

RECEIVED

JUL 29 2015

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Spartanburg County

Deadra L. Jefferson, Circuit Court Judge

TRAVIS F. HIPP,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000757

APPENDIX

BENJAMIN JOHN TRIPP
Appellate Defender

ALAN WILSON
Attorney General

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

SUZANNE H. WHITE
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....	i
TRIAL TRANSCRIPT.....	1
APPLICATION FOR POST-CONVICTION RELIEF.....	55
RETURN.....	63
AMENDED APPLICATION FOR POST-CONVICTION RELIEF.....	69
POST-CONVICTION RELIEF HEARING TRANSCRIPT.....	77
EXHIBITS.....	138
ORDER OF DISMISSAL.....	143
INDICTMENTS.....	169
STATE'S EXHIBIT #1 (PCR HEARING).....	181

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,) TRANSCRIPT
5 PLAINTIFF,) OF
6 vs.) RECORD
7 TRAVIS FRANKLIN HIPPI,) 12-GS-42-593
8 DEFENDANT.)
9

10 March 19th, 2012
11 Spartanburg, South Carolina
12

13 B E F O R E:

14 THE HONORABLE ROGER L. COUCH, Judge.

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

16 ZACH ELLIS
17 ASSISTANT SOLICITOR
18 Attorney for the State

19 ANDREA PRICE
20 ASSISTANT PUBLIC DEFENDER
21 Attorney for the Defendant

22
23 PAMELA E. GREEN
24 Circuit Court Reporter
25 Seventh Judicial Circuit

I N D E XWITNESSESPAGE

Jury Selection

5

Motions

17

Guilty Plea

30

Sentence

52

Certificate

54

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

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>State's Exhibits</u>		
S-1	Photograph		53
S-2	Photograph		53
S-3	Photograph		53
S-4	Photograph		53
S-5	Photograph		53
S-6	Photograph		53
S-7	Photograph		53
S-8	certified copy of Indictment		53
S-9	certified copy of Indictment		53
S-10	certified copy of Indictment		53

P R O C E E D I N G S

(WHEREUPON, the following takes place outside the presence of the entire jury panel.)

MS. PRICE: I have my original voir dire questions.

THE COURT: Thank you.

Have you seen those, Mr. Ellis?

SOLICITOR ELLIS: I have, judge, and I have no objection.

THE COURT: Thank you.

MS. PRICE: Mr. Ellis has passed along a copy of his and I have no objection to his.

THE COURT: All right. Thank you.

And let's see, do we have a witness list from you, Mr. Ellis?

SOLICITOR ELLIS: Yes, sir, I believe I passed one up and I've got another one.

THE COURT: If you would, pass one up. I don't see one here. I've got the voir dire. Oh, excuse me. I do.

Defense witness list is what I'm looking for.

MS. PRICE: None, Your Honor.

THE COURT: Thank you.

All right. Anything we need to take up before we select a jury, Mr. Ellis?

SOLICITOR ELLIS: Not before we select the jury, no,

1 sir.

2 THE COURT: Ms. Price.

3 MS. PRICE: No, Your Honor.

4 THE COURT: All right. Let's bring the jury panel in
5 please.

6 THE COURT: Mr. Ellis, is Ralph Edward Lee the alleged
7 victim in the case?

8 SOLICITOR ELLIS: Yes, sir.

9 THE COURT: Thank you.

10 SOLICITOR ELLIS: He is seated behind me.

11 THE COURT: Okay. I just -- it doesn't -- his name
12 doesn't appear in the indictment, and I just wanted to be
13 sure that I was correct --

14 SOLICITOR ELLIS: Yes, sir.

15 THE COURT: -- in this.

16 Can the attorneys approach briefly while the jury is
17 coming in?

18 (WHEREUPON, a bench conference was held out of the
19 hearing of the jury, and the following takes place within
20 the presence of the jury.)

21 THE COURT: All right. Good afternoon, ladies and
22 gentlemen.

23 At this point in time we're going to begin the trial of
24 the case of the State of South Carolina versus Travis
25 Franklin Hipp. Before we begin jury selection, I'm -- I am

1 going to go over with you the indictment in this case. The
2 indictment is the document that brings the case before this
3 Court, and it informs the Court of the charge to be tried.
4 It informs the defendant of the charge that has been lodged
5 against him.

6 I will tell you that my purpose in reading the
7 indictment to you is so that you might be able to more fully
8 answer some questions that I'm going to ask you in a few
9 minutes that pertains specifically to this case.

10 I will tell you, an indictment can not be used by a
11 jury in any manner whatsoever in determining the guilt or
12 the innocence of a person charged in the indictment. Again,
13 it is simply the document that informs the Court of the
14 charge that's been brought before it.

15 Now, in this particular case, the indictment is in Case
16 Number 12-GS-42-593. The indictment is for the crime of
17 burglary second degree building. The indictment, in part,
18 states that the defendant, Travis Franklin Hipp, did, in
19 Spartanburg County, on or about March 14 of 2011, willfully
20 and intentionally enter, enter a building located at [REDACTED]
21 Long Branch Road in Chesnee, South Carolina without consent
22 and with the intent to commit a crime therein, and either in
23 effecting entry or while in the building or in immediate
24 flight, he or another participant in the crime, one, was
25 armed with a deadly weapon or explosive and/or caused

7
1 physical injury to any person who was not a participant in
2 the crime, and/or used or threatened the use of a dangerous
3 instrument, and/or displayed what was or appeared to be a
4 knife, pistol, revolver, rifle, shotgun, machine gun, or
5 other firearm, and/or entered the building during the
6 nighttime all in violation of Section 16-11-312(b) of the
7 Code of Laws of South Carolina, 1976 as amended, against the
8 peace and dignity of the State and contrary to the statute
9 in such case made and provided.

10 Now, again I have read that indictment to you so that
11 you might be in a position to more fully answer some
12 questions that I'm going to ask you that pertain
13 specifically to this case.

14 Now, at this time, I am going to ask that the clerk
15 again swear you because it's important that the information
16 that we receive in response to the questions that I'm about
17 to ask is truthful, honest, and complete information.

18 So, at this time, Madam Clerk, please swear the
19 potential jury panel for me.

20 CLERK: Yes, sir.

21 (WHEREUPON, the jury panel was placed under oath at
22 this time.)

23 THE COURT: Please be seated.

24 Now, I believe the gentleman in the back that indicated
25 he did not wish to have an oath involving a deity, did you

1 take the oath otherwise, sir?

2 JUROR: Yes, sir.

3 THE COURT: All right. Thank you. You can be seated.
4 Did anyone else fail or refuse to take the oath that
5 was just administered by this, by the clerk, if so, please
6 stand.

7 (No response.)

8 THE COURT: All right. Then all jurors have been sworn
9 for purposes of the questioning that I'm about to enter
10 into.

11 Before I do that, I'll ask that the attorneys that are
12 involved in the trial of the case introduce themselves to
13 you.

14 In the case of the State, I will ask that the State
15 introduce the alleged victim in this matter.

16 And in the case of the defense, that they introduce the
17 defendant to you.

18 For the State.

19 SOLICITOR ELLIS: Thank you, Your Honor.

20 Please the Court.

21 Good afternoon. My name is Zach Ellis and I represent
22 the people of the State of South Carolina. With me today is
23 Mr. Ralph Edward Lee.

24 Please stand.

25 THE COURT: Sir, if you stand, face the jury panel so

1 that they can put a face with that name.

2 (Victim complies.)

3 THE COURT: Thank you, sir.

4 And for the defense.

5 MS. PRICE: Good afternoon. My name is Andrea Price.

6 I represent Mr. Travis Hipp this morning.

7 THE COURT: Thank you, sir. If you'll turn around all
8 the way and face the jury panel so that they can see you.

9 (Defendant complies.)

10 THE COURT: Thank you very much, sir. You can be
11 seated.

12 Now, ladies and gentlemen, we'll follow a similar
13 procedure that we followed when I qualified you this
14 morning. I'll be asking questions. If you have a response
15 to any of the questions that I ask, I'll be asking that you
16 stand. I will need to get your name and number on the
17 record before I discuss any response that you might have to
18 the questions that I'm about to ask.

19 Now, has any member of this jury panel ever been
20 related by marriage or are you related by blood to either
21 the defendant, Travis Franklin Hipp, or the victim, alleged
22 victim, Ralph Edward Lee, if that's true, please stand.

23 (No response.)

24 THE COURT: Has any member of this jury panel ever had
25 a close personal or a social relationship with either the

1 defendant in this case or the alleged victim, if that's
2 true, please stand.

3 (No response.)

4 THE COURT: As to the attorneys that are involved in
5 this case, if any member of the jury panel has ever been
6 represented by either of the attorneys that are involved in
7 this trial or if they have ever appeared on the other side
8 of a legal matter from you, please stand.

9 (No response.)

10 THE COURT: If any member of the jury panel has ever
11 been related by marriage or if you're related by blood or if
12 you've ever had a close social or a personal relationship
13 with either of the attorneys involved in this trial, please
14 stand.

15 (No response.)

16 THE COURT: I have had two other witnesses identified
17 to me as potential witnesses in this case. One of whom is
18 Investigator Brian Wilkens with the Spartanburg County
19 Sheriff's Office.

20 If you're present -- is that you, sir?

21 You'll stand and face the jury panel for me.

22 (Witness complies.)

23 THE COURT: Thank you, sir. You may be seated.

24 The other is Ms. Gail Moffitt or her designee from the
25 office of the Spartanburg County Clerk of Court. I don't

1 believe Ms. Moffitt is in the courtroom.

2 Now, as to the individuals that I have identified as
3 potential witnesses in this trial, if any of you have ever
4 been related by marriage or are you related by blood or have
5 you ever had a close personal or a social relationship with
6 the individuals that I've identified as possible witnesses
7 in this matter, if that's true, please stand.

8 (No response.)

9 THE COURT: Has any member of this jury panel or a
10 member of your immediate family ever been investigated by
11 either state or federal law enforcement agencies, if that's
12 true, please stand.

13 (No response.)

14 THE COURT: Does any member of the jury panel, are you
15 aware of any bias or prejudice that you might have either in
16 favor of or against law enforcement officers, if that is
17 true, please stand.

18 (No response.)

19 THE COURT: Has any member of the jury panel ever been
20 previously prosecuted for an offense by the Seventh Circuit
21 Solicitor's Office, if that is true, please stand.

22 (No response.)

23 THE COURT: Has any member of the jury panel or a
24 member of your immediate family ever been represented
25 previously by the Seventh Circuit Public Defender's Office,

1 if that is true, please stand.

2 (No response.)

3 THE COURT: Does any member of the jury panel know of
4 any reason whatsoever why he or she would not follow the
5 laws of the State of South Carolina and of the United States
6 of America in reaching a decision in this case, if that is
7 true, please stand.

8 (No response.)

9 THE COURT: Is there any member of the jury panel whose
10 ever been related by marriage or are you related by blood or
11 are you a close personal friend with any individual who is
12 employed by the Seventh Judicial Circuit Solicitor's Office,
13 the Spartanburg Department of Public Safety, the Spartanburg
14 County Sheriff's Office, or state, the State Law Enforcement
15 Division, if that is true, please stand.

16 (Jurors respond.)

17 THE COURT: Name and number please, sir.

18 JUROR: John Reninger, 138.

19 THE COURT: Yes, sir.

20 JUROR: Brother-in-law, Craig Show, is a Spartanburg
21 County Sheriff's officer.

22 THE COURT: All right. Would that fact affect your
23 ability to be fair and impartial if you were selected as a
24 juror?

25 JUROR: No, sir.

1 THE COURT: Thank you, sir.

2 Your name and number, sir?

3 JUROR: Brian Hyde, Juror Number 83. Cousin works as a
4 police officer in Greenville.

5 THE COURT: All right, sir. Would that fact affect
6 your ability to be fair and impartial if you were selected
7 on the jury?

8 JUROR: No, sir.

9 THE COURT: Thank you.
10 Anyone else?

11 (No response.)

12 THE COURT: Has any member of the jury panel or a
13 member of your immediate family ever been the victim of a
14 burglary or other property crime, if that is true, please
15 stand.

16 (No response.)

17 THE COURT: Has any member of the jury panel gathered
18 any information outside of this courtroom such that it would
19 of caused you to either express or form an opinion about any
20 issue or matter involved in this case, if that is true,
21 please stand.

22 (No response.)

23 THE COURT: Is there any member of the jury panel who
24 is aware of any bias or prejudice that you might have either
25 for or against either the State or the defense in this

1 matter, if that's true, please stand.

2 (No response.)

3 THE COURT: Is there any member of the jury panel who
4 is a member of or a contributor to any group which has as
5 its primary concern the promotion of law enforcement or
6 victim's rights?

7 These groups would include, but not be limited to such
8 groups as Mothers Against Drunk Driving, Students Against
9 Drunk Driving, Citizens Against Violent Crime, the South
10 Carolina Troopers Association, the South Carolina Sheriff's
11 Association, or other similarly oriented organizations, if
12 that's true, please stand.

13 (Jurors respond.)

14 THE COURT: Name and number please, ma'am.

15 JUROR: Juror 24, Melissa Gray. Contributor to those
16 organizations.

17 THE COURT: All right. Any one in particular or to all
18 of them?

19 JUROR: The Fraternal Order of Police, the Sheriff's
20 Department.

21 THE COURT: All right. Would that fact affect your
22 ability to be fair and---

23 JUROR: No, sir.

24 THE COURT: ---impartial if you were selected on the
25 jury?

1 JUROR: No, sir.

2 THE COURT: Thank you, ma'am.

3 Name and number please, sir?

4 JUROR: Kurt Neeley, 122.

5 THE COURT: Yes, sir.

6 JUROR: Our company has contributed to the State
7 Sheriff's Association and the local Sheriff's Department.

8 THE COURT: All right.

9 JUROR: And we participated in the Solicitor's
10 Worthless Check Program.

11 THE COURT: All right. Would that fact affect your
12 ability to be fair and impartial if you were selected on the
13 jury?

14 JUROR: No, sir.

15 THE COURT: Thank you.

16 Anyone else?

17 (No response.)

18 THE COURT: Does any member of this jury panel know of
19 any reason whatsoever why he or she should not serve as a
20 juror in this case with particular emphasis being placed
21 upon your ability to be both fair and impartial to both the
22 state and the defense, if that's true, please stand.

23 (No response.)

24 THE COURT: Any additional questions from the State?

25 SOLICITOR ELLIS: No, sir, Your Honor.

1 THE COURT: Any from the defense?

2 MS. PRICE: No, Your Honor.

3 THE COURT: All right. Then I'll declare that the jury
4 panel is qualified to serve as jurors in this case.

5 The strikes in this case will be five for the state,
6 ten for the defense. We'll pick one alternate with the
7 state having one strike, the defense having two strikes.

8 Now, ladies and gentlemen, what's going to happen now,
9 the clerk is preparing a list of potential jurors. We have
10 a computer program that randomly selects names from your
11 group. Once that list is prepared, we'll begin to call
12 those names.

13 When your name is called, I'll be asking that you come
14 down in front here. A bailiff will be standing there.
15 Bring with you any personal belongings that you brought into
16 the courtroom such as pocketbooks or whatever else you might
17 have with you. If you're selected to serve on the jury
18 panel, you'll be having a seat immediately in the jury box
19 to my left. So, as soon as that list is prepared we will
20 begin with the jury selection process.

21 (Pause.)

22 THE COURT: All right. Madam Clerk, you can begin the
23 selection process.

24 CLERK: Yes, sir.

25 (WHEREUPON, a jury panel of 12 was selected at this

1 time.)

2 THE COURT: All right. We are now selecting the
3 alternate.

4 (WHEREUPON, an alternate juror was selected at this
5 time.)

6 THE COURT: All right. Is there any objection to the
7 jury selection process from the State?

8 SOLICITOR ELLIS: No, sir, Your Honor.

9 THE COURT: Any objection from the defense?

10 MS. PRICE: No, Your Honor.

11 THE COURT: All right.

12 (Pause.)

13 THE COURT: All right. Ladies and gentlemen, you've
14 been selected as jurors in this case. There's a couple of
15 matters I need to take up with the lawyers before I actually
16 begin the trial of the case.

17 So, I'm gonna allow the bailiff to take you back to the
18 jury room. This will be the first time you'll hear me say
19 this, but I'm gonna say it many times as we go through the
20 trial, and that is I'm going to ask you not to begin to
21 discuss anything about this case until such time as you've
22 heard all the arguments by the lawyers, all the evidence to
23 be presented, and my charge concerning the law.

24 You've been selected as fair and impartial jurors with
25 an open mind on this case, and even if you just begin to

1 discuss what the charges are about or the people that are
2 involved, those discussions might begin to color your
3 ultimate decision in this case, and you haven't heard the
4 first word of testimony yet.

5 So, again, I'm gonna ask you, talk about the weather.
6 Talk about whatever you want to talk about. I won't suggest
7 politics cause I don't want any fights starting in the, in
8 the jury room. But I will ask you to talk about everything
9 but this case. But don't discuss anything about it until
10 I've asked you to begin your deliberations in this matter.
11 Should be -- it shouldn't be but just a couple of minutes.
12 The bailiffs will make you comfortable. You may retire to
13 the jury room.

14 Thank you very much.

15 (WHEREUPON, the following takes place outside the
16 presence of the jury.)

17 THE COURT: All right. Prior to our, the jury
18 selection, at the bench, I discussed with counsel the fact
19 that the defendant has previously been arraigned on this
20 charge.

21 Is that correct, Ms. Price?

22 MS. PRICE: Your Honor, yes, sir. He was arraigned on
23 March the 2nd of this year before the Honorable John Hayes.
24 Your Honor, at that time Mr. Ellis presented me with a copy
25 of the notice, the State's notice to seek the life without

1 parole under the Habitual Offender Act.

2 THE COURT: All right. So, notice of them seeking that
3 sentence has been given?

4 MS. PRICE: It has been given, Your Honor, under the
5 statute.

6 THE COURT: All right. Thank you very much.

7 And I would assume that your client has requested, has
8 pled not guilty and is requesting a trial by jury, is that
9 correct?

10 MS. PRICE: That's correct, Your Honor.

11 THE COURT: All right. Now, are there any other
12 matters that we need to take up from the State's prospective
13 before I swear the jury and we begin the trial?

14 SOLICITOR ELLIS: Yes, sir, just briefly. First, a
15 housekeeping matter. He was initially indicted in this case
16 under Indictment 2011-GS-42-4346. That is a charge for
17 burglary first degree. That charge was later changed to
18 this burglary second degree violent that you have before you
19 today, Your Honor---

20 THE COURT: Yes, sir.

21 SOLICITOR ELLIS: ---and that's what the arraignment
22 was for. 2011-4346 will be dismissed following this case.
23 Otherwise that would be double jeopardy.

24 Secondly, Your Honor, the State does wish to introduce,
25 as part of our case in chief, evidence of two prior

1 convictions for burglary. The defendant has been convicted
2 previously for actually three burglaries, Your Honor.
3 Under -- first, under Indictment 2006-GS-42-02095 he was
4 convicted for burglary in the first degree, under
5 2008-GS-42-6823 he was convicted of burglary in the second
6 degree, and under indictment 2008-GS-42-6827 he was also
7 convicted for burglary in the second degree. All those
8 convictions occurred before the charge in this case
9 occurred, Your Honor.

10 We would seek to introduce evidence of at least two of
11 those as part of our case, 2006-0095 and 2000-6823, for
12 purposes of the statute or meeting the elements of burglary
13 second degree.

14 THE COURT: All right. When the appropriate time comes
15 we will deal with that as far as being presented in your
16 case in chief.

17 SOLICITOR ELLIS: Yes, sir.

18 THE COURT: All right. Defense is on notice though of
19 those convictions, is that correct?

20 MS. PRICE: Yes, Your Honor. I have, throughout
21 discovery process, received certified copies of those. Of
22 course, I will be objected at the appropriate time.

23 THE COURT: I understand.

24 Anything else, Mr. Ellis?

25 SOLICITOR ELLIS: If I can just cover my -- the

1 exhibits I already turned in.

2 THE COURT: All right. I'll give you a minute.

3 MS. PRICE: And, Your Honor, I've already reviewed
4 those exhibits and I have no objection to the introduction
5 of any of those.

6 THE COURT: All right. You want to go ahead and put on
7 the record the exhibit numbers, and it's been indicated
8 there are no objections to those exhibits?

9 SOLICITOR ELLIS: Yes, sir.

10 MS. PRICE: Well, Your Honor, the photographs. Then
11 there's certified copies of the indictments. So --.

12 THE COURT: I understand.

13 SOLICITOR ELLIS: And, Your Honor, the photographs to
14 which Ms Price refers, the Exhibit No. 1 is a photograph
15 basically of the incident location. Exhibit No. 2 is a
16 photograph of basically the side of the incident location as
17 well as the fence. Exhibit No. 3 is a photograph of
18 Mr. Lee's residence and, again, part of that same fence.
19 Exhibit No. 4 is a photograph of Long Branch Road pointing
20 toward Highway 11. Exhibit No. 5 is another photograph of
21 Long Branch Road showing the victim's driveway. Exhibit No.
22 6 is a photograph of basically the defendant's residence,
23 which belongs to his father. And Exhibit No. 7 is a
24 different angle of the photograph of the defendant's home.

25 THE COURT: All right. No objection to those

1 photographs, is that right?

2 MS. PRICE: None, Your Honor.

3 THE COURT: All right. The other proposed exhibits
4 have to do with the convictions, and I know you're reserving
5 your right to object to those at the appropriate time.

6 MS. PRICE: That's correct, Your Honor.

7 THE COURT: All right. Now, anything further from the
8 State before we begin?

9 SOLICITOR ELLIS: No, sir, Your Honor.

10 THE COURT: And from the defense, anything you want me
11 to take up before we begin?

12 DEFENDANT: What if I don't want---

13 MS. PRICE: One---

14 THE COURT: Let me talk to your lawyer and then I'll
15 talk to you, sir.

16 MS. PRICE: Your Honor, it appears that he wants to
17 talk to you. I'm not quite sure what about.

18 THE COURT: Well, I'm gonna, I'm gonna give him an
19 opportunity to talk with me.

20 MS. PRICE: Yes, sir.

21 THE COURT: I just want to know if there's any motions
22 or anything you'd like to raise?

23 MS. PRICE: I do not have anything further, Your Honor.

24 THE COURT: All right. Mr. Hipp, do you wish to
25 address the Court?

1 DEFENDANT: Yes, I don't think---

2 THE COURT: Just one second. Stand up and swear the
3 defendant for me.

4 DEFENDANT: Oh, I'm sorry.

5 (WHEREUPON, the Defendant was placed under oath at this
6 time.)

7 THE COURT: Now, sir, I'll be happy to hear from you,
8 but let me caution you now, anything that you say at this
9 time could be used against you in a Court of law. This is a
10 matter of record. So, again, anything you say to the Court
11 could later be used in the trial of your case.

12 Do you understand that?

13 DEFENDANT: Yes, sir.

14 THE COURT: And you, by discussing these matters with
15 me, are, in effect, waiving your right to remain silent
16 concerning these matters?

17 You have a Fifth Amendment right not to testify against
18 yourself in this case.

19 Do you understand that as well?

20 DEFENDANT: Yes, sir.

21 THE COURT: All right, sir. Do you -- do you have any
22 questions about what I've explained to you?

23 DEFENDANT: No, sir.

24 THE COURT: All right. I'll be, I'll be glad to talk
25 with you, Mr. Hipp, if you want to talk to me.

1 DEFENDANT: I don't wish to end the testimony. I just
2 don't wish to go through this trial with counsel that I have
3 cause I don't think she's represented me to the best of her
4 abilities, and, in 2008, she was put on these prior cases
5 and I have fired, fired her at that time, and hired Michael
6 Brown, and he was assigned to me. But on these, on these
7 cases here, I don't feel that she has represented me
8 basically the best she could.

9 THE COURT: All right, sir. I want you to be specific.
10 Tell me what has she not done that you've asked her to do.

11 DEFENDANT: I've asked her to get me repeatedly for
12 bond hearing. I been, I been incarcerated for eight months.
13 She hadn't tried once to get me a bond hearing.

14 THE COURT: To get you a what?

15 DEFENDANT: A bond hearing.

16 THE COURT: A bond hearing?

17 DEFENDANT: Yes, sir.

18 THE COURT: All right, sir.

19 DEFENDANT: My motion of discovery, I had asked her for
20 that. It took a long time for that. I've wrote request
21 after request.

22 THE COURT: Have you received your discovery?

23 DEFENDANT: Yes, sir, I wrote---

24 THE COURT: And have you had an opportunity to review
25 it?

1 DEFENDANT: No, not before -- I'm waiting on the
2 jailhouse to give me glasses. Of course, I been waiting on
3 them for a month and a half.

4 THE COURT: Do you wear prescription lenses?

5 DEFENDANT: Yes, sir.

6 THE COURT: And tell me the nature of your seeing
7 problem.

8 DEFENDANT: I got astigmatism in both my eyes and I'm
9 legally blind in my left eye.

10 THE COURT: Okay, sir.

11 DEFENDANT: I'm suppose to have---

12 THE COURT: All right, sir. Now, has your lawyer not
13 gone over the discovery with you?

14 DEFENDANT: No.

15 THE COURT: Do you wish time to have that occur, to
16 have that occur?

17 DEFENDANT: No, I just wish to fire my counsel that I
18 have.

19 MS. PRICE: He wishes to fire me, Your Honor.

20 THE COURT: Oh, I know he wants to fire you. That's
21 not what I asked him. I asked him does he want more time in
22 which to review the discovery.

23 DEFENDANT: Yes, sir.

24 THE COURT: And I'd like to have an answer to that
25 question.

1 DEFENDANT: Yes, sir, if that would be possible, sir.

2 THE COURT: Okay. It's gonna be possible.

3 Anything else---

4 DEFENDANT: No, sir.

5 THE COURT: ---that she's not done?

6 So, it's a bond hearing and she's not gone over your
7 discovery with you?

8 DEFENDANT: Yes, sir, I wrote repeated request and
9 letters for her to come speak with me as far as these cases,
10 and just, it's -- like I said, it's been eight months and
11 I've not heard from her three times maybe about two or three
12 minutes at a time.

13 THE COURT: Well, sir, again, I'm, I'm gonna ask that
14 you be specific about the things that she has not done to be
15 prepared for your case, and it sounds like to me that you've
16 been specific in that you felt like you should of gotten a
17 bond hearing, and---

18 DEFENDANT: Yes, sir.

19 THE COURT: ---you feel like she's not gone over your
20 discovery with you sufficiently?

21 DEFENDANT: That's correct, sir.

22 THE COURT: All right. Any other specific items that
23 she's failed to do in representing you?

24 Such things as not contacting a witness that you've
25 identified?

1 DEFENDANT: There are witnesses that wrote her on
2 request. I would like for my stepfather to be here. This
3 is his fourth character witness. It's my pastor of my
4 church.

5 THE COURT: Do you intend to put your character into,
6 into evidence in this case because you know you have prior
7 convictions?

8 DEFENDANT: Yes, sir, I understand that. But I mean
9 there was people who wanted to be here, and she never did
10 ask me if there was anyone who wants to be here.

11 THE COURT: Well, no, I didn't, I didn't ask you about
12 people to attend the trial. I asked you if there are
13 specific witnesses---

14 DEFENDANT: No, sir.

15 THE COURT: ---that you've identified who would be
16 testifying during the trial that your lawyer needs to get in
17 touch with because we, you know, we can start this case in
18 the morning. I can get those people here.

19 DEFENDANT: My father, my father, my father and his
20 girlfriend as of on the night.

21 THE COURT: You want them to testify on your behalf?

22 DEFENDANT: Yes, sir.

23 THE COURT: In what regard?

24 DEFENDANT: In -- to the condition of me being in that
25 night.

1 THE COURT: Well, I'll let you talk that over with your
2 lawyer if you wish to talk it over with your lawyer.

3 Anything else?

4 DEFENDANT: No, sir, I'm sorry that I interrupted your
5 courtroom. I'm sorry.

6 THE COURT: You're not interrupting me. I'm just --
7 I'm gonna see to it that you get a fair trial.

8 DEFENDANT: Yes, sir.

9 THE COURT: And I'm gonna give you a chance, a
10 chance -- how much discovery do we have, Ms. Price?

11 DEFENDANT: One police report, Your Honor. It's two
12 pages.

13 THE COURT: All right. Well, why don't we take a short
14 recess?

15 I'm gonna let you step back to the, to the jail room.
16 If you don't mind, Ms. Price, read that to him, and if
17 there's any issues that come up out of that that need to be
18 taken up with the Court, I'll be glad to discuss that with
19 you when you come back.

20 Let me -- Mr. Hipp, so far, I've heard -- I don't -- I
21 have not heard anything that would justify the delaying of
22 your trial. Now, the bond issue really has nothing to do
23 with whether or not your lawyer's prepared to try your case.

24 DEFENDANT: And I understand---

25 THE COURT: I'm talking now, sir.

1 DEFENDANT: I'm sorry.

2 THE COURT: And I also have not heard anything that,
3 that can't be done before we actually begin the trial of
4 this case. Now, you certainly don't have -- you have a
5 right not to have a lawyer. But I will not delay the trial
6 in this case based on what I've heard so far. And if you
7 fire your attorney, you'll be trying this case yourself, for
8 yourself.

9 Do you understand?

10 DEFENDANT: Yes, sir.

11 THE COURT: I'm gonna give you an opportunity to step
12 back to the jail room, confer with your attorney, go over
13 the things that you've discussed with me. And certainly
14 she'd have the right to call your family or friends and ask
15 them to come to the trial, and I'll be glad to ask her to do
16 that for you.

17 Now, whether or not those people are, are people that
18 you would like to have testify for you, that would be a
19 matter of trial strategy that you'd need to talk over with
20 your lawyer. As I indicated, you mentioned that they might
21 be character witnesses. Placing people on the stand as
22 character witnesses can have implications concerning your
23 trial strategy. So, you need to talk that over with your
24 lawyer.

25 You understand what I'm saying?

1 DEFENDANT: Yes, sir.

2 THE COURT: Sir?

3 DEFENDANT: Yes, sir.

4 THE COURT: All right. We're gonna take a short
5 recess.

6 Ms. Price, when you think you're ready to come back
7 into the courtroom---

8 MS. PRICE: Certainly.

9 THE COURT: ---please let the bailiffs know.
10 Court will be in recess for a short period of time.

11 SOLICITOR ELLIS: Thank you, judge.

12 (WHEREUPON, a short recess was taken in this case at
13 this time.)

14 THE COURT: Yes, sir, Mr. Ellis.

15 SOLICITOR ELLIS: Thank you, Your Honor.

16 The State calls Travis Franklin Hipp. Indictment
17 2011-GS-42-5722. Indicted for petty larceny third or
18 subsequent property offense.

19 Also Indictment 2011-5723, indicted for breaking into
20 motor vehicle.

21 Indictment 2011-5724, indicted for petty larceny third
22 or subsequent property offense.

23 Indictment 2011-5725, indicted for burglary in the
24 first degree.

25 Indictment 2011-6162, indicted for malicious injury to

1 real property third or subsequent property offense.

2 Finally, Indictment 2012-0593, indicted for burglary in
3 the second violent.

4 Your Honor, each of these indictments has been
5 presented to the Grand Jury. The defendant is represented
6 by Ms. Andrea Price.

7 THE COURT: Thank you.

8 Please swear the defendant for me, Madam Clerk.

9 (WHEREUPON, the Defendant was placed under oath at this
10 time.)

11 THE COURT: All right. You are Travis Franklin Hipp,
12 is that right, sir?

13 DEFENDANT: Yes, sir.

14 THE COURT: You don't have to bend over. Just speak
15 straight to me, and the microphone will pick you up, Mr.
16 Hipp.

17 Mr. Hipp, we were about to begin your trial for
18 burglary in the second degree violent in which the State was
19 seeking life without the possibility of parole. At that
20 time you indicated that you were not satisfied with the
21 services of your lawyer, Ms. Price.

22 Now, since that time I gave you a recess and I gave you
23 an opportunity to meet with her and go over your cases, is
24 that true?

25 DEFENDANT: Yes, sir.

1 THE COURT: And have you had an opportunity to discuss
2 these matters with her fully?

3 DEFENDANT: Yes, sir.

4 THE COURT: It's my understanding that you are
5 appearing in front of me not only concerning that case, but
6 several other cases.

7 DEFENDANT: Yes, sir.

8 THE COURT: And you are offering a guilty plea in these
9 cases.

10 Is that correct as well?

11 DEFENDANT: Yes, sir.

12 THE COURT: Now, Mr. Hipp, did you have a chance to
13 fully discuss these matters with Ms. Price?

14 DEFENDANT: Yes, sir.

15 THE COURT: And are you now satisfied with her
16 services?

17 DEFENDANT: Yes, sir.

18 THE COURT: Is there anything else that you feel that
19 she ought to do for you?

20 DEFENDANT: No, sir.

21 THE COURT: Is there anything else you feel that you
22 ought to discuss with her before we go forward?

23 DEFENDANT: No, sir.

24 THE COURT: All right. Now, Mr. Hipp, I'm gonna go
25 over the charges that are before the Court. I'll be going

1 over with you the potential sentences in this case. The
2 State is accepting the pleas without negotiations or
3 recommendations concerning these cases. It's my
4 understanding, however, that the State is waiving its
5 request for a sentence of life imprisonment without the
6 possibility of parole.

7 Is that right, Mr. Ellis?

8 SOLICITOR ELLIS: Yes, sir, Your Honor. It is.

9 THE COURT: All right. You understand that, what I
10 just went over with you, Mr. Hipp?

11 DEFENDANT: Yes, sir.

12 THE COURT: And is that your understanding as well?

13 DEFENDANT: Yes, sir.

14 THE COURT: All right, sir. Now, there's a couple of
15 cases here that are third or subsequent property offenses.
16 Let me go over those with you first.

17 These are Cases 2011-GS-42-5724 for petty larceny, and,
18 again, it's a third or subsequent and carries up to ten
19 years in prison.

20 The next one is 2011-6162. It's a malicious injury to
21 real property. It's a third or subsequent property offense.
22 That carries up to ten years in prison.

23 The last one is Case Number 2011-GS-42-5722. It's a
24 petty larceny. It carries now up to ten years in prison.

25 All those have been indicted by the Grand Jury. Again,

1 the State makes no recommendations on sentencing.

2 The next case that I'll go over with you is breaking
3 into a motor vehicle. That's Case Number 2011-5723. That
4 carries up to five years in prison and/or a fine. It has
5 been indicted by the Grand Jury. Again, the State makes no
6 recommendation in that case.

7 Now, the next case is burglary in the second degree
8 violent. That is classified as a violent and serious
9 offense. That constitutes a strike under the law, and the
10 state could seek a life in prison without the possibility of
11 parole in this case. My understanding is they are waiving
12 that right.

13 DEFENDANT: Yes, sir.

14 THE COURT: Is that your understanding as well?

15 DEFENDANT: Yes, sir.

16 THE COURT: However, I will tell you that this is what
17 is described as a no parole offense. So that means that you
18 would have to serve the majority of the time that you
19 received before you would ever be eligible for parole.

20 Do you understand that?

21 DEFENDANT: Yes, sir.

22 THE COURT: Have you discussed that with your attorney?

23 DEFENDANT: No, sir, I didn't know that until just now.

24 THE COURT: All right, sir. well, do you need to talk
25 it over with her about that?

1 DEFENDANT: No, sir.

2 THE COURT: I will tell you that burglary in the second
3 degree violent requires DNA database registration. There
4 could be no PTI. You can be eligible for work release
5 within three years from your date of your release from
6 prison.

7 Did you understand that, sir?

8 DEFENDANT: Yes, sir.

9 THE COURT: Now, the last case is burglary in the first
10 degree. That carries a sentence of a minimum of 15 years up
11 to life. That has -- the State, again, is not making
12 recommendations in this case, and it is considered as a no
13 parole offense.

14 Do you understand that, sir?

15 DEFENDANT: Yes, sir.

16 THE COURT: All right. Now, that means, in these
17 particular cases, I guess the maximum sentence that you
18 could be facing would be a life sentence on the burglary
19 first. The others would all be less than that.

20 Do you understand that, sir?

21 DEFENDANT: Yes, sir.

22 THE COURT: Now, do you need any further explanation
23 concerning these charges?

24 DEFENDANT: No, sir.

25 THE COURT: Do you understand what you've been charged

1 with?

2 DEFENDANT: Yes, sir.

3 THE COURT: You have the right to plead either guilty
4 or not guilty to any or all of these offenses.

5 How do you plead?

6 DEFENDANT: I plead guilty, sir.

7 THE COURT: To all of them?

8 DEFENDANT: Yes, sir.

9 THE COURT: Ms. Price, I'm sure you've discussed this
10 matter thoroughly with Mr. Hipp, is that correct?

11 MS. PRICE: I have, Your Honor.

12 THE COURT: Are you satisfied with your discussions,
13 that he understood your discussions?

14 MS. PRICE: Yes, sir, Your Honor.

15 THE COURT: I would suspect that, among the many things
16 you would of discussed with him, you would of discussed such
17 things as the nature of the charges, the elements of the
18 crimes, the potential penalties that are involved, his
19 parole eligibility for these offenses, any defenses that he
20 might of had to the charges, as well as his rights under the
21 Constitution.

22 Is that some of the things you've talked about?

23 MS. PRICE: Yes, sir, Your Honor, and also explained to
24 him that he's looking at a minimum mandatory of 15 years
25 today---

1 THE COURT: All right.

2 MS. PRICE: ---by virtue of the burglary first charge.
3 He understands that he's looking at some significant time.

4 THE COURT: All right. And are you satisfied he
5 understood those things?

6 MS. PRICE: Yes, Your Honor.

7 THE COURT: Has he been able to assist you in his
8 defense?

9 MS. PRICE: Yes, Your Honor.

10 THE COURT: Mr. Hipp, do you agree that those were some
11 of the things that your lawyer talked to you about?

12 DEFENDANT: Yes, sir.

13 THE COURT: And is that the advice that you're
14 satisfied with?

15 DEFENDANT: Yes, sir.

16 THE COURT: Now, Mr. Hipp, how old are you?

17 DEFENDANT: I'm 30 years old, sir.

18 THE COURT: And how far did you go in school?

19 DEFENDANT: I completed 3.64 GPA.

20 THE COURT: All right. Are you married?

21 DEFENDANT: No, sir.

22 THE COURT: Any children?

23 DEFENDANT: I have to take care of my little niece.

24 THE COURT: All right.

25 DEFENDANT: My brother's---

1 THE COURT: All right. I asked you if you had any
2 children.

3 Do you have any children?

4 DEFENDANT: No, sir.

5 THE COURT: All right. Were you working when you got
6 arrested, Mr. Hipp?

7 DEFENDANT: Yes, sir, I was working two jobs.

8 THE COURT: Where did you work?

9 DEFENDANT: I worked at Blue Fin Grill at Westgate Mall
10 and for the Herald-Journal.

11 THE COURT: All right. Now, Mr. Hipp, has anyone
12 threatened you, coerced you, put pressure on you, tried to
13 intimidate you, in other words done anything to you to try
14 to force you to offer the plea?

15 DEFENDANT: No, sir.

16 THE COURT: Are you doing this of your own free will?

17 DEFENDANT: No, sir.

18 THE COURT: Have you had sufficient time to consider
19 these matters?

20 DEFENDANT: Yes, sir.

21 THE COURT: Now, is anyone made any promises or
22 guarantees or assurances to you about anything in connection
23 with these pleas?

24 DEFENDANT: No, sir.

25 THE COURT: So, no one's made any promises or

1 guarantees concerning such things as pardon, parole,
2 probation, early release, or length of sentence?

3 DEFENDANT: No, sir.

4 THE COURT: Now, Mr. Hipp, you -- when you plead guilty
5 you give up your Constitutional rights as they relate to all
6 of these charges, and I have to be sure that you do that
7 knowingly and intelligently. In other words, you know what
8 your rights are, you understand what they are, and you're
9 giving them up as an intelligent part of your decision to
10 offer the plea. So, I'm going to explain your rights, and
11 I'll give you a chance to ask questions.

12 Do you understand what I'm doing, Mr. Hipp?

13 DEFENDANT: Yes, sir.

14 THE COURT: You have a right to have a Grand Jury
15 consider your cases, and the Grand Jury has considered all
16 of these charges, and has issued a true bill.

17 You have a right to the service of your lawyer, and
18 your lawyer is available to you at all times. She will be
19 available to you until your plea is completed.

20 You have a right to a trial by jury. At that trial
21 you'd be presumed to be innocent until the State proves your
22 guilt beyond a reasonable doubt.

23 Now, for that reason the State has the only burden of
24 proof during a criminal trial. A defendant is not required
25 to prove anything since the, a defendant is presumed to be

1 innocent.

2 Now, at the trial and under the Constitution, you have
3 the right to have subpoenas issued to witnesses to require
4 that they attend the trial. You would have the right to
5 confront or question anyone who testified during the trial.
6 You'd have the right to present any defense you have to the
7 charges during the trial, and you'd be given the opportunity
8 to try to suppress any and all evidence the State may have
9 against you. That includes any statements that you might
10 have previously made.

11 Now, at all times, Mr. Hipp, you have the right to
12 remain silent. If you chose to remain silent during a
13 trial, the judge conducting the trial is required to
14 instruct the jury that your silence could not be used
15 against you.

16 Now, Mr. Hipp, do you understand what I just explained
17 about your rights?

18 DEFENDANT: Yes, sir.

19 THE COURT: Do you have any questions about them?

20 DEFENDANT: No, sir.

21 THE COURT: Do you realize that when you plead guilty
22 you give up all of those rights except the right to have a
23 lawyer?

24 DEFENDANT: Yes, sir.

25 THE COURT: Now, does the fact that you have to give up

1 those rights, does that cause you to want to change your
2 plea in any way?

3 DEFENDANT: No, sir.

4 THE COURT: So, are you still pleading guilty to these
5 charges?

6 DEFENDANT: Yes, sir.

7 THE COURT: Is that because you are guilty of these
8 charges?

9 DEFENDANT: Yes, sir.

10 THE COURT: I'm gonna ask the solicitor to go over the
11 facts in these cases. Listen carefully, Mr. Hipp, cause
12 I'll be asking you about these facts when he finishes.

13 Mr. Ellis.

14 SOLICITOR ELLIS: Thank you, Your Honor.

15 THE COURT: Yes, sir.

16 SOLICITOR ELLIS: Going chronologically, the first
17 indictment is 2012-0593. That is the case that was before
18 us today for a potential trial, Your Honor.

19 That occurred March 14th, 2011. Just after 2:00 in
20 the morning, at that point, Your Honor, the defendant broke
21 into a residence or, or, I'm sorry, a building that
22 basically was owned by the mother-in-law of Ralph Edward
23 Lee. The building does reside on Mr. Lee's property. The
24 building he broke into was [REDACTED] Long Branch Road. Mr. Lee
25 lives adjacent to it at [REDACTED] Long Branch Road. Both

1 buildings are in Chesnee, South Carolina in Spartanburg
2 County, Your Honor.

3 Basically Mr. Lee had had numerous break-in's from
4 unknown people at the home and, or over some times since his
5 mother-in-law had been put into a nursing home. At that
6 point had set up some, some laser beam alarm detectors
7 around the entryways into his mother-in-law's residence.
8 And, and at that point, around 2:00 in the morning, one of
9 the alarms tripped.

10 Mr. Lee, his son, and one of his son's friends, armed
11 themselves and went across the yard, which was just maybe 30
12 or 40 yards, Your Honor, basically, entered the home. And
13 when Mr. Lee entered the home with his gun, he saw that this
14 defendant was inside the house. He was basically headed
15 toward the opposite door from where Mr. Lee entered.
16 Mr. Lee ordered him at gunpoint to stop, turn around, come
17 back, approach him with his hands up, and get on the ground.

18 The defendant did approach him as ordered. Basically
19 continued to reach toward his pants pocket. He did get on
20 his knees, but kept reaching for his pants pocket and the
21 rear of his pants at which point Mr. Lee put him on the
22 ground, held him at gun point there, and located a
23 flashlight on him as well as a cell phone wallet and ID. He
24 then used the defendant's cell phone to call 9-1-1.

25 While he was there, Your Honor, the defendant continued

1 to tell Mr. Lee that he thought he was drunk, that he didn't
2 know where he was. He thought he was in his father's home,
3 things of that nature.

4 There was power into the home, Your Honor, to the, to
5 the building at [REDACTED] Long Branch Road. The defendant did not
6 take advantage of any of the power, and, as I said, he did
7 have a flashlight there with him at the time. The police
8 came and arrested him at that time.

9 He initially was charged with burglary in the first
10 degree, was indicted for that, under Indictment 2011-4346.
11 Based on more evidence coming forward from Mr. Lee about the
12 use of the building at that time, that is why the burglary
13 second degree indictment was done, and Indictment 2011-4346
14 for burglary first will be dismissed upon this plea.

15 THE COURT: I understand.

16 SOLICITOR ELLIS: All the other incidents, Your Honor,
17 occurred while this defendant was out on bond from that
18 charge. They all -- the rest of them occurred basically the
19 night of July 28th, 2011.

20 The defendant first entered the mobile home belonging
21 to Jennifer Gossett located at [REDACTED] Allen Ray Drive in
22 Chesnee. Again, in Spartanburg County. He stole various
23 items from inside that home including DVD's, a DVD holder, a
24 microwave, and various food and drinks from the
25 refrigerator, Your Honor.

1 He then continued to various other locations. It
2 appears, Your Honor, that he may have actually been -- these
3 may have been on his route as a paper deliveryman for the
4 Herald-Journal as he was doing these crimes.

5 That same night, July 28th, 2011, he also broke into
6 an SUV that belonged to Mr. Brannon Negro while it was
7 parked in his driveway at [REDACTED] Anderson Road in Chesnee,
8 which is also in Spartanburg County. He stole Mr. Negro's
9 wallet and two portable DVD players from that SUV. The
10 wallet contained debit and credit cards, driver's license,
11 and Social Security card.

12 At that point the defendant went to the H&M Stop And Go
13 Convenience Store which is located at 4811 Highway 11 in
14 Inman, South Carolina. Again, in Spartanburg County. He
15 used that, the credit card there to purchase a hundred
16 dollar phone card, cigarettes, and one electronic cigarette.
17 The total value of those items was \$134.24. The purchasing
18 of those items also was captured on security video, and the
19 clerk recognized the defendant and was able to identify him
20 to police.

21 The card was used again later that same morning to
22 purchase \$30 worth of gasoline at the Freedom Stop in
23 Spartanburg County, and then later that morning the
24 defendant tried a third time to use the card at the Wal-Mart
25 located in Boiling Springs in Spartanburg County. He wanted

1 to purchase approximately \$2,000 of items at the Wal-Mart,
2 but at that point the card had been called in by the victim,
3 had been declined. So, no purchase was made at that time.

4 Your Honor, later, on July 28th, 2011, that, that
5 morning, the defendant returned to the H&M Stop And Go on
6 Highway 11 in Inman and attempted to return the illegally
7 purchased electronic cigarette for cash. At that point the
8 clerk did call the police. She was already aware of the
9 prior crimes. Officers arrived at that store and arrested
10 him.

11 The defendant confessed to all of those crimes, Your
12 Honor. The DVD player stole from Mr. Negro were recovered
13 also in the front seat of the defendant's vehicle.

14 Additionally, Your Honor, under Indictment 2011-6162,
15 which is the malicious injury to property charge, this also
16 occurred that night basically, again, on that same general
17 route I was just describing. It was located at Rainbow
18 Baptist Church, which is at [REDACTED] Shortcut Road in Chesnee
19 again in Spartanburg County, and at 4:21AM officers were
20 responding to an alarm that went off at that bidding.

21 when they arrived, an officer was actually near the
22 scene and actually saw this defendant driving away from the
23 area. He had various items which did match the items stolen
24 from Ms. Gossett's home in his car. But at that point the
25 officer did not recognize, recognize that, that he may also

1 be a suspect in this particular crime at the church.

2 The defendant continued on from there and did the other
3 items, things that were just discussed. But at the church,
4 Your Honor, there was a motion detector inside of a window
5 at the passenger's office. That window was, was smashed at
6 that point at 4:21 in the morning on July 28th, 2011. The
7 alarm went off. He was also charged with malicious injury
8 to real property based on that, Your Honor.

9 Mr. Ralph Edward Lee is the victim in the burglary
10 second degree case. He is present. I don't believe he
11 wishes to address the Court. Also, Investigator Brian
12 Wilkens and Investigator Matt Davis from the Sheriff's
13 Office are both present. They're the two primary officers
14 on these two sets of incidents.

15 I believe Investigator Davis would like to address the
16 Court. I don't believe Investigator Wilkens would.

17 THE COURT: All right. Now, Mr. Hipp, you were present
18 in the courtroom.

19 Did you hear the solicitor go over the facts that are
20 alleged in these cases?

21 DEFENDANT: Yes, sir.

22 THE COURT: Did you understand what he said?

23 DEFENDANT: Yes, sir.

24 THE COURT: Is the information that he has given me, is
25 that information the truth?

1 DEFENDANT: Yes, sir.

2 THE COURT: Now, have you told me the truth today?

3 DEFENDANT: Yes, sir.

4 THE COURT: Has anyone told you how to respond to my
5 questions?

6 DEFENDANT: No, sir.

7 THE COURT: So, the answers you've given me, those were
8 your own answers.

9 Is that true?

10 DEFENDANT: Yes, sir.

11 THE COURT: Is there any part of what you and I have
12 talked about that you'd like to go back and change what
13 you've told me?

14 DEFENDANT: No, sir.

15 THE COURT: So, if I asked you all the questions I
16 asked earlier would I get the same answers now?

17 DEFENDANT: Yes, sir.

18 THE COURT: All right. Mr. Hipp, it's going to be my
19 finding that this plea is freely and voluntarily given.
20 You're aware of the charges. You're aware of the possible
21 penalties. You've had the advice of an attorney. You're
22 satisfied with that advice and there's a factual basis for
23 the plea.

24 Now, Mr. Hipp, I'm not sure I specifically mentioned it
25 to you, but the potential sentences in these cases would

1 be -- the maximum would be life.

2 You understand that, don't you, sir?

3 DEFENDANT: Yes, sir.

4 THE COURT: All right. Now, at this time I'm gonna
5 give your attorney an opportunity to speak on your behalf.
6 when she finishes, I'll give you an opportunity to speak to
7 the Court as well.

8 Ms. Price.

9 MS. PRICE: Thank you, Your Honor.

10 This is actually the second time I've represented Mr.
11 Hipp while I have been working at the Public Defender's
12 office. I first met him back in, around 2008 or 2009 on
13 some other charges that you'll hear about from the State a
14 little later.

15 But, Your Honor, Mr. Hipp has a very serious drug
16 problem, and everything that he's ever done, including his
17 past record that you'll hear about, is, was done under the
18 influence of drugs or to get money to buy drugs.

19 Mr. Hipp though has -- I've explained to him that he is
20 looking at some very serious time today, very serious amount
21 of time. The minimum of 15 years is bad enough. But he
22 could possibly go to jail for life today and I've explained
23 that to him.

24 Mr. Hipp, though, on his behalf, I would like to ask
25 the Court to consider running these six charges

1 concurrently, and for Your Honor, that whatever time you do
2 choose to give him in the DOC, and he understands he's going
3 to prison today, that Your Honor order the Addiction
4 Treatment Unit for him, Your Honor, because I think that is
5 the root, root of all, all of this, Your Honor.

6 THE COURT: All right. Mr. Hipp, this is your
7 opportunity to speak to me.

8 Is there anything you'd like to say at this time?

9 DEFENDANT: Yes, sir, I'd just like to apologize for
10 bringing this case in front of you, bringing mistakes, and
11 apologize to the victims for the part I was involved in in
12 this cause of my drug addiction, and ask you to please have
13 mercy on me.

14 THE COURT: Prior record.

15 SOLICITOR ELLIS: Yes, sir, Your Honor, and I have the
16 certified convictions of the burglaries if you'd like to see
17 those as well.

18 THE COURT: You can just tell me about them and make
19 that an exhibit. I think it's already been marked---

20 SOLICITOR ELLIS: Yes, sir, it has.

21 THE COURT: ---in the record. But tell me about them
22 please.

23 SOLICITOR ELLIS: Yes, sir.

24 In 2002, shoplifting.

25 2005, breaking into motor vehicle, petty larceny,

1 shoplifting, hit and run with property damage, two counts of
2 public disorderly conduct.

3 2006, burglary first degree.

4 2009, burglary second degree violent, burglary second
5 degree nonviolent, hit and run with property damage.

6 2011, hit and run with property damage.

7 THE COURT: All right. You indicated that the officer
8 would like to speak to the Court.

9 SOLICITOR ELLIS: Yes, sir, he would.

10 THE COURT: Come forward please, sir.

11 SOLICITOR ELLIS: Your Honor, while he's coming up,
12 the, for the Court's record, these are premarked as,
13 certified convictions, as State's Exhibits 8, 9, and 10.

14 THE COURT: All right. They'll be made a part of the
15 record for this plea.

16 State your name.

17 OFFICER: Matthew Davis.

18 THE COURT: Yes, sir.

19 OFFICER: Sir, I work with the Sheriff's Office, and
20 investigate the incidents that all occurred at one time
21 during the night. Just want it to be noted that some of
22 these did occur that were people that were on the paper
23 route that he was to deliver papers to each day. That
24 helped kind of lead to this when the clerk ended up finding
25 out where, the description of this car this person was in,

1 and he said wait, that's the paper delivery boy's car.
2 Called the Herald-Journal. They gave him the name. We
3 started trying to catch up to him before they called 9-1-1.

4 It also should be noted that, on the burglary to a
5 trailer where the microwave and all was, he did give me
6 directions to that. That was the crime that was unknown.
7 The person was not even home yet. It was a single mother
8 with a young kid that, for whatever reason that night,
9 decided that she needed to go to Pauline to stay with her
10 grandmother.

11 So, there, just by chance and by luck, no one was in
12 this house at this time. From -- during the interview, it
13 almost seems as if it was picked at random. But he was able
14 to give me directions to enough to where, the next day, I
15 was able to go out and find this location, but just it's a
16 very serious level he's gotten to of stuff, of crimes of
17 opportunity and some targets obviously being picked out over
18 a general time while he was delivering the paper.

19 THE COURT: Thank you, sir.

20 He's been in prison I think or jail for some period of
21 time.

22 How much time?

23 MS. PRICE: Your Honor, he's been in jail since last
24 August. July 29th.

25 THE COURT: Okay.

1 MS. PRICE: Let me add up those days.

2 THE COURT: Please.

3 MS. PRICE: 225 days, Your Honor.

4 THE COURT: Thank you.

5 All right. On the third or subsequent property
6 offense, the Sentence in each of those cases is ten years
7 run concurrently with other sentences given on today's date.

8 On the breaking into the motor vehicle, the Sentence is
9 five years run concurrently.

10 On the burglary in the second degree, the Sentence is
11 15 years run concurrently. I've ordered that you be given
12 credit for the time that you've served.

13 On the burglary first degree, Mr. Hipp, one of the most
14 troubling things is not only do you have a long and
15 extensive record of serious crimes, you also committed these
16 crimes, some of them while you were out on bond from this
17 Court.

18 DEFENDANT: Yes, sir.

19 THE COURT: That, that's a, particularly troubling to
20 this Court that you will do that.

21 So, in this case, the Sentence in the burglary first is
22 30 years run concurrently. Given credit for 225 days.

23 Good luck to you, sir.

24 MS. PRICE: Thank you, sir.

25 SOLICITOR ELLIS: Thank you, Your Honor.

1 (WHEREUPON, seven photographs were marked as State's
2 Exhibit Nos. 1 through 7. Three certified copies of
3 indictments were marked as State's Exhibit Nos. 8 through
4 10. All of the above exhibits were received into evidence
5 at this time.)
6
7

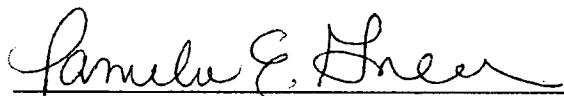
8 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 19th day of March, 2012.

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

May 13th, 2013

A handwritten signature in cursive script, reading "Pamela E. Green", is written over a horizontal line.

PAMELA E. GREEN, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Spartanburg)Travis Franklin Hipp 350200)

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

v.)

State of South Carolina)

2013-CP-42-

1235

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McCormick Correctional Institution
2. Name and location of Court which imposed sentence Spartanburg County 7th Circuit 180 Magnolia St. Spartanburg S.C. 2930
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

Continue (a)
on back
of page 2

The next page

2011 65 420 5725 / Burglary 1st degree
2012 65 420 0593 Burglary 2nd degree (Vidic)

1

Question 4 and 5 continued on the back of page 2.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 MAR 12 PM 3:28
Filing Clerk

- (c) 2011 65420 5723 Breaking into Motor Vehicle
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) MARCH 19, 2012 30 years (violent) CORRECTION
- (b) MARCH 19, 2012 15 years (violent) ON
- (c) MARCH 19 2012 5 years BACK OF PAGE
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. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) WAS NOT INFORMED I HAD THE RIGHT TO DO SO BY MY ATTORNEY ANDREA PRICE
- (b) _____

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 MAR 12 PM 3:28
H. J. CLACHLEY

4.D) 2011 GS4205722 PETIT LARCENY
3rd or sub. property offense

4.E) 2011 GS4205724 PETIT LARCENY
3rd or sub. property offense

4.F) 2011 GS4206162 MALICIOUS INJURY TO REAL
PROPERTY 3rd or sub. property offense

5.D) March 19 2012 10 years

5.E) March 19 2012 10 years

5.F) March 19 2012 10 years

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2013 MAR 12 PM 3:29

M. HURZ BLACKLEY

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEffective Council
- (b) CONFLICT of Interest
- (c) INvoluntary Plea
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) On The BACK of This Page.
- (b) On The BACK of This Page
- (c) On The BACK of This Page
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. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 MAR 12 PM 3:28
P. NORE BLAUGLEY

11. A) My lawyer Refused To answer any contact I made. I Tried Through mail, Phone, and Third party contact. She would not speak with me about my cases. I Tried To fire her but she would not Respond. did not Investigate ~~any~~^{critical} evidence. did not subpoena witnesses for the defense, was not informed of direct appeal By her

11. B) 1. Was Told by Judge Roger Coach during Jury selection, that I could not file my attorney. That he would Trial me with or without her. 2. Had fired this public Defender in 2008. had cursed her, and Told her I never wanted her Representation. I had hired private counsel to replace her. started these cases with Mathlene hedges in 2011 All of a sudden she is back on all these cases. I had Told her this time I did not want her Representing me. she Told me I could not file her cases lacked subject matter Jurisdiction

11. C) Had no choice but to Plead. Andrea Price was making no effort to Represent me, and Judge Roger Coach would not let me fire her due to her ineffective assistance of counsel would have been given life without parole 27 is shown in my 2008 cases that I should have been given a mental health evaluation

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2013 MAR 12 PM 3:29

MISSOURI BLAUNLEY

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

NO

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

(a) which grounds have been presented:

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

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

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

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2013 MAR 12 PM 3:28
 H. LUCY BLANCHET
 Revised 3/2003

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) first challenge
 (b) first challenge
 (c) first challenge

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~~ No trial
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No

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. Andrea Price SPARTANBURG COUNTY
Public Defenders Office 366 North Church St. SPARTANBURG, S.C. 29301
 ii. _____
 iii. _____

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

i. arraignment and plea
 ii. sentencing
 iii. _____

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2013 MAR 12 PM 3:29
 M. J. D. L. H. L. E. Y

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

Case overruled
Vacated sentence and conviction
Any other available to me

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

NO

STATE OF SOUTH CAROLINA)
 County of Spartanburg)

VERIFICATION

I, Travis Franklin Hipp, 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.

Travis F. Hipp

SWORN to and subscribed before me this 07
 day of March, 2013.

[Signature]
 Notary Public

My Commission Expires: 12-16-2015

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2013 MAR 12 PM 3:29
 M. MORE BLANCHLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
	)	2013-CP-42-1235
Travis Franklin Hipp, #350200,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

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

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the September 2011 term of the Spartanburg County Grand Jury for petit larceny – 3rd or subsequent (2011-GS-42-5722, -5724), breaking into a motor vehicle (2011-GS-42-5723), burglary – 1st degree (2011-GS-42-5725), the October 2011 term for malicious injury to real property – 3rd or subsequent (2011-GS-42-6162), and the February 2012 term for burglary – 2nd degree (2012-GS-42-0593)¹. The Applicant was represented on all charges by Andrea Price, Esquire. On March 19, 2012, after proceeding to trial on the burglary – 2nd degree charge, the Applicant chose to plead guilty to all of his pending charges as listed above. The Honorable Roger L. Couch sentenced Applicant to concurrent sentences of thirty years for burglary – 1st degree, fifteen years for burglary – 2nd degree, ten years for each count of petit larceny – 3rd or subsequent and malicious injury – 3rd or subsequent,

and five years for breaking into a motor vehicle. The Applicant did not appeal his conviction or sentence.

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

II.

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

1. Ineffective assistance of counsel, in that;
 - a. Counsel refused to communicate with Applicant;
 - b. Counsel failed to investigate the evidence;
 - c. Counsel failed to subpoena witnesses for the defense;
 - d. Counsel failed to inform Applicant of direct appeal;
 - e. Conflict of interest because Applicant had previously fired Counsel on prior charges and did not want her representing him;
 - f. Counsel failed to request a mental health evaluation;
2. Involuntary guilty plea, in that;
 - a. Applicant had no choice but to plead guilty because Counsel made no effort to represent Applicant and the court would not allow Applicant to fire Counsel.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that

¹ Originally indicted as burglary – 1st degree (2011-4346), but amended to burglary – 2nd degree and the burglary – 1st

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

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

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

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests

an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant also alleges that he did not plead guilty freely and voluntarily. The State submits this allegation has no merit. To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The State submits the transcript reflects that the pleas were knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Boykin, supra; Dover, supra. Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). The State submits the Applicant should not be allowed to depart from the truth of the statements he made during his guilty plea hearing.

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345

S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given the Applicant's burden of proof and the analysis to be applied to this claim, the Respondent submits that the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it should therefore, be treated as such.

V.

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

VI.

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

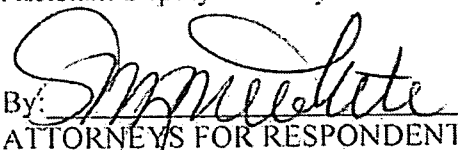
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General

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

March 28, 2014.

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

2013-CP-42-1235

TRAVIS FRANKLIN HIPPI, #350200)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

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

Christopher D. Brough, Esquire
 The Brough Law Firm
 175 Magnolia Street, Suite 202
 Spartanburg, South Carolina 29306

DATED this 28th day of March, 2014.


 Kelly Oppenheimer, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT

Travis Hipp, #350200,)

Applicant,)

vs.)

State of South Carolina,)

Respondent.)

AMENDED APPLICATION FOR
POST CONVICTION RELIEF

Case No.: 2013-CP-42-1235

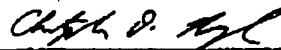
FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 JAN -2 PM 2:45
M. HOPE BLACKLEY

The Applicant, by and through his undersigned attorney, amends his Application for Post-Conviction Relief as follows:

1. Anything not specifically amended by this filing is incorporated herein as if restated verbatim.
2. Paragraph 10 is amended to add the following facts to support Applicant's grounds:
 - (a) Ineffective Assistance of Counsel – The Applicant's trial counsel failed to communicate a plea offer to Applicant in a timely fashion resulting in Applicant going to trial after being served with a life without the possibility of parole notice (See attached Applicant's Exhibit # 1).
 - (b) Ineffective Assistance of Counsel – The Applicant's trial counsel failed to inform the Applicant of his right to appeal Applicant's plea and sentence despite the fact that the Applicant indicated that he was not pleading freely and voluntarily (See attached Applicant's Exhibit # 2 – p. 38 of the plea transcript).
 - (c) Ineffective Assistance of Counsel – Applicant's trial counsel failed to defend the Applicant with facts that could have resulted in his acquittal.

- (d) Involuntary Guilty Plea – the Applicant's trial counsel failed to adequately communicate offers to the Applicant and prepare for trial resulting in Applicant pleading against his will.
- (e) Conflict of Interest – the Applicant's trial counsel failed to move to relieve herself as counsel after the Applicant's request. The Applicant had requested her removal due to hostile exchanges between the Applicant and the Applicant's trial counsel during Applicant's trial counsel's representation of him in a previous case.

Respectfully submitted,



Christopher D. Brough, Esq.
THE BROUGH LAW FIRM
175 Magnolia Street, Suite 202
Spartanburg, South Carolina 29306

January 2, 2015

CLERK OF COURT
SPARTANBURG COUNTY
2015 JAN -2 PM 2:45
M. HOPE BLACKLEY

Rec'd
7-11-14

Ms. Blough
I have enclosed a Brief for
Amendment in support of my P.C.H.
application. I have also sent a copy
of this to be filed with the clerk
of courts office. I would like to
know why you haven't mailed me
my Court Transcripts, and original
Police Reports from these cases also.
Why is the motion you sent me
different from the one Andrea Price
sent me? it contains photos and
documents. That the original one
from Andrea Price does not contain.

Thank you

Signed: Travis F. Hill

Dated: 7/8/14

Sworn to before me this 08 day of July
2014

Franklin

Notary Public South Carolina

my commission expires 12.16.2019

page ~~11/2/11~~**Price, Andrea**

From: Ellis, Zachary
Sent: Friday, November 04, 2011 11:04 AM
To: Price, Andrea
Subject: Travis Hipp - plea offer

Andrea,

Your client is charged with two counts of Burglary 1st Degree, one count of Breaking Into Motor Vehicle, two counts of Petit Larceny/3rd or Subsequent Property Offense, and one count of Malicious Injury to Real Property/3rd or Subsequent Property Offense from incidents in March and July 2011. Several of those charges appear on the 2nd Appearance list this month.

He already has been convicted of several Burglary charges, among other things. Specifically, he was convicted of: Burglary 1st Degree on Oct. 16, 2006; Burglary 2nd Degree (Violent) on Aug. 27, 2009; and Burglary 2nd Degree (Non-Violent) on Aug. 27, 2009. As such, he is eligible for life without parole if convicted on either of his two pending Burglary 1st Degree charges.

I will offer to let him plead guilty to both charges of Burglary 1st Degree with a recommendation of concurrent sentencing, provided he agrees to pay restitution to the victims in each of his crimes as needed. In exchange, I will dismiss the other charges.

He must agree to accept this offer by his 2nd Appearance on November 17, 2011. If he rejects this offer, I will file notice of my intent to seek life without parole on both of his pending Burglary 1st Degree charges and schedule him for trial.

Thanks,
Zach

was never
offered

is not in original
discovery

In The Court of Common Pleas

(Brief in support of:)

Amendment for Pcr Application

RE: Travis Hipp vs. State of South Carolina in the county of Spartanburg. Case No. 2013-CP-42-1235.

Applicant, amending his application for Post Conviction Relief dated 2013, March 12th, further alleges additional grounds regarding his ineffective counsel as follows:

SIXTH There was an offer placed on the table from the solicitor for the defendant to plea to charges Friday, November 04, 2011. My attorney Andrea Price failed to advise me of this offer. Please refer to the attached email from the case file of the state motion of discovery given to me by my present attorney Christopher Brough on March 13th, 2014. Until receiving this information in March of 2014 I was unaware of this offer. The attorney Andrea Price was in violation of Rule 5 of The S.C. Rules of Criminal Procedures. My attorney's failure to advise me of this offer makes her in violation of my Sixth Amendment Right to the Constitution. Please refer to the attached email dated November 02, 2011 from solicitor Zachary Ellis to my then attorney Andrea Price. I was not informed of, made aware of, or put on notice by my attorney at that time or at any other time. In support of my ground for relief for ineffective assistance of council this is my table of authoritative cases:

Glover vs. United States 531 U.S. 198 (2001)

Hill vs. Lockhart 474 U.S. 52 (1985)

Laffer vs. Cooper 132 S. Ct 1399 (2012)

Massiah vs. United States 377 U.S. 201 (1964)

Padilla vs. Kentucky 130 S. Ct 1473 (2010)

Powell vs. Alabama 287 U.S. 45 (1932)

Shumport vs. State 378 S.C. 62, 661 S.E. 2d 369 (2008)

Strickland vs. Washington 466, 668 (1984)

and the Missouri vs. Frye Court 132 S. Ct 1399 (2012): noted that the sixth amendment guarantees the defendant the right to have counsel present at all critical stages of the criminal proceedings (which) includes arraignments, post indictments, interrogations, post indictment line-ups and the entry of a guilty plea Id 132 S. Ct at 1405 (citations and internal quotations omitted). The Frye Court held that the right to effective assistance of counsel extends not only to those situations in which a criminal defendant accepts a plea bargain and waives his right to trial but also to situations that are rejected or allowed to lapse. SEE: Id AT 1409. Defense counsels have responsibilities that must be met to render adequate assistance of counsel that the Sixth Amendment requires in the criminal process at critical stages. Because ours is for the most part a system of pleas trial counsel (error) in the pre-trial process for not notifying the defendant of the solicitors offer. SEE: Hill vs. Lockhart 474 U.S. 52 (1985) establishing the standard for ineffective assistance of counsel claims arising from a guilty plea). SEE also: Padilla vs. Kentucky 559 U.S. 130 S. Ct 1473 (2010) finding ineffective assistance of counsel where counsel failed to advise the defendant regarding the deportation consequences of a conviction. The court noted that it's adaptation of the Strickland standard to require (P.C.R.)

claimants to show that there is reasonable probability [the defendant would have accepted the earlier more favorable plea offer had {they} been afforded effective assistance of counsel, there is a reasonable probability the plea would have been entered without the prosecution canceling it or the trial council refusing to accept it. id. at 1409.] See attached email from Zachary Ellis to Andrea Price Subject: Travis Hipp Plea offer.

Applying for arguments sake the criteria set forth by Frye and Lafiar it has long been established in South Carolina that state prosecutors are obligated to fulfill the promises they make to defendants when those promises serve as inducements to defendants to to defendants to plead guilty. SEE: Sprouse vs. State 355 s.c. 335, 338, 585 s.e. 2d 278 279 (2003). Citing Santabell vs. New York 404 U.S. 257 92 S. Ct 495 30 L.Ed 2d 427 (1971) State vs. Dingle 376 S.C. 643, 651, 659 S.E. 2d 101 105 (2008) applicant also notes for this court the Remedy granted in Lafiar ordering the state to reoffer the plea agreement with leave by the state court. In it's discretion to either vacate the conviction and sentence Lafiar pursuant to the plea agreement or to leave the sentence and conviction from my case undisturbed. SEE: Lafiar 132 S.Ct at p 1391 applicant would argue however that the latter leave the conviction and sentence from the plea the same would be an empty and illogical choice based upon the plea agreement offered by the solicitor. Vacate the sentence and accept the applicant deprived of his constitutional entitlement to plea bargain not given a fair chance be the house that the law says the applicant deserves when a player is excluded from the table. His constitutional rights have been violated give the defendant the benefit of the more favorable deal. The court therefore issues the only logical remedy and relies on the lower courts to exercise sound discretion in determining what is to be done. Time will tell how this works out in the Chief Justice opinion of Justice Alito. In his view, requiring the prosecution to renew an old plea offer Reversed and Remanded Certiorari was granted vacated and remanded denied formal court appearance with the defendant and counsel being present. The offer was a formal one with a fixed expiration date can and must be documented. (2nd) States may require that all offers be in writing. (3rd) Formal offers can be made part of the record at any subsequent plea proceeding or before trial to ensure the defendant has been fully advised before the latter proceeding commence. Under Strickland the question then becomes what if a prejudiced resulted fro, the counsel breach of duty vacated and remanded to implement a remedy for the 6th amendment violation. The court deemed Frye's case withdrawn and remanded to allow Frye either to insist on a trial or plea guilty to any offense the solicitor deemed appropriate to charge. The court granted Certiorari prior to the plea agreement no formal court appearance with the defendant and all counsel present. Before a guilty plea is entered the defendants understanding of the plea and it's consequences or possibilities that will ensue once a conviction is entered based upon the plea. SEE: Fed Rule Criminal Procedures II. Mo. Sup. Ct. rule 24.02 (2004) Hill and Padilla. The simple reality is that 97% of all federal convictions and 94% of all state convictions are a result of guilty pleas. Of Federal and state combined 95% of all criminal convictions are from guilty pleas period. To a large extent horse trading between prosecution and defense counsel determines who goes to jail and for how long. That is what plea-bargaining is. It is not some adjunct to the criminal justice system. The plea agreement can benefit both parties. The American Bar Association recommends defense counsels communicate and explain all plea offers made by the prosecuting attorney. The standard for prompt communication and consultation is also set out in State Bar Professional Standards for attorneys. SEE: FLA. Rule Regulating Bar 4-1.4 (2008) 111. Rule Professional Conduct 1.4. (2011) The term and it's processing can be documented so what to place in the negotiation process becomes more clear at some latter inquiry (2nd) that all offers be in writing and to ensure

against later misunderstandings or fabricated charges. SEE: N.J. Ct. Rule 3:9-1 (B) (2012) Any plea offer shall be in writing and forwarded to the defendants attorney (3rd) formal offers can be made part of the record at any subsequent plea proceedings or before a trial on the merits all to ensure that a defendant has been fully advised before those further proceedings commence. SEE: Brief for National Association of Criminal Defense Lawyers ET. AL. as AMIRI CURIAE 201 discussing a hearing in Arizona pursuant to State vs Donald 198 Ariz. 406, 10 P.3d 1193 (App. 2000). See also: N.J. CT. Rules 3:9-1 (B) Requiring the prosecution and defense counsel to discuss the case prior to the arraignment/status conference including and plea offers and to report on these discussions in open court with the defendant present. In RE: Alvernaz, 2, Cal. 4th 924, 938 N7, 8 Cal. RPTR, 2d 713, 830, p. 2d 747, 756, N.7 (1992) encouraging parties to memorize in some fashion prior to the trial (1) the fact that a plea bargain offer was made and (2) that the defendant was advised of the offer (and) it's precise terms (3) the defendants response to the plea bargain offer as a result of that deficient performance. The offer lapsed under Strickland. The question then becomes what if any prejudice resulted from the breach of duty Glover vs. United States 531 U.S. 198 (2001). The court of appeals found that the record is void of any evidence of any effort by trial counsel to communicate the formal offer to Frye during the offer window deadline let along and evidence that Frye's conduct with trial councils ability to do so 311 S.W. 3d at 358. On the record it is evident that Frye's attorney did not make a meaningful attempt to inform the defendant of a written plea offer before the offer expired. SEE: Supra at 1404-1405. A state may choose to preclude the prosecution from withdrawing a plea offer once it had been accepted or perhaps to preclude a trial from rejecting a plea bargain.

Miscarriage of Justice

Failure to convey plea offer See: Davis vs. State 381 S.C. 601, 675 S.E. 2d 416 (2009)

And I Travis Hipp assert that I was never informed of the plea offer by counsel. Had I known of the offer I would have definitely taken it. End of brief.

Signed Travis F Hipp

Dated 7/8/14

Sworn to before me this 08 day of July, 2014

J. Ann Kline

Notary Public of South Carolina

My commission expires 12-16-2019

1 THE COURT: All right. I asked you if you had any
2 children.

3 Do you have any children?

4 DEFENDANT: No, sir.

5 THE COURT: All right. Were you working when you got
6 arrested, Mr. Hipp?

7 DEFENDANT: Yes, sir, I was working two jobs.

8 THE COURT: Where did you work?

9 DEFENDANT: I worked at Blue Fin Grill at Westgate Mall
10 and for the Herald-Journal.

11 THE COURT: All right. Now, Mr. Hipp, has anyone
12 threatened you, coerced you, put pressure on you, tried to
13 intimidate you, in other words done anything to you to try
14 to force you to offer the plea?

15 DEFENDANT: No, sir.

16 THE COURT: Are you doing this of your own free will?

17 DEFENDANT: No, sir.

18 THE COURT: Have you had sufficient time to consider
19 these matters?

20 DEFENDANT: Yes, sir.

21 THE COURT: Now, is anyone made any promises or
22 guarantees or assurances to you about anything in connection
23 with these pleas?

24 DEFENDANT: No, sir.

25 THE COURT: So, no one's made any promises or

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS NONJURY

3
 4 TRAVIS FRANKLIN HIPPI,) TRANSCRIPT
 5) APPLICANT,) OF
 6) VS.) RECORD
 7 STATE OF SOUTH CAROLINA,)
 8 RESPONDENT.) 2013-CP-42-1235

9
 10 January 13th and 14th, 2015
 11 Spartanburg, South Carolina
 12

13 B E F O R E:

14 THE HONORABLE DEADRA L. JEFFERSON, Judge.

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

16 CHRISTOPHER D. BROUGH
 17 ESQ.
 18 Attorney for the Applicant

19 SUZANNE H. WHITE
 20 ASSISTANT ATTORNEY GENERAL
 21 Attorney for the Respondent

22
 23 PAMELA E. GREEN
 24 Circuit Court Reporter
 25 Seventh Judicial Circuit

I N D E X O F W I T N E S S E S

WITNESSES

PAGE

TRAVIS HIPP

Direct examination by Mr. Brough 7

Cross-examination by Ms. White 24

Redirect examination by Mr. Brough 31

MARK FREEMAN

Direct examination by Mr. Brough 34

Cross-examination by Ms. White 36

Redirect examination by Mr. Brough 37

Andrea Price

Direct examination by Ms. White 39

Cross-examination by Mr. Brough 41

Redirect examination by Ms. White 44

Closing argument by Mr. Brough 44

Closing argument by Ms. White 45

Ruling by The Court 49

Certificate 61

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

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>Applicant's Exhibits</u>		
A-1	Document	8	9
A-2	Document	34	36

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2		<u>State's Exhibits</u>		
3				
4	S-1	Document	28	28
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

P R O C E E D I N G S

THE COURT: Okay. This is Travis Franklin Hipp versus the State of South Carolina.

(Pause.)

THE COURT: This is Travis Franklin Hipp versus the State of South Carolina, 2013-1235, before the Court on an application for post-conviction relief filed March 12th of 2013. He was represented by Andrea Price on March 19th of 2012. He proceeded to trial on burglary second. Afterwards he chose to plead guilty to all these pending charges. That being 2011-5722, 5724, which is breaking and entering a motor vehicle, 2011-5725, burglary first, and 2011-6162, malicious injury to real property third or subsequent.

Judge Couch sentenced him to sentences of 30 years for burglary first, 15 years for burglary second, 10 years each -- for each count of malicious -- petty larceny third or subsequent and malicious injury third or subsequent.

Now I don't see -- where's the petty larceny?

Did I miss something?

Oh, I see. I did miss that. Petty larceny, third or subsequent, which is the 2011-5722 and 5724 -- through 5724, and five years for breaking and entering a motor vehicle. This -- the pleas were not appealed.

He alleges ineffective assistance of counsel based on

Travis Hipp - Direct examination
by Mr. Brough

1 several grounds. He is represented by Mr. Brough, and the
2 State is represented by Ms. White.

3 Is the Applicant ready to proceed?

4 MR. BROUGH: We are, Your Honor, and I indicated
5 before, we did file an amended application, which is in the
6 Court's file.

7 THE COURT: Let me make sure.

8 MR. BROUGH: If not, I have an additional copy of it.

9 THE COURT: I don't think it really -- what date did
10 you file the amended application?

11 MR. BROUGH: On January the 2nd of this year, Your
12 Honor. I've got a copy of it here.

13 THE COURT: It will make its way into the clerk's file.
14 This is my packet and I don't need it.

15 MR. BROUGH: Okay.

16 THE COURT: Okay.

17 MR. BROUGH: Fair enough.

18 THE COURT: You may proceed.

19 MR. BROUGH: We call Travis Hipp to the stand.

20 THE COURT: Sir, if you would come to the stand and be
21 sworn.

22 (Applicant complies.)

23 THE COURT: Please raise your right-hand to be sworn.

24 TRAVIS HIPPI, being first duly
25 sworn, testified as follow:

Travis Hipp - Direct examination
by Mr. Brough

1 THE COURT: You can put your right-hand down, sir.

2 (Applicant complies.)

3 THE COURT: State your name for the record.

4 THE WITNESS: My name is Travis Franklin Hipp.

5 THE COURT: And, sir, if you would state -- spell your
6 last name for the court reporter.

7 THE WITNESS: My last name is spelled H-I-P-P.

8 THE COURT: Thank you.

9 You may proceed.

10 MR. BROUGH: Thank you, Your Honor.

11 THE COURT: You're welcome.

12 DIRECT EXAMINATION

13 BY MR. BROUGH:

14 Q Mr. Hipp, you filed an amended application for
15 post-conviction relief.

16 Now, you've, you've alleged that Andrea Price was
17 ineffective in representing you, is that correct?

18 A Yes, sir.

19 Q Okay. How was she ineffective in representing you,
20 sir?

21 A Well, the first part where she said I had not appealed
22 the cases. I did not know that I had to write to direct
23 appeal because I was not informed of my right to direct
24 appeal.

25 Q Okay.

Travis Hipp - Direct examination
by Mr. Brough

1 A And as far, as far as the rules of being, being
2 represented by any kind of counsel there, there through the
3 appeal process. Not meaning that they are to represent you
4 through the appeal, but at least to inform you that you have
5 the right to an appeal and to file the appeal for you.

6 Q All right. And in addition to the appeal issue, I
7 believe you've also raised some concerns about not having
8 received an offer?

9 A Yes, sir.

10 MR. BROUGH: Okay. Let me get this marked as
11 Applicant's 1 please.

12 (WHEREUPON, the document was marked as Applicant's
13 Exhibit No. 1 for identification purposes only at this
14 time.)

15 Q I'm gonna show you what's marked as identification
16 purposes as Applicant's Exhibit No. 1.

17 Could you identify that for me, sir?

18 A Yes, sir, this was in the, this was in the motion of
19 discovery that you had sent me while I been incarcerated at
20 SCDC---

21 Q Okay.

22 A ---and I discovered this in there and it was not in my
23 discovery and I was never offered this. It was never -- I
24 was never put on notice or made aware of it. It's not a
25 matter of record of---

Travis Hipp - Direct examination
by Mr. Brough

1 Q And, and there's some written annotations on that.

2 A Yes.

3 Q Are those yours?

4 A Yes, sir.

5 Q Okay. And is -- does that document purport to be an
6 email?

7 A Yes, sir.

8 Q Okay. And who's the email to?

9 A Andrea Price.

10 Q Okay. And she was your trial counsel?

11 A Yes, sir.

12 Q And who's the email from?

13 A Zachary Ellis.

14 Q And who is he?

15 Is he the solicitor?

16 A He was the solicitor that was against me.

17 MR. BROUGH: Okay. At this time I'd like to move
18 Applicant's 1 into the record.

19 THE COURT: Any objection?

20 MS. WHITE: No objections as long as we got it noted
21 that those annotations, as he said, were from the Applicant.

22 THE COURT: Marked and admitted.

23 (WHEREUPON, Applicant's Exhibit No. 1 was received into
24 evidence at this time.)

25 Q Mr. Hipp, if you could, please go through with me and,

Travis Hipp - Direct examination
by Mr. Brough

1 and tell me what the offer letter states.

2 A The offer letter states your client is charged with two
3 counts of burglary first degree, one count of breaking into
4 motor vehicles, two counts of petty larceny, third or
5 substantial (sic) property offense and one count of
6 malicious injury to real property or subsequent property
7 offense from incidents in March and July, 2011.

8 Several of those charges appear on the second
9 appearance listed this month. He already has been convicted
10 of several burglary charges among other things, but,
11 specifically, he was convicted of burglary first around
12 October 16th, 2006, burglary second, second degree, second
13 degree violent on August 27th, 2009, burglary second
14 degree nonviolent August 22nd, 2009.

15 As such, he is eligible for life without parole if
16 convicted on either of his two pending burglary first degree
17 charges. I would offer to let him plead guilty to both
18 charges of burglary first degree with a recommendation of
19 concurrent sentencing provided he agrees to pay restitution
20 to the victims in each of his crimes as needing exchange I
21 will dismiss the other charges. He must agree to accept
22 this offer by his second appearance on November 17th,
23 2011. If he rejects this offer I will file notice of my
24 intent to seek life without, without parole on both of his
25 pending burglary first degree charges and schedule him for

Travis Hipp - Direct examination
by Mr. Brough

1 trial.

2 Thank you, Zach.

3 Q Okay. And, and that offer letter was dated when?

4 A It was dated November 4th, 2011.

5 Q Okay. And the deadline to respond was listed as being
6 when?

7 A It's 17th -- November 17th, 2011.

8 Q Okay. During that, that timeframe, were you out on the
9 street or were you incarcerated?

10 A I was incarcerated at the annex.

11 Q So you were in the Spartanburg County Detention---

12 A Yes, sir.

13 Q ---Center?

14 A Yes, sir.

15 Q Now, while you were there, did you receive any visits
16 from Ms. Price to discuss that offer?

17 A No, not the offer. I was, I was visited by her to
18 discuss the fact that her motion -- she's saying that I
19 couldn't, couldn't beat the case and it be the best offer
20 for me to plead guilty.

21 Q Okay. Well, let me ask you this.

22 Were you served with a life without parole notice, sir?

23 A Yes, sir.

24 Q You were?

25 A Yes, sir, I have copies of it in my folder here. Hold

Travis Hipp - Direct examination
by Mr. Brough

1 on. I was initially served with this notice twice on
2 December 1st as well and then February at some point in
3 time. I have both copies.

4 Q Okay. And I know that's in the court transcript that
5 you had been served a life without parole notice. So I'm
6 not gonna belabor that point.

7 Ultimately you went for trial in front of Judge Couch
8 on March 19th of 2012, is that correct, sir?

9 A Yes, sir.

10 Q Okay. At that time that offer was no longer on the
11 table.

12 A No.

13 Q Would that be fair?

14 A No, sir, no offer on the table at all except for she
15 told I would be pleaing to an LWOP sentence and I found out
16 later -- figured out that that meant life without parole --

17 Q Okay.

18 A -- what LWOP stood for because she didn't inform me
19 that's what that stood for.

20 Q Did you ever have any discussions about what the life
21 without parole statute held under 17-25-45?

22 A I had four -- what people had told me within the jail,
23 and, what, you know, research that I done just asking
24 people, but none from her, no.

25 Q Okay. And during the trial on March 19th, ultimately

Travis Hipp - Direct examination
by Mr. Brough

1 you pled after there was a jury selected, is that correct?

2 A The reason that I had pled is this goes back to a later
3 incident. This is a matter of my PCR issue is that, in
4 2008, she was assigned to represent me. She had called
5 me -- she called my home and at that point in time I was
6 rude to her and I did curse her and I fired her and told her
7 I never wanted her to represent me---

8 Q Okay.

9 A ---and I hired Michael Brown to represent me in those
10 cases as the record showed, and he would, he could inform
11 you of the fact that this, that I hired him and released her
12 as my counsel then. So it didn't make no sense to me that,
13 in 2012, I had been -- me and her had this altercation back
14 in 2008/2009 that she was reassigned to me again. It
15 doesn't -- it doesn't feel me that that shows bias as far as
16 representing me.

17 Q Okay. And it was your intent for her not to represent
18 you---

19 A Yes, sir.

20 Q Okay -- on this case?

21 Now, at, at trial, you weren't given that option, is
22 that correct?

23 A No, sir.

24 Q Okay. Now, ultimately you pled and, and the judge went
25 through with you some questions about you pleading, is that

Travis Hipp - Direct examination
by Mr. Brough

1 correct?

2 A Yes, sir.

3 Q Okay. I'm gonna ask you.

4 Do you feel that your plea was freely and voluntarily
5 given?

6 A And I said no, sir.

7 MR. BROUGH: Okay. And, and, Your Honor, I'm gonna
8 direct the Court's attention to Page 38 of the transcript.

9 THE COURT: I've already read the transcript. You may
10 proceed with questioning the witness.

11 THE WITNESS: Can I put this paper up here?

12 MR. BROUGH: Okay.

13 And, Mr. Hipp, the question you're referring to, I'm
14 gonna show on Page 38 of the transcript, if you could read
15 for me Lines 16---

16 A Yes, sir.

17 Q ---and 17.

18 A The Court had asked me are you doing this of your own
19 free will.

20 Line 17, defendant, which would be me, said no, sir.

21 Q Okay. And, and, at that point in time, was the plea
22 stepped aside, was it taken down?

23 A No, neither by the judge nor my attorney.

24 Q Okay. So you had indicated that you were not pleading
25 of your own free will?

Travis Hipp - Direct examination
by Mr. Brough

1 A Yes, sir.

2 Q Okay. And why did you feel like you weren't pleading
3 of your own free will at that point?

4 A Because I had changed my mind that I wanted to plea out
5 and that right there was me saying that I had changed my
6 mind that I wanted to plea out, that I wanted to go back and
7 go on through with the trial. But yeah, they just continued
8 on, and being, at that point in time, I did not know much
9 about Court other than the fact, other than the fact that I
10 was charged with a crime, that I was being tried, but now
11 since I been in SCDC and I been able to research a little
12 bit for myself, I understand more about what was really
13 going on.

14 Q Yes, sir.

15 A I'm not saying that I'm a lawyer or a jailhouse lawyer.
16 It's just, when it's my life on the line here, and, you
17 know, I kind of like to know a few things.

18 Q Okay. Now, your position, in this PCR, is, is that
19 you're entitled to two forms of relief, is that correct?

20 A In the PCR?

21 Q Yes.

22 A In the PCR I had ineffective assistance of counsel. I
23 had a conflict of interest being the fact of what I had
24 mentioned in 2008, and her being appointed to represent me
25 again and involuntary plea being a part, part of that factor

Travis Hipp - Direct examination
by Mr. Brough

1 as well.

2 Q Okay. Now, my question to you, sir, is you do, you do
3 understand that, if the Court were to grant you a new trial,
4 you'd still be facing the original life without parole
5 sentence?

6 A Yes, sir, and I, and I fully understand that the State
7 will probably push for that considering that the case gets
8 overturned.

9 Q Now -- but you've also said that you weren't informed
10 of an offer.

11 Is it your desire to have that offer back and have a
12 resentencing hearing---

13 A Yes, sir.

14 Q ---instead of a new trial?

15 A Yes, sir.

16 Q That's your desire?

17 A But I'd like to have without bias meaning like it went
18 back to the original thing to not being that well, I went
19 against them and now they're mad and resentence me and then
20 be horsy on me. Under Davis versus State, Keynote 12 states
21 that once you have been sentenced to a certain amount of
22 time once that they can not exceed that amount of time. I
23 may be wrong in that. I do have a copy of that law. Also
24 have a copy of Bell versus State---

25 Q Yes, sir.

Travis Hipp - Direct examination
by Mr. Brough

1 A ---which states that -- this is a new case. Actually,
2 on November 5th, 2011, it says defense counsel failed to
3 extend plea offer to defendant prior to sentencing
4 constituted deficient performance and, two, defendant showed
5 that he was prejudiced by counsel's deficient performance,
6 and this is also on Missouri versus Frey, 132 S.C.T 139,
7 1408 -- 2012, and Hill versus Lockhart. These are on my, my
8 amendment that I had put in my file.

9 Q Yes, sir, that's included in the exhibit in your
10 amended application.

11 A Okay.

12 Q But your -- are you desiring the Davey relief or are
13 you desiring a new trial based on your pleading involuntary
14 or pleading---

15 A You said what, new trial or what?

16 Q You want the -- if you had to elect a remedy --

17 A Uh-huh. (Affirmative).

18 Q -- would you choose, would you choose the election
19 under Davey versus State?

20 A Which would be, which would be the---

21 Q Which would for a resentencing, not to exceed---

22 A Yes.

23 Q ---your original sentence---

24 A Yes.

25 Q ---under 381 South Carolina 601?

Travis Hipp - Direct examination
by Mr. Brough

1 A Yes.

2 Q Okay. In the event that's not granted, do you still
3 wish to proceed with the---

4 A Yes.

5 Q ---belated appeal---

6 A Yes.

7 Q ---of the---

8 A And past that, PCR cause I have other things---

9 Q Okay.

10 A ---to---

11 Q Tell me about anything that I haven't gone over with
12 you at this point in time.

13 A Okay. As far as evidence in the case, and I know
14 evidence has nothing do with this, but the research of that
15 evidence does have something to do with this.

16 Okay. This is, if you want to come get this, this --
17 on the first case I had written her several requests that I
18 did not want her representing me on the same kind of request
19 as that. That was actually written to Judge Mark Hayes
20 right there at the Supreme Court hadn't happened at that
21 time. She had got the same request from me. She never come
22 talk to me about that.

23 Okay. There are paper, paperwork that I have here.
24 You have to let me get them out. It's hard.

25 Q And this request that you're referring to was dated in

Travis Hipp - Direct examination
by Mr. Brough

1 the -- October of 2011?

2 A Yes, sir.

3 Q Prior to the offer---

4 A Yes, sir.

5 Q ---though it not being extended to you?

6 A And where it says on there that I was on drugs at that
7 point in time, I also had pictures that show that they
8 retrieved, retrieved a pill bottle from my car.

9 Q Yes, sir.

10 A And that was never -- I brought this stuff up and it
11 was never discussed.

12 Okay. I have other things as far as evidence that
13 we've not gone through if I can get it out here. I -- it's
14 hard. I'm shackled here.

15 All right. One of the first things is this is the
16 Spartanburg County Sheriff's Office deputy report for Inmate
17 1071595 and this is against me.

18 Q Yes, sir.

19 A Okay. I was charged with burglary first. Burglary
20 first happens at nighttime. Black's Law Dictionary states
21 that nighttime is 30 minutes before sunrise or 30 minutes
22 after sunset.

23 THE COURT: That's not South Carolina's definition,
24 sir.

25 THE WITNESS: That's not South Carolina's definition?

Travis Hipp - Direct examination
by Mr. Brough

1 THE COURT: No, sir.

2 THE WITNESS: Okay.

3 THE COURT: It's the time from dusk till sunset.

4 THE WITNESS: Dusk to sunset.

5 THE COURT: That's nighttime.

6 THE WITNESS: Okay. My -- I apologize, ma'am.

7 THE COURT: That's okay. No need to. I just wanted to
8 clarify that for you---

9 THE WITNESS: Thank you, ma'am.

10 THE COURT: ---so that you were not laboring under any
11 misapprehension as to what South Carolina law requires.

12 THE WITNESS: All right.

13 well, on this deputy's report it says that this
14 incident occurred between 5:00PM on 7/26/2011 and
15 10:00 o'clock AM on 7/28/2011. That's a two day timeframe
16 that this could of happened.

17 THE COURT: In February, 5:00 would be dusk. It would
18 be dark by then.

19 THE WITNESS: In the middle of the summer?

20 THE COURT: I thought you said February.

21 THE WITNESS: No, ma'am, I said, I said 7/26/2011.

22 THE COURT: well, you go ahead and continue. I
23 misunderstood you. I thought you said February.

24 THE WITNESS: I'm sorry, ma'am.

25 THE COURT: That's okay. And I need you to slow down a

Travis Hipp - Direct examination
by Mr. Brough

1 little bit cause I know the court reporter's probably having
2 a hard time keeping up with you---

3 THE WITNESS: I'm sorry, ma'am.

4 THE COURT: ---especially when you're reading
5 something.

6 THE WITNESS: Okay.

7 THE COURT: You may continue.

8 THE WITNESS: Okay.

9 Also, on a supplemental report for the same thing,
10 which is 11071548. The report, I don't know who, who wrote
11 this. It just says supplement.

12 It says Ms. Woody called the Sheriff's Office on behalf
13 of her employer, H&M Stop & Go at 4811 Highway 11, Inman
14 South Carolina. She reported that the subject used a credit
15 card to buy \$100 in phone cards about 6:09 this morning.
16 Later she learned that the card had been stolen from the
17 Navairos in a car breaking case.

18 She said that Verizon would release the card numbers to
19 an investigator. She said that the store video is available
20 for the investigator. The subject was a regular customer, a
21 white male, about 5'6" with dark brown hair. He was in a
22 little black hatchback and I have that---

23 THE COURT: I need you to, Mr. Brough, instead of this
24 sort of---

25 Q So---

Travis Hipp - Direct examination
by Mr. Brough

1 THE COURT: ---statement that's being made, I need you
2 to---

3 Q What---

4 THE COURT: ---place a question for the witness---

5 MR. BROUGH: Yes, ma'am.

6 THE COURT: ---and I need it to be germane to---

7 Q What are you---

8 THE COURT: ---the allegations the Court needs to
9 elicit.

10 Q ---talking about?

11 A That the evidence was not investigated during my case.

12 Q Okay. So there was an issue with the color of the car
13 being different?

14 A There was an issue with the fact that she didn't go
15 through the evidence. She just wanted a guilty plea
16 automatic.

17 Q Okay. So I understand that and that gets into whether
18 your plea was voluntary or not?

19 A Yes, because they have, they have on their little black
20 card at the county Sheriff's Office encountered a white car.
21 This was stuff I discussed with you when you come to
22 McCormick.

23 Q Yes, sir. Yes, sir.

24 And would it be fair to say that their main issues are
25 dealing with the failure to inform you of their offer?

Travis Hipp - Direct examination
by Mr. Brough

1 A Uh-huh. (Affirmative).

2 Q And the failure to advise you that you could have
3 appealed, especially considering that you've indicated your
4 plea was not voluntarily given?

5 A Yes, sir.

6 Q Would that be fair to say those are your main issues?

7 A Yes, sir.

8 Q Okay. Are those the issues you really want the Court
9 to consider?

10 A Yes, sir.

11 Q Okay. Outside some factual discrepancies, is there
12 anything else that you want the judge to consider?

13 A Yes, the fact that, like I said, that, that the
14 ineffective assistance of counsel also goes in part that she
15 did not, she did not go through the discovery and really go
16 over this evidence and everything that was given me---

17 Q And---

18 A ---and there's a lot of flaws---

19 Q How many times did she---

20 A ---with the evidence.

21 Q How many times did she see you before the trial?

22 A She come see me one time talking about that she
23 couldn't fight it and I needed to plead guilty would be the
24 best thing that I could do and then was to come give me a
25 life notice.

Travis Hipp - Direct examination
by Mr. Brough

1 Q Okay. And that's it?

2 A Yes, sir.

3 Q All right. Thank you, sir. Please answer any of Ms.
4 White's questions.

5 THE COURT: You may proceed.

6 MS. WHITE: Thank you, Your Honor.

7 THE COURT: You welcome.

8 CROSS-EXAMINATION

9 BY MS. WHITE:

10 Q Mr. Hipp---

11 A Yes, ma'am.

12 Q ---the trial that you proceeded with was actually just
13 one charge, is that right?

14 A Yes, ma'am.

15 Q And that was a burglary second degree?

16 A Yes, ma'am.

17 Q But ultimately you pled to all of the pending charges
18 you had, is that right?

19 A Yes, ma'am.

20 Q And do you recall the Court giving the facts to you of
21 the case and you agreeing with that?

22 A That was, that was before I had agreed to, to
23 everything she -- I mean, excuse me, that was after I had
24 agreed to everything, that they give me the facts of the
25 case. The reason I had agreed to plea out to everything is

Travis Hipp - Cross-examination
by Ms. White

1 hoping that the State would give me a deal.

2 Q Right.

3 And so you pled guilty hoping that you would get a
4 lesser sentence obviously than facing a potential life
5 without parole?

6 A Yes. Yes, ma'am.

7 Q Okay. The judge asked you if you're pleading guilty
8 and if you were guilty and you said you were.

9 Do you recall that?

10 A No, ma'am, but I mean I know it's in the transcript.
11 So I do know that's in the transcript, but also I know that
12 it's in there that I -- he asked me was I making a plea
13 voluntarily and freely and I said no, sir. That should of
14 stopped all of the litigation at that point in time. She
15 should of objected and he should of stopped at that point---

16 Q You're claiming that you---

17 A ---regardless of what was said.

18 Q You claim that you said that you did not, you were not
19 doing this of your own free will?

20 A Yes, ma'am.

21 Q The judge also asked you if you had sufficient time to
22 consider this, if anybody made any promises or guarantees,
23 or threatened you, and you said you had had time to consider
24 it, and nobody had threatened you and nobody had made any
25 promises?

Travis Hipp - Cross-examination
by Ms. White

1 A Ma'am, if you go back to the date I was in the
2 courtroom I was under duress at this point in time. I was
3 in tears. I was shook up. You can listen to the record. I
4 mean I completely wasn't hearing everything that he had said
5 at that point.

6 This is not trying to back out of anything that she's
7 saying. In 2008, when I was sentenced, if you look at my
8 sentencing sheets, the Honorable Judge Mark Hayes said that
9 I needed to go to a mental health evaluation, which I was on
10 probation and the Probation Department never sent me for
11 that. So I do feel that I have issues. I couldn't tell you
12 what those issues are.

13 Q And you said that you were nervous that day and you
14 didn't understand much about the courtroom, but you had
15 several prior experiences with being in the courtroom.

16 Is that not right?

17 A That's just -- and everything's just saying plead,
18 plead guilty or fight. That's all I know.

19 Q But you had been in the courtroom several times before
20 this?

21 A Yes, ma'am.

22 Q Okay.

23 A Yes, ma'am.

24 Q You testified that you were never given an offer.
25 May I approach, Your Honor?

Travis Hipp - Cross-examination
by Ms. White

1 THE COURT: You may.

2 Q I'm gonna ask you if you recognize this handwriting.

3 A No, that wasn't there.

4 Q And that signature that says Travis F. Hipp?

5 A Yes, and it was never an offer made on that.

6 Q No.

7 My question is is that your handwriting?

8 A Yes, ma'am, that's my handwriting.

9 Q That's your handwriting.

10 So do you acknowledge that it says I do not want this
11 offer?

12 A But that's not the offer that we was---

13 Q Mr. Hipp?

14 A ---talking about---

15 THE COURT: Sir, please answer the question.

16 THE WITNESS: Oh, yes.

17 THE COURT: ---yes or no and then you may explain your
18 answer.

19 Q It says I do not want this offer, Travis F. Hipp, I
20 understand the three strike law, and you signed that
21 November 28th, 2011?

22 A Uh-huh. (Affirmative).

23 Q Okay. So you acknowledge that?

24 A Yes, ma'am.

25 MS. WHITE: Have this marked.

Travis Hipp - Cross-examination
by Ms. White

1 (WHEREUPON, the document was marked as State's Exhibit
2 No. 1 for identification purposes only at this time.)

3 Q And this was a---

4 THE COURT: Did you show it to counsel?

5 MS. WHITE: Yes, ma'am.

6 THE COURT: Any exception to the admission of the
7 document?

8 MR. BROUGH: None.

9 THE COURT: Marked and admitted without objection.

10 (WHEREUPON, State's Exhibit No. 1 was received into
11 evidence at this time.)

12 MS. WHITE: Thank you, Your Honor.

13 THE COURT: You're welcome.

14 Q And this mentions a burglary first, 15 years to life,
15 is that correct?

16 A Yes, ma'am.

17 Q Okay. So is this -- are you testifying that you were
18 never given an offer and explained the possibility of the
19 three strike and life without parole?

20 A I was given an open plea to plea out to everything.
21 Not just first degree burglary.

22 Q Okay.

23 A To plea out to everything and that if I want to plea
24 out to everything and it was just concurrent sentencing and
25 say nothing about restitution being on the end of that and

Travis Hipp - Cross-examination
by Ms. White

1 that's what I had signed that day. And that's when she
2 asked me did I understand the three strikes law, and, at the
3 point in time, no, ma'am, I did not understand the three
4 strikes law. At that -- when I did understand the three
5 strikes law was when I was given the life notice that was
6 put on me explaining two strike, three strike law. Then I
7 understood it.

8 Q Okay. But -- so you signed that paper saying you
9 understood it, but you're saying that that was incorrect?

10 A Yes, ma'am.

11 Q Okay. You also were given the offer, the offer that
12 you're saying you were never provided---

13 A Uh-huh. (Affirmative).

14 Q ---is where he lets you charge to -- plead to the
15 burglary first with concurrent sentencing provided you
16 provide restitution, restitution and he'd dismiss the other
17 charges.

18 A Uh-huh. (Affirmative).

19 Q Are you saying that's not representative of the offer?

20 A No, ma'am, that's not the same offer.

21 Q Okay. So the fact that you were aware of the three
22 strike law and you were facing a possible life without
23 parole notice---

24 A Uh-huh. (Affirmative).

25 Q ---if you didn't plead to the burg first?

Travis Hipp - Cross-examination
by Ms. White

1 A Yes, ma'am.

2 Q Okay. Did -- you said that you never asked for an
3 appeal.

4 Was there anything -- one second please, Your Honor.

5 THE COURT: Uh-huh. (Affirmative).

6 (Pause.)

7 Q You do recall that the judge asked you about whether or
8 not you had talked with your attorney, and, in fact, y'all
9 had some discussion about whether or not you wanted her to
10 still be your attorney, is that right?

11 A Yeah, I did. I told the judge that day that I did not
12 want her to be her attorney -- I mean her to be my attorney.
13 Excuse me. She said -- he told me -- when he found out. He
14 said that I will not allow you to fire her, that if you do
15 fire her, you will go through this basically saying pro se
16 on your own without counsel.

17 Q And, in fact, that was part of the reason you said that
18 you wanted to fire her was cause she hadn't gotten you a
19 bond hearing and you hadn't reviewed some discovery, is that
20 right?

21 A And the fact that me and her had, me and her had had an
22 altercation back in 2008/2009, which made me believe that
23 she could not be biased on my case.

24 Q Okay. All right. Thank you.

25 That's all I have for this witness, Your Honor.

Travis Hipp - Redirect examination
by Mr. Brough

1 THE COURT: Any redirect?

2 MR. BROUGH: Yes, Your Honor.

3 THE COURT: You may proceed.

4 REDIRECT EXAMINATION

5 BY MR. BROUGH:

6 Q Mr. Hipp---

7 A Yes, sir.

8 Q ---I direct your attention to Page 24, Line 1 of the
9 transcript, is that -- when you, when you answered Ms.
10 White's question about the fact that you told the judge that
11 day that you didn't want Andrea Price to be your lawyer
12 based on 2008.

13 Is that what you're referring to?

14 A On the first line?

15 Q Yes, sir.

16 A Yes, that's exactly what -- that's exactly what -- and
17 I brought it up, brought it up, brought it up about in 2008,
18 that she was put on these prior cases and I had, had fired
19 her.

20 Q Okay. And, and you, you had gone through---

21 A That was -- that was more stuff involving the evidence
22 in, in the case.

23 Q You had written her on 10/05---

24 A Yes, I was---

25 Q ---2011 saying you didn't want her to be your lawyer?

Travis Hipp - Redirect examination
by Mr. Brough

1 A Yes, when I had entered SCDC, the way SCDC works is you
2 can not go in but with so much paperwork. So the, the
3 request that they do have for that should be in the
4 jailhouse records because they keep a record of all those
5 requests and I had written her several days. I went to the
6 Public Defender's Office. I went to all the judges. I went
7 to her boss. It use to be Clay Allen at that point in time.
8 I'm not sure if that's still the same man that it's
9 running---

10 Q And, Mr. Hipp, I want to show you this exhibit again.

11 A Uh-huh. (Affirmative).

12 Q This is the State's Exhibit 1 that Ms. White was asking
13 you about.

14 A Uh-huh. (Affirmative).

15 Q The date on State's Exhibit 1 on this supposed offer
16 you turned down, what's the date on that?

17 A 11/28.

18 Q Okay. I'm gonna show you, on Applicant's Exhibit 1,
19 the offer letter, if you could, on Applicant's Exhibit No.
20 1. Read me the last paragraph right there.

21 A He must agree to accept this offer by his second
22 appearance on November 17th, 2011, and which I do
23 understand what my lawyer's getting at here, that this is
24 signed 11/28/2011.

25 Q So did---

Travis Hipp - Redirect examination
by Mr. Brough

1 A So it was past the time for the plea offer to be --.

2 Q So you had no indication that that was even still on
3 the record or on the table at that point in time?

4 A No.

5 Q Okay. All right. Thank you.

6 No further questions.

7 MS. WHITE: Nothing further, Your Honor.

8 THE COURT: Sir, you may step down.

9 THE WITNESS: Okay. This exhibit that he has here,
10 ma'am---

11 THE COURT: Just leave it there.

12 THE WITNESS: Just leave it up here?

13 THE COURT: Uh-huh. (Affirmative.)

14 THE WITNESS: Okay.

15 THE COURT REPORTER: Leave that one. That's an
16 exhibit.

17 THE WITNESS: Huh?

18 No, this is my paper or do you need all this?

19 THE COURT REPORTER: The one---

20 THE COURT: Anything that's yours you take back with
21 you. Anything that's been marked as an exhibit---

22 THE WITNESS: Oh, I'm sorry. I'm sorry.

23 THE COURT: ---just leave it on the bench.

24 THE WITNESS: I'm sorry about that, ma'am.

25 THE COURT: You may call your next witness if there is

Mark Freeman - Direct examination
by Mr. Brough

1 one.

2 MR. BROUGH: Call Lieutenant Mark Freeman to the stand,
3 Judge.

4 THE COURT: Please raise your right-hand to be sworn.

5 MARK FREEMAN, being first duly
6 sworn, testified as follows:

7 THE COURT: If you would, take your seat, sir, and then
8 state your full name for the record spelling your last name
9 for the court reporter.

10 THE WITNESS: It's Mark Anthony Freeman.
11 F-R-E-E-M-A-N.

12 THE COURT: Thank you.

13 You may proceed.

14 MR. BROUGH: Thank you, Your Honor.

15 THE COURT: You're welcome.

16 MR. BROUGH: Mark this Applicant's 2.

17 (WHEREUPON, the document was marked as Applicant's
18 Exhibit No. 2 for identification purposes only at this
19 time.)

20 DIRECT EXAMINATION

21 BY MR. BROUGH:

22 Q Agent Freeman, where are you employed, sir?

23 A Spartanburg County Sheriff's Office.

24 Q Okay. And what do your duties consist of?

25 A I'm the administrative lieutenant in the detention

Mark Freeman - Direct examination
by Mr. Brough

1 division. I'm one of the administrators over the computer
2 database system.

3 Q Does that include being, essentially, custodian of
4 records for the Spartanburg County Detention Center?

5 A Yes, sir, it does.

6 Q Okay. And as part of the duties there, do you keep a
7 visitation log of everyone that comes and goes?

8 A Yes, sir, we do.

9 Q Okay. And is it the policy of the Detention Center
10 that all visitors are suppose to log in including attorneys?

11 A It is the policy, yes, sir.

12 Q Okay. And that, that those visits are then put into a
13 log that's kept in the regular course of business?

14 A Yes, sir, that is correct.

15 Q Okay. I want to show you what's been marked for
16 identification as Applicant's Exhibit No. 2, sir.

17 Could you identify that document for me?

18 A Yes, sir, this is a report that I ran on request of a
19 subpoena in reference to an inmate who has came to visit
20 them.

21 Q And the inmate in question is who?

22 A Mr. Hipp.

23 Q Okay. And is that record kept in the ordinary course
24 of business?

25 A Yes, it is.

Mark Freeman - Direct examination
by Mr. Brough

1 MR. BROUGH: Okay. Like to move it into evidence as
2 Applicant's Exhibit No. 2.

3 THE COURT: Any objection?

4 MS. WHITE: No objection, Your Honor.

5 THE COURT: Marked and admitted without objection.

6 (WHEREUPON, Applicant's Exhibit No. 2 was received into
7 evidence at this time.)

8 Q And if I can have you go through the first page of
9 Applicant's Exhibit 2.

10 Could you tell me that, during the timeframe of
11 November, if you see a visitor from Mr. Hipp in the name of
12 Andrea Price?

13 A I do not.

14 Q And, if you could, how many times do you see her name
15 listed in the visitation log with Mr. Hipp?

16 A I see one time on 3/18 of '12.

17 Q The day before the trial?

18 A I'm not aware of the date of the trial, sir.

19 Q All right. Fair enough.

20 All right. Thank you, sir. Please answer any of Ms.
21 White's questions.

22 THE COURT: You may proceed.

23 MS. WHITE: Thank you, Your Honor.

24 THE COURT: You welcome.

25 CROSS-EXAMINATION

Mark Freeman - Cross-examination
by Ms. White

1 BY MS. WHITE:

2 Q Lieutenant Freeman, you've said it's policy that all
3 the visitors are, are checked in and then logged in.

4 Is there anytime that perhaps, with attorneys, they're
5 waved through or not logged in and checked in?

6 A Yes, ma'am.

7 Q Okay. So is it possible that Ms. Price came and
8 visited Mr. Hipp when she was visiting some other clients
9 and maybe it was not reflected in the log?

10 A Yes, ma'am.

11 Q And, in fact, I don't know if you were here earlier,
12 the defendant himself said that he was visited by her to
13 tell him to plead and then also when he was served with
14 notice for life without parole, December, 2011.

15 So neither one of those are reflected on the log?

16 A I did catch that. That is correct, ma'am.

17 Q Okay. All right. Thank you.

18 That's all I have, Your Honor.

19 THE COURT: Any redirect?

20 MR. BROUGH: Just briefly.

21 REDIRECT EXAMINATION

22 BY MR. BROUGH:

23 Q Lieutenant Freeman, it is the policy of the Detention
24 Center that attorneys are suppose to sign in?

25 A That is correct.

Mark Freeman - Redirect examination
by Mr. Brough

1 Q And there was even a memo that was sent out about that.

2 Is that also correct?

3 A I believe there was, yes, sir.

4 Q All right. Thank you, sir.

5 No further questions.

6 We'd ask that he be excused.

7 THE COURT: Any exception?

8 MS. WHITE: No exception.

9 THE COURT: Sir, you're excused.

10 THE WITNESS: Thank you, ma'am.

11 THE COURT: You're welcome.

12 MR. BROUGH: Applicant rests, Your Honor.

13 THE COURT: Anything from the State?

14 MS. WHITE: Your Honor, we would just briefly call

15 Andrea Price.

16 THE COURT: If you would, come to the stand and be
17 sworn.

18 ANDREA PRICE, being first duly
19 sworn, testified as follows:

20 THE COURT: If you would take a seat please and state
21 your full number -- full name for the record spelling your
22 last name for the court reporter.

23 THE WITNESS: Andrea Price. P-R-I-C-E.

24 THE COURT: You may proceed.

25 MS. WHITE: Thank you, Your Honor.

Andrea Price - Direct examination
by Ms. White

1 THE COURT: You're welcome.

2 DIRECT EXAMINATION

3 BY MS. PRICE:

4 Q Ms. Price, do you recall representing Mr. Tripp -- I
5 mean Mr. Hipp on these charges?

6 A I do.

7 Q And is it your recollection that you had had a prior
8 representation of him that had not ended well I guess is---

9 A He fired me and did hire Mr. Brown, yes.

10 Q Okay. And specifically of the visitations, can you
11 tell -- you keep notes of when you visit clients?

12 A I do.

13 Q And do you have a record of how many times you visited
14 Mr. Hipp?

15 A I do.

16 Q Can you tell us the dates?

17 A Certainly. I visited him on August the 12th of 2011.
18 That was at the old jail, which is also known as Annex 1.
19 It's right next door to here.

20 I visited again -- him again in December of 2012. That
21 was over at the -- at Annex 2, which is across the street.
22 I also visited him again -- well, I saw him here at the
23 courthouse when he was arraigned in March of 2012 on his
24 burg second violent charge, and I also went to see him at
25 the jail on 3/18/2012 and I got measurements for his clothes

Andrea Price - Direct examination
by Ms. White

1 for trial.

2 Q And in regards to meeting with him and conveying an
3 offer, were you aware of this email that has been introduced
4 of the offer from Zach Ellis?

5 A I am. Zach sent that. He and I, in conjunction,
6 worked with Mr. James Cheek on that. As you know, he works
7 at the Public Defender's Office. He does strictly jail
8 clients.

9 Q And did you have a conversation -- did you ever have a
10 conversation, excuse me, with Mr. Hipp about the plea offer?

11 A I did subsequently after he rejected it. Mr. Cheek's
12 actually the one that went and talked to him at the jail and
13 had this sentencing sheet.

14 Q And to your understanding, at that point, he was being
15 offered this plea and then he obviously rejected it and
16 acknowledged on the sheet that he was aware of the three
17 strikes law?

18 A Yes, actually the plea that he rejected was actually
19 better than -- a little better than the one Mr. Ellis had
20 originally offered.

21 Q And what was your conversation with him after that
22 point before you proceeded to trial in regards to him
23 rejecting the offer?

24 A Well, shortly after that he was served with a notice of
25 intent to seek -- State's intent to seek life without parole

Andrea Price - Direct examination
by Ms. White

1 of which I was also served a copy. So we did talk about
2 that in December when I went to go see him at the jail
3 whenever I had his discovery at that time.

4 Q And in leading up to your discussions with him and
5 proceeding to this trial and then the, the ultimate plea,
6 what was the turning point, I guess, during the, the trial
7 that led to the plea?

8 A We actually were prepared to go forward with the trial.
9 Actually proceeded with the picking of the jury at this
10 point. During a lull, Mr., Mr. Ellis did come to me and
11 graciously re-extended the -- an offer which would of taken
12 LWOP off the table if he pled to his other charges.

13 Q And is that the offer that he ultimately pled to?

14 A It is.

15 Q Okay. Thank you.

16 That's all I have at this time, Your Honor.

17 THE COURT: Any questions for the witness?

18 MR. BROUGH: Yes, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. BROUGH:

21 Q Ms. Price, the -- I believe you testified that you had
22 given the information to Mr. Cheek---

23 A Yes.

24 Q ---to go talk to him about that offer?

25 A Yes.

Chris Brough - Cross-examination
by Mr. Brough

1 Q Okay. Were you present with Mr. Cheek when that offer
2 was extended?

3 A I was not.

4 Q Okay. So you don't know actually if it was ever a
5 conversation between Mr. Cheek and Mr. Hipp, do you?

6 A Well, I was not present for any conversation, no.

7 Q Okay. So you're not sure if that offer was ever
8 extended?

9 A I know that the offer was extended to plead -- for him
10 to plead to the one burglary that Mr. Cheek came back and
11 gave me the sentencing sheet on indicating that Mr. Hipp had
12 rejected that.

13 Q Now, I want to go through you -- with the trial and
14 Mr. Ellis you said pulled the life without parole notice and
15 allowed him to enter a plea?

16 A Yes.

17 Q Okay. Do you recall him indicating that his plea was
18 not given freely and voluntarily?

19 A I do not.

20 Q Okay. I want to direct your attention to the
21 transcript.

22 A Certainly. I have a copy.

23 Q Okay.

24 A Okay.

25 Q Okay.

Chris Brough - Cross-examination
by Mr. Brough

- 1 A What page are you on, Chris?
- 2 Q On Page 38.
- 3 A Okay. Sixteen and 17?
- 4 Q Yes.
- 5 A Okay.
- 6 Q Where is says are you doing this of your own free will
- 7 and he answered no, sir.
- 8 A That is what the transcript reflects.
- 9 Q Okay. Now, when he answered no, sir, at that point the
- 10 judge never stopped the plea, is that correct?
- 11 A That's correct.
- 12 Q Okay. And did you, at that point, object to the plea
- 13 going forward or ask for time to speak to your client or do
- 14 any of those things?
- 15 A No, I did not.
- 16 Q Okay. Would you agree with me that, based on that
- 17 answer, that the case could potentially be overturned on
- 18 appeal?
- 19 A If that is, in fact, what his answer was at the time.
- 20 Q Okay. But that's what the transcript reads.
- 21 A That's what the transcript reflects, but it's very
- 22 unusual that I would have a client in front of Judge Couch
- 23 who would say no, sir, to that question. I have been in
- 24 front of him before where he is actually stopped the
- 25 proceedings.

Chris Brough - Cross-examination
by Mr. Brough

1 Q I'm not saying it's not unusual. I'm saying that's
2 what the transcript reads.

3 A That's what the transcript reflects, yes.

4 Q All right. Thank you.

5 No further questions.

6 THE COURT: Any redirect?

7 MS. WHITE: Just one final question.

8 REDIRECT EXAMINATION

9 BY MS. WHITE:

10 Q If Mr. Hipp had indicated to you that he wanted to stop
11 the plea or withdraw that, would you have asked or made that
12 request?

13 A Oh certainly.

14 Q Okay. Thank you.

15 A I have done it before.

16 MS. WHITE: That's all I have, Your Honor.

17 THE COURT: Ma'am, you may step down.

18 THE WITNESS: Thank you.

19 THE COURT: You're welcome.

20 MS. WHITE: And the State has no other witnesses, Your
21 Honor.

22 THE COURT: Any rebuttal testimony from the Applicant?

23 MR. BROUGH: No testimony, Your Honor.

24 THE COURT: Glad to hear any argument.

25 MR. BROUGH: Your Honor, we, we indicated that I think

1 we've met our, our burden of proof as to the offer not being
2 sent to him. We'd ask that he be sent for a resentencing
3 hearing pursuant to Davey versus State, 381, S.C. 601, 2009
4 case. I'll pass copies of the case up.

5 THE COURT: I don't need copies of it. I'm familiar
6 with it.

7 MR. BROUGH: Okay. In the event that that's not
8 granted for whatever reason, it would be our position that
9 he should be entitled to a delayed appeal, at a minimum,
10 or another trial pursuant to Pittman versus State of South
11 Carolina, 337 S.C. 597, Supreme Court case from 1999,
12 indicating and it would be our position that the record
13 shows that there was an issue as to whether or not the plea
14 was freely and voluntarily given. It's in the transcript, no
15 one's disputed, and we believe that he'd be entitled to
16 relief based on that, Your Honor.

17 THE COURT: Would the State like to respond?

18 MS. WHITE: Thank you, Your Honor.

19 In regards to the direct appeal, obviously the standard
20 for a guilty plea is that the counsel is not required to
21 advise a client unless there is some substantial
22 circumstances that would cause them to think that or if the
23 client actually requested an appeal, then they are required
24 to do that.

25 In this situation, obviously if he did request an

1 appeal, and there's no testimony that there was any
2 circumstances that would cause Ms. Price to believe that he
3 wanted an appeal. In this situation as well, I believe that
4 it's clear, with the plea colloquy, that it was freely and
5 voluntarily given and it was done based on his desire to
6 have a deal less than the possibility of life without
7 parole.

8 So we would ask that you deny that application.

9 THE COURT: Is there a reason you didn't call Mr. Cheek
10 as a witness?

11 MS. WHITE: Your Honor, to be honest, no. I knew that
12 Ms. Price had worked with him in regards to that. As far as
13 I knew, it was all kind of a joint effort. So I---

14 THE COURT: You felt the form, signing it, was
15 sufficient?

16 Is that---

17 MS. WHITE: Yes, ma'am.

18 THE COURT: Okay. Can I see the exhibits please?

19 (Pause.)

20 THE COURT: As I understand it, his only assertion is
21 that he was not made this offer, correct, and, therefore,
22 his plea was not voluntary?

23 MR. BROUGH: Well, that's -- he's also made the
24 assertion that he was not advised of his right to appeal and
25 that the plea wasn't freely and voluntarily given.

1 THE COURT: I'm sorry. Repeat that.

2 MR. BROUGH: That he was not advised of his right to a
3 direct appeal, and that his plea was involuntary, it was not
4 free and voluntarily given.

5 THE COURT: That's part and parcel with not being given
6 the deal.

7 MR. BROUGH: Okay.

8 THE COURT: Correct?

9 MR. BROUGH: We would say it's a separate ground, but I
10 can see how you can see it that way, Judge.

11 THE COURT: Pardon me?

12 MR. BROUGH: We, we have listed that as a, as a
13 separate ground, but I understand---

14 THE COURT: Oh, I got you.

15 MR. BROUGH: ---how you could see it that way.

16 THE COURT: Is there -- did anybody check with the
17 court reporter to get -- to have her check whether it was
18 a -- whether this was inaccurate or to listen to the tape---

19 MS. WHITE: Your Honor?

20 THE COURT: ---of this transcript?

21 MS. WHITE: Pam Green, our current court reporter, is
22 the court reporter---

23 THE COURT: Uh-huh.. (Affirmative).

24 MS. WHITE: ---and we had not done that.

25 THE COURT: Did anybody think about that cause I can

1 tell you, from reading it, that would of been inconsistent.

2 MS. WHITE: Yeah.

3 THE COURT: If somebody would of answered yes to all
4 those questions and no to another and the judge not stop.

5 Is there anyway -- do you still have the tape?

6 THE COURT REPORTER: I have it.

7 It was from when?

8 MS. WHITE: 2012.

9 THE COURT: It was from March 19th, 2012.

10 THE COURT REPORTER: I would still have my -- it's not
11 here at the courthouse. It's at my house.

12 THE COURT: Okay.

13 THE COURT REPORTER: But I do still have it.

14 THE COURT: I'm going to ask that the court reporter
15 listen to the tape for accuracy to make sure because it
16 just -- it doesn't make sense to me. It's not logical. No
17 judge is gonna have no to a question and not follow it up
18 with some follow-up question to clarify. He's not just
19 gonna roll on with the plea when somebody says no to a
20 question that they should of answered yes to when they've
21 answered yes to all the preceding questions and subsequent
22 questions. It's just not logical.

23 I suspect that is a typo, but I want her to listen to
24 the transcript -- listen to the tape or look at her notes
25 and see if, in fact, it was an error. I -- they have to

1 keep their records for five years. So I would assume --
2 although once it's typed she can discard her records, but
3 she says she has them in her possession. So I would ask her
4 to look at those and let us know tomorrow what -- whether
5 that, in fact, was a typo.

6 But irregardless of that, I find that he has failed to
7 meet his burden of proof and the application is denied and
8 I'll deal with it in the order that -- well, maybe not so
9 much in the order it was presented, but, in terms of the
10 direct appeal, the record is absolutely void of any evidence
11 that he would of prevailed on a direct appeal. Especially
12 based on the transcript.

13 Appeal, you know, as a matter of fact, most defense
14 attorneys now take the position, on a guilty plea, that they
15 don't even advise on the right to appeal because it's
16 basically a nullity. To just file something for the purpose
17 of filing it, and you know it's gonna be denied, is an
18 exercise in futility.

19 So, you only have -- and most judges advise on it even
20 though we know it's futile and we really do it because of
21 PCRs like this so that somebody can't come back later and
22 they didn't know.

23 But to file an appeal on a guilty plea that you know is
24 not going to amount to anything does not amount to
25 prejudice, and there's no evidence in the record that he --

1 a direct appeal would of been fruitful. In fact, I think
2 probably Indigent Defense would of done an Anders brief and
3 it would of been dismissed in an unpublished opinion.

4 The next issue that was raised is his contention that
5 the deal was never conveyed to him. The objective proof in
6 this case makes that testimony completely incredulous and I
7 do not believe him. I do not find his testimony credible on
8 that point, and the reason I do that is because the
9 objective proof that I see is an email which conveys an
10 offer on November 4th. We don't know when it was
11 received, and that's, of course, the downside of an email.
12 But it's dated Friday, November 4th, 2011 at 11:00, 11:04
13 AM. It would, however, corroborates that it, in fact, had
14 to have been communicated to him. Otherwise why would he
15 have signed a form rejecting it. That makes no sense.

16 So in terms of logic, it would of had to have been
17 communicated to him because he very clearly signed a
18 sentencing sheet which indicates burglary first degree,
19 signed by Mr. Ellis, with a concurrent recommendation where
20 he clearly says I do not want this offer and signs it and
21 also indicates that he understands the three strike law,
22 and, to me, that's contemporaneous proof of what happened at
23 that time.

24 I do not believe now, in hindsight, anything that he
25 says refuting that. I just do not find it credible.

1 As it regards to the sign-in sheet from the Spartanburg
2 County Detention Center, I -- or by the Sheriff's Office, I
3 have no reason to believe that it is inaccurate, and I have
4 no knowledge of -- direct knowledge of what's done at the
5 jail here, but I know in jails across the state they don't
6 always make lawyers sign in especially on days where they
7 have a high volume of lawyers coming to see -- like, for
8 example, in Charleston, there's certain days that the P.D.
9 has basically free reign at the jail and nobody signs in.
10 Especially on prelim day. They usually wave them in.

11 They have a series of rooms where they can all meet
12 with their clients, and so I find credible the testimony of
13 counsel that -- regarding how many times she saw her client
14 and communicated these matters to him, and I also find
15 credible the testimony that Mr. Cheek went and explained
16 this offer to him. Otherwise, again, we would have no
17 explanation for the rejected sentencing sheet, which is
18 State's No. 1.

19 Now, what I find more -- most compelling is the
20 contemporaneous record of this proceeding, which is the
21 transcript, and it is very telling. Judge Couch was very
22 thorough in his questioning of the Applicant. He asked him
23 very clearly was he satisfied with his attorney's
24 representation, and, at Page 32 Lines 12 through 23 and Page
25 34 Lines 22 through 25, and Page 35 Line 1 he indicates he

1 is completely satisfied with her services. He indicates
2 that he is -- that the State, in concession of the plea, is
3 withdrawing LWOP notice, and that's at Page 33 Lines 4
4 through 6.

5 Again, he -- the Court goes over, with both Ms. Price
6 and the Applicant, regarding the thoroughness of her
7 representation, the things that she would have discussed
8 with him, and have gone over with him, and they both answer
9 positively that, in fact, she has gone over everything with
10 him in thorough detail and he agrees with that.

11 That's at Page 36 Lines 9 through 25, Page 37 Lines 1
12 through 9 where he agrees, Page 37 Lines 10 through 12, and,
13 again, he says he is satisfied with his attorney's services,
14 Page 37 Lines 13 through 15, and what I left out of that is
15 that there's several times where he asked him do you want
16 additional time to speak with her. He says no.

17 He also takes a recess, if, if he wanted one, to give
18 her additional time to speak with him and he said he didn't
19 need it. So that contemporaneous record makes me believe
20 that any testimony provided regarding the thoroughness of
21 her representation at this hearing is not credible.

22 Judge Couch very clearly explains to him the range of
23 penalty at Page 32 through Lines 34 -- Page 32 through Page
24 34 Line 21, Page 35 through 36, Lines 1 through 2. He
25 indicates his desire to plead guilty at Page 36 Lines 3

1 through 8. He is clearly educated. I don't remember my
2 high school GPA, but he did, which was 3.64. He articulates
3 that at Page 37, Lines 16 through 19.

4 He indicates he is not coerced, Page 38 Lines 11
5 through 15, that it is of -- and I think that's where the
6 typo is on Page 38 Lines 16 through 17 where he says no,
7 sir, but we're gonna have the court reporter check that
8 where he says -- cause it just wouldn't make sense.

9 He asked him if he had adequate time to consider
10 whether he wanted to plead guilty, and he answered
11 affirmatively at Page 38 Lines 18 through 20 that there were
12 no promises or guarantees or assurances regarding the plea
13 or the range of penalty or how much time he would serve at
14 Page 38 Lines 21 through 24, and Page 38 Line 25 and Page 39
15 Lines 1 through 3.

16 His Constitutional rights were thoroughly explained to
17 him and he waived those at Page 39 Line 4 through 13, Page
18 40 Line 21 through 24, and Page 41 Lines 1 through 3 as well
19 as Page 39 Lines 14 through 25, and Page 40 Lines 1 through
20 3, and additionally that he had no questions regarding his
21 rights at Page 40 Lines 19 through 20.

22 He elocutes his guilt and indicates it is his desire to
23 plead guilty at Page 41 Lines 7 through 9 and he admits and
24 elocutes to all of the facts of the underlying indictments
25 at Page 41 Line 10 through 25 and through Page 47 Line 1.

1 He indicates to the Court that all of his answers have
2 been truthful and the Court, in fact, asked him, in detail,
3 are there any answers that you've provided to me that you
4 want to change right now. I'm giving you the option and the
5 opportunity, and he indicates no, all of my answers have
6 been truthful, and that's at Page 47 Lines 4 through 10 and
7 Page 47 Lines 11 through 17.

8 Now, he indicates that, at some point, he wanted to
9 fire his attorney, which is his right, but you don't wait to
10 fire your attorney on the eve of trial. You're not entitled
11 to an imperfect attorney -- I mean to a perfect attorney.
12 You're not entitled to perfect representation. If he wanted
13 another lawyer, he could of fired her and hired someone
14 else, which he did, but I assume maybe he didn't pay him. I
15 don't know what happened in the interim where that sort of
16 fell apart of whatever happened, but we -- he doesn't have
17 any right to have multiple attorneys appointed to represent
18 him at no cost.

19 He's appointed an attorney, and where it appears they
20 are competent, the Court has no obligation to relieve that
21 attorney. In fact, they won't because you end up with
22 rotating attorneys, and every time somebody's dissatisfied,
23 they want to fire their attorney, and, often times, and I
24 speak from experience, on the eve of trial everybody wants
25 to fire their attorney cause now the rubber's meeting the

1 road and they want to delay it some more, and if we allowed
2 that, it would -- you'd never have finality. Cases would
3 never go to trial. It's an exercise, again, in futility,
4 and it is a dilatory tactic on behalf of most defendants who
5 ask to do it.

6 So, I don't -- can not believe, from this record, any
7 abuse of discretion, that being an error of law, or some
8 factual deficit in Judge Couch denying that relief.

9 So based on what has been presented to the Court, I
10 find he's failed to meet his burden of proof and the
11 application for post-conviction relief is denied, and I'm
12 directing that the -- Ms. White provide the Court with a
13 proposed order within 20 days of today, that she make any
14 findings of fact, conclusions of law consistent with this
15 record, that she email that to Mr. Brough as well as the
16 same time that she emails it to me, and, within in five days
17 of receipt of that, an issue -- an order should be issued.

18 Anything further for the record, from the State?

19 MS. WHITE: Nothing from the State.

20 THE COURT: From the Applicant?

21 MR. BROUGH: Just to indicate that, in the event that
22 the tape for Mrs. Green shows otherwise, that the issue can
23 be---

24 THE COURT: I'm gonna have her listen to it and I
25 will -- I don't know that it's gonna change making any

1 appreciable difference when you look at the totality of the
2 plea colloquy because, at the end, he says is there anything
3 you want to change. He could very easily have said, at that
4 time, I don't want to plead guilty, and I have never known
5 a -- I've done too many pleas to probably even try to count.

6 In Charleston I do 12 at a time, all morning from 9:30
7 till about noon, and then do them again from about 2:30 to
8 5:30. Too numerous to count, too many indictments to count,
9 and I find that they are very forthright, and they will tell
10 me, my lawyer never told me about a deal and I don't want to
11 do this.

12 They don't go forward with a plea and elocute to
13 something they didn't do if they didn't feel one, there was
14 some benefit in it for them, which means -- a benefit isn't
15 perfect. It just means of the lesser of two bad choices.
16 I'm taking one that I think benefits me the most at this
17 moment because now I find myself, as we say in Charleston,
18 north of the rock and east of the hard place. So now I
19 think -- I have to figure out in this equation what's best
20 for me, which may not be the most palatable thing to me, but
21 it's the best thing to me right now, when faced with 30
22 years versus LWOP where I could possibly get parole versus
23 never getting parole cause we know life in South Carolina
24 means life till you die, that may well have been a choice
25 between two bad choices that he found palatable to him at

1 the place that he himself, which people often do.

2 I find that every county has different rules. In
3 Charleston, for example, a plea deal never extends through
4 the suppression hearing. If you roll the dice on
5 suppression, you're just going to trial if it goes against
6 you. I've noticed here that they leave it open till after
7 the suppression hearing, which gives you the benefit of
8 knowing what the judge is going to do or not do, which is
9 quite generous cause we don't do it that way.

10 But every, every county does things differently and so
11 every defendant makes a different assessment. For example,
12 in Charleston, nobody's gonna take a risk -- if I have a
13 deal and the solicitor says once you go forward with this
14 hearing there's no more deal, they gonna consider about that
15 deal a little bit differently and they may take it even
16 though it isn't what they -- they may have rejected five
17 different offers that were much better up to that point,
18 but, of course, now all of those have been withdrawn. So
19 now you're stuck in a situation now with the benefit of
20 hindsight that maybe I should of taken that other offer, but
21 I didn't, but now this is the best one that's open to me.

22 But, again, every county is different because, frankly,
23 on the eve of trial, they won't make any offers in
24 Charleston. You're just going to trial and the chips fall
25 where they fall as a matter of policy. So every -- but

1 every county does it differently.

2 I'm not trying to hold out that the way we do it is the
3 right way. It's just the way it's done because they feel
4 there has to be some consequence to drying the system out
5 and not, you know, immediately admitting culpability.

6 But, nevertheless, it appears, from this situation,
7 that it's a matter of hindsight at this point, but I have
8 never had -- and, again, I've had too many numerous to count
9 after 19 years I had a criminal defendant not say exactly
10 what was on their mind in a plea. Even in trial they will
11 say I don't like my, my attorney's strategy. I don't like
12 what they're doing. They've never discussed it with me.

13 I often have to go in in camera hearings so that they
14 won't compromise their representation, but, in a plea, I've
15 never had a defendant bite his tongue when he didn't want to
16 do it or tell me that they couldn't stand their lawyer or
17 tell me my lawyer ain't never told me about this deal and I
18 need to let you know right now they never told me and I want
19 my deal back.

20 So I want to hear whether that was a typo or not, but
21 when I look at the totality of the transcript, I don't have
22 any reason to question his voluntariness in having entered
23 into the plea. But I'd like to know, just for argument
24 sake, to see whether it's a typo or not cause, within the
25 context of it, it appears to me to be one, and, again, none

1 of us are infallible. So with the volume of typing they
2 have to do, I, I can't even, I can't even imagine it.

3 Okay. Thank you so much.

4 MS. WHITE: Thank you.

5 THE COURT: And I will, I will let you-all know once
6 she listens to it, however, what the results of that are.

7 MR. BROUGH: Thank you.

8

9 (WHEREUPON, this case was in recess for the evening.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

wednesday, January 14th, 2015

THE COURT: The court reporter has reviewed her records, and the page that we were concerned about, which is page 38 Line 16 through 17, she has checked her records and that is an inaccurate transcription.

So I would assume you're gonna provide them with an amended page?

THE COURT REPORTER: Sure.

MS. WHITE: Your Honor, I can email Chris Brough today just to kind of let him know the result if you'd like.

THE COURT: You can do that or you can just wait until he gets that amended page.

MS. WHITE: Okay.

THE COURT: I think that eliminates all the back and forth we went through.

MS. WHITE: Okay.

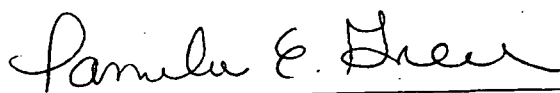
* * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

C E R T I F I C A T E

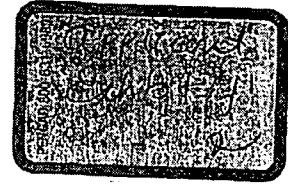
I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 13th and 14th day of January, 2015.

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

April 20th, 2015



PAMELA E. GREEN, Court Reporter



page ~~11-11-11~~

Price, Andrea

From: Ellis, Zachary
Sent: Friday, November 04, 2011 11:04 AM
To: Price, Andrea
Subject: Travis Hlpp - plea offer

Andrea,

Your client is charged with two counts of Burglary 1st Degree, one count of Breaking Into Motor Vehicle, two counts of Petit Larceny/3rd or Subsequent Property Offense, and one count of Malicious Injury to Real Property/3rd or Subsequent Property Offense from incidents in March and July 2011. Several of those charges appear on the 2nd Appearance list this month.

He already has been convicted of several Burglary charges, among other things. Specifically, he was convicted of: Burglary 1st Degree on Oct. 16, 2006; Burglary 2nd Degree 2nd Degree (Violent) on Aug. 27, 2009; and Burglary 2nd Degree (Non-Violent) on Aug. 27, 2009. As such, he is eligible for life without parole if convicted on either of his two pending Burglary 1st Degree charges.

I will offer to let him plead guilty to both charges of Burglary 1st Degree with a recommendation of concurrent sentencing, provided he agrees to pay restitution to the victims in each of his crimes as needed. In exchange, I will dismiss the other charges.

He must agree to accept this offer by his 2nd Appearance on November 17, 2011. If he rejects this offer, I will file notice of my intent to seek life without parole on both of his pending Burglary 1st Degree charges and schedule him for trial.

Thanks,
Zach

was never
offered

is not in original
discovery



SPARTANBURG COUNTY SHERIFF'S OFFICE
CHUCK WRIGHT, SHERIFF

TELEPHONE (864) 596-2607

FAX (864) 596-3421

ACKNOWLEDGEMENT OF COPIES OF AN INMATE'S FILE
PER SUBPOENA

FEE SCHEDULE:

INMATE FILE
\$16.75 PER HOUR
PLUS
\$0.25 PER PAGE
\$3.00 PER CD/DVD
\$1.00 COLOR PHOTO

MEDICAL FILE
\$15.00 RESEARCH FEE
PLUS \$0.65 /FIRST 30 PGS
AND \$0.50 EACH ADDT'L

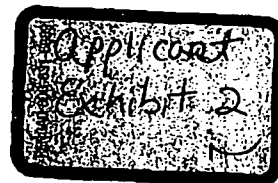
(FEE SUPPORTED BY THE FREEDOM OF INFORMATION ACT)
 I, Kim Lanford, OF THE BROUGH
LAW FIRM, DID RECEIVE A COPY OF INMATE VISITATION FILES FOR
INMATE TRAVIS F. HIPP.

ACCORDING TO THE FEE SCHEDULE ABOVE THE CHARGES THAT I
 SHALL PAY ARE BROKEN DOWN AS FOLLOWS:

\$16.75 x 0.50 (HOUR) = \$8.38
 PLUS
 \$0.25 X 4 PAGES = \$1.00
 \$3.00 X 0 CD/DVD = \$0
 \$1.00 X 3 COLOR PHOTO = \$0

\$15.00 RESEARCH FEE
 PLUS
 \$0.65 X 0 = \$0
 \$0.50 X 0 = \$0

\$ 9.38
 0
 + 0 Postage
 \$ 9.38 **TOTAL DUE**



X Kim Lanford 1/12/15
 (RECIPIENT'S SIGNATURE) (DATE)

I, Hope Goldner, do hereby certify that the following pages are true and
 accurate copy of the aforementioned inmate's original file.

Copied by: [Signature] Date: 1/12/15
 Signed before me this 12th day of January, 2015.

[Signature] My notary expires 8/27/23.

CC: INMATE'S FILES (BOOKING, ADMIN)
 RUNNER FOR ATTORNEY'S OFFICE

01/12/15
09:44Spartanburg County Sheriff's Office
Visitation Summary Report, by Visitor Date226
Page: 1

In	Out	Visitor	Visitee	Relation	Destination
<u>10/08/08</u>					
19:42	20:30	10/08/08 HIPPI, BOBBY DEAN	HIPP, TRAVIS	FRA brother	
19:43	20:30	10/08/08 HARRIS, ALLYSSA M	HIPP, TRAVIS	FRA girlfriend	
Total visits:		2			
<u>10/09/08</u>					
20:28	21:30	10/09/08 HARRIS, ALLYSSA M	HIPP, TRAVIS	FRA GIRLFRIEND	
20:28	21:30	10/09/08 CLAYTON, MICKEY R	HIPP, TRAVIS	FRA STEPFATHER	
Total visits:		2			
<u>10/14/08</u>					
19:31	20:30	10/14/08 HARRIS, ALLYSSA M	HIPP, TRAVIS	FRA wife	MAIN JAIL V
19:33	20:30	10/14/08 CLAYTON, MICKEY R	HIPP, TRAVIS	FRA father	MAIN JAIL V
Total visits:		2			
<u>10/21/08</u>					
20:24	21:30	10/21/08 HARRIS, ALLYSSA M	HIPP, TRAVIS	FRA FIANCE	
Total visits:		1			
<u>10/31/08</u>					
13:24	14:56	10/31/08 HIPPI, BOBBY SHANE	HIPP, TRAVIS	FRA BROTHER	MAIN JAIL V
Total visits:		1			
<u>11/06/08</u>					
11:24	11:25	11/06/08 MOSS, ANGELA JOHN	HIPP, TRAVIS	FRA lawer	POD 4
21:31	22:30	11/06/08 CLAYTON, MICKEY R	HIPP, TRAVIS	FRA STEPDAD	
21:32	22:30	11/06/08 HARRIS, ALLYSSA M	HIPP, TRAVIS	FRA FIANCE	
Total visits:		3			
<u>11/11/08</u>					
20:39	21:30	11/11/08 HARRIS, ALLYSSA M	HIPP, TRAVIS	FRA girlfriend	MAIN JAIL V
20:41	21:30	11/11/08 CLAYTON, MICKEY R	HIPP, TRAVIS	FRA stepfather	MAIN JAIL V
Total visits:		2			
<u>08/25/11</u>					
7:45	18:30	08/25/11 CLAYTON, MICKEY R	HIPP, TRAVIS	FRA step father	ANNEX 2 VIS
Total visits:		1			
<u>09/30/11</u>					
20:19	21:30	09/30/11 CLAYTON, MICKEY R	HIPP, TRAVIS	FRA father	ANNEX 1 VIS
Total visits:		1			
<u>10/06/11</u>					
7:20	18:30	10/06/11 CLAYTON, MICKEY R	HIPP, TRAVIS	FRA step-father	ANNEX 2 VIS

01/12/15
09:44

Spartanburg County Sheriff's Office
Visitation Summary Report, by Visitor Date

Page: 226
2

In	Out	Visitor	Visitee	Relation	Destination

Total visits:		1			
11/18/11					
=====					
18:28	19:30	11/18/11 CLAYTON, MICKEY R HIPPI, TRAVIS FRA father	ANNEX 2 VIS		
Total visits:		1			
12/01/11					
=====					
15:32	15:37	12/01/11 POWELL, SCOTT	HIPP, TRAVIS FRA SOLICITOR/IN	ANNEX 2 VIS	
Total visits:		1			
12/09/11					
=====					
19:32	20:30	12/09/11 CLAYTON, MICKEY R HIPPI, TRAVIS FRA step father	ANNEX 2 VIS		
Total visits:		1			
12/30/11					
=====					
18:30	19:30	12/30/11 CLAYTON, MICKEY R HIPPI, TRAVIS FRA step father	ANNEX 2 VIS		
Total visits:		1			
01/06/12					
=====					
21:32	22:30	01/06/12 CLAYTON, MICKEY R HIPPI, TRAVIS FRA stepdad			
Total visits:		1			
01/11/12					
=====					
13:29	14:30	01/11/12 HIPPI, CLAUDE	HIPP, TRAVIS FRA GRANDFATHER	ANNEX 2 VIS	
Total visits:		1			
01/12/12					
=====					
21:34	22:30	01/12/12 CLAYTON, MICKEY R HIPPI, TRAVIS FRA step father	ANNEX 2 VIS		
Total visits:		1			
01/26/12					
=====					
18:44	19:30	01/26/12 CLAYTON, MICKEY R HIPPI, TRAVIS FRA G/father	ANNEX 2 VIS		
Total visits:		1			
02/03/12					
=====					
18:27	19:30	02/03/12 CLAYTON, MICKEY R HIPPI, TRAVIS FRA STEPFATHER	ANNEX 2 VIS		
Total visits:		1			
02/09/12					
=====					
19:33	08:02	02/17/12 CLAYTON, MICKEY R HIPPI, TRAVIS FRA step father	ANNEX 2 VIS		
Total visits:		1			
02/23/12					
=====					

01/12/15
09:44Spartanburg County Sheriff's Office
Visitation Summary Report, by Visitor Date226
Page: 3

In	Out	Visitor	Visitee	Relation	Destination
19:35	20:00	02/23/12 CLAYTON, MICKEY R	HIPP, TRAVIS FRA	grandfather	
Total visits:		1			

03/02/12
=====

21:27	21:35	03/02/12 CLAYTON, MICKEY R	HIPP, TRAVIS FRA	stepdad	ANNEX 2 VIS
Total visits:		1			

03/08/12
=====

17:28	18:30	03/08/12 CLAYTON, MICKEY R	HIPP, TRAVIS FRA	STEP FATHER	ANNEX 2 VIS
Total visits:		1			

03/15/12
=====

17:36	19:30	03/15/12 HENDERSON, JERRY	HIPP, TRAVIS FRA	deacon	ANNEX 2 VIS
18:23	19:30	03/15/12 WATERS, WESLEY &	HIPP, TRAVIS FRA	deacon	ANNEX 2 VIS
18:33	19:30	03/15/12 CLAYTON, MICKEY R	HIPP, TRAVIS FRA	step father	ANNEX 2 VIS
Total visits:		3			

03/18/12
=====

17:51	18:00	03/18/12 PRICE, ANDREA LEA	HIPP, TRAVIS FRA	lawyer	MAIN JAIL V
Total visits:		1			

10/31/14
=====

15:00	16:21	10/31/14 BROUGH, CHRISTOPH	HIPP, TRAVIS FRA		
Total visits:		1			

Total visits, this report: 34

Report Includes:

- All arrival dates
- All destinations
- All visitee numbers matching 62585`
- All visitor numbers
- All visitee last names
- All visitee first names
- All visitee middle names
- All visitor last names
- All visitor first names
- All visitor middle names

*** End of Report /tmp/rptH-awqa-rpjvvsr.rl_1 ***

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2013-CP-42-1235

Travis Franklin Hipp, #350200,
Applicant,

v.

State of South Carolina,
Respondent.

ORDER OF DISMISSAL

Presiding Judge:	The Hon. Deadra L. Jefferson
Applicant's Attorney:	Christopher D. Brough, Esquire
Respondent's Attorney:	Suzanne H. White, Esquire
Plea Counsel:	Andrea L. Price, Esquire
Date of Hearing:	January 13, 2015
Court Reporter:	Pamela E. Green

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed March 12, 2013. The Respondent made its Return on or about March 28, 2014. An evidentiary hearing into the matter was convened on January 13, 2015, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Christopher D. Brough, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Lt. Mark Freeman and Andrea L. Price, Esquire, also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the Return, and the trial transcript. The Applicant submitted an amended application for PCR, filed January 2, 2015 at the hearing.

1 of 26
2/19

2015 MAR 31 9:03
CLERK OF COURT
SPARTANBURG COUNTY

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the September 2011 term of the Spartanburg County Grand Jury for Petit Larceny-Third or Subsequent Property Offense¹ (2011-GS-42-5722, -5724), Breaking Into a Motor Vehicle² (2011-GS-42-5723), Burglary-First Degree (Dwelling)³ (2011-GS-42-5725), the October 2011 term for Malicious Injury to Real Property-Third or Subsequent Property Offense⁴ (2011-GS-42-6162), and the February 2012 term for Burglary-Second Degree (Building)⁵ (2012-GS-42-0593).⁶ The Applicant was represented on all charges by Andrea L. Price, Esquire. On March 19, 2012, after proceeding to trial on the Burglary-Second Degree charge, the Applicant chose to plead guilty to all of his pending charges as listed above. The Honorable Roger L. Couch sentenced Applicant to concurrent sentences of thirty (30) years for Burglary-First Degree, fifteen (15) years for Burglary-Second Degree, ten (10) years for each count of Petit Larceny-Third or Subsequent Property Offense and Malicious Injury to Real Property-Third or Subsequent Offense, and five (5) years for Breaking Into a Motor Vehicle. The Applicant did not appeal his conviction or sentence.

¹ Property Crime Enhancement is a felony punishable by ten (10) years' imprisonment. See S.C. CODE ANN. § 16-1-57 (2011).

² An offender who commits the offense of Breaking Into a Motor Vehicle "is guilty of a felony and, upon conviction, must be imprisoned not more than five [(5)] years or fined not more than one thousand dollars [(\$1,000.00)], or both." S.C. CODE ANN. § 16-13-160(B) (2011).

³ "Burglary in the first degree is a [violent, most serious] felony punishable by life imprisonment. For purposes of this section, 'life' means until death. The court, in its discretion, may sentence the defendant to a term of not less than fifteen [(15)] years." S.C. CODE ANN. § 16-11-311(B) (2011); S.C. CODE ANN. § 16-1-60 (2011); S.C. CODE ANN. § 17-25-45 (2011).

⁴ Property Crime Enhancement is a felony punishable by ten (10) years' imprisonment. See S.C. CODE ANN. § 16-1-57 (2011).

⁵ "Burglary in the second degree . . . is a [violent, serious] felony punishable by imprisonment for not more than fifteen [(15)] years, provided, that no person convicted of burglary in the second degree . . . shall be eligible for parole except upon service of not less than one-third [(1/3)] of the term of the sentence." S.C. CODE ANN. § 16-11-312(B)(2) (2011); S.C. CODE ANN. § 16-1-60 (2011); S.C. CODE ANN. § 17-25-45 (2011).

2
2012/2/26
[Signature]

ALLEGATIONS

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

1. Ineffective assistance of counsel, in that;
 - a. Counsel refused to communicate with Applicant;
 - b. Counsel failed to investigate the evidence;
 - c. Counsel failed to subpoena witnesses for the defense;
 - d. Counsel failed to inform Applicant of direct appeal;
 - e. Conflict of interest because Applicant had previously fired Counsel on prior charges and did not want her representing him;
 - f. Counsel failed to request a mental health evaluation;
2. Involuntary guilty plea, in that;
 - a. Applicant had no choice but to plead guilty because Counsel made no effort to represent Applicant and the court would not allow Applicant to fire Counsel.

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).

Summary of Testimony and Proceeding

The Applicant testified that he did not know he had the right to a direct appeal because Counsel did not inform him and did not file an appeal on his behalf. The Applicant also testified that Counsel failed to inform him of his plea offer. The Applicant further alleged that he was not

⁶ Originally indicted as Burglary-First Degree (2011-4346), but amended to Burglary-Second Degree and the

3
302 26
SPG

CLERK OF COURT
 2015 MAR 3 AM 9:59
 H. ROPELACHNEY

properly noticed of the State's intention to seek a sentence of life imprisonment without possibility of parole (LWOP) if he was found guilty at trial and the notice was not included in the record. However, the Applicant later testified that he was served with the LWOP notice twice.

The Applicant testified that Counsel had only an email from the Solicitor dated November 4, 2011 and that Counsel did not convey the State's plea offer. The Applicant alleged that the State's offer would expire November 17, 2011 and, at that time, the State would then seek LWOP. The Applicant claimed he did not hear about the offer because his attorney told him "[you] can't beat the charges" and encouraged him to plead guilty. The Applicant summarized his understanding of the State's guilty plea offer as seeking the Burglary-First Degree conviction to be run concurrent with his Burglary-Second Degree conviction.⁷ The Applicant testified that the State would also seek restitution and would dismiss his other pending charges. The Applicant testified that his criminal record includes a prior Burglary-First Degree conviction from October 2006 and Burglary-Second Degree Violent conviction from August 2009.⁸

The Applicant testified that on March 19, 2012, once he proceeded to trial, the plea offer was no longer on the table. Only then, he testified, did he find out he was eligible for LWOP. He alleged he never found out that he was LWOP eligible through his attorney. The Applicant claimed he was entitled to his old deal as a remedy for Counsel's failure to explain the offer. The Applicant testified that he seeks the remedy imposed in Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) and Bell v. State, 401 S.C. 436, 765 S.E.2d 4 (2014), and asks this Court to honor the

Burglary-First Degree (2011-4346) was dismissed following the guilty plea (Tr. 19:14-23).

⁷ Based on a review of the record, it appears the Applicant was referring to the State's first plea offer.

⁸ At trial, the Solicitor published the Applicant's criminal history, which consists of the following prior convictions relevant to the trial and the Applicant's LWOP eligibility: Burglary-First Degree, Indictment Number 2006-GS-42-2095; Burglary-Second Degree, Indictment Number 2008-GS-42-6823; and Burglary-Second Degree, Indictment Number 2008-GS-42-6827 (Tr. 19:24-20:7). Prior to sentencing, the Solicitor clarified that the Applicant's prior Burglary convictions were: Burglary-First Degree in 2006, Burglary-Second Degree Violent in 2009, and Burglary-Second Degree Nonviolent in 2009 (Tr. 49:24-50:6).

Ad 26
SPJ

CLERK OF COURT
CLERK OF COURT
2015 MAR 31 AM 9:59
M. HOPE

State's prior plea offer and grant a belated review of his direct appeal issues.

The Applicant testified that he was facing several charges and was incarcerated at the Spartanburg County Detention Center when Counsel received a second plea offer via email on Applicant's behalf, (Applicant's Exhibit #1). The Applicant alleged that he never was informed of the plea offer and would have accepted the offer had he known. The Applicant testified that Counsel never investigated the evidence against the Applicant and never advised him of his right to appeal the conviction and sentence. He testified he originally went to trial on his Burglary—Second Degree charge, but then agreed to plead guilty to all charges “before [he] knew the facts” and “hoping [he] would get a deal.” He further testified that during his guilty plea, he was under “duress,” in “tears,” “shook up,” and told the court his plea was not free and voluntary. The Applicant acknowledged that he pled guilty, but alleged that he informed the plea court that he said, “no, sir,” when asked if he was pleading freely and voluntarily and had “changed [his] mind at that point” (Tr. 38: 16–17).⁹

Applicant acknowledged that he signed a statement on a sentencing sheet dated November 28, 2011, where he indicated that he did not want to plead guilty and was aware that if he chose not to accept the plea offer, he would face a possible sentence of life without parole. (State's Exhibit #1). The Applicant again summarized the deal he purportedly rejected as a straight up plea—“open plea out to everything concurrent” to his Burglary—First Degree charge, which carried the penalty range of fifteen (15) years' imprisonment to LWOP.¹⁰ The Applicant further testified that the plea deal did not include restitution and that he did not understand the three-strike law until he received LWOP notice from the State. He testified that he “didn't know

⁹ This Court notes that upon request, the court reporter reviewed her back up tape and submitted a revised transcript for page 38 because the tape reflected that when the plea court asked whether he was entering his guilty plea of his own free will, the Applicant answered “yes, sir” (Tr. 38: 16–17). Based on this review the original transcript clearly contained a scrivener's error.

5
5 of 26
SPG

RECEIVED
2011 MAR 1 AM
11:03
BLACK

about court back then.”

The Applicant testified that Counsel visited him twice—once for her to tell the Applicant that his best interests were served by pleading guilty and once when he was served with notice that the State would seek a life without parole sentence on December 1, 2011. The Applicant testified that he proceeded to trial on March 19, 2012, but was not given the chance to fire Counsel at that time. The Applicant testified that Counsel previously represented him in 2008 but that he cursed at her, fired her, and hired Michael Brown, Esq. instead. In his opinion, the fact that he fired Counsel before shows “bias that she was appointed to represent [him] again.” Therefore, the Applicant opined at trial he should have been given the opportunity to be represented by another attorney.

Lieutenant Mark Anthony Freeman testified that he is employed by the Spartanburg Sheriff's Office as Custodian of Records. Freeman testified that the Detention Center's policy is that each visitor is to check-in and log-in their visit. Freeman identified the Applicant's Exhibit #2 as a record of visits for the Applicant and acknowledged that the record showed Counsel visited the Applicant once on March 18, 2012, twice in December 2011. However, Freeman also testified that attorneys are often waived through without signing in and can often visit with multiple clients after signing-in to meet with one particular client; therefore, he testified, it was possible that Counsel visited the Applicant but her name was not in the log.

Counsel testified that according to her notes, she met with the Applicant in the jail annex on August 12, 2011, and December 12, 2011; at the courthouse for the Applicant's arraignment in March 2012; and March 18, 2012 in the jail in order to get his measurements to clothe the Applicant for his upcoming trial. Counsel testified that she forwarded the plea information from

¹⁰ Based on a review of the record, it appears the Applicant was referring to the State's second plea offer.

6
60226
289

2015 MAR 31 AM 9:59
CLERK OF COURT
SPARTANBURG COUNTY
MICHAEL A. KLEY

the assistant solicitor, Zach Ellis contained in the email to Mr. James Cheek, Esquire, who works exclusively on jail cases. She further testified that Mr. Cheek met with the Applicant to extend the State's offer to plead guilty to one Burglary charge. Mr. Cheek also discussed the offer and reviewed the sentencing sheet with the Applicant. She testified that the Applicant rejected the offer, signed a rejection form, which Mr. Cheek returned to Counsel, and then Mr. Cheek explained the three (3) strikes law. She opined that the first offer the Applicant rejected was better than the latest offer included in the Solicitor's email. Counsel testified that the Applicant was served with notice that the State would seek life without parole shortly after the Applicant's rejection of the plea, which they thoroughly discussed during their meeting on December 12, 2011.

Counsel testified that she conversed with Mr. Cheek about the Solicitor's office re-extending the plea offer and testified that she prepared for trial and had picked a jury when the Solicitor's office extended the plea deal that the Applicant ultimately accepted. Counsel testified that the trial was the turning point leading to the Applicant's decision to plead guilty. She testified that at that point, she was able to negotiate with the State to secure the Applicant's plea to other charges if the State "took LWOP off the table" in return. Counsel has no recollection of Applicant indicating that he did not want to plead or accept the State's offer at that time. She further testified she did not believe the plea transcript to be accurate and likewise believed it contained a scrivener's error regarding the Applicant's response. Counsel likewise testified that she had no recollection that the Applicant told the plea court his plea was not entered voluntarily or that the Applicant indicated he wanted to stand down. Counsel testified that had the Applicant requested Counsel withdraw his plea, she would have done so, as she has withdrawn her client's pleas in the past. Counsel finally testified that based on her knowledge of the presiding judge, it

CLERK OF COURT
JAMES H. CHEEK
JAN 31 AM 59
JAMES H. CHEEK

7/26/26
2/29

is unlikely that the plea court would have continued the colloquy had the Applicant indicated he wanted to stop the proceedings or withdraw his plea.

Ineffective Assistance of Counsel

In a PCR action, "the burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 622, 300 S.E.2d 482, 483 (1983)). Where the Applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 686, 104 S. Ct. at 2064).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. See Strickland at 690, 104 S. Ct. at 2066. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See id. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. See id. at 117-18, 386 S.E.2d at 625. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 668, 104 S. Ct. at 2052). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional

807 26
2019

2009 MAR 31 AM 9:59
CLERK OF COURT
CRIMINAL DIVISION
HONORABLE CLERK
Y

errors, the result of the proceeding would have been different.” Id. at 117–18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068).

This Court finds Counsel is a criminal practitioner who has experience in the trial of serious offenses. This Court finds Counsel provided credible testimony during the Applicant’s evidentiary hearing. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, Counsel discussed the pending charges, the elements of the charges and what the State was required to prove, the range of penalty and enhancements, the Applicant’s constitutional rights, the Applicant’s version of the facts, and his possible defenses or lack thereof. The record reflects that Counsel communicated the State’s offers and that the Applicant’s plea was entered freely, voluntarily, knowingly, and intelligently.

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 that the Applicant’s attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687–88, 104 S. Ct. 2052, 2064–65; Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 687–88, 104 S. Ct. at 2064–65, Turner v. Bass, 753 F.2d 342, 348 (4th Cir. 1985), *rev’d on other grounds*, Turner v. Murray, 106 S. Ct. 1683 (1986); Marzullo v. Maryland, 561 F.2d 540, 543 (4th Cir. 1977)). This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. This Court finds that

9 of 26
JES

2011 MAR 1 PM 3:09
CLERK OF COURT
JES
RECEIVED
MAR 1 2011
CLERK OF COURT

Counsel's representation did not fall below an objective standard of reasonableness.

Failure to Meet with the Applicant

The Applicant alleges Counsel was ineffective for failing to meet with him to adequately convey the State's plea offers. This Court finds that Applicant's testimony is not credible because the record is replete with objective proof that the Applicant conferred with either Counsel or her co-counsel, Mr. Cheek, in order to discuss the Applicant's case and the State's offers: Mr. Cheek presented the offer included in the email dated November 4, 2011, which the Applicant rejected in a signed statement dated November 28, 2011. Counsel testified she met with the Applicant no less than four (4) times prior to trial. Further, Counsel testified that she had ample opportunity to explain the State's final plea offer during the Applicant's trial. Therefore, this Court finds the Applicant's argument that Counsel failed to meet with and advise him regarding his first and second plea offers is without merit. Further, the record reflects that the Applicant and Counsel were served with the State's Notice of Intention to Seek Life Imprisonment Sentence, filed February 24, 2012 with the Spartanburg County Clerk of Court, which included the Applicant's criminal history and record of a most-serious Burglary-First Degree and serious Burglary-Second Degree Violent convictions. Thus, the Applicant's argument that he was not notified that he was LWOP eligible and therefore could not understand his plea offers is without merit. Accordingly, this Court finds that the Applicant has failed to meet his burden of proof in this regard.

The Applicant argues that the sign-in log at the County Detention Center proves that Counsel failed to visit the Applicant. This Court finds the Applicant's argument is without merit. Neither the Applicant nor the State contend that the sign-in log is inaccurate; however, the parties

CLERK OF COURT
 SPARTANBURG COUNTY
 2015 MAR 31 AM 9:59
 M. HOEBAECHE

10
 108226
 [Signature]

understand that, and the records custodian testified that it is well known that the jails often waive attorneys through without requiring them to sign-in, or allow attorneys to sign-in under one client's name while visiting other clients at the jail at the same time. Moreover, on one occasion the Applicant met with Counsel's co-counsel, Mr. Cheek—the records custodian did not testify as to whether Mr. Cheek's name appeared in the sign-in log. Therefore, the sign-in log may not be a complete or accurate record of the Applicant's attorneys' visits. This Court finds Counsel's testimony enumerating the dates of her meetings with the Applicant and relating Mr. Cheek's meeting with the Applicant most credible. There is no evidence that Counsel was deficient in her representation of the Applicant and therefore his claim is denied and dismissed.

Failure to Advise of Direct Appeal

This Court finds that trial counsel was not ineffective for failing to advise the Applicant of his right to appeal. The United States Supreme Court has rejected a "bright-line rule that counsel must always consult with the defendant regarding an appeal." Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000). They instead held that "counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Id. "[A]lthough not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings." Id. "In a plea proceeding, . . . there is no requirement that plea counsel inform a defendant of the right to a direct appeal absent

11 11/22/26
2026

RECEIVED
U.S. DEPT. OF JUSTICE
FEB 31 AM 11:59
FBI

extraordinary circumstances.” Turner v. State, 384 S.C. 451, 456, 682 S.E.2d 792, 794–95 (2009) (citing Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)).

This Court finds the Applicant’s broad assertion that Counsel was ineffective for failing to communicate his right to direct appeal is without merit. This Court finds the Applicant has failed to carry his burden of proving he expressed his desire to appeal to Counsel. This Court finds that the Applicant has provided no proof, evidence, or argument that any appeal taken from the Applicant’s guilty plea would have been meritorious. This Court also finds that a rational defendant would not want to appeal the Applicant’s sentence, especially since considering the Applicant’s prior record and the serious nature of the charges against him, the Applicant could have received life in prison without possibility of parole. Neither the Applicant nor Counsel testified to any meritorious issue the Applicant may have raised on appeal; therefore, this Court finds the Applicant’s appeal likely would have been dismissed pursuant to an Anders brief. See Anders v. California, 386 U.S. 738, 741–42, 87 S. Ct. 1396, 1398–99 (1967). This Court finds the Applicant was not prejudiced by Counsel’s performance because Counsel had no constitutionally imposed duty to consult with the Applicant about an appeal after his guilty plea. See Roe, 528 U.S. at 479–80, 120 S. Ct. at 1036. This Court finds this allegation is without merit and the Applicant has failed to carry his burden of proving Counsel was ineffective in this regard.

Failure to Investigate and Subpoena Witnesses

The Applicant asserts that Counsel was ineffective for failing to investigate and subpoena witnesses to bolster the Applicant’s case. “[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case.” Walker v. State, 15 MR 31, 400 S.E.2d 800 (1990).

12 120826
2519

CLERK OF COURT
SARASOTA COUNTY
15 MAR 31 AM 10:00
RE: MIKE LACKEY

397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012), *overruled on other grounds*, Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014). "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result." Porter v. State, 368 S.C. 378, 385–86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521–22, 123 S. Ct. 2527, 2535 (2003).

Our Courts have repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (citing Pauling v. State, 31 S.C. 606, 503 S.E.2d 468 (1998); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995); Underwood v. State, 309 S.C. 345, 495 S.E.2d 768 (1998)). The Applicant's mere speculation as to what a witness' testimony would have been by itself cannot satisfy the Applicant's burden of showing prejudice. Id. (citing Glover, 318 S.C. at 498–99, 458 S.E.2d at 540). See Edwards, 392 S.C. at 457, 710 S.E.2d at 65 ("So long as a defendant's attorney conducts a reasonable investigation, including interviewing potential witnesses when it is reasonable to do so, his performance will not be deficient."); Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006) (citing Strickland, 466 U.S. at 691, 104 S. Ct. at 2066) ("Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.").

The trial transcript reflects that prior to the Applicant's guilty plea, while arguing to the

13
13926
289

FILED
CLERK OF COURT
SPRINGFIELD COUNTY
2016 MAR 31 14:10:00
V. HOPE BLECKLEY

plea court to relieve Counsel, the Applicant asserted that Counsel failed to investigate and subpoena witnesses (Tr. 26:24–28:23). However, the Applicant offered the names of only character witnesses, his father, and his father's girlfriend. The Applicant has not supplemented the record with the substance of those witnesses' testimony, nor did he subpoena those witnesses to testify on his behalf at the PCR hearing. The Applicant has failed to provide this Court with any actual evidence tending to prove his assertions at the PCR hearing. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (citing Pauling v. State, 31 S.C. 606, 503 S.E.2d 468 (1998); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995); Underwood v. State, 309 S.C. 345, 495 S.E.2d 768 (1998)). Ultimately, the Applicant has failed to produce the putative witnesses and present their purportedly beneficial testimony at the PCR hearing. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (citing Pauling v. State, 31 S.C. 606, 503 S.E.2d 468 (1998); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995); Underwood v. State, 309 S.C. 345, 495 S.E.2d 768 (1998)). Thus, this Court finds the Applicant has failed to carry his burden of proving Counsel was ineffective for failing to investigate and subpoena potential witnesses.

Conflict of Interest

The Applicant asserted that Counsel was appointed to represent him twice and thus his guilty plea was affected by Counsel's conflict of interest. "To establish a violation of the Sixth Amendment right to effective counsel due to a conflict of interest arising from multiple representation, a defendant who did not object at trial must show an actual conflict of interest adversely affected his attorney's performance." Lomax v. State, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008) (Thomas v. State, 346 S.C. 140, 143, 551 S.E.2d 254, 256 (2001)). The test used to determine when a conflict of interest results in a violation of sixth amendment rights

14
1-10-26
2/28

200 MAR 31 PM 10:00
STATE OF SOUTH CAROLINA
CLERK OF COURT
JUDICIAL BRANCH
COLUMBIA, SOUTH CAROLINA

In order to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer's performance . . .

[A] defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief. . . .

But until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance.

Duncan v. State, 281 S.C. 435, 437-38, 315 S.E.2d 809, 810-11 (1984) (citing Cuyler v. Sullivan, 446 U.S. 335, 348-350, 100 S. Ct. 1708, 1718-19, 64 L.Ed.2d 333 (1980)). An actual conflict of interest occurs "when a defense attorney places himself in a situation inherently conducive to divided loyalties. . . . If a defense attorney owes duties to a party whose interests are adverse to those of the defendant, then an actual conflict exists." Id. (citations omitted) "The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction." Id. (citing State v. Gregory, 364 S.C. 150, 152-53, 612 S.E.2d 449, 450 (2005)). "Additionally, the fact that counsel does not advise a defendant of the potential conflict of interest does not affect the constitutionality of the conviction." Id. (citing Jackson v. State, 329 S.C. 345, 355, 495 S.E.2d 768, 773 (1998)). Moreover, the "Rules of Professional Conduct have no bearing on the constitutionality of a criminal conviction." Langford v. State, 310 S.C. 357, 360, 426 S.E.2d 793, 795 (1993).

South Carolina jurisprudence contemplates a criminal defendant is prejudiced where his attorney has an actual or concurrent conflict of interest concerning multiple representations of adverse parties or parties to the same criminal episode. See Lomax, 379 S.C. at 101, 665 S.E.2d at 168; Duncan, 281 S.C. at 438, 315 S.E.2d at 811. Here, the Applicant plainly claims that Counsel was "biased" based on her prior representation of the Applicant in 2008. The Applicant claims Counsel's representation suffers from a conflict of interest because he fired her in 2008. The Applicant has failed to demonstrate an actual, cognizable conflict of interest. Further, the

2011 MAR 1 10:00
CLERK OF COURT
SPRINGFIELD
V. HOFFER
BLACKLEY

Applicant has failed to argue or provide authority for his proposition that Counsel's representation was fatally flawed because he relieved her as counsel in 2008. See Padgett v. State, 324 S.C. 22, 27, 484 S.E.2d 101, 103 (1997) (the mere possibility of a conflict of interest is insufficient to impugn a criminal conviction). Because the Applicant cannot show an actual conflict of interest, he must prove that he was prejudiced by Counsel's alleged conflict of interest. This Court finds that the record is devoid of any evidence that Counsel's alleged bias towards her client negatively affected her representation. Therefore, this Court finds that the Applicant failed to show prejudice. Accordingly, this Court finds the Applicant has failed to meet his burden of proving Counsel was ineffective in this regard.

Further, as to the Applicant's argument that the plea court should have fired Counsel, a motion to relieve counsel is addressed to the discretion of the trial court and will not be disturbed absent an abuse of discretion. State v. Gregory, 364 S.C. 150, 152, 612 S.E.2d 449, 450 (2005). The defendant bears the burden of showing satisfactory cause for removal. State v. Graddick, 345 S.C. 383, 386, 548 S.E.2d 210, 211 (2001). In analyzing a defendant's motion to relieve counsel, the court may consider the following factors: "timeliness of the motion, adequacy of the trial [court]'s inquiry into the defendant's complaint, and whether the attorney-client conflict was so great that it resulted in a total lack of communication, thereby preventing an adequate defense." State v. Sims, 304 S.C. 409, 414, 405 S.E.2d 377, 380 (1991). "It is well-established that a defendant may waive the right to counsel and proceed pro se." Dearybury v. State, 367 S.C. 34, 39, 625 S.E.2d 212, 215 (2006) (citing Faretta, 422 U.S. at 834, 95 S.Ct. 2525). "Although a defendant's decision to proceed pro se may be to the defendant's own detriment, it "must be honored out of that respect for the individual which is the lifeblood of the law." Id. (citing Faretta, 422 U.S. at 834, 95 S.Ct. 2525). "The trial judge has the responsibility to ensure

1609.26
2/28

CLERK OF COURT
SCARLETT L. GIBSON
15 MAR 31 AM 9:00
H. L. PEEBLES
CLERK

that the accused is informed of the dangers and disadvantages of self-representation, and makes a knowing and intelligent waiver of the right to counsel." Id.

The transcript reveals that the plea court allowed the Applicant ample opportunity to air his grievances on the record (Tr. 24:1-30:10). Thereafter, the court extensively questioned the Applicant and cautioned the Applicant that he would not be able to secure new representation on the eve of trial, which the Applicant affirmed he understood (Tr. 28:20-30:10). Once the Applicant's case was called to trial, the plea court advised, his trial would not be continued and thus the Applicant would be required to proceed *pro se*. See id.; State v. Williams, 312 S.C. 455, 459, 469 S.E.2d 49, 52 (1996) (where fifteen months had passed since counsel was retained and defendant could not show satisfactory cause to grant motion to relieve counsel, trial court did not abuse its discretion by denying defendant's motion on the eve of trial). Further, prior to accepting the Applicant's guilty plea, the court again insured that the Applicant's complaints against Counsel had been satisfied and he no longer wished to fire her (Tr. 31:17-25). This Court finds that the trial court's refusal to relieve Counsel on the eve of trial was not an abuse of discretion. This Court finds that the Applicant's motion to relieve Counsel was a dilatory delay tactic and without merit. Accordingly, the Applicant's assignment of error is overruled.

Involuntary Guilty Plea

In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). A defendant alleging that

17
17 Feb 26
[Signature]

CLERK OF COURT
2017 MAR 1 11:10:00
V HOGUE BLACKBURN

his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566, 566 (4th Cir. 1976).

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, 474 U.S. at 52, 106 S. Ct. at 366; Roscoe, 345 S.C. at 20, 546 S.E.2d at 419 (citing Hill, 474 U.S. at 52, 106 S. Ct. at 366; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991) (citing State v. Hazel, 275 S.C. 392, 394, 271 S.E.2d 602, 602 (1980)). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009) (citing Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000)). See Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). "Specifically, the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record

1809 24
25/8

2015 MAR 31 PM 10:30
CLERK OF COURT
HONORABLE CLERK

made at the time of the entry of the guilty plea, and also from the record of the PCR hearing.” Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000). “In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of the plea.” Id. (citing Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991); State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980)). A defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record and “may be accomplished by colloquy between court and defendant, between court and defendant’s counsel, or both.” State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993). “Under the procedure, a defendant, before his guilty plea may be accepted, is examined under oath on the voluntariness of his plea, including particularly its freedom from coercion by threat.” Edmonds, 546 F.2d at 567. When a defendant pleads guilty on the advice of counsel, the plea may be attacked through only a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citing Al-Shabazz v. State, 338 S.C. 354, 363–64, 527 S.E.2d 742, 747 (1999)).

Moreover,

a signed document that informs a defendant of the charges against him, such as a sentencing sheet, gives rise to a presumed regularity in the proceedings and signifies that the defendant has been notified of the charges to which he has pled guilty. . . . In a criminal case, a defendant who chooses to plead guilty has ample opportunity to be fully notified of the charges he is pleading guilty to. . . . [A] defendant may check a box to indicate that he wishes to plead guilty. In addition, a defendant may sign the sentencing sheet, indicating the defendant is informed of the choices and has selected the box that corresponds to the course of action the defendant wants to take in the case. As a result, we believe that all of these factors indicate that the Defendant had notice of the charges to which he chose to plead guilty.

State v. Smalls, 364 S.C. 343, 347, 613 S.E.2d 754, 756 (2005).

This Court finds that the Applicant failed to meet his burden of proof as to this claim.

This Court finds the transcript of the guilty plea to be most compelling. The plea court

FILED
CLERK OF COURT
SPARTANBURG
2015 MAR 31 PM 10:00
H. HOPE BLACKLEY

thoroughly questioned the Applicant in order to ensure that he was pleading guilty with full knowledge of the charges, potential sentences, and constitutional rights he waived. The plea court reminded the Applicant that after he moved to relieve Counsel at the commencement of trial, he provided Counsel and the Applicant the opportunity to meet and discuss his case (Tr. 31:17-25). The Applicant then informed the court that he had the opportunity to fully discuss his case with Counsel, had nothing else to discuss with her before he pled guilty, felt there was nothing else she should do for him, and was ultimately satisfied with Counsel's representation (Tr. 32: 1-23). Further, the Applicant acknowledged to the court that Counsel reviewed the charges and the potential sentences and that he understood he was pleading to all pending charges without negotiations or recommendations other than the State's waiver of its intent to seek life imprisonment without possibility of parole (Tr. 32:24-33:13). The plea court confirmed that the Applicant was aware of each indictment, the charged offenses, and the penalty ranges associated with each offense and that he needed no additional explanation before entering his plea (Tr. 33:14-36:8; 37:10-15). The plea court further advised the Applicant that his violent and serious offenses were "no parole" offenses and could subject him to additional strikes and the possibility of life in prison without parole (Tr. 34:7-35:1). The Applicant affirmed that he required no additional clarification from his attorney (Tr. 34:20-35:1).

The plea court completed its colloquy with Counsel to ensure that she thoroughly discussed the matter with the Applicant, was satisfied that he understood their discussions and could assist in his defense, was satisfied that he understood the nature of the charges, the elements of the crimes, the potential penalties and mandatory minimum sentences, his parole eligibility, any defenses he might have had, and his constitutional rights (Tr. 36:9-37:9). The Applicant stated that he was thirty (30) years old, graduated high school with a 3.64 grade point

CLERK OF COURT
COURT REPORTER
2015 MAR 31 AM 10:00
M. J. DEGLAUXLEY

20
2015 26
[Signature]

average, and had no children (Tr. 37:16–19; 38:3–4). The Applicant affirmed to the court that he wanted to plead guilty to all of the charges and had not been threatened or coerced (Tr. 38:11–17). The Applicant further affirmed that he was entering his plea freely without any promises, guarantees, and assurances—specifically regarding his parole eligibility—and after he had sufficient time to consider his plea (Tr. 38: 16–39:3).¹¹ The plea court extensively advised the Applicant of the constitutional rights he was waiving, ensured he understood, had no questions, and waived his rights fully in order to plead guilty (Tr. 39:4–41:9). The Applicant again admitted his guilt (Tr. 41:7–9). Further, Applicant acknowledged that the facts, as published by the assistant solicitor, were correct and stated Applicant had told the truth to the court. (Tr. 41:10–47:17). When the court specifically asked the Applicant whether he wanted to change any part of his guilty plea, the Applicant answered “no” (Tr. 47:11–17). Ultimately, the court found that the applicant’s plea was entered freely and voluntarily and accepted the Applicant’s plea. (Tr. 47:18–23). Based on the testimony of Counsel and the transcript of the plea hearing, this Court finds that the Applicant failed to meet his burden of proof as to his claim that his guilty plea was involuntary. Accordingly, the Applicant’s claim is denied and dismissed.

Remedy Provided by *Davie v. State*

The Applicant asserts that he is entitled to the remedy provided by *Davie v. State*, 381 S.C. 601, 675 S.E.2d 416 (2009) and *Bell v. State*, 410 S.C. 436, 765 S.E.2d 4 (Ct. App. 2014), specifically that because Counsel was ineffective for failing to communicate the State’s plea offer, the Applicant should be entitled to a resentencing in accordance with that offer. Additionally, the Applicant claims that he is consequently entitled to a belated direct appeal. Pursuant to the professional standards espoused by the American Bar Association and the South

¹¹ See note 9, *supra*.

21 2/10/26
[Signature]

2025 MAR 11 AM 10:00
SPRINGFIELD
CLERK OF COURT
J. HOE BACKLEY

Carolina Rules of Professional Responsibility, "counsel is required to fully communicate [a plea offer] with the client so that the client can make an informed decision regarding any proposals by the State." Davie, 381 S.C. at 609, 675 S.E.2d at 420. Once the PCR court determines that counsel was ineffective for failing to adequately communicate a plea deal to his or her client, "the question becomes whether [the applicant] was prejudiced by this deficient performance." Id. The PCR court uses a case-by-case approach in "assessing whether but for counsel's deficient performance a defendant would have accepted the State's proposed plea bargain and that he would have benefited from the offer. Id. at 613, 675 S.E.2d at 422. "The second prong of the ineffective assistance inquiry—prejudice—is shown by demonstrating through *objective* evidence . . . [the existence of] a reasonable probability that, but for counsel's advice, [the defendant] would have accepted the plea. Mere statements by the PCR petitioner that he would have accepted the plea agreement but for counsel's incompetence are insufficient to show prejudice because they are self-serving and inherently unreliable." Judge v. State, 321 S.C. 554, 562, 471 S.E.2d 146, 150 (1996). "[D]epending on the facts of the case, a defendant's self-serving statement may be sufficient to establish actual prejudice." Davie, 381 S.C. at 613, 675 S.E.2d at 422. Where the applicant does not express a desire to proceed to trial, the remedy for counsel's failure to communicate a plea offer is remand for a new sentencing hearing, not specific performance of the purported offer. See id. at 615–616, 675 S.E.2d at 423–24.¹²

As an initial matter, this Court has found that Counsel effectively communicated the State's offers to the Applicant and therefore she was not inefficient. Accordingly, this Court need

¹² The Davie court further held: "Given that we cannot compel the State to reinstate or the circuit court judge to accept the original, fifteen-year plea offer, we remand the case for a new sentencing hearing with the limitation that Petitioner's sentence should not exceed the original sentence of twenty-seven years' imprisonment." Davie, 381 S.C. at 616, 675 S.E.2d at 424.

CLERK OF COURT
 SEABOARD COUNTY
 15 MAR 31 AM 10:00
 M. HOPE BRADLEY

not reach the question of whether the Applicant suffered actual prejudice by Counsel's alleged failures.

Nevertheless, the underlying facts of the Applicant's case are distinguishable from Davie and Bell. In Davie, the court found that the applicant was prejudiced by counsel's failure to communicate the State's offer based on plea counsel's admission that he failed to communicate the offer to the applicant; the admission by both plea counsel and the applicant that had the offer been communicated to the applicant, he would have accepted the agreement; and based on the fact that had the applicant accepted the offer, he would have received a significantly lower sentence than the 27 year sentence actually imposed. See Davie, 381 S.C. at 614, 675 S.E.2d at 423. The facts of Bell are substantially similar to Davie, although, in Bell, the applicant's "trial counsel testified Bell's file contained a note indicating the solicitor made an offer of ten years imprisonment" and "Bell testified he did not know anything about a plea offer until his sentencing." Bell, 410 S.C. at 442, 765 S.E.2d at 7. However, the Solicitor and Bell's counsel disagreed as to whether the State ever tendered an offer. Id.

Here, Counsel testified the Applicant was aware of both plea offers. Counsel testified and the record reflects that the Applicant signed a plea rejection form after Counsel's co-counsel, Mr. Cheek advised the Applicant of the State's most recent offer while visiting the Applicant at the jail. Moreover, by the Applicant's own admission at the hearing, he testified to understanding the basic terms of the offers. Finally, on the eve of trial, the Applicant chose to take advantage of the State's concession that they would waive seeking life imprisonment without possibility of parole. Although the Applicant could have received as little as fifteen (15) years imprisonment had he pled to a single Burglary-First Degree charge, after accepting his plea, the court still would have had to accept the negotiated sentence and run any other charge concurrent. Even if the Applicant

23
23 of 26
228

CLERK OF DISTRICT COURT
PARTIAL COUNTY
2015 APR 31 AM 10:00
M. A. OPEBLA KLE

could have received less than a maximum sentence of fifteen (15) years imprisonment had he pled to a single Burglary-Second Degree Violent charge, the sentencing court still could have imposed the maximum penalty on that charge. Ultimately, the sentences imposed by the plea court were substantially more generous than the Applicant's possible exposure to life imprisonment without possibility of parole if he was found guilty at trial. Moreover, the Applicant never testified that had he been presented with the initial deal, he would have accepted it; he simply asked this Court to give him his deal "back." This Court finds compelling Counsel's ability to obtain any kind of agreement whatsoever on behalf of the Applicant once he had rejected prior negotiations and his case had been called and a jury empanelled. While this Court understands that the choice between a thirty (30) year sentence and potential life imprisonment without possibility of parole has difficult challenges, this Court finds that hindsight is not an adequate legal basis for vacating a sentence. Accordingly, this Court finds that the Applicant failed to show actual prejudice as required pursuant to Davie and Strickland. This Court finds the Applicant has failed to meet his burden of proof and therefore declines to remand the Applicant's case for resentencing.

This Court notes that Davie and its progeny does not stand for the proposition that upon Counsel's prejudicial failure to communicate a plea offer, a PCR applicant is entitled to a belated, direct appeal. As this Court has found *supra*, the Applicant is not entitled to a belated, direct appeal, pursuant to established precedent.

All Other Allegations

As to any and all allegations that the Applicant raised in the application and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant abandoned such

CLERK OF COURT
SPARTANBURG COUNTY
2015 MAR 31 PM 10:00
M. HOPE BLACKBERRY

24
24 of 26
2509

allegations. Therefore, they are hereby denied and dismissed.

CONCLUSION

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test specifically that Counsel failed to render reasonably effective assistance under prevailing professional norms. See Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in her representation of the Applicant. The Applicant failed to show that Counsel's performance was deficient. Therefore, this Court need not address whether the Applicant was prejudiced by Counsel's representation. See id. The Applicant's complaints concerning Counsel's performance are without merit and are denied and dismissed.

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

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. The Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

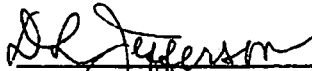
2015 MAR 31 AM 10:00
M. OPELAKLEY
CLERK OF COURT
FARMINGTON COUNTY

25 25-4-26
AKG

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 26th day of March, 2015.



Deadra L. Jefferson
Presiding Judge
Seventh Judicial Circuit

Charleston, South Carolina
At Chambers

CLERK OF COURT
SPARTANBURG COUNTY
2015 MAR 31 AM 10:00
M. HOPE BLACKLEY



WITNESSES

SPARTANBURG COUNTY

REPORT MADE

CLERK OF COURT
Spartanburg County Sheriff's Office

10/2/11

CRIMINAL JUSTICE

CRIMINAL JUSTICE
M735018
FINE CARD-1000

VIOLATION SET

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

SEP 15 2011

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

11-CC-12-5722

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

SEP 15 2011

TERM

THE STATE
VS.

Travis Franklin Hipp

Indictment for

PETIT LARCENY
THIRD OR SUBSEQUENT PROPERTY
OFFENSE

SC Code: 16-13-0030 (B), 16-1-0057

CDR Code: 2367

Class FEL/E

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 SEP 16 PM 4:48
M. HOPE BLACKLEY

A CERTIFIED COPY
BY *M. Hope Blackley*
CLERK OF COURT
SPARTANBURG COUNTY
DATED 4-15-13
D.C. 16-1-0057

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF SPARTANBURG)

SEP 15 2011

At a Court of General Sessions, convened on _____ the Grand

Jurors of Spartanburg County present upon their oath:

PETIT LARCENY**THIRD OR SUBSEQUENT PROPERTY OFFENSE**

That Travis Franklin Hipp did in Spartanburg County on or about July 27-28, 2011 feloniously take, steal and carry away the goods and/or monies belonging to Brandon Nagro, to wit: two DVD players and/or a debit card and/or a wallet, the total value of the property being less than Two Thousand Dollars, with the intent to deprive the owner permanently of such property. Further, the Defendant has at least two (2) prior convictions for Property Crimes, all in violation of §16-13-0030 (B), §16-1-0057 of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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



ASSISTANT SOLICITOR

DOCKET NO. 14-03-02-5723

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

TERM

THE STATE
vs.

Travis Franklin Hipp

Indictment for

BREAKING INTO MOTOR VEHICLE

SC Code: 16-13-0160 (1) (2), (B)
CDR Code: 258
Class FEL/F

WITNESSES

COMPUTER
Spartanburg County
Spartanburg County Clerk's Office

INDEXED

CHECKED

CHECKED

CHECKED

ASSIGNMENT AND

FILE CASE NO.

MAFFARRETHES NUMBER

M755017

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

MINOR BLACKLEY
14 SEP 16 PM 4:48
ADJUTANT
CLERK

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

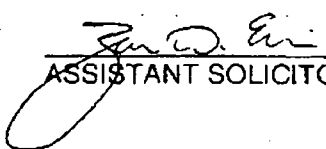
At a Court of General Sessions, convened on July 15 2011 the

Grand Jurors of Spartanburg County present upon their oath:

BREAKING INTO MOTOR VEHICLE

That Travis Franklin Hipp did in Spartanburg County on or about July 27-28, 2011 break into a motor vehicle belonging to Brandon Nagro with the intent to steal the same or anything of value therefrom, in violation of §16-13-160, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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



ASSISTANT SOLICITOR

WITNESSES

Spartanburg County Sheriff's Office

Computer

Spartanburg County Sheriff's Office

UNITED

CHECKED WATSON ARREST WARRANT

CHECKED STANLEY

M127698

Computer

FOR CLERK USE

WATSON VERIFIED

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

SEP 15 2011

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. **11-GS-42-5724**

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

SEP 19 2011

TERM

THE STATE
vs.

Travis Franklin Hipp

Indictment for

PETIT LARCENY
THIRD OR SUBSEQUENT PROPERTY
OFFENSE

SC Code: 16-13-0030 (B), 16-1-0057

CDR Code: 2367

Class FEL/E

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 SEP 16 PM 4:48
M. HOPE BLACKLEY

M. Hope Blackley

CLERK OF COURT
SPARTANBURG COUNTY
BY
DATED 4-15-13 D.C.

173

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

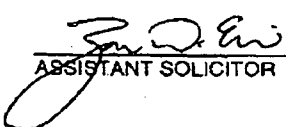
At a Court of General Sessions, convened on SEP 15 2011 the Grand

Jurors of Spartanburg County present upon their oath:

PETIT LARCENY
THIRD OR SUBSEQUENT PROPERTY OFFENSE

That Travis Franklin Hipp did in Spartanburg County on or about July 27-28, 2011 ~~feloniously take, steal and carry away the goods and/or monies belonging to Jennifer Gossett, to wit: DVDs and/or a microwave and/or miscellaneous household goods, the total value of the property being less than Two Thousand Dollars, with the intent to deprive the owner permanently of such property. Further, the Defendant has at least two (2) prior convictions for Property Crimes, all in violation of §16-13-0030 (B), §16-1-0057 of THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.~~

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



ASSISTANT SOLICITOR

DOCKET NO. 114942-5725

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

TERM

THE STATE
vs.

Travis Franklin Hipp

Indictment for

BURGLARY FIRST DEGREE
(DWELLING)

SC Code: 16-11-0311

CDR Code: 0079

Class: FEL/EXM (V)

WITNESSES

Compute

Spartanburg County Sheriff's Office

INDEXED

CHECKED WARRANTS

CHECKED SIGNATURE

Spartanburg County Sheriff's Office

NOTES AND

FILE CARD INDEX

ARREST WARRANT NUMBER

M127697

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

JUL 15 2011

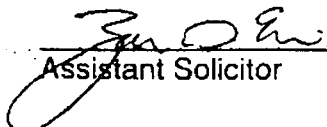
At a Court of General Sessions, convened on _____, the Grand Jurors of Spartanburg County present upon their oath:

BURGLARY FIRST DEGREE (DWELLING)

That the Defendant, Travis Franklin Hipp, did in Spartanburg County on or about July 27-28, 2011 willfully and intentionally enter a dwelling belonging to Jennifer Gossett located at [REDACTED] Alan Ray Drive, Chesnee, South Carolina without consent and with intent to commit a crime therein, and either in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime:

- (1) was armed with a deadly weapon, and/or
 - (2) caused physical injury to any person who was not a participant in the crime, and/or
 - (3) used or threatened the use of a dangerous instrument, and/or
 - (4) displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm, and/or
 - (5) entered the dwelling during the nighttime, and/or
 - (6) committed the crime while possessing a prior record of two or more convictions for burglary or housebreaking or a combination of both,
- all in violation of Section 16-11-0311 of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976) as amended.

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


 Assistant Solicitor

FILED
CLERK OF COURT

2012 FEB 24 AM 8:43

M. HOPE BLACKLEY

12-GS-42-0593

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

TERM

THE STATE
vs.

Travis Franklin Hipp

Indictment for

BURGLARY SECOND DEGREE
(BUILDING)

SC Code: 16-11-0312(B)
CDR Code: 0086
Class: FEL-D

WITNESSES

SPARTANBURG COUNTY
Computer

OLD POLLED

INDEXED

CHECKED WARRANT

CHECKED SIGNATURE

ASSIGNMENT AND

FILED AND
ARREST WARRANT NUMBER

"BARRY" TELEPHONE 3637

Direct Indictment

ACTION OF GRAND JURY

True Bill

FEB 23 2012

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

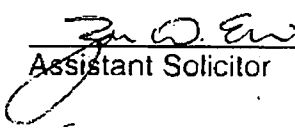
At a Court of General Sessions, convened on _____, the Grand Jurors of Spartanburg County present upon their oath:

BURGLARY SECOND DEGREE (BUILDING)

That the Defendant, Travis Franklin Hipp, did in Spartanburg County on or about March 14, 2011 willfully and intentionally enter a building located at [REDACTED] Long Branch Road, Chesnee, South Carolina without consent and with intent to commit a crime therein, and either in effecting entry or while in the building or in immediate flight, he or another participant in the crime:

- (1) was armed with a deadly weapon or explosive, and/or
 - (2) caused physical injury to any person who was not a participant in the crime, and/or
 - (3) used or threatened the use of a dangerous instrument, and/or
 - (4) displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm, and/or
 - (5) entered the building during the nighttime, and/or
 - (6) committed the crime while possessing a prior record of two or more convictions for burglary or housebreaking or a combination of both,
- all in violation of Section 16-11-0312(B) of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976) as amended.

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


Assistant Solicitor

WITNESSES

SPARTANBURG COUNTY
CLERK OF COURT
COMPTON

CLERK OF COURT

FILED

CLERK OF COURT
COMPTON

CLERK OF COURT

COMPTON

CLERK OF COURT

COMPTON

Direct Indictment

ACTION OF GRAND JURY

TRAVIS FRANKLIN HIPPI

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET # **14-GS-42-1612**

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

OCT 24 2011

TERM

THE STATE
vs.

Travis Franklin Hipp

Indictment for
MALICIOUS INJURY TO
REAL PROPERTY

SC Code: 16-11-520 (B) (3); 16-1-57
CDR Code: 2367
CLASS FEL/E

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2011 OCT 31 PM 3:47

M. HOPE BLACKLEY

A CERTIFIED COPY
CLERK OF COURT
SPARTANBURG COUNTY
BY **M. Hope Blackley**
DATED **11-15-13** D.C.

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

OCT 21 2011

At a Court of General Sessions, convened on _____, the

Grand Jurors of Spartanburg County present upon their oath:

MALICIOUS INJURY TO REAL PROPERTY

That Travis Franklin Hipp did in Spartanburg County on or about July 28, 2011 willfully, unlawfully and maliciously injure, damage, or destroy the real property belonging to Rainbow Baptist Church located at [REDACTED] Shortcut Road, Chesnee, South Carolina, causing damage to the property of the value of less than Two Thousand Dollars. Further, that the Defendant has at least two (2) prior convictions for Property Crimes, all in violation of § 16-11-520 (B) (3), § 16-1-57, Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE VS.

Travis Franklin Hipp

AKA:

Race: WHITE Sex: M Age: 29

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:

CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

FO: Burglary 1st Degree (15 years - Life)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS4205725

A/W#: M127697

Date of Offense: 7/28/2011

S.C. Code § : 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

☐ CONVICTED OF ☒ 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) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Right to Grand Jury (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

ELLIS, ZACHARY D

71919
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 _____ 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.☐ 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

Recipient: _____

Fine:

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
% to County (if paid in installments)	\$
TOTAL	\$

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: _____

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

Clerk of Court/ Deputy Clerk

Court Reporter:

CCAS 12/03/2011

Presiding Judge

Judge Code:

Sentence Date:

