

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Richland County

L. Casey Manning, Circuit Court Judge

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S.C. Supreme Court

DAQUAN JONES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000368

APPENDIX

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
)
COUNTY OF RICHLAND) Case No(s) : 2013GS4002368,
) 2013GS4002369,
State of South Carolina,) 2013GS4002370
)
Plaintiff,)
)
-VS-) TRANSCRIPT OF RECORD
)
DaQuan Jones,)
)
Defendant.)
)

October 14, 2013
Richland, South Carolina

B E F O R E :

HONORABLE ALLISON R. LEE, Judge.

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

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EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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PLAINTIFF EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 14th day of October, 2014 at approximately 10:04 a.m.)

THE COURT: Daquan Jones and Larry Carter, could you just come stand here for a moment please. Good morning, gentlemen.

MR. JONES: Good morning.

MR. CARTER: Good morning.

THE COURT: Gentlemen, it's my understanding that your cases were originally on the trial docket for this week related to certain charges that are pending against you. I've been informed by your attorneys that you are here today offering to plead guilty to the charges. And so, what I'd like to do is just go over with you your constitutional rights, then we'll take up your matters individually.

Gentlemen, even though you have your charge, even though I understand that you are offering to plead guilty to these charges, you are still innocent of those charges and you remain innocent unless and until the state is able to convince a jury that you are guilty of those charges.

So with respect to the criminal matters,

1 you have certain constitutional rights. I'm
2 just going to go over those with you briefly
3 this morning. If your charge or charges have
4 not been presented to the Grand Jury, uh, then
5 you have the right to require the State to
6 produce evidence of those charges to a Grand
7 Jury.

8 The Grand Jury's function is to determine
9 whether there's reason to believe that a crime
10 has been committed and whether there's reason
11 to believe that you committed that particular
12 crime. What happens is that the Solicitor's
13 office will go in to the grand jury and will
14 present evidence about the charge. After
15 hearing that evidence, 12 of those 18 grand
16 jurors would have to agree and vote for a true
17 bill in order for you to be formally indicted.
18 If they vote for a true bill, then the criminal
19 justice process continues on. If 12 of those
20 18 people do not agree, then they return a no
21 bill or a no true bill. Under that
22 circumstance, nothing further would become of
23 the charges that, uh, were brought against you.
24 By offering the plea of guilty before your
25 charge or charges had been presented to the

1 grand jury, you give up the opportunity to have
2 those grand jurors make the initial decision as
3 to whether or not you should even be charged.

4 You also have the right to remain silent.
5 That's known as your right against self-
6 incrimination, that is, your right not to say
7 anything or do anything that would give
8 evidence against yourself. That means you
9 don't have to talk to anybody in law
10 enforcement about the charges. You don't have
11 to talk to anybody in the Solicitor's office.
12 You don't have to discuss them with me. By
13 coming here today and by offering to plead
14 guilty, you give up the right to remain silent
15 because you will be required to make statements
16 that are against your interest.

17 You also have the right to a jury trial.
18 That's your right to have 12 people decide your
19 guilt or innocence. As we speak here this
20 morning, the jury is downstairs being
21 qualified. We have jurors available if you
22 decide that you wish to have a jury trial.
23 What happens is the jury is informed that you
24 are innocent and that you remain innocent
25 unless and until the state is able to convince

1 all 12 of those jurors that you are guilty of
 2 the charges that have been against you. Before
 3 the jury can find you guilty, the state has to
 4 put up enough evidence that convinces those
 5 jurors that you are guilty beyond a reasonable
 6 doubt.

7 In connection with your right to a jury
 8 trial, that is the time that you put up any
 9 defenses. I don't know whether you have any
 10 defenses, but the time to present those would
 11 be during the course of the jury trial. With
 12 your defenses, that means you can call
 13 witnesses who would testify for you. They
 14 could come into court and give testimony. You
 15 could also get on the witness stand and testify
 16 for yourself if that's what you wish to do.

17 You also have the chance before trial began
 18 to raise any legal challenges to the charges or
 19 the evidence. If there is any basis that you
 20 or your attorney believes that you have the
 21 right to challenge, either the indictments or
 22 the charges for the evidence, the time that
 23 that would occur would be right before we start
 24 the trial.

25 If, for example, you made any statements to

1 law enforcement officers, whether they call it
2 a confession or a statement, if you have given
3 them statements and the state wants to use
4 those against you, you can have a hearing to
5 determine whether or not it is a voluntary
6 statement or whether it can be used at trial.

7 You may have been searched for whatever
8 reason. You can have a hearing to determine
9 whether it was a valid search or whether the
10 evidence that came about as a result of that
11 search can be used against you. If there was
12 some type of identification to do a photo
13 lineup, you can challenge the photo lineup.
14 Any of those procedural matters to challenge
15 the charge, challenge the evidence or challenge
16 some part of some evidence that would come in
17 against you or during the course of the trial,
18 you are entitled to have a hearing on that.
19 That is normally done right before the trial
20 begins.

21 By pleading guilty at this particular
22 point, you are given up that opportunity to be
23 able to raise those legal challenges. You are
24 also giving up your right to present a defense,
25 call witnesses in your behalf and giving up the

1 opportunity to have those jurors make the
2 initial -- make the decision as to your guilt
3 or innocence in this matter.

4 You also have the right to confront your
5 accusers. That is known as your right of
6 confrontation. That is your right to require
7 the state to bringing witnesses who will
8 testify against you. They are required to come
9 to court. They would be placed under oath and
10 give testimony from the witness stand. You get
11 to see who those witnesses are and you get to
12 hear them testify in their own words as to what
13 evidence they are offering against you. It is
14 not a situation of whether the state is bound
15 to stand up and say we have witnesses who are
16 going to say X, Y, Z. You actually get to see
17 those witnesses and hear what they have to say.

18 Once they have given testimony, then your
19 attorneys get the opportunity to cross-examine
20 them to ask them questions about that testimony
21 while they are under oath. You have the
22 opportunity to challenge or impeach their
23 testimony. Gentlemen, by coming here today and
24 offering to the guilty, you give up the right
25 to be able to confront your accusers.

1 Additionally, gentlemen, if I accept your
2 plea today, you have 10 days from today's date
3 to file any type of appeal. An appeal from a
4 guilty plea is very limited in nature because
5 this is not a trial. We are not going to hear
6 all the evidence. You won't be able to
7 challenge whatever evidence the state has
8 against you but you can still have an appeal to
9 determine whether your plea was freely and
10 voluntary. If you decide that you wish to have
11 an appeal, you must tell your attorney to file
12 an appeal within 10 days of today's date. If
13 that appeal is not filed within that period,
14 you will lose your opportunity to have an
15 appeal.

16 Gentlemen, I have briefly gone over with
17 you some of your constitutional rights. I am
18 going to ask you if you all have understood the
19 rights that I have explained to you. I am
20 going to ask that you answer out loud so I can
21 hear you and understand you. Have you all
22 understood the rights I explained to you thus
23 far?

24 **MR. JONES:** Yes, Your Honor.

25 **MR. CARTER:** Yes, Your Honor.

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1 **THE COURT:** Thank you. I will tell you
2 what, we will take up your matters
3 individually. We will start with Mr. Jones.
4 We will talk about these matters in a little
5 bit more detail.

6 Mr. Carter, you just have a seat. Thank
7 you.

8 (WHEREUPON, Mr. Daquan Jones is first duly
9 sworn.)

10 **THE COURT:** Yes, ma'am.

11 **MS. CAVANAUGH:** Thank you, Your Honor.
12 Standing before you is that Daquan Jones. He's
13 represented by Constantine Pournaras of the
14 Public Defender's office. Kathryn Cavanaugh
15 for the State.

16 Mr. Jones was on the trial docket for
17 Attempted Burglary second degree charge. He
18 also has -- that was indictment 2013-GS-40-
19 2368. He also has a separate Burglary second
20 and Petty Larceny pending in our office that he
21 is pleading guilty to today. That is under
22 indictment 2013-GS-40-2369 and 2370. The
23 victim of the actual burglary is present in the
24 courtroom with her mother, Kersha Sessions.
25 That is what we are proceeding on this morning.

1 **THE COURT:** And the trial was set for the
2 actual burglary or the attempted burglary?

3 **MS. CAVANAUGH:** The trial was set for the
4 attempted burglary because there was still some
5 outstanding DNA testing should be conducted.
6 We had to get a Schmerber. That was not
7 completely finished yet. The trial was only on
8 the attempted burglary, Your Honor. That
9 victim has been notified that he is going to
10 plead guilty this morning. She did not wish to
11 be present for the plea. She does want me to
12 read her victim impact statement.

13 **THE COURT:** Is it DaQuan?

14 **MR. JONES:** DaQuan.

15 **THE COURT:** DaQuan Jones?

16 **MR. JONES:** Yes, ma'am.

17 **THE COURT:** How old are you, sir?

18 **MR. JONES:** 19.

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

20 **MR. JONES:** Went to the 10th grade.

21 **THE COURT:** Are you currently under the
22 influence of any drugs or alcohol or
23 prescription medicines?

24 **MR. JONES:** No.

25 **THE COURT:** Do you have any physical or

1 mental conditions that would prevent you from
2 understanding your plea here today?

3 **MR. JONES:** No, ma'am.

4 **THE COURT:** Mr. Pournaras, if you would,
5 turn to that microphone towards him a little
6 bit please.

7 **MR. POURNARAS:** Sure.

8 **THE COURT:** You don't have to speak
9 directly into it. Just speak louder. Mr.
10 Jones, are you employed?

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

12 **THE COURT:** Mr. Jones, do you understand
13 that you have been charged with burglary second
14 degree nonviolent and attempted burglary second
15 degree nonviolent?

16 **MR. JONES:** Yes, ma'am.

17 **THE COURT:** You understand each one of
18 those carries a maximum term of imprisonment of
19 10 years?

20 **MR. JONES:** Yes, ma'am.

21 **THE COURT:** You have also been charged
22 with petty larceny in which the value is \$2000
23 or less. That carries a maximum of 30 days in
24 jail. Do you understand that?

25 **MR. JONES:** Yes, ma'am.

1 **THE COURT:** And you are represented by Mr.
2 Pournaras, is that correct?

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

4 **THE COURT:** Did he have an opportunity to
5 explain these charges to you?

6 **MR. JONES:** Yes, ma'am.

7 **THE COURT:** Did he explain to you the
8 penalties associated with these charges?

9 **MR. JONES:** Yes, ma'am.

10 **THE COURT:** Do you think you understand
11 that even though one may be called an attempt
12 under our state statutes, you are punished the
13 same for attempt as you would be for actually
14 completing the offense. You understand?

15 **MR. JONES:** Yes, ma'am.

16 **THE COURT:** Did Mr. Pournaras also explain
17 to you the consequences for a conviction?

18 **MR. JONES:** Yes, ma'am.

19 **THE COURT:** For example, if you were
20 subsequently convicted of other charges or
21 other larceny charges depending on what the
22 charge is and how many, you could be facing
23 harsher penalties. The state could charge you
24 with a burglary first which carries a minimum
25 of 15 years up to life in prison. Do you

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1 understand that?

2 **MR. JONES:** Yes, ma'am.

3 **THE COURT:** There is no parole and no
4 probation. Well, you can get probation on that
5 but it is no parole. It is a day-for-day
6 offense. You have to serve 85 percent of your
7 time before you will be eligible to be released
8 from jail.

9 On the petty larceny, it is presumed to
10 be a property crime. If you get three or more
11 property crime convictions, the state could
12 enhance and you could get up to 10 years. Do
13 you understand?

14 **MR. JONES:** Yes, ma'am.

15 **THE COURT:** Did Mr. Pournaras also
16 explained to you the evidence the state has
17 against you in these charges?

18 **MR. JONES:** Yes, ma'am.

19 **THE COURT:** You heard Ms. Cavanagh say,
20 at least on the burglary charge, not all of the
21 forensic evidence has been returned. They are
22 in the process. Do you understand that you
23 have a while to wait until all of that is done
24 before you decide to plead guilty if that's
25 what you wish to do? You understand that?

1 **MR. JONES:** Yes, ma'am.

2 **THE COURT:** And did Mr. Pournaras also
3 explain to you in more detail your
4 constitutional rights?

5 **MR. JONES:** Yes, ma'am.

6 **THE COURT:** Mr. Pournaras, you heard your
7 client indicate that you have had those
8 discussions with him. Is that correct?

9 **MR. POURNARAS:** Yes, Your Honor.

10 **THE COURT:** Did you, in fact, discuss with
11 him these charges as well as the penalties and
12 consequences for a conviction?

13 **MR. POURNARAS:** I have, Your Honor.

14 **THE COURT:** Did you explain to him the
15 evidence the state has against him?

16 **MR. POURNARAS:** Yes, Your Honor.

17 **THE COURT:** Did you explain to him the
18 fact that the DNA testing is not completed and
19 he couldn't wait to find out exactly what those
20 results are before he reached the ultimate
21 decision?

22 **MR. POURNARAS:** Yes, Your Honor. To
23 clarify, the Schmerber was for chain purposes
24 in a trial. We did that Schmerber motion
25 several months ago. I explained to him that it

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1 just truly confirmed the original results.

2 THE COURT: Did you also explain to Mr.
3 Jones in more detail his constitutional rights?

4 MR. POURNARAS: I have.

5 THE COURT: Do you believe he understood
6 all those discussions that you had with him?

7 MR. POURNARAS: I believe so.

8 THE COURT: Mr. Jones, you were present
9 earlier while I explained to you those
10 constitutional rights, is that correct?

11 MR. JONES: Yes, ma'am.

12 THE COURT: Did you understand those
13 rights as I explained them to you?

14 MR. JONES: Yes, ma'am.

15 THE COURT: On the front of each one of
16 these indictments -- and these are copies of
17 the indictments. On the front of these ones,
18 there is a place here that says action of the
19 grand jury. It is stamped true bill. That is
20 on each one. There is a signature of the
21 foreperson of the grand jury. That tells me
22 that these charges were presented to the grand
23 jury. After hearing evidence about the
24 charges, the grand jury decided that you should
25 be formally charged. Do you understand that?

1 **MR. JONES:** Yes, ma'am.

2 **THE COURT:** You understand that by coming
3 here today and are offering to plead guilty to
4 these charges that you're giving up your right
5 to remain silent, you are giving up your right
6 to confront your accusers and you are giving up
7 your right to a jury trial. Has anyone
8 promised you anything to come here and plead
9 guilty today?

10 **MR. JONES:** No, ma'am.

11 **THE COURT:** Has anyone threatened you or
12 coerced you to plead guilty?

13 **MR. JONES:** No, ma'am.

14 **THE COURT:** Has there been any hope or
15 promise of any type of reward with any benefit
16 to get you to plead guilty today?

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

18 **THE COURT:** Mr. Jones, before I accept
19 your plea, I will hear from the state about the
20 facts. Listen to them carefully.

21 Yes, ma'am.

22 **MS. CAVANAUGH:** Thank you. I will do it
23 in chronological order. The first incident is
24 the actual burglary and petty larceny that
25 occurred August 11, 2012 at [REDACTED] [REDACTED] [REDACTED]

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1 ██████████ here in ██████████ ██████████ That is the
2 home of Kersha Sessions. Richland County
3 Sheriff's Department responded to an alarm
4 about 10:45 in the morning that day. They
5 spoke with Ms. Sessions' fiancé at the time.
6 He arrived back at the home after the alarm
7 call. Both of them were at work.

8 The deputies discovered there was a broken
9 window in the back where the dining room was.
10 It appears that a rock had been thrown through
11 that window. The sliding glass door in the
12 back was partially open. A 52-inch flatscreen
13 from the living room was stolen as well as an
14 iPad or an iPod, Your Honor.

15 The privacy fence had also been kicked in
16 in the back. Deputies noticed that there was
17 blood on the point of entry on that window.
18 The crime scene investigators were called to
19 the scene. That area was processed. November
20 12, 2012, the DNA results came back from that
21 point of entry. The blood came back as a match
22 to DaQuan Jones. Investigator Rast who is
23 standing beside me confirmed that the victim
24 did not know him. He did not have permission
25 to be in her home.

1 On that day, on November 12, 2012, while
2 Investigator Rast was on his way to magistrate
3 court to get warrants, uh, for DaQuan Jones for
4 Burglary second and Petty Larceny, he received
5 a call related to another attempted burglary.
6 That was at, uh, the home of Caroline Boston
7 Williams. She is, uh, -- she is 64 years old,
8 Your Honor. She was sitting at her home which
9 is located at [REDACTED]. The car
10 was in the garage. So it might have appeared
11 that she was not home.

12 She was sitting at her computer working on
13 a new software program that she had bought.
14 She heard the back doorknob sound like
15 jiggling. She didn't immediately go to her
16 back door. It was louder the second time. She
17 walked to her back door and saw two individuals
18 that she was able to give a good description of
19 flee from the back of her home. One of them was
20 wearing a red jacket. That was later confirmed
21 to be Daquan Jones. She called 911.

22 Richland County Sheriff's Department
23 immediately responded to the area. One of the
24 deputies that responded saw, uh, Daquan Jones
25 wearing the red jacket that she described and

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1 he matched the description, uh, walk into his
2 house at [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. So it's
3 only about a quarter mile away from the
4 victim's home.

5 When he called -- he notified Investigator
6 Rast, uh, who was the supervisor. He was the
7 investigator on call. Investigator Rast told
8 him to detain DaQuan Jones because he had
9 pending warrants for burglary second and petty
10 larceny. Deputies did a knock-and-talk at
11 Daquan Jones' residence, arrested him on those
12 outstanding warrants and transported him to the
13 sheriff's department.

14 He originally denied having anything to do
15 with the attempted burglary, uh, and agreed to
16 a -- wanted to do a polygraph a couple of days
17 later. Investigator Rast went to the detention
18 center on November 16th, 2012 to conduct the
19 polygraph. He asked Daquan if he was still
20 interested in doing it. He said yes.

21 Once deception was indicated on that
22 polygraph, -- his rights were read to him
23 before the polygraph and at the scene that day.
24 Once deception was indicated on the polygraph,
25 DaQuan Jones gave a full confession to, uh,

1 this attempted burglary as well as, uh, the
2 burglary where his DNA was found at Waverly
3 Place Drive. He confessed to both to Sergeant
4 Godfrey and then, uh, two other investigators
5 at the sheriff's department on November 16th,
6 2012. He also wrote an apology letter to Ms.
7 Caroline Boston-Williams while he was at the
8 Sheriff's Department.

9 Ms. Sessions is here. She does not wish to
10 address Your Honor. She does want me to read
11 her statement and Ms. Boston-Williams, as I
12 stated earlier, does also want to read -- me to
13 read her statement. Do you want me to pause at
14 this point?

15 **THE COURT:** I will go ahead in hear you.

16 **MS. CAVANAUGH:** Okay. This is from Ms.
17 Sessions lives at 1116 Waverly Road. She said
18 that the call that she received from her home
19 security system change her life forever. The
20 caller stated that they received an alarm and
21 there have been some activity in my kitchen
22 area which was later confirmed as a break-in
23 robbery.

24 I think God every day that I was not home
25 to suffer any physical injuries as a result of

1 the break-in. However, emotionally, I am still
2 suffering. It is really hard to understand how
3 someone can break into your home, go through
4 your entire house and take your personal
5 belongings. For the first time in my life, I
6 felt scared, angry, confused and uneasy about
7 being safe in my home along with other feelings
8 of emotions. What I don't understand is why
9 Daquan Jones targeted my home. I do not know
10 him nor have I ever seen him.

11 Since the break-in, my life has changed.
12 My schedule has been disrupted. Before the
13 break-in, I used to sleep soundly and enjoy
14 being in my new home in the area I live in.
15 Now, I sleep on my sofa and I have to take
16 sleeping medicine at night. Any sound can
17 cause me to stay awake. Before the break-in,
18 it was okay to leave my belongings on the
19 dresser. I now find myself hiding things.

20 My relationships, I think, with my family,
21 friends and coworkers have also suffered. Once
22 outgoing, I prefer to stay near the house
23 because I am scared that my home may be broken
24 into again. There are also feelings of guilt.
25 I feel if I would have stayed home on that day,

1 maybe this could have been prevented.

2 Based on -- not only does he need to serve
3 time at the Department of Corrections but
4 perhaps a screening for the Department of
5 Disabilities and Special Needs too. I don't
6 understand how someone could break into
7 someone's house unless they have problems.

8 Based on his most recent incarceration with
9 the Department of Corrections, it is evident
10 that the system has failed. He has outsmarted
11 the system as a career criminal. He proves
12 that there is no rehabilitation for the --
13 based on the nine months he had already served,
14 for prior convictions. He was on house arrest
15 and ankle monitor in which proved to be too
16 lenient. He has already proved to society that
17 he is not willing to become a law-abiding
18 citizen since being released on probation.

19 I want him to receive the maximum sentence
20 that the courts will allow for breaking into my
21 home. I want justice to be served to the
22 fullest extent of the law. I will not be at
23 peace until I know that he cannot break into my
24 home again. That is from Ms. Sessions.

25 Ms. Boston-Williams just stated that this

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1 event has left me emotionally raw. Now, I am
2 unable to sleep without the light on, the door
3 to my bedroom locked and unable to bathe or
4 shower without being worried that someone might
5 try and break into my house. After receiving
6 counseling in the past two weeks, it has been
7 helpful.

8 I will say that when I called Ms. Boston-
9 Williams to let her know that she did not have
10 to testify, she did break down crying because
11 this really did -- she is 64 years old. She
12 knew that Mr. Jones lives about a quarter of a
13 mile away from her. She was very scared to
14 have to testify against him. She was relieved
15 that he was willing to accept responsibility.

16 I will just say, Your Honor, that I have
17 prosecuted all of Mr. Jones' cases that have
18 come across my desk. He has demonstrated that
19 he does not have any regard for the second
20 chances that have been provided to him and no
21 regard to the law. On August 21, 2011, he was
22 arrested for attempted murder, two counts of
23 attempted murder and two counts of armed
24 robbery. He was in jail for nine months before
25 his bond was reduced. His bond was reduced

1 March 5, 2012. Within nine days, he was
2 already reoffending. He was arrested for auto
3 braking and petty larceny on March 14, 2012.
4 His bond was revoked at that point for
5 rearrest.

6 On June 26, 2012, we pled the attempted
7 murder down to assault and battery first. The
8 victim in that case was not cooperative. We
9 did have to make an offer in that case. He
10 received seven years suspended to 307 days --
11 372 days and three years probation. He spent a
12 short time at the Department of Corrections and
13 was released on intensive probation on June 29,
14 2012. He had to wear an ankle bracelet. He
15 was on house arrest. He was released on June
16 29, 2012 from the Department of Corrections.
17 Within a month and a half, he committed the
18 burglary at Kersha Sessions' home. And then,
19 two and a half months later, tried to break
20 into Ms. Boston-Williams home.

21 We do think that based on his young age and
22 based on the many opportunities he was given,
23 he is a danger to the community. We are asking
24 for a sentence close to the maximum on these
25 two charges, Your Honor. Investigator Rast

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1 would like to address you as well.

2 **THE COURT:** What is the prior record?

3 **MS. CAVANAUGH:** I apologize, Your Honor.

4 He has an auto breaking and an assault and
5 battery in the first degree from June of 2012.

6 **THE COURT:** No other priors?

7 **MS. CAVANAUGH:** No, Your Honor.

8 **THE COURT:** Yes, sir.

9 **SPEAKER:** Thank you, Your Honor. My name
10 is Investigator Rast at the Richland County
11 Sheriff's Department. I am the lead primary --
12 I am the primary burglary investigator for the
13 Northeast Columbia area. During the 2011/2012
14 years, we had an overwhelming number of
15 property crime that was occurring in the
16 vicinity of Mr. Jones' house basically in his
17 neighborhood. Surrounding neighborhoods with
18 suffering as well. Mr. Jones is a known member
19 of a Folk Nation subset in the Northeast side.
20 It is a street gang --

21 **MR. POURNARAS:** I have to object, Your
22 Honor. I have been provided no basis for these
23 allegations, Your Honor. This is the first
24 time I have been made aware of anything. I
25 have not seen anything to corroborate this.

1 **THE COURT:** You just need to make sure
2 that it is relevant to the particular charge.

3 **SPEAKER:** Yes, ma'am. I will say that
4 since Mr. Jones' arrest and the arrest of
5 several of his associates, the property crimes
6 in that area and in that neighborhood and the
7 surrounding area declined significantly.

8 I will also say that I would agree with
9 Mrs. Kathryn's assessment that Mr. Jones has
10 been given several opportunities, second
11 chances, lenient sentences. He has shown
12 complete disregard for those chances. He has
13 consistently chosen to reoffend rather than to
14 change his life around. I will have to agree
15 with the Solicitor's suggestion on sentencing.

16 **THE COURT:** Mr. Jones, you have heard the
17 facts about these particular charges, the
18 burglary, the attempted burglary, the petty
19 larceny. Is there anything you wish to add or
20 change or correct as it relates to those
21 particular charges?

22 **MR. JONES:** No, ma'am.

23 **THE COURT:** You admit that in August of
24 2012 you entered the home of Kersha Sessions
25 and took televisions and other equipment from

Guilty Plea

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1 that particular property and that you had no
2 permission to be there?

3 MR. JONES: Yes, ma'am.

4 THE COURT: And that on November 14 that
5 you attempted to enter the home of Ms. Williams
6 on [REDACTED] [REDACTED] [REDACTED] and attempted to take
7 items?

8 MR. JONES: Yes, ma'am.

9 THE COURT: Have you had enough time to
10 discuss this matter with Mr. Pournaras?

11 MR. JONES: Yes, ma'am.

12 THE COURT: Have you cooperated with him
13 so that he can prepare a defense for you?

14 MR. JONES: Yes, ma'am.

15 THE COURT: Mr. Jones, you understand also
16 that they are seeking restitution from you in
17 the amount of thousand dollars as it relates
18 to, uh, Ms. Sessions and the property that you
19 took from her home? Do you understand that?

20 MR. JONES: Yes, ma'am.

21 THE COURT: Has Mr. Pournaras done
22 everything that you have asked him to do in
23 connection with these particular charges?

24 MR. JONES: Yes, ma'am.

25 THE COURT: Mr. Jones, are you pleading

1 guilty freely and voluntarily?

2 MR. JONES: Yes, ma'am.

3 THE COURT: Are you pleading guilty to
4 these charges because you are, in fact, guilty
5 of the burglary, attempted burglary and petty
6 larceny?

7 MR. JONES: Yes, ma'am.

8 THE COURT: Then I will accept your plea.
9 I find it is freely and voluntarily made and
10 that you understand that you are giving up your
11 constitutional rights and your right to a jury
12 trial.

13 Yes, sir, Mr. Pournaras.

14 MR. POURNARAS: If I am able to address
15 one other thing Investigator Rast said, I would
16 like to bring to the court's attention this is
17 not the first time law enforcement has alleged
18 a significant reduction of property crimes
19 every time my client decides to plead. Again,
20 I have not seen any statistics that Mr. Rast is
21 referring to and that he has attempted to say.

22 We are here only on these two charges, Your
23 Honor. I would ask that those be the only two
24 charges that are considered today. I have just
25 had this discussion in the past that we had

1 this issue before. I have never been shown
2 these allegations every time we plead that my
3 client is responsible for the entirety of the
4 community's problems.

5 Having said that for the record, Your
6 Honor, I would like to say Mr. Jones did have a
7 probation hearing after these incidents
8 occurred. I was not present, Your Honor. I
9 only inherited this case after the revocation.
10 I have the sentencing sheets for that probation
11 revocation if Your Honor would like to see
12 that. My understanding is that he was revoked
13 90 days and continued on probation. The
14 probation department says he is scheduled to
15 remain on supervision until June 19th of 2015.
16 Would Your Honor like to see?

17 **THE COURT:** Yes please. (Reviewing.)

18 **MR. POURNARAS:** That was before the
19 Honorable Judge Young.

20 **THE COURT:** Yes, sir.

21 **MR. POURNARAS:** So it is my understanding
22 that he is still on supervision, Your Honor.
23 Since this incident occurred a year ago, he has
24 had a child. That is primarily what he has
25 been doing in this year, Your Honor. His

1 girlfriend is here as well. She is the primary
2 worker in the family. He stays at home with
3 his daughter most of time. He is, however,
4 looking for work. He is working on getting his
5 GED, Your Honor.

6 There are two programs that he is
7 interested in. One of them is Goodwill Work
8 Industries. It is a more recent program that
9 has been advocated through probation. The
10 other one is the Midlands Tech. He wants to go
11 into autobody work. He has got -- I believe he
12 is supposed to start working at Duke's Body
13 Shop on Beltline helping out in the interim,
14 Your Honor, as scheduled childcare permits. He
15 would like to address Your Honor so would Ms.
16 Ward at the appropriate time.

17 **THE COURT:** Yes, ma'am. Tell me your name
18 please.

19 **SPEAKER:** Crystal Ward.

20 **THE COURT:** Yes, ma'am.

21 **SPEAKER:** He has been helping with my
22 child. I have been working. He has been good.
23 I have not seen him do anything bad.

24 **THE COURT:** How old is your child?

25 **SPEAKER:** She is one.

Guilty Plea

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1 **THE COURT:** Thank you.

2 **SPEAKER:** You're welcome.

3 **THE COURT:** Yes, sir.

4 **MR. JONES:** Your Honor, I would like to
5 apologize to my victim. I man up to what I
6 did. Since I have been home, I have been
7 looking for a job. Currently, my uncle has his
8 own shop. I work whenever I am free and not
9 watching the child. Right now, I am currently
10 looking for a job and trying to get in school.
11 I am not hanging or nothing. I am home with my
12 child. I am on the right path right now.

13 **THE COURT:** Thank you. Anything further,
14 Mr. Pournaras?

15 **MR. POURNARAS:** No, Your Honor. I believe
16 that is it.

17 **THE COURT:** To the probation office, I
18 understand that at the time the probation
19 hearing came up, he had been charged with these
20 offenses. Is there any -- would the actual
21 plea and conviction be a further violation or
22 has it already been addressed?

23 **SPEAKER:** It would be a violation. He
24 was charged with those crimes. The judge gave
25 him 90 days and continued to be heard. Once he

1 dealt with these charges, he would come back
2 for the violation.

3 **THE COURT:** Is it possible we can take it
4 all up together today? So Mr. Jones, you
5 understand that your plea today would be a
6 violation of your probation case on the
7 Breaking into a Motor Vehicle. This says on
8 here Larceny, Breaking into a Motor Vehicle.

9 **MR. POURNARAS:** Yes, Your Honor. There
10 were two charges. They were concurrent. He
11 played at the same time.

12 **THE COURT:** Mr. Jones, do you understand
13 that you would be facing an additional hearing
14 that relates to probation. They will be
15 seeking to revoke your probation because of the
16 pleadings today. You understand that?

17 **MR. JONES:** Yes, ma'am.

18 **MR. POURNARAS:** Your Honor, I apologize.
19 When I read the order, it appeared to me that
20 it included it in the specified findings of
21 these charges. Again, I wasn't present at the
22 hearing.

23 **THE COURT:** It does. The description of
24 violation includes that there were allegations
25 related to these offenses. Of course, one of

Guilty Plea

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1 the ways as you well know to violate probation
2 is that you get arrested. So, there's a charge
3 of violation of the arrest and the conviction
4 is another violation.

5 MR. POURNARAS: I did advise him that it
6 was possible. My understanding was it had
7 already been taken care of.

8 THE COURT: And Mr. Pournaras, how long
9 was he in jail?

10 MR. POURNARAS: For?

11 THE COURT: On these charges.

12 MR. POURNARAS: On these charges, he was
13 arrested I believe 93 days. That is not
14 including the time that he spent pursuant to
15 the revocation.

16 THE COURT: Of course, that time is for
17 that particular charge so he can't get credit
18 for that on this one. (Pause)

19 Mr. Jones, on the petty larceny, that is a
20 30-day offense. I am going to sentence you to
21 the County detention center for 30 days. I
22 will give you credit for the time that you
23 served on that particular offense. On the
24 other -- on the other two, the attempted
25 burglary and burglary charge, I am going to

1 sentence you under the Youthful Offender Act
2 for an indeterminate period of time not to
3 exceed five years with a recommendation for
4 shock incarceration.

5 What that means, Mr. Jones, is that you
6 would be placed in the Department of
7 Corrections in a facility for those who are
8 determined to be youthful offenders. It is for
9 individuals between age of 17 to 26. You can
10 only receive such a sentence on one occasion.
11 It is designed to assist those who may not be
12 career criminals to help prevent from becoming
13 a career criminal.

14 I am recommending the shock program which
15 is more like boot camp. It is designed to give
16 you some structure and some instructions to
17 kind of help you be able to adapt to living a
18 lawful way. It is also designed to give you
19 tools that you may need to be able to be
20 gainfully employed. While you may have had
21 some previous felonies on your record, the
22 burglaries will make it much more difficult for
23 you to get gainful employment. They will offer
24 you programs so that if you do not have a GED,
25 they will help you obtain that. Whether or not

1 you are successful depends on you. If you
2 don't want to do shock, you just serve your up
3 to five years under the Youthful Offender Act
4 in whatever program they have available.

5 Shock is a lot more rigorous. There are
6 some physical components. You have to be
7 physically fit for it. You have to have mental
8 wherewithal to want to participate. They would
9 evaluate you for that. If they don't think you
10 have the right attitude and they don't think
11 you can successfully complete it, they won't
12 put you in shock. It is just a recommendation
13 by the court.

14 I don't know whether there is gang
15 affiliation. I am not making any comments on
16 that. To the extent that you have the
17 opportunity to change your association with
18 individuals, whether there are friends of yours
19 that you just have that get you in trouble or
20 whether it is actually gang-related activity, I
21 hope you will take the opportunity to remove
22 yourself from those situations because
23 ultimately, it is not going to help you. You
24 will either end up back in jail for a long time
25 or you will end up dead. I'm sure nobody wants

1 to see that.

2 I'm also going to order restitution in the
3 amount of \$1000. You will be required, once
4 you are released from the Department of
5 Corrections. And they will supervise you on
6 parole just like they do on probation. You
7 will have to make your payments on restitution.

8 I hope that you, you know, now that you
9 have a family, you have a child, I hope you
10 will reflect on that and figure out what you
11 want to do in your life. 19 is very young. I
12 know, at 19, you don't necessarily know what
13 you want to do with your life. This may be the
14 time to figure out whether you want to spend it
15 in jail or whether you want to do something
16 more productive with your life. I would
17 encourage you to take advantage of the
18 opportunities given to you. Good luck to you.

19 **MS. CAVANAUGH:** Your Honor, while he is on
20 parole, is there to be no contact with both
21 victims?

22 **THE COURT:** Yes.

23 **MS. CAVANAUGH:** I only address this
24 because I just got a case on PCR for this
25 issue. The recommendation of shock is not

Guilty Plea

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1 honored on Burglary second under the Youthful
2 Offender Act. Because he is under 21 they
3 won't make him serve a mandatory 36 months at a
4 youthful detention center and shock is not
5 available for these charges.

6 **THE COURT:** That must be a change. I
7 don't know anything about how the Department of
8 Corrections runs its programs. Mr. Jones, I do
9 have to tell you that I can only make the
10 recommendation. If the department has other
11 policies or procedures, they are going to
12 follow what their requirements are. It may be
13 available to you; it may not be available to
14 you.

15 Whatever youthful offender program that
16 they have, -- you are a youthful offender. You
17 under the age of 26 and you don't have a very
18 long record -- you need to take advantage of
19 the positive aspects of that program whether
20 you are there for three years or five years or
21 two years or one year. Whatever program they
22 have, you really need to take advantage of
23 those because, in the long run, it will benefit
24 yourself. I think we can set you on a path
25 where you will not come back here again and we

1 won't have to see you again on these issues and
2 we won't deal with those things.

3 When you are released, there should be no
4 contact with the victims in either case. Any
5 restitution that you will be required to pay
6 will be made to the Department of Probation
7 Pardon and Parole Services or whatever
8 department it is. They will collect the money
9 from you and forward it on to the victim. You
10 won't have any contact. Again, good luck to
11 you.

12 **MR. JONES:** How long is the boot camp?

13 **THE COURT:** I'm sorry?

14 **MR. JONES:** How long is the boot camp?

15 **THE COURT:** I have no idea how long the
16 program is. Like I said, Mr. Pournaras is
17 telling me that it is not available to you. I
18 don't know whether it is or not. You can
19 certainly ask to request it once you get there.

20 If it is something that they see that you
21 are -- that you really have a good mind and a
22 good idea and you will really want to be able
23 to, uh, take advantage of those programs, even
24 if boot camp is not available, they may direct
25 you to other programs which will have the same

Guilty Plea

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1 components and be just a little bit longer
2 time. They will have the same components but
3 you will still have the benefit of that. You
4 can ask. It certainly wouldn't hurt for you to
5 ask. Even if you are not eligible, you need to
6 have the right attitude and take advantage of
7 whatever programs they do have. Good luck to
8 you.

9 MR. POURNARAS: Thank you, Your Honor.

10

11 (WHEREUPON, the proceedings conclude at
12 approximately 10:53 a.m.)

13

14

15

2014CP4002810

STATE OF SOUTH CAROLINA

County of Richland

In the Court of Common Pleas

Da'Quan Jones #351398
Full name and prison number (if any) of Applicant

vs.
STATE OF SOUTH CAROLINA
Name of Respondent

County of Richland

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

Since every application must be sworn to 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 applicant was convicted.

RICHLAND COUNTY
FILED
2014 MAY -2 9 12 21
JEANETTE W. WOOD
C.C.P.

1. Place of detention TRENTON CORRECTION INSTITUTION

2. Name and location of Court which imposed sentence Richland County Judicial Center
1701 Main Street, Columbia, SC

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

- (a) N/A
- (b) N/A
- (c) N/A

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

- (a) Oct, 14 2013
- (b) NOT TO EXCEED 5 YEARS 90A
- (c) Recommend To Shock Incarceration program

5. Check whether a finding of guilty was made

- (a) after a plea of guilty Yes it was an open plea.
 (b) after a plea of not guilty N/A
 (c) after a plea of nolo contendere N/A

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

N/A

7. If you answered "yes" to (6), list

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

- i. N/A
 ii. N/A
 iii. N/A

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

- i. N/A
 ii. N/A
 iii. N/A

(c) the date of each such result:

- i. N/A
 ii. N/A
 iii. N/A

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

- i. N/A
 ii. N/A
 iii. N/A

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) I was told that I would be going to the shock program.
 (b) The judge told me it's like boot camp. Judge LEE.
 (c) I didn't know that I would be doing 3 years.

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

- (a) The judge gave me shock and my charge is second degree burglar.
 (b) Under the Yoa any body sentence with a 2nd degree burglary do 3 y.
 (c) It was pose to get drop to a 3rd degree for me to do shock.

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) I was improperly sentence under the Yoa Act. The judge didn't
 (b) know burglary and couldn't go to shock. She never drop the charge
 (c) down to a 3rd degree.

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(c) the disposition thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

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

- i. N/A
- ii. N/A
- iii. N/A

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) I wrote my public defender he never wrote back.
- (b) I didn't know about PCB's or how to file it.
- (c) _____

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

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

17. If you answered "yes" to one or more parts of (16), list:

- (a) the name and address of each attorney who represented you
 - i. Constatine Pankovress ~~1701 Main Street Columbia, SC 29201 (4th Floor)~~
1701 main street Columbia, SC 29201 (4th Floor)
 - ii. _____
 - iii. _____

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

- i. That's the lawyer I took the plea with and was sentence with.
- ii. _____
- iii. _____

18. State clearly the relief you seek in filing this application.

To have my charge drop to a 3rd degree to do shock or get time served because I been lock up 6 months now.

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

N/A

STATE OF SOUTH CAROLINA

VERIFICATION

County of Richland

I, DaQuan Jones, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Daquan Jones

SWORN to and subscribed before me this 21st day of April, ~~2014~~ 2014
Elaine M. Freeman (L.S.)
Notary Public

My Commission Expires: June 22, 2021.

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

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

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

Daquan Jones
Applicant

RICHLAND COUNTY
FILED
2014 MAY -2 PM 12:44
JEANETTE W. MCBRIDE
C.C.P. & G.S.

SWORN or affirmed to and subscribed before me this 21st day of April, ~~2014~~ 2014
Elaine M. Freeman
Notary Public

My Commission Expires June 22, 2021.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS)
FOR THE FIFTH JUDICIAL CIRCUIT)

DaQuan Jones, #351398,)

2014-CP-40-02810)

Applicant,)

v.)

RETURN)

State of South Carolina,)

Respondent.)
_____)

Respondent, making its Return to the Application for post-conviction relief filed May 2, 2014, 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 April 2013 term of the Richland County Grand Jury for Attempted Burglary – Second Degree (Non-Violent) (2013-GS-40-02368) and Petit Larceny – Value \$2,000 or Less (2013-GS-40-02369). Applicant was represented by Constantine G. Pournaras, Esquire. On October 14, 2013, Applicant appeared before the Honorable Alison R. Lee, where he pled guilty as indicted. Judge Lee sentenced Applicant to a sentence not to exceed five years under the Youthful Offender Act for Attempted Burglary – Second Degree (Non-Violent) and thirty days for Petit Larceny – Value \$2,000 or Less.¹ Applicant did not appeal his guilty pleas or sentences.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject convictions and Applicant's records from the South Carolina Department of Corrections. The transcript from Applicant's guilty plea proceeding has been

¹ Applicant was given credit for time served for this sentence and does not challenge this conviction in his application.

ordered and will be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "The judge gave me shock and my charge is second degree burglary. Under the YOA any body sentence with a 2nd degree burglary do 3y. It was pose to get drop to a 3rd degree for me to do shock." [sic]
2. I was improperly sentence under the YOA act. The judge didn't know burglary 2nd couldn't go to shock. She never drop the charge down to a 3rd degree." [sic]

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.

Respondent interprets Applicant's allegations as those of ineffective assistance of 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).

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

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

IV.

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.

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: *Megan E. Harrigan*
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

August 18th 2014

1 STATE OF SOUTH CAROLINA) IN COMMON PLEAS
 2 COUNTY OF RICHLAND) COURT
 3)
 4 DAQUAN JONES,)
 5) TRANSCRIPT
 6 -V-) OF
 7) RECORD
 8 STATE OF SOUTH CAROLINA,) 2014-CP-40-02810
 9 DEFENDANT.)

10

JANUARY 21, 2015

RICHLAND, SOUTH CAROLINA

11

12

13
14 B-E-F-O-R-E:

15 HONORABLE CASEY L. MANNING, JUDGE;

16

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

18 FOR THE PLAINTIFF:

19 MS. GOODE, ESQ.

20

21 FOR THE DEFENDANT:

22 MR. MITCHELL, ESQ.

23

24

25

I-N-D-E-X

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6	CERTIFICATE OF REPORTER:	20
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1 (The following proceedings were held on
2 January 21, 2015.)

3 THE COURT: All right. Mr. DaQuan Jones. You're
4 Mr. Jones?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Come around, sir.

7 MR. MITCHELL: May it please the Court?

8 THE COURT: Yes, sir.

9 MR. MITCHELL: This is DaQuan Jones vs. the State
10 of South Carolina, case number 2014-CP-40-02810. Mr. Jones
11 was indicted during the April 2013 term of the Richland
12 County Grand Jury for attempted burglary, second degree,
13 nonviolent, and petit larceny. He was presented on these
14 charges by Mr. Constantine Pournaras. He pled guilty on
15 October 14th, 2013, before the Honorable Alison R. Lee. He
16 was sentenced to -- he was sentenced under YOA of a sentence
17 not to exceed five years for the attempted burglary second
18 degree, and 30 days for the petit larceny. He did not
19 appeal those guilty pleas or sentence.

20 Mr. Jones filed this application for
21 post-conviction relief May 2nd, 2014, where he's raised
22 various aspects of ineffective assistance of counsel. He's
23 present here today represented today by Ms. Anna Goode.
24 I'll turn it over to her at this time.

25 MS. GOODE: Okay. Your Honor, just to streamline,

1 we're going to focus only on the sentencing aspect of the
2 PCR application.

3 THE COURT: Okay.

4 MS. GOODE: At this time, I would call DaQuan
5 Jones.

6 THE COURT: Come around, Mr. Jones.

7 THEREUPON,

8 DAQUAN JONES,

9 after having been duly sworn, testified as follows:

10 THE CLERK: Have a seat in the witness box and
11 state your name for the record, please.

12 DIRECT EXAMINATION

13 BY MS. GOODE::

14 Q. State your name for the record.

15 A. DaQuan Jones.

16 THE COURT: Sit a little closer to the microphone,
17 Mr. Jones. Speak up, please, sir.

18 THE WITNESS: DaQuan Jones.

19 BY MS. GOODE::

20 Q. Mr. Jones, you just heard the attorney general discuss
21 your sentencing on your case of burglary second as a
22 YOA indeterminate sentence of five years. In addition,
23 was shock incarceration also recommended as part of
24 that sentence by Judge Lee?

25 A. Yes, ma'am.

1 Q. Okay. And he stated that Constantine or Deno Pournaras
2 was your attorney for this, correct?

3 A. Yes, ma'am.

4 Q. How long had he been your attorney prior to your plea
5 on October 14th of 2013?

6 A. Two months, I think.

7 Q. Okay. Who did you originally have before that?

8 A. Connie Bredon.

9 Q. Okay. And when Deno became your attorney in September
10 of 2013, about how many meetings did you have with him
11 prior to your plea?

12 A. Two meetings.

13 Q. Okay. And what was that first meeting regarding?

14 A. With the Schmerber motion.

15 Q. The Schmerber motion?

16 A. Yes, ma'am.

17 Q. And at that Schmerber motion, you, ultimately,
18 consented to that. Did y'all discuss potential
19 sentences in your case and plea offers at that time?

20 A. Yes, ma'am.

21 Q. And what was those plea offers and what was that
22 discussion?

23 A. He said that the solicitor said she was going to -- she
24 wasn't going to drop the charges down. She said she
25 was going to -- it was going to be an open plea from

1 zero to 10.

2 Q. Okay. And was there a discussion of YOA at that time?

3 A. Yeah, I told them that I didn't want to be under YOA.

4 Q. Okay. In fact, you were already on adult probation,
5 correct?

6 A. Yes, ma'am.

7 Q. You had a second meeting with him, did you also discuss
8 the plea at that time?

9 A. Yes, ma'am.

10 Q. Was there also a discussion of YOA then?

11 A. No, ma'am. It was an open plea.

12 Q. Okay. You had already made clear to him you did not
13 want a YOA sentence, correct?

14 A. Yes, ma'am.

15 Q. On the day of the plea of October 14th, 2013, did you
16 speak with your attorney?

17 A. Yes, ma'am.

18 Q. And about how long did y'all speak?

19 A. About 30 minutes to an hour.

20 Q. What did y'all go over during that 30 minutes?

21 A. The open plea, the plea I was taking.

22 Q. And during the sentencing, did your attorney ever ask
23 for a particular sentence or for you not to be on YOA?

24 A. No, ma'am.

25 Q. Okay. And, ultimately, you were given a YOA sentence,

- 1 correct?
- 2 A. Yes, ma'am.
- 3 Q. In addition, there was a recommendation of shock
4 incarceration?
- 5 A. Yes, ma'am.
- 6 Q. Okay. At the time that shock incarceration was brought
7 up as the potential sentence for your case when Judge
8 Lee sentenced you, did anybody speak up regarding this
9 sentence?
- 10 A. The solicitor.
- 11 Q. Okay. Did your attorney ever speak up about it?
- 12 A. No, ma'am.
- 13 Q. Okay. Did he ever object to it?
- 14 A. No, ma'am.
- 15 Q. Is it your contention today that he was ineffective for
16 not objecting to the sentence being invalid since shock
17 incarceration is not an availability for burglary
18 second?
- 19 A. Yes, ma'am.
- 20 Q. And you're asking Judge Manning today to overturn your
21 sentence, just to be sentenced correctly?
- 22 A. Yes.
- 23 Q. Not necessarily to overturn your plea, but just your
24 sentence so you can be sentenced with a valid sentence?
- 25 A. Yes, ma'am.

1 Q. Okay.

2 MS. GOODE: No further questions, Your Honor.

3 THE COURT: All right.

4 CROSS-EXAMINATION

5 BY MR. MITCHELL::

6 Q. Morning, Mr. Jones?

7 A. Good morning.

8 Q. All right. You pled guilty to attempted burg second
9 and petit larceny, is that correct?

10 A. Yes, sir.

11 Q. Now, you had -- the case was pending for trial, then
12 you decided to plead guilty, isn't that right?

13 A. Yes, sir.

14 Q. Okay. Now, there was some DNA testing done in the
15 case, isn't that right?

16 A. Yes, sir.

17 Q. That was where -- they were testing -- you cut yourself
18 on a window, it was a blood test, right?

19 A. That's correct.

20 Q. They found blood at the scene?

21 A. Yes, sir.

22 Q. Okay. They matched that DNA to you, right?

23 (There was no response.)

24 Q. So you're not challenging whether -- your guilt in this
25 case today, are you?

- 1 A. No, sir.
- 2 Q. So it's just the sentence, right?
- 3 A. Yes, sir.
- 4 Q. Okay. You're unhappy with the sentences you received?
- 5 A. Yes, sir.
- 6 Q. Okay. Now, the deal with the solicitor was -- didn't
7 have anything to do with YOA, isn't that right?
- 8 A. Yes, sir.
- 9 Q. So it was open zero to ten?
- 10 A. Yes, sir.
- 11 Q. Is that correct? Okay. Now, I think certain victims
12 asked for the maximum in that case, isn't that right?
- 13 A. Yes, sir.
- 14 Q. I think the investigator also made some strong remarks,
15 too, in favor of you being in prison more than the YOA
16 sentence, isn't that right?
- 17 A. Yes, sir.
- 18 Q. Okay. Now, shock was explained to you that it was a
19 recommendation at the plea, isn't that right?
- 20 A. Not that I remember, sir.
- 21 Q. Now, Judge Lee explained to you that it was just a
22 recommendation for shock and that you were not
23 guaranteed to get it, isn't that right?
- 24 A. Yeah, I think -- yes, sir.
- 25 Q. Okay. Now, you understood that it wasn't a guarantee

1 that you would go into the shock, isn't that right?

2 A. Yes, sir.

3 Q. Okay. So you had hoped to get shock, you got a
4 different sentence -- well, you hoped to get shock,
5 right?

6 A. Yes, sir.

7 Q. Okay. And under -- the way that SCDC Department of
8 Corrections interprets that is it's just a
9 recommendation for that, right?

10 A. From what I recall, yes, sir.

11 Q. So you understood that when you pled?

12 A. Not when I pled. When I -- when I got to Kirkland,
13 this kind of still was going on.

14 Q. Okay. But that was all mentioned on the record, it was
15 a recommendation and not guaranteed you were going to
16 get it, isn't that right?

17 A. Yes, sir.

18 Q. Okay.

19 MR. MITCHELL: No further questions, Your Honor.

20 THE COURT: Anything further, Ms. Goode?

21 MS. GOODE: No, sir.

22 THE COURT: All right. Any other questions of
23 this witness?

24 MR. MITCHELL: No, Your Honor.

25 THE COURT: All right. You may step down, sir,

1 Mr. Jones.

2 Anything further?

3 MR. MITCHELL: Your Honor, the State calls
4 Constantine Pournaras.

5 THE COURT: Come around, Mr. Pournaras.

6 THE WITNESS: Good morning, Judge.

7 THEREUPON,

8 CONSTANTINE POURNARAS,

9 after having been duly sworn, testified as follows:

10 THE CLERK: Have a seat in the witness box and
11 state your name for the record.

12 THE WITNESS: Constantine Pournaras.

13 DIRECT EXAMINATION

14 BY MR. MITCHELL::

15 Q. Good morning, Mr. Pournaras.

16 A. Good morning.

17 Q. Thank you for being here today. Have you had the
18 opportunity to review your file in preparation for this
19 hearing?

20 A. Yes.

21 Q. Were you present when Mr. Jones was just testifying?

22 A. Yes.

23 Q. Okay. How did you become involved in Mr. Jones's case?

24 A. The case was originally conflicted out of our office to
25 Ms. Bredon and then for one reason or another, I

1 believe she was relieved and it came back to our office
2 having no longer -- there was no longer a conflict at
3 the time, so it was sent to me.

4 Q. All right. Do you have a record of when you met with
5 Mr. Jones?

6 A. I did not bring that with me, but I -- I agree with his
7 recitation of our meetings.

8 Q. So two or three times before and then before he pled
9 guilty that day, is that right?

10 A. Yes, we also had a probation matter.

11 Q. Okay.

12 A. That was taken care of.

13 Q. So he was on probation at the time?

14 A. Yes.

15 Q. Well, his issue today is the YOA sentence of shock
16 incarceration?

17 A. Yes.

18 Q. What were your discussions on the plea deal the
19 solicitor had in place?

20 A. Well, that there really wasn't one. The solicitor in
21 the case had scheduled it for trial. We talked about
22 that. We had spoken about the Schmerber issue. I
23 talked to him about, you know, what he wanted. And
24 having gone through the probation case, we did not ask
25 for a Y. We focused on the fact that he was already

1 supervised and we focused on the fact he was interested
2 in programs through probation that he wanted to take
3 part of. And we were hoping that it would be a
4 suspended sentence concurrent with the one that he was
5 already on.

6 Q. Okay. So there was no recommendation by the State for
7 the Y?

8 A. No.

9 Q. You didn't ask for a Y, is that correct?

10 A. No.

11 Q. So Judge Lee decided to sentence him under youthful
12 offender act after hearing the plea, is that right?

13 A. Yes, I note -- I recall specifically he did not want a
14 Y. Being that he already had something on his record,
15 it wasn't something he was interested in from my
16 recollection.

17 Q. To your knowledge, it's a legal sentence that he
18 received, is this right?

19 A. Yes -- well, the sentence was legal, yes.

20 THE COURT: What did you say, sir?

21 THE WITNESS: Yes, Your Honor, I believe it was a
22 legal sentence.

23 THE COURT: A legal sentence?

24 THE WITNESS: Legal.

25 THE COURT: Okay.

1 MR. MITCHELL: All right. No further questions.

2 THE COURT: All right.

3 Ms. Goode.

4 MS. GOODE: Very briefly, Your Honor.

5 CROSS-EXAMINATION

6 BY MS. GOODE::

7 Q. At the time of Mr. Jones's plea, are you aware of how
8 old Mr. Jones was?

9 A. There was some confusion to that. I believe I thought
10 him to be over 21 at the time because the information
11 from the jail and his rap sheet had his birthday at
12 1991. I believe the warrant and the sentencing sheet
13 had it as 1994. I, typically, always print out the
14 jail's information so that I have a record of how long
15 he had been incarcerated, which listed it as 1991. I
16 cannot say for certain, but I lean towards thinking he
17 was 22 at the time.

18 Q. Okay. And at that time -- I guess prior to the plea,
19 you said you had a discussion with him about YOA
20 sentencing and how he did not want to have YOA?

21 A. Yes.

22 Q. And at any time during the plea, did you specify to the
23 judge a particular amount of time or what you were
24 seeking for?

25 A. I don't believe so. I don't -- I don't recall

1 specifically, but I definitely recall I did not raise
2 the issue of Y whatsoever.

3 Q. And when the YOA sentence was brought down and she
4 recommended shock, what was your thoughts on whether
5 that was a sentence that was available to him at that
6 time, the shock incarceration?

7 A. I thought that it was available. I agreed with what
8 she -- with what Judge Lee said at the time, that she
9 -- when Ms. Cavanaugh brought up that she didn't
10 believe shock was an option, Judge Lee thought that it
11 was an option and that if it wasn't, that was a recent
12 change. I was more inclined to agree with Judge Lee at
13 the time. I wasn't certain on that issue at the time
14 either.

15 Q. And were you agreeing with her at the time because you
16 believed he was 21 or 22 and thought it was available
17 as he was older than if he was 18 or 19?

18 A. I mean, that is possible because -- I don't have that
19 in my notes, but at the time, I was under the
20 impression that being over 21, shock was still
21 available because the statute only requires the 36
22 months for persons under 21. And I, also, wasn't aware
23 that SCDC applied it across the board regardless of
24 age.

25 Q. And at the time she gave the shock incarceration, it

1 seemed as if she did not want him to do a straight
2 three-year time for time, correct, day for day?

3 A. I mean, I can't say what she was thinking, but her --
4 it seemed to me that she thought the shock program
5 would be beneficial being that it was shorter, and she
6 reassured him of that, and that it would be more
7 structured and they would have more opportunities
8 through that program if I had to guess at what her
9 reasoning was.

10 MS. GOODE: No further questions, Your Honor.

11 THE COURT: Anything further?

12 REDIRECT EXAMINATION

13 BY MR. MITCHELL::

14 Q. Do you know now how old Mr. Jones was at the time of
15 the plea?

16 A. Yes, he was 19 at the time of the plea.

17 Q. So he was eligible for the YOA under the statute?

18 A. Yes.

19 Q. Is that correct? And, also, the Court went over that
20 this is a recommendation I think three or four times,
21 just the recommendation for the shock, do you recall
22 that?

23 A. Yes, Judge Lee did say that this is a recommendation,
24 you know.

25 Q. It may or may not be offered?

1 A. She did say that.

2 Q. Okay.

3 MR. MITCHELL: No further questions.

4 THE COURT: One or two questions.

5 EXAMINATION

6 BY THE COURT::

7 Q. Now, your client wanted you to specifically tell Judge
8 Lee that he did not want shock incarceration?

9 A. After she explained what shock was, I believe that he
10 liked that when she explained what shock was because he
11 ever asked her followup questions.

12 Q. All right. Let me back up a little bit. My question
13 is this, did your client ask you to tell Judge Lee he
14 did not want shock incarceration?

15 A. No, he did not.

16 THE COURT: Okay. That's all I needed to know.
17 Anything further?

18 MR. MITCHELL: Nothing further.

19 MS. GOODE: Can I just follow up on that?

20 RECROSS-EXAMINATION

21 BY MS. GOODE::

22 Q. During your original meeting with him, you had a
23 conversation with him reviewing YOA, correct, and he
24 said he did not want a YOA sentence?

25 A. Yes.

1 Q. Okay.

2 MS. GOODE: No further questions.

3 THE COURT: Did you inform Judge Lee that you had
4 a conversation with Mr. Jones wherein he wanted you to ask
5 her not to give him shock?

6 THE WITNESS: I did not.

7 THE COURT: All right. Thank you, sir. You may
8 step down.

9 THE WITNESS: Thank you, Your Honor.

10 MR. MITCHELL: No further witnesses for the State.

11 THE COURT: Anything further?

12 MS. GOODE: No, sir, Your Honor.

13 THE COURT: Can I see y'all a minute?

14 MS. GOODE: Yes, sir.

15 (Whereupon, a bench conference was held
16 off the record.)

17 THE COURT: All right. Mr. Jones, where are you
18 originally from, here in Columbia?

19 THE DEFENDANT: Columbia, South Carolina.

20 THE COURT: Where did you go to high school?

21 THE DEFENDANT: Ridgeview.

22 THE COURT: Ridgeview. What's your middle name?

23 THE DEFENDANT: Jamil.

24 THE COURT: What?

25 THE DEFENDANT: Jamil.

1 THE COURT: Jamil?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Well, anyway, I wish you
4 the very best. I'll think about your case and let you know
5 my decision in due course. All right.

6 THE DEFENDANT: Okay.

7 THE COURT: Thank you.

8 MS. GOODE: Thank you, Your Honor.

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1 COUNTY OF RICHLAND)

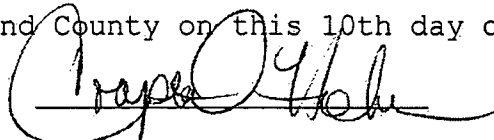
2 CERTIFICATE OF REPORTER

3 I, Crystal Holmes, hereby certify that I reported
4 the preceding case entitled DaQuan Jones Vs. State of SC
5 Case No. 2014-CP-40-02810, at the Richland County
6 Courthouse, January 21, 2015.

7 I FURTHER CERTIFY that the foregoing pages 1
8 through 20 constitute a true, accurate and full transcript
9 of said hearing.

10 I FURTHER CERTIFY that I am not employed by any of
11 the parties hereto and I have no financial interest in the
12 outcome of said case.

13 IN WITNESS WHEREOF, I have heretofore set my hand
14 and seal at Richland County on this 10th day of April, 2015.



15
16 Crystal Holmes, Official Court Reporter

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

DaQuan Jones, #351398,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2014-CP-40-02810

ORDER OF DISMISSAL

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SC Court of Appeals

2015 FEB 13 AM 9:11
CLERK OF COURT
RICHLAND COUNTY

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed May 2, 2014. Respondent made its Return on August 19, 2014, requesting an evidentiary hearing be convened. Anna R. Good, Esquire, was appointed by the Richland County Clerk of Court.

An evidentiary hearing was held on January 21, 2015, at the Richland County Courthouse. Applicant was present and represented by Counsel Anna R. Good. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

Applicant testified on his own behalf at the PCR hearing. Also testifying were Applicant's plea counsel, Constantine G. Pournaras, Esquire. The Court had before it the Richland County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the guilty plea transcript.

I. 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 April 2013 term of the Richland County Grand Jury for Attempted Burglary - Second Degree (Non-Violent) (2013-GS-40-02368) and Petit Larceny - Value \$2,000 or Less (2013-GS-

40-02369). Applicant was represented by Constantine G. Pournaras, Esquire. On October 14, 2013, Applicant appeared before the Honorable Alison R. Lee, where he pleaded guilty as indicted. Judge Lee sentenced Applicant to a sentence not to exceed five (5) years under the Youthful Offender Act (YOA) for Attempted Burglary – Second Degree (Non-Violent) and thirty days for Petit Larceny – Value \$2,000 or Less.¹ Applicant did not appeal his guilty pleas or sentences.

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance counsel in that counsel failed to oppose a sentence under the YOA.

II. SUMMARY AND EVIDENCE PRESENTED AT THE PCR HEARING

Applicant's Testimony

Applicant alleged that his trial counsel was ineffective in failing to object to the sentence imposed pursuant to the Youthful Offender Act and in failing to request an active sentence. Applicant testified that Counsel had represented him for about two months prior to his guilty plea and that he was represented by another member of the Richland County Public Defenders' Office before. He testified that he and Counsel had met two times before the guilty plea hearing. In those meetings, Applicant testified Counsel discussed pleading guilty and that he would be pleading guilty to an open plea where he would be sentenced within a range of 0-10 year's imprisonment. Applicant stated that he understood there were no plea agreements in place and that he would be pleading "straight up". Applicant testified he did not take issue with his guilt, but only with the sentence imposed and his Counsel's failure to argue for an active sentence and in failing to object to the YOA sentence.

¹ Applicant was given credit for time served for this sentence and does not challenge this conviction in his application.

Counsel Constantine G. Pournaras's Testimony

Trial counsel testified he was appointed to represent Applicant through his position with the Richland County Public Defender's Office. Counsel testified he had discussions with Applicant about a proper disposition to the case and the length of the sentence. Counsel testified the case was scheduled for trial and through his discussions with Applicant, he advised him to plead guilty. Counsel testified that he did not ask the plea court to impose a sentence pursuant to the YOA, but that is what Judge Lee ultimately imposed. Counsel testified he believed the sentence to be a legal sentence and did not see any reason to object to it. Counsel testified that there was a discussion of how Applicant was unlikely to be admitted into the Shock Incarceration Program since it was his understanding that the South Carolina Department of Corrections does not honor a court's recommendation when a defendant is convicted of Second Degree Burglary. Counsel also testified that Applicant did not inform him that he would prefer an active sentence as opposed to a sentence pursuant to the YOA.

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "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, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (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. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds counsel's testimony to be credible and persuasive

on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Failure to Oppose a Sentence Pursuant to the YOA and Failure to Object to the Sentence Imposed

This Court finds Applicant failed to meet his burden to prove counsel was ineffective in failing to object to the sentence imposed and in failing to oppose a sentence pursuant to the YOA. Applicant testified he did not wish to be sentenced pursuant to the YOA and hoped to receive an active adult sentence. This Court finds that testimony not credible. Applicant presented no testimony to support his argument that he desired an active adult sentence. More importantly, Applicant testified that he did not convey this request to Counsel. Counsel had no way of knowing what sentence Applicant hoped to receive. Our supreme court has maintained that criminal defense attorneys are not expected to be clairvoyant. See Thornes v. State, 310 S.C. 306, 426 S.E.2d 764 (1993) ("This Court has never required an attorney to anticipate or discover changes in the law, or facts which did not exist, at the time of the trial."). See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997).

It is also of significant note that there were no plea deals in place. The State made no recommendation to the court regarding sentencing. Applicant corroborated this when he testified that he understood he was entering into an open plea with a possible sentencing range of 0-10 year's imprisonment. Counsel also confirmed this in his testimony that Applicant was entering into an open plea. This Court finds Applicant's hope that he would not be sentenced under the YOA to be a product of wishful thinking. See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997) ("Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made."). The record,

especially the plea proceeding transcript, makes clear that Applicant was not promised any specific sentence by Counsel. This Court finds Applicant has failed to meet his burden of proof of showing Counsel was deficient and finds Counsel's action reasonable under the circumstances.

This Court finds Applicant's contention that he was allegedly prejudiced by Counsel's failure to object to the sentence and to oppose a YOA sentence unfounded. A trial court has broad discretion in imposing criminal sentences within the limits prescribed by law. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976); Clark v. State, 259 S.C. 378, 192 S.E.2d 209 (1972). The courts normally have no jurisdiction to correct a sentence given within statutory limits. To be entitled to relief, the Applicant must prove that the alleged excessive sentence was the result of partiality, prejudice, oppression or corrupt motive, or that the sentence constitutes cruel and unusual punishment per se. Clark, Id.; State v. Cogdell, 273 S.C. 563, 257 S.E.2d 748 (1979).

The sentence imposed by the plea court was legal, fully within the court's discretion, and was within the statutory limits. See S.C. Code § 16-11-312 (C)(1) ("Burglary in the second degree pursuant to subsection (A) is a felony punishable by imprisonment for not more than ten years."). Applicant was properly sentenced under the YOA since he was less than twenty-one (21) years of age at the time of the guilty plea. See S.C. Code § 24-19-10(d)(iv) ("'Youthful offender' means an offender who is: seventeen but less than twenty-one years of age at the time of conviction for burglary in the second degree."). This Court finds applicant has failed to meet his burden in proving that he was prejudiced by Counsel's alleged erroneous decisions.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this

matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

V. CONCLUSION

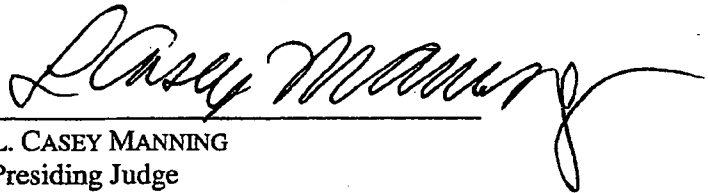
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 11 day of Feb., 2015.



L. CASEY MANNING
Presiding Judge

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGM F IN A CIVIL CASE

CASE NUMBER: **2014CP4002810**

Da Quan #351398 Jones

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

RECEIVED

FEB 24 2015

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount is to be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

SC Court of Appeals

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 13 February 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Da Quan #351398 Jones

Anna Rawl Good

Megan Harrigan Jameson

Da Quan #351398 Jones

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court *Jeanette W. McBride*

WITNESSES

(s) Inv. B. Rast - RCSD

DOCKET NO. 2013-GS-40-02368

The State of South Carolina

County of

Richland

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

ARREST WARRANT NUMBER

2012A4010201657

COURT OF GENERAL SESSIONS

116

APRIL TERM 2013

THE STATE

vs.

Daquan Jamil Jones

CERTIFIED TRUE COPY OF ORIGINAL FILED
Jacquetta Williams
C.C.C.F.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

ACTION **TRIPLE BILL**

Foreperson of Grand Jury

APR 12 2013

Date:

VERDICT

Indictment for
ATTEMPTED BURGLARY
2ND DEGREE (NON-VIOLENT)

SC Code: 16-11-0312

CDR Code: 0080; 1151

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on April 10, 2013, the Grand Jurors of Richland County present upon their oath:

ATTEMPTED BURGLARY-2ND DEGREE (NON-VIOLENT)

That Daquan Jamil Jones did in Richland County on or about November 14, 2012, willfully and unlawfully attempt to enter the dwelling belonging to CAROLYN BOST-WILLIAMS located at [REDACTED] without consent and with the intent to commit a crime therein, in violation of the Common Law and Section 16-11-312(A), S. C. Code of Laws, (1976, as amended).

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



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Inv. B. Rast - RCSD

DOCKET NO. 2013-GS-40-02369

The State of South Carolina

County of

Richland

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

ARREST WARRANT NUMBER

2012A4010900233

COURT OF GENERAL SESSIONS

APRIL TERM 2013

116

THE STATE vs.

Daquan Jamill Jones

Defendant

Witness:

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

CERTIFIED TRUE COPY OF ORIGINAL FILED, *Jessie M. Bride* C.C.C.P.&G.S. RICHLAND COUNTY SOUTH CAROLINA

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

APR 12 2013

VERDICT

Indictment for PETIT LARCENY - VALUE \$2000 OR LESS

SC Code: 16-13-0030(A) CDR Code: 3419

Foreperson of Petit Jury, Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

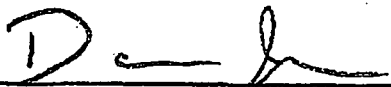
INDICTMENT

At a Court of General Sessions, convened on April 10, 2013, the
Grand Jurors of Richland County present upon their oath:

PETIT LARCENY – VALUE \$2000 OR LESS

That Daquan Jamil Jones did in Richland County on or about August
11, 2012, take and carry away the personal goods of Kersha Sessions,
valued at Two Thousand (\$2,000.00) dollars or less, described as follows:
a television and/or a surround-sound system and/or an Apple Ipad and/or
other personal goods, with the intent to deprive the owner permanently of
such property and to convert the goods to his own use, in violation of
Section 16-13-0030(B)(1), S.C. Code of Laws, (1976, as amended).

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



DAN JOHNSON, SOLICITOR

WITNESSES

(s) Inv. B. Rast - RCSD

DOCKET NO. 2013-GS-40-02370

The State of South Carolina

County of

Richland

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

Defendant

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

ARREST WARRANT NUMBER

2012A4010900234

COURT OF GENERAL SESSIONS

APRIL TERM 2013

116

THE STATE

vs.

Daquan Jamil Jones

Defendant

Witness:

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

CERTIFIED TRUE COPY OF ORIGINAL FILED. *Jacqueline W. McBride* C.C.C.R.&G.S. RICHLAND COUNTY SOUTH CAROLINA

ACTING CLERK OF COURT
TRUE BILL

Foreperson of Grand Jury
Date: APR 12 2013

VERDICT

Indictment for

BURGLARY

2ND DEGREE (NON-VIOLENT)

SC Code: 16-11-0312

CDR Code: 0080

Foreperson of Petit Jury
Date:

