

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Horry County

Kristi Lea Harrington, Circuit Court Judge

RECEIVED

AUG - 4 2015

S.C. Supreme Court

SHANNON T. PARKER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000016

APPENDIX

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

ATTORNEY FOR PETITIONER

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JOSHUA L. THOMAS
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P. O. Box 11549
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ATTORNEYS FOR RESPONDENT

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INDICTMENT65

State of South Carolina.,) In the General Sessions Court
) of Conway
)
) Case No.: 2012-GS-26-01711
)
 County of Horry.)

State of South Carolina.,)
)
 Plaintiff.,)
)
 -v-) Transcript of Record
)
 Shannon Tyrone Parker.,)
)
Defendant.)

September 12, 2012
 Conway, South Carolina

B E F O R E:

Honorable W. Jeffrey Young, Judge.

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

Mr. J. Stephen Grooms
 Assistant Solicitor
 Fifteenth Judicial Circuit
 Conway, South Carolina
 1301 Second Avenue
 Conway, South Carolina 29526
 843-915-5460
 For the Plaintiff

ORIGINAL

Mr. James C. Galmore
 Fifteenth Circuit Public Defender
 Senior Trial Attorney
 203 Laurel Street
 Post Office Box 1666
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 843-915-5385
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 For the Defendant

Wanda Nelson, CVR-M
 Official Court Reporter
 Sixteenth Judicial Circuit
 To the Honorable John C. Hayes, III

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I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

WITNESS

BY:

PAGE NO.

No witnesses were called.

I-N-D-E-X - CON'T

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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No Exhibits were received into the record.

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1 (COURT IN SESSION IN THE MATTER OF STATE V. SHANNON
2 TYRONE PARKER WEDNESDAY, SEPTEMBER 12, 2012 AT 11:13 A.M..)

3 THE COURT: Yes, sir, good morning.

4 SOLICITOR GROOMS: Thank you, Judge. Judge, this the
5 State versus Shannon Tyrone Parker. This is True Bill
6 Indictment 2012-GS-26-01711. This is an indictment for
7 burglary first. The defendant is here today to plead
8 guilty with counsel James Galmore as indicted to that
9 charge. The State's recommendation: Minimum fifteen
10 years.

11 In exchange for his plea we'll be dropping numerous
12 charges. If you would like I can read the Warrant Numbers.

13 THE COURT: Please, yes.

14 SOLICITOR GROOMS: All right. The first which is
15 Burglary First, Warrant I 234679. The Grand Larceny goes
16 along with it. Grand Larceny I 234680. Burglary Second
17 Warrant I 234684. Grand Larceny Warrant I 234687.
18 Burglary First Warrant I 234693. Grand Larceny Warrant
19 I 234695. Burglary Second Warrant I 234659. Grand Larceny
20 Warrant I 234700. Burglary Second Warrant I 234703. And
21 Grand Larceny Warrant I 234704.

22 MADAME CLERK: Sir, please raise your right hand.

23 (WHEREUPON: SHANNON TYRONE
24 PARKER, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
25 FOLLOWS:)

1 MR. PARKER: I won't swear.

2 MADAME CLERK: Do you affirm?

3 MR. PARKER: Yes, ma'am.

4 MADAME CLERK: Thank you.

5 THE COURT: Mr. Galmore, is that correct?

6 MR. GALMORE: Yes, sir.

7 THE COURT: Okay. You represent Mr. Shannon Tyrone
8 Parker?

9 MR. GALMORE: Yes, sir.

10 THE COURT: And have you had an opportunity to explain
11 to him the charges contained in Indictment 2012-GS-26-1711?

12 MR. GALMORE: Yes, sir.

13 THE COURT: Have you had an opportunity to explain to
14 him his constitutional rights and the consequences of his
15 plea?

16 MR. GALMORE: Yes, sir.

17 THE COURT: Okay. And do you think he's understood
18 what you've told him?

19 MR. GALMORE: Yes, sir.

20 THE COURT: And does your client intend to plea guilty
21 or not guilty?

22 MR. GALMORE: Guilty, Your Honor.

23 THE COURT: And do you agree with his decision to
24 plead guilty?

25 MR. GALMORE: Yes, sir.

1 THE COURT: Based upon your understanding of the facts
2 and the circumstances in your research into this
3 investigation, do you think that if this case were to go to
4 trial there would be a substantial likelihood that he'd be
5 found guilty beyond a reasonable doubt?

6 MR. GALMORE: Yes, sir.

7 THE COURT: All right. Mr. Parker, I need to ask you
8 a series of questions to make sure that you're entering
9 into this plea freely, voluntarily, knowingly and
10 intelligently. Now the first question I have for you, Mr.
11 Parker, are you under the influence of alcohol or drugs
12 today?

13 MR. PARKER: No, sir.

14 THE COURT: Okay. Are you taking any medication that
15 would cloud your judgment in any way?

16 MR. PARKER: Uh - I take some medicine for depression.

17 THE COURT: I mean but you understand what's going on
18 here?

19 MR. PARKER: Yes, sir.

20 THE COURT: All right. Now are you aware of any
21 physical, emotional, or nervous condition that would keep
22 you from understanding what's happening today?

23 MR. PARKER: No, sir.

24 THE COURT: All right. Now, Mr. Parker, it's my
25 understanding that you want to plead guilty to Indictment

1 2012-GS-26-1711 that reads in part or reads in full, that
2 Shannon Tyrone Parker did in Horry County on or about
3 August 28th, 2011 enter the dwelling of Terry Williams
4 without consent and with the intent to commit a crime
5 therein and when effecting entry or while in the dwelling
6 or in immediate flight he or another participant in the
7 crime was armed with a deadly weapon in violation of
8 Section 16-11-311(a) of the South Carolina Code 1976 as
9 amended.

10 Is what's stated in this indictment the truth, sir?

11 MR. PARKER: Yes, sir.

12 THE COURT: All right. Solicitor, what are the facts?

13 SOLICITOR GROOMS: Thank you, Judge.

14 On August 28th, 2011, in Conway being in Horry County,
15 the Defendant Shannon Tyrone Parker and co-defendant Darius
16 Jamal Gore did enter forcibly the dwelling located at 2982
17 Highway 545 without permission and with intent to commit a
18 crime therein. Once inside the residence the two
19 defendants did take, steal, carry away, numerous property
20 items several of those being guns, Your Honor. They took a
21 Brownie .270 rifle, a Remington .12 gauge, two .22 caliber
22 rifles, two .33's and a .50 caliber Muzzle Loader which
23 satisfies the elements of Burglary First as they became
24 armed when Detectives spotted them.

25 THE COURT: All right. Mr. Parker, do you agree with

1 the facts as stated by the Solicitor?

2 MR. PARKER: Yes, sir.

3 THE COURT: Are you in fact guilty?

4 MR. PARKER: Yes, sir.

5 THE COURT: All right. Now, Mr. Parker, you
6 understand that this sentence or this charge carries a
7 minimum of fifteen years and a maximum of life in prison.
8 Do you understand that?

9 MR. PARKER: Yes, sir.

10 THE COURT: Now I understand they made a
11 recommendation that I give you fifteen years. But you
12 understand that's only a recommendation. If I choose to do
13 so I can sentence you to a life imprisonment; do you
14 understand that?

15 MR. PARKER: Yes, sir.

16 THE COURT: All right. Now in my understanding you
17 all have dropped a number of other cases that would -
18 sounded like he could have received about six life
19 sentences and about a hundred and twenty years.

20 SOLICITOR GROOMS: It was three burglary first, Your
21 Honor.

22 THE COURT: Okay.

23 SOLICITOR GROOMS: The rest were burglary seconds and
24 the Grand Larceny is accompanying those burglaries. The
25 reason for the recommendation is he has no record. He did

1 cooperate in these burglaries but he had rejected the
2 State's offer numerous times before today.

3 THE COURT: Okay. Now, so Mr. Parker, you fully
4 understand the charges contained in the indictment and the
5 possible range of punishment that you can receive? Do you
6 understand that?

7 MR. PARKER: Yes, sir.

8 THE COURT: All right. Do you understand, Mr. Parker,
9 that when you plead guilty you waive certain constitutional
10 rights. The first right is your right against self
11 incrimination. Neither in this court or any other court
12 would you ever be required to testify against yourself;
13 however, when you plead guilty you are doing that. Do you
14 understand that?

15 MR. PARKER: Yes, sir.

16 THE COURT: Do you wish to waive your right against
17 self incrimination at this time?

18 MR. PARKER: Yes, sir.

19 THE COURT: Okay. Mr. Parker, you are also waiving
20 your right to have a jury trial. Now we had forty jurors
21 ready to come here and hear this case. In fact they're
22 down stairs right now for you all to strike. And during
23 the trial the State would have the burden of proving your
24 guilt beyond a reasonable doubt. If you didn't testify -
25 but you wouldn't have to testify - I would explain to the

1 jury that they couldn't hold that against you. Further,
2 Mr. Galmore could cross examine the witnesses' presented by
3 the State to discredit them. If he thought it was in your
4 best interest he could call witnesses' on your behalf. And
5 if there are any legal defenses he could bring those up and
6 possibly have you acquitted of the charge, but when you
7 plead guilty you don't get to ask any questions about the
8 evidence and the State doesn't have to prove anything. Do
9 you understand that?

10 MR. PARKER: Yes, sir.

11 THE COURT: Now do you wish to waive your right to
12 have a trial and confront the witnesses' against you?

13 MR. PARKER: Yes, sir.

14 THE COURT: Now, Mr. Parker, has anybody threatened
15 you in any way to get you to plead guilty?

16 MR. PARKER: No, sir.

17 THE COURT: Has anybody promised you anything to get
18 you to plead guilty?

19 MR. PARKER: No, sir.

20 THE COURT: Is the only reason that you're pleading
21 guilty to burglary first degree is because you're guilty of
22 burglary in the first degree?

23 MR. PARKER: Yes, sir.

24 THE COURT: All right. Now are you satisfied with the
25 services of Mr. Galmore?

1 MR. PARKER: Yes, sir.

2 THE COURT: Has he done everything that you've ask him
3 to do?

4 MR. PARKER: Yes, sir.

5 THE COURT: And you think he's had enough time to
6 review the facts and circumstances surrounding this charge
7 to properly represent you?

8 MR. PARKER: Yes, sir.

9 THE COURT: Do you need any more time to speak to Mr.
10 Galmore?

11 MR. PARKER: No, sir.

12 THE COURT: All right. Have you understood all of my
13 questions today, Mr. Parker?

14 MR. PARKER: Yes, sir.

15 THE COURT: And do you have any questions for the
16 Court?

17 MR. PARKER: No, sir.

18 THE COURT: Mr. Parker, you understand that if you
19 change your mind about your decision to plead guilty that
20 you will only have ten days in which to file an appeal?

21 MR. PARKER: Yes, sir.

22 THE COURT: Mr. Parker, let me also advise you; you
23 understand that this is a violent crime and this is the
24 type of crime that you will have to serve eighty-five
25 percent of whatever I sentence you to. Do you understand

1 that?

2 MR. PARKER: Yes, sir.

3 THE COURT: And because this is a violent crime this
4 counts as one of your strikes. If you should get two more
5 strikes then you could be sentenced to life without the
6 possibility of parole. Do you understand that?

7 MR. PARKER: Yes, sir.

8 THE COURT: All right. Now, Mr. Parker, under
9 Indictment 2012-GS-26-1711 charging you with burglary in
10 the first degree, how do you plead, guilty or not guilty?

11 MR. PARKER: Guilty.

12 THE COURT: All right. Excuse me, this is a two
13 strike, so you only have one more opportunity when you get
14 out of this sentence if you should commit another crime
15 that is serious and violent then you will face life without
16 the possibility of parole. Do you understand that?

17 MR. PARKER: Yes, sir.

18 THE COURT: All right. All right, I find that the
19 defendant has entered into the plea freely and voluntarily,
20 knowingly and intelligently. He has had the advice of
21 counsel who he says he is well pleased; I will accept the
22 plea. You say he has no prior criminal record?

23 SOLICITOR GROOMS: No, sir, Your Honor.

24 THE COURT: Okay. All right, Mr. Galmore.

25 MR. GALMORE: Your Honor, let me tell you a little bit

-13-

1 about Shannon Parker. He is twenty-five years old, he is
2 married, he's been married since 2009 and he has two
3 children. And that is unforutnately where the problem here
4 started. When I first talked with Mr. Parker I looked at
5 the case and I just kind of assumed that like so many
6 clients he's out there on drugs and drinking and trying to
7 support his drug habit, but that's not the case here.

8 He wasn't working, he was out of work for a while and
9 trying to take care of his wife and kids and didn't have
10 the means to do it and was trying to hold on and do the
11 right thing and just ended up making the wrong decision.
12 His wife ended up by leaving him and she's out there in the
13 streets using drugs and things. And he didn't fall into
14 that. He could have very easily fell into that himself but
15 he did not.

16 Your Honor, he is a good person. He come from a good
17 Christian family, his mother and aunt is here today to
18 support him, they may want to speak on his behalf, I don't
19 know. But he knows the right thing and he just simply made
20 a mistake and did the wrong thing. His co-defendant Darius
21 Gore is his cousin and basically Mr. Gore came over to the
22 house and said "Hey, you want to make some money?" And Mr.
23 Parker said, "Sure." The next thing you know they were
24 breaking into houses. Like I said he's a good person and
25 he knows right from wrong and that's why when the police

1 showed up he told them I'm the person that you're looking
2 for. After he was taken into custody for the burglaries he
3 drove with the police down to his house just a mile or so
4 from where he was arrested and went down to his house and
5 went in the house with the officers and gave them the guns
6 from the burglaries.

7 THE COURT: Were all the guns recovered?

8 SOLICITOR GROOMS: Your Honor, - -

9 MR. GALMORE: There were several. I don't know what
10 everything was. The jewelry was recovered, a play station
11 was recovered, several guns from various houses were
12 recovered. I think one might have been sold.

13 THE COURT: Is there any restitution requested?

14 SOLICITOR GROOMS: Your Honor, we're not requesting
15 restitution. Out of the guns that were taken from this
16 burglary we have one, two, three, four that were recovered.
17 One that's in evidence in North Carolina on another case
18 not pled to this defendant but someone else committed. And
19 we have a shot gun, two shot guns that were not recovered
20 according to the victim.

21 THE COURT: All right.

22 MR. GALMORE: Well he cooperated with the officers.
23 In addition to cooperating with them, he gave a statement
24 explaining his involvement in this. Just by comparison
25 Mr. Gore on the other hand he made bond for this set of

-15-

1 burglaries right here and got out of jail and continued to
2 commit more burglaries and got rearrested on other charges.

3 THE COURT: Sometimes I guess it's good that you don't
4 make bond, huh?

5 MR. GALMORE: Yes, sir.

6 THE COURT: How much time did he serve?

7 MR. GALMORE: He's in jail now three hundred and
8 seventy-seven days. There is so much more I could say
9 about Shannnon but just to put in a nut shell, he made a
10 bad decision and he knows he has to answer for it. He was
11 sentenced to a probationary sentence for the possession of
12 stolen property in North Carolina, of course I understand
13 this is gonna --

14 THE COURT: He wont' get that today.

15 MR. GALMORE: Right. This is gonna supercede that.
16 But he cooperated with the officers jsut as soon as they
17 came to him he knew he done the wrong thing and he tried to
18 make it right.

19 THE COURT: All right. Would he like to say anything
20 or would his family members like to say anything?

21 Good morning, ma'am. Please state your name for the
22 record.

23 A. My name is Freda Hutchinson.

24 THE COURT: All right, Ms. Hutchinson.

25 MS. HUTCHINSON: I would just like to say that on

1 behalf of my nephew I just pray that you please have mercy.

2 THE COURT: Thank you.

3 Anyone else want to speak on his behalf?

4 MR. GALMORE: No, sir.

5 THE COURT: Thank you. Anything further from the
6 State?

7 SOLICITOR GROOMS: Your Honor, I would just agree with
8 Mr. Galmore that he did fully cooperate with the police at
9 the time.

10 THE COURT: All right. Well I guess he'll learn a
11 lesson about procrastination in this case as he was offered
12 a substantially lower charge early on. He waited and now
13 the Solicitor's office kind of bound by what the burglary
14 first which carries a minimum of fifteen years. I mean if
15 I absolutely love this man and think he's as good as you
16 say he is and he's still gonna get fifteen years.

17 And the sentence of the Court - Because he did
18 cooperate and I don't know what's gonna happen with the
19 other gentleman, but the sentence of the Court is he be
20 committed to the State Department of Corrections for a
21 period of fifteen years. He will receive credit for the
22 three hundred and seventy-seven days that he has already
23 served.

24 Good luck, sir.

25 SOLICITOR GROOMS: Thank you, Judge.

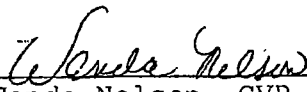
-17-

CERTIFICATE OF REPORTER

State of South Carolina)
)
 County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for 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 Horry County, South Carolina, on the 12th day of September, 2012.

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



 Wanda Nelson, CVR-M
 Certified Verbatim Reporter,
 Official Court Reporter,
 Notary Public, in and for
 The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: 6/21/2013

FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
Shannon Tyrae Parker 352462)
 Full name and prison number (if any) of Applicant.)
)
 v.)
)
 State of South Carolina)
)

IN THE COURT OF COMMON PLEAS

2013 2547

APPLICATION FOR POST-CONVICTION RELIEF

FILED
 HURRY COUNTY
 2013 APR 17 PM 3:06
 MELANIE HUGHES
 CLERK OF COURT

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (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 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 Lieber Corr. Inst.
2. Name and location of Court which imposed sentence _____
3. Name(s) of co-defendant(s) (if any) Jamal Gore
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012GS2601711
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) September 12, 2012
 - (b) _____

- (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
no

8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. N/A
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. N/A
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. N/A
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. _____
 - iii. _____

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

- (a) I was not advised by trial Counsel I had a right
- (b) to an appeal
- (c) _____

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

- (a) See page (3)(a)
- (b) _____
- (c) _____

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

- (a) See page 3 (a)
- (b) _____
- (c) _____

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

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

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. No
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. N/A
 - ii. _____
 - iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

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

(a) Trint Counsel did not appeal my case

(b) _____

(c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. James Galmore _____
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Plea _____
 - ii. _____
 - iii. _____

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

New Trial _____

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

No _____

13

2547

STATE OF SOUTH CAROLINA)

County of _____)

VERIFICATION)

I, Shannon Parker, 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.

Shannon Parker

SWORN to and subscribed before me this 8th day of March, 2013

Sylvia Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2018

FILED
HURRY COUNTY
2013 APR 17 PM 3:05
MELANIE HUGGINS-WARD
CLERK OF COURT

2547

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

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

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

Sharon Parker
Applicant

SWORN or affirmed to and subscribed before me this
8th day of March, 2013.

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2018

FILED
HURRY COUNTY
2013 APR 17 PM 3:05
MELANIE HIGGINS-WARD
CLERK OF COURT

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
)	
Shannon T. Parker, #352462,)	Case No. 2013-CP-26-2547
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	

The Respondent, making its Return to the Application for Post-Conviction Relief filed April 17, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In May 2012, the Horry County Grand Jury indicted Applicant for first degree burglary (2012-GS-26-1711). James C. Galmore, Esquire, represented Applicant. On September 12, 2012, Applicant pled guilty as indicted. The Honorable W. Jeffrey Young accepted the State's recommendation and sentenced Applicant to fifteen (15) years. Applicant did not appeal his plea or sentence.

Attached to this Return and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the plea transcript. Any records not attached will be forwarded upon receipt. The State 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 because of ineffective assistance of trial counsel. Any claims not specifically enumerated in the Application or amendments thereto will be opposed by the State at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCP.

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, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove that plea

counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea 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." Id. 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, 59 (1985).

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

IV.

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

V.

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

JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

9/20, 2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
)
)
 SHANNON T. PARKER, #352462)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS


2013-CP-26-2547

AFFIDAVIT OF SERVICE BY MAIL

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

Daniel A. Selwa, II, Esquire
1053 London St., Suite A
Myrtle Beach, SC 29577

DATED this 20th day of September, 2013.


 Norma Bigbee, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
 COUNTY OF HORRY) CASE NO.: 2013-CP-26-2547

SHANNON T. PARKER,)
)
 APPLICANT,)
)
 VS.)
)
 STATE OF SOUTH CAROLINA,)
)
 RESPONDENT.)

POST CONVICTION RELIEF HEARING

held before the Honorable Kristi L. Harrington
 Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
 in the Horry County Courthouse
 Conway, South Carolina
 on Tuesday, August 26, 2014, Commencing at 12:18 p.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
 Post Office Box 31865
 Charleston, South Carolina 29417-1865
 1-706-231-6028

APPEARANCES OF COUNSEL

FOR THE APPLICANT: Daniel A. Selwa, II, Esquire
Attorney at Law
1053 London Street, Suite A
Myrtle Beach, South Carolina 29577

FOR THE RESPONDENT: Joshua Thomas, Esquire
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

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EXHIBITS

[None]

Shannon Parker vs. The State of South Carolina
Post Conviction Relief Hearing
August 26, 2014

PROCEEDINGS

1
2 THE COURT: Counsel, if you will state your name
3 for the record and the party you represent.

4 MR. SELWA: Thank you, Your Honor. Did you say
5 counsel?

6 THE COURT: I did.

7 MR. SELWA: Thank you, Your Honor. May it
8 please the Court.

9 My name is Daniel Selwa. I am representing
10 Shannon Parker in the matter of Shannon Parker versus
11 the State of South Carolina.

12 THE COURT: And you are Shannon Parker?

13 MR. PARKER: Yes, ma'am.

14 THE COURT: Please swear Mr. Parker.

15 MR. PARKER: I don't swear on the Bible.

16 THE COURT: All right. Well, you can affirm.

17 THE CLERK OF COURT: Raise your right hand.

18 [Whereupon, Mr. Parker is duly sworn by the
19 clerk of court as follows: do you affirm that the
20 testimony you are about to give the Court in this case
21 will be the truth, the whole truth, and nothing but
22 the truth]

23 MR. PARKER: Yes, ma'am.

24 THE CLERK OF COURT: Please state your name and
25 spell your last name for the record.

Shannon Parker vs. The State of South Carolina
Post Conviction Relief Hearing
August 26, 2014

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MR. PARKER: Shannon Parker. P-A-R-K-E-R.

THE COURT: All right. Mr. Parker, we're here today on your application for post conviction relief. You were sentenced by Judge Young, on September 12th of 2012, on a burglary in the first degree. That is punishable by a minimum of fifteen years up to life in prison and you were sentenced to fifteen years pursuant to a recommendation. Is that correct?

MR. PARKER: Yes, ma'am.

THE COURT: And you understand that you could have faced a potential of life in prison; is that correct?

MR. PARKER: I understand. Yes, ma'am.

THE COURT: And I show that you have a max-out date of approximately May of 2024; is that correct?

MR. PARKER: Yes, ma'am.

THE COURT: And based upon my calculation, that is significantly less than your proposed life expectancy.

MR. PARKER: Yes, ma'am.

THE COURT: And I understand that five additional indictments were dismissed pursuant to the plea; is that correct?

MR. PARKER: Five.

THE COURT: Five?

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Shannon Parker vs. The State of South Carolina
Post Conviction Relief Hearing
August 26, 2014

1 MR. PARKER: I think it was more than five.

2 THE COURT: More than five? Maybe six?

3 MR. PARKER: Something like that.

4 THE COURT: Something like that? And you
5 understand that because they were dismissed pursuant
6 to the plea that should I grant this application
7 for a post conviction relief, all of those would be
8 reinstated. Do you understand that?

9 MR. PARKER: Yes, ma'am.

10 THE COURT: And I have not done all of the
11 calculation but it appears that you had at least a
12 burglary in the second degree, two counts of that, and
13 it appears to be perhaps two or three counts of grand
14 larceny. And I do not have how much the dollar amount
15 is.

16 Mr. Thomas, did you happen to do those
17 calculations?

18 MR. THOMAS: I haven't done the calculations,
19 Your Honor, but I'm pretty sure those grand larcenies
20 were just the five to ten variety -- or, actually,
21 ten.

22 MR. SELWA: Excuse me. I think actually the
23 guilty-plea judge calculated that and put that on the
24 record. I may be mistaken but I do recall --

25 THE COURT: And I may have just missed it.

Shannon Parker vs. The State of South Carolina
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1 But, regardless, you understand that you are
2 facing a potential of more than life in prison if
3 those were -- you were found guilty on all of those
4 indictments and they were to be run consecutive? You
5 understand that, sir?

6 MR. PARKER: Yes, ma'am.

7 THE COURT: Do you still wish to go forward here
8 today?

9 MR. PARKER: I would like a continuance.

10 THE COURT: Well, tell me why you want a
11 continuance.

12 MR. PARKER: Well, for one, my lawyer, he just
13 came to see me last week. I didn't know we was coming
14 to court this week till he came to see me. And that
15 was the first time I ever seen him, so I ain't
16 prepared.

17 THE COURT: All right. Based upon that ground
18 in and of itself, I am denying your motion for a
19 continuance. The Supreme Court has held that that is
20 not sufficient grounds for a continuance in and of
21 itself.

22 What else, Mr. Parker? Do you have any other
23 grounds for a continuance?

24 MR. PARKER: No, ma'am.

25 THE COURT: Mr. Selwa, you are prepared to go

Shannon Parker vs. The State of South Carolina
Post Conviction Relief Hearing
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1 forward here today?

2 MR. SELWA: Yes, Your Honor.

3 And I might have missed it. Did my client say
4 that he wanted to go forward?

5 THE COURT: He said he wanted a continuance. I
6 denied that, so his options are fairly limited at this
7 point.

8 MR. SELWA: Thank you, Your Honor.

9 THE COURT: All right.

10 MR. SELWA: May I ask him a question before
11 we --

12 THE COURT: You may.

13 [Whereupon, Mr. Selwa and Mr. Parker confer]

14 MR. SELWA: Your Honor, we would like to
15 proceed.

16 THE COURT: You may have a seat. Call your
17 first witness.

18 MR. SELWA: Your Honor, I actually would call
19 Mr. Shannon Parker to the stand.

20 THE COURT: All right. Thank you.

21 Mr. Parker, you've already been sworn, so if
22 you'll just come and have a seat in the chair.

23 [Whereupon, Mr. Parker takes the witness stand]

24 MR. SELWA: May it please the Court?

25 THE COURT: Yes, sir.

Shannon Parker
Direct Examination by Mr. Selwa
August 26, 2014

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SHANNON PARKER,

Having Been Previously Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. SELWA:

Q. Mr. Parker, you pled guilty to burglary;
correct?

A. Yes, sir.

Q. And how many years did you get for that?

A. I got fifteen, violent.

Q. And there were several other indictments that
were dismissed in consideration of you pleading guilty;
correct?

A. Yes, sir.

Q. And you wish to proceed today with your claim;
correct?

A. Yes, sir.

Q. And what are you claiming in your application
for post conviction relief?

A. That Mr. James Galmore, he told me that I was --
well, put it like this. He told me that if he get me the
fifteen non violent would I take it. I told him yeah. So
they gave me the -- they granted me the fifteen non
violent but when they granted me that, he told me we had
them beat, we could go ahead and take it on through. So I

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Shannon Parker
Direct Examination by Mr. Selwa
August 26, 2014

1 looked at him and I said, yeah, we could do that. So when
2 we got about to go to trial and everything, he tells me we
3 ain't got -- we ain't going to beat them. So I feel like
4 he gave me some bad advice.

5 Q. And so basically your testimony today is that --
6 or just right now is that the advice that Mr. Galmore gave
7 you led you to accept this plea where you would have
8 accepted it with a non-violent classification --

9 A. Yes, sir.

10 Q. -- for the same amount of time?

11 A. Yes, sir.

12 Q. How long before the trial were you offered that
13 plea?

14 A. It was about a month or so I think before -- a
15 month before I went to trial before I pleaded guilty.

16 Q. Did Mr. Galmore bring you any offers in writing,
17 from the State, evidencing that offer?

18 A. Yeah. Yes, sir.

19 Q. And did you decline that offer in writing?

20 A. Only reason why I -- I told him I would take it.
21 Only reason I declined is because he said, they don't have
22 nothing on you, we can have them beat. But once they was
23 talking about going to trial, he was talking about we
24 ain't got them beat, then they switched it back to fifteen
25 violent and they said they wasn't coming off the fifteen

Shannon Parker
Direct Examination by Mr. Selwa
August 26, 2014

1 violent.

2 Q. Did you understand why he said that you could
3 beat them?

4 A. The only thing I understand was about when he
5 said I could beat it was when he -- about the evidence and
6 everything, because they wasn't proceeding [phonetic] no
7 evidence.

8 Q. Did he explain what you were charged with?

9 A. He told me I was charged with first-degree
10 burglary.

11 Q. Did he explain the elements of that crime to
12 you?

13 A. He said fifteen to life.

14 Q. Okay. But did -- so is it correct to say that
15 he didn't explain what the prosecution would have to prove
16 beyond a reasonable doubt?

17 A. Yes, sir.

18 Q. Did he explain each element of that crime, in
19 other words, the specific parts of that crime, that they
20 would have to prove to find you guilty?

21 A. No.

22 Q. He didn't?

23 What was the conversation that you had with him
24 that made you feel comfortable in rejecting that plea
25 offer of fifteen years non violent?

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Shannon Parker
Direct Examination by Mr. Selwa
August 26, 2014

1 A. Because when he was telling me that, he was
2 telling me like they would have had to dismissed it, or
3 otherwise they have to charge me with the one that I was
4 talking about on the confession tape.

5 Q. Had Mr. Galmore told you or advised you that
6 this was a smart plea, would you have taken it?

7 A. Say it again.

8 Q. If Mr. Galmore had stated to you, hey, this plea
9 offer of fifteen years non violent is a good offer, would
10 you have taken it?

11 A. Of course, because he's my advisor.

12 Q. And did you rely upon his advice in rejecting
13 that?

14 A. Yes, sir.

15 Q. And you subsequently or later pled guilty to
16 fifteen years violent; correct?

17 A. Yes, sir.

18 Q. Is there anything else that you would like to
19 tell the Court today in support of your application for
20 post conviction relief?

21 A. Well, there's one more thing, but I ain't got
22 no -- I ain't got no physical proof of it. But when he
23 gave me that confession tape, he was drunk, falling
24 asleep, while the confession tape was going on and all of
25 that.

Shannon Parker
Direct Examination by Mr. Selwa
August 26, 2014

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Q. Who are you referring to?

A. James Galmore.

Q. Did you -- anything further?

A. No, sir.

MR. SELWA: No further questions, Your Honor.

Please answer any questions Mr. Thomas may have
for you.

THE COURT: Mr. Thomas.

MR. THOMAS: Thank you, Your Honor.

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FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-526-6313

Shannon Parker
Cross-Examination by Mr. Thomas
August 26, 2014

CROSS-EXAMINATION

1

2

BY MR. THOMAS:

3

Q. How many meetings did you have with Mr. Galmore?

4

A. I had like a few of them, like two or three of

5

them.

6

Q. And you're saying that in all those meetings, he

7

told you that the State didn't have any evidence against

8

you?

9

A. Yes, sir.

10

Q. So you never went over discovery with him?

11

A. What you mean by that?

12

Q. You never went over with him, you know, your

13

confession and statements and everything?

14

A. Yeah. I had to go over with that.

15

Q. And you had an opportunity in those meetings to

16

tell him your version of what happened?

17

A. Yes, sir.

18

Q. And you said you decided you didn't want to take

19

that first offer?

20

A. Say what, again?

21

Q. You decided you didn't want to take a fifteen-

22

year offer to begin with?

23

A. Yeah, because he gave me a lie saying I could

24

have beat it.

25

Q. But it was your decision. He told you it was

Shannon Parker
Cross-Examination by Mr. Thomas
August 26, 2014

1 your decision?

2 A. Yeah. But he's my advisor.

3 Q. But you ended up taking a fifteen-year offer?

4 A. Yes.

5 Q. Did you say you gave a confession in this case?

6 A. A taped confession.

7 MR. THOMAS: All right. Thank you. That's all
8 I have.

9 THE COURT: Mr. Selwa?

10 MR. SELWA: No redirect, Your Honor.

11 THE COURT: You may step down. Thank you.

12 [Whereupon, Mr. Parker is excused and exits the
13 witness stand]

14 THE COURT: Call your next witness.

15 MR. SELWA: Your Honor, I would call James
16 Galmore.

17 [Whereupon, Mr. Galmore comes forward]

18 THE CLERK OF COURT: If you would raise your
19 right hand.

20 [Whereupon, Mr. Galmore is duly sworn by the
21 clerk of court as follows: do you solemnly swear that
22 the testimony you're about to give the Court in this
23 case will be the truth, the whole truth, and nothing
24 but the truth, so help you God]

25 THE WITNESS: Yes, ma'am.

Shannon Parker
Cross-Examination by Mr. Thomas
August 26, 2014

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THE CLERK OF COURT: Please be seated.

[Whereupon, Mr. Galmore takes the witness stand]

THE CLERK OF COURT: Please state your name and
spell your last name for the record.

THE WITNESS: My name is James Galmore.

G-A-L-M-O-R-E.

MR. SELWA: May it please the Court.

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James Galmore
Direct Examination by Mr. Selwa
August 26, 2014

1 JAMES GALMORE,

2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MR. SELWA:

6 Q. Mr. Galmore, you represented Mr. Shannon Parker
7 in his guilty plea to these charges he is convicted of;
8 correct?

9 A. Yes, sir.

10 Q. And part of that plea was the dismissal or nol-
11 propping of a number of other indicted charges; correct?

12 A. Yes, sir. I believe he was charged with eleven
13 counts, total.

14 Q. Do you recall the offer -- you were sitting in
15 the courtroom here. Do you recall the offer that was made
16 to Mr. Parker?

17 A. Just a moment. I just saw it in my file just a
18 moment ago. Hold on, please.

19 [Whereupon, the witness reviews documents]

20 A. Mr. Parker was offered a sentence for a burglary
21 second degree negotiated fifteen-year sentence.

22 Q. [Mr. Selwa] so that was a negotiated plea?

23 A. Yes, sir.

24 Q. And did you explain to him the difference
25 between a negotiated plea and a recommendation?

James Galmore
Direct Examination by Mr. Selwa
August 26, 2014

1 A. Yes. I have explained that to Mr. Parker on
2 several different occasions.

3 Q. You felt that -- do you feel that Mr. Parker was
4 able to understand and comprehend the difference in those
5 two pleas?

6 A. Yes, I do.

7 I will also refer you to a letter that I sent to
8 Mr. Parker dated July 13th, 2012. This letter says: the
9 purpose of this letter is to explain everything that went
10 on in court today so that you understand what decisions
11 you have made by rejecting the plea offer. You were
12 charged with several counts of burglary first degree.
13 That charge carries a minimum of fifteen years in jail and
14 a maximum of life in prison, if convicted. This is an
15 eighty-five-percent no-parole offense. That means if you
16 get fifteen years, you must serve twelve years and nine
17 months. Your plea offer today was to plea to -- was to
18 plea to burglary second degree for a negotiated fifteen-
19 year sentence. That means you would have served seven-
20 and-a-half years on the fifteen-year sentence. The
21 difference between first degree and second degree is
22 significant and by rejecting the plea offer today, you are
23 forcing yourself to serve more time if convicted. This is
24 your choice to make. If I was forced to choose between
25 seven-and-a-half years and twelve and three-fourths years,

James Galmore
Direct Examination by Mr. Selwa
August 26, 2014

1 I would choose the seven and a half. Your request for
2 three years is not possible on a burglary first degree
3 charge. Keep in mind that you confessed on tape and you
4 returned the stolen weapons. The burglary second degree
5 is not the deal you wanted, but it is better than
6 potentially facing a life sentence. I do not -- I do not
7 know what else to tell you. I believe that you are making
8 a mistake that will cost you more time in jail, but it
9 your mistake to make. When I asked how you expect to win
10 a trial when you confessed and returned the guns, you
11 said, quote, pray on it. You are entitled to handle your
12 case any way you want. I know you do not have a record,
13 but I cannot help that. Please think about what you are
14 doing and do not make a mistake that will cost you more
15 time in jail.

16 Q. When was that letter sent?

17 A. I sent that July 13th, 2012, to Mr. Parker at
18 the detention center.

19 August 2nd, I sent him a second letter, which
20 reads: thank you for speaking with me today about your
21 case. The solicitor has refused any further plea offers
22 in your case. Also, they have confirmed that your case
23 will begin August 13th on warrant numbers I-234686 and
24 I-234687. This is a burglary first degree and grand
25 larceny case that occurred on Highway 545 in Aynor. They

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James Galmore
Direct Examination by Mr. Selwa
August 26, 2014

1 will wait on the outcome of your trial to decide if they
2 want to take you to trial on the other warrants. At this
3 point, the only plea available to you is to plead without
4 a plea offer and throw yourself on the mercy of the Court.
5 In that case, the best you can expect is fifteen years in
6 jail. I suggest that you plead guilty because we cannot
7 win at trial, and if you lose a trial you will be facing
8 life in prison. As I have said before, it is your choice
9 if you want to plead guilty or have a trial but please do
10 not make a mistake that will cost you more time in prison.

11 And I sent him a third letter September 5th of
12 2012 and that letter says: I still do not know if your
13 case is going to trial next week or not. I have tried to
14 talk with your attorney in North Carolina about any
15 statements you may have made to the police but he has not
16 returned my phone calls. Again, my legal advice is to
17 take whatever deal I can get for you at this point. This
18 is a no-win situation for you, and most appeals are
19 unsuccessful. I just don't want you sitting in prison
20 waiting for an appeal that never comes. You are a grown
21 man and even though I am telling you that you will lose,
22 you can have a trial if you want to.

23 MR. SELWA: No further questions, Your Honor.

24 THE COURT: Mr. Thomas?

25 MR. THOMAS: No questions, Your Honor.

James Galmore
Direct Examination by Mr. Selwa
August 26, 2014

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THE COURT: Thank you. You may step down.
Thank you.

[Whereupon, Mr. Galmore is excused and exits the witness stand]

THE COURT: Mr. Selwa, call your next witness.

MR. SELWA: One moment, Your Honor.

THE COURT: Take your time.

[Whereupon, Mr. Selwa and Mr. Parker confer]

MR. THOMAS: Your Honor, we just ask that Mr. Galmore be excused for the day --

THE COURT: Are we done with him for the day?

MR. THOMAS: That is his last case.

THE COURT: And what is his schedule for tomorrow?

MR. THOMAS: Mr. Galmore is not coming back tomorrow.

THE COURT: Thank you, Mr. Galmore.

MR. GALMORE: Yes, ma'am. Thank you.

THE COURT: You are excused.

MR. GALMORE: Yes, ma'am.

MR. SELWA: Your Honor, real quick, can we redirect Mr. Parker? He wishes to --

THE COURT: It is generally against my policy to allow that, but I'm feeling a little generous today, Mr. Parker, so go ahead.

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James Galmore
Direct Examination by Mr. Selwa
August 26, 2014

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MR. SELWA: Thank you, Your Honor.

THE COURT: Thank you.

Please remember that you are under -- still
under oath.

[Whereupon, Mr. Parker retakes the witness
stand]

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Shannon Parker
Redirect Examination by Mr. Selwa
August 26, 2014

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SHANNON PARKER,

Having Been Previously Sworn,
was Examined and Testified as Follows:

REDIRECT EXAMINATION

BY MR. SELWA:

Q. Mr. Parker, real quick, you heard the testimony of Mr. Galmore and you wish to readdress some of the things that he stated on the record. What do you wish to state about his testimony?

A. On September the 12th, when I was -- when I was -- they was prosecuting me, I was telling him -- when we was in the conference room, he was talking about what you want to do. I said, take it to trial, take it to trial. He kept saying, it ain't best, it ain't best. So he goes out there and talked to my mom, my aunt, to convince me to take the plea. I kept telling him let's go to trial. He didn't want to do no work to go to trial. So they -- he got in my mother head to get in my head, convince me to take the plea.

Q. Anything further?

A. No, sir.

MR. SELWA: No further questions, Your Honor.

THE COURT: Mr. Thomas?

MR. THOMAS: Just one question. Or two questions, actually.

Shannon Parker
Recross-Examination by Mr. Thomas
August 26, 2014

CROSS-EXAMINATION

1
2 BY MR. THOMAS:

3 Q. Do you remember the judge telling you you had a
4 right to a jury trial when you pled guilty?

5 A. Yeah. Yes, sir.

6 Q. And do you remember telling the judge you wanted
7 to plead guilty anyway?

8 A. [No response]

9 Q. Do you remember telling the judge that you
10 wanted to waive your right to a jury trial and plead
11 guilty?

12 A. I can't recall because it be in the minute. But
13 I might have did.

14 But for the record, I didn't -- I hadn't want to
15 go to trial but he convince me to not to go to trial.

16 MR. THOMAS: No further questions, Your Honor.

17 THE COURT: All right. Redirect?

18 MR. SELWA: No further redirect, Your Honor.

19 THE COURT: You may step down. Thank you.

20 [Whereupon, Mr. Parker is excused and exits the
21 witness stand]

22 MR. SELWA: And, Your Honor, that will be the
23 applicant's case.

24 MR. THOMAS: No witnesses from the State.

25 THE COURT: All right. I did not assume that

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1 there were. Thank you, Mr. Thomas.

2 I did not have you articulate on the record all
3 the claims that you were making. I only show a claim
4 and your ground was failing to advise your client of
5 his right to appeal. Was there anything else?

6 MR. SELWA: You're talking to me?

7 THE COURT: Yes. Was there anything else?

8 MR. SELWA: Oh. I'm sorry, Your Honor. No, not
9 to my knowledge. Not to my knowledge.

10 THE COURT: You would agree just -- the
11 transcript is part of the record -- that on page 11 of
12 the transcript, beginning at line 18, the Court says:
13 Mr. Parker, you understand that if you change your
14 mind about your decision to plead guilty, that you
15 will only have ten days in which to file an appeal.

16 Is that an accurate reflection of what the
17 transcript indicates, Mr. Selwa?

18 MR. SELWA: That's the way I'm reading it, Your
19 Honor.

20 THE COURT: All right. I'll be happy to hear
21 from you in closing.

22 MR. SELWA: Your Honor, Mr. Parker wishes to
23 have a trial on this. He didn't want to plea, he did,
24 and we would ask that you grant that.

25 THE COURT: You agree, Mr. Selwa, that the

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1 transcript on page 9 indicates that the Court --
2 beginning on line 19 indicates: Mr. Parker, you are
3 also waiving your right to a jury trial. And the
4 court goes on in colloquy indicating that they have
5 forty jurors ready to come and hear the case. And
6 then beginning page 10, line 8: do you understand
7 that. And Mr. Parker says: yes, sir. And then the
8 Court goes even further and says: now, do you wish to
9 waive your right to have a trial and confront the
10 witnesses against you. And Mr. Parker then again
11 says, on line 13: yes, sir.

12 Is that an accurate recitation of what the
13 transcript contains, Mr. Selwa?

14 MR. SELWA: That is, Your Honor. I'm looking at
15 it now.

16 THE COURT: Anything further, based upon my
17 questions?

18 MR. SELWA: No further questions, Your Honor.

19 THE COURT: Mr. Thomas, anything further?

20 MR. THOMAS: We would just submit that the
21 record shows this is a knowing and voluntary plea and
22 we rest on that.

23 THE COURT: Counsel, what date did I give you on
24 your other order?

25 MR. THOMAS: 15th, September.

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1 THE COURT: September 15th.

2 September 15th, Mr. Selwa, by 9:00 a.m. I
3 believe that was what I indicated.

4 MR. SELWA: Yes, Your Honor.

5 THE COURT: And I'll take the matter under
6 advisement and allow y'all to submit your proposed
7 orders.

8 Mr. Parker, you have a wonderful day. And good
9 luck to you. What I am doing is taking this matter
10 under advisement. Your attorney and the State will
11 have an opportunity to submit a proposed order to me
12 and indicate which way -- so your attorney will
13 indicate that I need to grant your application for
14 post conviction relief. All right? Thank you. Good
15 luck to you. I may -- I don't know that I would see
16 you again, but good luck to you. Thank you. Good
17 luck to the family. Thank you.

18 [HEARING CONCLUDES AT 12:44 P.M.]

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Shannon Parker vs. The State of South Carolina
Certificate of Court Reporter

C E R T I F I C A T E

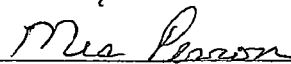
STATE OF SOUTH CAROLINA

COUNTY OF HORRY

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the PCR hearing held before the Honorable Kristi L. Harrington, on Tuesday, August 26, 2015.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 21st day of March, 2015.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
Shannon T. Parker, #352462,)	Case No. 2013-CP-26-2547
Applicant,)	
v.)	ORDER OF DISMISSAL
State of South Carolina,)	
Respondent.)	

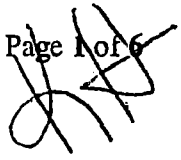
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 HORRY COUNTY
 14 NOV 19 AM 9:48
 MELANIE H. JINS-WARD
 CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 17, 2013. Respondent made a timely Return on or about September 20, 2013. The Court convened an evidentiary hearing into the matter on August 26, 2014, at the Horry County Courthouse. Applicant was present at the hearing and represented by Daniel A. Selwa II, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

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

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In May 2012, the Horry County Grand Jury indicted Applicant for first degree burglary (2012-GS-26-1711). James C. Galmore,

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Esquire ("plea counsel"), represented Applicant. On September 12, 2012, Applicant pled guilty as indicted. In exchange for the plea, the State dismissed two (2) charges of first degree burglary, three (3) charges of grand larceny, and three (3) charges of second degree burglary. The Honorable W. Jeffrey Young accepted the plea and sentenced Applicant to fifteen (15) years in the State Department of Corrections with credit for time served. Applicant did not appeal his plea or sentence.

II. ALLEGATIONS

In his application, Applicant alleged he is being held in custody unlawfully because of ineffective assistance of counsel. At the evidentiary hearing, Applicant proceeded on an allegation of ineffective assistance of plea counsel for advising Applicant to reject a plea to a lesser included offense of second degree burglary.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A. Summary of Testimony

Applicant testified he was initially offered a sentence of fifteen (15) years for second degree burglary. He alleged plea counsel informed him to reject the plea because he could beat these charges. Applicant stated he only rejected the initial offer because plea counsel told him he would prevail at trial. Applicant testified the State had no evidence connecting him to the burglaries. However, he admitted on cross-examination he gave a confession to police. He also admitted it was his decision to reject the initial plea. Applicant also recalled reviewing and

waiving his rights at the plea hearing.

Plea counsel testified he discussed Applicant's numerous charges with him. He explained the State's initial burglary second offer. Plea counsel testified he felt Applicant understood the plea negotiations. He testified Applicant rejected the State's initial offer. Plea counsel testified he advised Applicant to take that offer because it was significantly less time than he was facing if convicted. He testified Applicant wanted a three (3) year offer, which the State was unwilling to make. Plea counsel testified he later advised Applicant to accept the offer to enter a plea to first degree burglary for a recommended fifteen (15) year sentence. He based this advice on the fact Applicant confessed to the burglary and led authorities to the location of the stolen gun.

B. Ineffective Assistance of Plea Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing *Griffin v. Martin*, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Id.* at 442, 334 S.E.2d at 814 (citing *Strickland v. Washington*, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Id.* (citing *Strickland*, 466 U.S. at 687; *Turner v. Bass*, 753 F.2d 342 (4th Cir. 1985); *Marzullo v. Maryland*, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions

in the exercise of reasonable professional judgment. *Id.* (citing *Strickland*, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. *Id.* at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. *Id.* Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." *Id.* (citing *Strickland*, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

The Court finds Applicant failed to meet his burden of proving trial counsel ineffective. Applicant's allegation plea counsel advised him to reject the initial plea is without merit. Applicant was advised to accept the State's initial plea offer, but chose to reject the offer. Once Applicant realized the State would not make a better offer, he made decided to accept the plea he received. Plea counsel properly advised Applicant throughout the process. Plea counsel's advice was appropriate in light of the overwhelming evidence against him, including his confession and his cooperation in locating the stolen property. *See Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009) (applicant must show "something that would have affected

counsel's advice to [the applicant] to accept the plea bargain offered or that would have caused [the applicant] to decline to accept it").

The plea dialogue between Applicant and Judge Young shows Applicant fully understood the nature of the charges against him and the consequences of his plea. *Simpson v. State*, 317 S.C. 506, 508, 455 S.E.2d 175, 176 (1995) (citing *Dover v. State*, 304 S.C. 433, 405 S.E.2d 391 (1991)). He was informed of the privilege against self-incrimination, the right to a jury trial, and the right to confront his accusers. *Roddy v. State*, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000) (citing *Boykin v. Alabama*, 395 U.S. 238 (1969)). The Court finds Applicant's plea was knowingly and voluntarily entered. Applicant has failed to demonstrate his plea was the result of faulty advice of plea counsel. See *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) ("A guilty plea is a solemn, judicial admission of the truth of the charges against an individual[.] ... Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. (citations omitted)).

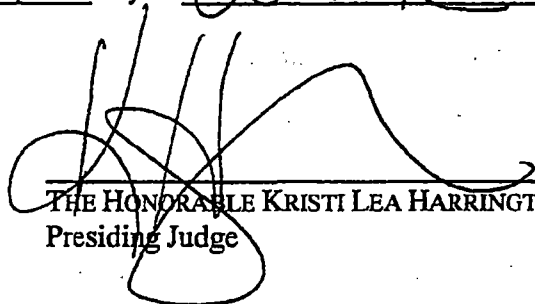
IV. CONCLUSION

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

IT IS THEREFORE ORDERED THAT:

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

AND IT IS SO ORDERED this 7th day of October, 2014.



A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

THE HONORABLE KRISTI LEA HARRINGTON
Presiding Judge

Charles, South Carolina

WITNESSES

Terry Elliott Horry County Police Department

ARREST WARRANT NUMBER

1234686

CDR: 0079 16-11-0311

DOA: 3/9/2012

**ACTION OF GRAND JURY
TRUE BILL**

Brandon Cerven
Foreperson of Grand Jury
Date: **MAY 24 2012**

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012-GS-26-01711

**The State of South Carolina
County of Horry**

George H. Debusk

12H01037

COURT OF GENERAL SESSIONS

May, 2012 TERM

THE STATE

vs.

Shannon Tyrone Parker
B/M

Tabor City, NC 28463

DOB:

SSN:

ATTORNEY: Galmora, James Cullen

Indictment for

Burglary, 1st Degree

J. Gregory Hembree, Solicitor

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT


At a Court of General Sessions, convened on May 24, 2012, the Grand Jurors of Horry County present upon their oath:

BURGLARY, FIRST DEGREE

CDR: 0079 16-11-0311

That Shannon Tyrone Parker did in Horry County, on or about August 28, 2011 enter the dwelling of Terry Williams without consent and with the intent to commit a crime therein and when in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime was armed with a deadly weapon, in violation of Section 16-11-0311(A), S. C. Code of Laws, 1976, as amended.

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



J. GREGORY PEMBREE
FIFTEENTH CIRCUIT SOLICITOR