

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Robert E. Hood, Circuit Court Judge

RECEIVED

SEP - 8 2015

S.C. Supreme Court

DARRELL WILLIAMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000071

APPENDIX

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1 Exhibit, your transcript of record from the May 3rd,
2 1995, Bennettsville, South Carolina, proceeding for
3 your PCR; and then another Court's Exhibit which is
4 the Order of Dismissal.

5 **MR. WILLIAMS:** That's correct.

6 **THE COURT:** Did you need to state anything with
7 respect to those?

8 **MR. WILLIAMS:** No. No. My objections have
9 already been made for the record concerning that.
10 And I would like just to have those basically in
11 support of my argument.

12 **THE COURT:** Okay. Thank you.

13 **MS. GARFIELD:** And I believe it's actually a
14 transcript of his initial proceeding in the guilty
15 plea. It is not the PCR.

16 **THE COURT:** Thank you very much. It's the
17 guilty plea, not the PCR. Okay. I wish you well.

18 **MR. WILLIAMS:** Thank you, Your Honor.

19 **THE COURT:** That will be the sentence of the
20 Court.

21 (WHEREUPON, Court's Exhibit No. 8 is marked for
22 identification.)

23 (WHEREUPON, Court's Exhibit No. 9 is marked for
24 identification.)

25 (Whereupon, the proceedings are concluded)

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Jenny H. Williams, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 23rd and 24th days of September, 2008.

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

June 4, 2010

Jenny H. Williams
Jenny H. Williams, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

COURT OF GENERAL SESSIONS
2008-GS-40-13175

STATE OF SOUTH CAROLINA

-vs-

DARRELL WILLIAMS

:
:
:
:
:

TRANSCRIPT OF RECORD

TUESDAY, MAY 19, 2009
COLUMBIA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. MICHELLE CHILDS, JUDGE.

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

HEATHER WEISS, ASSISTANT SOLICITOR
DOLLY GARFIELD, ASSISTANT SOLICITOR
ATTORNEYS FOR THE STATE

DARRELL WILLIAMS
PRO SE DEFENDANT

DIANNE A. RUTLEDGE
CIRCUIT COURT REPORTER

I N D E X

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4 CERTIFICATE OF COURT REPORTER 30

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E X H I B I T S

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12 (No exhibits were introduced during the hearing.)

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1 THE COURT: Okay. We're going to call to court the
2 matter of State versus Darrell Williams. I've got Heather
3 Weiss and Dolly Garfield representing the state.

4 Mr. Williams, you are still proceeding pro se?

5 MR. WILLIAMS: Yes, ma'am.

6 THE COURT: Okay. All right. And you've been duly
7 advised of your right to have an attorney throughout the
8 trial proceedings, but you did represent yourself in the
9 underlying trial?

10 MR. WILLIAMS: Yes, I did.

11 THE COURT: Okay. And you still wish to do so today?

12 MR. WILLIAMS: Yes, ma'am.

13 THE COURT: Okay. We are here for your motion for a
14 new trial. And I apologize for the time it's taken to kind
15 of get this scheduled. But we will proceed with your
16 motion. I notice you don't have any documents with you.
17 I'd be happy to hand you your motion if you'd like to have
18 that to refer to.

19 MR. WILLIAMS: Yes.

20 THE COURT: Okay. Take a moment to look that over,
21 and then we can proceed. Let me give you these other ones.
22 One says amended motion for a new trial. I'll give you
23 this one as well.

24 (Pause.)

25 THE COURT: Okay. Are you ready to proceed?

1 MR. WILLIAMS: Yes, ma'am.

2 THE COURT: Okay. All right. You've had an
3 opportunity to review that. It's your motion, so you can
4 begin first.

5 MR. WILLIAMS: Okay. First, I would like to present
6 my motion that I argued, one of the points that I wanted to
7 raise is that I would like to request The Court to grant a
8 new trial motion based on the fact that during the course
9 of the trial the prosecution used two prior past offenses
10 that were coming from a 1995 conviction. As it was stated
11 during the course of the trial, those 1995 convictions were
12 part of one single offense that was based on a plea
13 agreement between the state and the defense at the time
14 that all offense will be considered as deemed as one
15 offense, not separated.

16 What the prosecution did during the course of the
17 trial is they used those convictions and they separated
18 them. They used two different crimes -- they used two
19 different burglary charges, one for -- each one was a first
20 degree burglary charge was separate offenses, but they was
21 all one conviction.

22 And in a sense what the prosecution did is that they
23 used those two -- two past offenses from 1995 which was
24 said to be one. They used those to say that they -- this
25 is how they proved the element of the two prior burglary --

1 two or more prior burglary charges to satisfy 16-11-311-A-
2 2.

3 This is -- my -- my argument is that that's wrong.
4 You cannot separate something that was considered to be as
5 one offense.

6 THE COURT: Okay. Let me stop you there. When you
7 say one offense, are you saying that you pled on that day
8 for two separate offenses but it was pled at the same time?

9 MR. WILLIAMS: What I'm saying is that during the 1995
10 -- my prior conviction, what the solicitor at the time and
11 the defense did is they said we're going to consider all
12 this to be one offense. It was ---

13 THE COURT: Okay. But on the sheet for which you
14 actually pled, did the judge have two sentencing sheets and
15 so considered them two separate offenses but ran them
16 concurrent, meaning that you serve all your time at once?

17 MR. WILLIAMS: Well, according to what was stated and
18 what was part -- supposed to be part of the plea agreement,
19 was it was 17 charges at the time in 1995. 17 separate
20 charges. They all charged me separate. But what they said
21 is they was going -- they were going to put all -- they
22 were going to consider -- they were going to consider all
23 these one charge. And by considering them all one charge
24 is what they was going to do is they was going to sentence
25 -- I had separate convictions. They was going to be 15

1 years for each one -- for the burglary charge for each one.

2 THE COURT: 17?

3 MR. WILLIAMS: Yeah.

4 THE COURT: Did they run consecutive or together?

5 MR. WILLIAMS: Concurrent.

6 THE COURT: Okay. But it's still two offenses, but
7 they might run together, but it's still two offenses. Is
8 that what you understood it?

9 MR. WILLIAMS: No. The way I understood it was that
10 when they was putting -- when they put it together, they
11 were saying it was going to be -- a concurrent sentence,
12 but all the charges -- the part of the deal was you've got
13 17 charges. We're going to consider them to be one
14 offense. First we're going to give -- we're going to
15 sentence you, but it's going to be one offense. It's not
16 going to be separate offenses.

17 THE COURT: So when you say one offense, I think what
18 I hear you saying is that the charges would all still be --
19 the judge read off all 17 charges ---

20 MR. WILLIAMS: Yeah.

21 THE COURT: --- but he runs your sentence concurrent.
22 And when you run a sentence concurrent, it means that
23 you're going to serve all the sentences at the same time.
24 So if he said 15 years, you might have 15 years and you're
25 going to serve all of it together, but it's still 17

1 offenses -- 17 criminal charges.

2 MR. WILLIAMS: Charges.

3 THE COURT: We do that everyday; that's why I'm asking
4 you, because there's a difference between dismissing a
5 charge and then therefore it's gone, versus you still have
6 the charge but we're going to run them concurrent so that
7 you serve all the sentences together.

8 MR. WILLIAMS: Because, see, you know, the way I
9 understood it at the time is that what he was saying is
10 that, okay. You had 17 charges, but we're not going to
11 consider them to be, you know, so to speak like separated
12 in a sense where we're going to consider this 17 charges.
13 We're going to give you time, you only have one.

14 THE COURT: Okay.

15 MR. WILLIAMS: One conviction for all of them; that's
16 the way I understood it was giving one conviction to
17 satisfy all of them. This is what I -- as I understood it
18 to be at the time. This is why I make an argument that
19 during the time of the guilty plea, this is what I assumed
20 this is what he was doing during the time that I got
21 convicted for those charges.

22 So that's why I argue is basically if the state took
23 the charges and separate those charges the way they did,
24 this is what made them -- this is what was my argument is
25 that they did it to satisfy the element of the two or more

1 prior offenses. By doing that, because basically the 1995
2 was considered to be one; then that's all this is just one
3 conviction. By taking them and separating them now, now
4 you see -- like, basically what they did, they -- as they
5 presented to the jury, I had more than -- on this
6 particular day I had two separate convictions when it was
7 all actually just one conviction.

8 THE COURT: Okay. All right. So that would be the
9 first ground. Do you have other grounds?

10 MR. WILLIAMS: Okay. And the second thing I want to
11 also argue is about -- also that the statute 16-11-311-A is
12 that by itself the way they have -- the way as the court
13 has set up in the way it's presented, this statute here by
14 sought a way -- which by allowing the individuals -- while
15 allowing the state prosecution to bring up prior offense,
16 this would -- this would interfere with individual's right
17 to competition because what I think, you have -- and the
18 officer testify -- an officer testify he has two or more
19 prior offenses, the officer doesn't know -- all he know --
20 basically the officer is testifying that he's -- when I
21 talk about officer, the arresting officer for the present
22 offense, all he has information of is that he has prior
23 offenses.

24 As far as a factual background behind what happened
25 and the circumstances of it, this officer has no -- has no

1 knowledge of that. And ---

2 THE COURT: Let me ask you this. You know, this trial
3 was some time ago.

4 MR. WILLIAMS: Yes.

5 THE COURT: Usually when we have a trial and you're
6 relying on two prior offenses to actually get the LWOP, all
7 we do is present the actual guilty plea or the sentence
8 sheet for ---

9 MR. WILLIAMS: What I'm talking about is I'm not
10 looking -- I have the indictments for the 17-25-45 -- what
11 I'm looking at is 16 -- we're talking about the burglary
12 statute itself because the burglary statute deals with two
13 or more prior offenses as an element to prove it. And
14 basically what I'm saying with the -- with the 16-11-311-A
15 is that if the officer -- if the officer is testifying to
16 the two prior offenses that took place, then his knowledge
17 about it is limited because he would not -- would not be
18 able to tell the circumstance behind it.

19 Now, what the courts have done is they saying that all
20 they can do is just bring out the circumstances concerning
21 that, but they can't go into the -- to the whole factual
22 background behind it.

23 THE COURT: But usually what we do on a burglary first
24 if you -- I mean, or LWOP allowing the two prior offenses
25 to count, we don't let the state go into the reasons,

1 because that's past. I mean, we don't let the jury have
2 any information as to what specifically happened on those
3 occasions because that's past-tense. We don't want that
4 considered for purposes of the trial on whether or not
5 you're guilty on the facts in that particular trial.

6 What we do is only allow them to have knowledge that
7 there was two prior convictions for purposes of the
8 enhancement essentially.

9 MR. WILLIAMS: Okay. And, see, this is -- this is why
10 I say this would violate competition clause if you allow
11 the jury to hear evidence concerning this, then now it's
12 almost like the point where you're bringing evidence out
13 but not I don't get the fact that I don't have a chance to
14 challenge them because the prosecution to say, no, you
15 can't show that this conviction here might -- or it might
16 not be a -- a -- a actual burglary the way, you know, the
17 statute show -- I mean, not so much go into detail but
18 showing ---

19 THE COURT: Okay. Well, let me ask you this. If the
20 statute requires that there be the two prior offenses for
21 the enhancement, it's your argument you've got two, one is
22 that they shouldn't have been considered because you
23 believe that they were really one offense?

24 MR. WILLIAMS: Right.

25 THE COURT: The second argument is that you don't

1 think the jury should have heard it because the jury then
2 gets prejudiced by the fact in that perhaps that if we're
3 going to have an enhancement, maybe The Court knows about
4 it for purposes of sentencing, but the jury shouldn't know
5 about it because you're thinking it prejudiced them or it
6 somehow kind of makes them think about the prior offenses
7 in determining whether you're guilty on this offense?

8 MR. WILLIAMS: Exactly.

9 THE COURT: Okay.

10 MR. WILLIAMS: And on top of that with that -- with
11 that said, that's -- that also interferes with the rights
12 for the individual to challenge the officer concerning if
13 you bring it out now that the jury's hearing it now, we
14 need to go into more detail to show the jury certain things
15 about this -- because you can't question the officer on
16 this because it's state law -- case law -- there's case law
17 that says they can only go so far in presenting the case.
18 Just like you said yourself, they present what's there, not
19 go into detail. But now what about the defense opportunity
20 to cross examine the officer further about this -- because
21 if you bring it out, this opens the door -- we open the
22 door now. I mean, to challenge the prosecution's case
23 because of this evidence they're presenting against him.
24 THE COURT: Okay. All right. Go ahead with your
25 other grounds.

1 MR. WILLIAMS: And the last one I want to present is
2 that -- this is concerning 17-25-45. This is the last
3 argument. 17 -- my argument is that 17-25-45 violates the
4 ex-post facto clause because during the time that we -- I
5 think we talked about this during the course of the trial,
6 that there was 17-25 -- when 16-11-311 at the time was in
7 effect, State versus Washington was considering the fact
8 that it was a housebreaking charge -- it wasn't considered
9 a most serious offense at the time.

10 The ex-post facto clause requires that during the time
11 that individual be informed about the changes that are
12 going to take place in that what wasn't a penalty back then
13 now all of a sudden -- now when the statute changed during
14 the time that I got convicted -- from what I've been
15 reading, 16 -- first degree burglary wasn't considered to
16 be a most-serious offense in 1995. But in 1996 when they
17 -- when the legislature changed the statute when they
18 started to put that in there, now this is when it became a
19 most-serious offense for purpose of treating it three
20 strikes -- at the time when it was three strikes going to
21 now two. But this is what triggered this now.

22 In 1995 -- now to use a 1995 conviction that was not
23 considered to be a most-serious offense, this is what the
24 prosecution use as enhancement purpose for this particular
25 statute. This is the ex-post facto clause; this is why I

1 believe the motion for a new trial should be granted.

2 THE COURT: Okay. I will say I am very impressed with
3 your arguments in that they do have some good legal and
4 factual basis. I'll hear from the state, but The Court
5 would have to look in to it, because I have to abide by
6 whatever our Supreme Court and appellate courts have stated
7 as of now.

8 MR. WILLIAMS: Okay.

9 THE COURT: I can't change the law. But to the extent
10 that you need to appeal me -- of course, I'm never offended
11 by that, to the extent that you wish to try to change the
12 law. I've heard these arguments before. But I have to go
13 with whatever the law is currently. But let's see if Ms.
14 Weiss has any law to support her position.

15 Go ahead.

16 MS. WEISS: Your Honor, I don't have the law with me,
17 obviously. I think we discussed all this. I think we
18 looked back in the transcript of the case. We discussed
19 each of these issues at trial, what the case law supported.

20 As far as the two burglaries in one plea for his prior
21 record, he pled to 17 different burglaries over numerous
22 days. We actually used the one from the beginning and the
23 one from the end. This is the two that we introduced as
24 his prior record. And although he pled to 17 burglaries at
25 one time, and it did count as one plea as far as sentencing

1 as far as strikes or anything else, it counts as one time.

2 As far as two prior burglaries, it is clearly stated
3 in the law -- and I can get the actual case law to support
4 this. But it's clearly stated that they were two separate
5 burglaries, separated in time. It was not one continuing
6 act. So each of the burglaries would have been a separate
7 prior to be introduced as the two priors for burglary first
8 for the trial.

9 And as far as this burglary, we were planning to bring
10 the clerk from the county where he pled guilty to enter
11 those into evidence in case he had any questions as to
12 those pleas or as to the convictions. And at the time he
13 went ahead and stipulated to each of those priors, so that
14 was why they were just entered in.

15 There was no discussion about pleas or whether or not
16 they were properly taken. I guess as to the facts, it
17 would be a whole another issue. But as to whether or not
18 the pleas were properly taken and how they were taken,
19 those could have been discussed by the clerk of court, but
20 Mr. Williams allowed us to allow the clerk to stay in her
21 own county and went ahead and stipulated to those two prior
22 burglaries in the trial.

23 And as far as burglary first ---

24 THE COURT: Okay. Let me go back on that to make a
25 clarification for him.

1 17 different burglaries. Do you understand that these
2 were not pled at one time then?

3 MS. WEISS: They were pled at one time.

4 THE COURT: They were pled at one time?

5 MS. WEISS: They were pled at one time and they were
6 clearly separate burglaries.

7 THE COURT: Okay.

8 MS. WEISS: And we checked the facts on each of those
9 to make sure they were separated in day and time.

10 THE COURT: He just received a concurrent sentence?

11 MS. WEISS: Correct.

12 THE COURT: Okay. And I think that might be, you
13 know, some of the confusion.

14 MS. WEISS: I believe he was represented as well.

15 THE COURT: Okay.

16 MS. WEISS: So there would have been an attorney to
17 help interpret that as well.

18 THE COURT: Okay. And when that happens that you'd
19 have several charges but yet you receive a concurrent
20 sentence -- do you all take a position that that's one
21 strike when you plead it all that day?

22 MS. WEISS: Yes, Your Honor.

23 THE COURT: Okay.

24 MS. WEISS: One strike.

25 THE COURT: Okay. So that's one strike. But then

1 would this one strike on those type of offenses have been
2 the enhancement alone?

3 MS. WEISS: Yes, Your Honor.

4 THE COURT: Okay. And then once you had the two
5 separate ---

6 MS. WEISS: Enhancement for life without parole.

7 THE COURT: Yes, life without parole. Thank you.

8 That's what I meant, but I'm glad you qualified that on the
9 record.

10 Okay. Insofar as the burglary first statute is
11 considered, you all used two prior burglary convictions for
12 the enhancement to burglary first?

13 MS. WEISS: As well as the nighttime element.

14 THE COURT: And nighttime. Okay. So we had both that
15 were testified to during the trial?

16 MS. WEISS: Yes, Your Honor.

17 THE COURT: And you could have gotten conviction on
18 one or the other?

19 MS. WEISS: Yes, Your Honor.

20 THE COURT: Okay. Go ahead.

21 MS. WEISS: And as far as the burglary first, the law
22 did change, my understanding, to violent -- violent, non-
23 violent in 1996. But I think as far as the most-serious
24 life without parole, that existed in 1995. However, the
25 theory as I understand it on the life without parole and

1 two strike/three strike is for someone who is in a
2 situation where they do have a prior, then it's before the
3 law came into existence -- the idea is you're on notice at
4 this point before you commit your new offense, that those
5 are now strikes. And if you choose to commit another
6 offense, it is a two strike or a three strike offense, at
7 that point when you're committing the new offense, you are
8 then subject to life without parole if you're convicted for
9 that offense.

10 So ---

11 THE COURT: So you're saying it wasn't a violent
12 offense at the time, the prior charges?

13 MS. WEISS: They did not have the violent/non-violent.
14 My understanding that changed in 1996.

15 THE COURT: Okay.

16 MS. WEISS: However, I believe that the serious/most
17 serious for the three strike -- two strike, three strike
18 was in existence prior to that.

19 THE COURT: Okay.

20 MS. WEISS: However, if I'm wrong about that, you
21 know, my understanding is regardless the idea is that those
22 are the qualifying offenses now and that you are put on
23 notice once the law changes. Ignorance of the law is no
24 defense. You are put on notice once the law changes. And
25 if you choose to go out and commit another offense that's a

1 qualifying offense, at that point you are subject to life
2 without parole, which is what he did. He then went out and
3 committed a burglary first after the law changed. He was
4 indicted in 2008, but he committed the offense long after
5 the law changed after being on notice that the prior
6 burglary first that he pled to -- the 17 charges that he
7 pled to would be a most serious strike and if convicted of
8 another burglary first, he would be subject to life without
9 parole.

10 So he was on notice prior to committing the offense.

11 THE COURT: Basically, once the law change,
12 everybody's on notice that the next one could be your
13 enhancement.

14 MS. WEISS: Yes, Your Honor.

15 THE COURT: Okay. I believe that deals with his ex-
16 post facto argument.

17 And then he mentioned about the officer testifying.

18 MS. WEISS: I believe what he was -- I believe if I
19 remember correctly from the trial itself, what he was
20 saying is that because we were entering the prior
21 burglaries, he should have the benefit of having the
22 officer from those cases testify to argue -- to ask him
23 whether or not there were problems with those burglaries
24 when they were committed, go ahead and re-argue those
25 burglaries even though he'd already pled guilty to them.

1 And I understand he ---

2 MR. WILLIAMS: Yes. Yes, that's correct.

3 MS. WEISS: And that was my understanding. And the
4 argument from the state is that he pled guilty at that
5 point waiving any rights to ever challenge the facts in
6 those cases.

7 So, of course, we did not bring an officer to testify.
8 That would not have been appropriate. It was not relevant
9 to the current trial. The only thing that was relevant was
10 -- right. Ms. Garfield said, it would have probably been
11 more prejudicial than probative to bring out -- to get in
12 facts of prior crimes. All we are allowed to do is get in
13 the fact that he was convicted of those crimes without the
14 facts.

15 But beyond that, it would not have been relevant to
16 the current crime. I mean, it would have been more
17 prejudicial than probative to the current crime because it
18 had nothing to do with it. It occurred back in 1995 and
19 those would have been totally separate facts. So that
20 officer was not brought.

21 And I think the whole purpose of a guilty plea, you
22 waive all the rights of challenging those facts. And he
23 did so at the time and took the benefit of the 17 pleas at
24 one time and went ahead and sentenced them at one time,
25 waiving all his rights to then confront the officer as to

1 any problems with those cases.

2 THE COURT: Okay. All right. Thank you. Do you want
3 to reply?

4 MR. WILLIAMS: Yes. I just want to -- just for
5 clarification purpose, I understand what the solicitor --
6 the prosecutor is saying is that with the two -- with the
7 prior burglary charges from 1995 being that they was run
8 concurrent -- the position would be from the state that
9 they were considered one offense.

10 If that's considered one offense for the purpose of
11 17-25-45, why can't the same look at 16-11-311-A would be
12 considered the two or more prior burglary offenses --
13 because if you're going to use that for the purpose of
14 enhance -- taking that -- okay. For instance, during my --
15 during this conviction here when I first got arrested, it
16 was for a second degree charge.

17 Now the state take the position because I had two or
18 more prior burglary offenses, they use that for purposes of
19 enhancing it to first degree burglary.

20 Now what they -- now what I'm seeing is that if you're
21 going to use that for purposes of 17-25-45 and say, okay,
22 this is your first strike. Your next strike for the 1995
23 conviction that you had, we're going to consider that to be
24 your first strike. If that's considered to be the first
25 strike, then for 16-11-311, the same has to be applied for

1 the same thing.

2 Now, in regards to the -- the clerk of the court
3 testifying concerning, you know, whether or not the plea
4 was entered properly, this is whether the plea was proper
5 -- that was never going to be. The challenge was going to
6 be basically if they're going to -- if you show the jury
7 the indictments and they look at it and they just see the
8 circumstances that they say as the reasons for giving the
9 indictment is listed inside the indictment -- this is what
10 the jury is looking at, then those go to the facts. And
11 you testify to the facts concerning this is the -- and
12 that's -- and that's the thing that I argue. I just want
13 to clarify that point. But that's ---

14 THE COURT: Okay. Let me ask you this. What does it
15 matter for purposes of the enhancement as to what the facts
16 of the individual burglaries were? Because the fact that
17 you get charged, that's what the enhancement is for, not
18 the facts underlying.

19 MR. WILLIAMS: Okay. What I'm saying is that when we
20 look at the facts and circumstances, if the state is
21 presenting the burglary -- the two prior burglary charges
22 concerning it, then as you see we was talking about
23 earlier, this is -- okay. Excuse me. Make sure I get it
24 clear. When we're dealing with the two prior offenses, if
25 the state is considering for -- as the purpose for that,

1 you're looking at it to be one. For 17-25-45, that's
2 considered to be one strike. I understand. But 17 -- 16-
3 11-311, that also should be considered as one burglary, not
4 two. Because when you took it and you separated it, you
5 say, okay, we got this conviction here. All -- all these
6 charges come from the same day and the same plea, but we're
7 going to take it. We're going to separate it. We're going
8 to use this charge here and this charge here and you have
9 two prior -- you're going to satisfy this element here by
10 showing these two burglaries from 1995 conviction.

11 Now, that basically would -- if that's the case, that
12 basically would be considered to be two strikes then. If
13 you're going to separate those and you're going to look at
14 it -- you could say I'm going to use this one and this one;
15 that's considered two -- if you're going to look at it,
16 that's basically looking at it as two separate offenses,
17 not one.

18 And if you're looking at it and you're saying that
19 because when you -- when you plead -- the position of the
20 state is that you have a bunch of pleas, we're going to
21 consider -- we're going to consider it to be one; that's
22 one strike. And that's considered the same.

23 Now, when I'm talking about the facts -- the facts
24 concerning the case, what I'm talking about is when the
25 officer -- when you get up there and you just testify

1 concerning like we was talking about the prejudicial effect
2 of just having the officer testify he have two prior
3 burglaries.

4 But now the jury has got this -- we -- the jury is
5 going to speculate, well, he's got two prior offense for
6 burglary. For what? How did it happen? When did it
7 happen? What are the circumstances behind it?

8 THE COURT: But then you're asking the jury to
9 reconsider factually whether or not you should have been
10 guilty on those charges, but you've already pled to the
11 charge.

12 MR. WILLIAMS: Yeah.

13 THE COURT: I think that's even more prejudicial for
14 them to hear the circumstances, because potentially you
15 could have had the same methods and manners on how you
16 committed those crimes, and then they would be considering
17 that for purposes of determining whether you're guilty on
18 this crime. And we don't allow that in criminal court.

19 MR. WILLIAMS: See, this is the problem when you bring
20 it out. You just ---

21 THE COURT: But, remember that there's a jury charge
22 at the end that says they can only consider that for
23 purposes of the enhancement, not whether or not you're
24 guilty on the offense for which we're trying.

25 MR. WILLIAMS: See, being -- okay. And also -- also

1 when you're also charging that this is evidence the state
2 must prove beyond a reasonable doubt. Now, looking at the
3 circumstance ---

4 THE COURT: But you've pled.

5 MR. WILLIAMS: Yes. Okay. I pled guilty to. But now
6 I think we presented the indictments from the 199 -- and
7 then -- now, this is the jury have before them. We have to
8 look at the fact the jury will look at this. They're going
9 to look at the indictment. They're going to read what's
10 there. So the -- so -- so certain factual circumstances
11 concerning that are going to be listed in there. I mean,
12 it's not going to be going to, you know, real detail but
13 some of the facts and circumstances concerning --
14 surrounding that will be there. And this is the problem.
15 See, it's going to still create the problem.

16 THE COURT: Okay.

17 MS. WEISS: Your Honor, if I may.

18 THE COURT: Sure.

19 MS. WEISS: My understanding is the reason he was
20 given the benefit of the one plea in 1995 to all the
21 burglary firsts because if they had been taken in separate
22 offenses in 1995, he would have gotten automatic life
23 without parole in 1995 because he pled to burglary first at
24 that time. It was to his benefit that he plead at one
25 time, so that it would be one strike under life without

1 parole.

2 He pled to 17 separate and distinct burglaries. But
3 on the same day count as one strike; thereby keeping him
4 from serving life without parole starting in 1995. I mean,
5 it was to his benefit.

6 Then -- but he pled to separate and distinct
7 burglaries that we could then use to enhance. But it all
8 goes to show that they've committed two or more burglaries.

9 A second note is I believe at the time Ms. Garfield
10 and I also had evidence of a burglary from New York that he
11 had been convicted of as well we were going to present if
12 there was a need be. He made this -- Mr. Williams made
13 this argument at the initial trial and we presented to Your
14 Honor that we believe that 17 distinct burglaries we could
15 bring in any of those two, which we chose to do because we
16 had local person who could come and testify, you know, from
17 that standpoint regarding those two.

18 However, if The Court chose to count those as one, we
19 still had a separate burglary to count as a prior from New
20 York that we could have entered in and we had a certified
21 conviction on we could have entered in as a second
22 burglary.

23 So Mr. Williams is aware that according to his prior
24 record, he has -- even if you count it as one, he had two
25 prior burglaries. But it shouldn't be counted as one. It

1 was counted as one for purposes of the strike only and for
2 purposes of concurrent time but not for purposes of the
3 burglary statute which just required us to show that he had
4 committed two or more prior burglaries.

5 THE COURT: Okay. All right.

6 MR. WILLIAMS: On this -- the statute that makes
7 reference to the fact that when you have -- okay -- you
8 talking about separate and distinct charges, but I believe
9 that the controlling statute here might be 17-25-50, which
10 is considered to be you have a bunch of offenses stemming
11 out of the same transaction, they could consider for
12 purposes of sentencing. This is what -- this is what --
13 this is what we're dealing with now.

14 Now, yes, the state is correct. I do have a prior
15 burglary from New York. But it's not what was presented to
16 the jury. What the jury got evidence of was two prior
17 burglaries from South Carolina. They never heard about the
18 burglaries from New York, so we can't even consider -- it's
19 not -- it's not what the individual is convicted of that
20 can be used, it is what was presented before the jury.

21 If the jury don't know about the burglary charge in
22 New York, then the jury's not aware of it and they can
23 never consider this for the two prior burglaries, one from
24 New York. And we know about the one from South Carolina.
25 So they consider this as evidence. The jury never heard

1 this. They only heard about evidence from South Carolina,
2 this is what they considered. This is all that's before
3 The Court. If the state would have presented the other
4 burglary charge from New York, yes, it would be no problem
5 because there was two -- the state had proven the element.

6 THE COURT: But they're indicating that they could
7 have used any of them.

8 MR. WILLIAMS: That's -- you know, according to the
9 law, that would be correct, they can use it, but it was
10 never used. My -- my point is -- like I said in the
11 beginning, it was never used. We can never consider that.
12 It was never used. We're talking about evidence that was
13 presented to the jury which is those two charges from South
14 Carolina; that was it, that's all we talk about presenting.

15 THE COURT: Okay. Help me understand better your
16 position with respect to this argument.

17 MS. WEISS: His argument is that pled to 17 separate
18 burglaries separated by time, by at least two weeks. So
19 it's not the same transaction. It was to his benefit to
20 plead to all 17 at one time to avoid the two strike law.

21 THE COURT: But I'm talking about more particular when
22 he's separating New York burglary versus a South Carolina
23 burglary?

24 MS. WEISS: He's just saying that we didn't present it
25 and we can't -- so he can't argue it. He's saying had we

1 presented the New York burglary, he wouldn't have an
2 argument. I mean, that's all he's saying. We're just
3 saying we presented it to The Court at the time just to
4 show that we had that information and Mr. Williams knew we
5 had that information. His record would have supported that
6 any which way. However, we chose to do the burglary first
7 because he stipulated to it. We had a witness to come in
8 -- that was available to come in from the other county
9 where he pled. He stipulated to the two burglaries. The
10 stipulation was entered in the record. He admitted that he
11 had two prior burglaries by virtue of stipulation. So we
12 were able to go forward on those two burglaries is the
13 bottom line for that. They were separated by about two
14 weeks, two totally separate burglaries, not the same course
15 of events at all.

16 THE COURT: Okay. All right. Anything further?

17 (Pause.)

18 THE COURT: Okay. Anything further from the state?

19 MS. WEISS: Nothing further from the state, Your
20 Honor.

21 THE COURT: Okay. All right. The Court will review
22 your file, and then we'll put something formal in writing
23 in terms of an order to you, and then that way you can
24 determine how to proceed on either side. Okay.

25 MR. WILLIAMS: Thank you.

1 THE COURT: Thank you.

2 MS. WEISS: Thank you, Your Honor.

3 --- End of transcript of record ---

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1 I, the undersigned Dianne A. Rutledge, official court
2 reporter for the Fifth Judicial Circuit of The State of
3 South Carolina, do hereby certify that the foregoing is a
4 true, accurate, and complete transcript of the record of
5 the proceedings had and evidence introduced in the hearing
6 of the captioned case, relative to appeal, in the Circuit
7 Court for Richland County, South Carolina on the 19th day
8 of May 2009.

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

11

12

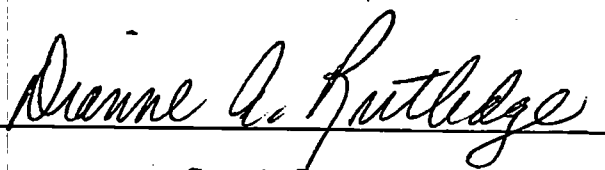
May 15, 2014

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Court Reporter

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

State of South Carolina

v.

Darrell O. Williams,

Defendant.

IN THE COURT OF GENERAL SESSIONS

Indictment No(s): 2008-GS-40-13175;
2008-GS-40-6965

ORDER

JEANETTE W. McBRIDE
C.C.P. & G.S.

2010 MAR 26 PM 4:09

RICHLAND COUNTY
FILED

This matter came before the Court pursuant to Defendant's Motion for a New Trial. Present at the hearing were Heather Weiss, Esquire, and Dolly Garfield, Esquire, Assistant Solicitors, Fifth Judicial Circuit, representing the State of South Carolina; and Darrell O. Williams, appearing *pro se*.¹

FACTUAL/PROCEDURAL BACKGROUND

Defendant was charged with Burglary (1st degree) (Indictment No.: 2008-GS-40-13175) and Petit Larceny (Indictment No.: 2008-GS-40-6965). Defendant's jury trial began in Richland County on September 22, 2008. On September 24, 2008, the jury unanimously found Defendant guilty of Burglary (1st degree) and Petit Larceny.² Defendant was subsequently sentenced to life imprisonment without the possibility of parole ("LWOP") for Burglary (1st degree) and a concurrent sentence of thirty (30) days for Petit Larceny. On September 29, 2008, Defendant

¹ At trial, Joshua S. Kendrick, Esquire, assisted Defendant as "shadow" counsel.

² Defendant was also charged with Grand Larceny (over \$1,000) (2008-GS-40-6965); however, the State did not proceed on this charge against Defendant at trial.

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timely filed a Motion for a New Trial. On October 20, 2008, Defendant filed an Amended Motion for a New Trial.

LEGAL STANDARD

"Except for motions for new trials based on after discovered evidence, post trial motions shall be made within ten (10) days after the imposition of the sentence." Rule 29(a), SCRCrimP. "Over a century ago, our Supreme Court held that in a criminal case, a motion for a new trial is the only available post-trial motion addressing the sufficiency of the evidence." State v. Scurry, 322 S.C. 514, 473 S.E.2d 61, 63 (Ct. App. 1996). "It is well settled that the grant or refusal of a new trial is within the discretion of the trial judge... However, where there is competent evidence to sustain the jury's verdict, the judge may not substitute his judgment for that of the jury." State v. Prince, 316 S.C. 57, 447 S.E.2d 177, 181 (1993). "Where there is no evidence to support a conviction, an order granting a new trial should be upheld." State v. Smith, 316 S.C. 53, 447 S.E.2d 175, 176 (1993).

DISCUSSION/ ANALYSIS

I. Sixth Amendment Confrontation Clause

Defendant argues that the State was allowed to use two of his prior convictions for burglary to prove an element of his alleged offense for Burglary (1st degree). Defendant claims that the prior convictions were based on sworn testimony from prior adversarial proceedings, and he has been denied his constitutional rights to confront witnesses against him in violation of the confrontation clause of the Sixth Amendment.

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During the pendency of Defendant's motion, the United States Supreme Court rendered a decision in the case of Melendez-Dias v. Massachusetts, 129 S. Ct. 2527 (2009), issued on June 25, 2009. The Supreme Court decided the issue of whether a forensic analyst lab report was "testimonial" evidence which supported a constitutional challenge based on a defendant's right to confront witnesses against him. Id. In that case, the analyst who created the report did not testify at trial. Id. at 2531. Therefore, the Supreme Court held that not allowing the defendant to cross-examine the drug analyst who created the report submitted at trial was a violation of the defendant's right to confront the witnesses against him, and the submission of the report violated the defendant's Sixth Amendment rights. Id. at 2532.

The Sixth Amendment to the United States Constitution, made applicable to the States through the Fourteenth Amendment, Pointer v. Texas, 380 U.S. 400, 403 (1965), states that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him." The Supreme Court has held that the Sixth Amendment "guarantees a defendant's right to confront those who 'bear testimony' against him." Melendez-Diaz, 129 S. Ct. at 2531 (quoting Crawford v. Washington, 541 U.S. 36, 51 (2004)). "A witness's testimony against a defendant is thus inadmissible unless the witness appears at trial or, if the witness is unavailable, the defendant had a prior opportunity for cross-examination." Id. In Crawford, the Court explained that the following testimonial statements fell within the Sixth Amendment:

Various formulations of this core class of testimonial statements exist: *ex parte* in-court testimony or its functional equivalent—that is, material such as affidavits, custodial examinations, prior testimony that the defendant was unable to cross-examine, or similar pretrial statements that declarants would reasonably expect to be used prosecutorially; extrajudicial statements ... contained in formalized testimonial materials, such as affidavits, depositions, prior testimony, or

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confessions; statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.

541 U.S. at 51-52. (internal quotation marks and citations omitted). Moreover, the Supreme Court in White v. Illinois, 502 U.S. 346, 365 (1992), held that "the Confrontation Clause is implicated by extrajudicial statements only insofar as they are contained in formalized testimonial materials, such as affidavits, depositions, prior testimony, or confessions." In Melendez, the Court found that because "[t]he fact in question [was] that the substance found in the possession of Melendez-Diaz and his codefendants was... cocaine-the precise testimony the analysts would be expected to provide if called at trial[.]" then "[t]he 'certificates' [were] functionally identical to live, in-court testimony, doing 'precisely what a witness does on direct examination.'" 129 S. Ct. at 2532 (quoting Davis v. Washington, 547 U.S. 813, 830 (2006)) (emphasis deleted). Defendant also bases his argument on the holding of State Ex. rel. Medlock v. Nest Egg, 290 S.C. 124, 131, 348 S.E.2d 381, 385 (1986), in which the South Carolina Supreme Court held that "[t]he introduction of evidence by affidavit rather than live testimony accordingly deprived the defendants of the due process right to confrontation and cross examination."

Defendant seeks to apply the holdings in Melendez-Diaz and Medlock to the facts of his case, in which the Court allowed evidence of Defendant's prior convictions to prove an element of the offense of Burglary (1st). The holdings of Melendez-Diaz and Medlock do not apply in the present factual situation because the State did not submit prior sworn testimony regarding Defendant's prior convictions. Rather, the State presented evidence of Defendant's previous

certified convictions in order to prove one of the elements of Burglary (1st degree), which is that Defendant had two or more prior convictions for burglary. As these certified convictions fall within a hearsay exception regarding judgments of previous convictions and are self-authenticating certified copies of public records, they are not the equivalent to the lab reports in Melendez-Dias, nor did the State seek to produce affidavits to support their contents, as was done in Medlock. See Rule 803(22), SCRE ("Evidence of a final judgment..., entered after a trial or upon a plea of guilty..., adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment" are not excluded by the hearsay rule, even though the declarant is available as a witness."); Rule 902(4), SCRE ("Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to... [a] copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with subsection (1), (2), or (3) of this rule or complying with any statute or rule promulgated by the Supreme Court."). Furthermore, the State is not required to prove beyond a reasonable doubt that Defendant committed the offenses to which he previously pleaded guilty. The State has already proved the elements of those offenses beyond a reasonable doubt at a prior proceeding. Therefore, as the convictions are public records, not containing the opinions of those making them, Defendant has not been denied his Sixth Amendment right to confront witnesses against him. Furthermore, at trial, Defendant stipulated that he had committed these particular prior burglaries.

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II. Failure to Prove Two Prior Burglary Convictions

Defendant contends that the State failed to prove and establish that Defendant had two prior burglary convictions under South Carolina Code Ann. § 16-11-311(A)(2), which provides that "[a] person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and...the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both."

Defendant also challenges the use of his two prior burglary convictions under S.C. Code Ann. § 17-25-50. That Section provides "[i]n determining the number of offenses for the purpose of imposition of sentence, the court shall treat as one offense any number of offenses which have been committed at times so closely connected in point of time such that they may be considered as one offense, notwithstanding under the law they constitute separate and distinct offenses." Specifically, Defendant argues that he was sentenced for his prior burglaries together as one offense, as Defendant pleaded guilty to several burglary² charges and received a concurrent sentence of fifteen (15) years for all of his charges. The State argues that, notwithstanding Defendant's guilty plea for several burglary charges during one proceeding, it can use any two (or more) of his prior burglary convictions at trial to meet this element of Burglary (1st degree). The Court agrees.

² Defendant pleaded guilty to seventeen (17) different burglaries at one time, which occurred on different dates, and received the benefit of receiving a concurrent sentence and one strike. The State had the ability to use several of these burglaries to demonstrate that Defendant committed two or more prior burglaries but the Court only allowed the State to use two of them to meet its burden of proof under the Burglary (1st degree) statute to prove an element of the offense. Furthermore, the Court notes that Defendant stipulated to his prior record at trial.

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As an initial matter, the Court finds that Defendant's prior burglaries were not "so closely connected in point of time" such that they should be considered one offense under South Carolina law. At trial, the State submitted certified convictions of Defendant for separate offenses occurring in Marlboro County on or about December 6, 1994 and December 13, 1994, on which dates Defendant willfully and unlawfully entered the dwelling house of two different victims without their consent and with the intent to commit a crime at nighttime. See Koon v. State, 372 S.C. 531, 643 S.E.2d 680 (S.C. 2007) (Defendant's prior burglary convictions were not regarded as one crime for sentencing under recidivist statute, and sentence of life without possibility of parole was deemed proper because one of defendant's three prior burglaries occurred in another building and location and two weeks after prior two burglaries); Bryant v. State, 384 S.C. 525, 533, 683 S.E.2d 280, 284 (2009) (three armed robberies which occurred over a three-day period and concerned three different victims were "not inextricably connected and did not share an immediate temporal proximity" and therefore could not be considered one offense); State v. Woody 359 S.C. 1, 596 S.E.2d 907 (2004) (two prior convictions were considered one conviction for sentencing purposes when the only difference between the two prior convictions were different victims but the offenses emerged from one incident in which the defendant robbed a store's clerk and the store itself). Therefore, the Court allowed the State to use two of Defendant's prior burglary convictions as an element of Burglary (1st degree) at trial.

Finally, Defendant claims that allowing the jurors to hear evidence regarding two of his prior burglary convictions was more prejudicial than probative in violation of Rule 404(b), SCRE. The Court, however, finds that such convictions are probative because the State had to

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prove beyond a reasonable doubt that Defendant had been previously convicted of two or more burglaries. Additionally, the Court only allowed the State to present evidence of two of Defendant's prior burglary convictions and gave the jury a limiting instruction when charging it as to the elements of Burglary (1st degree).³

III. Proof of Nighttime Element of Burglary Offense

Defendant argues that, at trial, the State failed to prove that the crime of Burglary (1st degree) was committed at night. Defendant was convicted under S.C. Code Ann. § 16-11-311(A)(3), which provides that "[a] person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and... the entering or remaining occurs in the nighttime."

Defendant further argues nighttime means "when the person(s) [sic] countenance can not [sic] be observed." Defendant argues that this definition is not the one argued by the State at trial, because an officer who testified at the trial stated that the time for sunset was 7:01 p.m. Defendant argues that this definition does not satisfy the nighttime element and without this proof, the State has not proven the crime of Burglary (1st degree). However, at trial, the victim also testified that he left his home around 8:30 p.m. The Court allowed this factual determination to be made by the jury. The Court charged the jury appropriately regarding it's role as finders of fact in the case and the law concerning the elements of Burglary (1st degree). Furthermore, the

³The Court charged the jury as follows: "Evidence of prior offenses committed by the Defendant was not offered to prove the Defendant has a bad character or to prove that the Defendant committed the burglary on this occasion. The prior convictions may be considered by you only for the purpose of determining whether or not it satisfies that element of the offense that makes it burglary first degree if you enter a dwelling without consent to commit a crime and you have two prior convictions for burglary and/or housebreaking."

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Court charged the jurors as to their role regarding determinations of the credibility or believability of witnesses at trial, stating that they were free to accept or reject the testimony of any witness in its entirety. Therefore, the Court will not substitute its judgment for that of the jury regarding its finding that the nighttime element of Burglary (1st degree) had been satisfied.

IV. Ex Post Facto Clause

The Defendant asserts that, pursuant to S.C. Code Ann. § 17-25-45, the use of his prior burglaries to convict him violates his rights under the Ex Post Facto Clause. S.C. Code Ann. § 17-25-45(A)(1) provides that "a person must be sentenced to a term of imprisonment for life without the possibility of parole if that person has one or more prior convictions for... a most serious offense." Burglary (1st degree), as defined by S.C. Code Ann. § 16-11-311, is a "most serious offense" under S.C. Code Ann. § 17-25-45(C)(1). Defendant claims that the 1995 prior convictions which the State used to enhance his sentence were classified as non-violent and not deemed "most serious" at the time of those convictions. The State concedes that under prior law the offense was not considered a violent offense but that "serious" and "most serious" categories were in existence at the time of the prior offenses. Therefore, the State argues that Defendant's prior burglary convictions can now be considered "most serious" offenses.

"[A]ny law is an ex post facto law, within the meaning of the Constitution, passed after the commission of a crime charged against a defendant, which in relation to that offense alters the situation of the party to his disadvantage; and no one can be criminally punished, except in accordance with the law of force when the offense was committed." State v. Malloy, 95 S.C. 441, 441, 78 S.E.2d 995, 997 (1913). "To fall within the ex post facto prohibition, a law must be

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retrospective and must disadvantage the offender by altering the definition of criminal conduct or increasing the punishment for the crime." Farris v. State, 334 S.C. 21, 511 S.E.2d 688 (1999); see also Lynce v. Mathis, 519 U.S. 433 (1997); State v. Matthews, 296 S.C. 379, 373 S.E.2d 587 (1988). In Khattah v. Ashcroft, 332 F. 3d 250, 253 (4th Cir. 2003), applying South Carolina law, the court stated the following:

A rule does not operate retroactively simply because it "upsets expectations based in prior law." Landgraf v. USI Film Prods., 511 U.S. 244, 269, 114 S. Ct. 1483, 128 L.Ed.2d 229 (1994). Rather, to have a retroactive effect, a statute must "attach[] new legal consequences to events completed before its enactment." INS v. St. Cyr, 533 U.S. 289, 321, 121 S. Ct. 2271, 150 L.Ed.2d 347 (2001) (internal quotation marks omitted). In determining whether a rule has a retroactive effect, courts should be guided by "familiar considerations of fair notice, reasonable reliance, and settled expectations." Martin v. Hadix, 527 U.S. 343, 358, 119 S. Ct. 1998, 144 L.Ed.2d 347 (1999) (internal quotation marks omitted).

Because Defendant committed the crime of Burglary (1st degree) after the recidivist statutes were passed, the Court finds that Defendant's constitutional rights were not violated. See State v. Jones, 344 S.C. 48, 59, 543 S.E.2d 541, 546 (2001) ("Where conduct in committing offenses which trigger recidivist features of sentencing provisions occur after the sentencing provision's effective date, there is no ex post facto violation"); State v. Dabney, 301 S.C. 271, 391 S.E.2d 563 (1990) (amendment of statute lengthening period of time previous convictions could be used to increase punishment for subsequent DUI offense did not violate ex post facto clause as applied to drivers who committed offenses for which they were being sentenced after effective date of statute's amendment); Phillips v. State, 331 S.C. 482, 504 S.E.2d 111 (1998) (no ex post facto violation for legislature to enhance punishment for later offense based on prior conviction, even though enhancement provision was not in effect at time of prior offense). As in

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Jones, Defendant's offenses occurred after the enactment of S.C. Code Ann. § 17-25-45; and therefore, Defendant's constitutional rights have not been violated. Id. at 59, 543 S.E.2d at 546. Defendant is mistaken as to the effect that the passage of the two strike law has on his guilty plea regarding his earlier charges of burglary. Id. (citing Gryger v. Burke, 334 U.S. 728 (1948)) (holding that sentencing as a habitual criminal is not viewed as a new jeopardy or additional penalty for an earlier crime; rather it is a stiffened penalty for the latest crime, which is considered to be an aggravated offense because it is a repetitive one). Once the law changed, a person is on notice that any subsequent offense could lead to an enhancement for purposes of an LWOP sentence.

V. Cruel and Unusual Punishment

In Defendant's Amended Motion for a New Trial, he asserts that the Court's life sentence under S.C. Code Ann. § 17-25-45 constitutes cruel and unusual punishment. Defendant contends that the jury found him guilty because his prior record comprised an element of the offense of Burglary (1st degree). Defendant argues that no other state has a statute similar to South Carolina in that a defendant can be found guilty and then sentenced based on a triggering offense under a recidivist statute. Defendant argues that when looking at the gravity of the offense compared with the harshness of the sentence and its mandatory nature under S.C. Code Ann. §§ 16-11-311(A)(2) and 17-25-45, his sentence violates Harmelin v. Michigan, 501 U.S. 457, 111 S. Ct. 2680 (1991). The Court disagrees.

Defendant's sentence does not constitute cruel and unusual punishment for the same reasons enumerated in State v. Jones, 344 S.C. 48, 56-57, 543 S.E.2d 541, 545-6 (2001) (finding

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that sentencing enhancement under the recidivist statute did not constitute cruel and unusual punishment); see also State v. Johnson, 350 S.C. 543, 567 S.E.2d 486 (Ct. App. 2004) (finding that sentencing enhancement under the two-strike system did not constitute cruel and unusual punishment, especially considering the defendant's prior record) State v. Standard, 351 S.C. 199, 204-5, 569 S.E.2d 325, 328-9 (2002) (LWOP sentence under the two-strikes law for first-degree burglary did not constitute cruel and unusual punishment although defendant was fifteen years old at the time he committed the underlying offense of armed robbery, for which he was tried and adjudicated as an adult); State v. White, 349 S.C. 33, 37, 562 S.E.2d 305, 307 (2002) (finding that the defendant's life sentence was "proportionate to any other criminal who has a second most serious conviction, and life sentences for first-degree burglary under recidivist laws have withstood such a challenge [cruel and unusual punishment] before").

VI. Due Process and Equal Protection Challenges as to the Constitutionality of S.C. Code Ann. § 16-11-311(A)(2)

Defendant claims that S.C. Code Ann. § 16-11-311(A)(2), concerning the use of two or more convictions as an element of Burglary (1st degree), is unconstitutional. Specifically, Defendant claims that this section of the statute violates the equal protection and due process clauses of the federal and state constitutions because it lessens the State's burden of proof by allowing the State to inform the jury of a defendant's prior convictions for burglary without having to prove such convictions beyond a reasonable doubt. Additionally, Defendant argues that the State may not use prior convictions for other offenses.

The Court finds that Defendant's conviction under this statute does not violate Defendant's due process rights under the Fourteenth Amendment. See State v. Benton, 338 S.C.

151, 154, 526 S.E.2d 228, 230 (2000). In Benton, the defendant made the exact argument as Defendant herein, and the South Carolina Supreme Court held that the statute "does not violate due process as it is reasonably designed to accomplish its purpose." Similarly, the United States Supreme Court has held that statutes in which two prior burglaries constitute an element of the offense do not violate a defendant's due process rights. See Spencer v. Texas, 385 U.S. 554, 87 S. Ct. 648 (1967).

Furthermore, the statute does not violate Defendant's equal protection rights under the Fourteenth Amendment as applied to Defendant. See Lee v. South Carolina Dept. of Natural Resources, 339 S.C. 463, 467, 530 S.E.2d 112, 114 (2000) ("To satisfy the Equal Protection Clause, a classification must (1) bear a reasonable relation to the legislative purpose sought to be achieved, (2) members of the class must be treated alike under similar circumstances, and (3) the classification must rest on some rational basis."); Sandy Springs Water Co. v. Department of Health and Environmental Control, 324 S.C. 177, 181, 478 S.E.2d 60, 62 (1996). ("In challenging classification on equal protection grounds, party alleging violation must show that similarly situated persons received disparate treatment."); Skyscraper Corp. v. County of Newberry, 323 S.C. 412, 417, 475 S.E.2d 764, 766 (1996) ("Equal protection requires that all persons be treated alike under like circumstances and conditions, both in privileges conferred and liabilities imposed."). In this case, Defendant has made no showing that the Burglary (1st degree) statute is not rationally related to its legislative purpose nor that he has received disparate treatment under the statute compared to others similarly situated. Therefore, the Court finds that Defendant's rights to due process and equal protection have not been violated.

VII. Lack of Judicial Discretion when Sentencing under S.C. Code Ann. § 17-25-45

Defendant also claims that S.C. Code Ann. § 16-11-311 conflicts with S.C. Code Ann. § 17-25-45 because sentencing under the former is discretionary, and sentencing under the latter is mandatory. Under S.C. Code Ann. § 16-11-311(B), “[t]he court, in its discretion, may sentence the defendant to a term of not less than fifteen years” and not more than life imprisonment. However, S.C. Code Ann. § 17-25-45(A)(1) states that “upon a conviction for a most serious offense as defined by this section, a person *must be* sentenced to a term of imprisonment for life without the possibility of parole if that person has one or more prior convictions for... [a] most serious offense.” (emphasis added). While the court may have discretion under § 16-11-311(B), once a person has committed two or more “most serious” offenses, including Burglary (1st degree), the sentence no longer becomes discretionary, but mandatory, under § 17-25-45. The Court finds that there is no conflict between these two provisions merely because sentencing under one provision may be discretionary.

In the alternative, Defendant argues the jury should have determined his sentence. In South Carolina, the jury does not determine sentences after rendering a guilty verdict. Rather, the Court decides all sentences upon a guilty verdict, except in cases where the death penalty is a possible punishment. Furthermore, in cases where it applies, S.C. Ann. § 17-25-45 clearly states that the Court must sentence a defendant to incarceration for life without the possibility of parole. Therefore, the Court finds that Defendant is not entitled to a new trial on this basis.

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VIII. Trial Court's Refusal to Charge on Accessory after the Fact

Defendant argues that the Court erred in failing to charge the law on Accessory After the Fact because he considers Accessory After the Fact a lesser included offense⁴ of Burglary (1st degree). Therefore, Defendant argues that the Court should have charged Accessory After the Fact in the same manner in which courts routinely charge the "Hand of One, Hand of All" doctrine under the facts of a case. The Court stands by its prior ruling that Accessory After the Fact is a separate crime for which Defendant must have been indicted in order for the Court to charge the jury. See State v. Fuller, 346 S.C. 477, 552 S.E.2d 282 (2001) (Defendant in a murder case was not entitled to jury instruction on accessory after the fact to murder because defendant had not been indicted for accessory after the fact, accessory after the fact was not a lesser-included offense of murder, and the evidence did not eliminate defendant as a principal.). Additionally, Accessory After the Fact is not a lesser included offense of Burglary (1st). See S.C. Code Ann. § 16-11-311.

IX. Trial Court's Refusal to Charge Mistake of Fact or Law

Defendant further argues that the Court erred in refusing to charge the jury on the law of mistake of fact or law. Defendant contends that because the Court allowed impeachment evidence regarding Defendant's prior written statement, the Court should have charged the jury on mistake of fact or law because the statement negated the elements of consent and intent.

⁴ "In determining whether one crime is a lesser included offense of another, the test is whether the greater of the two offenses includes all of the elements of the lesser offense. If the lesser offense includes an element which is not included in the greater offense, then the lesser offense is not included in the greater offense." Hope v. State, 328 S.C. 78, 81, 492 S.E.2d 76, 78 (1997); State v. Bland, 318 S.C. 315, 317, 457 S.E.2d 611, 612 (1995).

At trial, the State presented testimony from the victim and Investigator Mead to show that Defendant did not have permission or consent to be at the victim's home on the evening of the burglary. Defendant claims that his prior statement indicates that a man named Jimmy Bowman consented for Defendant to be present on the premises, telling Defendant that his girlfriend owned the house and requesting Defendant's help in cleaning up some glass at the house. Defendant bases his argument on State v. Bendoly, 273 S.C. 47, 49, 254 S.E.2d 287, 288 (1979), in which the South Carolina Supreme Court held that the trial court should have allowed the defendants "to testify regarding their good faith belief in the legality of their actions." Defendant's reliance on this case is misplaced. In that case, the South Carolina Supreme Court determined that the trial court erred by not allowing the defendants to present their side of the story "however implausible such an explanation may have appeared." Id. In this case, the Court advised Defendant of his rights against self-incrimination, and Defendant decided not to testify or put forth any evidence in his case. Therefore, this Court did not refuse to allow Defendant's testimony regarding his belief in the legality of his actions.

Additionally, for the Court to charge the jury on the law of mistake of fact, the mistake must be reasonable. See State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998). Moreover, the Court is not required to instruct the jury on mistake of fact unless and until a defendant introduces some evidence, direct or circumstantial, of a reasonable basis for having made a mistake. Id. at 78, 502 S.E.2d at 77 (citing United State v. Norguay, 987 F.3d 475 (8th Cir. 1993)). In Clark v. Cantrell, 339 S.C. 369, 390, 529 S.E.2d 528, 539 (2000), the South Carolina Supreme Court stated the following:

When instructing the jury, the trial court is required to charge only principles of law that apply to the issues raised in the pleadings and developed by the evidence in support of those issues. It is error for the trial court to refuse to give a requested instruction which states a sound principle of law when that principle applies to the case at hand, and the principle is not otherwise included in the charge. However, the trial court is not required to instruct the jury on a principle of law that is irrelevant to the case as proved.

(internal citations omitted). In the present case, Defendant did not testify or present any evidence to support an inference of mistake of fact or law. In his written statement, Defendant claims that Jimmy Bowman asked him to help clean the victim's yard, told him that the house belonged to his girlfriend and told him to enter the house to clean up the glass. Defendant's statement also indicates that Jimmy Bowman told Defendant to climb through the broken window even though he had apparently already opened the door and that Jimmy Bowman had broken the window before Defendant arrived at the scene. On the other hand, the State presented evidence that Jimmy Bowman was incarcerated at the time Defendant committed the crime. During trial, the Court determined that Defendant had not presented any objectively reasonable evidence that warranted a jury charge on mistake of fact or law, and the Court now stands by its previous ruling.

X. Impermissible Impeachment Evidence Regarding Defendant's Prior Statement

Defendant argues that the Court erred in allowing the State to impeach Defendant's prior statement and to attack the credibility of Defendant's statement during closing arguments when he did not testify on his own behalf. At the pre-trial hearing, the Court conducted a hearing in accordance with Jackson v. Denno, 378 U.S. 368, 84 S. Ct. 1774 (1964), to determine the admissibility of Defendant's written statement to the police. At that hearing, the Court concluded

that Defendant's statement was entered into voluntarily, intelligently, and without any threat of coercion and found that it was therefore admissible. Defendant initially provided oral answers to police questioning then gave a written statement, which he signed after he had the opportunity to review or change the statement. In his written statement, Defendant claims that he and Jimmy Bowman went to Bowman's girlfriend's house. He further stated that when they arrived, the back window was already broken, so they cleaned up the glass, which is how his fingerprints were recovered at the scene of the crime. The State called a witness to impeach these portions of Defendant's statement to police. At trial, the State called Joli Rish, the custodian of records at Alvin S. Glenn Detention Center ("ASGDC"), to show that Jimmy Bowman was not with the Defendant on the night of the burglary because Jimmy Bowman was incarcerated at ASGDC from July 4 until July 20, 2007 (and the burglary occurred on July 12, 2007). Defendant argued that the Court should not have allowed Joli Rish to testify and impeach this portion of his statement because Defendant did not testify at trial. The Court overruled Defendant's objection to such testimony, finding that its probative value outweighed its prejudicial effect. Furthermore, the jury could determine the credibility of Joli Rish's testimony, as well as Defendant's statement. Moreover, the State proved at trial that only Defendant, not another person, had left fingerprints at the house.

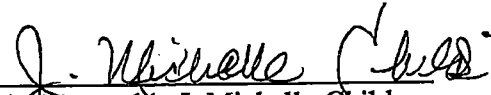
Defendant also argues that the Court erred in allowing the State to attack the truthfulness of Defendant's statement during closing arguments. The solicitor's closing argument must be based upon the principle that the solicitor's duty is "not to convict a defendant but to see justice done." State v. Linder, 276 S.C. 304, 312, 278 S.E.2d 335, 340 (1981). "The argument therefore

must be carefully tailored so as not to appeal to the personal bias of the juror nor be calculated to arouse his passion or prejudice." Id. The solicitor must stay within the record and its reasonable inferences. Id. at 312-3, 278 S.E.2d at 340. "However, a solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony." State v. Cooper, 334 S.C. 540, 553, 514 S.E.2d 584, 591 (1999). The Court finds that the solicitor's attack on the truthfulness of Defendant's statement was reasonable based on the conflicting testimony surrounding the statement in the record.

CONCLUSION

Based on the foregoing, **NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED** that Defendant's Motion for New Trial is **DENIED**.

IT IS SO ORDERED.


The Honorable J. Michelle Childs
Presiding Judge
Fifth Judicial Circuit

This 26th day of March, 2010.
Columbia, South Carolina.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

J. Michelle Childs, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DARRELL WILLIAMS,

APPELLANT

ANDERS BRIEF OF APPELLANT

DAYNE C. PHILLIPS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in admitting Appellant's written statement to a police officer where Appellant asserts that, although he was represented by counsel, the police officer failed to stop the interrogation after Appellant requested to have an attorney present during questioning?

STATEMENT OF THE CASE

On January 7 and 14, 2008, a motions hearing was held before the Honorable Michelle Childs. R. 1 – 66. Appellant Darrell Williams appeared *pro se*, and the State was represented by Assistant Solicitor Heather Weiss. Judge Childs ruled on those motions in a written Order on May 1, 2008. R. 67 – 68.

On January 16, 2008, Appellant was indicted by the Richland County Grand Jury for first-degree burglary. R. 723 – 724. Appellant was also indicted by the Richland County Grand Jury for petit larceny on September 19, 2008. R. 725 – 726. Another hearing was held before Judge Childs pursuant to *Schmerber v. California*, 384 U.S. 757 (1966) on September 15, 2008, to obtain Appellant's fingerprints. R. 69 – 73.

On September 22 – 24, 2008, Appellant proceeded to trial before Judge Childs and a jury. R. 74 – 613. Appellant appeared *pro se* with Josh Kendrick and Hans Pauling assisting as stand-by counsel, and the State was represented by Assistant Solicitors Heather Weiss and Dolly Garfield. The jury ultimately found Appellant guilty as charged. R. 599, l. 18 – 600, l. 9. The trial court then sentenced Appellant to life imprisonment without the possibility of parole (LWOP) pursuant to S.C. Code Ann. § 17-25-45 (2008) (the "repeat offender statute") on the first-degree burglary conviction and thirty days imprisonment on the petit larceny conviction. R. 610, ll. 16-25. The sentences were to run concurrently. R. 727 (Sentence Sheet).

On September 29, 2008, Appellant filed a motion for a new trial. Appellant also filed an amended motion for a new trial on October 20, 2008. Judge Childs subsequently denied Appellant's motion for a new trial in a written Order on March 26, 2010. R. 704 – 722.

ARGUMENT

The trial court erred in admitting Appellant's written statement to a police officer where Appellant asserts that, although he was represented by counsel, the police officer failed to stop the interrogation after Appellant requested to have an attorney present during questioning.

Relevant Facts

Pre-trial, a hearing was held pursuant to *Jackson v. Denno*, 378 U.S. 368 (1964) on September 22, 2008, to determine the admissibility of Appellant's written statement to police. R. 74 – 174. Therefore, the following testimony was elicited outside the presence of the jury.

Paul Meade, an investigator for the Columbia Police Department, stated that he was assigned to investigate burglaries and other property crimes in July of 2007 and that he investigated the burglary of Peter Sederberg's residence on Edisto Avenue. R. 117, l. 20 – 118, l. 22. Investigator Meade maintained that Officer Rhodes was able to recover a latent finger print from broken glass found inside the home and that it matched Appellant's fingerprints in AFIS database. R. 119, ll. 7-17. Investigator Meade recalled that he had Appellant brought "to police headquarters" from the Alvin S. Glenn detention center on August 15, 2007, to interview Appellant about the burglary. R. 120, ll. 8-14.

Furthermore, Investigator Meade admitted that he was the only police officer present when he questioned Appellant about the burglary. R. 121, ll. 3-7. Investigator Meade claimed that Appellant "was extremely cooperative" and that he advised Appellant of his constitutional rights using an "advice of rights" form. R. 120, l. 21 – 123, l. 9. Investigator Meade further noted that Appellant signed the "advice of rights" form after he read the form to Appellant. R. 123, l. 12 – 125, l. 10.

Investigator Meade also admitted that he questioned Appellant orally before any of Appellant's responses were put into writing. R. 126, ll. 9-13. Investigator Meade claimed that Appellant never requested to speak to an attorney or to have an attorney present during the interrogation. R. 128, ll. 12-13.

On cross-examination, Investigator Meade admitted that he questioned Appellant for approximately fifteen to twenty minutes before Appellant gave the statement. R. 132, ll. 10-22. Although Investigator Meade claimed that Appellant did not request an attorney, Investigator Meade did admit, "I didn't have any idea if you [Appellant] had counsel or not [when he initiated the interrogation]." R. 133, ll. 14-22.

Jeffrey Jacob, who works at Alvin S. Glenn detention center revealed when an outside agency requests that an inmate be transported to another location, the inmate must leave the dorm and refuse transportation by the outside agency. R. 139, l. 5 – 141, l. 19.

The trial court indicated to Appellant that "there's no testimony, [no] sworn testimony, about that issue . . . [i]t would require you taking the stand and then me making a judgment call on credibility and preponderance of the evidence at that time." R. 143, ll. 16-21. Appellant subsequently objected to the admissibility of the written statement:

[D]espite the testimony that's been heard here today there had - - there was [a] request for counsel made during the [interrogation]. . . . [T]he statement should not be allowed because police violated [Appellant's] rights to counsel during the time the statement was given. . . . I distinctly recall informing the officer that, yes, I did have counsel and it wasn't as the officer testified. . . . And I respectfully ask that the statement not be admitted.

R. 142, l. 20 – 143, l. 8 (emphasis added). The trial court ultimately held "by the preponderance or greater weight of the evidence that the statement was voluntary" and that the statement was admissible. R. 143, l. 9 – 144, l. 5.

At trial, the State called Joli Rish, the custodian of records for the Alvin S. Glenn detention center, to discredit Appellant's written statement. Specifically, Appellant indicated in his written statement that he entered the residence with Jimmy Bowman because Bowman paid him ten dollars to help clean up broken glass; yet, Rish testified that Bowman was incarcerated at Alvin S. Glenn detention center on the day the burglary occurred. R. 441, l. 9 – 457, l. 20.

Discussion

In *Jackson v. Denno*, 378 U.S. 368, 376 (1964), the United States Supreme Court held that “a defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession, without regard for the truth or falsity of the confession.” In order to introduce a statement produced during custodial interrogation, the prosecution must prove by a preponderance of the evidence that the statement was made freely and voluntarily, and taken in compliance with *Miranda v. Arizona*, 384 U.S. 426 (1966). *Accord State v. Moses*, 390 S.C. 502, 512, 702 S.E.2d 395, 400 (Ct. App. 2010); *State v. Goodwin*, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009); *State v. Miller*, 375 S.C. 370, 378, 652 S.E.2d 444, 448 (Ct. App. 2007).

Furthermore “the *Miranda* safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent.” *Rhode Island v. Innis*, 446 U.S. 291, 300-01 (1980); *State v. Howard*, 296 S.C. 481, 488, 374 S.E.2d 284, 288 (1988). “*Miranda* . . . declared that an accused has a Fifth and Fourteenth Amendment right to have counsel present during custodial interrogation.” *Edwards v. Arizona*, 451 U.S. 477, 482 (1981); *see also* U.S. Const. amend. V; *State v. Wannamaker*, 346 S.C. 495, 499, 552 S.E.2d 284, 286 (2001).

“[W]hen an accused has invoked the right to have his counsel present during custodial interrogation, a valid waiver of that right *cannot* be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights.” *Edwards*, 451 U.S. at 484 (emphasis added). Thus, “[o]nce an accused requests counsel, police interrogation *must cease* unless the accused himself ‘initiates further communication, exchanges, or conversations with the police.’” *State v. Kennedy*, 333 S.C. 426, 431, 510 S.E.2d 714, 716 (1998) (emphasis added).

In this case, Appellant gave his written statement to Investigator Meade while he was in police custody and after approximately fifteen to twenty minutes of oral interrogation. R. 126, ll. 9-13; R. 132, ll. 10-22. Appellant objected to the admissibility of the written statement:

[D]espite the testimony that's been heard here today there had - - there was [a] request for counsel made during the [interrogation]. . . . [T]he statement should not be allowed because police violated [Appellant's] rights to counsel during the time the statement was given. . . . I distinctly recall informing the officer that, yes, I did have counsel and it wasn't as the officer testified. . . . And I respectfully ask that the statement not be admitted.

R. 142, l. 20 – 143, l. 8 (emphasis added). See *Edwards*, 451 U.S. at 484.

Notably, no evidence was presented at the *Jackson v. Denno* hearing as to whether Investigator Meade, who was the only law enforcement officer in the room, advised Appellant of his constitutional rights prior the initial oral interrogation. See *Miranda*, 384 U.S. 426. This omission is particularly important because Investigator Meade admitted, “I didn’t have any idea if you [Appellant] had counsel or not [when he initiated the interrogation].” R. 133, ll. 14-22. See *Innis*, 446 U.S. at 300-01; see also *Howard*, 296 S.C. at 488, 374 S.E.2d at 288.

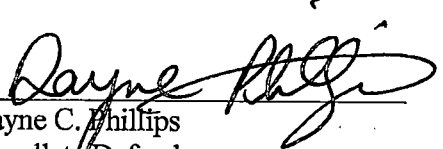
Appellant was also prejudiced by the improper admission of the written statement because at trial, the State called Joli Rish, the custodian of records for the Alvin S. Glenn detention center, to discredit Appellant's written statement. Specifically, Appellant indicated in his written statement that he entered the residence with Jimmy Bowman because Bowman paid him ten dollars to help clean up broken glass; yet, Rish testified that Bowman was incarcerated at Alvin S. Glenn detention center on the day the burglary occurred. R. 441, 1. 9 - 457, 1. 20.

Accordingly, the trial court erred in admitting Appellant's written statement to a police officer where Appellant asserts that, although he was represented by counsel, the police officer failed to stop the interrogation after Appellant requested to have an attorney present during questioning. *See* U.S. Const. amend. V; *see also Denno*, 378 U.S. at 376; *Kennedy*, 333 S.C. at 431, 510 S.E.2d at 716.

CONCLUSION

For the foregoing reasons, Appellant Darrell Williams respectfully requests that this Court reverse his convictions and sentence and remand this case to the Richland County Court of General Sessions for a new trial.

Respectfully submitted,


Dayne C. Phillips
Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of October, 2012.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

J. Michelle Childs, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DARRELL WILLIAMS,

APPELLANT

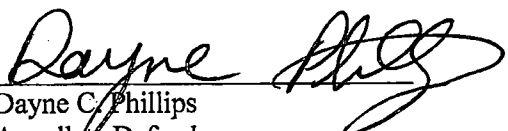
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Darrell Williams states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge J. Michelle Childs, which was held on September 21-24, 2008, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Darrell Williams.

Respectfully submitted,


Dayne C. Phillips
Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of October, 2012.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
J. Michelle Childs, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DARRELL WILLIAMS,

APPELLANT

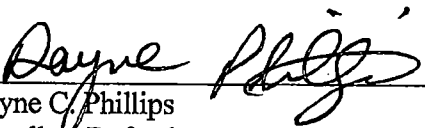
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Pursuant to the new Anders procedure, Appellant included the following in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Transcript of proceedings: January 7 and 14, 2008; September 15, 2008, September 22, 2008; September 23-24, 2008.
- (3) State's Exhibit # 1 and 2 (September 22, 2008);
- (4) Court's Exhibit # 9 (guilty plea transcript - May 3, 1995);
- (5) Pre-trial Order (May 1, 2008);
- (6) Order denying Appellant's motion for a new trial (March 26, 2010).

I certify that this designation contains no matter which is irrelevant to this appeal.

October 24th, 2012


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Appellate Defender

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(803) 734-1343

Attorney for Appellant

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
J. Michelle Childs, Circuit Court Judge

THE STATE,

RESPONDENT,

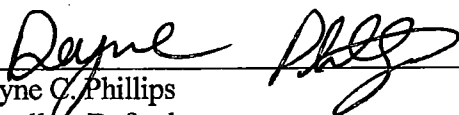
V.

DARRELL WILLIAMS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and on Darrell Williams, #219730 at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 24th day of October, 2012.


Dayne C. Phillips
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 24th day of October, 2012.

_____(L.S.)
Notary Public for South Carolina

My Commission Expires: _____.

Darrell Williams #219730
Lee Correction Institution
990 Wilsocky Highway/SS1122
Bishopville, South Carolina 29010

November 27th, 2012

Honorable Jenny A. Kitchings, Chief Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

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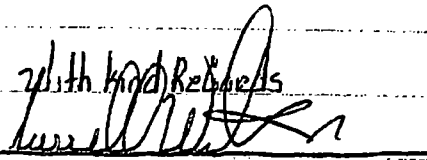
SC Court of Appeals

RE: State v. Darrell Williams # 2010-157626

Subject: Pro Se Brief Filing

Honorable Chief Clerk of Court

Please find enclosed my original Pro se brief, and it is asked
that you send me a stamped filed copy of same for my records.

With kind regards


Darrell Williams / Pro Se

cc: file

enc. brief

The State of South Carolina

For The Court of Appeals

Appeal From Richland County

J. Michelle Childs, Circuit Judge

The State,

Respondent,

v.

2010-157626

Darrell Williams,

Appellant,

Question One:

Whether Use of Two Prior Convictions
Under South Carolina Code Ann. Sec. 16-
11-311(A)(2) To Enhance Charge And South
Carolina Code Ann. Sec. 17-25-45 To Enhance
Sentence Is Unconstitutional?

Appellant addressed the constitutionality of enhancements Post-trial (ROA PG 709-717) as well as trial (ROA PG 245 lines 13-25) and our appellate courts have not addressed the laws announced in *Buford v. United States*, 121 S. Ct 1276 (); *United States v. Allen*, 507.3d 294 (4th Cir. 1995); *Bryant v. State*, 1083 S.E.2d 280 (2009) whereas it is my contention that in doing so, my 8th, 14th amendment rights were violated. Accordingly, when state enhanced my charge for second degree burglary non-violent to first degree burglary violent, it is at this point my argument is that under sec. 17-25-45(A) this sentence constitutes as cruel and unusual punishment and it is this reason why my sentence is subjected to eighth amendment scrutiny under *Buford*, *Bryant*, *Allen*. Defense objected, on grounds these prior burglaries were run concurrent (ROA PG 246 lines 8-16) and Prosecution in rebuttal said:

Under the most serious two strike law, if you convicted of one most serious offense and then you are convicted of a second, this is the second...

ROA PG 247 lines 6-8

and the court in Post-trial order held:

Notwithstanding defendant's Guilty Plea for several burglaries during one Proceedings, it can use any (two or more) of his prior burglary convictions at trial.

ROA PG 709

Both state and court misread *Bryant*, as the court ruled Assuming a defendant is adjudicated guilty disposing of all charges at the same time will avoid the application of Section 17-25-45(7) as it relates to those charges and Preclude a life without Parole sentence.

Bryant v. State, supra.

Therewith, we must read sec. 16-11-311(2) 17-25-45 in conjunction with the dictums of *Bryant*, *Allen*, *Buford*, as those cases adequately support argument when those prior offenses were adjudicated together they constitute as one

3)

offense for purposes of sec. 17-25-45; 16-11-311(2). Moreover, when defendants like me are faced with a similar circumstance they could be subjected to a LWOP sentence. Thus, the Buford, Allen court squarely held under federal law when offenses are adjudicated together, then it precludes career offender status under federal law. As such, my interpretation of sec. 17-25-45 follows the law of Bryant, when interpreting this statutory provision as court did as to so give it force and effect. To interpret this relevant statutory provision any other way, would strip this provision of its meaning and render it inapplicable and give it a forced construction. Therefore, sec. 17-25-45(7) is construed by me as illustrated in Buford, that the legislature did not intend for me to get a LWOP sentence when law clearly can be interpreted as the Bryant court did, that charges and sentences run concurrently do not trigger sec. 17-25-45 or sec. 16-11-311(2) and Buford, Bryant dictums is a guiding light on a dark fog. By night at sea when determining whether my prior convictions trigger these applicable sections. As a consequence, my argument under *Sawyer v. Whitley* 505 U.S. 333 (1992) is my actual innocence not of crime but sentence, and the Sawyer court recognized difficulty in translating and applying the actual innocence exception to a case challenging a capital sentence *Sawyer*, 505 U.S. at 339-40; *Smith v. Murray*, 477 U.S. 527 (1986) When applying this exception in this sentencing case, the court adopted an "Eligibility Test" *Schlupe v. Delo*, 513 U.S. 298 (1995) This court may refuse to apply this eligibility test to case at bar, contending that the actual innocence exception does not extend to case at bar challenging a non-capital sentence. See *United States v. Nikola Jumas*, 186 F.3d 490 (4th Cir. 1999); *United States v. Maybeck*, 23 F.3d 888 (4th Cir. 1994) This court would misread *Sawyer*, as the Maybeck, Nikola Jumas courts ruled the actual innocence exception articulated as an eligibility test in *Sawyer*, does extend to cases involving challenges to non-capital sentences. While it is true *Sawyer* involved a challenge to a capital sentence, *Sawyer's* analysis is not expressly restricted to cases involving capital sentences. Moreover, I see no

reason to restrict the Sawyer, Maybeck, Mikolajunas analysis to cases challenging capital sentences. As these court demonstrate, the test is a useful solution to a difficult problem and is a communicative method, for ascertaining whether ends of Justice require this court to reach merits of challenge to a sentence. Since lower court sentenced me to a sentence I was not eligible to receive, this test allows court to reach sentence and to correct or vacate sentence. In my opinion, court should recognize my interpretation under sec. 17-25-45 in conjunction with Buford, despite fact our appellate courts have not to date developed its own Guide for sec. 17-25-45; as it did in Bryant demonstrates this section is applicable to non-capital sentences. However, both our courts and legislatures have recognized the writ is available to correct a fundamental miscarriage of Justice. Surely, no one can claim that requiring me to serve a LWOP sentence, is not a miscarriage of Justice and this court should not adopt lower court decision, or determine actual innocence test articulated by court in MURRAY V. CURRIER, 477 U.S. 478 (1986); SAWYER, 505 U.S. at 348; is not flexible enough to be used to attack an illegal sentence. This would make little sense to me, since essence of my claim is that of "Legal Innocence" where my challenge to my conviction under sec. 16-11-311(2) under In Re Wind Ship, 397 U.S. 358 (1970). As the obvious has been shown that, my original charge was a non-triggering offense for sec. 17-25-45 (ROA PG 424; lines 11-25; PG 425; lines 1-16) It is for this reason, my belief is the respondent will no doubt argue that element of nighttime and two or more prior burglaries has as a matter of law been met. The line in the sand must be drawn here, because at trial the nighttime element was not proven by testimony either during direct or cross-examination (ROA PG 303; lines 8-13; PG 321; lines 5-17) and at the closing of trial the defense stated

... that doesn't constitute as in the hours of darkness. The hours of darkness has been defined by law as when there is darkness, were talking about when there is, as they say, when a person can not -- You have to use artificial light or

some other type of light in order for a person to see himself or for another person to view him.

RDA PG 462; lines 2-8

With this in mind, then state has failed to satisfy this element of offense to the satisfaction of *State v. Bannister*, 509 S.E.2d 807 (1998) when testimony shows it was still light outside. Moreover, at trial state used two indictments as proof for the elements of *Sec. 16-11-311(2)* and since these documents do not state or show a conviction as it is only a notice document *State v. Gentry*, 610 S.E.2d 494 (2005) and as a pure legal matter the state could not use this document. As already noted, that under *Bryant*, *Butford* the prior convictions would count as one conviction and will not trigger enhancement for *Sec. 16-11-311(2)* nor will these line of cases satisfy respondent burden of proof to obtain a conviction. Any challenge to a sentence or conviction under these terms is valid, and this is especially true when lower court sentenced me without authority to do so. Conversely, my challenge to the constitutionality of statute is predicated upon a substantive defect in proof and constitutionality of enhancements, as well as the court lack of power under *Bryant*, *Butford*, *Sawyer*, *Maybeck* to impose this sentence.

Question Two:

Whether South Carolina Code Ann. Sec.

16-11-311(2) Failure To Afford Bifurcated Proceedings Is Unconstitutional Under *Blakely*, *Graham*.

Spencer?

The constitutionality of this statute, was fully addressed at trial and in Post-trial and lower court ruled in favor of state (RDA PG 462; lines 20

25; PG 163; lines 1-12; PG 167; lines 1-8) Consequently, our courts have likewise not addressed *Blakely v. Washington*, 124 S. Ct. 2531 (2004) *Graham v. West Virginia*, 224 U.S. 616 (1912) and whether lower court deprived me of a bifurcated trial in violation of these cases and resolution of this issue seeks court to examine Sec. 16-11-311(A) in light of *Spencer v. Texas*, 385 U.S. 554 (1967) *Graham*, *Blakely* and revisit dictums of *Patrick v. State*, 562 S.E.2d 609 (2002), *Simmons v. State*, 503 S.E.2d 164 (1998) to determine whether defendants like me are constitutionally required to have jury decide sentence and if judge does so whether it violates my constitutional rights under *Blakely*, *Spencer*, *Graham* as articulated by these courts. Thus, despite what lower court and prosecution stated:

... I think that case does not hold up at this point because the law is clearly very different now. And so the points that he's taking from there are taken from the fact the law has changed.

RDA. PG 163; lines 5-9

... the court would find that this case appears to have predated the burglary statute ... that was discretionary and then if you had the bifurcation then the jury would proceed to sentencing.

RDA. PG 167; lines 1-8

Wherefore, it is my argument that statute in existence during time of *Chubb v. State*, 401 S.E.2d 159 (1991) contained same language in Sec. 16-11-311(B) which reads:

the court in its discretion, may sentence the defendant to a term of not less than 17 years and not more than life imprisonment.

S.C. code 16-11-311(B)

This statute, that 16 years Per-Chubb prompted court to interpret statutory provision as one in which legislature proscribed a bifurcated process. *Spencer v. Texas*, supra. Similarly, *Spencer* concluded that under Texas law there was no federal constitutional right for bifurcated trials and court did not do so then, however, in this state the dictum of *Spencer* can be distinguished when 18 years later our state court in *Watson v. State*, 338 S.E.2d 636 (1985) reasoned statutory provision sanctioned bifurcated trials

7)

for first degree burglary. In later years, the court changed course dramatically and in *Blahely* the court held defendant had a constitutional right to have Jury make determination. Furthermore, contrary to respondent argument a bifurcated trial under sec. 16-11-311(2) would realistically satisfy my confrontation rights, and allow defense to challenge prior convictions before Jury during sentencing phase of trial. Because much of the information that is relevant to my sentence, such as the two prior convictions of burglary has no relevance to my question of guilt, (BDA pg 266-268) and is extremely prejudicial to a fair determination of this question. See, *Cunningham v. California*, 127 S. Ct 856 (2007) During sentencing phase, the prejudicial effect of this evidence is removed and the laws do not in any way help respondent. For the statute here involves a sentencing factor which is prior burglary that exist and needs to be proven in order to prove commission of present conviction. See, *State v. Washington*, 526 S.E.2d 709 (2000) The sentencing factor at issue here recidivism is a traditional, if not the most traditional basis for increasing my sentence. See, *State v. McAbee*, 67 S.E.2d 418 (1951) Consistent with this tradition the court said long ago that state need not allege a prior conviction, in the indictment or information which alleges the elements of underlying crime even though conviction was necessary to bring case within statute. See, *State v. Burdette*, 515 S.E.2d 525 (1999) According to dictums of *Burdette*, *Graham*, my analysis is derived from the very "Distinct Nature of The Issue" and that recidivism does not relate to commission of the offense. "But Goes To Punishment Only" and only then may it eventually decided. *Graham*, 224 U.S. at 629 *Burdette*, 515 S.E.2d at 528. The courts of this state have deviated from this view and holds the constitution requires recidivism be deemed as an "Element" of my offense, marks an abrupt departure from longstanding tradition of treating recidivism as going to punishment only. See, *Dwyer v. Boles*, 368 U.S. 448 (1962) However, if the basis for *Graham's* holding was accepted, one must then conclude that recidivism must be tried to Jury and found beyond a reasonable doubt. The essence of *Graham's* reasoning was that in recidivist proceedings

the defendant was not held to answer for an offense. *Graham*, 224 U.S. at 624, since recidivism goes to Punishment only. But this can not be a basis for dispensing with the Protections of Jury trial and findings beyond a reasonable doubt that was explicitly rejected in *Blakely*, *Cunningham* which recorded these Protections to facts that were "not General elements of the crime" only the appropriate Punishment category. *Cunningham v. California*, 127 S.Ct. at 864; *Blakely v. Washington*, 124 S.Ct. at 2537. as the *Blakely* court held:

A Jury must find, not only the facts that make-up the crime of which the offender is charged, but also all (Punishment-Increasing) facts about the way in which the offender carried out that crime.

Blakely v. Washington, 124 S.Ct. at 2537

Whatever else *Blakely*, *Cunningham* stands for, it certainly stands for the Proposition that what *Graham* used as the line of separation for Confrontation and some Due Process Purposes, is not the rule of separation for Purposes of the right to Jury trial and Proof beyond a reasonable doubt. So also does *Blakely*, which even while narrowing *Cunningham* made it very clear that mere fact a certain finding "goes only to the Penalty" does not end the inquiry. The appellant is aware, that distinctive treatment of recidivism for confrontation, due Process Purposes takes some explaining, but it takes some explaining for court, respondent no less than for me and this Practice has allowed recidivism to be charged and tried separately. *Graham*, 224 U.S. at 623-626. While I have given many arguments supporting this Position, that the constitution requires recidivism finding in this case to be made by a Jury beyond a reasonable doubt. See. *Vines v. Muncy*, 553 F.2d 342 (4th Cir. 1997) What I am trying to establish and all that needs to be established, is on basis of state court Jurisprudence *State v. Zutter*, 547 S.E. 2d 885 (2002) *State v. Hamilton*, 486 S.E.2d 512 (1997) the answer to this constitutional question is unanswered. It is the court inter alia, who should establish that its constitutional answer shines forth clearly from this case. Without question, there was until this case no resolution of this Point "Serious Doubt" whether the

9)

constitution Permits sentencing to be increased tenfold on the basis of fact not charged, tried to a Jury and found beyond a reasonable doubt. The relevant question for Present Purposes is not whether Prior Felony conviction is "Typically" used as a sentencing factor, but rather if Sec. 16-11-311(2) Provides a higher maximum for crimes committed by convicted felons. Prior conviction is "Typically" treated as mere sentence enhancement rather than an element of separate offense. It is not difficult to understand why, it would matter for Jury trial Purposes whether this statute Sec. 16-11-311(2) labels this aggravating factor a sentencing fact which allows state to elevate actions that would normally fall within Parameters of South Carolina Code Ann. Sec. 16-11-312(A); South Carolina Code Ann. Sec. 16-11-313; Washington, 526 S.E.2d at 711; Zulfer, 547 S.E.2d at 887; The only difference, between these two circumstances concerns legislative Policy, about which label to Place on the Prior convictions that lead to a Greater sentence. At a minimum, a two-Jury system Preventing court from taking account of this factor, will not undermine legislative efforts as state might suggest to ensure through statute the Punishments reflect a convicted offenders conduct. In these and other ways, the two-Jury system will not work a radical change in existing law and it is therefore not Surprising our State Supreme Court has already suggested the constitution outside context of death Penalty might require bifurcated Jury based sentencing Chubb v. State, 401 S.E. 2d at 160, and it is Respondent arguments that will Pose impediments to legislative intent of Sec. 16-11-311(2) which will cast doubt on its constitutionality. Whereas, it is my contention that doctrine of Constitutional Doubt requires court to interpret Sec. 16-11-311(2) as setting forth a sentencing factor not an element of the crime. As court held that:

A statute must be construed, if fairly Possible, so as to avoid not only the conclusion that it is unconstitutional but also Grave doubts upon that score.

United States v. Jin Lucy Moy, 241 U.S. 394, 401 (1916)

The doctrine is designed to minimize disagreement between the branches by

Preserving legislative enactments that might otherwise founder on legislative constitutional objections. This is not designed to abrogate this fraction, by creating statutes foreign to those legislature intended, simply through fear of constitutional difficulty that upon analysis will evaporate. Thus, by invoking this doctrine the alternative is a serious likelihood statute will be held unconstitutional. Only then can this doctrine serve its basic democratic function of maintaining a set of statutes, which reflect rather than distort the Policy elected Representatives have made. For this reason, the statute in question is susceptible to two constructions after and not before these complexities are unraveled and then the statutory construction must avoid the constitutional question. As such, the Doctrine of Constitutional Doubt is not applicable to sec. 16-11-311(2) and is not susceptible of the question which avoids constitutional Problem, but the construction whereby sec. 16-11-311(2) sets forth an element of the offense. (RDA PG 268; lines 3-25; PG 269; lines 1-9) Accordingly, my analysis begins not by examining the text of sec. 16-11-311(2) but demonstrate the subject matter of statutory Provision subsection "Prior Commission" of a burglary is a typical sentencing factor as one might imagine. The statutory language is not complex, and after analyzing matter in question the interpretative circumstances points significantly in one direction of sentencing. Consequently, even if we assume my construction of statute is not Plausible, the constitutional questions raised while requiring discussion, leads one to believe legislature authorized court to impose longer sentences upon recidivist who repeat this offense.

An enhanced sentence imposed on a Persistent offender, thus, is not to be viewed as a new Jeopardy or additional Penalty for the earlier crimes. But as a stiffened Penalty for the latest crime which is considered to be an aggravated offense because it is a repetitive one.

State v. Washington, 526 S.E. 2d at 711

So Precedent makes clear court should apply this doctrine, in circumstances similar to those herein where a constitutional question while lacking an obvious

iii)

answer, would lead reasonable Persons based on Washington, Benton to doubt statutes constitutionality.

Question Three:

Whether Submission Of Indictments
To Prove Element Of Offense Imple-
cate Confrontation Clause Protections?

Defense argued at Post-trial, that submission of the indictments at the trial violated my right to confrontation. See, *Crawford v. Washington*, 541 U.S. 36 (2004); *State ex. rel. Medlock v. Nest Egg*, 290 S.E.2d 384 S.E.2d 381 (1986) During time new trial motion was Pending, United States Supreme Court in *Melendez-Diaz v. Massachusetts*, 129 S.Ct 2527 (2009) ruled that lab reports constituted as testimonial documents implicating confrontation clause Protections. However, the lower court ruled in case at bar that:

The holdings of *Melendez-Diaz* and *Medlock* do not apply in the Present factual situation because the state did not submit Prior sworn testimony regarding defendant's Prior convictions.

RDA PG 707-708

This analysis by court is incorrect, as the *Medlock* court ruled that:

The introduction of evidence by affidavit rather than live testimony accordingly deprived the defendants of the due Process right to confrontation and cross examination.

State ex. rel. Medlock v. Nest Egg, 348 S.E.2d at 385

Contrary to lower court opinion, the affidavit constitutes as "testimonial" document the *Melendez-Diaz* court held implicated confrontation clause Protections. At the outset, it has consistently been my contentions these indictments are the

equivalent. See, State v. Staten, 610 S.E.2d 823 (2005) The Staten court defined what constitutes as "Testimonial" documents. It is for this reason lower court misconstrues dictum of Medlock. Applying Rule of Medlock, Staten when these indictments were submitted, they constitute as testimony that the defense never had Prior opportunity to cross-examine and lower court can not distinguish case of bar from Medlock, moreover, the lower court likewise seeks to distinguish Melendez-Diaz from case of bar. What court is attempting to do is, conclude that affidavits of Melendez-Diaz are not the same as indictments herein and the lab reports, sworn testimony of the Grand Jury was used to prove element as Melendez-Diaz used lab reports and Medlock used affidavits. See, State v. Roach, 613 S.E.2d 791 (2005) Hence, under Sec. 16-11-311(2) when state uses Prior convictions to prove element of this offense, when defense is prevented from confrontation of adverse witnesses the statute becomes unconstitutional Roach, 613 S.E.2d at 794 N.L. if defense as herein did not have Prior opportunity for examination, inter alia, testimony given at Grand Jury is done under oath and as the Crawford, Staten, Roach opinions are instructive when they held:

Such as affidavits, custodial examinations, Prior testimony that defendant was unable to cross-examine.

Crawford v. Washington, 541 U.S. at 51; State v. Roach, supra

State v. Staten, supra, State v. Davis, 613 S.E.2d 760, 766-67 (2005)

State v. Mitchell, 662 S.E.2d 493, 498 (2008)

The court is asked, not to follow lower court or respondent contentions. When the indictments submitted (ROA PG 597; lines 14-20) are truly "Testimonial" under the state and federal cases set forth herein. Furthermore, the court also has acknowledged defense stipulated to these Prior offenses

Defendant stipulated that he had committed these Particular Prior burglaries.

ROA PG 708

But the trial court, did not instruct the Jury on this stipulation (ROA PG 597, lines

1-4) this evidence is not before Jury and state made no attempts at getting the evidence before Jury and as a matter of law this issue is not preserved by state for consideration by court.

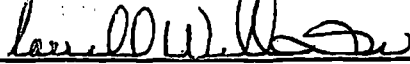
Conclusion

The court is asked to review sentence, and ascertain if it was unconstitutional for court to impose when prior convictions constituted as one offense, when it relates to enhancement of charge and sentence. Moreover, whether defendant is entitled to a bifurcated trial to determine sentence, and if defendant confrontation rights have been violated.

Wherefore, Appellant Prays court will Grant writ.

Dated: 27th day of November, 2012

Respectfully Submitted



Darrell Williams #219930 / Pro Se

Lee Correction Institution / SS1122

990 Wilsack Highway

Bishopville, South Carolina 29010

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Darrell Williams, Appellant.

Appellate Case No. 2010-157626

Appeal From Richland County
J. Michelle Childs, Circuit Court Judge

Unpublished Opinion No. 2013-UP-416
Submitted October 1, 2013 – Filed November 13, 2013

APPEAL DISMISSED

Appellate Defender Dayne C. Phillips, of Columbia, and
Darrell Williams, pro se, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Salley W. Elliott,
both of Columbia, for Respondent.

PER CURIAM: Dismissed after consideration of Appellant's pro se brief and review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

SHORT, WILLIAMS, and THOMAS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA)

County of Richland)

IN THE COURT OF COMMON PLEAS

Darrell Williams #219730)

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

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

2013 NOV 22 PM 4:12
CLERK OF COURT
RICHLAND COUNTY

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 Lee Correction Institution; 990 Wisocky Highway
Bishopville, South Carolina 29010; Chx 1263
2. Name and location of Court which imposed sentence Richland County Courthouse
1701 Main Street; Columbia, South Carolina 29202
3. Name(s) of co-defendant(s) (if any) _____
NOT APPLICABLE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) Burglary 1st # 08-6540-13175

(b) Pelly Lazzeny # 08-6540-6965

583

(c) _____

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

(a) September 24th, 2008; Life Without Parole

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓ _____

(c) after a plea of nolo contendere _____

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

Yes; Appellate Defense Has Not Contacted me re Court

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

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

i. South Carolina Court Of Appeals

ii. _____

iii. _____

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

i. Dismissed

ii. _____

iii. _____

(c) the date of each such result:

i. November 13th, 2013

ii. _____

iii. _____

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

i. 2013-11P-416

ii. _____

iii. _____

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

(a) _____

A) Failure To Raise On Direct Appeal, that motion for directed verdict should have been granted because the state failed to prove every element of trial

1) Ineffective Assistance Of Appellate Counsel

2) Prior conviction used to enhance is unconstitutional

A) The Prior conviction violated *Faretta v. California*, because it failed to afford me choice to represent myself

3) Use Of Prior Conviction Under Rule 404(B)

A) The state did not show requirements of rule 404(B) when it sought to use Prior convictions during trial

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See Attached Sheets
- (b) See Attached Sheets
- (c) See Attached Sheets
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
- (b) _____
- (c) See Attached Sheets
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? Yes
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. Motion For A New Trial
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Richland County General Sessions Court
- ii. _____
- iii. _____

- iv. _____
- (c) the disposition thereof:
- i. ~~Reading~~ Denied _____
- ii. _____
- iii. _____
- iv. _____
- (d) the date of each such disposition:
- i. March 26th, 2010 _____
- 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?
- Yes _____
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. First Degree Burglary Statute Unconstitutional _____
- ii. Motion for New Trial _____
- iii. Prosecutorial Misconduct _____
- (b) the proceedings in which each ground was raised:
- i. New Trial Motion _____
- ii. New Trial Motion _____
- iii. New Trial Motion _____

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) _____
 (b) _____
 (c) _____

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

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

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. South Carolina Appellate Defense

 ii. _____

 iii. _____

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

i. Dorcas E. Phillips

 ii. _____

 iii. _____

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

Grant Appellate Review

Vacate Conviction

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

No

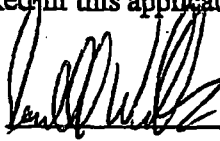
Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Lee)

VERIFICATION

I, Darrell Williams, 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.



SWORN to and subscribed before me this 11
day of Mar., 2009.

Debra J. Sina
Notary Public

(L.S.)

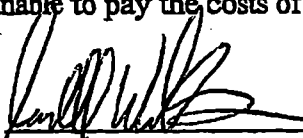
My Commission Expires:

5/6/10

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

I, Darell Williams, 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:

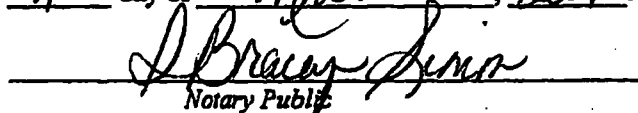
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



Applicant

SWORN or affirmed to and subscribed before me this

11 day of Mar., 2009.


Notary Public

My Commission Expires: 5/16/19

2013 NOV 22 PM 4:42
JEANETTE J. HARRIS
C.C.P. J. HARRIS

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Darrell Williams, #219730,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2013-CP-40-7117

RETURN

Respondent, making its Return to the Application for post-conviction relief filed November 22, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during the January 2008 term of the Richland County Grand Jury for Petit Larceny and Burglary in the First Degree (2011-GS-40-0884, -0866). On September 22-24, 2008, Applicant proceeded to a jury trial *pro se*, with Joshua Kendrick, Esquire, and Hans Pauling, Esquire, assisting as stand-by counsel, before the Honorable J. Michelle Childs. Applicant was convicted as indicted and Judge Childs sentenced Applicant to life imprisonment without parole pursuant to S.C. Code Ann. § 17-25-45 (2008).

Applicant filed a notice of appeal and was represented by Appellate Defender Dayne C. Phillips. Following the submission of an Anders brief and a *pro se* brief, the South Carolina Court of Appeals dismissed Applicant's appeal. The Remittitur was sent on December 5, 2013.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina

Department of Corrections, Applicant's appellate records, and Applicant's trial transcript. Respondent reserves the right to amend this Return upon any receipt of any relevant materials.

II.

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

1. Ineffective Assistance of Appellate Counsel;
2. Prior Conviction used to enhance unconstitutional; and
3. Use of Prior conviction under rule 404(b) invalid.

Any claims not specifically enumerated in the application or amendments filed by counsel of record will be opposed by Respondent at an evidentiary hearing, and Respondent will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

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

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

professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent contends that the Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. The Respondent requests an evidentiary hearing on this allegation.

IV.

Applicant has also alleged that the use of his prior conviction to enhance his sentence is unconstitutional. This allegation raises a direct appeal issue that is procedurally based by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

V.

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

V.

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

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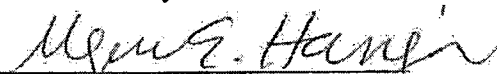
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

February 25, 2014.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

DARRELL WILLIAMS, #219730

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2013-CP-40-7117

AFFIDAVIT OF SERVICE BY MAIL

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

Anna R. Good, Esquire
 Law Office of Anna Good, LLC
 1720 Main Street, Suite 303
 Columbia, South Carolina 29201

DATED this 25th day of February, 2014.


 Kelly Oppenheimer, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
County of Richland	)	2015-CP-40-000071
	)	
DARRELL WILLIAMS,	)	
	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
RESPONDENT,	)	

September 2, 2014
Columbia, South Carolina

BEFORE:

THE HONORABLE ROBERT E. HOOD, JUDGE.

APPEARANCES:

ANNA GOOD, ESQ.
Attorney for the Applicant

SUZANNE WHITE, ASSISTANT ATTORNEY GENERAL
Attorney for the State

KAREN AMBROZIAK
Official Court Reporter

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DAYNE PHILLIPS

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(No exhibits were marked)

CERTIFICATE OF REPORTER	25
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1 THE COURT: Okay. All right. Ms. White, tell me
2 what's going on.

3 MS. WHITE: Thank you, Your Honor. This is case of
4 Darrell Williams versus the State. It's 2013-CP-40-7117.
5 Mr. Williams was indicted in January of '08 for petit
6 larceny and burglary in the first degree.

7 He proceeded to trial representing himself pro se.
8 He did have standby counsel. He was convicted as
9 indicted, and because of prior convictions was sentenced
10 to life in prison without parole.

11 He did file a motion for reconsideration, and there
12 was a hearing with a fairly substantial order issued in
13 that case. There was an appeal filed. He was represented
14 by Appellate Defense.

15 An Anders brief was filed, and he also filed his own
16 pro se brief. Following remittitur in that, he filed this
17 application alleging ineffective assistance of appellate
18 counsel; that the prior conviction used to enhance his
19 prior sentence was unconstitutional and that the use of a
20 prior conviction was invalid pursuant to Rule 404(b).

21 At that point, I will turn it over to Ms. Good.

22 THE COURT: All right.

23 MS. GOOD: Thank you, Your Honor. I will call
24 Darrell Williams.

25 THE COURT: All right. Come on up. All right,

1 Mr. Williams.

2 DARRELL WILLIAMS, after being duly
3 sworn, testified as follows:

4 DIRECT EXAMINATION:

5 BY MS. GOOD:

6 Q Thank you, Your Honor.

7 Mr. Williams, you just heard the attorney general
8 state that you were convicted of burglary first and petit
9 larceny at trial and sentenced to life without parole, and
10 then you ultimately appealed, correct?

11 A That is correct.

12 Q And who was your attorney upon appeal?

13 A I really had about -- I really had one attorney
14 before, before Mr. Phillips. I had Ms. Franklin-Best.
15 When she left the Public Defender's Office is the day Mr.
16 Phillips picked the case up.

17 Q Okay. And about how many meetings did you have with
18 Mr. Phillips regarding your case?

19 A We had -- we had meetings but we talked numerous
20 times on the phone.

21 Q Okay. And regarding your conversations, what did you
22 discuss?

23 A Basically, we discussed some of the issues I had. I
24 wrote him. I wrote him plenty of letters, and some of the
25 conversation we had was based on those letters that I

2
1 wrote him. He -- I talked to him about some of the cases
2 I found, and we discussed that over the phone. That was
3 basically about it.

4 Q And your main issues for your appeal that you wanted
5 him to address were your directed verdict motion and the
6 prior burglaries being used as a burglary first, correct?

7 A Yes; that is correct.

8 Q When you spoke with Mr. Phillips and had these
9 conversations, did he ever bring up on your appeal the
10 directed verdict motion happening at nighttime element?

11 A No, he did not.

12 Q Did you ask him to?

13 A If that was part of it -- I believe I did. I believe
14 I did.

15 Q As part of your trial, just for reference for the
16 judge, please correct me if I misstate this. During the
17 trial, one of the elements of burglary first is that it
18 happened at nighttime.

19 The victim stated he left prior to it turning dark
20 and then return at dark, and you made a directed verdict
21 motion based on the fact the State couldn't prove it
22 happened at nighttime since the victim agreed he left
23 while it was light outside, correct?

24 A That is correct.

25 Q Okay. And that's what you wanted him to follow up on

1 in the appeal?

2 A Yes.

3 MS. GOOD: Okay. And then for reference, Your Honor,
4 the testimony of the victim is on page 303 of the
5 transcript, and the directed verdict motion is on page
6 461.

7 THE COURT: So the victim basically says, "I left my
8 house when it was daylight. I returned when it was dark."
9 The burglary allegedly took place some time in between
10 those two --

11 MS. GOOD: Correct.

12 THE COURT: -- but nobody can specifically say
13 whether it was light outside or dark outside?

14 THE WITNESS: That's correct.

15 THE COURT: Am I saying it right?

16 THE WITNESS: Yeah.

17 THE COURT: Okay.

18 BY MS. GOOD:

19 Q Did you also go over with him, I guess, during the
20 trial, you argued that your two prior burglaries could not
21 be used as elements of burglary first; correct --

22 A That's right.

23 Q -- to enhance your charge to make it life without
24 parole. Can you explain to the judge where your prior
25 burglaries were from? Were they were from out of state?

1 A Well, the two prior burglaries that they used at
2 trial was from South Carolina, but I had a prior -- I had
3 another burglary that was out of -- that was in New York
4 state.

5 Q Okay.

6 A My main argument with the State using those two prior
7 burglaries from South Carolina is that in the conviction
8 that I had in 1995, those convictions were run concurrent.

9 Q Okay.

10 A I explained to them that during the course of the
11 time that the law requires that if you have a concurrent
12 sentence, that constitutes as one, not separate offense.

13 What the State did is they took those offenses and
14 separated them and made it look like I had two separate
15 convictions for the multiple burglary convictions that I
16 had.

17 Q And it was your understanding from those that it was
18 part of the crime spree, correct?

19 A That's correct.

20 Q Okay. And did you discuss this with Mr. Phillips?

21 A No, not that particular part right there.

22 Q Okay. But all of that was part of your transcript,
23 correct?

24 A Yes, it was.

25 Q And, in fact, it's very drawn out and in great detail

1 in your transcript, correct?

2 A Yes, it is.

3 Q Okay. And as part of your transcript, you had
4 actually requested some transcripts from your prior PCR
5 hearings for use during your trial to show this, correct?

6 A Yes, it is.

7 Q Were you ever able to receive those from the Attorney
8 General's Office or Appellate Defense during your trial?

9 A Well, what happened is during the course of the
10 trial, we had contacted my prior PCR attorney. He -- what
11 he did is he brought the transcript from the old PCR
12 hearing and the court order.

13 The basis of -- the reason why it was used in that
14 was to use -- to basically to support my allegations that
15 you can also not use a prior burglary conviction because
16 the conviction itself is not constitutional.

17 Q Okay.

18 A But when I said that, I was referring to the fact
19 that during my first PCR hearing, I mean, the first
20 conviction which was in '95, that conviction I had asked
21 to be -- excuse me, I had asked -- prior before trial, I
22 had sent a request in to be -- asked for counsel as I did
23 in this trial here. That whole request was never granted.

24 During the PCR hearing, Judge Westbrook who was the
25 PCR judge at the time ruled that because I didn't raise it

1 at the time during the guilty plea that I couldn't raise
2 it now, during the PCR process.

3 Q And that was what you were planning to use those --
4 that information from in your trial, correct?

5 A That's correct.

6 Q But you were not able to do so because you weren't
7 able to get that information.

8 A I got the -- I got the transcripts, but the only
9 thing is that at the time, the only reason I didn't bring
10 it up is that I didn't have all the information as far as
11 how legally I can do that during the course of the trial.

12 Q Okay. And did Mr. Phillips ever look into this issue
13 as part of the appeal that you were aware of?

14 A No, not that I'm aware of.

15 Q Okay. In conclusion, as a result of him failing to
16 correctly look at the directed verdict motion and bring it
17 up as part of your appeal, in addition to the crime spree
18 burglaries being used to enhance your sentence --

19 A Uh-huh.

20 Q -- are you asking for your trial -- for your appeal
21 to be granted in that he was ineffective for not bringing
22 those up?

23 A That's correct.

24 Q Okay. Is there anything else you would like to tell
25 the court that we may have missed or skipped over?

1 A Well, the next thing I want to talk about is one of
2 the issues that I was -- that I tried to raise. I raised
3 it, you know. I just got -- I did all -- I kind of
4 touched on it, but I didn't go into full detail on it.
5 That was the question about 17-25-45 being
6 unconstitutional for two reasons: One is one of the main
7 arguments that I addressed was that when they used the
8 prior -- what they did is that they used the prior
9 convictions from a charge that was considered to be
10 unconstitutional because I had a right to represent
11 myself.

12 Being that I have a right to represent myself, you
13 cannot take that away from me, and that's what they did
14 during my first PCR -- during my first PCR hearing. Since
15 they took that right away from me, that means that since I
16 never agreed to have the counsel that represented me at
17 the PCR -- at the guilty plea as my counsel, then I looked
18 at it as being just a simple situation of them just
19 forcing counsel on me.

20 Now --

21 THE COURT: But you're talking about your prior
22 burglary convictions.

23 THE WITNESS: That's correct.

24 THE COURT: Okay. I wanted to make sure I was
25 following you.

1 THE WITNESS: The second thing is I'm saying that
2 17-25-45 is unconstitutional because according to the US
3 Justice Department Prison Policies Initiative and the
4 Bureau of Justice Services, in the Department of
5 Corrections, African Americans make up 75 percent of the
6 people that are in there, and according to them,
7 67.3 percent are serving life without the possibility of
8 parole.

9 This is African Americans alone. With that alone, it
10 seems like it's being arbitrarily applied to just African
11 Americans because only 10 percent of those who are
12 nonblack are serving the possibility of life without
13 parole sentences.

14 In this whole thing, if this is the case, then we
15 have to look about now it should be a situation where the
16 prosecutors have too much discretion in apparently using
17 it in the wrong manner of even seeking life without the
18 possibility of parole sentences.

19 BY MS. GOOD:

20 Q And you brought that up during your trial?

21 A No.

22 Q Touched on it?

23 A Touched on it.

24 Q Okay. And did Mr. Phillips bring that up as part of
25 your appeal?

1 A He wouldn't do it because of the way I'm explaining
2 it now. I didn't go into details with it. So I guess,
3 you know, that's one of the things I did write to him
4 about. I believe he expressed to me, he said, "Listen,
5 there is not enough information for me to go off on."

6 MS. GOOD: No further questions, Your Honor.

7 MS. WHITE: Thank you. Just briefly. Mr. --

8 THE WITNESS: Excuse me, could I have some water,
9 please?

10 MS. WHITE: Water?

11 THE COURT: We're getting you some.

12 THE BAILIFF: I got it.

13 MS. GOOD: Oh, you got it?

14 THE WITNESS: Thank you.

15 THE COURT: All right. You got your water?

16 THE WITNESS: All right.

17 CROSS-EXAMINATION:

18 BY MS. WHITE:

19 Q All right. Thank you, Mr. Williams. Just a couple
20 of quick questions. You, obviously, have no qualms with
21 the fact that you wanted to represent yourself at trial?

22 A No. I had no problem with that at all.

23 Q And you, in fact, had a very long trial, and you
24 raised a lot of issues at the trial; is that right?

25 A That's correct.

1 Q Okay. And then the majority of those issues, you
2 raised and were brought back up in a motion for
3 reconsideration?

4 A Yes.

5 Q And there was a fairly substantial order that Judge
6 Childs issued, about 19 pages if I'm correct or 16 -- 19
7 pages?

8 A Nineteen-page order, yeah.

9 Q Okay. And she ruled on each of those issues having
10 to deal with violation of confrontation clause --

11 A Uh-huh.

12 Q -- the unconstitutionality, maybe, of the life
13 without parole statute --

14 A That's correct.

15 Q -- and a couple of other issues; is that correct?

16 A Uh-huh.

17 Q So these were all in the record as being raised and
18 ruled upon.

19 A Not all of them because -- because there's issues
20 that I'm talking about now dealing with the sentencing --
21 the disparity of sentencing when it comes to life without
22 parole sentences. That was never raised. Because like I
23 said, at the time I didn't have information. So there
24 was -- I couldn't -- there was no need for me to bring it
25 up then.

1 Q Right. And you're raising that as kind of an overall
2 constitutional problem or an issue with the justice system
3 today?

4 A That's correct.

5 Q Okay. Now, when -- Mr. Phillips, you said you did
6 have some communication with him?

7 A Uh-huh.

8 Q Via either letter or phone?

9 A Uh-huh.

10 Q And you were able to talk to him about what issues
11 were preserved or could be presented on appeal?

12 A That's correct.

13 Q Okay. And he did present an Anders brief. Did he
14 explain to you what an Anders brief is?

15 A Yeah. He explained it -- he explained that to me. I
16 want to say one thing: My -- my only -- me and
17 Mr. Phillips, we had -- I would say we had conversations.
18 We talked. We talked for about an hour each time we talk
19 on the phone.

20 My only problem with what Mr. Phillips did was file
21 an Anders brief. As far as him -- you know, as far as
22 conversation wise and discussion about the case, we went
23 through the whole thing. I mean, I could not -- I mean,
24 I'm kind of sorry he was left off the case, but other than
25 that, I have no other problem with him.

1 Q And you said your only problem was he did file an
2 Anders brief?

3 A Yeah.

4 Q Okay. Now, the Anders brief, you ended up filing
5 also a pro se brief?

6 A Uh-huh.

7 Q Is that right?

8 A Uh-huh.

9 Q Did he explain to you that because of the filing of
10 the Anders brief and the pro se, the Court reviews the
11 entire record to see if there's any appealable issue that
12 they want them to actually address?

13 A Right.

14 Q Okay. So he did talk with you about that?

15 A Yeah. He -- yes.

16 Q Okay. And ultimately, once the Court reviewed his
17 brief and your pro se brief, they dismissed the appeal and
18 affirmed the conviction and sentence; is that right?

19 A That's correct.

20 MS. WHITE: Okay. Your Honor, that's all I have.

21 MS. GOOD: Very briefly.

22 REDIRECT EXAMINATION:

23 BY MS. GOOD:

24 Q You said you had a problem that he presented the
25 Anders brief. What was your problem with him presenting

1 the Anders brief?

2 A Because three issues -- with the Anders brief, the
3 issue he raised, I didn't think that the issue he raised
4 was a really good issue.

5 Q Which issue was that?

6 A I think the issue was concerning the statement.

7 Q Okay.

8 A What I felt he should have raised is the fact that
9 with the three issues I did raise in the brief, and there
10 was another one, the one issue that -- which comes to mind
11 is the fact that under Rule 404(b), what the State did,
12 what the State has is that they said when you have two or
13 more prior burglaries, you can submit those during the
14 course of trial to prove the element of the offense.

15 Well, my question is this: I'm not saying the
16 State -- that the law is wrong, but the way the State has
17 gone about doing it is wrong. Because what they're doing
18 is you are submitting these two prior convictions, but
19 you're not following the rules.

20 The rules under 404(b) require that you establish the
21 common scheme or plan, the intent. You have to establish
22 all of that before you submit that during the course of
23 the trial. This is not being done. This wasn't done in
24 this case, and this is a long -- this is something that I
25 think -- I believe I did -- I did address at the course of

1 the trial.

2 MS. GOOD: Okay. No further questions, Your Honor.

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

4 Call your next witness, Ms. Good.

5 MS. GOOD: No further witnesses, Your Honor.

6 MS. WHITE: Your Honor, the State would just call
7 Mr. Dayne Phillips briefly.

8 THE COURT: All right.

9 DAYNE PHILLIPS, after being duly
10 sworn, testified as follows:

11 THE COURT: Okay.

12 (Whereupon, there was an off-the-record discussion).

13 DIRECT EXAMINATION:

14 BY MS. WHITE:

15 Q Thank you.

16 Mr. Phillips, if you could just give me a brief
17 description of what you're doing today in the legal field.

18 A Today I work for the Lexington County Public
19 Defender's Office. I've been there for approximately a
20 year-and-a-half. Before that I was at Appellate Defense
21 where I worked on this case.

22 Q Okay. And in your representation of Mr. Williams, do
23 you recall talking with him or having some conversations
24 with him about the case?

25 A I do. I spoke to him roughly five times. It looks

1 like I did have very lengthy conversations. I remember
2 speaking with Mr. Williams. He is highly intelligent, and
3 he was very active in his case at Appellate Defense.

4 You kind of have two types of clients: Clients who
5 don't call at all and clients who call a lot and send a
6 lot of letters. He was very active in his case. We
7 discussed pretty much every issue that he talked about
8 regarding the constitutionality of the burglary statute.

9 Q And in representing himself, he had made several
10 objections or motions that had been ruled upon and could
11 have been presented on appeal; is that correct?

12 A That's correct. One of the things I went through
13 with him was, you know, with the issues as long as -- as
14 well as preservation law and how representing yourself,
15 how sometimes preservation law can be lax but not to the
16 sense that the issue still has to be preserved.

17 Q And in your discussion with him, did you explain to
18 him about an Anders brief and how the court reviews the
19 entire record?

20 A I did. One of the things I was telling him regarding
21 the burglary statute was that although I agreed with him
22 on his arguments, our Supreme Court has disagreed with
23 him, and that those issues have been settled by our
24 Supreme Court and that would be argued against precedent.

25 He was very adamant that he wanted those issues

1 raised. With that, I looked through all the other issues
2 that were presented, and I told him I'm in a position to
3 where I can raise an Anders brief, and you would be
4 allowed -- he was in -- Mr. Williams would be allowed to
5 file a pro se brief and raise every issue that you deem
6 appropriate, and that the Court would look at not only my
7 brief but his brief for any issues of merit, and then if
8 they found an issue of merit, they would send it back to
9 me to brief that issue.

10 Q And did you feel like strategically that was in his
11 best interest?

12 A I did. Particularly when he was as adamant as he is,
13 and I also agree with him that those issues with the
14 burglary statute that I -- I don't -- I disagree with that
15 burglary statute the same as he does. However, it's
16 precedent. It's settled law, and he wanted it raised.

17 Q And to your knowledge, did you get a copy of his pro
18 se brief?

19 A I did.

20 Q Do you recall? And he did -- he was able to raise
21 several of the issues that he brought up with you?

22 A He raised every issue that we discussed.

23 MS. WHITE: Thank you. That's all I have, Your
24 Honor.

25 THE COURT: Cross.

CROSS-EXAMINATION:

1
2 BY MS. GOOD:

3 Q You just stated that it's very important with
4 preservation law to preserve all the issues in the case.

5 A That's correct.

6 Q Does that include issues on appeal if they were to be
7 sent on to federal court, Supreme Court of the United
8 States?

9 A It applies to me, as well, as an appellate attorney,
10 very much so.

11 Q In this case, he asked you to preserve his appeal
12 argument regarding the burglary happening at night,
13 correct, his directed verdict motion?

14 A As to the specifics, we discussed everything
15 regarding his burglary, the issues with the burglary
16 statute. Specifically, I can't remember exactly, but we
17 discussed every issue.

18 Q But that would have been something that would have
19 needed to be preserved if he wanted to take it to a higher
20 level, correct?

21 A Oh, most definitely.

22 Q In addition to his burglary -- his prior burglary
23 arguments?

24 A That's correct, and as appellate counsel, we had a
25 strategic decision as to which issues to raise.

1 Q In this case, you just filed an Anders brief instead
2 of raising particular issues, correct?

3 A That's correct, once I believed the issue was
4 settled. Now, going directly, as far as you said the
5 nighttime element, now are we speaking to the directed
6 verdict motion?

7 Q Yes.

8 A That's on another issue versus the burglary statute.
9 The directed verdict motion, obviously, as you know, it's
10 either direct evidence or direct circumstantial evidence.

11 In this case, there was testimony that's conflicting.
12 I would definitely say it met the threshold of direct and
13 substantial circumstantial evidence as to the nighttime
14 element, and that was a jury issue, a factual issue for
15 the jury.

16 Q And you admit that as an attorney at Appellate
17 Defense, you have more access to legal cases, law, that
18 sort of thing as opposed to a DOC inmate, correct?

19 A Of course, yes.

20 Q And so it would be easier for you to file a type of
21 brief that preserved all these issues correctly for the
22 higher courts than to have a pro se defendant who is in
23 the Department of Corrections who does not have a lot of
24 access to the law library to file a pro se brief, correct?

25 A That's correct. I believe I also even sent him

1 copies of all the cases we discussed. We went through it
2 very thoroughly.

3 When filing an Anders brief, I try not to raise
4 issues that have already been settled in his case. The
5 one I raised, I believe, I thought it had -- you know, the
6 dispute was still open and could be addressed by the court
7 versus all the burglary statute issues which there was
8 direct cases on point.

9 MS. GOOD: No further questions, Your Honor.

10 MS. WHITE: Nothing further from the State, Your
11 Honor.

12 THE COURT: Have a good day.

13 THE WITNESS: Thank you, Your Honor.

14 THE COURT: And be safe going back. All right.

15 MS. WHITE: The State has no other witnesses.

16 THE COURT: All right.

17 MS. GOOD: Very briefly, Your Honor. We believe his
18 PCR should be granted; that the Applicant has met his
19 burden.

20 Mr. Phillips decided to file an Anders brief instead
21 of focusing on specific issues that should have been
22 brought up to preserve them for appeal to higher courts
23 for Mr. Williams to be able to take those to the Supreme
24 Court or if need be to the federal courts based on those
25 arguments in preserving the appeal correctly, and believe

1 he did not do so.

2 MS. WHITE: And, Your Honor, the State would argue he
3 failed to meet his burden of proof of establishing the
4 issues he wanted raised particularly by appellate counsel
5 would have changed the outcome and would have affected his
6 appeal.

7 Plus, in addition, Your Honor, he did file a pro se
8 brief which is in the record. From our understanding with
9 appellate law and preservation for federal law, that would
10 be considered, as well.

11 THE COURT: All right. I'll let you know within ten
12 days.

13 MS. WHITE: Thank you very much.

14 THE COURT: Thank you, Your Honor.

15 (Whereupon, the proceedings were concluded.)
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25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the
5th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas for
Richland County, South Carolina, on the 2nd day of
September, 2014.

March 24, 2015

/Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Darrell Williams, #219730,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2013-CP-40-7117

ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2015 JAN -2 PM 12:09
JEANETTE W. MCBRIDE
CLERK, P. & G.S.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 22, 2013. The Respondent made its Return on or about February 25, 2014. An evidentiary hearing into the matter was convened on September 2, 2014, at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Anna R. Good, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Dayne C. Phillips, Esquire, testified on behalf of the State. This Court also had before it a copy of the records of the Richland County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, Applicant's appellate records, the trial transcript, and the motion for new trial transcript.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during the January 2008 term of the Richland County Grand Jury for Petit Larceny and Burglary in the First Degree (2011-GS-40-0884, -0866). On September 22-24, 2008, Applicant proceeded to a

jury trial *pro se*, with Joshua Kendrick, Esquire, and Hans Pauling, Esquire, assisting as stand-by counsel, before the Honorable J. Michelle Childs. Applicant was convicted as indicted and Judge Childs sentenced Applicant to life imprisonment without parole pursuant to S.C. Code Ann. § 17-25-45 (2008).

Applicant filed a Motion for New Trial and a hearing was held before Judge Childs. The Applicant appeared *pro se*. The Motion was denied and an Order was issued on March 26, 2010.

Applicant filed a timely notice of appeal and was represented by Appellate Defender Dayne C. Phillips. Following the submission of an Anders brief and a *pro se* brief, the South Carolina Court of Appeals dismissed Applicant's appeal. The Remittitur was sent on December 5, 2013.

ALLEGATIONS

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

1. Ineffective Assistance of Appellate Counsel;
2. Prior Conviction used to enhance unconstitutional; and
3. Use of Prior conviction under rule 404(b) invalid.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Ineffective Assistance of Appellate Counsel

The Applicant alleges he received ineffective assistance of appellate counsel. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

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

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective

assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Applicant testified that he never met with Appellate Counsel ("Counsel"), but communicated via letters and had numerous telephone conversations. Applicant testified that he believed the two issues that should be presented on appeal were the denial of the directed verdict motion and the use of his prior convictions to enhance his sentence. Applicant testified that the directed verdict motion focused on the State's failure to prove that the incident occurred in the nighttime. Applicant testified that his two prior burglaries should not have been counted as two separate charges, but rather as one offense as a result of a crime spree. Ultimately, Applicant testified that his problem with Counsel was that Counsel filed an Anders¹ brief on Applicant's behalf. However, Applicant acknowledged that Counsel explained the procedure to Applicant and Applicant filed a pro se brief in addition to the Anders brief.

Counsel testified that he spoke with the Applicant at least five times and expressed that Applicant was very active in his defense and very intelligent. Counsel testified that he reviewed with Applicant the various objections and motions made by Applicant during trial and discussed preservation law with Applicant. Counsel testified that he explained the process of an Anders brief with Applicant and the fact that the court would review the entire record. Counsel testified that Applicant wished Counsel to raise issues regarding the constitutionality of the statute providing for a three strikes, life without parole sentence. S.C. Code Ann. § 17-25-45 (2008).

¹ Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967).

However, Counsel testified that he informed Applicant that the case law was contrary to Applicant's position.

In Anders v. California, the United States Supreme Court announced the procedure an appointed attorney should follow if that attorney believes the client's appeal is frivolous and without merit. 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). The Supreme Court held the attorney could petition for permission to withdraw from the case, but that the petition for withdrawal must be accompanied by a brief "referring to anything in the record that might arguably support the appeal." Id. at 744, 87 S.Ct. at 1400, 18 L.Ed.2d at 498. Under Anders, the defendant must be given time to respond and to raise any additional points after his attorney submits the Anders brief. Id. The court then is obligated to conduct a "full examination" of the record to determine whether the appeal is "wholly frivolous." Id. According to Anders, if the reviewing court finds the appeal is frivolous, "it may grant counsel's request to withdraw and dismiss the appeal insofar as federal requirements are concerned, or proceed to a decision on the merits, if state law so requires." Id. at 744, 87 S.Ct. at 1400, 18 L.Ed.2d at 498.

As discussed previously, the Applicant was presented with and took advantage of the opportunity to file his *pro se* brief with the South Carolina Court of Appeals following Counsel's brief. The Applicant failed to present any evidence or testimony to establish that he suffered any prejudice as a result of Counsel's Anders brief. This Court finds that although the Applicant is clearly well researched and knowledgeable of the issues involved in his case, he has failed to meet his burden to establish that appellate counsel was ineffective. Therefore, this claim is denied and dismissed.

Prior Convictions for Enhancement Purposes

Applicant has also alleged that the use of his prior convictions to enhance his sentence is unconstitutional and violates the rule against introducing evidence of prior bad acts. This allegation raises a direct appeal issue that is procedurally based by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Specifically, the Applicant raised the issue of constitutionality of the statute at trial and in his *pro se* brief on appeal.

This Court finds that the doctrine of *res judicata* bars the Petitioner's claims. *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.

The Applicant had a full opportunity to argue both the constitutionality of the statute and whether the use of his prior burglary convictions violated the rule against evidence of prior bad acts at trial and on appeal. The public interest in finality of judgments requires that litigation must eventually come to an end. The Order denying Applicant's Motion for New Trial very thoroughly addresses each of the arguments Applicant raised.

Therefore, based upon the doctrine of *res judicata* and the fact that the issues raised are not appropriate for post-conviction relief, but rather direct appeal, this Court summarily dismisses these allegations.

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 cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR., Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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 1 day of December, 2014.

Re Hood

Robert E. Hood
Presiding Judge

WITNESSES

✓ (S) PAUL MEAD CPD

ARREST WARRANT NUMBER

K265406

NOTION OF GRAND JURY
TRUE BILL

Foreperson of Grand Jury
Date: **SEP 19 2008**

VERDICT

Guilty
Shameka B Cole

9/24/08

Foreperson of Petit Jury
Date:

DOCKET NO. 2008 GS40 6965

Amended
The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

JANUARY TERM 2008

102

THE STATE
vs.

DARRELL O. WILLIAMS

Indictment for

PETIT LARCENY
SC Code: 16-13-30(A)
CDR Code: 0480
Class: MISD/EXEMPT

After being fully advised as to my legal rights, I hereby waive my presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED
in Case No. 2008 GS40 6965
C.C.C. REG. S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

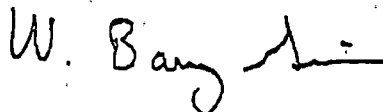
INDICTMENT

At a Court of General Sessions, convened on ____January 16, 2008____ the
Grand Jurors of Richland County present upon their oath:

PETIT LARCENY

That DARRELL O. WILLIAMS did in Richland County on or between JULY 12 AND
JULY 13, 2007, feloniously take and carry away the personal goods of the victim,
PETER SEDERBERG, of less than One Thousand Dollars, described as follows: money
and/or jewelry, with intent to deprive the owner permanently of such property, in
violation of §16-13-30(A), Code of Laws of South Carolina, (1976), as amended.

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



Warren B. Giese, SOLICITOR

WITNESSES

(s) Paul Mead CPD

ARREST WARRANT NUMBER

DP 07420

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: JAN 1 2008

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-40- 13175

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

January TERM 2008

102

THE STATE

vs.

Darrell O. Williams

Indictment for

BURGLARY/(AFTER 6/20/85)
1ST DEGREE

SC Code: 16-11-311

CDR Code: 079

Class FEL-EXM(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

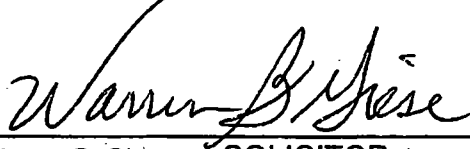
INDICTMENT

At a Court of General Sessions, convened on January 16, 2008 the Grand Jurors of Richland County present upon their oath:

BURGLARY/(AFTER 6/20/85) - 1ST DEG

That Darrell O. Williams did in Richland County on or about July 12, 2007, ^{to July 13th 2007} willfully and unlawfully enter the dwelling of Peter Sederberg at [REDACTED] Avenue, Columbia, South Carolina without consent and with the intent to commit a crime therein, and the defendant did enter during the hours of darkness and/or has two or more prior convictions for burglary, all in violation of §16-11-311, Code of Laws of South Carolina.

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


Warren B. Giese, SOLICITOR