

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Post-Conviction Relief

Edgar W. Dickson, Presiding Judge

Case No.: 2015-000105

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S.C. Supreme Court

Alwin Jones #260800 Petitioner,

vs.

State of South Carolina Respondent.

APPENDIX

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1 STATE OF SOUTH CAROLINA

2 IN THE COURT OF GENERAL SESSIONS

3 COUNTY OF LEXINGTON

4
5 THE STATE,

6 V.

7 ALWIN TREMAINE JONES,

8 DEFENDANT.

9
10 B E F O R E : THE HONORABLE WILLIAM P. KEESLEY, JUDGE.

11
12 A P P E A R A N C E S :

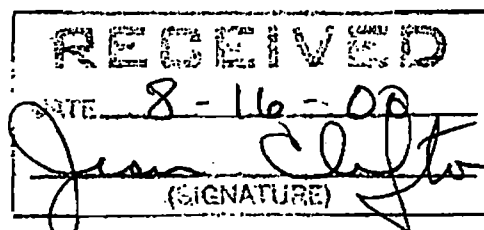
13 FOR THE STATE: RICK HUBBARD, ASSISTANT SOLICITOR

14 FOR THE DEFENDANT: CAM LITTLEJOHN, ESQUIRE

15
16 COURT REPORTER: SMOKEY PERRY

17
18 AUGUST 26, 1999

19
20 INDICTMENT NUMBERS 98-66-32-2458, 2459, 2460,
21 3567, 2471, 2472, 2473, 2654, 2655



1 THE COURT: ARE YOU ALWIN TREMAINE JONES?

2 THE DEFENDANT: YES, SIR.

3 THE COURT: THERE'S AN INDICATION ON HERE THAT --
4 THERE'S THE NAME OF TREMAINE ALWIN JONES. WHICH IS CORRECT?

5 THE DEFENDANT: ALWIN TREMAINE JONES.

6 THE COURT: ALRIGHT. RAISE YOUR RIGHT HAND, PLEASE.
7 (THE DEFENDANT WAS SWORN TO TELL THE TRUTH.) I HAVE A
8 SERIES OF INDICTMENTS, MR. JONES. ONE ALLEGES THAT IN
9 LEXINGTON COUNTY ON OR ABOUT FEBRUARY THE 6TH 1998 YOU
10 WILFULLY AND UNLAWFULLY ENTERED THE DWELLING OF JACK EDSON
11 WHITLOW WITHOUT CONSENT AND WITH THE INTENT TO COMMIT A
12 CRIME THEREIN. UPON YOUR ARRAIGNMENT ON THAT CHARGE OF
13 BURGLARY IN THE 2ND DEGREE, IT APPEARS THAT YOU WISH TO
14 PLEAD GUILTY. IS THAT RIGHT?

15 THE DEFENDANT: YES, SIR.

16 THE COURT: I HAVE ANOTHER INDICTMENT THAT CHARGES THAT
17 IN LEXINGTON COUNTY ON OR ABOUT FEBRUARY THE 6TH 1998 YOU
18 WILFULLY AND UNLAWFULLY ENTERED THE DWELLING OF REBECCA ADDY
19 WITHOUT CONSENT AND WITH THE INTENT TO COMMIT A CRIME
20 THEREIN. UPON YOUR ARRAIGNMENT ON THAT CHARGE OF BURGLARY
21 IN THE SECOND DEGREE IT APPEARS THAT YOU WISH TO PLEAD
22 GUILTY. IS THAT CORRECT?

23 THE DEFENDANT: YES, SIR.

24 THE COURT: I HAVE AN INDICTMENT THAT CHARGES THAT IN
25 LEXINGTON COUNTY ON OR ABOUT FEBRUARY THE 6TH 1998 YOU

1 WILFULLY AND UNLAWFULLY ENTERED THE DWELLING OF TRUDY MOORE
2 WITHOUT CONSENT AND WITH THE INTENT TO COMMIT A CRIME
3 THEREIN AND THAT WHILE IN THAT DWELLING YOU WERE ARMED WITH
4 A DEADLY WEAPON, THAT BEING A 7 MILLIMETER RIFLE. UPON YOUR
5 ARRAIGNMENT ON BURGLARY IN THE FIRST DEGREE, IT APPEARS THAT
6 YOU WISH TO ENTER A PLEA OF GUILTY. IS THAT RIGHT?

7 THE DEFENDANT: YES, SIR.

8 THE COURT: I HAVE ANOTHER INDICTMENT THAT CHARGES THAT
9 IN LEXINGTON COUNTY ON OR ABOUT FEBRUARY THE 6TH 1998 YOU
10 WILFULLY AND UNLAWFULLY ENTERED THE DWELLING OF JEFFREY
11 SMITH WITHOUT CONSENT AND WITH THE INTENT TO COMMIT A CRIME
12 THEREIN. UPON YOUR ARRAIGNMENT IT APPEARS THAT YOU WISH TO
13 PLEAD GUILTY TO BURGLARY IN THE SECOND DEGREE. IS THAT
14 RIGHT?

15 THE DEFENDANT: YES, SIR.

16 THE COURT: THE NEXT INDICTMENT CHARGES THAT IN
17 LEXINGTON COUNTY ON OR ABOUT FEBRUARY THE 2ND 1998 YOU
18 WILFULLY AND UNLAWFULLY ENTERED THE DWELLING OF PHILIP
19 CLAYTOR WITHOUT CONSENT AND WITH THE INTENT TO COMMIT A
20 CRIME THEREIN, AND THAT WHILE ENTERING OR WHILE IN THE
21 DWELLING YOU WERE ARMED WITH A 380 CALIBER PISTOL. UPON
22 YOUR ARRAIGNMENT ON THAT CHARGE OF BURGLARY IN THE FIRST
23 DEGREE IT APPEARS THAT YOU WISH TO PLEAD GUILTY. IS THAT
24 RIGHT?

25 THE DEFENDANT: YES, SIR.

1 THE COURT: I HAVE ANOTHER INDICTMENT THAT CHARGES ON
2 OR ABOUT FEBRUARY THE 6TH 1998 YOU WILFULLY AND UNLAWFULLY
3 ENTERED THE DWELLING OF T.H. RAWL, III, WITHOUT CONSENT AND
4 WITH THE INTENT TO COMMIT A CRIME THEREIN AND THAT WHILE IN
5 THE DWELLING OR ENTERING IT, YOU WERE ARMED WITH A DEADLY
6 WEAPON, THAT BEING A 20 GAUGE SHOTGUN. UPON YOUR
7 ARRAIGNMENT ON THIS CHARGE OF BURGLARY IN THE FIRST DEGREE
8 IT APPEARS YOU WISH TO PLEAD GUILTY. IS THAT RIGHT?

9 THE DEFENDANT: YES, SIR.

10 THE COURT: I HAVE AN INDICTMENT THAT CONTAINS FOUR
11 COUNTS.

12 COUNT ONE IS FOR ARMED ROBBERY ALLEGING THAT IN
13 LEXINGTON COUNTY ON OR ABOUT SEPTEMBER THE FIRST 1998 WHILE
14 ARMED WITH A DEADLY WEAPON OR WHAT APPEARED TO BE A DEADLY
15 WEAPON, THAT BEING A PISTOL, YOU FELONIOUSLY TOOK FROM THE
16 PERSON OR PRESENCE OF ALVIN LUCAS BY MEANS OF FORCE OR
17 INTIMIDATION GOODS OR MONIES OF CAYCE BAIT & TACKLE
18 DESCRIBED AS ABOUT FIVE HUNDRED DOLLARS WITH THE INTENT TO
19 DEPRIVE THE OWNER PERMANENTLY OF THAT PROPERTY.

20 COUNT TWO IS FOR CONSPIRACY; COUNT THREE IS FOR
21 POSSESSION OF A FIREARM OR KNIFE DURING COMMISSION OF A
22 VIOLENT CRIME, AND COUNT FOUR IS FOR POSSESSION OF A PISTOL
23 BY A PERSON UNDER TWENTY-ONE YEARS OF AGE. UPON YOUR
24 ARRAIGNMENT ON THIS INDICTMENT, IT APPEARS YOU WISH TO PLEAD
25 GUILTY UNDER COUNT ONE TO ARMED ROBBERY. IS THAT CORRECT?

1 THE DEFENDANT: YES, SIR.

2 THE COURT: ALRIGHT. I HAVE ANOTHER INDICTMENT THAT
3 CONTAINS THREE COUNTS. COUNT ONE OF THE INDICTMENT CHARGES
4 YOU WITH BURGLARY IN THE SECOND DEGREE ALLEGING THAT IN
5 LEXINGTON COUNTY YOU AND OTHERS ON OR ABOUT DECEMBER THE
6 NINTH 1998 WILFULLY AND UNLAWFULLY ENTERED THE DWELLING OF
7 TAMMY GANT WITHOUT CONSENT AND WITH THE INTENT TO COMMIT A
8 CRIME THEREIN. COUNT TWO IS FOR CRIMINAL CONSPIRACY. COUNT
9 THREE IS FOR PETTY LARCENY. UPON YOUR ARRAIGNMENT ON THESE
10 CHARGES IT APPEARS YOU WISH TO PLEAD GUILTY TO BURGLARY IN
11 THE SECOND DEGREE. IS THAT CORRECT?

12 THE DEFENDANT: YES, SIR.

13 THE COURT: AND FINALLY I AN INDICTMENT THAT CHARGES
14 THAT IN LEXINGTON COUNTY ON OR ABOUT JANUARY SECOND 1999
15 WHILE ARMED WITH A DEADLY WEAPON, THAT BEING A GUN,
16 FELONIOUSLY TOOK FROM THE PERSON OR PRESENCE OF SHANE
17 MELBOURNE BY MEANS OF FORCE OR INTIMIDATION GOODS OR MONIES
18 OF THE VICTIM DESCRIBED AS APPROXIMATELY -- I'M SORRY -- AS
19 MONEY, JEWELRY AND OTHER ITEMS VALUED AT APPROXIMATELY ONE
20 THOUSAND 3 HUNDRED 76 DOLLARS. UPON YOUR ARRAIGNMENT ON
21 THIS CHARGE OF ARMED ROBBERY IT APPEARS YOU WISH TO WAIVE
22 PRESENTMENT TO THE GRAND JURY AND ENTER A PLEA OF GUILTY.
23 IS THAT CORRECT?

24 THE DEFENDANT: YES, SIR.

25 THE COURT: MR. LITTLEJOHN, HAVE YOU FULLY EXPLAINED TO

1 YOUR CLIENT THE NATURE AND ELEMENTS OF EACH OFFENSE, THE
2 POSSIBLE PUNISHMENT HE MAY RECEIVE, MANDATORY ASPECTS OF
3 PUNISHMENT AND HIS CONSTITUTIONAL RIGHTS INCLUDING TRIAL BY
4 JURY?

5 MR. LITTLEJOHN: YES, YOUR HONOR.

6 THE COURT: ARE YOU SATISFIED THERE IS A FACTUAL BASIS
7 FOR EACH PLEA?

8 MR. LITTLEJOHN: YES, YOUR HONOR.

9 THE COURT: YOU AGREE WITH HIS DECISION TO ENTER THE
10 PLEA?

11 MR. LITTLEJOHN: YES, SIR.

12 THE COURT: MR. JONES, TODAY ARE YOU UNDER THE
13 INFLUENCE OF ANY MEDICINE, DRUGS, ALCOHOL, ANYTHING THAT
14 AFFECTS YOUR THINKING?

15 THE DEFENDANT: NO, SIR.

16 THE COURT: DO YOU HAVE ANY PHYSICAL OR MENTAL PROBLEMS
17 THAT AFFECT YOUR THINKING?

18 THE DEFENDANT: NO, SIR.

19 THE COURT: YOU'RE CLEARHEADED TODAY; YOU KNOW WHAT
20 YOU'RE DOING?

21 THE DEFENDANT: YES, SIR.

22 THE COURT: DO YOU UNDERSTAND THAT WHEN YOU PLEAD
23 GUILTY YOU GIVE UP IMPORTANT RIGHTS INCLUDING YOUR RIGHT TO
24 REMAIN SILENT AND YOUR RIGHT TO A JURY TRIAL?

25 THE DEFENDANT: YES, SIR.

1 THE COURT: IF YOU WANTED A JURY TRIAL YOU'D BE
2 PRESUMED TO BE INNOCENT; THE STATE WOULD HAVE TO PROVE YOU
3 GUILTY BEYOND A REASONABLE DOUBT TO CONVICT YOU, AND YOU'D
4 GET TO SEE, HEAR AND HAVE YOUR LAWYER CROSS EXAMINE EVERY
5 WITNESS AGAINST YOU. YOU UNDERSTAND ALL THAT?

6 THE DEFENDANT: YES, SIR.

7 THE COURT: WHEN YOU PLEAD GUILTY YOU GIVE UP ALL THOSE
8 RIGHTS; YOU GIVE UP DEFENSES YOU HAD; YOU GIVE UP CHALLENGES
9 TO EVIDENCE AND YOU ADMIT THAT THE CHARGE IS TRUE. DO YOU
10 UNDERSTAND ALL THAT?

11 THE DEFENDANT: YES, SIR.

12 THE COURT: IN A JURY TRIAL SETTING YOU HAVE A RIGHT
13 NOT TO TESTIFY; YOU HAVE A RIGHT TO MAINTAIN YOUR SILENCE,
14 AND IF YOU CHOSE TO DO THAT, THE TRIAL JUDGE WOULD TELL THE
15 JURY THAT THEY COULD NOT HOLD YOUR SILENCE AGAINST YOU IN
16 ANY WAY AT ALL. YOU UNDERSTAND ALL THAT?

17 THE DEFENDANT: YES, SIR.

18 THE COURT: IN A JURY TRIAL, THE DECISION OF THE JURY
19 TO CONVICT SOMEONE HAS TO BE UNANIMOUS. SO THE STATE WOULD
20 HAVE THE OBLIGATION OF PROVING YOUR GUILTY BEYOND A
21 REASONABLE DOUBT TO THE SATISFACTION OF ALL 12 JURORS. YOU
22 UNDERSTAND THAT?

23 THE DEFENDANT: YES, SIR.

24 THE COURT: IN A JURY TRIAL THERE MAY BE LESSER
25 INCLUDED OFFENSES THAT WOULD BE SUBMITTED TO THE JURY AND

1 THE JURY MAY HAVE THE OPTION OF FINDING YOU GUILTY OF A
2 LESSER OFFENSE IF THEY FOUND YOU GUILTY OF ANYTHING AT ALL.
3 YOU UNDERSTAND THAT?

4 THE DEFENDANT: YES, SIR.

5 THE COURT: NOW ANY DEFENSES YOU'VE GOT, ANY CHALLENGES
6 TO EVIDENCE, THOSE THINGS ARE GIVEN UP WHEN YOU PLEAD
7 GUILTY. YOU REALIZE THAT?

8 THE DEFENDANT: YES, SIR.

9 THE COURT: SO REALIZING THAT YOU GIVE UP YOUR RIGHT TO
10 A JURY TRIAL; YOU GIVE UP YOUR RIGHT TO REMAIN SILENT; YOU
11 GIVE UP YOUR RIGHT TO CONFRONT THE WITNESSES AGAINST YOU;
12 YOU GIVE UP THE REQUIREMENT OF REQUIRING THE STATE TO PROVE
13 YOU GUILTY BEYOND A REASONABLE DOUBT, ALL THOSE THINGS WE
14 DISCUSSED AND OTHERS, DO YOU WANT A JURY TRIAL?

15 THE DEFENDANT: NO, SIR.

16 THE COURT: DO YOU WANT A JURY TRIAL ON ANY OF THESE
17 CASES?

18 THE DEFENDANT: NO, SIR.

19 THE COURT: YOU ADMIT THESE CHARGES ARE TRUE?

20 THE DEFENDANT: YES, SIR.

21 THE COURT: YOU'RE PLEADING GUILTY BECAUSE YOU ARE, IN
22 FACT, GUILTY?

23 THE DEFENDANT: YES, SIR.

24 THE COURT: THE STATE'S GONNA GIVE ME THEIR VERSION OF
25 WHAT HAPPENED. WHEN THE STATE IS FINISHED, I'LL ASK YOU IF

1 ALL THAT IS TRUE. SO LISTEN CAREFULLY. MR. HUBBARD?

2 MR. HUBBARD: YES, SIR. MAY IT PLEASE THE COURT, YOUR
3 HONOR?

4 THE COURT: YES, SIR.

5 MR. HUBBARD: YOUR HONOR, THE FIRST INCIDENT OCCURRED
6 FEBRUARY THE 2ND OF 1998. THE DEFENDANT ALONG WITH A FELLOW
7 BY THE NAME OF NICHOLAS COOK BROKE INTO THE RESIDENCE OF
8 PHILIP CLAYTOR. THAT'S C-L-A-Y-T-O-R. HIS RESIDENCE IS
9 HERE IN LEXINGTON COUNTY. THEY BROKE IN BY KICKIN' OPEN A
10 DOOR AND WENT IN AND ONE OF THE ITEMS THEY STOLE WAS A THREE
11 BO PISTOL. THAT WAS THE BASIS FOR MAKIN' THIS A FIRST
12 DEGREE BURGLARY, YOUR HONOR, 'CAUSE HE CAME ARMED WITH A
13 DEADLY WEAPON.

14 FOUR DAYS LATER FEBRUARY THE 6TH 1998 HE AND NICHOLAS
15 COOK AGAIN BROKE INTO THE RESIDENCE OF A JEFFREY SMITH.
16 ONCE AGAIN THEY ENTERED BY KICKING IN A DOOR TO GET INTO THE
17 RESIDENCE. THEY TOOK A VARIETY OF ITEMS VALUED AT LESS THAN
18 \$1000. THE VICTIM IN THIS CASE IS SEEKING RESTITUTION OF
19 \$250. AND, YOUR HONOR, I'LL GIVE YOU A SUM TOTAL OF THE
20 RESTITUTION AT THE END.

21 THE COURT: OKAY.

22 MR. HUBBARD: THAT SAME DAY THE DEFENDANT MR. JONES AND
23 NICHOLAS COOK BROKE INTO THE RESIDENCE OF JACK WHITLOW.
24 AGAIN, THEY KICKED IN THE BACK DOOR AND STOLE A VARIETY OF
25 ITEMS ALL VALUED AT LESS THAN \$1000.

1 THAT SAME DAY, YOUR HONOR, THEY BROKE INTO THE
2 RESIDENCE OF THOMAS RAWL. HE'S THE MAGISTRATE RAWL HERE IN
3 LEXINGTON COUNTY, YOUR HONOR. THEY OPENED -- KICKED DOWN
4 HIS BACK DOOR, WENT INTO HIS HOUSE AND STOLE A 20 GAUGE
5 SHOTGUN. THAT'S THE BASIS FOR THE FIRST DEGREE BURGLARY ON
6 THIS CHARGE.

7 THAT SAME DAY FEBRUARY THE 6TH MR. COOK AND MR. JONES
8 THE DEFENDANT KICKED OPEN THE DOOR OF REBECCA ADDY, WENT
9 INTO HER RESIDENCE AND STOLE A VARIETY OF ITEMS TOTALING 5
10 HUNDRED DOLLARS, AND SHE'S SEEKING RESTITUTION IN THAT
11 AMOUNT.

12 AGAIN THAT SAME DAY MR. JONES AND MR. COOK BROKE INTO
13 THE RESIDENCE OF TRUDY MOORE WHO IS PRESENT HERE IN THE
14 COURTROOM, YOUR HONOR. THEY KICKED IN HER BACK DOOR, STOLE
15 A VARIETY OF ITEMS INCLUDING A SEVEN MILLIMETER RIFLE WHICH
16 IS THE BASIS FOR THE BURGLARY FIRST IN THIS CASE. THEY ALSO
17 AGAIN THEY STOLE A VARIETY OF OTHER ITEMS AND THEY ALSO
18 TRASHED HER HOUSE. AND AT THE APPROPRIATE TIME SHE WOULD
19 LIKE TO ADDRESS THE COURT ON THIS PARTICULAR BURGLARY.

20 YOUR HONOR, SEPTEMBER FIRST 1998 THE DEFENDANT
21 COMMITTED AN ARMED ROBBERY ON ALVIN LUCAS. HE WAS WITH
22 ANOTHER FELLOW AT THE TIME, THE DEFENDANT WAS A DEANDRE
23 BLACK. THIS OCCURRED IN CAYCE AT THE CAYCE BAIT & TACKLE
24 SHOP. AT THAT TIME THE VICTIM NOTICED THE DEFENDANT AND
25 DEANDRE BLACK ENTER HIS SHOP. THEY JUST KINDA LOOKED

1 AROUND; THEY LEFT; SOMETIME LATER THEY CAME BACK. ONE OF
2 THE INDIVIDUALS I BELIEVE IT WAS MR. BLACK ASKED FOR SOME
3 MINNOWS.

4 WHILE THE VICTIM WAS GETTING THE MINNOWS, MR. BLACK
5 WENT TO THE REST ROOM AND THEN MR. JONES TOOK A PISTOL FROM
6 BEHIND THE COUNTER THAT WAS KEPT THERE AT THE STORE AND
7 ROBBED THE VICTIM IN THIS CASE ALVIN LUCAS AND STOLE
8 APPROXIMATELY \$500.

9 YOUR HONOR, ON DECEMBER 9TH OF '98 THE DEFENDANT
10 TOGETHER WITH LUTHER GREG BROKE INTO THE RESIDENCE OF TAMMY
11 GANT. AND THAT'S HERE IN LEXINGTON COUNTY AS WELL, YOUR
12 HONOR. THIS WAS A BURGLARY DURING THE DAYTIME, THE SAME
13 M.O.; THEY KICKED IN A DOOR, STOLE A VARIETY OF ITEMS, ALL
14 OF WHICH AMOUNTED TO LESS THAN \$1000.

15 AND FINALLY, YOUR HONOR, THERE IS AN ARMED ROBBERY THAT
16 WAS COMMITTED BY THIS DEFENDANT ALONG WITH TWO OTHER
17 INDIVIDUALS. THIS HAPPENED JANUARY OF THIS YEAR, JANUARY
18 THE 2ND.

19 THE VICTIMS IN THAT CASE ARE SHANE MELBOURNE -- THERE'S
20 ALSO A DAVID LEE GRAY WHO WAS PRESENT. THE DEFENDANT ALONG
21 WITH TWO OTHER GUYS, ONE BY THE NAME OF TIMOTHY ARTLET AND
22 ANOTHER BY MICHAEL MCCOY WENT TO THE RESIDENCE OF THESE
23 INDIVIDUALS, HELD THEM AT GUNPOINT AND STOLE A VARIETY OF
24 MONEY AND JEWELRY. THE MONEY WAS ALMOST A THOUSAND THAT
25 THEY STOLE. THE MAN HOLDIN' THE GUN IN THIS CASE WAS MR.

1 JONES. MR. ARTLET WHOSE ROLE WAS SIMPLY COLLECTING THE
2 MONEY, AND I BELIEVE MR. MCCOY DID THE SAME THING. BUT THE
3 MAN WITH THE HANDGUN WAS MR. JONES.

4 YOUR HONOR, WE'VE CONTACTED ALL THE VICTIMS IN THIS
5 CASE EITHER BY PHONE OR IN WRITING.

6 THE TOTAL RESTITUTION SOUGHT IS \$1452. I DO HAVE THAT
7 BROKEN DOWN FOR PROBATION SO THEY CAN KNOW WHO TO SEND ANY
8 RESTITUTION TO AND I HAVE TOLD 'EM THAT BASED ON THESE --
9 EXCUSE ME -- I HAVE TOLD THE VICTIMS IN THIS CASE THAT BASED
10 ON THE NATURE OF THESE CHARGES, RESTITUTION IS -- IS A SLIM
11 POSSIBILITY IN THIS CASE BUT THAT I WOULD ASK FOR IT ANYWAY.
12 SOME VICTIMS HAVE NOT RESPONDED AS TO VICTIM IMPACT
13 INFORMATION, BUT I AM ASKING THAT ANY RESTITUTION BE JOINTLY
14 AND SEVERALLY DISTRIBUTED SO THAT THIS INDIVIDUAL IS JOINTLY
15 AND SEVERALLY LIABLE DUE TO THE FACT THAT CO-DEFENDANTS WERE
16 INVOLVED.

17 AS FAR AS ANY AGREEMENTS, YOUR HONOR, I TOLD MR.
18 LITTLEJOHN I WOULD NOT MAKE ANY RECOMMENDATIONS IN THIS
19 CASE. I DID TELL HIM THAT I'M NOT OPPOSED ON THE BURGLARY
20 FIRSTS TO YOUR HONOR GIVING A FIFTEEN-YEAR SENTENCE. BUT
21 THAT I WAS NOT MAKING ANY RECOMMENDATIONS AS TO CONCURRENT
22 VERSUS CONSECUTIVE OR TO ANYTHING ELSE AS FAR AS THESE
23 SENTENCES ARE CONCERNED. BASICALLY I'M JUST NOT GOING TO
24 TAKE A POSITION ON THE SENTENCE.

25 IN ADDITION, YOUR HONOR, I HAVE AGREED TO DISMISS

1 NUMEROUS CHARGES, ONE BEING A SERIES OF CHARGES DATING BACK
2 FROM FEBRUARY OF '97.

3 THERE WAS A TRAFFICKING IN CRACK CHARGE WHERE THE DRUG
4 ANALYSIS CAME UP NEGATIVE. THERE WAS A NO DRIVER'S LICENSE
5 CHARGE ALONG WITH THAT, AND THEN THERE WAS A CONSPIRACY TO
6 DISTRIBUTE IMITATION CONTROLLED SUBSTANCES BASED ON THE
7 TRAFFICKING CHARGE SINCE IT WAS NEGATIVE.

8 FROM OCTOBER OF '97 THERE WAS A BREAKING AND ENTERING
9 AUTO. I'M DISMISSING THAT.

10 FROM NOVEMBER OF '97 I'M DISMISSING TWO UNLAWFULLY
11 CARRYING PISTOL CHARGES AND POSSESSION OF CRACK COCAINE.

12 I'M ALSO DISMISSING FROM THESE VARIOUS BURGLARIES SEVEN
13 PETTY LARCENIES.

14 YOUR HONOR, I'M DISMISSING TWO FORGERIES FROM FEBRUARY
15 OF '98. ALSO FROM THE ARMED ROBBERY OF SEPTEMBER OF '98 I'M
16 DISMISSING A CRIMINAL CONSPIRACY AND TWO FIREARM VIOLATIONS.
17 ALSO FROM FEBRUARY OF '99 I'M DISMISSING A CRIMINAL
18 CONSPIRACY AND A PETTY LARCENY, AND FROM APRIL OF '99 I'M
19 DISMISSING ANOTHER PISTOL CHARGE, ACTUALLY TWO PISTOL
20 CHARGES FROM THAT INCIDENT. AND FINALLY, YOUR HONOR, I'M
21 DISMISSING A BURGLARY CHARGE FROM APRIL OF 1999. AND, YOUR
22 HONOR, AGAIN, JUST AT THE APPROPRIATE MOMENT MS. MOORE WOULD
23 LIKE TO SPEAK.

24 THE COURT: OKAY. THANK YOU. MR. JONES, IS EVERYTHING
25 THE SOLICITOR TOLD ME TRUE?

1 THE DEFENDANT: YES, SIR.

2 THE COURT: HAS ANYONE FORCED YOU, THREATENED YOU,
3 COERCED YOU IN ANY WAY TO GET YOU TO ENTER YOUR PLEAS?

4 THE DEFENDANT: NO, SIR.

5 THE COURT: ANY PLEA NEGOTIATIONS HAVE TO BE FULLY
6 STATED ON THE RECORD, TAKEN DOWN BY THE COURT REPORTER OR
7 YOU LOSE ANY PROMISES THEY DON'T TELL ME ABOUT. YOU
8 UNDERSTAND?

9 THE DEFENDANT: YES, SIR.

10 THE COURT: MR. LITTLEJOHN, ARE ALL THE PLEA
11 NEGOTIATIONS ON THE RECORD?

12 MR. LITTLEJOHN: YES, YOUR HONOR.

13 THE COURT: SO OTHER THAN WHAT'S ON THE RECORD NO, MR.
14 JONES, HAS ANYONE PROMISED YOU ANYTHING OR OFFERED YOU ANY
15 HOPE OF REWARD TO GET YOU TO PLEAD?

16 THE DEFENDANT: NO, SIR.

17 THE COURT: ARE YOU FULLY SATISFIED WITH YOUR LAWYER?

18 THE DEFENDANT: YES, SIR.

19 THE COURT: DO YOU HAVE ANY COMPLAINT OF ANY KIND
20 AGAINST YOUR ATTORNEY, LAW ENFORCEMENT OFFICIALS OR ANYBODY
21 IN YOUR CASE?

22 THE DEFENDANT: NO, SIR.

23 THE COURT: HAVE YOU BEEN ABLE TO MEET WITH MR.
24 LITTLEJOHN FOR A SUFFICIENT PERIOD OF TIME AND A SUFFICIENT
25 NUMBER OF TIMES FOR HIM TO REPRESENT YOU PROPERLY?

1 THE DEFENDANT: YES, SIR.

2 THE COURT: ANYBODY ELSE YOU NEED HIM TO TALK TO, ANY
3 WITNESSES OR ANYBODY ELSE AT ALL?

4 THE DEFENDANT: NO, SIR.

5 THE COURT: ANYTHING ELSE YOU NEED HIM TO INVESTIGATE?

6 THE DEFENDANT: NO, SIR.

7 THE COURT: YOU HAVE UNDERSTOOD ALL YOUR TALKS WITH
8 HIM?

9 THE DEFENDANT: YES, SIR.

10 THE COURT: ONE OF YOUR CASES HAS NOT BEEN TO THE GRAND
11 JURY. IF YOU WANT THAT CASE TO GO BEFORE THE GRAND JURY, AT
12 LEAST 12 OF THE 18 GRAND JURORS WOULD HAVE TO AGREE YOU'RE
13 PROBABLY GUILTY ON THAT CHARGE OR THAT CHARGE WOULD STOP.
14 YOU UNDERSTAND?

15 THE DEFENDANT: YES, SIR.

16 THE COURT: PAPER INDICATES YOU WANT TO GIVE UP THAT
17 RIGHT. IS THAT RIGHT?

18 THE DEFENDANT: YES, SIR.

19 THE COURT: IS THAT YOUR OWN DECISION MADE OF YOUR OWN
20 FREE WILL?

21 THE DEFENDANT: YES, SIR.

22 THE COURT: NOW, MR. JONES, I'M GOING TO ASK THE
23 ATTORNEYS TO FOLLOW BEHIND ME ON THIS AND MAKE SURE I'VE GOT
24 THE PENALTIES CORRECT. DO YOU UNDERSTAND THAT FOR ARMED
25 ROBBERY I CAN PUT YOU IN PRISON FOR 30 YEARS AND I MUST GIVE

1 YOU NOT LESS THAN 10 YEARS?

2 THE DEFENDANT: YES, SIR.

3 THE COURT: DO YOU UNDERSTAND THAT FOR BURGLARY IN THE
4 FIRST DEGREE I CAN PUT YOU IN PRISON FOR LIFE?

5 THE DEFENDANT: YES, SIR.

6 THE COURT: DO YOU UNDERSTAND THAT FOR BURGLARY IN THE
7 SECOND DEGREE I CAN PUT YOU IN PRISON FOR 15 YEARS?

8 THE DEFENDANT: YES, SIR.

9 THE COURT: NOW NORMALLY, MR. JONES, I DON'T DISCUSS
10 ANYTHING ABOUT PAROLE, PAROLE ELIGIBILITY OR EARLY RELEASE
11 WITH ANYONE WHO'S ENTERING A PLEA OF GUILTY, AND IT'S MY
12 FIRM CONVICTION THAT NO ONE CAN TELL YOU WHEN YOU MIGHT BE
13 RELEASED FROM PRISON SOONER THAN THE FULL AMOUNT OF TIME
14 YOU'RE SENTENCED TO SERVE. IF YOU PLEAD GUILTY, YOU HAVE TO
15 BE PREPARED TO DO EVERY SINGLE DAY OF THE SENTENCE DAY FOR
16 DAY. YOU UNDERSTAND?

17 THE DEFENDANT: YES, SIR.

18 THE COURT: NOW HAVING SAID THAT, I DO WANT TO MAKE
19 SURE YOU UNDERSTAND CERTAIN THINGS ABOUT THESE LAWS, AND I'M
20 SURE YOUR ATTORNEY HAS BEEN OVER THEM WITH YOU. YOU
21 UNDERSTAND THEY'RE ALL FELONIES?

22 THE DEFENDANT: YES, SIR.

23 THE COURT: YOU UNDERSTAND THAT ON BURGLARY THERE IS A
24 PROVISION THAT IF YOU GET A CERTAIN COMBINATION OF
25 BURGLARIES YOU FACE HIGHER PUNISHMENT BECAUSE OF THE

1 COMBINATION.

2 THE DEFENDANT: YES, SIR.

3 THE COURT: YOU UNDERSTAND THAT BURGLARY IN THE FIRST
4 DEGREE IS CLASSIFIED AS A VIOLENT OFFENSE?

5 THE DEFENDANT: YES, SIR.

6 THE COURT: YOU UNDERSTAND THAT ARMED ROBBERY IS
7 CLASSIFIED AS A VIOLENT OFFENSE?

8 THE DEFENDANT: YES, SIR.

9 THE COURT: DO YOU UNDERSTAND THAT VIOLENT OFFENSES ARE
10 TREATED DIFFERENTLY AND MORE HARSHLY BY THE DEPARTMENT OF
11 CORRECTIONS THAN NON-VIOLENT OFFENDERS?

12 THE DEFENDANT: YES, SIR.

13 THE COURT: VIOLENT OFFENDERS ARE NOT ELIGIBLE FOR
14 PROGRAMS AND THE PLACEMENTS AND THE THINGS THAT NON-VIOLENT
15 OFFENDERS ARE ELIGIBLE FOR. YOU UNDERSTAND?

16 THE DEFENDANT: YES, SIR.

17 THE COURT: NOW DO YOU UNDERSTAND THAT ON BOTH THE
18 BURGLARY IN THE FIRST DEGREE AND ARMED ROBBERY CASES, THOSE
19 ARE CLASSIFIED BY THE LEGISLATURE AS MOST SERIOUS OFFENSES?
20 THAT'S PART OF THE 2 STRIKES YOU'RE OUT AND 3 STRIKES YOU'RE
21 OUT LEGISLATION.

22 THE DEFENDANT: YES, SIR.

23 THE COURT: SO YOU UNDERSTAND THAT THESE ARE ALL
24 STRIKES AND THEY'RE ALL MOST SERIOUS STRIKES WHICH MEANS
25 THEY'RE IN THE TWO-STRIKES-AND-YOU'RE-OUT CATEGORY?

1 THE DEFENDANT: YES, SIR.

2 THE COURT: DO YOU UNDERSTAND THAT IF YOU GET THE RIGHT
3 COMBINATION OF STRIKES THAT YOU DO LIFE WITHOUT PAROLE?

4 THE DEFENDANT: YES, SIR.

5 THE COURT: DO YOU UNDERSTAND THAT MEANS WHAT IT SOUNDS
6 LIKE, THAT YOU DO NOT GET OUT OF PRISON UNTIL THEY CARRY YOU
7 OUT IN A COFFIN?

8 THE DEFENDANT: YES, SIR.

9 THE COURT: DO YOU UNDERSTAND THAT BOTH THE BURGLARY
10 FIRST CASES AND THE ARMED ROBBERY CASES ARE CLASSIFIED BY
11 THE LEGISLATURE AS NO-PAROLE OFFENSES WHICH IS PART OF THE
12 TRUTH-IN-SENTENCING LAW.

13 THE DEFENDANT: YES, SIR.

14 THE COURT: NOW BASICALLY WHAT THAT BOILS DOWN TO IS
15 THAT ON THOSE CASES WHATEVER SENTENCE YOU RECEIVE, YOU HAVE
16 TO DO NOT LESS THAN 85 PERCENT OF THAT TIME BEFORE YOU COULD
17 POSSIBLY BE RELEASED FROM PRISON?

18 THE DEFENDANT: YES, SIR.

19 THE COURT: DO YOU UNDERSTAND THAT WITH NO-PAROLE
20 OFFENSES YOU AUTOMATICALLY COME OUT ON SUPERVISION?

21 THE DEFENDANT: YES, SIR.

22 THE COURT: WHEN YOU COME OUT THERE WILL AUTOMATICALLY
23 BE IMPOSED A PERIOD OF SUPERVISION, NORMALLY 2 YEARS, AND IF
24 YOU VIOLATE THE SUPERVISION YOU CAN BE BROUGHT BACK BEFORE
25 THE COURT AND CHARGED WITH A SEPARATE OFFENSE FOR VIOLATING

1 THE SUPERVISION AND YOU CAN GET A YEAR IN PRISON JUST FOR
2 VIOLATING THE SUPERVISION. YOU UNDERSTAND?

3 THE DEFENDANT: YES, SIR.

4 THE COURT: NOW I HAVE NO IDEA WHAT I'M GOING TO
5 SENTENCE YOU TO RIGHT AT THIS POINT. I HAVEN'T HEARD FROM
6 YOUR LAWYER, BUT I'M GONNA USE A ROUND FIGURE AS AN EXAMPLE.
7 ALRIGHT?

8 THE DEFENDANT: YES, SIR.

9 THE COURT: IF YOU GOT A TEN-YEAR SENTENCE ON A NO-
10 PAROLE OFFENSE, AND YOU GOT OUT WHETHER YOU GOT OUT IN EIGHT
11 AND A HALF YEARS OR TEN YEARS, YOU AUTOMATICALLY GO ON
12 SUPERVISION. IF YOU CONTINUED TO MESS UP ON SUPERVISION
13 EACH TIME YOU GOT OUT, DO YOU UNDERSTAND YOU COULD DO TWENTY
14 YEARS ON A TEN-YEAR SENTENCE?

15 THE DEFENDANT: YES, SIR.

16 THE COURT: ALRIGHT. HOW OLD ARE YOU?

17 THE DEFENDANT: 19, SIR.

18 THE COURT: DO YOU UNDERSTAND I CANNOT PUT YOU IN A
19 YOUTHFUL OFFENDER DIVISION?

20 THE DEFENDANT: YES, SIR.

21 THE COURT: ALRIGHT. UNDERSTANDING EVERYTHING WE'VE
22 BEEN OVER NOW, MR. JONES, ARE YOU CERTAIN THAT YOU WANT TO
23 PLEAD GUILTY AND GIVE UP YOUR RIGHTS?

24 THE DEFENDANT: YES, SIR.

25 THE COURT: IF I'VE CALCULATED THIS CORRECTLY, AND I

1 WILL TELL YOU THAT MY MATH IS NOT THE GREATEST IN THE WORLD,
2 YOU FACE THE POSSIBILITY OF 3 LIFE SENTENCES PLUS 120 YEARS.
3 YOU UNDERSTAND THAT?

4 THE DEFENDANT: YES, SIR.

5 THE COURT: ANYTHING ELSE I NEED TO COVER WITH HIM,
6 GENTLEMEN, BEFORE I ACCEPT HIS PLEA?

7 MR. HUBBARD: YOUR HONOR, I DON'T RECALL ANYTHING ELSE
8 THAT YOU MIGHT'VE MISSED.

9 MR. LITTLEJOHN: NOR DO I, YOUR HONOR.

10 THE COURT: OKAY. I TOLD YOU ABOUT THE GRAND JURY
11 WAIVER PRESENTMENT.

12 THE DEFENDANT: YES, SIR.

13 THE COURT: ALRIGHT. THEN THE COURT FINDS THAT MR.
14 JONES HAS MADE A FREE, KNOWING, VOLUNTARY AND INTELLIGENT
15 DECISION TO WAIVE HIS RIGHTS AND ENTER HIS PLEAS OF GUILTY.
16 HE'S DONE SO UPON THE ADVICE OF COUNSEL WITH WHOM HE'S FULLY
17 SATISFIED; THERE IS A FACTUAL BASIS FOR EACH PLEA AND EACH
18 IS ACCEPTED. HE ALSO HAS MADE A FREE, KNOWING, VOLUNTARY
19 AND INTELLIGENT DECISION TO ENTER HIS WAIVER OF PRESENTMENT
20 TO THE GRAND JURY ON THE CASE THAT HAS NOT BEEN TRUE-BILLED
21 BY THE GRAND JURY. ALRIGHT. MR. HUBBARD, I'LL BE HAPPY TO
22 HEAR FROM ANY VICTIMS OR VICTIM'S REPRESENTATIVE.

23 MR. HUBBARD: YES, SIR. THIS IS TRUDY MOORE.

24 MS. MOORE: THANK YOU, YOUR HONOR. I WOULD JUST LIKE
25 TO LET YOU KNOW THAT THE DAY BEFORE THIS INCIDENT OCCURRED,

1 I HAPPENED TO BE OFF AND I CLEANED MY HOUSE.

2 SO THE NEXT DAY WHEN MY HOUSE WAS BROKE INTO, I WALKED
3 IN AND I COULD FOLLOW THIS INDIVIDUAL'S FOOTSTEPS THROUGH MY
4 HOUSE. BEST I COULD TELL, HE WENT INTO EVERY ROOM IN MY
5 HOUSE.

6 HE WENT INTO MY BABY'S ROOM. YOU COULD TELL WHERE HE
7 KNELT DOWN AND LOOKED UNDER MY BABY'S BED.

8 HE WENT IN MY OTHER CHILD'S ROOM AND HE OPENED HIS
9 CLOSETS. HE WENT THROUGH HIS TOYS AND HE WENT THROUGH HIS
10 THINGS.

11 THEN HE WENT INTO MY HUSBAND AND MY BEDROOM, AND I WANT
12 YOU TO KNOW THAT I HAVE A HOPE CHEST THAT BELONGS TO MY
13 HUSBAND'S MOTHER WHO HAS SINCE PASSED AWAY. INSTEAD OF
14 OPENING IT, HE RIPPED IT OPEN AND TORE IT APART. SHE BOUGHT
15 THAT WHEN SHE WAS 16 YEARS OLD, AND THERE ARE SOME THINGS
16 THAT CAN'T BE REPLACED. HE THEN TOOK THE DRAWERS OUT OF
17 EVERY CHEST-OF-DRAWERS THAT I HAD AND EVERYTHING AND STROWED
18 MY CLOTHES FROM UNDERWEAR TO T-SHIRTS ALL OVER THAT ROOM.

19 MY HOUSE WAS RANSACKED.

20 HE WENT UPSTAIRS IN MY HUSBAND'S OFFICE. THERE WAS A
21 DESK. INSTEAD OF OPENING THE DRAWER, HE RIPPED IT FROM THE
22 DESK.

23 I CANNOT TELL YOU HOW I FEEL, YOUR HONOR.

24 LIKE I SAID, I FOLLOWED HIS FOOTSTEPS THROUGH THE
25 HOUSE, AND I TOLD THE POLICE RIGHT THERE IS WHERE HE WENT,

1 AND I COULD TAKE THEM IN EVERY PART OF MY HOUSE WHERE HE HAD
2 BEEN.

3 HE DID NOT TAKE MUCH MONETARILY FROM US, BUT,
4 OTHERWISE, SOME THINGS CAN NEVER BE REPLACED.

5 I HAVE TWO SMALL CHILDREN. AT THE TIME MY SON WAS
6 FIXING TO TURN FOUR. AND TO THIS DAY, HE STILL ASKS ME,
7 "MOMMY, ARE THE BAD MEN COMIN' BACK TO MY HOUSE TO TRY AND
8 TAKE ME AWAY OR TAKE MY THINGS?" I HAVE TO CONSOLE HIM AND
9 SAY, "SON, I WILL ALWAYS TAKE CARE OF YOU." BUT IN THE BACK
10 OF MY MIND SOME PART OF MY LIFE HAS BEEN CHANGED FROM THIS.

11 I ALSO TRIED TO CHANGE MY INSURANCE JUST FROM THIS
12 INCIDENT WHICH I HAD NOTHING TO DO WITH. MY DEDUCTIBLE WAS
13 GOING UP TO \$1000 BECAUSE OF THIS INCIDENT. I'M STILL BEING
14 VICTIMIZED EVEN THOUGH THIS OCCURRED A YEAR AND A HALF AGO,
15 YOUR HONOR. I DO APPRECIATE YOU LISTENING TO ME, AND I KNOW
16 THAT YOU WILL TAKE THIS INTO CONSIDERATION. THANK YOU VERY
17 MUCH.

18 THE COURT: THANK YOU.

19 THE DEFENDANT: EXCUSE ME, YOUR HONOR.

20 THE COURT: YES?

21 THE DEFENDANT: I'D LIKE TO SAY SOMETHIN'. I JUST WANT
22 TO APOLOGIZE TO EVERYBODY THAT THIS HAPPENED TO. I WAS
23 YOUNG. I HAVE DRUG PROBLEMS OR WHATEVER. I'M JUST TRYIN'
24 TO GET HELP AND PUT ALL THIS STUFF BEHIND ME, SIR.

25 THE COURT: THANK YOU.

1 THE DEFENDANT: I WAS JUST YOUNG AND STUPID.

2 THE COURT: HE HAVE A PRIOR RECORD?

3 MR. HUBBARD: YOUR HONOR, HE DOES NOT HAVE AN ADULT
4 RECORD. I DON'T KNOW WHAT, IF ANY, JUVENILE RECORD HE HAS.

5 THE COURT: ALRIGHT. WELL, IS THERE ANY INDICATION
6 THAT THESE PEOPLE WERE TARGETED BECAUSE THEY WORKED FOR
7 PROBATION OR ONE HAPPENED TO BE A MAGISTRATE?

8 MR. HUBBARD: YOUR HONOR, AS FAR AS I KNOW, NO, SIR,
9 BECAUSE THESE OTHER VICTIMS BUT FOR MAGISTRATE RAWLS AND BUT
10 FOR MS. MOORE, THEY HAVE A VARIETY OF DIFFERENT JOBS. I
11 DON'T REALLY SEE A RHYME OR REASON AS TO WHY HE WENT INTO
12 THE HOUSE AS HE DID.

13 THE COURT: OKAY. ANYTHING ELSE FROM THE STATE AT THIS
14 POINT?

15 MR. HUBBARD: NO, SIR, YOUR HONOR.

16 THE COURT: OKAY. MR. LITTLEJOHN, THEN WE'RE TO YOU.

17 MR. LITTLEJOHN: YOUR HONOR, FIRST OFF, AS TO THE
18 COURT'S CONCERN AS TO WHETHER THEY WERE TARGETED, I THINK I
19 CAN TELL THE COURT THAT THIS YOUNG MAN WAS AMAZED WHEN I
20 TOLD HIM WHOSE HOUSES HE HAD BROKEN INTO. I THINK IT REALLY
21 SHOCKED HIM.

22 YOUR HONOR, AS INDICATED, HE'S NINETEEN YEARS OLD.

23 HE WENT THROUGH THE 10TH GRADE AT LEXINGTON HIGH
24 SCHOOL.

25 WITH HIM TODAY ARE HIS MOTHER, HIS FATHER, TWO OF HIS

1 GRANDPARENTS, TWO OF HIS GRANDMOTHERS, I THINK TWO OF HIS
2 AUNTS, AND OTHER FAMILY MEMBERS WHO WOULD LIKE TO SPEAK TO
3 THE COURT AT THE APPROPRIATE TIME.

4 YOUR HONOR, AS INDICATED, YOUNG MR. JONES HERE HAS A
5 DRUG PROBLEM WHICH HE WANTS HELP WITH, AND, APPARENTLY, THAT
6 IS WHAT CAUSED ALL THESE SITUATIONS HE GOT HIMSELF INTO.

7 YOUR HONOR, HE'S A VERY POLITE, SOFT-SPOKEN MAN. IT'S
8 JUST KIND OF AMAZING TO ME THAT HE GOT INTO ALL THIS
9 TROUBLE.

10 YOUR HONOR, I BELIEVE I'M CORRECT WHEN I SAY WHEN HE
11 WAS CONFRONTED HE CONFESSED TO MOST, IF NOT ALL, OF THESE
12 CRIMES. YOUR HONOR, HE HAS TOLD ME THAT HE IS TRYING TO GET
13 HELP WITH HIS DRUG PROBLEM. HE WOULD ASK THE COURT TO MAKE
14 THAT PART OF THE SENTENCE THAT HE BE GIVEN SOME DRUG
15 COUNSELING WITHIN THE DEPARTMENT OF CORRECTIONS. AS I
16 UNDERSTAND, THEY HAVE VARIOUS PROGRAMS WHERE THAT CAN OCCUR.
17 YOUR HONOR, AT THIS TIME I MIGHT ASK ANY OF HIS FAMILY
18 MEMBERS TO ADDRESS THE COURT. THEY KNOW THIS YOUNG MAN MUCH
19 BETTER THAN DO I AND I THINK THEY CAN TELL THE COURT HOW OUT
20 OF CHARACTER THIS REALLY IS FOR HIM.

21 THE COURT: ALRIGHT. THANK YOU. ANYONE WHO WISHES TO
22 ADDRESS THE COURT I'D BE HAPPY TO HEAR FROM YOU. YOU HAVE
23 TO FIRST STATE YOUR NAME AND REALIZE THAT THE COURT REPORTER
24 HAS TO TAKE IT DOWN. SO IF YOU GET SO EMOTIONAL THAT YOU
25 CAN'T TALK -- I DON'T KNOW THAT ANY OF YOU WILL, BUT

1 SOMETIMES IT HAPPENS. YOU JUST UNDERSTAND WE HAVE TO STOP
2 BECAUSE SHE'S GOT TO PUT DOWN WHAT YOU SAY. ALRIGHT.

3 MR. WILLIS: MY NAME IS ALVIN WILLIS.

4 I'M TREMAINE'S FATHER.

5 AND I'D LIKE TO APOLOGIZE TO YOU TOO 'CAUSE I
6 UNDERSTAND HOW YOUR LIFE HAS BEEN CHANGED.

7 YOUR HONOR, TREMAINE WAS A NICE, SOFT-SPOKEN KID WHO
8 HAPPENED TO GET ENTICED INTO THE DRUG AREA. WHEN HE WENT
9 INTO THAT DRUG AREA HE BECAME -- HE DID THE THINGS HE SAYS
10 HE DID, BUT, YOUR HONOR, HE WAS 18 YEARS OLD, AND I ASK YOU,
11 I'M BEGGING YOU AS A FATHER NOT TO SENTENCE HIM FOR LIFE FOR
12 SOMETHING HE DID AT A VERY YOUNG AGE.

13 HE STILL HAS A CHANCE TO COME OUT INTO SOCIETY AND MAKE
14 A MAN OF HIMSELF. AND THAT'S WHAT I HOPE AND PRAY THAT HE
15 DOES. BUT IT'S IN YOUR HANDS NOW, YOUR HONOR, AND I'M
16 BEGGING YOU NOT TO SEND HIM TO JAIL FOREVER FOR BEING -- HE
17 WASN'T A KID.

18 HE WAS NINETEEN. BUT HE WAS NINETEEN AND WE ALL BEEN
19 NINETEEN AT ONE TIME. AND WE ALL HAVE DONE WRONG THINGS.
20 I'VE DONE 'EM, BUT NOT TO THE DEGREE. AND I UNDERSTAND
21 PUNISHMENT IS WARRANTED, BUT I JUST ASK THAT YOU TAKE INTO
22 CONSIDERATION THAT THIS IS A LIFE, AND DON'T JUST THROW IT
23 AWAY FOR -- THERE WERE SERIOUS INDISCRETIONS, BUT DON'T JUST
24 THROW HIS LIFE AWAY COMPLETELY, YOUR HONOR. PLEASE, GIVE
25 HIM A CHANCE TO COME OUT AND LIVE LIKE NORMAL PEOPLE.

1 THERE'S A LOT MORE I COULD SAY, BUT I KIND OF -- THANK YOU,
2 SIR.

3 THE COURT: THANK YOU VERY MUCH.

4 MS. WILLIS: YOUR HONOR, I AM TREMAINE'S GRANDMOTHER.

5 THE COURT: WHAT'S YOUR NAME, MA'AM?

6 MS. WILLIS: LUCILLE WILLIS.

7 HE IS STANDIN' HERE AND HEAR ALL OF THESE THINGS THAT
8 TREMAINE SAID HE HAS DONE, IT'S A SURPRISE TO ME. TREMAINE
9 WAS LOVIN', SWEET CHILD. HE WOULD BE TO MY HOUSE AND I
10 WOULD NEVER HAVE A PROBLEM OUT OF HIM, BUT TO HEAR THIS --
11 TREMAINE GOT CAUGHT UP IN DRUGS. HE GOT CAUGHT UP. BECAUSE
12 I WENT TO A DRUG HOUSE AND TRIED TO FIND HIM. THEY TOLD ME
13 THEY HADN'T SEEN HIM THEN. I WENT TO LOOK FOR HIM. AND I
14 COULDN'T FIND HIM. AND HE DIDN'T GET HELP. HE DIDN'T GET
15 ANY HELP. AND HE JUST KEPT ON WITH THAT DRUG CROWD. AND SO
16 IT'S WRONG. I'M SORRY THAT HE WENT IN PEOPLE'S HOUSES AND
17 HURT PEOPLE. I'M SORRY FOR IT. BUT I JUST HOPE YOU -- AND
18 I ASK THE LORD TO HAVE MERCY UPON HIM. THANK YOU.

19 THE COURT: THANK YOU, MA'AM. ANYTHING ELSE, MR.
20 LITTLEJOHN?

21 MR. LITTLEJOHN: NO, YOUR HONOR. THIS IS TREMAINE'S
22 MOTHER HERE. SHE SUFFERS FROM LOU GEHRIG'S DISEASE, AND
23 HE'S BEEN TAKING CARE OF HER OF LATE. YOUR HONOR, AS
24 INDICATED EARLIER, THE STATE DOES NOT OPPOSE A FIFTEEN-YEAR
25 SENTENCE ON THE BURGLARY FIRST CHARGES. I WOULD ASK THE

1 COURT TO SERIOUSLY CONSIDER RUNNING THE OTHER CHARGES
2 CONCURRENT. I WOULD POINT OUT THAT OF THESE CHARGES I
3 BELIEVE 5 OF 'EM OCCURRED ON THE SAME DAY WHICH IS NO REAL
4 JUSTIFICATION BUT IT WAS KIND OF ONE CONTINUOUS SPREE ON
5 THAT DATE. YOUR HONOR, I'D JUST ASK THE COURT TO CONSIDER
6 THAT AND GIVE HIM -- THE CIRCUMSTANCES OF THIS YOUNG MAN'S
7 LIFE AT THIS POINT.

8 THE COURT: THANK YOU VERY MUCH. ALRIGHT. WELL, IF
9 THERE'S NOTHING ELSE I'M GONNA LET YOU FOLKS SIT DOWN
10 BECAUSE IT'S GOING TO TAKE ME A LONG TIME TO WRITE ALL THIS.

11 (THE FOLLOWING OCCURRED SHORTLY AFTER.)

12 ALRIGHT. MR. JONES, AT A TIME LIKE THIS I ALWAYS FEEL
13 LIKE I NEED TO SAY SOMETHING, BUT THE BEST THING FOR ME TO
14 DO IS JUST KEEP THOSE THOUGHTS TO MYSELF. I DO WANT TO SAY
15 THAT I HAVE ONE CERTAINTY IN THIS, AND THAT IS THAT YOU'VE
16 COME FROM A VERY FINE FAMILY. AND I DEAL WITH DRUG ADDICTS
17 PROBABLY MORE INTENSIVELY THAN ANY OTHER CIRCUIT JUDGE, AND
18 I UNDERSTAND WHAT DRUGS DO TO PEOPLE, BUT THERE IS A LINE
19 THAT YOU JUST CANNOT CROSS AND VIOLENCE IS THE PRINCIPAL
20 DETERMINING FACTOR.

21 SO WITHOUT BELABORING THIS ANYMORE, THE SENTENCE OF THE
22 COURT ON INDICTMENT 245B BURGLARY IN THE SECOND DEGREE IS 15
23 YEARS PLUS COST AND ASSESSMENTS. CREDIT SEVEN MONTHS OF
24 JAIL TIME. I'M DIRECTING THE ADDICTIONS TREATMENT UNIT
25 WHILE INCARCERATED. THERE'S A MANDATORY 100 DOLLAR

1 SURCHARGE ON EACH OF THESE CASES THAT I CANNOT WAIVE. YOU
2 HAVE A YEAR FROM THE TIME YOU'RE RELEASED TO PAY THEM. YOU
3 UNDERSTAND?

4 THE DEFENDANT: YES, SIR.

5 THE COURT: THE SENTENCE OF THE COURT ON INDICTMENT
6 2459 BURGLARY IN THE SECOND DEGREE IS 15 YEARS. CREDIT 7
7 MONTHS SERVED. PLUS COST AND ASSESSMENTS. RESTITUTION OF
8 \$500 PLUS THE TWENTY PERCENT HANDLING FEE IS ORDERED AT A
9 RATE SET BY THE PROBATION, PARDON AND PAROLE SERVICES FOR
10 REBECCA ADDY. A.T.U. PAY THE SURCHARGE WITHIN A YEAR OF
11 RELEASE.

12 2460 BURGLARY IN THE FIRST DEGREE, THE SENTENCE IS 30
13 YEARS, PLUS COST AND ASSESSMENTS. CREDIT 7 MONTHS JAIL
14 TIME. CONCURRENT. RESTITUTION OF \$702 PLUS A 20 PERCENT
15 FEE IS ORDERED UPON YOUR RELEASE AT A RATE SET BY THE
16 PROBATION, PAROLE AND PARDON SERVICES FOR TRUDY MOORE.
17 A.T.U. WHILE INCARCERATED. PAY THE SURCHARGE WITHIN A YEAR
18 OF RELEASE.

19 2471 BURGLARY IN THE SECOND DEGREE. SENTENCE IS
20 FIFTEEN YEARS PLUS COST AND ASSESSMENTS. CREDIT SEVEN
21 MONTHS SERVED. RESTITUTION OF 2 HUNDRED 50 DOLLARS PLUS A
22 TWENTY PERCENT FEE IS ORDERED AT A RATE SET BY THE
23 PROBATION, PARDON AND PAROLE SERVICES FOR JEFFREY SMITH.
24 A.T.U. WHILE INCARCERATED. PAY THE SURCHARGE WITHIN A YEAR
25 OF RELEASE.

1 2472 BURGLARY IN THE FIRST DEGREE, THE SENTENCE IS 30
2 YEARS PLUS COST AND ASSESSMENTS. CREDIT 7 MONTHS OF JAIL
3 TIME. PAY THE SURCHARGE WITHIN A YEAR OF RELEASE. AND
4 A.T.U.

5 2473 BURGLARY IN THE FIRST DEGREE 30 YEARS PLUS COST
6 AND ASSESSMENTS. CREDIT 7 MONTHS JAIL TIME. PAY THE
7 SURCHARGE WITHIN A YEAR OF YOUR RELEASE. AND A.T.U. WHILE
8 INCARCERATED.

9 2654 ARMED ROBBERY, THIRTY YEARS, PLUS COST AND
10 ASSESSMENTS. CREDIT SEVEN MONTHS JAIL TIME. A.T.U. WHILE
11 INCARCERATED. PAY THE SURCHARGE WITHIN A YEAR OF RELEASE.

12 2655 BURGLARY IN THE SECOND DEGREE, FIFTEEN YEARS PLUS COST
13 AND ASSESSMENTS. CREDIT SEVEN MONTHS JAIL TIME. A.T.U.
14 WHILE INCARCERATED. AND PAY THE SURCHARGE WITHIN A YEAR OF
15 RELEASE. AND ON INDICTMENT 3567 ARMED ROBBERY, THE SENTENCE
16 IS THIRTY YEARS PLUS COST AND ASSESSMENTS. CREDIT SEVEN
17 MONTHS JAIL TIME. A.T.U. WHILE INCARCERATED. PAY THE
18 SURCHARGE WITHIN A YEAR OF RELEASE. ALL THE SENTENCES RUN
19 CONCURRENTLY. GOOD LUCK TO YOU, SIR.

20 MR. HUBBARD: THANK YOU, YOUR HONOR.

21 MR. LITTLEJOHN: THANK YOU, YOUR HONOR.

22 *****ENDOFTRANSCRIPT*****
23
24
25

CERTIFICATE

I, THE UNDERSIGNED, SMOKEY PERRY, OFFICIAL
AND CERTIFIED COURT REPORTER FOR THE ELEVENTH JUDICIAL
CIRCUIT AND NOTARY PUBLIC FOR THE STATE OF SOUTH
CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS
A TRUE AND ACCURATE TRANSCRIPT TO THE BEST OF MY
ABILITY AND SKILL.

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

Smokey Perry

8-15-2000

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON) COURT OF COMMON PLEAS
) ELEVENTH JUDICIAL CIRCUIT

Alwine T. Jones,)
)
) Motion
 APPLICANT,) Hearing
) 2012-CP-32-1046
)
 -VS-)
)
 State of South Carolina,)
)
 RESPONDENT.)
 _____)

BEFORE THE HONORABLE EDGAR W. DICKSON, JUDGE

AUGUST 16, 2013

LEXINGTON, SOUTH CAROLINA

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

Tommy A. Thomas, Esq.
 Tristan Shaffer, Esq.
 For the Applicant

Mary Williams, Esq.
 For the Respondent

REMA K. GANTT THOMAS
 CIRCUIT COURT REPORTER

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1 (The defendant, together with counsel, was
2 personally present in the courtroom.)

3 THE COURT: On Mr. Jones, I've got a notice
4 that says motion hearing.

5 MS. WILLIAMS: Yes, sir, it's only a motion
6 hearing at this point.

7 THE COURT: Okay.

8 MS. WILLIAMS: It's not an evidentiary
9 hearing today. It's actually based on the State's
10 motion to dismiss this matter. I'll give you a brief
11 history. Mr. Jones pled guilty in 1999. He had three
12 counts of burglary second, three counts of burglary
13 first, and one count of armed robbery.

14 He's serving a sentence of 30 years
15 currently. He's had since that time -- this would be
16 his fourth PCR application. He had one in 2000,
17 another in 2002, another in 2006. Based on those prior
18 applications, it's the State's position that this would
19 be barred by the statute of limitations, also
20 successive.

21 And specifically in this application, he has
22 alleged newly discovered evidence in stating that a Mr.
23 Sharpe who signed his arrest warrant was not in a proper
24 position to do. And it's the State's position that
25 certainly in the 14 years that have elapsed since his

1 plea, he could have discovered this information at any
2 point. And therefore, the application would be
3 procedurally barred. He's represented by Mr.
4 Thomas today.

5 THE COURT: All right, Mr. Thomas, how are
6 you this morning?

7 MR. THOMAS: Good morning, Your Honor.

8 THE COURT: And, Mr. Thomas, you've heard
9 what Ms. Williams has said. What's your client's
10 position on that?

11 MR. THOMAS: Your Honor, if it please the
12 Court, I'm here also. Tristan Shaffer is here, as
13 well.

14 THE COURT: Mr. Shaffer, it's so good to see
15 you. It's good to have you back.

16 MR. SHAFFER: Thank you, Your Honor.

17 MR. THOMAS: Your Honor, if it please the
18 Court, Tristan has agreed to help with me with this
19 case, this motion. I have a brief in the Court of
20 Appeals that's due actually today, and it's been kind
21 of -- I don't know why I've been stubborn for so long.
22 It took me a long time to get it ready, and Tristan
23 agreed to kind of help me prepare for today.

24 THE COURT: Okay.

25 MR. THOMAS: Just basically, Your Honor,

1 what I know about Alwine's case is that it all got
2 started with he wrote the Court Administration asking
3 and inquiring about Mr. Sharpe, and that is attached
4 to the motion or reply to respondent's motion to
5 dismiss. It is at this time that he was informed by
6 them that they didn't have any information in regards
7 to him as a Municipal Judge or Ministerial Recorder.

8 And then there's a statute which I was
9 actually not aware of that provides for recorders. And
10 what it all boils down to is it allows them to serve
11 signed arrest warrants. And one of the arrest wants
12 that he was picked up on and later convicted of is signed
13 by Mr. Sharpe. And it would be our argument that it's
14 not a valid arrest. Therefore, anything that's
15 attached to that warrant further would be invalid, as
16 well.

17 Your Honor, if it please the Court, at this
18 point I'm going to let Tristan kind of pick it up from
19 there. He's prepared to argue these other points.

20 THE COURT: Right. And, Mr. Thomas or Mr.
21 Shaffer, either one of you, I have the return of the
22 State on a motion to dismiss.

23 MR. THOMAS: Yes, sir.

24 THE COURT: Did you all have anything
25 prepared?

1 MR. THOMAS: I've got -- do you have a copy
2 of the reply?

3 MS. WILLIAMS: If he does not, I'll share
4 mine with the Court.

5 MR. THOMAS: I've got it. He can share
6 mine.

7 THE COURT: Do you have an extra copy?

8 MR. THOMAS: I don't, Your Honor, but I'll
9 be glad to --

10 THE COURT: It's not too many things. Do
11 you mind copying that?

12 CLERK OF COURT: Not a problem.

13 THE COURT: I'm going to let her copy that
14 for me.

15 MS. WILLIAMS: This one is not stapled.

16 THE COURT: Thank you.

17 MS. WILLIAMS: This one's not stapled, so it
18 will be easier.

19 THE COURT: All right, Mr. Thomas, I now have
20 the reply to --

21 MR. THOMAS: Yes, sir.

22 THE COURT: -- respondent's motion.

23 MR. THOMAS: Yes, sir.

24 THE COURT: It's three pages?

25 MR. THOMAS: Let's see, Your Honor. Three

1 pages, Your Honor, and also attached to that is a letter
2 from the Court Administration. I can hand that up,
3 Your Honor.

4 THE COURT: Now I've got a letter dated March
5 17, 2011, addressed to Mr. Jones?

6 MR. THOMAS: That's correct.

7 THE COURT: Okay, all right.

8 MR. THOMAS: And, Your Honor, we believe
9 that this is really an interesting case, and I think
10 it is -- we would ask that it be allowed to go Because
11 I do think that there's prejudice involved in this. If
12 in fact determined, which I believe it is correct, that
13 Mr. Sharpe did not have the authority to sign the
14 arrest warrant, that it kind of creates additional
15 problems with that in that it impacts his conviction,
16 Your Honor.

17 And I think in a nutshell that it could
18 potentially make a difference between the 30-year
19 sentence that he has and a 15-year sentence which had
20 been offered by the Solicitor's Office.

21 THE COURT: All right. And, Mr. Thomas, I'm
22 looking. Just so I'll know we're talking about the
23 same thing --

24 MR. THOMAS: Yes, sir.

25 THE COURT: -- I have an arrest warrant for

1 armed robbery, F655788, that apparently was signed by
2 Mr. Sharpe. Is that Sharpe?

3 MR. THOMAS: I believe that is correct, Your
4 Honor.

5 THE COURT: Now, I have the other issuing
6 judge seem to be a Melody James or Jones or something
7 like that?

8 MR. THOMAS: Yes, sir.

9 THE COURT: Okay.

10 MR. THOMAS: And she is a Municipal Judge,
11 Your Honor.

12 THE COURT: Okay. And then I've got some
13 other charges -- burglary first degree that apparently
14 was signed by -- I can't read this last name, but it
15 doesn't appear to be Sharpe.

16 MR. THOMAS: I think that Mr. Sharpe only
17 signed one, that's correct. And what --

18 THE COURT: That's what I'm trying to get at.

19 MR. THOMAS: Yes, sir. He did sign the
20 warrant.

21 THE COURT: Okay. So the only arrest
22 warrant that we're concerned about is the one armed
23 robbery arrest warrant that's given that arrest warrant
24 number F655788, is that correct?

25 MR. THOMAS: That's correct, Your Honor.

1 THE COURT: Okay, all right.

2 MR. THOMAS: Can I beg the Court's
3 indulgence?

4 THE COURT: Oh, sure.

5 MR. THOMAS: Your Honor, what happened is
6 that he pled to a number of charges all at the same time.
7 It's arguable, I guess, if it's a post-conviction on
8 one, it's my understanding you can't really kind of pick
9 and choose which actions you apply the post-conviction
10 to.

11 So it would be, I guess, our argument that
12 it would apply to all. But really what it boils down
13 to is that he picked up this additional charge. He had
14 an offer and there is testimony in the transcript to
15 this fact. He picked up -- he had an offer of a 15-year
16 sentence on all charges from the Solicitor Office.

17 Then what happened when this other charge
18 occurred, that was withdrawn. So he ended up with a
19 30-year sentence. And it's our position that that was
20 not a proper charge. It was invalid because of Mr.
21 Sharpe not having the authority to issue that arrest
22 warrant.

23 It certainly impacted his plea by 15 years,
24 and it would be prejudice in this situation. That's
25 what we're asking to allow him to go through another

1 post-conviction relief. And I'm going to let Tristan
2 pick it up from there, Your Honor.

3 THE COURT: Okay.

4 MR. SHAFFER: Thank you, Your Honor.

5 THE COURT: All right, Mr. Shaffer, yes,
6 sir.

7 MR. SHAFFER: I believe that the State's
8 primary support for their argument that this should not
9 go forward is, as in Hayden v. State, laying out factors
10 for the after discovered evidence. The State has
11 indicated that he had 14 years to look this up.

12 Well, I believe that that goes a little
13 beyond due diligence to try to track down every person
14 who signed an arrest warrant to find out whether or not
15 they were qualified to do it. Now, he ended up going
16 and -- he had heard from another inmate essentially that
17 Mr. Sharpe wasn't qualified or wasn't capable of
18 signing the arrest warrant.

19 Part of the reason that that is, is that he's
20 not neutral and detached. He was actually working for
21 -- Mr. Sharpe was an employee of the City of Cayce. He
22 was the treasurer over there for a long time, and then
23 the city manager.

24 And while he was there, he actually also
25 operated as evidence custodian for the police, not for

1 all evidence but for evidence related to money. He
2 would basically take and hold all of the evidence for
3 the police that was related to cash.

4 And we have that in transcript from, you
5 know, other officers' mouths. We do have a record of
6 that, Your Honor, which would make him not neutral and
7 detached. We also have no record -- Court
8 Administration has no record of him ever being a
9 Ministerial Recorder.

10 He failed to comply with various
11 requirements for that. And that's the basis of us
12 saying that he was not even a Ministerial Recorder to
13 begin with. Regarding the after discovered evidence
14 claim, which is sort of the heart of what they're
15 getting at, the State is trying to say that essentially
16 this is not -- doesn't fit within the Hayden facts.

17 Your Honor, I think that there is exceptions
18 that the courts of this state have made for
19 constitutional violations that would alter --
20 basically due process violations. And one of those due
21 process violations is being arrested under a bad arrest
22 warrant, Your Honor. I put forth Riddle v. State, and
23 I can hand up a copy if you'd like.

24 THE COURT: Yes, sir. The Court wants as
25 many copies as it can get. Thank you, sir.

1 MR. SHAFFER: It's actually Riddle v.
2 Ozmint, Your Honor. It was originally filed as a
3 habeas petition, but it's treated a PCR petition by the
4 Court. And essentially one thing that they raise is
5 actually a Brady issue that might actually fall within
6 the Hayden factors.

7 And they say that there was a Brady
8 violation. There is also a Napoo (PH) violation,
9 basically prosecutorial misconduct, where the State
10 failed to correct something that was materially wrong.
11 It would have only been impeachment evidence had they
12 corrected it. But the Court said essentially that
13 there was a due process violation and found that as a
14 basis for a new trial.

15 Your Honor, that would not fit under Hayden,
16 that evidence. The second issue in Riddle, Your Honor,
17 would not fit under the Hayden factors. I put forth
18 this case basically to say that there are exceptions
19 to the rule -- to the Hayden rule.

20 The Hayden rule basically deals with
21 evidence that's actually related to the guilt or
22 innocence, evidence at trial. It doesn't go to due
23 process or constitutional violations, Your Honor,
24 which is what we have here.

25 THE COURT: All right. Do you have as part

1 of your memo a list of any other exceptions that you
2 believe the Court has made with regard to the Hayden
3 rule?

4 MR. SHAFFER: No, Your Honor. I can brief
5 that. If would you like me to, I can supplement it,
6 Your Honor. I don't have it offhand right now.

7 THE COURT: Okay.

8 MR. SHAFFER: But I do know that this could
9 possibly be one of those exceptions. I mean, it's a
10 due process violation in the fact that he was arrested
11 under a warrant from someone who was never qualified
12 to be. And I know I'm getting into merits on that, but
13 he was not qualified to sign -- or at least that's the
14 allegation.

15 THE COURT: Mr. Shaffer, let me ask you
16 another question. So then his PCR would be on the basis
17 of a constitutional violation, not ineffective
18 assistance of counsel or anything like that, right?

19 MR. SHAFFER: Your Honor, I don't believe it
20 would be anything related to ineffective assistance of
21 counsel, which he's already raised.

22 THE COURT: Right. This is just strictly a
23 constitutional argument?

24 MR. SHAFFER: It's a constitutional
25 argument that was discovered later. It was after

1 discovery.

2 THE COURT: Which brings me to the next
3 question that I have, which is this happened -- he pled
4 guilty to this in 1999.

5 MR. SHAFFER: Yes, sir.

6 THE COURT: According to my calendar, this
7 is now 2013, correct? Why did it take so long?

8 MR. SHAFFER: Your Honor, I don't think he
9 necessarily had reason to suspect that his warrants
10 were bad until the fact that another inmate told him
11 in their case that they discovered that. I believe
12 that that's beyond the exercise of due diligence to ask
13 Court Administration for everyone who's ever signed a
14 warrant, for their records. If that was due diligence,
15 I'm ineffective on every single case I've ever argued.

16 THE COURT: Well, that's kind of what I'm
17 getting at. To my knowledge, nobody would do that.

18 MR. SHAFFER: Yes, Your Honor. I would not
19 do that, and that's why I'm saying that, you know, I
20 don't think you can hold the 14 years against him if
21 he found out later.

22 THE COURT: Okay, all right. My next
23 question. He pled guilty to three counts of burglary
24 second degree, three counts of burglary first degree,
25 and one count of armed robbery. I haven't

1 double-checked the numbers, but I'm assuming that this
2 armed robbery is related to this arrest warrant?

3 MR. SHAFFER: I believe so. And I think he
4 actually pled to two counts of armed robbery, if I'm
5 not mistaken.

6 THE COURT: Okay.

7 MR. SHAFFER: Yes, Your Honor.

8 THE COURT: I just don't --

9 MR. SHAFFER: I apologize. Yes, Your
10 Honor, he pled to two counts of armed robbery.

11 THE COURT: Now, he was sentenced to 30 years
12 on the armed robbery, but it was concurrent with the
13 burglary charges. So tell me how that impacts such
14 that I should do something about it.

15 MR. SHAFFER: Your Honor, I actually have
16 another case with that.

17 THE COURT: That's why you're here. Thank
18 you, sir.

19 MR. SHAFFER: I'm handing up State v.
20 Stevens -- or Stevens v. State.

21 THE COURT: Okay.

22 MR. SHAFFER: It's a PCR case. And to
23 answer your question directly regarding my client, he
24 pled guilty to the armed robbery. And it's true he has
25 concurrent sentences on everything. But I don't think

1 that you can -- especially in a plea hearing -- part
2 out each individual charge, because you don't know what
3 kind of impact each individual charge would have had
4 against this.

5 This was probably the most violent of the
6 armed robberies, the one at Cayce Bait and Tackle, the
7 one that he was illegally arrested for, Your Honor. It
8 was certainly the charge that based off the PCR
9 transcript that would have pulled the offer off the
10 table for 15, Your, Honor.

11 THE COURT: You're saying that if I hear
12 this, I would hear testimony to that effect?

13 MR. SHAFFER: Yes, Your Honor, I believe you
14 would. And under --

15 THE COURT: Or if some judge heard it on the
16 merits?

17 MR. SHAFFER: Yes, Your Honor. Well, I
18 think you would hear that it was withdrawn at that
19 point, yes. Under Stevens v. State, Your Honor, in
20 that case I think that it's 18 or 19 charges of receiving
21 stolen goods, and he pled to all of them. More than
22 likely, they said it was four or five events.

23 Now, pointing to the third page of that, and
24 actually the last line before the conclusion, the Court
25 writes, "Petitioner may have received a lighter

1 sentence had the judge known that petitioner faced four
2 or five counts instead of 18. Therefore, the PCR
3 Court's decision should have been reversed, and the
4 case should have been remanded for a trial or a plea
5 on the proceedings."

6 Basically, they remanded everything because
7 of the fact that the Court could have looked at that
8 as the greater number of charges as something that
9 enhanced the sentence on all of it, Your Honor, because
10 in that case he also had a whole bunch of concurrent
11 time, Your Honor.

12 But they remanded on everything based on
13 that. I believe that if you hear the case on the
14 merits, it would affect the outcome of each and every
15 charge he pled to, each and every sentence he pled to,
16 especially given the nature of the armed robbery in
17 Cayce.

18 THE COURT: Just because I haven't a chance
19 to look and see it, he pled to 18, but he found out later
20 that it should have been just five?

21 MR. SHAFFER: They didn't necessarily find
22 that. They said that it should have been less. There
23 was evidence that there should have been less.

24 THE COURT: Okay. But it was five counts
25 instead of 18?

1 MR. SHAFFER: Yes, Your Honor.

2 THE COURT: Okay, so I'm looking at it.
3 Less than 25 percent?

4 MR. SHAFFER: Yes, Your Honor. But I think
5 that especially in my client's case, if you looked at
6 the fact that he -- the armed robbery -- he's charged
7 with a whole bunch of break-ins in homes, burglaries.

8 And there's a second armed robbery that's
9 also basically a burglary that someone happened to be
10 at home. On all of the armed rob -- but this is an armed
11 robbery of a store, the Cayce Bait and Tackle. They
12 go into a store. They essentially connive the store
13 owner to turn away while they reach behind the counter,
14 grab a gun that's behind the counter, and hold him up.

15 I think it's a little bit different. It's
16 uncharacteristic of the other charges, which were all
17 break-ins. One happened to be an armed robbery because
18 there was someone there. But all of the other
19 burglaries were break-ins, and I think that this might
20 have been the charge that said okay -- it was also
21 committed while he was out on bond, Your Honor, which
22 is especially detrimental to my client.

23 THE COURT: I would imagine I can take that
24 and find out the legality of the warrant?

25 MR. SHAFFER: Thank you, Your Honor.

1 THE COURT: Okay, anything else?

2 MR. SHAFFER: No, Your Honor. I'd like to
3 reply to whatever the State has to say.

4 THE COURT: Okay.

5 All right, Ms. Williams.

6 MS. WILLIAMS: Your Honor, basically it's
7 the State's position that it's mischaracterized as a
8 constitutional violation. We're talking about a
9 technicality on a warrant, potentially as statutory as
10 opposed to something of a constitutional magnitude.

11 Clearly, there was plenty of evidence upon
12 which to issue a warrant for this gentleman. The error
13 in who signed it, could that have been corrected? Yes.
14 But those types of errors in those notice documents are
15 mooted upon deposition of the case.

16 It's also my position that Hayden describes
17 the factors that we are allowed to look at in terms of
18 a PCR. A PCR is very limited into what an applicant
19 can allege and how they can gain relief. So in order
20 for it to fall properly as an application for
21 post-conviction relief, that's what we're limited to
22 looking at.

23 If there is truly some sort of constitutional
24 violation that may put it into a habeas type matter,
25 that would be a matter for another day. Also,

1 information about when he heard this from another
2 inmate, that's not even been presented to show that he
3 has within one year acted upon that information, so the
4 primary argument being that the technicality on the
5 warrant is not a constitutional error.

6 THE COURT: Ms. Williams, do you cover that
7 and cite cases to that effect in your return?

8 MS. WILLIAMS: Not in a return, sir, but I'll
9 be glad to prepare that for you.

10 THE COURT: Okay, thank you. What I'm
11 probably going to do is ask you to do that and ask Mr.
12 Shaffer to give me the other exceptions that we get into
13 from Hayden. Nobody is going to find out
14 -- I'm assuming a judge can't make a determination.
15 He was told that Mr. Sharpe was not a judge. We won't
16 find that out unless we take that hearing, is that
17 correct?

18 MS. WILLIAMS: He could testify to it today
19 in order to avoid having his application hearing.

20 THE COURT: That's true. But I want to find
21 who told him and maybe have that person as a witness,
22 if we have a hearing, which I don't know if we're going
23 to have. I'm just asking the question.

24 All right, Ms. Williams, is there anything
25 else you want to tell me?

1 MS. WILLIAMS: No, Your Honor. I'll be glad
2 to produce that record.

3 THE COURT: Okay.

4 Mr. Shaffer, anything in follow-up?

5 MR. SHAFFER: I know this is getting into the
6 merits a little bit. But the State --

7 THE COURT: I'm going to let you address
8 anything she said.

9 MR. SHAFFER: Thank you, Your Honor.

10 THE COURT: Okay.

11 MR. SHAFFER: The State said that basically
12 it was a technicality. I don't think it's a
13 technicality. I think we could get into the merits
14 and see that basically this guy who worked at the City
15 of Cayce just decided, "Hey, I'm going to be a
16 Ministerial Recorder." Maybe someone had told him to
17 be a Ministerial Recorder. Maybe he was working under
18 no oversight. He alleges to have attended some
19 conferences whenever he got notified of this, Your
20 Honor.

21 THE COURT: Have you all taken his
22 deposition?

23 MR. SHAFFER: No, Your Honor, but another
24 case has raised it, and we have the transcript from
25 that.

1 THE COURT: Okay.

2 And, Ms. Williams, do you have a copy of that
3 transcript?

4 MS. WILLIAMS: No, sir, I do not.

5 THE COURT: Okay. And just out of
6 curiosity, why hasn't that been made available to
7 anybody?

8 MR. SHAFFER: Your Honor, I pulled it from
9 the Supreme Court library yesterday.

10 THE COURT: So it's newly discovered
11 evidence?

12 MR. SHAFFER: I suppose, Your Honor.

13 THE COURT: All right, go ahead, Mr.
14 Shaffer. I don't mean to interrupt you.

15 MR. SHAFFER: Regarding the State's
16 basically saying "Oh, well, this could be raised in a
17 habeas," the issue is, is that they're looking at Riddle
18 as being a habeas, even though it's not.

19 It's captioned as a habeas because it was
20 brought as a habeas action. They turned it into a PCR.
21 They specifically say, "This PCR action involves the
22 guilt phase in a 1986 trial." They're phrasing it as
23 -- they say that they have to overturn the order of the
24 PCR court. They're saying that it's a PCR, the Supreme
25 Court is.

1 THE COURT: No, that's not--

2 MR. SHAFFER: Okay, thank you, Your Honor.
3 I'm just clarifying that this is not a habeas issue.
4 It's a PCR issue.

5 THE COURT: What I would like for you to do
6 is you're going to give me your exceptions to Hayden.

7 Ms. Williams, you're going to be kind enough
8 to give me the cases concerning whether this is a
9 technical violation or a constitutional violation.

10 You all can even address each other's
11 concerns. But in addition, I want Mr. Sharpe's
12 deposition, okay?

13 MR. SHAFFER: Thank you, Your Honor.

14 THE COURT: I'll leave the record open for
15 you all to provide that information to me.

16 MR. SHAFFER: Thank you, Your Honor.

17 THE COURT: Okay, anything else we need to
18 do? Ms. Williams, anything from the State?

19 MS. WILLIAMS: Nothing further, Your Honor.

20 THE COURT: Mr. Thomas, is there any way you
21 want to correct Mr. Shaffer for anything he said or any
22 shortcomings?

23 MR. THOMAS: No, I thought he did an
24 outstanding job. I assume the Court will grant -- and
25 the PCR would have the granting of discovery. So the

1 Court would grant the discovery in order that we could
2 take Mr. Sharpe's deposition?

3 THE COURT: No, no. I want to see a copy of
4 the deposition, the newly discovered --

5 MR. THOMAS: Okay.

6 THE COURT: -- deposition of Mr. Sharpe that
7 Mr. Shaffer through his continued efforts went through
8 the Supreme Court records and got.

9 MR. THOMAS: Yes, sir.

10 THE COURT: I'd like to see that.

11 MR. SHAFFER: Thank you, Your Honor. I can
12 probably have it to you by next week sometime.

13 THE COURT: You can just talk among
14 yourselves about how long it's going to take you to get
15 the other documents. And if you all would just send
16 me an e-mail of what you have agreed to, I will go along
17 with that.

18 Mr. Thomas, I know you've got things.
19 You've got to finish up your brief?

20 MR. THOMAS: Today. And then I'll be free,
21 Your Honor.

22 THE COURT: Okay, all right. Thank you all.

23 MR. THOMAS: Thank you, Your Honor.

24 MR. SHAFFER: Thank you, Your Honor.

25 THE COURT: --End of Transcript of Record--

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT THOMAS, OFFICIAL COURT REPORTER,
AND NOTARY PUBLIC IN AND 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
ABOVE-CAPTIONED CASE ON AUGUST 15, 2013, IN LEXINGTON,
SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL NOR
KIN TO ANY OF THE PARTIES TO THIS CAUSE OF ACTION, NOR
AM I INTERESTED IN ANY MANNER IN ITS OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND
AND SEAL AT LEXINGTON, SOUTH CAROLINA, THIS THE
NINETEENTH DAY OF FEBRUARY, 2015.

Reema K. Thomas

REMA K. GANTT THOMAS
OFFICIAL COURT REPORTER
STATE OF SOUTH CAROLINA

COPY 000057

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Alwin T. Jones #260800

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

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2012CP3201046

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 Kershaw Correctional Institution, 4848 Goldmine Hwy., Kershaw, SC 29067
2. Name and location of Court which imposed sentence Lexington County Courthouse, 205 East Main Street, Lexington, SC 29072.
3. Name(s) of co-defendant(s) (if any) Deandre Black
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 98-GS-32-2473 - Burglary First Degree
 - (b) 98-GS-32-2472 - Burglary First Degree
 - (c) 98-GS-32-2460 - Burglary First Degree
 - (d) 99-GS-32-2654 - Armed Robbery

Revised 3/2003

- (e) 99-GS-32-3567 - Armed Robbery
- (f) 99-GS-32-2655 - Burglary 2nd (A)
- (g) 98-GS-32-2458 - Burglary 2nd (A)
- (h) 98-GS-32-2459 - Burglary 2nd (A)
- (i) 98-GS-32-2471 - Burglary 2nd (A)

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5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) August 26, 1999 - 30 years, concurrent
 - (b) August 26, 1999 - 30 years concurrent
 - (c) August 26, 1999 - 30 years concurrent
 - (d) August 26, 1999 - 30 years concurrent
 - (e) August 26, 1999 - 30 years concurrent
 - (f) August 26, 1999 - 30 years concurrent
 - (g) August 26, 1999 - 15 years concurrent
 - (h) August 26, 1999 - 15 years concurrent
 - (i) August 26, 1999 - 15 years concurrent
6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty X
 - (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. _____

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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) Not advised by counsel that I could appeal.

(b) _____

(c) _____

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

(a) Newly Discovered Evidence - Discovered on March 17, 2011 that John C. Sharpe who signed arrest warrant as issuing Judge lacked the authority to do so.

(b) _____

(c) _____

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

(a) Judge lacked authority to issue a valid arrest warrant. See attached letter and Warrant.

(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? yes

(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. Two - prior Post Conviction Relief Actions

ii. Two - prior Writ of Certiori

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. Lexington County Common Pleas Court, 205 East Main St., Lexington, SC 29072

ii. SC Supreme Court, P.O. Box 11330, Columbia, SC 29221

iii. _____

iv. _____

(c) the disposition thereof:

i. Denied

ii. Dismissed

iii. Denied

iv. Denied

(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:

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STINA CARROLL
CLERK

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) Only discovered on March 17, 2011

(b) _____

(c) _____

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

(a) your arraignment and plea? yes

(b) your trial, if any? _____

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes

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

(a) the name and address of each attorney who represented you:

i. Cameron B. Littlejohn, Jr., 1720 Main St., Suite 202, Columbia, SC 29201

ii. Elizabeth Fullwood, Esq., 407 1/2 W. Main St., Lexington, SC 29072

iii. _____

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

i. plea

ii. First Post Conviction Relief Action

iii. _____

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

New Trial

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20. Are you now under sentence from any other court that you have not challenged? 3:15

No

FILED
JUL 14 2003
CLERK OF COURT

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STATE OF SOUTH CAROLINA)

County of Kershaw)

VERIFICATION

I, Alwin T. Jones, 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.

Alwin Jones

SWORN to and subscribed before me this 1st
day of March, 2012

Michelle Michel (L.S.)
Notary Public

My Commission Expires: 9-3-2014

2012CP3201046

FILED
2012 MAR -6 2 3:15
JIM A. CARRIG
CLERK OF COURT

000064

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

COPY

I, Alwin T. Jones, 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.

Al Jones
Applicant

SWORN or affirmed to and subscribed before me this
1st day of March, 2012

Michele Michel
Notary Public

My Commission Expires: 9-3-2014

2012CP3201046

2012 MAR - 6 2 3:15

FILED

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Case No. 2012-CP-32-1046

Alwin T. Jones,
S.C.D.C. No. 260800

Applicant,

v.

State of South Carolina,

Respondent.

**RETURN AND MOTION TO
DISMISS**

In response to the post-conviction relief application filed March 6, 2012, the Respondent would show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lexington County. Applicant was indicted at the June 1999 term of the Lexington County Grand Jury for armed robbery; criminal conspiracy; possession of a firearm or knife during commission of a violent crime; unlawful possession of a pistol by person under the age of twenty-one, burglary, second degree; burglary, first degree; and petit larceny. Cam Littlejohn, Esquire, represented Applicant. On August 26, 1999, Applicant pled guilty to three counts of burglary, second degree (1999-GS-32-2458; -2459; -2471) and three counts of burglary, first degree (1999-GS-32-2460; -2472; -2473) and one count of armed robbery (1999-GS-32-2654). The Honorable William P. Keesley sentenced Applicant fifteen (15) years confinement on each burglary, second degree, charge, thirty (30) years confinement on each burglary, first degree, charge, and thirty (30) years on the armed robbery charge. The

sentences were to be served concurrently. The Applicant did not appeal his sentence and conviction.

2000-CP-32-3546

The Applicant subsequently filed an application for post-conviction relief (PCR) on May 15, 2000. Applicant alleged he was being held unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
2. "Involuntary Guilty Plea"

An evidentiary hearing was heard before the Honorable J.C. Nicholson, Jr., at which Applicant was present and was represented by Elizabeth Fullwood, Esquire. By Order dated July 31, 2001, Judge Nicholson denied and dismissed the Application. A timely Notice of Appeal was filed on Applicant's behalf and a Johnson Petition for Writ of Certiorari was submitted by the South Carolina Office of Appellate Defense. On April 18, 2002, the South Carolina Supreme Court denied the Petition.

2002-CP-32-02531

The Applicant subsequently filed a second Application for post-conviction relief on May 15, 2000. Applicant alleged he was being held unlawfully for the following reasons:

1. "Subject Matter Jurisdiction."
2. "Involuntary Guilty Plea"
3. "Ineffective Assistance of Counsel"
4. "Newly Discovered Evidence"
5. "Brady violation"
6. "Due Process Violation"
7. Fourth, Fifth, and Sixth Amendment violations

A motion to dismiss hearing was heard before the Honorable Mark H. Westbrook, at which Applicant was present and was represented by Lori Murray, Esquire. By Order dated March 14, 2004, Judge Westbrook denied and dismissed the Application. A timely Notice of Appeal was filed on Applicant's behalf and a Johnson Petition for Writ of Certiorari was

submitted by the South Carolina Office of Appellate Defense. On September 23, 2005, the South Carolina Supreme Court denied the Petition.

2006-CP-32-3178

Applicant subsequently filed a third Application for post-conviction relief on May 15, 2000. Applicant alleged he was being held unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"

The Honorable James W. Johnson issued a Conditional Order of Dismissal dated April 26, 2007. By Final Order of Dismissal dated June 27, 2007, Judge Johnson denied and dismissed the Application. Applicant did not file a timely Notice of Appeal.

II.

In Applicant's current and fourth application for post-conviction relief, the Applicant alleged he was being held unlawfully for the following reasons:

1. "Newly Discovered Evidence – Discovered on March 17, 2011 that John C. Sharpe who signed arrest warrant as issuing Judge lacked the authority to do so."

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, the South Carolina Department of Corrections' records and the prior PCR records by reference. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent submits Applicant's after-discovered evidence claim is without merit. To obtain a new trial based on after-discovered evidence, the party must show that the evidence: (1) would probably change the result if a new trial is had; (2) has been discovered since the trial; (3) could not have been discovered before trial; (4) is material to the issue of guilt or innocence; and

(5) is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983). The Respondent submits that the Applicant cannot satisfy these requirements.

IV.

The Court should summarily dismiss the current Application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised

the current allegations in his previous post-conviction relief applications. Accordingly, Respondent moves for a summary dismissal of the application because it is successive.

V.

The Respondent submits that this Application for Post-Conviction Relief should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on September 13, 1976. The Applicant was therefore required to file his PCR application by July 1, 1996. This Application was filed on March 7, 2011, which was well over fourteen (14) years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily

dismiss the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

VI.

The Respondent submits this application for post-conviction relief is barred by the doctrine of laches. Applicant has filed this application ten (10) years after he was convicted. The doctrine of laches bars the Applicant from raising these allegations in a post-conviction relief application. Absent some explanation or justification for the delay in seeking post-conviction relief, laches will prevent an Applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to refute the applicant's claims. McElrath v. State, 276 S.C. 282, 277 S.E.2d 890 (1981); Honeycutt v. Ward, 612 F.2d 36 (2nd Cir. 1979). Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002).

To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. This requirement "guards the state's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." McElrath, 276 S.C. at 283. Rule 9(a) of the Federal Habeas Corpus Act recognizes the doctrine of laches. The Rule states in pertinent part:

A petition may be dismissed if it appears that the state of which the Respondent is an officer has been prejudiced in its ability to respond to the Petition by delay in its filing unless the Petitioner shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the state occurred.

Therefore, the Respondent requests that this Court summarily dismiss the application for post-conviction relief under the doctrine of laches.

VII.

Respondent submits Applicant's after-discovered evidence claim is without merit. To obtain a new trial based on after-discovered evidence, the party must show that the evidence: (1) would probably change the result if a new trial is had; (2) has been discovered since the trial; (3) could not have been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983). Applicant fails to meet Hayden's third and fourth prongs. Applicant admitted guilt and waived his right to present a defense at his 1999 guilty plea hearing. Therefore, the Court should summarily dismiss this claim.

VIII.

Additionally, this Court should summarily dismiss the application as barred by the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id. Applicant had a full opportunity to litigate the allegation regarding after discovered evidence. In Applicant's second 2002 PCR Applicant, he alleged defect in subject matter jurisdiction as after discovered evidence. The other grounds present allegations that could have been raised in those prior proceedings. The public interest in finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRPC, the Court should summarily dismiss these claim as barred by *res judicata*.

IX.

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

X.

WHEREFORE, Respondent moves to summarily dismiss the application because it is successive to the Applicant's prior PCR action and was filed after the statute of limitations had expired.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

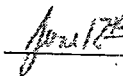
SALLEY ELLIOTT
Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

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

By:


Attorneys for the Respondents


Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
IN THE ELEVENTH CIRCUIT

2012-CP-32-1046

Alwin T. Jones, # 260800

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 and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tommy A. Thomas, Esq.
Post Office Box 88
Irmo, SC 29063

DATED this 12th day of June, 2013


Troyeshi Brailey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON) IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

DOCKET NO.: 2012-CP-32-1046

ALWIN T. JONES #260800,)

Applicant,)

v.)

STATE OF SOUTH CAROLINA,)

Respondent.)

REPLY TO RESPONDENT'S
MOTION TO DISMISS

That the Applicant, through below signed counsel, would respectfully submit his
Reply to the Respondent's Motion to Dismiss.

That on or about June 12, 2013, the Respondent filed a Return and Motion to
Dismiss the Applicant's Post Conviction Relief Action.

Applicant's claim is based on newly discovered evidence. That on March 17,
2011, he was notified by the South Carolina Court Administration that they had no
indication that John C. Sharp was or had been a Municipal Judge or Ministerial Recorder.
(See attached). Therefore, John C. Sharpe, who signed the Applicant's Arrest Warrants
as issuing Judge, lacked the authority to do so.

Mr. Sharpe, was acting for the Town of Cayce as a ministerial recorder. Pursuant
to Section 14-25-115:

"Ministerial recorders shall have the power to set and accept bonds and
recognizance and to issue summonses, subpoenas, arrest warrants, and
search warrants in all cases arising under the ordinances of the
municipality, and in criminal cases as are now conferred by law upon
magistrates. Ministerial recorders shall have no other judicial authority."

Section 14-25-115 also states:

“The council of a municipality may establish the office of ministerial recorder and appoint one or more full-time or part-time ministerial recorders, who shall hold office at the pleasure of the council. Before entering upon the discharge of the duties of the office of ministerial recorder, the person appointed shall take and subscribe the prescribed oath of office and shall be certified by the municipal judge as having been instructed in the proper method of issuing warrants and setting and accepting bonds and recognizances.”

It was only at a later date, that the Applicant was able to determine that Mr. Sharpe was never officially appointed and does not meet the requirements of Section 14-25-115 and as such is not authorized to issue arrest warrants pursuant to this Section. The Applicant contends that this is proper newly discovered evidence and should be allowed to proceed to an evidentiary hearing.

The Respondent also contends that this matter should be summarily dismissed because it is successive to the previous Application for Post Conviction Relief, that it is not within the one year statute of limitations, as prescribed by the Uniform Post Conviction Procedure Act. That it is barred by the Doctrine of Latches and finally that it is barred by the Doctrine of Res Judicata.

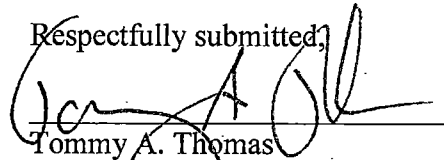
The Applicant would contend that these issues are not applicable in this case. In that this matter has never been before the Court. Was only recently discovered and therefore would not be barred from an evidentiary hearing by summarily dismissal.

For the reasons, as stated above, the Applicant would respectfully request that he be allowed to proceed to an evidentiary hearing or in the alternative, that a Motion

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hearing be scheduled to allow testimony and argument as to why this case should not be dismissed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tommy A. Thomas", written over a horizontal line.

Tommy A. Thomas
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

June 25, 2013

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

ORIGINAL

2014 JUL 07 11:4

2012-CP-32-3136 1046

Alwin Jones, #260800,

Applicant,

v.

State of South Carolina,

Respondent.

BEITH A. CARNEY
CLERK OF COURT
LEXINGTON, SC

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for post-conviction relief filed March 6, 2012. Respondent made its Return dated June 12, 2012, requesting that the Application be summarily dismissed based on the statute of limitations, successiveness, and laches. A hearing was convened on August 16, 2013, at the Lexington County Courthouse. Applicant was present and represented by Tommy Thomas, Esquire, and Tristan Shaffer, Esquire. Following hearing, the Court requested and received memoranda from the parties. This Court has before it the records of the Lexington County Clerk of Court, the guilty plea transcript, the Applicant's records from the South Carolina Department of Corrections, and the memoranda with attachments submitted by the parties.¹

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lexington County. Applicant was indicted for armed robbery; criminal conspiracy; possession of a firearm or knife during commission of a violent crime; unlawful possession of a pistol by person under the age of twenty-one, burglary, second degree; burglary, first degree; and petit larceny. Cam Littlejohn, Esquire, represented Applicant. On August

¹ Transcripts from other proceedings were submitted by both parties, and the parties consent that these transcripts shall stand in lieu of live testimony from the witnesses in this matter.

26, 1999, Applicant pled guilty to three counts of burglary, second degree (1999-GS-32-2458; -2459; -2471) and three counts of burglary, first degree (1999-GS-32-2460; -2472; -2473) and one count of armed robbery (1999-GS-32-2654). The Honorable William P. Keesley sentenced Applicant to fifteen (15) years confinement on each count of burglary, second degree; thirty (30) years confinement on each count of burglary, first degree; and to thirty (30) years for armed robbery. The sentences were to be served concurrently. The Applicant did not appeal his sentence and conviction.

The Applicant subsequently filed an application for post-conviction relief (PCR) on December 28, 1999 (1999-CP-32-3546).² Applicant alleged he was being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel.
2. "False representations, from trial or plea counsel."

An evidentiary hearing was held before the Honorable J.C. Nicholson, Jr., at which Applicant was present and was represented by Elizabeth Fullwood, Esquire. By Order dated July 31, 2001, Judge Nicholson denied and dismissed the Application. Judge Nicholson denied Applicant's motion for relief from judgment in a short order dated April 23, 2002, and filed May 21, 2002. A timely Notice of Appeal was filed on Applicant's behalf and a Johnson Petition for Writ of Certiorari was submitted by the South Carolina Office of Appellate Defense. On April 18, 2002, the South Carolina Supreme Court denied the Petition, and the Remittitur was sent on May 6, 2002.

The Applicant filed a second Application for post-conviction relief on July 25, 2002 (2002-CP-32-2531). Applicant alleged he was being held unlawfully for the following reasons:

1. "Subject Matter Jurisdiction."
2. "Involuntary Guilty Plea"
3. "Ineffective Assistance of Counsel"
4. "Newly Discovered Evidence"

² Some filings in this matter bear the case number 2000-CP-32-3546. This appears to be a scrivener's error.

5. "Brady violation"
6. "Due Process Violation"
7. Fourth, Fifth, and Sixth Amendment violations.

A hearing was held on Respondent's motion to dismiss on February 24, 2004, before the Honorable Mark H. Westbrook, at which Applicant was present and was represented by Lori Murray, Esquire. By Order dated March 14, 2004, and filed March 15, 2004, Judge Westbrook denied and dismissed the Application as successive and barred by the one-year statute of limitations. A timely Notice of Appeal was filed on Applicant's behalf and a Johnson Petition for Writ of Certiorari was submitted by the South Carolina Office of Appellate Defense. In an order dated September 7, 2005, the South Carolina Supreme Court denied the petition and granted counsel's request to withdraw. The Remittitur was sent on September 23, 2005.

Applicant filed a third Application for post-conviction relief on September 1, 2006 (2006-CP-32-3178). Applicant alleged he was being held unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Counsel's failure to submit evidence into courts, raise particular arguments, and to follow up on transcript."

The Honorable James W. Johnson issued a Conditional Order of Dismissal dated April 26, 2007, and filed May 3, 2007, finding the application successive and barred by the one-year statute of limitations. By Final Order of Dismissal dated June 22, 2007, and filed June 27, 2007, Judge Johnson denied and dismissed the Application. Applicant did not file a timely Notice of Appeal.

In his current application, Applicant set forth the following basis for relief:

1. Newly Discovered Evidence – Discovered on March 17, 2011, that John C. Sharpe who signed arrest warrant as issuing judge lacked the authority to do so.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80.

State's Motion to Dismiss

The State moved for summary dismissal of Applicant's claim based on the statute of limitations and successiveness. Applicant claims that he heard about the facts giving rise to his claim from another inmate but does not provide a specific date. Applicant cites a letter for Court Administration dated March 17, 2011, attached to his PCR application as the appropriate date from which to consider the one-year statute of limitations. The State maintains that the information raised in the current application has been available from the time of Applicant's arrest and therefore, with due diligence, he could have discovered this information at any time since 1998 and could have raised this claim at any time in the intervening years. The State further submits that the Applicant's claim should be barred by the doctrine of laches due to the extreme passage of time since Applicant's conviction in 1999, more than a decade before this application was filed. In response, Applicant argues that this is not the sort of claim which, even with due diligence, a defendant may normally be expected to explore and that Applicant filed his application within one year of securing information which would verify what he had heard from another inmate.

This court denies the State's motion for summary dismissal on all grounds and reaches the merits of Applicant's claim.

Merits – Ministerial Recorder

Applicant asserts that his arrest for armed robbery (one of several charges for which Applicant was arrested) was invalid based on a defective arrest warrant in that the man who signed the warrant, John Sharpe, was not properly a ministerial recorder in Cayce. Applicant adds that he was prejudiced by this because after his arrest he confessed to the robbery.

Applicant contends that the individual who signed his arrest warrant for armed robbery, John Sharpe, lacked authority to sign the warrant based on failure to comply with the South Carolina Court Administration's annual continuing education requirements. Applicant attaches excerpts from the PCR hearing of Julius Irick Gilyard v. State of South Carolina (2001-CP-32-3154) in support of his allegation.³ During hearings in the Gilyard case, Sharpe testified that he was a ministerial recorder in the town of Cayce. For many purposes, ministerial recorders are afforded the same capacity as that of municipal judge. Sharpe testified that he assumed duties as a ministerial recorder in Cayce in 1977. (State's B, Tr. p. 34, lines 4-6; State's C, Tr. p. 17, lines 3-8.) He was both a ministerial recorder and also the Clerk/Treasurer for the City of Cayce during the year Applicant's warrant was issued, 1998. (State's C Tr. p. 15, lines 18-22; p. 17, lines 9-12.) Sharpe stated that during the years in question he was not aware that educational requirements existed. (State's B Tr. p. 35, lines 7-13.) Sharpe did attend seminars but was unsure of the exact dates. (State's B Tr. p. 35, line 18 – p. 36, line 3; State's C Tr. p. 18, line 19 – p. 19, line 10.) He did not report attendance at these seminars, unaware of the requirement to do so. (State's B Tr. p. 36, lines 4-8.)

During the Gilyard case, testimony was also taken from Mary Joyce Marshall, then a staff attorney with South Carolina Court Administration. Marshall reported that during 1998, ministerial recorders were required to have twelve hours of continuing education. (State's B Tr. p. 39.) Marshall

³ Per exhibit A submitted by the State in its memorandum, Gilyard's PCR application on this issue was denied. The South Carolina Supreme Court denied certiorari on April 7, 2010, and the remittitur was sent on April 23, 2010.

stated that she had been unable to find any record of Sharpe. Marshall testified that reporting would not have been required until 2000 and most recorders did not report prior to 2000. (State's B Tr. p. 40, lines 4-15.)

In 1980, the Legislature enacted S.C. Code §14-25-115, allowing a city council to appoint "one or more full-time or part-time ministerial recorders, who shall hold office at the pleasure of the counsel."⁴ Ministerial recorders had several powers, including issuance of arrest warrants. Under §14-25-15 (1980), ministerial recorders were required to "take and subscribe the oath of office" prescribed by the South Carolina Constitution. Educational requirements were not codified until 2000 when S.C. Code §14-25-15 was amended to add sections (B) – (G) (2000 Act No. 394, §2, effective August 4, 2000) (TAB F). Until 2000, the only authority for education requirements was found in South Carolina Supreme Court Order 1994-05-03-01, dated May 3, 1994 and effective January 1, 1995 (TAB D). The order states, "[f]ailure to comply with this order shall subject the party so failing to penalties for contempt of court." No other penalty, such as vacating office or invalidation of signatures, is mentioned.

In the absence of other guidance requiring continuing education for the post of ministerial recorder, the only remedy for non-compliance with training at the time of Applicant's arrest warrant was civil contempt of court. While in 2000 the amendments to S.C. Code §14-25-15(D) and (E) allowed for the office of a magistrate to be declared vacant upon notice of failure to comply or April 30, 2002, whichever came first, no such directive existed in 1998 when Applicant's arrest warrant was issued. The State maintains that §14-25-15(D)(2000) set out requirements for each magistrate and municipal judge to pass an examination and does not address continuing education requirements. Nonetheless, even applying the section and assuming that Sharpe never took an appropriate

⁴ Prior to 1980, when Sharpe was initially appointed, the office of ministerial recorder was covered by S.C. Code §§14-25-310 and – 320 (1976). These sections similarly permitted a city council to establish the office of ministerial recorder.

examination, Sharpe remained a ministerial recorder until April 30, 2002. Therefore, even in the light most favorable to Applicant, Sharpe properly signed his arrest warrant on September 1, 1998. Because in the light most favorable to Applicant no violation has been established in this regard Applicant's claim fails.

Merits – Evidence Custodian

Applicant asks this court to accept a portion of a transcript from another case taken in 1996 in which a police officer testifies that he turned money over to Sharpe as evidence that Sharpe was acting as an evidence custodian for the police department at the time of Applicant's warrant, 1998. In the 1996 transcript, the law enforcement officer states that Sharpe is the City Treasurer; in Sharpe's position as Treasurer/Clerk, the officer takes money to Sharpe that is collected from search warrants. After taking money to the Treasurer, the officer did not know what happened to the money. Applicant somehow interprets this administrative function, assuming such was the case at the time of Applicant's arrest, as equivalent of being in the employ of law enforcement as an evidence custodian, and implies that Sharpe could somehow lose neutrality by handling evidence submitted by a law enforcement officer. However, as City Treasurer/Clerk, Sharpe is removed from the prosecutor and police, not under their employ or influence. Additionally, the facts as set forth in the warrant affidavit, including the victim's identification of Applicant from a lineup, surely support the issuance of the warrant based on probable cause and not on any improper basis. There is no evidence that Sharpe handled any money associated with Applicant's case. For all these reasons, Applicant's claim that his arrest warrant was invalid on this basis likewise fails.

Prejudice

Even if Applicant's claims above succeeded, this Court finds no evidence of prejudice. As prejudice, Applicant states that he would not have confessed to armed robbery had he known the arrest

warrant was defective. Applicant offers mere speculation that he could have secured a more favorable plea offer regarding his remaining charges (including multiple counts of burglary – 1st degree and burglary – 2nd degree and a series of charges dismissed pursuant to the plea dating back to 1997, including breaking and entering of an auto, unlawful carrying of a pistol, seven petit larcenies, two forgeries, armed robbery, burglary, and numerous other offenses) had he not been arrested for armed robbery. However, an indictment could have been sought even without an arrest warrant. Thompson v. State, 251 S.C. 593, 164 S.E.2d 760 (1968). Moreover, Applicant was arrested pursuant to several warrants associated with the same armed robbery which were issued on September 1, 1998: conspiracy to commit armed robbery (F-655787), possession of a firearm by a person under the age of 21 (F-655786), and possession of a firearm during commission of a violent crime (F-655786). Applicant alleges no defects in these additional warrants or any question as to the validity of his arrest. For all these reasons, in the light most favorable to Applicant, Applicant's claim that he was somehow prejudiced by the invalid warrant fails.

Other Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

CONCLUSION

Based on all 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 advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also

directed to Rule 243, SCACR, for appropriate procedures after notice has been timely filed.

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 14th day of July, 2014.



EDGAR W. DICKSON
Presiding Judge
Eleventh Judicial Circuit

Orangeburg, South Carolina.

COUNTY OF Lexington
STATE 86 VS Alvin T. Jones
AKA:
Race: Black Sex: Male
DOB: 2-1-60 Age: 19
SSN:
DL#:
SID#:

INDICTMENT/CASE#:
98 GS- 32 2473
A/W#: E-434804
Date of Offense: 2-6-98
S.C. Code §: 16-11-311
CDR Code #: 1-1-719

SENTENCE
☒ PLEA ☐ TRIAL
☐ CONVICTED OF or ☒ PLEADS

In disposition of the said indictment comes now the Defendant who was Burglary 1st
TO: 15+
in violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 1-1-719
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Ju
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the Sta
ATTEST:
[Signature] Solicitor [Signature] Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Cer
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed
and/or to pay a fine of \$ provided that upon the service of days/months/years and/or pay
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 condition
probation, which are incorporated by reference.

☒ The Defendant is to be given credit for 7 days/months jail time Co. C.C.P., G.S. & F.C.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ plus 20% fee \$
Payment Terms:
☐ set by SCDPPPS

Recipient:

*Fine: \$
§ 14-1-206 - Assessments 100% \$
§ 14-1-211 - Surcharge \$ 100.00
(Exceptions: See § 14-1-211)
§ 56-5-2995 (DUI) \$
County (3%) \$
TOTAL \$ 100.00

PTUP
 days/hours Public Service Employment
Obtain GED
Attend Voc Rehab. or Job Corps
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/mor
pmts. of \$ beginning
\$ paid to Public Defender Fund.
Other: Pay surcharge w/in 1 yr. o
Release from prison; A.T.U.

Clerk of Court/Deputy Clerk Thomas H Comerford PRESIDING JUDGE William P. [Signature]
Judge Code: 010-1510
Sentence Date: 2/12/98

ARREST WARRANT
F- 434804
STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Lexington

THE STATE
against
REMAINE ALWIN JONES
S: RD 11 ROAD
LEXINGTON, SC 29073
SSN: 2067
M Race: B Height: 6-2 Weight: 210
le: 12 12 #:
Agency ORI #: 3200
ating Agency: L. C. S. D.
ating Officer: GRASSANO, J.
#: BURGLARY FIRST DEGREE
Offense Code: 79
Ordinance Sec. 16-11-311

warrant is CERTIFIED FOR SERVICE in the
unity/ ☐ Municipality of
The accused
be arrested and brought before me to be
with according to law.

(L.S.)
Signature of Judge

RETURN
y of this arrest warrant was delivered to
ant TREMAINE ALWIN JONES

Signature of Constable/Law Enforcement Officer

IN WARRANT TO:
BRUCE RUTLAND
650 KNOX ABBOTT DR.

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Lexington

AFFIDAVIT
Personally appeared before me the affiant JAMIE GRASSANO wt
being duly sworn deposes and says that defendant TREMAINE ALWIN JONES
did within this county and state on 02/06/1998 violate the criminal laws of t
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of
in the following particulars:
DESCRIPTION OF OFFENSE: BURGLARY FIRST DEGREE

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

ON OR ABOUT FEBRUARY 06, 1998 THE ABOVE DEFENDANT, TREMAINE ALWIN JONES DID WITHOUT CONSENT BREAK AND ENTER THE RESIDENCE OF T. H. RAWL III LOCATED AT 1347 RD 11 ROAD IN LEXINGTON COUNTY, SC WITH THE INTENT TO COMMIT A CRIME. ONCE INSIDE THE RESIDENCE DEFENDANT DID TAKE, STEAL, AND CARRY AWAY ONE 20 GAUGE SHOTGUN WITHOUT PERMISSION. THE STOLEN SHOTGUN WAS RECOVERED AND DEFENDANT GAVE INVESTIGATING OFFICER WRITTEN STATEMENT OF INCIDENT.

Sworn to and subscribed before me
on 02/20/1998

(L.S.)
Signature of Issuing Judge
Shirley M. Sans

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Lexington

ARREST WARRANT
TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe th
on 02/06/1998 defendant TREMAINE ALWIN JONES
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☐ Municipality of _____) as set forth below:
DESCRIPTION OF OFFENSE: 16-11-311
BURGLARY FIRST DEGREE

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

(L.S.)
Signature of Issuing Judge
Judge Code: 207
Judge's Address 521 Gibson RD.
Lexington, SC 29072
Judge's Telephone 951-2542
Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

Form Approved by
S.C. Attorney General
July 28, 1990
SCCA 518

A TRUE COPY

mm Littlejohn

WITNESSES

LCSD

Grassano

ARREST WARRANT NUMBER

04

ACTION OF GRAND JURY

TRUE BILL

in of Grand Jury

7-06-98

VERDICT

0000000000

in of Petit Jury

DOCKET NO. 98-GS-32- 2473

The State of South Carolina

County of LEXINGTON

COURT OF GENERAL SESSIONS

JULY TERM 1998

THE STATE

vs.

ALWIN TREMAINE JONES

aka

TREMAINE ALWIN JONES

As charged

CDR# 79

Indictment for

BURGLARY FIRST DEGREE

§16-11-311

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
BURGLARY FIRST DEGREE

000089

§16-11-311

At a Court of General Sessions, convened on JULY 6, 1998 the Grand Jurors of
LEXINGTON County present upon their oath:

BURGLARY IN THE FIRST DEGREE

§16-11-311

That **ALWIN TREMAINE JONES aka TREMAINE ALVIN JONES**, did in Lexington
County on or about February 6, 1998, willfully and unlawfully enter the dwelling of **T. H.
Rawl, III** located at _____ Road in the Lexington area, without consent and
with intent to commit the crime of larceny therein, and in effecting entry or while in the
dwelling, the defendant was armed with a deadly weapon, to wit: a 20 gauge shotgun, in
violation of Section 16-11-311 of the South Carolina Code of Laws, as amended.

A TRUE COPY


Lex. Co. C.C.C.P., G.S. & F.O.

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 Lexington

STATE

VS.

Alvin T. Jones

AKA:

Race: BlackSex: Male

DOB:

Age: 19

SSN:

DL#:

SID#:

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:98 -GS- 32 - 2472

A/W#:

F-425469

Date of Offense:

2-2-98

S.C. Code § :

16-11-311

CDR Code #:

1 1719

SENTENCE

☒ PLEA☐ TRIAL☐ CONVICTED OF or ☒ PLEADS

In disposition of the said indictment comes now the Defendant who was

TO: Burglary 1stin violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 1 1719☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor[Signature]
Defendant[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 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.

☒ The Defendant is to be given credit for 7 days/months jail time.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee \$ Payment Terms: ☐ set by SCDPPPS Recipient: *Fine:\$ § 14-1-206 - Assessments 100%.....\$ § 14-1-211 - Surcharge.....\$ 100.00

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI).....\$ County (3%).....\$ TOTAL.....\$ 100.00Clerk of Court/Deputy Clerk Thomas H. ComerfordCourt Reporter: S. PerryPTUP days/hours Public Service EmploymentObtain GED Attend Voc Rehab. or Job Corps 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: Pay surcharge via 1st401012 from prison, HTLPRESIDING JUDGE William P. StanleyJudge Code: 0101510Sentence Date: 8/26/98

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (1/99)

ARREST WARRANT
F- 425469
STATE OF SOUTH CAROLINA
County/ Municipality of
Lexington

THE STATE
against

REMAINE ALWIN JONES
SSN:
LEXINGTON, SC 29073
Race: B Height: 6- 2 Weight: 210
DL #:
Agency ORI #: AFNT
Arresting Agency: AFFIANT
Arresting Officer: AFFIANT
Charge: BURGLARY FIRST DEGREE
Offense Code:
Ordinance Sec. 16-11-311

Warrant is CERTIFIED FOR SERVICE in the
County/ Municipality of
The accused
be arrested and brought before me to be
with according to law.

Signature of Judge (L.S.)

RETURN
of this arrest warrant was delivered to
int TREMAINE ALWIN JONES
2-27-98
James Moore
Signature of Constable/Law Enforcement Officer

WARRANT TO
Shirley Sons
521 Gibson

STATE OF SOUTH CAROLINA
County/ Municipality of
Lexington
Personally appeared before me the affiant
being duly sworn deposes and says that defendant
did within this county and state on
State of South Carolina (or ordinance of
in the following particulars:
DESCRIPTION OF OFFENSE:

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

THAT ON OR ABOUT FEB. 2, 1998 THE ABOVE NAMED DEF. TREMAINE JONES ALONG WITH CO-DEF. DID WITHOUT CONSENT BREAK AND ENTER A RESIDENCE LOCATED AT WAY IN LEXINGTON COUNTY SC WITH THE INTENT TO COMMIT A CRIME. ONCE INSIDE THE RESIDENCE THE DEF. ALONG WITH A CO-DEF. DID TAKE, STEAL AND CARRY AWAY ONE .380 PISTOL WITHOUT PERMISSION. DEF. GAVE INVESTIGATING OFFICER A WRITTEN STATEMENT OF INCIDENT. VALUE OF PROPERTY WAS LESS THAN \$1000.00

Sworn to and subscribed before me
on
Signature of Issuing Judge (L.S.)

Shirley Sons
STATE OF SOUTH CAROLINA
County/ Municipality of
Lexington

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe the
on defendant
did violate the criminal laws of the State of South Carolina (or ordinance of
County/ Municipality of
DESCRIPTION OF OFFENSE: 16-11-311
BURGLARY FIRST DEGREE

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

AFFIDAVIT
Form Approved by
S.C. Attorney General
July 28, 1990
SCCA 618
PHILLIP CLAYTOR
TREMAINE ALWIN JONES
02/02/1998
violate the criminal laws of
County/ Municipality of
BURGLARY FIRST DEGREE
I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:
THAT ON OR ABOUT FEB. 2, 1998 THE ABOVE NAMED DEF. TREMAINE JONES ALONG WITH CO-DEF. DID WITHOUT CONSENT BREAK AND ENTER A RESIDENCE LOCATED AT WAY IN LEXINGTON COUNTY SC WITH THE INTENT TO COMMIT A CRIME. ONCE INSIDE THE RESIDENCE THE DEF. ALONG WITH A CO-DEF. DID TAKE, STEAL AND CARRY AWAY ONE .380 PISTOL WITHOUT PERMISSION. DEF. GAVE INVESTIGATING OFFICER A WRITTEN STATEMENT OF INCIDENT. VALUE OF PROPERTY WAS LESS THAN \$1000.00
Signature of Affiant
Affiant's Address
Affiant's Telephone
LEXINGTON, SC 29073
765-9421
Lex. Co. C.C.C.P., C.S. & F.C.

ARREST WARRANT
TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe the
on defendant
did violate the criminal laws of the State of South Carolina (or ordinance of
County/ Municipality of
DESCRIPTION OF OFFENSE: 16-11-311
BURGLARY FIRST DEGREE
Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.
Judge's Address
Lexington, SC 29072
Judge's Telephone
359-8528
Issuing Court: Magistrate Municipal Circuit

Ann L. H. Johnson

WITNESSES

LCSO

Grassano

ARREST WARRANT NUMBER

39

ACTION OF GRAND JURY

TRUE BILL

on of Grand Jury

7-06-98

VERDICT

000092

on of Petit Jury

DOCKET NO. 98 -GS-32-*2472*

The State of South Carolina

County of LEXINGTON

COURT OF GENERAL SESSIONS

JULY TERM 1998

THE STATE

vs.

ALWIN TREMAINE JONES

aka

TREMAINE ALWIN JONES

As charged

CDR# 79

Indictment for

BURGLARY FIRST DEGREE

§16-11-311

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
BURGLARY FIRST DEGREE

000093

§16-11-311

At a Court of General Sessions, convened on JULY 6, 1998 the Grand Jurors of LEXINGTON County present upon their oath:

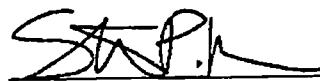
BURGLARY IN THE FIRST DEGREE

§16-11-311

That **ALWIN TREMAINE JONES** aka **TREMAINE ALVIN JONES**, did in Lexington County on or about February 2, 1998, willfully and unlawfully enter the dwelling of **Phillip Claytor** located at **Way in the Lexington area**, without consent and with intent to commit the crime of larceny therein, and in effecting entry or while in the dwelling, the defendant was armed with a deadly weapon, to wit: a .380 pistol, in violation of Section 16-11-311 of the South Carolina Code of Laws, as amended.

A TRUE COPY
Lex. Co. C.C.P., G.S. & F.C.

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 Lexington

STATE

VS.

Alvin T. Jones

AKA:

Race: Black Sex: MaleDOB: 11-11-77 Age: 19SSN: 1-11-311

DL#:

SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

98 -GS- 32 - 2460A/W#: F-425473Date of Offense: 2-6-98S.C. Code § : 16-11-311CDR Code #: 1 1719

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO: Burglary 1stin violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 1 1719☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

82141414
SolicitorP. L. S. S.
DefendantC. B. L.
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 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.

☒ The Defendant is to be given credit for 7 days/months jail time.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☒ RESTITUTION ☐ Heard ☐ Waived, ☒ OrderedTotal: \$ 702 plus 20% fee \$ _____Payment Terms: upon release☒ set by SCDPPPS _____Recipient: TRUDY MAORE

*Fine:\$ _____

§ 14-1-206 - Assessments 100%.....\$ _____

§ 14-1-211 - Surcharge.....\$ 100.00

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI).....\$ _____

County (3%).....\$ _____

TOTAL.....\$ 802.00Clerk of Court/Deputy Clerk Sharon H. CoverfordCourt Reporter: S. Perry

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (1/99)

PTUP _____
_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

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: pay SURCHARGE w/in 1 yr of RELEASE from prison; ADAPRESIDING JUDGE William T. ManningJudge Code: 0101510Sentence Date: 2/26/99

ARREST WARRANT
F- 425473
STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Lexington

THE STATE
against

REMAINE ALWIN JONES
SSN: _____
Race: B Height: 6-2 Weight: 210
DL #: _____
Agency ORI #: AFNT
Issuing Agency: AFFIANT
Issuing Officer: AFFIANT
Offense: BURGLARY FIRST DEGREE
Offense Code: AA
Ordinance Sec. 16-11-311

Warrant is CERTIFIED FOR SERVICE in the
County/ ☐ Municipality of _____
The accused
be arrested and brought before me to be
with according to law.

Signature of Judge (L.S.)

RETURN
/ of this arrest warrant was delivered to
int TREMAINE ALWIN JONES
2-27-98
James Moore
Signature of Constable/Law Enforcement Officer

WARRANT TO:
Shirley Sons
521 Gibson
Lexington SC 29072

STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
Lexington)

AFFIDAVIT

S.C. Attorney General
July 28, 1990
SCCA 518

Personally appeared before me the affiant TRUDY MOORE wt
being duly sworn deposes and says that defendant TREMAINE ALWIN JONES
did within this county and state on 02/06/1998 violate the criminal laws of
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____)

In the following particulars:
DESCRIPTION OF OFFENSE: BURGLARY FIRST DEGREE

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

THAT ON OR ABOUT FEB. 6, 1998 THE ABOVE NAMED DEF. TREMAINE JONES
ALONG WITH CO-DEF. DID WITHOUT CONSENT BREAK AND ENTER A
RESIDENCE LOCATED AT _____ ROAD IN LEXINGTON COUNTY SC
WITH THE INTENT TO COMMIT A CRIME. ONCE INSIDE THE RESIDENCE THE
DEF. ALONG WITH A CO-DEF. DID TAKE, STEAL AND CARRY AWAY ONE
SAVAGE 7MM MAG RIFLE WITHOUT PERMISSION. THE STOLEN RIFLE
RECOVERED AND DEFENDANT GAVE INVESTIGATING OFFICER A WRITTEN
STATEMENT OF THE INCIDENT. VALUE OF PROPERTY WAS LESS THAN \$1000

Sworn to and subscribed before me)
on 02/25/1998)
Shirley Sons (L.S.))
Signature of Issuing Judge

Trudy Moore
Signature of Affiant
Affiant's Address _____ ROAD
LEXINGTON, SC 29073
Affiant's Telephone 3592551

Shirley Sons
STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
Lexington)

ARREST WARRANT

A TRUE COPY
Lex Co. C.C.C.P. G.S. & C.

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe the
on 02/06/1998 defendant TREMAINE ALWIN JONES
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☐ Municipality of _____) as set forth below:

DESCRIPTION OF OFFENSE: 16-11-311
BURGLARY FIRST DEGREE

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

Shirley Sons (L.S.))
Signature of Issuing Judge)
Judge Code: _____)

Judge's Address: 521 Gibson
Lexington, SC 29072
Judge's Telephone 359-8528
Issuing Court: ☐ Magistrate ☐ Municipal ☐ Circuit

Ann L. Alejohn

WITNESSES

LCSD

Grassano

ARREST WARRANT NUMBER

73

ACTION OF GRAND JURY

TRUE BILL

on of Grand Jury

7-06-98

VERDICT

on of Petit Jury

DOCKET NO. 98-GS-32- *2460*

The State of South Carolina

County of LEXINGTON

COURT OF GENERAL SESSIONS

JULY TERM 1998

THE STATE

vs.

ALWIN TREMAINE JONES

aka

TREMAINE ALWIN JONES

As charged

CDR# 79

Indictment for

BURGLARY FIRST DEGREE

§16-11-311

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
BURGLARY FIRST DEGREE

000097

§16-11-311

At a Court of General Sessions, convened on JULY 6, 1998 the Grand Jurors of
LEXINGTON County present upon their oath:

BURGLARY IN THE FIRST DEGREE

§16-11-311

That **ALWIN TREMAINE JONES** aka **TREMAINE ALVIN JONES**, did in Lexington
County on or about February 6, 1998, willfully and unlawfully enter the dwelling of **Trudy
Moore** located at 12... Road in the Lexington area, without consent and
with intent to commit the crime of larceny therein, and in effecting entry or while in the
dwelling, the defendant was armed with a deadly weapon, to wit: a 7 mm Mag Rifle, in
violation of Section 16-11-311 of the South Carolina Code of Laws, as amended.

A TRUE COPY

[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

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

[Signature]
ASSISTANT SOLICITOR

000098

STATE OF SOUTH CAROLINA

COUNTY OF

Lexington

STATE

VS.

Alwin T. Jones

AKA:

Race:

Black

Sex:

Male

DOB:

Age:

19

SSN:

DL#:

SID#:

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

99 -GS- 32 - 2654

A/W#:

F-655786

Date of Offense:

9/1/98

S.C. Code § :

16-11-330(A)

CDR Code #:

111319

SENTENCE

☒ PLEA☐ TRIAL☐ CONVICTED OF or ☒ PLEADS

In disposition of the said indictment comes now the Defendant who was

TO:

Armed Robbery

in violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 111319

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 1'-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 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.

☒ The Defendant is to be given credit for 7 days/months jail time.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient: _____

*Fine: _____ \$

§ 14-1-206 - Assessments 100%..... \$

§ 14-1-211 - Surcharge..... \$ 100.00

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI)..... \$

County (3%)..... \$

TOTAL..... \$ 100.00

Clerk of Court/Deputy Clerk _____

Court Reporter: _____

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekl./monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: ATTN: PAM SURCHARGE W/IN 1 yr

OF RELEASE

PRESIDING JUDGE _____

Judge Code: _____

Sentence Date: _____

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (1/9)

COUNTY OF

STATE

Lexington

VS.

Alwin T. Jones

AKA:

Race: Black

Sex: male

DOB:

Age: 19

SSN:

DL#:

SID#:

INDICTMENT/CASE#:

99 -GS- 32 - 3567

000099

A/W#:

F-851434

Date of Offense:

1-2-99

S.C. Code § :

16-11-330(A)

CDR Code #:

111319

SENTENCE

☒

PLEA

☐

TRIAL

☒

PLEADS

In disposition of the said indictment comes now the Defendant who was

TO:

Armed Robbery

in violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 111319

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand JuThe plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the Sta

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Cen
 for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or pay
 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 condition
 probation, which are incorporated by reference.

☒ The Defendant is to be given credit for 7 days/months jail time.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: \$ _____

§ 14-I-206 - Assessments 100% \$ _____

§ 14-1-211 - Surcharge \$ 100.00

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI) \$ _____

County (3%) \$ _____

TOTAL \$ 100.00

Clerk of Court/Deputy Clerk

Kerash H. Connerford

PRESIDING JUDGE

William P. Hanks

Judge Code:

0101510

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc Rehab. or Job Corps

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/mor
pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund.

Other: ATK; PAY SURCHARGE w/in

1 yr. of release

ARREST WARRANT

F-851434 F- 851434

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
LexingtonTHE STATE
againstALWIN TREMAINE JONESAddress: AD
LEXINGTON, SC 29073Phone: SSN: Sex: M Race: B Height: 6-2 Weight: 200DL State: DL #: DOB: Agency ORI #: 3200Prosecuting Agency: L. C. S. D.Prosecuting Officer: KIRCHNEROffense: ARMED ROBBERY W/DEADLY WEPOffense Code: 151
Code/Ordinance Sec. 16-11-330This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant ALWIN TREMAINE JONES
on 2-10-99

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

BRUCE RUTLAND
650 KNOX ABBOTT DR.
CAYCE, SC 29033
803-796-7100

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
Lexington

AFFIDAVIT

Form Approved by
S.C. Attorney General
July 26, 1990
SCCA 518Personally appeared before me the affiant SHANE T. MELBOURNE w/
being duly sworn deposes and says that defendant ALWIN TREMAINE JONES
did within this county and state on 01/02/1999 violate the criminal laws of
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of)
in the following particulars:DESCRIPTION OF OFFENSE: ROBBERY AND ATTEMPTED ROBBERY WHILE ARMED WITH
DEADLY WEAPONI further state that there is probable cause to believe that the defendant named above did comm
the crime set forth and that probable cause is based on the following facts:

THAT ON OR ABOUT JANUARY 2, 1999 AT APPRX. 5:00 P.M. THE
DEFENDANT, ALWIN JONES AND TWO CO-DEFENDANTS ENTERED THE
AFFIANT'S RESIDENCE LOCATED AT CIR. IN THE WEST
COLUMBIA AREA OF LEXINGTON COUNTY, S.C. ONCE INSIDE THE
DEFENDANTS DID TAKE MONEY, JEWELRY AND OTHER ITEMS VALUED AT
APPRX. \$1376.00 FROM THE AFFIANT AND FOUR OTHER OCCUPANTS OF THE
RESIDENCE WHILE HOLDING THEM AT GUNPOINT.

Sworn to and subscribed before me
on 02X09/1999

Signature of Affiant

Affiant's Address 27

Signature of Issuing Judge (L.S.)

SCOTT D. WHITTLEAffiant's Telephone 936-1009WEST COLUMBIA, SC 29169

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
Lexington

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that
on 01/02/1999 defendant ALWIN TREMAINE JONES
did violate the criminal laws of the State of South Carolina (or ordinance of☐ County/ ☐ Municipality of) as set forth below:DESCRIPTION OF OFFENSE: 16-11-330ROBBERY AND ATTEMPTED ROBBERY WHILE ARMED WITH
DEADLY WEAPONNow, therefore, you are empowered and directed to arrest the said defendant and bring her before
me forthwith to be dealt with according to law. A copy of this Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge (L.S.)

Judge's Address 521 GIESON RD. G.S. S.C.Judge's Telephone 951-2542Judge Code: 886Issuing ☐ Municipal ☐ Circuit

ORIGINAL

A TRUE COPY

WITNESS

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
ARMED ROBBERY
§16-11-330 (A)

At a Court of General Sessions, convened in AUGUST, 1999 the Grand Jurors of
LEXINGTON County present upon their oath:

ARMED ROBBERY §16-11-330 (A)

That **ALWIN TREMAINE JONES**, did in Lexington County on or about January
2, 1999, while armed with a deadly weapon, to wit: a gun, feloniously take from the
person or presence of the victim **Shane Melbourne**, by means of force or intimidation
goods or monies of the victim, such goods or monies being described as follows:
money, jewelry and other items valued at approximately \$1376.00, in violation of
§16-11-330.(A) of the South Carolina Code of Laws of 1976, as amended.

A TRUE COPY

[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

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

[Signature]
SOLICITOR
Asst.

STATE OF SOUTH CAROLINA
COUNTY OF Lexington
STATE VS.
Alvin T. Jones
AKA: _____
Race: Black Sex: Male
DOB: 2 Age: 19
SSN: _____
DL#: _____
SID#: _____

INDICTMENT/CASE#: 000103
99-GS-32-2655
A/W#: Strategic
Date of Offense: 12-9-98
S.C. Code § : 16-11-312(A)
CDR Code #: 1 1810

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Burglary 2nd (A)
in violation of § 16-11-312(A) of the S.C. Code of Laws, bearing CDR Code # 1 1810
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State
ATTEST: [Signature] Alvin T. Jones [Signature]
Solicitor Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center
for a determinate term of 15 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 condition
probation, which are incorporated by reference.

☒ The Defendant is to be given credit for 7 days/months jail time.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ _____ plus 20% fee \$ _____
Payment Terms: _____
☐ set by SCDPPPS _____

Recipient: _____
*Fine: _____ \$
§ 14-1-206 - Assessments 100%..... \$
§ 14-1-211 - Surcharge..... \$ 100.00
(Exceptions: See § 14-1-211)
§ 56-5-2995 (DUI)..... \$
County (3%)..... \$
TOTAL..... \$ 100.00

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly payments of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund.
Other: ATU; Pay surcharge w/in 1 yr of release

Clerk of Court/Deputy Clerk Thomas H. Connerford PRESIDING JUDGE William P. Clardy
Judge Code: 0101510

ARREST WARRANT

51380F- 851380

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
Lexington

THE STATE

against

LWIN TREMAINE JONES

EXTINGTON, SC 29073

SSN: 24

Race: B Height: 0-0 Weight: 000

Agency ORI #: 3200

ing Agency: L. C. S. D.

ing Officer: E. PRESTIGIACOMO

BURGLARY SECOND DEGREE

Offense Code: 16-11-312

Ordinance Sec.

Warrant is CERTIFIED FOR SERVICE in the
County/ ☐ Municipality ofThe accused
be arrested and brought before me to be
with according to law.

Signature of Judge

(L.S.)

RETURN

of this arrest warrant was delivered to
nt ALWIN TREMAINE JONES

05-99 AT 1135 A.M.

Signature of Constable/Law Enforcement Officer

N WARRANT TO:

BRUCE RUTLAND
650 KNOX ABBOTT DR.
CAYCE, SC 29033

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
Lexington

AFFIDAVIT

Personally appeared before me the affiant TAMMY GANTT - who
being duly sworn deposes and says that defendant ALWIN TREMAINE JONES
did within this county and state on 12/09/1998 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of)

In the following particulars:

BURGLARY. SECOND DEGREE

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:THAT ON 12-09-98 AT APPROXIMATELY 1330 HRS THE DEFENDANT ,
TREMAINE JONES , DID ALONG WITH THREE OTHER CO-DEFENDANTS ENTER
THE AFFIANT'S RESIDENCE LOCATED AT _____ ROAD IN LEXINGTON,
COUNTY S.C. BY KICKING IN THE FRONT DOOR AND ENTERING WITH THE
INTENT TO COMMIT INSIDE. ONCE INSIDE THE RESIDENCE THE DEFENDANTS
DID REMOVE A CAMCORDER , A RADIO , AND A RADIO ALL TOTALLING TO
VALUE OF LESS THAN A THOUSAND DOLLARS. CONFESSION OBTAINED FROM
LAW ENFORCEMENT.Sworn to and subscribed before me
on 01/28/1999

Signature of Affiant

Affiant's Address

ROAD

LEXINGTON, SC 29072

Signature of Issuing Judge

(L.S.)

Affiant's Telephone

808-3499

SCOTT D. WHITTLE

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
Lexington

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that
on 12/09/1998 defendant ALWIN TREMAINE JONES
did violate the criminal laws of the State of South Carolina (or ordinance of☐ County/ ☐ Municipality of

) as set forth below:

DESCRIPTION OF OFFENSE:

BURGLARY SECOND DEGREE

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

Judge's Address

521 GIBSON RD.

LEXINGTON, SC 29072

Signature of Issuing Judge

Judge's Telephone

951-2542

Judge Code: 086

Issuing Court:

☒ Magistrate☐ Municipal☐ CircuitS.C. Attorney General
July 26, 1990
SCCA 518

A TRUE COPY

Lex. Co. C.C.C.P. 08 & 90

000105

Carm Littlejohn

WITNESSES

LCSD

Prestigiacomo

DOCKET NO. 99-GS-32- 2655

The State of South Carolina

County of LEXINGTON

COURT OF GENERAL SESSIONS

JUNE TERM 1999

THE STATE

vs.

ALWIN TREMAINE JONES

ARREST WARRANT NUMBER

HT INDICTMENT

ACTION OF GRAND JURY

TRUE BILL

[Signature]

on of Grand Jury

6-21-99

VERDICT

(P) et al only (Burg. 2nd (A))
NP ct's 2 & 3

CDR# 480

Indictment for

COUNT THREE: PETIT LARCENY

§16-13-30 (A)

on of Petit Jury

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
COUNT THREE: PETIT LARCENY
§16-13-30 (A)

At a Court of General Sessions, convened in JUNE, 1999 the Grand Jurors of
LEXINGTON County present upon their oath:

COUNT THREE:

PETIT LARCENY §16-13-30 (A)

That **ALWIN TREMAINE JONES**, along with others, did In Lexington County, on
or about December 9, 1998, willfully and unlawfully take and carry away the personal
goods of **Tammy Gantt**, of the value less than one thousand dollars (\$1000.00),
described as follows: one Kenwood Stereo System, one Thompson Camcorder, and/or
other personal property, with the intent to deprive the owner permanently of such
property, in violation of §16-13-30 (A) of the 1976 South Carolina Code of Laws, as
amended.

A TRUE COPY

[Signature]
Lex. Co. C.C.C.P., C.S. & F.C.

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

[Signature]
SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF

Lexington

STATE

VS.

Alvin T. Jones

AKA:

Race: Black

Sex: Male

DOB:

Age: 19

SSN:

DL#:

SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

000107

98 -GS- 32 - 2458

A/W#:

F-425463

Date of Offense:

2-6-98

S.C. Code § :

16-11-312(A)

CDR Code #:

1 1810

SENTENCE

☒ PLEA☐ TRIAL☐ CONVICTED OF or ☒ PLEADS

In disposition of the said indictment comes now the Defendant who was

TO:

Burglary 2nd (A)

in violation of § 16-11-312(A) of the S.C. Code of Laws, bearing CDR Code # 1 1810

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 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.

☒ The Defendant is to be given credit for 7 days/months jail time.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:\$

§ 14-1-206 - Assessments 100%.....\$

§ 14-1-211 - Surcharge.....\$ 100.00

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI).....\$

County (3%).....\$

TOTAL.....\$ 100.00

Clerk of Court/Deputy Clerk

Court Reporter:

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

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: ADJ: PAY SURCHARGE w/in 1 yr. of release

PRESIDING JUDGE

Judge Code:

Sentence Date:

ARREST WARRANT

463 F- 425463

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

THE STATE

against

TREMAINE ALWIN JONES

Lexington, SC 29073

SSN:

Age: B Height: 6-2 Weight: 210

DL #:

Agency ORI #: AFNT

Agency: AFFIANT

Officer: AFFIANT

BURGLARY SECOND DEGREE

Offense Code: 40

Agency Sec. 16-11-312

I am CERTIFIED FOR SERVICE in the

☐ Municipality of

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

(L.S.)
Signature of Judge

RETURN

this arrest warrant was delivered to
TREMAINE ALWIN JONES

27-98

Signature of Constable/Law Enforcement Officer

WARRANT TO:

Shirley Sons

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

Personally appeared before me the affiant JACK EDISON WHITLOW who being duly sworn deposes and says that defendant TREMAINE ALWIN JONES did within this county and state on 02/06/1998 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of) in the following particulars:

DESCRIPTION OF OFFENSE: BURGLARY SECOND DEGREE

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

THAT ON OR ABOUT FEB. 6, 1998 THE ABOVE NAMED DEF. TREMAINE JONES ALONG WITH CO-DEF. DID WITHOUT CONSENT BREAK AND ENTER A RESIDENCE LOCATED AT DRIVE IN LEXINGTON COUNTY SC WITH THE INTENT TO COMMIT A CRIME. ONCE INSIDE THE RESIDENCE THE DEF. ALONG WITH A CO-DEF. DID TAKE, STEAL AND CARRY AWAY MISC ITEMS WITHOUT PERMISSION. DEF. GAVE INVESTIGATING OFFICER A WRITTEN STATEMENT OF INCIDENT. VALUE OF PROPERTY WAS LESS THAN \$1000.00

Sworn to and subscribed before me

on 02/25/1998

Signature of Issuing Judge (L.S.)

Signature of Affiant

Affiant's Address

Affiant's Telephone

A TRUE COPY

LEXINGTON, SC 29073, S.C. & N.C.

359-4173

Shirley Sons
STATE OF SOUTH CAROLINA☒ County/ ☐ Municipality of

Lexington

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that on 02/06/1998 defendant TREMAINE ALWIN JONES did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☐ Municipality of) as set forth below:

DESCRIPTION OF OFFENSE: 16-11-312

BURGLARY SECOND DEGREE

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

Signature of Issuing Judge (L.S.)

Judge's Address 521 Gibson

Lexington, SC 29072

Judge's Telephone 359-8528

Sam Littlejohn
WITNESSES
LCSD
Grassano

DOCKET NO. 98-GS-32- 2458

The State of South Carolina
County of LEXINGTON
COURT OF GENERAL SESSIONS

JULY TERM 1998

THE STATE
vs.

ALWIN TREMAINE JONES

aka

TREMAINE ALWIN JONES

As charged

CDR# 80

Indictment for
BURGLARY SECOND
DEGREE

§16-11-312 (A)

ARREST WARRANT NUMBER

53

ACTION OF GRAND JURY

TRUE BILL

7-06-98
on of Grand Jury

VERDICT

on of Petit Jury

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
BURGLARY SECOND
DEGREE

§16-11-312 (A)

At a Court of General Sessions, convened on JULY 6, 1998 the Grand Jurors of
LEXINGTON County present upon their oath:

BURGLARY SECOND DEGREE

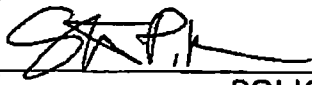
§16-11-312 (A)

That **ALWIN TREMAINE JONES** aka **TREMAINE ALWIN JONES**, did in
Lexington County on or about February 6, 1998, willfully and unlawfully enter the
dwelling of **Jack Edison Whitlow**, located at _____ Drive in the Lexington area,
without consent and with the intent to commit the crime of Larceny therein, in violation
of §16-11-312 (A) of the South Carolina Code of Laws of 1976, as amended.

A TRUE COP


Lex. Co. C.C.C.P., G.S. & F.

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

Lexington

STATE

VS.

Alvin T. Jones

AKA:

Race: Black

Sex: male

DOB:

Age: 19

SSN:

DL#:

SID#:

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

98-GS-32-2459

A/W#:

F-42546

Date of Offense:

2-6-98

S.C. Code §:

16-11-312(A)

CDR Code #:

1810

SENTENCE

☒ PLEA☐ TRIAL☐ CONVICTED OF or ☒ PLEADS

In disposition of the said indictment comes now the Defendant who was

TO:

Burglary 2nd (A)

in violation of §

16-11-312(A)

of the S.C. Code of Laws, bearing CDR Code #

1810

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 1'-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 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.

☒ The Defendant is to be given credit for 7 days/months jail time.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☒ RESTITUTION ☐ Heard, ☐ Waived, ☒ OrderedTotal: \$ 500 plus 20% fee \$ _____

Payment Terms: _____

☒ set by SCDPPPS _____Recipient: REBECCA ADAM

*Fine: _____ \$

§ 14-1-206 - Assessments 100% _____ \$

§ 14-1-211 - Surcharge _____ \$ 100.00

(Exceptions: See § 14-1-211) _____ \$

§ 56-5-2995 (DUI) _____ \$

County (3%) _____ \$

TOTAL _____ \$ 600.00

Clerk of Court/Deputy Clerk _____

Court Reporter: S. Perry

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

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: ATTN: PAY SURCHARGEWHILE 1 YR. OF RELEASE

PRESIDING JUDGE

Judge Code: 0101310Sentence Date: 2/26/98

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

ARREST WARRANT
F- 425461
STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Lexington
THE STATE
against

MAINE ALWIN JONES
INGTON, SC 29073
SSN:
ace: B Height: 6-2 Weight: 210
DL #:
Agency ORI #: AENT
Agency: AFFIANT
Officer: AFFIANT
BURGLARY SECOND DEGREE
Offense Code:
nance Sec. 16-11-312
ant is CERTIFIED FOR SERVICE in the
// ☐ Municipality of
The accused
arrested and brought before me to be
according to law.
Signature of Judge (L.S.)

RETURN
f this arrest warrant was delivered to
TREMAINE ALWIN JONES
?- 27-98
Signature of Constable/Law Enforcement Officer
WARRANT TO:
Shirley Sons

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Lexington

AFFIDAVIT
Personally appeared before me the affiant REBECCA ADDY who
being duly sworn deposes and says that defendant TREMAINE ALWIN JONES
did within this county and state on 02/06/1998 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of)
in the following particulars:
DESCRIPTION OF OFFENSE: BURGLARY SECOND DEGREE

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

THAT ON OR ABOUT FEB. 6, 1998 THE ABOVE NAMED DEF. TREMAINE JONES
ALONG WITH CO-DEF. DID WITHOUT CONSENT BREAK AND ENTER A
RESIDENCE LOCATED AT ROAD IN LEXINGTON COUNTY SC
WITH THE INTENT TO COMMIT A CRIME. ONCE INSIDE THE RESIDENCE THE
DEF. ALONG WITH A CO-DEF. DID TAKE, STEAL AND CARRY AWAY MISC
ITEMS WITHOUT PERMISSION. DEF. GAVE INVESTIGATING OFFICER A
WRITTEN STATEMENT OF INCIDENT. VALUE OF PROPERTY WAS LESS THAN
\$1000.00

Sworn to and subscribed before me
on 02/25/1998
Signature of Issuing Judge (L.S.)

Shirley Sons
STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Lexington

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

It appearing from the above affidavit that there are reasonable grounds to believe that
on 02/06/1998 defendant TREMAINE ALWIN JONES
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☐ Municipality of) as set forth below:

DESCRIPTION OF OFFENSE: 16-11-312
BURGLARY SECOND DEGREE

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

Signature of Issuing Judge (L.S.)

Signature of Affiant
Affiant's Address
Affiant's Telephone 7371611
LEXINGTON, SC 29079
COPY
Lex. Co. C.C.P., C.S. & F.C.

ARREST WARRANT

Judge's Address 521 Gibson
Lexington, SC 29072
Judge's Telephone 354-8528

9mm 2.75/32mm

WITNESSES

LCSD

Grassano

DOCKET NO. 98-GS-32- 2459

The State of South Carolina

County of LEXINGTON

COURT OF GENERAL SESSIONS

JULY TERM 1998

THE STATE

vs.

ALWIN TREMAINE JONES

aka

TREMAINE ALWIN JONES

As charged

CDR# 80

Indictment for

**BURGLARY SECOND
DEGREE**

§16-11-312 (A)

ARREST WARRANT NUMBER

61

ACTION OF GRAND JURY

RUE BILL

on of Grand Jury

7-06-98

VERDICT

on of Petit Jury

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
BURGLARY SECOND
DEGREE

§16-11-312 (A)

At a Court of General Sessions, convened on JULY 6, 1998 the Grand Jurors of
LEXINGTON County present upon their oath:

BURGLARY SECOND DEGREE

§16-11-312 (A)

That **ALWIN TREMAINE JONES aka TREMAINE ALWIN JONES**, did in
Lexington County on or about February 6, 1998, willfully and unlawfully enter the
dwelling of **Rebecca Addy**, located at _____ Road in the Lexington area,
without consent and with the intent to commit the crime of Larceny therein, in violation
of §16-11-312 (A) of the South Carolina Code of Laws of 1976, as amended.

A TRUE COPY
[Signature]
Lex. Co. C.C.P., G.S. & F.C.

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

[Signature]
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF

STATE

VS.

AKA:

Race:

Sex:

DOB:

Age:

SSN:

DL#:

SID#:

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

98 -GS- 32 - 2471

A/W#:

F-425455

Date of Offense:

2-6-98

S.C. Code §:

16-11-312(A)

CDR Code #:

1 1810

SENTENCE

☒ PLEA☐ TRIAL☐ CONVICTED OF or ☒ PLEADS

In disposition of the said indictment comes now the Defendant who was

TO: Burglary 2nd (A)in violation of § 16-11-312(A) of the S.C. Code of Laws, bearing CDR Code # 1 1810☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 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.

☒ The Defendant is to be given credit for 7 days/months jail time.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

SPECIAL CONDITIONS:

☒ RESTITUTION ☐ Heard, ☐ Waived, ☒ OrderedTotal: \$ 250 plus 20% fee \$ Payment Terms: ☒ set by SCDPPPS Recipient: JEFFREY SMITH*Fine: \$§ 14-1-206 - Assessments 100% \$§ 14-1-211 - Surcharge 100.00 \$

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI) \$County (3%) \$TOTAL 350.00 \$Clerk of Court/Deputy Clerk Thomas H. CemerfeCourt Reporter: S. PerryPTUP days/hours Public Service EmploymentObtain GED Attend Voc Rehab. or Job Corps 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: ADA: PMY SURCHARGE W/IN1 YR. OF RELEASEPRESIDING JUDGE William P. BlumleyJudge Code: 0101510Sentence Date: 8/20/99

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (1/99)

ARREST WARRANT
5455 **F- 425455**
STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Lexington
THE STATE
against

EMAINIE ALWIN JONES
XINGTON, SC 29073
SSN: _____
Race: **B** Height: **6- 2** Weight: **210**
DL #: _____
Agency ORI #: **AENT**
Agency: **AFFIANT**
Officer: **AFFIANT**
BURGLARY SECOND DEGREE
Offense Code: **16-11-312**
Finance Sec. **16-11-312**
Warrant is CERTIFIED FOR SERVICE in the
County/ ☐ Municipality of _____
The accused
is arrested and brought before me to be
according to law.
Signature of Judge _____ (L.S.)

RETURN
of this arrest warrant was delivered to
TREMAINE ALWIN JONES
- 27-98
more
Signature of Constable/Law Enforcement Officer _____
WARRANT TO:
Shirley Sons

STATE OF SOUTH CAROLINA)
☐ County/ ☐ Municipality of)
Lexington)

AFFIDAVIT
Personally appeared before me the affiant **JEFFREY SMITH** who
being duly sworn deposes and says that defendant **TREMAINE ALWIN JONES**
did within this county and state on **02/06/1998** violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____)
in the following particulars:
DESCRIPTION OF OFFENSE: BURGLARY SECOND DEGREE

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

THAT ON OR ABOUT FEB. 6, 1998 THE ABOVE NAMED DEF. TREMAINE JONE
ALONG WITH CO-DEF. DID WITHOUT CONSENT BREAK AND ENTER A
RESIDENCE LOCATED AT _____ IN LEXINGTON COUNTY
SC WITH THE INTENT TO COMMIT A CRIME. ONCE INSIDE THE RESIDENCE
THE DEF. ALONG WITH A CO-DEF. DID TAKE, STEAL AND CARRY AWAY MISC
ITEMS WITHOUT PERMISSION. DEF. GAVE INVESTIGATING OFFICER A
WRITTEN STATEMENT OF INCIDENT. VALUE OF PROPERTY WAS LESS THAN
\$1000.00

Sworn to and subscribed before me)
on **02/25/1998**)
Signature of Issuing Judge _____ (L.S.)

Shirley Sons
STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
Lexington)

ARREST WARRANT
TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that
on **02/06/1998** defendant **TREMAINE ALWIN JONES**
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☐ Municipality of _____) as set forth below:

DESCRIPTION OF OFFENSE: 16-11-312
BURGLARY SECOND DEGREE

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

Signature of Issuing Judge _____ (L.S.)
Judge's Address **521 Gibson**
Lexington, SC 29072
Judge's Telephone **359-8528**

Form Approved by
S.C. Attorney General
July 26, 1990
SCCA 518

Signature of Affiant _____
Affiant's Address _____
LEXINGTON, SC 29072
Affiant's Telephone **3568537**
A TRUE COPY
Lex. Co. C.C.C.P., C.S. & F.E.

WITNESSES

LCSD

Grassano

ARREST WARRANT NUMBER

55

ACTION OF GRAND JURY

RUE BILL

on of Grand Jury

7-06-98

VERDICT

on of Petit Jury

DOCKET NO. 98-GS-32- 2471

The State of South Carolina

County of LEXINGTON

COURT OF GENERAL SESSIONS

JULY TERM 1998

THE STATE

vs.

ALWIN TREMAINE JONES

aka

TREMAINE ALWIN JONES

As charged

CDR# 80

Indictment for

BURGLARY SECOND
DEGREE

§16-11-312 (A)

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
BURGLARY SECOND
DEGREE

§16-11-312 (A)

At a Court of General Sessions, convened on JULY 6, 1998 the Grand Jurors of
LEXINGTON County present upon their oath:

BURGLARY SECOND DEGREE

§16-11-312 (A)

That **ALWIN TREMAINE JONES aka TREMAINE ALWIN JONES**, did in Lexington County on or about February 6, 1998, willfully and unlawfully enter the dwelling of **Jeffrey Smith**, located at 1000 [REDACTED] Road in the Lexington area, without consent and with the intent to commit the crime of Larceny therein, in violation of §16-11-312 (A) of the South Carolina Code of Laws of 1976, as amended.

Lex. Co. C.C.C.P., G.S. & F.C.

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

S.P.L.
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

2012-CP-32-3136

Alwin Jones, #260800,

Applicant,

v.

MEMORANDUM

State of South Carolina,

Respondent.

This matter comes before the Court by way of an Application for post-conviction relief filed March 6, 2012. Respondent made its Return dated June 12, 2012, requesting that the Application be summarily dismissed based on the statute of limitations, successiveness, and laches. A hearing was convened on August 16, 2013, at the Lexington County Courthouse on the motion for summary dismissal. Following hearing, the Court requested memoranda from the parties.

Applicant asserts that his arrest for armed robbery (one of several charges for which Applicant was arrested) was invalid based on a defective arrest warrant in that the man who signed the warrant, John Sharpe, was not properly a ministerial recorder in Cayce. Applicant adds that he was prejudiced by this because after his arrest he confessed to the robbery.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lexington County. Applicant was indicted at the June 1999 term of the Lexington County Grand Jury for armed robbery; criminal conspiracy; possession of a firearm or knife during commission of a violent crime; unlawful possession of a pistol by person under the age of twenty-one, burglary, second degree; burglary, first degree; and petit larceny. Cam

Littlejohn, Esquire, represented Applicant. On August 26, 1999, Applicant pled guilty to three counts of burglary, second degree (1999-GS-32-2458; -2459; -2471) and three counts of burglary, first degree (1999-GS-32-2460; -2472; -2473) and one count of armed robbery (1999-GS-32-2654). The Honorable William P. Keesley sentenced Applicant fifteen (15) years confinement on each burglary, second degree, charge, thirty (30) years confinement on each burglary, first degree, charge, and thirty (30) years on the armed robbery charge. The sentences were to be served concurrently. The Applicant did not appeal his sentence and conviction. Applicant subsequently filed PCR applications in 2000, 2002, and 2006, and the details of those applications appear in the State's Return and Motion to Dismiss and attached materials.

ALLEGATIONS

Merits – Ministerial Recorder

Applicant contends that Sharpe lacked authority to sign the warrant based on failure to comply with the South Carolina Court Administration's annual continuing education requirements. Applicant attaches excerpts from the PCR hearing of Julius Irick Gilyard v. State of South Carolina (2001-CP-32-3154) in support of his allegation.¹ Hearings in that matter were had on August 26, 2003, (TAB B) and July 10, 2007 (TAB C). Applicant states in his application that he learned this information on March 17, 2011, but provides no additional information regarding how he learned of the allegation. Even if the matter were not barred based on the statute of limitations, successiveness, and laches, the issue fails on the merits.

¹ Gilyard's PCR application on this issue was denied. The South Carolina Supreme Court denied certiorari on April 7, 2010, and the remittitur was sent on April 23, 2010. (TAB A)

During hearings in the Gilyard case, Sharpe testified that he was a ministerial recorder in the town of Cayce.² For many purposes, ministerial recorders are afforded the same capacity as that of municipal judge. Sharpe testified that he assumed duties as a ministerial recorder in Cayce in 1977. (TAB B Tr. p. 34, lines 4-6; TAB C Tr. p. 17, lines 3-8.) He was both a ministerial recorder and also the Clerk/Treasurer for the City of Cayce during the year Applicant's warrant was issued, 1998. (TAB C Tr. p. 15, lines 18-22; p. 17, lines 9-12.) Sharpe stated that during the years in question he was not aware that educational requirements existed. (TAB B Tr. p. 35, lines 7-13.) Sharpe did attend seminars but was unsure of the exact dates. (TAB B Tr. p. 35, line 18 – p. 36, line 3; TAB C Tr. p. 18, line 19 – p. 19, line 10.) He did not report attendance at these seminars, unaware of the requirement to do so. (TAB B Tr. p. 36, lines 4-8.)

During the Gilyard case, testimony was also taken from Mary Joyce Marshall, then a staff attorney with South Carolina Court Administration. Marshall reported that during 1998, ministerial recorders were required to have twelve hours of continuing education. (TAB B Tr. p. 39.) Marshall stated that she had been unable to find any record of Sharpe. Marshall testified that reporting would not have been required until 2000 and most recorders did not report prior to 2000. (TAB B Tr. p. 40, lines 4-15.)

In 1980, the Legislature enacted S.C. Code §14-25-115, allowing a city council to appoint "one or more full-time or part-time ministerial recorders, who shall hold office at the pleasure of the council."³ Ministerial recorders had several powers, including issuance of arrest warrants. Under §14-25-15 (1980) (TAB E), ministerial recorders were required to "take and subscribe the oath of office" prescribed by the South Carolina Constitution. Educational requirements were not codified until 2000

² Applicant attached portions of the Gilyard transcript to his memorandum in this matter. No testimony has been offered by John Sharpe in the present case. It is unknown whether Sharpe is available for testimony in the present matter.

³ Prior to 1980, when Sharpe was initially appointed, the office of ministerial recorder was covered by S.C. Code §§14-25-310 and - 320 (1976). These sections similarly permitted a city council to establish the office of ministerial recorder.

when S.C. Code §14-25-15 was amended to add sections (B) – (G) (2000 Act No. 394, §2, effective August 4, 2000) (TAB F). Until 2000, the only authority for education requirements was found in South Carolina Supreme Court Order 1994-05-03-01, dated May 3, 1994 and effective January 1, 1995 (TAB D). The order states, “[f]ailure to comply with this order shall subject the party so failing to penalties for contempt of court.” No other penalty, such as vacating office or invalidation of signatures, is mentioned.

In the absence of other guidance requiring continuing education for the post of ministerial recorder, the only remedy for non-compliance with training at the time of Applicant’s arrest warrant was civil contempt of court. While in 2000 the amendments to S.C. code §14-25-15(D) and (E) allowed for the office of a magistrate to be declared vacant upon notice of failure to comply or April 30, 2002, whichever came first, no such directive existed in 1998 when Applicant’s arrest warrant was issued. The State maintains that §14-25-15(D)(2000) set out requirements for each magistrate and municipal judge to pass an examination and does not address continuing education requirements. Nonetheless, even applying the section and assuming that Sharpe never took an appropriate examination, Sharpe remained a ministerial recorder until April 30, 2002. Therefore, even in the light most favorable to Applicant, Sharpe properly signed his arrest warrant on September 1, 1998. As, in the light most favorable to Applicant, no violation has been established in this regard, Applicant’s claim must fail.

Merits – Evidence Custodian

Applicant asks this court to accept a portion of a transcript from another case taken in 1996 in which a police officer testifies that he turned money over to Sharpe as evidence that Sharpe was acting

as an evidence custodian for the police department at the time of Applicant's warrant, 1998.⁴ In the 1996 transcript, the law enforcement officer states that Sharpe is the City Treasurer; in Sharpe's position as Treasurer/Clerk, the officer takes money to Sharpe that is collected from search warrants. After taking money to the Treasurer, the officer did not know what happened to the money. Applicant somehow interprets this administrative function, assuming such was the case at the time of Applicant's arrest, as equivalent of being in the employ of law enforcement as an evidence custodian, and implies that Sharpe could somehow lose neutrality by handling evidence submitted by a law enforcement officer. However, as City Treasurer/Clerk, Sharpe is removed from the prosecutor and police, not under their employ or influence. Additionally, the facts as set forth in the warrant affidavit, including the victim's identification of Applicant from a lineup, surely support the issuance of the warrant based on probable cause and not on any improper basis. There is no evidence that Sharpe handled any money associated with Applicant's case. For all these reasons, Applicant's claim that his arrest warrant was invalid on this basis likewise fails.

Prejudice

As prejudice, Applicant states that he would not have confessed to armed robbery had he known the arrest warrant was defective.⁵ Applicant offers mere speculation that he could have secured a more favorable plea offer regarding his remaining charges (including multiple counts of burglary – 1st degree and burglary – 2nd degree and a series of charges dismissed pursuant to the plea dating back to 1997, including breaking and entering of an auto, unlawful carrying of a pistol, seven petit larcenies, two forgeries, armed robbery, burglary, and numerous other offenses) had he not been arrested for armed robbery. An indictment could have been sought even without an arrest warrant. Thompson v.

⁴ Applicant again offers no explanation for the necessity and relevance of an unrelated transcript as evidence in his case and fails to establish that any pertinent witness is unavailable.

⁵ The State submits that an argument on prejudice is not necessary in this matter but addresses these claims in the interest of responding to all aspects of Applicant's memorandum.

State, 251 S.C. 593, 164 S.E.2d 760 (1968). Moreover, Applicant was arrested pursuant to several warrants associated with the same armed robbery which were issued on September 1, 1998: conspiracy to commit armed robbery (F-655787), possession of a firearm by a person under the age of 21 (F-655786), and possession of a firearm during commission of a violent crime (F-655786). Applicant alleges no defects in these additional warrants or any question as to the validity of his arrest. For all these reasons, in the light most favorable to Applicant, Applicant's claim that he was somehow prejudiced by the invalid warrant fails.

Other Grounds for Summary Dismissal

Applicant has failed to present in either of his grounds an argument as to why his application should not be barred by the statute of limitations, successiveness, and laches. As to Applicant's first issue, while the identical issue was raised in Gilyard's PCR application in 2001, Applicant offers no explanation of why this information was not equally available to him in the last decade. At hearing, Applicant posited that this was not the type of information someone would typically seek in a reasonable investigation. However, it appears that at least one other PCR applicant did undertake this investigation and did so prior to filing an application in 2001, over ten years prior to Applicant's PCR application being filed in 2012. Applicant makes no explanation for how he came to learn of the information beyond his bare assertion in his application that he learned of it on March 17, 2011. This bare assertion, without more, fails to overcome the one-year statute of limitations. Similarly, the Applicant has failed to show why he could not have raised this issue in the applications he filed in 2000, 2002 and 2006.

Finally, the State maintains that the application should be barred by the doctrine of laches. Applicant presents evidence from other cases in lieu of testimony from the parties and presents letters indicating a dearth of records regarding Sharpe. The unavailability of records and apparent

unavailability of live testimony regarding Sharpe's employment in this matter should not provide a basis upon which to grant relief; rather, this lack of records exemplifies why a delay of approximately fifteen years prejudices the opposing party.

CONCLUSION

Based upon the foregoing analysis, the Respondent submits that the Applicant's claim, in addition to being barred by the statute of limitations, successiveness, and laches, is wholly meritless. The State respectfully asks the Court to summarily deny and dismiss the application for post-conviction relief.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN RATIGAN
Senior Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: Mary Williams
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Nov. 4, 2013.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	Case No.: 2012-CP-32-3136
ALWIN JONES # 260800,	)	
Applicant,	)	MEMORANDUM IN OPPOSITION TO THE
	)	STATE'S MOTION TO DISMISS
	)	
vs.	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	
Respondent.	)	
	)	

On August 16, 2013, Applicant appeared before this Court on the State's Motion to Dismiss the above referenced post-conviction relief case (PCR). In addition to the grounds raised during the hearing, Applicant gives the following additional grounds for denial of the State's motion to dismiss.

RELEVANT BACKGROUND

From 1977 until 2000, the City of Cayce claims that John Sharpe acted as their ministerial recorder. There does not appear to be any official record that Mr. Sharpe was properly sworn into this position. Court Administration has no record of Mr. Sharpe serving as ministerial recorder, and there is no proof that Mr. Sharpe completed the required training for that position. See Attachment A; Attachment B. However, Mr. Sharpe signed warrants for the city of Cayce for twenty-three years.

During Mr. Sharpe's tenure, Applicant was charged with a crime in Cayce. Applicant was a nineteen year old with a drug problem. Although Applicant had a good upbringing, after leaving school he began to fall into the wrong crowd. Applicant became addicted to crack cocaine. His addiction lead to a spree of burglaries. Applicant was also charged with the armed robbery of the Cayce Bait and Tackle.

Applicant was arrested for the armed robbery on a warrant signed by Mr. Sharpe. The record indicates that after being arrested for the armed robbery Applicant confessed to the crime. PCR Tr. 14, ll. 5-7; Plea Tr. 24, ll. 10-12. Applicant pled guilty and received a thirty-year sentence.

DISCUSSION

- I. The Court should grant post-conviction relief when Applicant's conviction is based on an arrest warrant that was signed by a person who does not have authority to act as a ministerial recorder.

Generally, officers may not arrest a suspect for a crime, not committed in their presence, without a warrant unless there is an exception to the warrant requirement. *See* S.C. Code § 23-13-60. Although an arrest warrant does not confer jurisdiction, due process requires that a "valid" warrant is necessary to initiate an arrest. *See Bayly v. State*, 397 S.C. 290, 296, 724 S.E.2d 182, 185 (2012) ("[I]n all court with our pronouncement in *Gentry*, we find that neither a uniform traffic ticket nor and arrest warrant operates to confer subject matter jurisdiction in the magistrate court."); *cf. State v. Smalls*, 364 S.C. 343, 347, 613 S.E.2d 754, 756 (2005) ("Although an indictment does not confer subject matter jurisdiction, due process requires that a criminal defendant be properly served with a valid indictment."). The violation of due process can be grounds for granting PCR. S.C. Code § 17-27-20(a)(1).

Applicant's rights were violated when he was arrested under an invalid warrant. John Sharpe lacked the authority to issue the warrant. By order dated May 3, 2004, the Supreme Court required all municipal judges to complete 18 hours of legal education per year and report them to the office of Court Administration. Mr. Sharpe previously indicated that he was unaware of any continuing legal education requirement. Attachment A p. 35, ll. 15-24. Furthermore, Court Administration has no record of Mr. Sharpe ever being a ministerial recorder. Attachment B. Therefore, Mr. Sharpe would not qualify as a ministerial recorder and Applicant's armed robbery arrest warrant is invalid.

Moreover, during this time, Mr. Sharpe assisted law enforcement as custodian of all currency evidence that was seized by the Cayce Police Department. See Attachment C p. 219, l. 4 – p. 220, l. 10. This connection would defeat Mr. Sharpe's "neutral and detached" status. See *Shadwick v. City of Tampa*, 407 U.S. 345, 92 S.Ct. 2119 (1972) ("Whatever else neutrality and detachment might entail, it is clear that they require severance and disengagement from activities of law enforcement."). Therefore, Mr. Sharpe would not be able to sign an arrest warrant even if he was properly serving as a ministerial recorder.

Applicant was prejudiced by this invalid arrest because of the evidence the police obtained after arresting him. According to trial counsel, after he was arrested under the invalid search warrant he confessed to the robbery. PCR Tr. 14, ll. 5-7; Plea Tr. 24, ll. 10-12. The Supreme Court has held that evidence obtained as a result of an unconstitutional arrest is fruit of the poisonous tree and therefore inadmissible at trial. See *State v. Boswell*, 391 S.C. 592, 707 S.E.2d 265 (2011) (holding that a criminal defendant's confession was inadmissible when it was a product of an unlawful arrest.). Therefore Applicant was prejudiced by the unlawful arrest.

Additionally, Applicant was prejudiced by his subsequent arrest because it was the reason applicant lost his "very good" plea offer. PCR Tr. 13, l. 20—Tr. 14, l. 10. Prior to the arm robbery, applicant was supposed to plead guilty with a very good plea offer. PCR Tr. 13, ll. 22-24. However, after the invalid arrest for armed robbery his trial counsel had to "start the plea negotiations all over again." PCR Tr. 14, ll. 9-10. Applicant asserts that had he not been arrested under the invalid warrant, he would have been able to plea under a more favorable recommendation.

II. Applicant's case is one of the situations when South Carolina should allow a PCR applicant to raise an "after-discovered evidence" claim although the after-discovered evidence in this case does not fit within the factors listed in *Hayden*.

Respondent has alleged that the newly discovered fact that John Sharpe was not authorized to issue the arrest warrant is not newly discovered evidence because it does not comply with the five factors listed in *Hayden*. However, *Hayden* does not control the type of allegation in this case.

Generally post-conviction relief actions must be filed within one year of the conviction, or if an appeal is taken, one year after remittitur is sent in the direct appeal. "However, S.C. Code § 17-27-45(C) provides that if a PCR applicant discovers material facts not previously presented and heard that require vacation of his conviction or sentence, he may file a PCR application within one year after the date of actual discovery or one year after the date when the facts could have been ascertained by the exercise of reasonable diligence." *McCoy v. State*, 401 S.C. 363, 368-69, 737 S.E.2d 623, 626 (2013) (internal quotations omitted).

Earlier this year, the Supreme Court addressed "the frequent but *erroneous* application" of the *Hayden* factors to newly discovered evidence cases that do not involve evidence that is material to an applicant's guilt or innocence. *See McCoy*, 301 S.C. at 371, 737 S.E.2d at 627 (emphasis added). In *McCoy*, a case involving juror misconduct, the Supreme Court stated "the standard test for governing newly discovered evidence is properly applied when relief is sought based on evidence discovered post-trial that is material to the accused's guilt or innocence." *Id.* However, the Court found that when newly discovered facts, that do not go to guilt or innocence, form "a separate basis for a new trial" they should be governed by a "separate standard" than traditional newly discovered evidence claims. *See id.*, 301 S.C. at 371, 737 S.E.2d at 627.

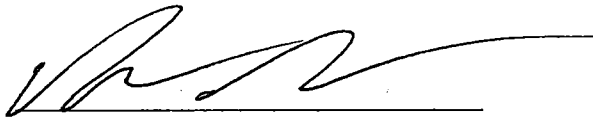
The rule in *McCoy* is not a change in the law; it is in keeping with other cases in which newly discovered evidence that do not fit within the *Hayden* factors can form the basis for and after discovered evidence claim at PCR. *See Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006) (granting a new trial based on newly discovered prosecutorial misconduct).

Applicant's claim is based on newly discovered evidence that would invalidate his arrest warrant. This evidence does not go to guilt or innocence, therefore should not be analyzed under the factors listed in *Hayden*. See *McCoy*, *supra*.

CONCLUSION

Based upon the foregoing arguments as well as the arguments set forth by Applicant at the hearing, Applicant respectfully requests that the State's motion to dismiss be denied and grant a hearing on the merits.

RESPECTFULLY SUBMITTED,



Tristan Michael Shaffer
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SC Bar # 77565

Attorney for Applicant

October 2, 2013

000131
ORIGINAL

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

DOCKET NO.: 2012-CP-32-1046

ALWIN T. JONES #260800,)

Applicant,)

v.)

STATE OF SOUTH CAROLINA,)

Respondent.)

REPLY TO RESPONDENT'S
MOTION TO DISMISS

That the Applicant, through below signed counsel, would respectfully submit his
Reply to the Respondent's Motion to Dismiss.

That on or about June 12, 2013, the Respondent filed a Return and Motion to
Dismiss the Applicant's Post Conviction Relief Action.

Applicant's claim is based on newly discovered evidence. That on March 17,
2011, he was notified by the South Carolina Court Administration that they had no
indication that John C. Sharp was or had been a Municipal Judge or Ministerial Recorder.
(See attached). Therefore, John C. Sharpe, who signed the Applicant's Arrest Warrants
as issuing Judge, lacked the authority to do so.

Mr. Sharpe, was acting for the Town of Cayce as a ministerial recorder. Pursuant
to Section 14-25-115:

"Ministerial recorders shall have the power to set and accept bonds and
recognizance and to issue summonses, subpoenas, arrest warrants, and
search warrants in all cases arising under the ordinances of the
municipality, and in criminal cases as are now conferred by law upon
magistrates. Ministerial recorders shall have no other judicial authority. MH

Section 14-25-115 also states:

SCANNED

10-10-21
CLERK OF COURT
LEXINGTON, SC

"The council of a municipality may establish the office of ministerial recorder and appoint one or more full-time or part-time ministerial recorders, who shall hold office at the pleasure of the council. Before entering upon the discharge of the duties of the office of ministerial recorder, the person appointed shall take and subscribe the prescribed oath of office and shall be certified by the municipal judge as having been instructed in the proper method of issuing warrants and setting and accepting bonds and recognizances."

It was only at a later date, that the Applicant was able to determine that Mr. Sharpe was never officially appointed and does not meet the requirements of Section 14-25-115 and as such is not authorized to issue arrest warrants pursuant to this Section. The Applicant contends that this is proper newly discovered evidence and should be allowed to proceed to an evidentiary hearing.

The Respondent also contends that this matter should be summarily dismissed because it is successive to the previous Application for Post Conviction Relief, that it is not within the one year statute of limitations, as prescribed by the Uniform Post Conviction Procedure Act. That it is barred by the Doctrine of Latches and finally that it is barred by the Doctrine of Res Judicata.

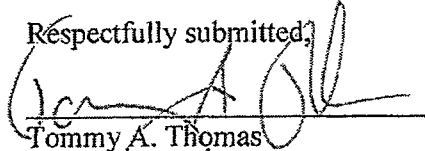
The Applicant would contend that these issues are not applicable in this case. In that this matter has never been before the Court. Was only recently discovered and therefore would not be barred from an evidentiary hearing by summarily dismissal.

For the reasons, as stated above, the Applicant would respectfully request that he be allowed to proceed to an evidentiary hearing or in the alternative, that a Motion

hearing be scheduled to allow testimony and argument as to why this case should not be dismissed.

CIRCUIT COURT
LEXINGTON, SC

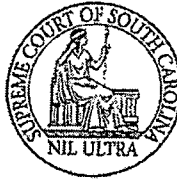
Respectfully submitted,



Tommy A. Thomas
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

June 25, 2013

000134



FILED
MAR 23 2011
CLERK OF COURT
LEXINGTON, SC

South Carolina Court Administration

South Carolina Supreme Court
Columbia, South Carolina

ROSALYN W. FRIERSON
DIRECTOR

1015 SUMTER STREET, SUITE 200
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1800
FAX: (803) 734-1355
E-MAIL: rfrierson@sccourts.org

March 17, 2011

Alwin T. Jones, #260800
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, South Carolina 29067

Re: Your letter dated March 11, 2011

Dear Mr. Jones:

Your letter has been received by our office and forwarded to this section for response. We have checked our records, and they do not reflect a John C. Sharpe as having been a municipal judge or ministerial recorder for the city of Cayce during the years of 1997, 1998, or any other year for which we have records.

Sincerely,

Staff Attorney Section

1 STATE OF SOUTH CAROLINA

IN THE CIVIL COURT

2 COUNTY OF LEXINGTON

3
4
5 JULIUS GILYARD,

6 Plaintiff,

7 -vs-

TRANSCRIPT OF RECORD

01-CP-32-3154

8 STATE OF SOUTH CAROLINA,

9 Defendant.

10
11 August 26, 2003
12 Lexington, South Carolina

13
14 B E F O R E:

15 HONORABLE MARC H. WESTBROOK, Judge.

16
17
18 A P P E A R A N C E S:

19 STEPHEN R. SOLTIS, JR., Esquire
20 Attorney for the Plaintiff

21 B. ALLEN BULLARD, Deputy Attorney General
22 Attorney for the Defendant

23
24 L. COCONUT PANTSARI, R.P.R.
25 Circuit Court Reporter

I.S. LEEVY JOHNSON -- REDIRECT -- MR. SOLTIS

32

1 A Oh, no, no, no. I don't believe he would make it
2 up. I don't think Tom would do that.

3 Q That's all I have. Thank you.

4 A Thank you.

5 THE COURT: Any recross?

6 MR. BULLARD: No, sir, Your Honor.

7 THE COURT: You can step down.

8 THE WITNESS: Thank you, Your Honor.

9 MR. SOLTIS: Call Mr. John Sharpe.

10 JOHN C. SHARPE, being
11 first duly sworn, testified as follows:

12 CLERK: State your full name, please.

13 THE WITNESS: My name is John C. Sharpe.

14 MR. BULLARD: Judge, before we begin with this
15 witness, I want to interpose an objection. I think I
16 know where this is headed because it was raised in a
17 prior P.C.R. that never did come to fruition.

18 So I sort of have some idea where we are
19 headed, but it's not in this application. So I'm not
20 prepared to deal with it today. So I would object to
21 the testimony.

22 I think they are going into testimony that
23 Mr. Sharpe couldn't sign the warrants because he was a
24 dual office holder or something to that effect because
25 it was raised in another application, some individual

1 who I can't remember the name right now. I am not
2 prepared to go forward on it. I object to the
3 amendment.

4 MR. SOLTIS: Judge, I'm not amending anything.
5 I am simply offering this witness in prosecution, so to
6 speak, of our ineffective assistance of counsel claim.
7 The fact that an issue regarding him was brought forth
8 in another P.C.R., this has nothing to do with the dual
9 office holding position.

10 MR. BULLARD: Well, again, there is no
11 allegation in the application that there was anything
12 wrong with the search warrant or the person authorized
13 to sign the search warrant.

14 That's what I meant to say. There is no
15 allegation that the person authorized to sign the search
16 warrant didn't have the authority to do so. So I object
17 to that because I am not prepared to deal with it.

18 THE COURT: I understand. Counsel, I will
19 note the objection for the record. I am going to let
20 him go ahead and go forward with it and get it on the
21 record.

22 MR. SOLTIS: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. SOLTIS:

25 Q Mr. Sharpe, during the year 1997, you were the

1 ministerial recorder for the City of Cayce; is that
2 correct?

3 A Yes.

4 Q When were you hired by the City of Cayce as a
5 ministerial recorder?

6 A In 1977.

7 Q A long time ago?

8 A Long time, yes.

9 Q About 25 years now, on and off?

10 A At least 20 years, yes.

11 Q What were your duties in 1996, '97, and '98 if you
12 can recall?

13 A I was also the Clerk/Treasurer for the City of
14 Cayce.

15 Q But you were also the ministerial recorder?

16 A Yes.

17 Q In fact, you signed some warrants in this
18 particular case right here, Exhibits Number 1 and
19 2. These are copies. Is that your signature?

20 A Yes, that is my signature.

21 Q And that purports to be your signature you said?

22 A Yes.

23 Q That says you are a municipal judge?

24 A Ministerial recorder, yes.

25 Q But it does say municipal judge next to your

1 signature, does it not?

2 A Underneath it says judge.

3 Q Are you a judge?

4 A No.

5 Q You are not a judge?

6 A No.

7 Q In 1997 when you signed that warrant, as you claim
8 in the capacity as a ministerial recorder, are you
9 aware of any requirements that you have to meet
10 every year to continue as a ministerial recorder?

11 A No.

12 Q There aren't any?

13 A Not to my knowledge, no.

14 Q Are you required to attend any kind of continuing
15 education seminars on a yearly basis?

16 A I don't know.

17 Q You have done that?

18 A I have attended classes, yes; but I was not aware
19 of any continuing education requirements at that
20 time.

21 Q So during the year 1996, '97, and '98, did you
22 attend any legal education seminars?

23 A I have attended seminars. I don't recall the exact
24 dates.

25 Q What kind of seminars did you attend?

1 A They were conducted at the Criminal Justice
2 Academy: Domestic relations, domestic violence,
3 that type of thing.

4 Q And did you report those seminars that you attended
5 to the Office of Court Administration?

6 A No.

7 Q Why not?

8 A I did not know I had to do so.

9 Q When did you last receive any kind of certificate
10 from any certifying authority showing that you are
11 now or ever were a ministerial recorder?

12 A I was appointed by the Mayor and the City Council
13 of the City of Cayce and never received a
14 certificate from them.

15 Q Thank you. Please answer any questions that the
16 attorney general may have.

17 THE COURT: Cross.

18 CROSS EXAMINATION

19 BY MR. BULLARD:

20 Q Mr. Sharpe, you say you were appointed by the Mayor
21 or City Council?

22 A The Mayor and City Council under the laws in effect
23 in 1977.

24 Q And how long did you serve as ministerial recorder?

25 A Until February of 2000.

MARY JOYCE MARSHALL -- DIRECT -- MR. SOLTIS

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1 THE COURT: You can step down, Mr. Sharpe.

2 MR. SOLTIS: Call Joyce Marshall.

3 MARY JOYCE MARSHALL, being
4 first duly sworn, testified as follows:

5 CLERK: State your full name, please.

6 THE WITNESS: Mary Joyce Marshall.

7 DIRECT EXAMINATION

8 BY MR. SOLTIS:

9 Q Mrs. Marshall, you are a staff attorney with the
10 South Carolina Court Administration; is that
11 correct?

12 A Yes, sir.

13 Q And you are here today by subpoena?

14 A Yes, sir.

15 Q Are you familiar with the compliance requirements
16 for the municipal court judges and magistrates and
17 ministerial recorders?

18 A Yes, sir.

19 MR. BULLARD: Your Honor, I object. I just
20 want -- for the record can this be a continuing
21 objection to this line?

22 THE COURT: Yes, sir.

23 MR. BULLARD: On this issue.

24 THE COURT: We will allow the objection to
25 continue. But, again, under the same understanding as

MARY JOYCE MARSHALL -- DIRECT -- MR. SOLTIS

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1 before, if you need to call any of these witnesses back
2 later, you can and any other witness you may need to.

3 MR. BULLARD: Thank you.

4 THE COURT: Yes, sir.

5 BY MR. SOLTIS:

6 Q You are familiar then with the compliance
7 requirements for municipal judges, magistrates, and
8 ministerial recorders?

9 A Yes, sir.

10 Q And they record -- actually they report to Court
11 Administration on their compliance, correct?

12 A Yes, sir.

13 Q And what are they required to do on a yearly basis?
14 Or actually let me back up, I'm sorry. What were
15 they required to do back in 1996, 1997, and 1998?

16 A Municipal judges were required to have 12 hours
17 continuing legal education.

18 Q And would you consider or does Court Administration
19 consider a ministerial recorder to be on the same
20 basis as a municipal judge?

21 A Yes, sir.

22 Q So ministerial recorders are also then required to
23 have 12 hours of continuing education?

24 A Yes, sir.

25 Q All right. At my request did you not search

MARY JOYCE MARSHALL -- DIRECT -- MR. SOLTIS

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1 records for any reporting compliance by Mr. John
2 Sharpe?

3 A Yes, sir.

4 Q Has he ever reported any compliance records for
5 continuing education?

6 A No.

7 Q You have no record whatsoever of Mr. Sharpe?

8 A We have no record of John C. Sharpe.

9 Q In fact, you have no record of John C. Sharpe even
10 being appointed as a ministerial recorder?

11 A No, sir.

12 Q And are they supposed to tell you this?

13 A The cities are supposed to -- well, until August of
14 2000, they were not required to report; and most of
15 the time, a lot of the time, they did not.

16 Q But they still had to complete continuing education
17 classes?

18 A They were supposed to.

19 Q And, in fact, in 1994 did Chief Justice David
20 Harwell issue an order to that effect?

21 A Yes, sir.

22 Q I want to show you what has been marked as
23 Plaintiff's Exhibit Number 10 and ask if you can
24 identify that order.

25 A That's the order that was issued by the Chief

MARY JOYCE MARSHALL -- DIRECT -- MR. SOLTIS

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1 Justice that requires magistrates to receive 18
2 hours of continuing legal education and municipal
3 judges to receive 12 each year.

4 Q And municipal judges and ministerial recorders are
5 the same thing, correct?

6 A In Court Administration's estimation, yes, sir.

7 MR. SOLTIS: I offer Plaintiff's Exhibit
8 Number 10.

9 THE COURT: Any objection?

10 MR. BULLARD: No, sir.

11 THE COURT: Without objection.

12 (Plaintiff's Exhibit Number 10 is received
13 into evidence).

14 BY MR. SOLTIS:

15 Q Did you find any records from anyone at the City of
16 Cayce as a ministerial recorder?

17 A During the years Tammy Barkley was a ministerial
18 recorder.

19 Q That is Mrs. Tammy Barkley. That is during the
20 years 1996, '97, and '98?

21 A I did not check into that.

22 Q All right.

23 A I would have to look back at the letters that I
24 wrote Mr. Gilyard.

25 Q I have three letters from you, one dated

1 September 27th, one dated December 13th, and
2 another dated July 18th of this year. They are
3 marked as Plaintiff's Exhibit 11, 12, and 13. I
4 ask you if you can identify those.

5 A (Pause). These are the letters that I wrote to
6 Mr. Gilyard and to Mr. David MacDougall.

7 MR. SOLTIS: We offer those letters as
8 exhibits.

9 THE COURT: Any objection?

10 MR. BULLARD: No, sir.

11 THE COURT: Without objection.

12 (Plaintiff's Exhibit Number 11-13 are received
13 into evidence).

14 MR. SOLTIS: We ask the Court to take judicial
15 notice of Section 14-25-15 (d) wherein it provides for
16 sanctions for not complying with the records.

17 THE COURT: Any objection to that, counsel?

18 MR. BULLARD: A statute, no.

19 THE COURT: All right. We will take judicial
20 notice.

21 MR. SOLTIS: Thank you, Your Honor.

22 Q Thank you, Mrs. Marshall. Please answer any
23 questions the attorney general may have.

24 MR. BULLARD: I don't have any questions at
25 this time, Your Honor, subject to my objection and

1 leaving the record open.

2 THE COURT: Mrs. Marshall, if there is a
3 necessity for calling you back, we will let you know at
4 a later time and give you proper notice; okay?

5 THE WITNESS: Thank you.

6 THE COURT: Thank you.

7 MR. SOLTIS: Recall I.S. Leevy Johnson.

8 I.S. LEEVY JOHNSON, having
9 being previously duly sworn, resumed the witness stand
10 and testified as follows:

11 THE COURT: You are still under oath.

12 THE WITNESS: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. SOLTIS:

15 Q You heard the testimony that was presented here
16 today regarding John Sharpe and the issuance of
17 these warrants?

18 A I have.

19 Q In light of the previous questions that I had, do
20 you think that your not objecting to that would
21 have made a difference in this trial?

22 A I don't think so from what I have been able to just
23 glean quickly. Because if he was appointed as a
24 ministerial recorder, if he failed to get the
25 continuing legal education, according to what --

1 and I have looked at it quickly -- the punishment
2 is to be held in contempt of Court. That does not
3 vitiate his authority, but I'm subject to be
4 corrected on that because I haven't researched it.

5 Q Would it surprise you to know that 14-25-15 (d)
6 provides that if any municipal judge does not
7 comply with the training or examination
8 requirements, his office is declared vacant on the
9 date the time expires or when he is notified,
10 whenever is earlier? Does that make a difference?

11 A Yeah. When does the time expire and when was he
12 notified? That's the part I was missing.

13 Q If he didn't complete the C.L.E. requirements, his
14 job is vacant. He has no authority to sign
15 warrants as such.

16 A Let me see that.

17 Q Sure. (Hands to witness).

18 THE COURT: Let me note one thing.

19 Mr. Soltis, I don't have the statute right in front of
20 me.

21 MR. SOLTIS: Judge, I have a copy for you.

22 THE COURT: I was going to ask you: Does the
23 statute contain a procedure for declaring the office
24 vacant?

25 MR. SOLTIS: It says it happens automatically,

1 Judge, or they notify him, whichever comes first.

2 THE COURT: Right. Somebody just says it's
3 vacant?

4 MR. SOLTIS: I think the Chief Justice has
5 already said that.

6 THE COURT: All right.

7 A The statute that you handed me says that, "Upon
8 written notification of the Supreme Court" -- and I
9 have heard no testimony about a written
10 notification to him by the Supreme Court -- "or its
11 designee to the affected municipal judge and the
12 council of the failure of the municipal judge" --
13 and I had heard no testimony that members of the
14 council received notice -- "to complete the
15 training program or past certification examination
16 requirements pursuant to Subsection (d), the
17 municipal judge's office is declared vacant."

18 Q I think if you will read right above that,
19 Number 2.

20 A "If any municipal judge does not comply with these
21 training or examination requirements, his office
22 is declared vacant on the date of the time -- on
23 the date the time expires and when he is notified,
24 as provided in Subsection (e), whichever is
25 earlier."

1 That's the point I am making. I didn't hear
2 any testimony about him being notified or someone,
3 a designee from the Supreme Court being
4 notified --

5 Q You are absolutely correct. We never said anything
6 about him being notified. Part one is referring to
7 it automatically expired on the date he didn't
8 comply. He didn't comply with '96, '97 or '98;
9 therefore, at the earliest, he was out of office in
10 1996.

11 A If that's your interpretation, but the point is,
12 Mr. Sharpe -- not Mr. Sharpe. I'm sorry. The
13 point is I did not validate it. Mr. Young and I
14 both, looking at the warrant assumed that it was a
15 valid signature.

16 Q Yes, sir, and I can understand that completely. We
17 all assume that.

18 A Right.

19 Q But upon checking it and finding out differently --

20 A Right.

21 Q -- my whole point is, should you have checked on
22 it?

23 A Upon reflection I should have checked on it.

24 Q Thank you.

25 MR. SOLTIS: That's all we have, Your Honor.

1 THE COURT: Any cross?

2 MR. BULLARD: I don't have any questions.

3 THE COURT: You can step down, Mr. Johnson.
4 Any other witnesses, Mr. Soltis?

5 MR. SOLTIS: No, sir.

6 THE COURT: I understand, Mr. Bullard, that
7 you -- do you want to call your entire case at a later
8 time or just this one issue? I don't know if you have
9 witnesses you want to put up now or what?

10 MR. BULLARD: I think -- if you will give me a
11 few minutes to look over my notes, I can give you an
12 answer to that.

13 THE COURT: Sure. Just let me know.

14 (Pause).

15 MR. BULLARD: Your Honor, aside from the one
16 issue that we have been dealing with with Mr. Sharpe,
17 where Mr. Sharpe is concerned, I don't have any further
18 testimony regarding the other issues.

19 So I just would have potentially witnesses and
20 other matters to present regarding the issue of whether
21 Mr. Sharpe's warrants were valid. That's the only one
22 where I would have any potential additional testimony.

23 THE COURT: What we will do is we will adjourn
24 the hearing and leave the record open until I assume the
25 next term of P.C.R.s.

1 MR. BULLARD: That would be fine.

2 THE COURT: Mr. Soltis, obviously you will be
3 notified when it's set up again.

4 MR. SOLTIS: Thank you, Judge.

5 THE COURT: Thank you, sir.

6 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal, in the Civil Court for Lexington County, South Carolina on the 26th day of August, 2003.

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

February 1, 2005

L Coconut Pantsari

Court Reporter

COURT OF COMMON PLEAS
2001-CP-32-3154

JULIUS GILYARD
APPLICANT
VS.
STATE OF SOUTH CAROLINA
RESPONDENT

TRANSCRIPT OF RECORD

July 10, 2007
Lexington, South Carolina

B E F O R E:

THE HONORABLE JOHN M. MILLING, JUDGE.

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

DANIEL E. GRIGG, ASSISTANT DEPUTY ATTORNEY GENERAL
Attorney for the State

MICHAEL DUNCAN, ESQ.
Attorney for the Applicant

CAROL M. THUEME, RPR
Official Court Reporter

1 hearing before Westbrook.

2 What did the applicant have in addition? Does
3 he have any witnesses, Mr. Duncan, other than himself?

4 MR. DUNCAN: He would like me to call Mr. John
5 Sharp, who is in the courtroom.

6 THE COURT: Very good.

7 MR. DUNCAN: And, your Honor, I guess also in
8 regard to Mr. Sharp, I think we'd like to do the same
9 thing. He does have testimony from before. I don't
10 really care to ask him all the same questions that he was
11 asked four years ago, but I believe there are some
12 additional questions that my client would like asked.

13 THE COURT: We'll proceed in that same fashion
14 then.

15 And so that the court reporter can sign
16 documents back over to the Clerk's office when this
17 hearing is concluded, I don't know whether I'm going to
18 need to also take the matter under advisement or not, but
19 at some point in time let's get an extra copy of the
20 earlier transcript so I can have one to stick in my file
21 if we don't have enough copies.

22 MR. GRIGG: The August of 2003?

23 THE COURT: Yes, sir.

24 MR. GRIGG: I've got one right here, I believe,
25 your Honor. I've just got to dig it out.

1 THE COURT: Great.

2 Mr. Sharp, if you'll come forward.

3 JOHN C. SHARP, after being duly sworn, testified
4 as follows:

5 THE CLERK: If you'll have a seat and state your
6 name.

7 THE WITNESS: My name is John C. Sharp.

8 DIRECT EXAMINATION

9 BY MR. DUNCAN:

10 Q Good morning, Mr. Sharp.

11 A Good morning, sir.

12 Q I'm Mike Duncan. I represent Mr. Gilyard in this PCR
13 matter.

14 Mr. Sharp, what is your current profession?

15 A I'm city manager for the City of Cayce.

16 Q And how long have you held that office, sir?

17 A Since February of 2000.

18 Q Prior to February of 2000, what was your position
19 with the City of Cayce?

20 A Clerk/treasurer.

21 Q Clerk/treasurer?

22 A Clerk/treasurer, yes, sir.

23 Q Mr. Sharp, in connection with Mr. Gilyard's case,
24 I've got some documents, and I don't know whether they
25 were admitted previously four years ago or not, but I've

1 got some warrants that I believe have your signature on
2 there. I'm going to ask you to examine them and see if
3 this is indeed your signature.

4 THE COURT: These are search warrants, arrest
5 warrants?

6 MR. DUNCAN: This is a search warrant dated
7 January -- excuse me, September 11th, 1997 and
8 September 10th, 1997, I think.

9 THE WITNESS: Yes, sir, that is my signature.

10 BY MR. DUNCAN:

11 Q That is your signature?

12 A Yes, sir.

13 Q And, Mr. Sharp, looking at those again, and I
14 apologize for reading with you, but, Mr. Sharp, there
15 appears to be on the September 10th, 1997 warrant, the
16 search is for a residence and it looks like only the
17 residence. And I will give you time to look at that and
18 see if that's the residence at 806 Oakland Avenue.

19 A That's correct, for 806 Oakland Avenue.

20 Q Okay. And then the other warrant that's in front of
21 you from September 11th, and I think it's
22 September 11th?

23 A It's a little confusing. I really can't tell either.

24 Q Okay. It's either September 10th or September 11th,
25 and it appears to add search of vehicles located at that

1 same residence, 806 Oakland Avenue; is that correct?

2 A That's correct, yes, sir.

3 Q Mr. Sharp, how did -- in your position as
4 clerk/treasurer, how did you come to be the person signing
5 those warrants in September of 1997?

6 A I was appointed ministerial recorder in 1977 by the
7 mayor and the city council, and I held that position at
8 that time.

9 Q Okay. And in that position, was it ordinary for you
10 to sign warrants?

11 A If the city judge was not available I would sign
12 search warrants in her absence, yes.

13 Q I know that's ten years ago. Do you recall why the
14 city judge -- who was the city judge at that time?

15 A Melody James.

16 Q Okay. Is Judge James still the city judge?

17 A Yes, she is.

18 Q Do you happen to recall the circumstances by which
19 you were approached on September 10th, 1997, and I will
20 hand you this return signed by Mark Broder maybe, but do
21 you recall the circumstances under which you were
22 approached by law enforcement on that date?

23 A No, sir, I really don't.

24 Q And, Mr. Sharp, do you recall, again going back ten
25 years, do you recall the circumstances under which they

1 added to the initial warrant that was issued?

2 A No, sir, I don't.

3 MR. DUNCAN: Beg the Court's indulgence one
4 moment.

5 BY MR. DUNCAN:

6 Q Mr. Sharp, in regard to your duties with the City of
7 Cayce at the time as ministerial recorder, when you issued
8 or when you signed those two search warrants there before
9 you, was it ordinary for you to receive those back once
10 they, you know, to receive a return from the law
11 enforcement agency?

12 A They were usually returned to the city judge because
13 she was usually available by that time.

14 Q So is it fair to say that you were a stop gap, you
15 know, if they just couldn't find the judge for whatever
16 reason then they would come to you?

17 A If she was not available I would issue the warrants
18 in her absence, yes.

19 Q And, Mr. Sharp, did you participate in any kind of
20 continuing legal education? I think we went into great
21 detail four years ago in that regard, but I will just ask
22 that directly: Did you participate in any continuing
23 legal education requirements in your position as
24 ministerial recorder for the City?

25 A Yes, sir, I attended some classes at the criminal

1 justice academy.

2 Q When did you do that, sir?

3 A In the 1990s.

4 Q In the 1990s. Did you do that on a yearly basis?

5 A I did it as I received notification from them in the
6 form of mailers and I would attend seminars and classes.
7 I can recall several that I attended.

8 Q Can you specifically recall attending any during
9 1997?

10 A No, sir, I can't.

11 MR. DUNCAN: All right, sir. I think that's all
12 the questions -- no, that is not all the questions I have.

13 BY MR. DUNCAN:

14 Q Mr. Sharp, these two warrants sitting before you
15 dated September 10th, September 11th maybe 1997 were
16 signed by you, issued by you; correct?

17 A That's correct, yes, sir.

18 Q And the return was not made to you; is that correct?

19 A That's correct. They were returned to Melody James,
20 City Judge.

21 MR. DUNCAN: That's all there is. I don't have
22 any further questions for Mr. Sharp.

23 Your Honor, I would like to admit the search
24 warrant dated September 10th and September 11th.

25 THE COURT: They're already in the record.

1 MR. GRIGG: I certainly have no objection, your
2 Honor.

3 MR. DUNCAN: Thank you, your Honor.

4 THE COURT: Mr. Grigg.

5 MR. GRIGG: I have no questions for this
6 witness, your Honor.

7 MR. DUNCAN: That's all I have, your Honor.

8 THE COURT: The rest of his concerns are legal
9 issues?

10 MR. DUNCAN: Yes, sir.

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

12 THE WITNESS: Thank you, your Honor.

13 MR. GRIGG: Your Honor, if there is no objection
14 may Mr. Sharp be excused?

15 THE COURT: He is city manager over in Cayce?

16 THE WITNESS: Yes, sir.

17 THE COURT: You're not going out of town in case
18 we need you back here?

19 THE WITNESS: No, sir, I will be here until
20 Friday of this week.

21 THE COURT: Thank you. I will excuse you at
22 this time.

23 THE WITNESS: Thank you, your Honor.

24 THE COURT: Thank you.

25 MR. DUNCAN: I would call Mr. Julius Gilyard to

1 the stand.

2 JULIUS GILYARD, after being duly sworn,
3 testified as follows:

4 THE CLERK: Please have a seat.

5 DIRECT EXAMINATION

6 BY MR. DUNCAN:

7 Q Good morning, Mr. Gilyard.

8 A Good morning, Mr. Duncan.

9 Q Mr. Gilyard, obviously this is your second time
10 appearing in court on this matter, on your post-conviction
11 relief application dated October -- well, filed
12 October 15th, 2001, excuse me, filed October 19th, 2001,
13 correct?

14 A Correct, sir.

15 Q And, Mr. Gilyard, I'm not going to read your entire
16 application, it's before the judge, but essentially you
17 made several, raised several issues about ineffective
18 assistance of counsel in your PCR application?

19 A Yes, sir.

20 Q And, Mr. Gilyard, you kind of broke it down into like
21 pretrial?

22 A Yes, sir.

23 Q The pretrial phase, the trial phase, and then even in
24 appellate work that was done; is that correct?

25 A That's correct, sir.

1 told him I didn't want to speak to him, he needs to give
2 me a warrant, that's why I'm in jail, I need to see a
3 warrant. And he explained to me that he needed me to sign
4 some consent to search my home and my vehicles. I told
5 him I couldn't give him a consent to search my home and my
6 vehicles. So he said that he could get a warrant and I
7 told him he need to go and get a warrant then.

8 Q And, Mr. Gilyard, the consent to search
9 authorization, is that the document that they brought you
10 the morning of September 11th?

11 A That's it. It's not signed by me.

12 Q You did not agree or you did not --

13 A No, sir.

14 Q -- allow them to search, you did not consent to
15 search?

16 A No, sir.

17 MR. DUNCAN: If I could mark this document,
18 Consent to Search Authorization, as Applicant's No. 2.

19 MR. GRIGG: No objection, your Honor.

20 (WHEREUPON, Applicant Exhibit No. 2 was marked
21 for identification and received into evidence.)

22 BY MR. DUNCAN:

23 Q Mr. Gilyard, as you did not agree to consent to a
24 search of your residence, warrants were issued; is that
25 correct, to your knowledge?

1 A Not to me they weren't.

2 Q They weren't issue to you, but warrants were issued
3 by someone?

4 A Yes, sir, warrants were issued, but I didn't receive
5 one until later.

6 Q And those points, the search warrant itself,
7 Mr. Johnson did object at trial to certain aspects of the
8 search warrant; is that correct?

9 A Yes, sir, he did.

10 Q However, he did not object to the person who issued
11 the search warrant?

12 A No, sir, he didn't.

13 Q And you say in your application that the arrest and
14 search warrants were issued by a non-judicial official?

15 A Yes, sir.

16 Q And that non-judicial official was the clerk and
17 treasurer of the City of Cayce?

18 A Yes, sir, the clerk, the treasurer, the finance
19 director and evidence custodian for the City of Cayce.

20 Q And that was Mr. Sharp who just testified here a few
21 minutes ago?

22 A Yes, sir.

23 Q And your point in your application is that that
24 individual is not a judicial person, he's not a judge, he
25 was the finance person for that town?

1 A . Yes, sir. Pretty much what they tried to tell me is
2 that the Office of Ministerial Recorder falls under the
3 office of Clerk/Treasurer, but it didn't seem possible.
4 If you're a judicial official, I mean, you're not the
5 clerk/treasurer, you're not a finance director, you're not
6 an evidence custodian, and Court Administration pretty
7 much told me that they had no records of Mr. Sharp being a
8 judicial official or ministerial recorder for the City of
9 Cayce.

10 Q And again, in your application, you recite various
11 statutory provisions that would require a person to be a
12 judicial officer and the ways in which Mr. Sharp does not
13 measure up; in other words, he was not qualified as a
14 judge of this state?

15 A Well, my understanding of the law, it pretty much
16 explained to me that Mr. Sharp, the information I got from
17 the City of Cayce was that he was appointed by the mayor
18 and council on December 23rd, 1977. Well, I can
19 understand that. But then the law was repealed under Act
20 480 in 1981. It repealed the law that Mr. Sharp claimed
21 that he was appointed under and it now required that a
22 person who is appointed to this particular position must
23 be certified and trained as properly being instructed in
24 issuing arrest and search warrants by the municipal judge.

25 So I felt that Mr. Sharp being appointed under

1 this particular position more than 20 some years ago
2 wouldn't be grandfathered into that same position when
3 that law was repealed, it was done away with. I felt that
4 he had to be certified, he had to be trained now.

5 And the search warrant affidavit pretty much
6 indicated to me his lack of training where he allowed the
7 police officers to make the returns to the municipal
8 judge. I mean, even though the municipal judge is not
9 present that day, I mean, the statute requires the returns
10 to be made to the issuing judicial official.

11 Q And, Mr. Gilyard, of course your major point in this
12 regard is that the search warrants, had the search
13 warrants not been issued then no evidence would have been
14 found, period? I mean it's illegal search and seizure is
15 what your point is?

16 A Yes, sir.

17 Q In fact, specifically that issue was not raised at
18 your trial?

19 A No, sir, it wasn't.

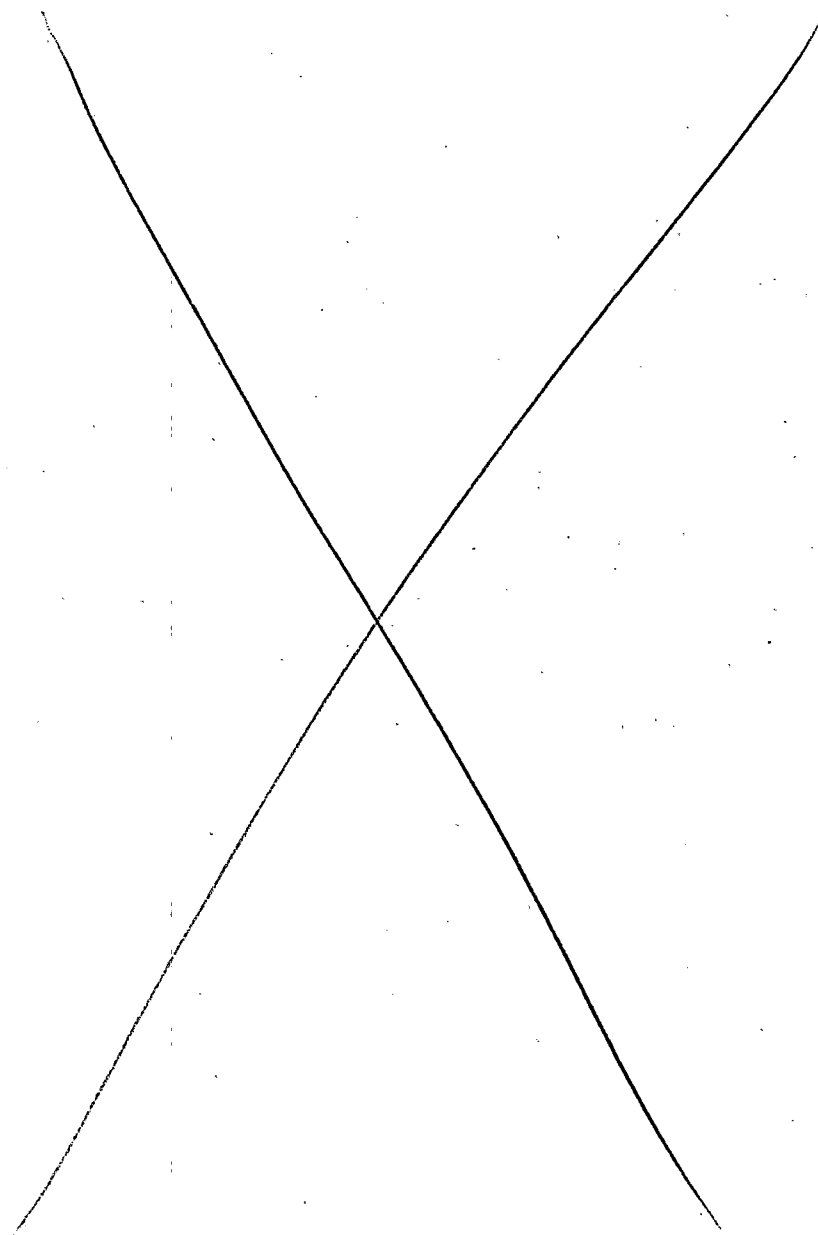
20 Q Mr. Johnson did not raise that on your behalf?

21 A No, sir, he didn't.

22 Q Although he did argue on other points of the
23 warrants?

24 A Yes, sir. Mr. Johnson is a good attorney. He
25 probably just didn't see that issue.

0000166



1994-05-03-01

The Supreme Court of South Carolina

ORDER

WHEREAS only by continuing their legal education can the Judiciary fulfill their obligation to competently serve the State, and

WHEREAS there are many opportunities for all levels of the Judiciary to obtain continuing legal education, and

The judges of the magistrate and municipal courts of South Carolina being a part of the unified statewide judicial system; NOW, THEREFORE, pursuant to the provisions of Section 4, Article V, South Carolina Constitution,

IT IS ORDERED that every magistrate in this State shall complete, by actual attendance and satisfactory completion of such reasonable testing as may be required by approved educational providers, a minimum of eighteen (18) hours of legal education accredited by the Office of Court Administration during each calendar year. This requirement represents one and a half hours of credit for each full month that a magistrate serves in office. Hours completed by a magistrate in any one year in excess of the minimum requirement of eighteen (18) hours may be carried forward to the next year provided that not more than twelve (12) hours of credit may be carried forward to the next year.

IT IS FURTHER ORDERED that of the eighteen (18) hours of accredited legal education that each magistrate must complete each year, a minimum of six (6) hours must be devoted to civil issues and a minimum of six (6) hours must be devoted to criminal issues.

IT IS FURTHER ORDERED that every municipal judge in this State shall complete, by actual attendance and satisfactory completion of such reasonable testing as may be required by approved educational providers, a minimum of twelve (12) hours of legal education accredited by the Office of Court Administration during each calendar year. This requirement represents one hour of credit for each full month that a municipal judge serves in office. Hours completed by a municipal judge in any year in excess of the minimum requirement of twelve (12) hours may be carried forward to the next year provided that not more than six (6) hours of credit may be carried forward to the next year.

IT IS FURTHER ORDERED that the Office of Court Administration is authorized to determine the number of hours for which credit will be given for particular courses and to exercise general supervisory authority over the administration of this Order as it applies to magistrates and municipal judges, subject to the approval of the Chief Justice.

IT IS FURTHER ORDERED that on or before January 10 of each year, each magistrate or municipal judge shall file an affidavit with the Office of Court Administration on a form

prescribed by that Office, concerning his or her completion of accredited legal education during the preceding calendar year.

Failure to comply with this order shall subject the party so failing to penalties as for contempt of court.

This order shall be effective January 1, 1995.

s/David W. Harwell C.J.

s/A. Lee Chandler A.J.

s/Ernest A. Finney A.J.

s/Jean H. Toal A.J.

s/James E. Moore A.J.

May 3, 1994
Columbia, South Carolina

Westlaw

Code 1976 § 14-25-15

Page 1

C

Effective:[See Text Amendments]

Code of Laws of South Carolina 1976 Annotated Currentness

Title 14. Courts

Chapter 25. Municipal Courts (Refs & Annos)

Article 1. General Provisions

→ § 14-25-15. Appointment of municipal judge; training program, certification examination and continuing education requirements.

(A) Each municipal judge must be appointed by the council to serve for a term set by the council of not less than two years but not more than four years and until his successor is appointed and qualified. His compensation must be fixed by the council.

(B) The council shall notify South Carolina Court Administration of any persons appointed or reappointed as municipal judges.

(C) Before entering upon the discharge of the duties of his office, each judge shall take and subscribe the oath of office prescribed by Article VI, Section 5 of the South Carolina Constitution.

(D) Notwithstanding any other provision of law relating to the terms and qualifications of municipal judges:

(1) All municipal judges shall complete a training program or pass certification or recertification examinations, or both, pursuant to standards established by the Supreme Court of South Carolina. The examination must be offered at least three times each year. The Chief Justice of the Supreme Court shall establish guidelines for exempting municipal judges from taking an examination based upon experience or education factors.

(a) Municipal judges appointed for the first time on or after the effective date of this act shall complete the training program and pass the certification examination within one year after taking office, or before April 30, 2001, whichever is later.

(b) Municipal judges serving in the counties of Abbeville, Allendale, Bamberg, Beaufort, Calhoun, Cherokee, Chesterfield, Clarendon, Colleton, Dillon, Edgefield, Florence, Greenville, Hampton, Jasper, Lancaster, Lee, Marion, McCormick, Oconee, Pickens, Saluda, Sumter, and Williamsburg, as of the effective date of this section, shall pass a certification examination before April 30, 2001.

(c) Municipal judges serving in the counties of Aiken, Anderson, Barnwell, Berkeley, Charleston, Chester, Darlington, Dorchester, Fairfield, Georgetown, Greenwood, Horry, Kershaw, Laurens, Lexington, Marlboro, Newberry, Orangeburg, Richland, Spartanburg, Union, and York, as of the effective date of this section, shall pass a certification examination before April 30, 2002.

(d) Every municipal judge shall pass a recertification examination within eight years after passing the initial certification examination and at least once every eight years thereafter.

(2) If any municipal judge does not comply with these training or examination requirements, his office is declared vacant on the date the time expires or when he is notified, as provided in subsection (E), whichever is earlier.

(E) Upon written notification of the Supreme Court or its designee to the affected municipal judge and the council of the failure of the municipal judge to complete the training program or pass the certification examination required pursuant to subsection (D), the municipal judge's office is declared vacant, the municipal judge does not hold over, and the council shall appoint a successor, as provided in Section 14-25-25; however, the council shall not reappoint the current municipal judge who failed to complete the training program or pass the certification examination required pursuant to subsection (D) to a new term or to fill the vacancy in the existing term.

(F) No municipal judge who is admitted to practice in the courts of this State shall practice law in the municipal court for which he is appointed.

(G) All municipal judges shall attend annually the number of approved continuing education hours in criminal law and subject areas related to municipal judges' duties which are required by the Supreme Court of South Carolina. The Chief Justice of the Supreme Court shall establish guidelines for exempting municipal judges from the continuing education hours required by this section based upon experience or education factors.

CREDIT(S)

HISTORY: 1980 Act No. 480, eff January 1, 1981; 2000 Act No. 394, § 2, eff August 4, 2000; 2004 Act No. 238, § 2, eff May 24, 2004.

EDITOR'S NOTE

This section contains provisions dealing with matters formerly dealt with by § 14-25-920.

2004 Act No. 238, § 3, provides as follows:

"This act takes effect upon approval by the Governor and applies to municipal judges appointed on or after this act's effective date."

EFFECT OF AMENDMENT

The 2000 amendment designated the first two sentences of the existing section as subsection (A) and the third and fourth sentences thereof as subsection (C), and added subsections (B), (D), (E), (F) and (G).

The 2004 amendment, in subsection (A), substituted "of not less than two years but not more than four years" for "not to exceed four years" and substituted "must" for "shall" in both sentences.

RESEARCH REFERENCES**Encyclopedias**

S.C. Jur. Magistrates and Municipal Judges § 5, Municipal Judges-- Generally.

S.C. Jur. Magistrates and Municipal Judges § 6, Municipal Judges-- Terms and Authority.

S.C. Jur. Magistrates and Municipal Judges § 15, Municipal Judges' Courts.

ATTORNEY GENERAL'S OPINIONS

Simultaneously serving as member of Georgetown County Election Commission and part-time municipal judge for City of Georgetown would probably contravene dual office holding provisions of State Constitution. 1984 Op Atty Gen, No. 84-11, p. 40.

Code 1976 § 14-25-15, SC ST § 14-25-15

Current through End of 2012 Reg. Sess.

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Page 1

Code 1976 § 14-25-15

CODE OF LAWS OF SOUTH CAROLINA 1976 ANNOTATED
TITLE 14. COURTS
CHAPTER 25. MUNICIPAL COURTS
ARTICLE 1. GENERAL PROVISIONS
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§ 14-25-15. Appointment of municipal judge.

Each municipal judge shall be appointed by the council to serve for a term set by the council not to exceed four years and until his successor is appointed and qualified. His compensation shall be fixed by the council. Before entering upon the discharge of the duties of his office, each judge shall take and subscribe the oath of office prescribed by Article VI, Section 5, of the South Carolina Constitution. No municipal judge who is admitted to practice in the courts of this State shall practice law in the municipal court for which he is appointed.

HISTORY: 1980 Act No. 480, eff January 1, 1981.

EDITOR'S NOTE—

This section contains provisions dealing with matters formerly dealt with by § 14-25-920.

RESEARCH AND PRACTICE REFERENCES—

12 S.C. Juris. Magistrates and Municipal Judges §§ 5, 6, 15.

ATTORNEY GENERAL'S OPINIONS

1. In General

Simultaneously serving as member of Georgetown County Election Commission and part-time municipal judge for City of Georgetown would probably contravene dual office holding provisions of State Constitution. 1984 Op Atty Gen, No. 84-11, p. 40.

Code 1976 § 14 -25 -15
SC ST § 14 -25 -15

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ORIGINAL

Vol 1 of 2

STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from Lexington County
The Honorable J.C. Nicholson, Jr., Circuit Court Judge

2000-CP-32-811

COREY RANDALL,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

APPENDIX

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1 STATE OF SOUTH CAROLINA

2 IN THE COURT OF GENERAL SESSIONS

3 COUNTY OF LEXINGTON

4
5 THE STATE.

6 V.

7 COREY D. RANDALL and FELTON YAWN.

8 DEFENDANTS.

9
10 B E F O R E : THE HONORABLE MARC WESTBROOK. JUDGE: AND A
11 JURY.

12
13 A P P E A R A N C E S :

14 FOR THE STATE: AL EARGLE. ASSISTANT SOLICITOR

15 RICK HUBBARD. ASSISTANT SOLICITOR

16 FOR THE DEFENDANT: HERVERY YOUNG. ASSISTANT PUBLIC DEFENDER
17 CHARLES BROOKS. ESQUIRE

18
19 COURT REPORTER: SMOKEY PERRY

20
21 WEEK OF NOVEMBER 18, 1996

22
23 INDICTMENT #96-1812 AND 1813

24 1838 AND 1837

25

LT. NORTHCUTT - DIRECT BY MR. HUBBARD

1 THOSE DRUGS?

2 A HE IS THE ONLY ONE THAT CAN TAKE IT OUT OF THAT LOCKER.
3 HE WOULD TAKE CARE OF TAKING THE EVIDENCE WHEREVER IT NEEDED
4 TO GO AT THAT POINT.

5 Q OK. NOW THE MONEY, THE 500 AND 600 DOLLARS. WHAT DID
6 YOU DO WITH THE MONEY?

7 A IF I RECALL CORRECTLY, THAT WAS A SATURDAY OR I BELIEVE
8 IT WAS A SATURDAY. LT. SCOGGINS DOESN'T WORK -- BUT THE
9 MONEY DOESN'T GO INTO EVIDENCE. THE MONEY GOES TO MR. SHARPE
10 WHO IS THE CITY TREASURER. HE TAKES CONTROL OF THE CASH IF
11 WE RECOVER ANY MONIES WE RECOVER. IN MY OFFICE THERE IS A
12 SAFE THAT ONLY A FEW PEOPLE, TWO, HAVE ACCESS TO. I PUT THE
13 MONEY IN THAT SAFE FOR THE WEEKEND UNTIL THE MONDAY WHEN MR.
14 SHARPE WAS AVAILABLE AND IT WAS TAKEN TO HIM.

15 Q IF I'M NOT MISTAKEN, IS YOUR OFFICE SEPARATE FROM THE
16 REST OF THE DETECTIVE'S OFFICES?

17 A WELL, IT'S ACTUALLY WITHIN THERE, BUT IT'S LOCKED AND
18 THEY, YOU KNOW, WANTED TWO PEOPLE TO HAVE ACCESS TO
19 INVESTIGATIONS AND INTO MY OFFICE.

20 Q THAT SAFE IS IN THAT OFFICE. IT'S NOT THE EVIDENCE
21 LOCKER.

22 A NO. IT'S A SMALL FIRE SAFE.

23 Q OK.

24 A YOU CAN GET IT FROM WAL-MART, I THINK. IS WHERE WE GOT
25 IT.

219

LT. NORTHCUTT - DIRECT BY MR. HUBBARD

Q OK. AND AFTER YOU DID THAT, AFTER YOU PUT IT
DID YOU, AT ANOTHER POINT IN TIME, TAKE THAT MONEY
YOU MENTIONED A JOHN SHARPE?

A YES. SIR. MR. SHARPE WHO IS THE CITY TREASURER
TAKE THE MONEY TO, YOU KNOW, PROBABLY ON THAT
DON'T REMEMBER THE DATE. I'M SURE IT'S MARKED ON
IT WAS ON MONDAY I BELIEVE.

Q IS THAT WHAT YOU TYPICALLY DO WITH ALL THE MONEY
RECEIVED?

A YES. ANY CASH MONEY THAT IS RECEIVED, WE TAKE FOR
ACCOUNTING PURPOSES.

Q OK. WHAT'S YOUR UNDERSTANDING WHAT HE DOES WITH
MONEY WHEN YOU TAKE MONEY IN?

A I BELIEVE HE TAKES IT AS WE GIVE IT TO HIM.
I'M NOT EVEN SURE THAT HE OPENS THE PACKAGE. I DON'T
THAT HE DOES.

Q LET ME ASK YOU ABOUT THE PACKAGE. I GIVE YOU
HERE. WELL, HERE'S 500 AND \$600. ARE THOSE
YOU'LL PUT 'EM IN OR DID MR. SHARPE PUT 'EM IN?

A NO. THIS IS MY WRITING ON HERE AND I SIGNED

Q OK. SO YOU DELIVER THEM TO JOHN SHARPE JUST

A THAT'S CORRECT.

Q AND WHAT DOES HE DO WITH IT?

A I UNDERSTAND HE TAKES 'EM OVER TO THE BANK
CITY DEALS WITH 'EM AND PLACES 'EM IN A SAFETY DEPOSIT

LT. NORTHCUTT - DIRECT BY MR. HUBBARD

1 Q OK.

2 A I'VE NEVER ACTUALLY GONE WITH HIM TO DO IT. BUT I
3 UNDERSTAND THAT'S WHAT HE DOES WITH IT.

4 Q THAT'S WHAT HE DOES WITH ALL THE MONEY YA'LL SEND IN?

5 A TO MY UNDERSTANDING. YES, SIR.

6 Q OK. SO AS FAR AS THE MONEY IS CONCERNED, LT. SCOGGINS
7 ISN'T IN CHARGE OF THAT. IS HE?

8 A NO. HE NEVER GETS THE MONEY.

9 Q HE'S JUST IN CHARGE OF THE DRUGS AND ANY OTHER EVIDENCE.

10 A THAT'S CORRECT.

11 MR. HUBBARD: BEG THE COURT'S INDULGENCE, YOUR HONOR.

12 THE COURT: YES, SIR.

13 MR. HUBBARD: NO FURTHER QUESTIONS, YOUR HONOR.

14 THE COURT: ALRIGHT. CROSS, MR. BROOKS?

15 MR. BROOKS: PLEASE THE COURT, YOUR HONOR?

16 THE COURT: YES, SIR.

17 CROSS-EXAMINATION

18 BY MR. BROOKS

19 Q HOW YOU DOIN', MR. NORTHCUTT?

20 A JUST FINE.

21 Q MR. NORTHCUTT, YOU TESTIFIED A FEW MINUTES AGO THAT YOU
22 FILL OUT CERTAIN PAPERWORK. CERTAIN FORMS THAT DEAL WITH. I
23 BELIEVE THE TERM USED IS CHAIN OF CUSTODY.

24 A YES, SIR. WHEN WE HAVE EVIDENCE, WE DO CHAIN OF CUSTODY
25 FORMS.

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