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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Aiken County

The Honorable Tanya A. Gee, Circuit Court Judge

TIMOTHY CLEMENT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001425

APPENDIX

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1 STATE OF SOUTH CAROLINA

CIRCUIT COURT

2 COUNTY OF AIKEN

2013-GS-02-00551, -556, -557 & -567

4 STATE OF SOUTH CAROLINA,

5 -vs-

TRANSCRIPT OF RECORD

6 TIMOTHY CLEMENT,
7 Defendant.

9 Heard on Wednesday, June 19, 2013

10 Aiken, South Carolina

12 BEFORE:

THE HONORABLE DOYET A. EARLY, III

14 APPEARANCES:

15 Counsel on Behalf of the State:
16 J. William Weeks, Esq.

17 Counsel on Behalf of the Defendant:
18 De Grant Gibbons, Esq.

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25

EXHIBIT INDEX

(NO EXHIBITS IDENTIFIED/INTRODUCED.)

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1 ON WEDNESDAY, JUNE 19, 2013 AT 10:52 A.M.:

2 MR. WEEKS: Timothy Clement.

3 (Defendant placed under oath.)

4 THE COURT: Are we ready to proceed? Mr. Gibbons, you
5 represent -- Timothy Clement?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Is that how you pronounce that, Clement?

8 THE DEFENDANT: Clement; yes, sir.

9 THE COURT: He has a number of indictments before me.
10 The first indictment is 13-GS-2-556, an indictment for
11 kidnapping.

12 The next indictment is 13-GS-2-557, an indictment for
13 car jacking.

14 The next indictment is 13-GS-2-551, burglary in the
15 second degree violent.

16 The next indictment is 13-570, an indictment for
17 burglary second degree non-violent.

18 And the last indictment I have is 13-567, an
19 indictment for armed robbery.

20 All of these indictments have been true billed.

21 Mr. Gibbons, have you advised Mr. Clement of all of
22 the charges contained in each of the indictments I have
23 just read into the record?

24 MR. GIBBONS: I have, Your Honor.

25 THE COURT: As to the armed robbery, have you advised

1 him that that is a minimum of 10 years to 30 years in the
2 Department of Corrections?

3 MR. GIBBONS: I've advised him of what that charge
4 carries and that it is a violent and a most-serious
5 charge.

6 THE COURT: And it's also a no-parole, 85 percent
7 sentence?

8 MR. GIBBONS: Correct. We talked about that.

9 THE COURT: As to Indictment 570, that's the burglary
10 non-violent second degree, have you advised him that that
11 carries 10 years?

12 MR. GIBBONS: Yes, sir.

13 THE COURT: As to 551, that's the burglary violent
14 second degree, have you advised him that is classified as
15 violent, serious and it carries 15 years?

16 MR. GIBBONS: I've advised him of that sentence and
17 that that would be a strike should we do these
18 separately.

19 THE COURT: As to Indictment 557, that's the car
20 jacking, have you have advised him that that is a 20-year
21 sentence, no parole, most serious and violent?

22 MR. GIBBONS: That's correct, Your Honor.

23 THE COURT: And the last indictment, 556, the
24 indictment for kidnapping, that carries up to 30 years,
25 classified as violent and most serious. Excuse me. Have

1 you advised him of that?

2 MR. GIBBONS: I did, Your Honor. And the ramification
3 of the strike possibilities and 85 percent.

4 THE COURT: Now, let's just make sure. On the ones
5 that are classified as violent, I assume you've informed
6 him that that will have some affect on how and where he's
7 housed in the Department of Corrections?

8 MR. GIBBONS: Yes, sir.

9 THE COURT: And perhaps other restrictions?

10 MR. GIBBONS: Yes, sir.

11 THE COURT: As to the armed robbery and the
12 kidnapping, those are most serious along with car
13 jacking. And the burglary violent second degree is a
14 serious offense.

15 Have you advised him that that now creates a strike
16 under our enhancement laws and the effect that has, i.e.,
17 if he's involved in criminal activity classified as
18 serious or most serious in the future he would be
19 subjecting himself to the possibility of life in prison
20 without parole?

21 MR. GIBBONS: I explained that to him, Your Honor, as
22 well as if they were tried separately they would be
23 separate strikes and he could be struck out on these
24 offenses. But as they were occurring the same day, they
25 would count as one.

1 THE COURT: These offenses occurred on different days,
2 some of them?

3 MR. WEEKS: Yes, a day apart.

4 THE COURT: But by pleading to all of them on today's
5 date, under our current status that he would only have one
6 strike --

7 MR. GIBBONS: Correct, Your Honor.

8 THE COURT: -- under the statute. And I assume as we
9 talked about earlier that you advised him that armed
10 robbery, the car jacking and kidnapping are all 85 percent
11 no-parole sentences and that once he's released from
12 incarceration it would be to a community supervision
13 program?

14 MR. GIBBONS: Correct, Your Honor.

15 THE COURT: In your opinion, does he understand these
16 charges and the potential sentences and the serious
17 classifications and the violent classifications?

18 MR. GIBBONS: He does, Your Honor.

19 THE COURT: And have you advised him of his right to
20 trial by jury?

21 MR. GIBBONS: I have.

22 THE COURT: And how does he indicate to you he wishes
23 to plead, not guilty or guilty?

24 MR. GIBBONS: He wishes to plead guilty, Your Honor.

25 THE COURT: And that's as to each indictment?

1 MR. GIBBONS: Yes, sir.

2 THE COURT: And you've had an opportunity as his
3 lawyer to review all the information involved in the case,
4 discuss the case with him and investigate it. Are you in
5 agreement with his decision to plead guilty?

6 MR. GIBBONS: I am, Your Honor. I've spent a lot of
7 time. There are numerous videos and statements involved
8 in this case. It's an overwhelming case and I have
9 reviewed it and talked to him about the situation.

10 THE COURT: Mr. Weeks, does he have a prior record?

11 MR. WEEKS: Your Honor, he has a prior simple
12 possession of marijuana in '03. And an ABHAN in 2007 for
13 which he had received a YOA. He had a parole revocation
14 on that YOA in '08.

15 THE COURT: Mr. Clement, good morning.

16 THE DEFENDANT: Good morning.

17 THE COURT: All right. You stand before me,
18 Mr. Clement, facing five separate indictments. Very
19 serious charges. Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Let's talk about them individually.
22 Indictment 556 is an indictment for kidnapping. That
23 carries up to 30 years in the Department of Corrections.
24 Do you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: It is classified as violent and most
2 serious. The classification of violent means it may have
3 some effect on how and where you are housed in the
4 Department of Corrections. And it may have some other
5 conditions attached to it under the Department rules. Do
6 you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: It's classified as most serious which
9 means you now have a strike under our three strike
10 enhancement law which means that once you are released
11 from incarceration if you become involved in unlawful
12 activity that is classified as most serious one more time
13 or serious two more times then you would be subjecting
14 yourself to the possibility of life in prison without
15 parole. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you understand that kidnapping is what
18 we call a no-parole offense? And under our current law
19 what every sentence that I impose upon you, you will have
20 to serve 85 percent of it before being eligible for
21 release into a community supervision program. Do you
22 understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Any questions you want to ask me about the
25 offense of kidnapping and what we just went over?

1 THE DEFENDANT: No, sir.

2 THE COURT: The second charge and/or indictment is
3 557. That is car jacking. That too is classified as
4 violent that we just talked about and also most serious.
5 And it carries up to 20 years and it too is a no parole,
6 85 percent sentence.

7 Do you understand all of that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you have any questions you want to ask
10 me about the car jacking case?

11 THE DEFENDANT: No, sir.

12 THE COURT: Indictment 551 is for the burglary violent
13 second degree. That is classified as violent and serious
14 with the same effects. And it carries up to 15 years. It
15 is not an 85 percent sentence.

16 Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Indictment 570 is the indictment for
19 burglary in the second degree non-violent and that carries
20 up to 10 years.

21 Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And the last indictment we are talking
24 about is the Indictment 567 which is an indictment for
25 armed robbery. That carries a minimum of 10 years up to

1 30 years. That too is classified as violent and most
2 serious. That also is a no parole, 85 percent sentence.

3 Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Mr. Clement, do you have any questions you
6 want to ask me about any of these sentences -- strike
7 that, any of these charges, the potential sentences, the
8 classification of violent, the classification of most
9 serious and/or serious, plus the fact they're no parole,
10 85 percent sentences; anything you want to ask me about
11 any of that?

12 THE DEFENDANT: No, sir.

13 THE COURT: Understanding what we just discussed,
14 these charges and the potential sentences, how do you wish
15 to plead as to each of the charges, not guilty or guilty?

16 THE DEFENDANT: Your Honor, I plead guilty.

17 THE COURT: Mr. Clement, when you plead guilty you
18 will be waiving or giving up certain of your
19 constitutional rights. One is your right to remain
20 silent. In just a little while I will ask you if you in
21 fact committed these offenses and you will have to explain
22 and admit to me for me to accept the plea.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: You will be giving up your right to remain
25 silent.

1 Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You will also be giving up your right to a
4 jury trial. Obviously if you pled not guilty and demanded
5 a jury trial, the State would provide you one at which
6 time you would have the right to confront and cross-
7 examine everyone who testified against you.

8 You would have the right to present your own defense,
9 your own case. You can call witnesses to testify on your
10 behalf. You can introduce relevant exhibits. And you can
11 testify in your own defense.

12 If you exercised your constitutional right to remain
13 silent, I will tell the jury they could not hold the fact
14 that you did not testify against you in any manner
15 whatsoever. And I would instruct them that they could not
16 even consider the fact that you did not testify when they
17 deliberated your guilt or innocence.

18 You would be presumed innocent throughout the trial
19 and the State of South Carolina would have the burden of
20 proving you guilty beyond a reasonable doubt to a jury of
21 12 people. And in order for that jury to convict you, all
22 12 jurors would have to unanimously agree that you were in
23 fact guilty. And even if you were convicted you would
24 still have the right to an appeal.

25 Now do you understand your rights to trial by jury?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Understanding your rights to trial by
3 jury; do you still wish to plead guilty or do you want me
4 to set this case for trial?

5 THE DEFENDANT: I plead guilty, Your Honor.

6 THE COURT: Has anyone promised you anything, held out
7 any hope of reward or threatened you in any manner in
8 order to make you plead guilty?

9 THE DEFENDANT: No, sir.

10 THE COURT: You've been represented by Mr. Grant
11 Gibbons. Are you satisfied with his legal representation?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: In your opinion, has Mr. Gibbons had
14 enough time to spend with you, enough time to investigate
15 the facts and to research the law so that he can properly
16 assist and defend you here today?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Is there anything else you want him to do
19 for you today before we move forward other than speak up
20 on your behalf?

21 THE DEFENDANT: No, sir.

22 THE COURT: And I ask you again, Mr. Clement, are you
23 totally and completely satisfied with his services?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Sir, are you today under the influence of

1 any alcohol, drugs or prescription medication?

2 THE DEFENDANT: No, sir.

3 THE COURT: Sir, are you today aware of any mental,
4 nervous or emotional conditions which would keep you from
5 understanding these proceedings?

6 THE DEFENDANT: No, sir.

7 THE COURT: Sir, have you understood all of my
8 questions here today?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And, Mr. Clement, are you pleading guilty
11 to each of these indictments of your own free will?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Mr. Clement, these incidents which led to
14 the indictments took place on two days, as I am informed;
15 one on December 20, 2012, and one on December 21, 2012.

16 So let's talk about December the 20th, 2012. Did you
17 on that day here in Aiken County, December 20, 2012, while
18 armed with a deadly weapon or alleging that you were armed
19 with a deadly weapon, take a Bank of America debit card,
20 an iPod and an automobile from one Victim ? And on
21 that same day did you enter the dwelling of one Rachel
22 Holly located at here in Aiken without
23 her consent with the intent to commit a crime therein?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Also on that same day, December 20, 2012,

1 did you confine, take away, seize or kidnap Victim
2 Victim ? Sir?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And also on that same date, did you take
5 or attempt to take a motor vehicle from one Victim
6 by force or violence or by intimidation, a 2001 Toyota 4
7 Runner while she was operating the vehicle with -- by way
8 of force or intimidation or with threats?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: So that's the car jacking, the kidnapping,
11 the armed robbery, and the burglary of the dwelling of one
12 Rachel Holly.

13 MR. GIBBONS: Your Honor, can you stop? My client's a
14 little nervous. The burglary is not tied in with those
15 charges. It happened earlier, a different time that day
16 but it was the same day. It's a separate incident.

17 THE COURT: Let's make sure we're all on the same
18 page. The car jacking, kidnapping and armed robbery
19 involve Victim ; is that correct?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: On that same date, December 20, 2012,
22 separate and apart from Victim , did you unlawfully
23 and without consent enter a dwelling owned by Rachel Holly
24 located on here in Aiken without her
25 consent with intent to commit a crime therein?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: So on the 20th of December 2012, you're
3 pleading guilty to armed robbery, kidnapping, car jacking
4 of Victim and the burglarization of the home of or
5 the dwelling of Rachel Holly; is that correct?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Now moving forward to the next day, the
8 21st day of December 2012 here in Aiken County. Did you
9 again enter the dwelling without consent of Rachel Holly
10 with intent to commit a crime therein?

11 Are we right on this?

12 MR. GIBBONS: I think two different places.

13 THE COURT: Hold on a second.

14 MR. WEEKS: It was the same house, same residence.
15 Burglarized two different times.

16 THE DEFENDANT: (Conferring with Mr. Gibbons.)

17 THE COURT: And to make sure I'm -- I'm sorry,
18 Mr. Gibbons.

19 (Pause.)

20 THE COURT: Mert, let those solicitors in, please.

21 MR. GIBBONS: Your Honor, we might need a minute. Can
22 we stand down?

23 THE COURT: Let me tell you what the indictment says.

24 MR. GIBBONS: Yes, sir.

25 THE COURT: The indictment says that on the 21st day

1 of December 2012, which would be the next day, that
2 Ms. Holly's home was once again burglarized. You entered
3 the dwelling, I say home, the dwelling without consent
4 with the intent to commit a crime therein. The same
5 address,

6 Do you need a second?

7 MR. GIBBONS: Just one minute, if we could.

8 THE COURT: Sure. Go back there. Stand at ease for
9 one second or for however long you need.

10 (Court stood at ease from 11:13 a.m., until
11 11:15 a.m., and continued:)

12 MR. GIBBONS: Your Honor, may I put something on the
13 record real quick?

14 THE COURT: Sure, but before you go back on the
15 record, Mr. Gibbons, you've had an opportunity to discuss
16 the December 21, 2012, burglary of Rachel Holly's
17 dwelling?

18 MR. GIBBONS: I have, Your Honor.

19 THE COURT: All right. You may.

20 MR. GIBBONS: Your Honor, what the holdup was.
21 Mr. Clement had lived there and stayed there on and off.
22 And he was confused as to whether or not having permission
23 to go in for one purpose gave him permission to go in for
24 any purpose.

25 And after talking to him and explaining to him if

1 you're going in to break the law, you're not on the lease,
2 you don't live there, it is still a burglary. And that's
3 what we were clearing up.

4 THE COURT: Sure. As -- Mr. Clement, as to that
5 December 21, 2012, did you without consent and permission
6 unlawfully enter the dwelling of Ms. Holly on
7 without consent and with intent to commit
8 a crime therein the next day, December 21, 2013
9 (verbatim)?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Now just to make sure. You are pleading
12 guilty to all five of these indictments because you are in
13 fact guilty?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You're pleading guilty to all five of
16 these indictments because you did what is alleged in each
17 indictment?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. I find your decision,
20 Mr. Clement, to plead guilty to be freely and voluntarily
21 and intelligently made. You've had the representation of
22 an excellent lawyer, Mr. Gibbons, with whom you say you're
23 satisfied. And I will accept your plea.

24 If you disagree with these proceedings in any respect
25 you have 10 days from today's date to file a notice of

1 intent to appeal. Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Thank you. Mr. Weeks?

4 MR. WEEKS: Your Honor, Aiken Department of Public
5 Safety began investigating a crime spree, for lack of a
6 better word, that Mr. Clement began on December the 20th
7 of 2012, when they received a call about a burglary to a
8 Rachel Holly's home.

9 They responded to that location and found that a key
10 had been broken off in the door handle and -- the door
11 handle of the front door. The victim stated there wasn't
12 any forced entry. She had had some previous relationship
13 with this man, and that's who she suspected of having
14 burglarized her home.

15 There were two TVs, a Wii, a portable laptop were
16 taken from her residence on that date.

17 She suspected him because she found some evidence in
18 the house of drug use that she suspected he had left
19 there. And there was also some information that he was
20 seen running from that residence but nobody had seen him
21 running with anything from the residence.

22 Later on he was contacted, admitted taking the items.
23 While the burglary application process was taking place
24 for that residence, Mr. Clement decided to victimize and
25 rob a complete stranger, Victim . She was

1 parked in a car on Richland Avenue, waiting to meet some
2 friends, talking on the phone, when Mr. Clement came up to
3 the window of her car and indicated that -- she believed
4 he had a gun. He had his hand in his pocket the entire
5 time. Told her -- pushed her back in in order to move
6 over to the passenger seat and hang up her phone.

7 He got in the vehicle with her. Ordered her to give
8 him her keys. He went on to say they were going to go to
9 the bank and not do anything stupid. He asked her what
10 bank. She ended up telling him where her bank was
11 located.

12 Ultimately the police in the investigation got a
13 videotape of him withdrawing money from her account with
14 her sitting in the car on the other side.

15 THE COURT: So he goes to Richland Avenue forcibly
16 taking her to the bank located where?

17 MR. WEEKS: Bank of America up on Laurens Street
18 toward public safety. I believe that was the one.

19 THE COURT: And then from there?

20 MR. WEEKS: Then from there he got her PIN number from
21 her, let her out of the vehicle and she ran to Aiken Brew
22 Pub and called the Aiken Department of Public Safety and
23 reported this.

24 She said the entire exchange with him and he all of
25 that, he kept one hand inside of her coat. One time he

1 told her that he would fucking kill her.

2 THE COURT: Inside of her coat or his --

3 MR. WEEKS: His coat. So she believed he had a gun
4 the whole time. Of course her parents were contacted and
5 the investigation began on that event.

6 The December 21st event occurred, once again to
7 Ms. Holly's home. A piece of concrete had been thrown
8 through the window and he gained access. I'm not sure
9 exactly what was taken during that particular burglary,
10 but they began an investigation and identified Mr. Clement
11 as suspect.

12 THE COURT: Suspect in the Holly?

13 MR. WEEKS: In the Holly thing. And they were
14 beginning to get an idea, I believe, that he was the one
15 that had assaulted Victim

16 They got the videotape and it was clear he was in it.
17 And they were looking for him, basically. And an off-duty
18 officer with Aiken Department of Public Safety spotted a
19 vehicle, contacted multiple officers with public safety
20 and the vehicle ended up being Victim 's vehicle that
21 Mr. Clement was driving and they stopped him.

22 THE COURT: They stopped him driving her car?

23 MR. WEEKS: Yes.

24 THE COURT: The next day or so?

25 MR. WEEKS: On December the 21st of 2012.

1 High speed.-- or it was a chase around the
2 neighborhood and he jumped. And it was not a situation
3 where he was going to get away because they were all over
4 him.

5 Ultimately a search warrant of his residence or where
6 he was living, they found Victim 's iPod. They
7 recovered several items of stolen property from
8 Ms. Holly's house and some firearms. There were a number
9 of people in that house or several more people in that
10 house and the -- some more arrests were made as a result
11 of stuff that was in the house.

12 But the Aiken Department of Public Safety did a
13 tremendous job, getting on top of it and investigating
14 this. They had -- they were getting reports that
15 Victim 's card was being used at about eight or nine
16 different places and in two counties.

17 So, he was charged with some financial transaction
18 card fraud and some theft, but as a result of this plea we
19 just agreed to not go down that road with the financial
20 transaction card charges.

21 Your Honor, the Victim family's here. And, you know,
22 at the appropriate time if you want to speak to them, they
23 indicated that they don't particularly wish to say
24 anything, that they would let me handle presentation of
25 it.

1 THE COURT: Mr. Gibbons?

2 MR. GIBBONS: Thank you, Your Honor. May it please
3 the Court. My client stands before you. He's 28 years of
4 age.

5 THE COURT: Twenty-eight?

6 MR. GIBBONS: Yes, sir. Your Honor, drugs do a lot of
7 things to people and he has got a horrible crack problem
8 that he has for several years. And we've seen people fall
9 from heights to lows because of that particular drug and
10 he's a prime example of that.

11 He went to Palmetto High School. I believe that's up
12 by Anderson. His mom, Genieva Clement, lives up there and
13 she couldn't make it down this far today but she is
14 worried about him and she has been in touch with me about
15 his case. He graduated from high school. He went to
16 three years of college, both at Charleston Southern and at
17 Benedict in business management. So he's no dummy. He
18 had opportunities. He had reasons, he had ways to move
19 himself forward in life but he got tangled up with crack
20 cocaine. And that brought him to where he is today.

21 Judge, he has been on YOA, been out on parole on YOA
22 and had that revoked.

23 THE COURT: Was he on YOA parole when this happened?

24 MR. GIBBONS: I don't believe so. He had been revoked
25 back in 2008 is what my records show.

1 THE COURT: He completed all of that?

2 MR. GIBBONS: Yes, sir. I mean, there's sadness all
3 the way through this case. And he has, from day one, been
4 remorseful about what happened. He was shocked at how bad
5 it was when he finally got clean and how horrible a thing
6 he had done to this young girl and what he had put her
7 through.

8 He tells me that in the days leading up to this he had
9 been bingeing on crack cocaine. He had gone to Aiken
10 Regional Medical Center and tried to get into some kind of
11 program there. They told him they didn't do that at the
12 hospital.

13 This isn't by way of excuse. This is just more by way
14 of explanation, Judge. He's never denied what's
15 happened. He just kind of wanted to tell you this isn't
16 his character. This was just a bad drug problem that took
17 hold of him.

18 He also approached the police. He told them he wanted
19 to be locked up because he thought something bad was going
20 to happen because he couldn't get control of his drug
21 situation. And that, I believe that's in the discovery as
22 well.

23 But there was, you know, he had to help himself deal
24 with that situation when he's out on the street. And he
25 turned to a couple places but then wasn't able to stop

1 bingeing and this horrible thing happened.

2 He tells me he did not have a weapon and he was
3 threatening to get what he wanted but she had no way of
4 knowing that. And he knows that that put her in all kinds
5 of fear and it was a horrible thing he did.

6 From day one he's been straightforward. He told the
7 police what happened. He was on tape admitting
8 everything, telling them exactly what was going on, why it
9 happened, how it happened.

10 And he's before the Court and he knows he's going to
11 do some substantial time on this thing. He and I talked
12 and we're asking you to consider -- you got plenty of time
13 to work with, Your Honor, we ask you to consider
14 concurrent sentences on this case.

15 And he would like me to express to the victim how
16 sorry he is that he basically tormented her and gave her
17 something in her life that she doesn't need to have and
18 she's probably going to carry for a long time.

19 THE COURT: A long time. Thank you. Mr. Clement,
20 anything you want to tell me?

21 THE DEFENDANT: Yes, sir. Your Honor, first and
22 foremost, I want to say I apologize to my victim. The
23 things I did on those days were not me, Your Honor. I
24 don't know any other way to say it. It wasn't me. But
25 I've been on this thing for a while, Your Honor. I asked

1 that the Lord help me. I just, just, I just can't get
2 control of it.

3 I didn't do the things to this girl on purpose. I
4 didn't do them on purpose, Your Honor. It wasn't me. I
5 can't control this drug habit. I'm sorry. Your Honor,
6 I'm so sorry. She didn't deserve what I did, Your Honor,
7 but I couldn't control, couldn't control it. I ask that
8 you have as much mercy on me as you can, Your Honor, but I
9 can't do it. I'm sorry.

10 THE COURT: I understand. Thank you. Anything anyone
11 else wants to say?

12 MR. WEEKS: No, Your Honor.

13 MR. GIBBONS: Your Honor, I would like one more thing
14 on the record. Just a side note.

15 My client was under the understanding that the victim
16 on the burglaries may have requested a dismissal or
17 something with Mr. Weeks' office. I told him I would
18 inquire, and I did. And Bill told me that there has been
19 no request. I'd just like for that to be on the record.

20 MR. WEEKS: If there has been it wasn't going to be
21 paid attention to, to be honest with you.

22 THE COURT: Mr. Clement, people in society are --
23 should be able to talk on their cell phone on a street
24 corner in their car without the threat of someone
25 kidnapping them, car jacking them, wronging them. Not

1 withstanding your drug habit, we don't live in a society
2 that allows that type of behavior. That's why we have
3 laws and I have to enforce those laws.

4 You're looking at a substantial amount of time. I
5 will temper my sentence with mercy.

6 Sentence of the Court is this. AS TO THE INDICTMENT
7 FOR KIDNAPPING, SENTENCE OF THE COURT: YOU BE COMMITTED
8 TO THE STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 25
9 YEARS.

10 AS TO THE BURGLARY NON-VIOLENT, SENTENCE OF THE
11 COURT: YOU BE COMMITTED TO THE STATE DEPARTMENT OF
12 CORRECTIONS FOR A PERIOD OF 10 YEARS.

13 AS TO THE CAR JACKING, SENTENCE OF THE COURT: YOU BE
14 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A
15 PERIOD OF 20 YEARS.

16 AS TO THE ARMED ROBBERY, SENTENCE OF THE COURT: YOU
17 BE COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR 25
18 YEARS.

19 AS TO THE VIOLENT BURGLARY SECOND DEGREE, THE SENTENCE
20 IS THAT YOU BE COMMITTED TO THE STATE DEPARTMENT OF
21 CORRECTIONS FOR A PERIOD OF 15 YEARS.

22 I WILL LET THEM ALL RUN CONCURRENT. That's for mercy.

23 Good luck to you. YOU'LL BE GIVEN CREDIT FOR YOUR
24 TIME SERVED. Thank you.

25 MR. WEEKS: Thank you, Your Honor.

1 END OF PROCEEDINGS: 11:31 A.M.

2 ***

3 CERTIFICATE OF REPORTER

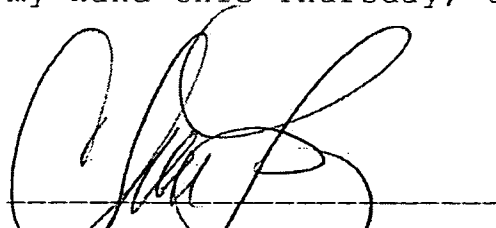
4 STATE OF SOUTH CAROLINA)

5 COUNTY OF AIKEN)

6 I, Cheri L. Young, Registered Professional Reporter
7 and Official Court Reporter for the State of South
8 Carolina, Second Circuit-At Large, do hereby certify that
9 the foregoing proceedings were written stenographically by
10 me using computer-aided translation; further, that the
11 foregoing is a true, accurate and complete record, to the
12 best of my skill and ability, of all the proceedings had
13 and evidence introduced in the hearing of the captioned
14 case, relative to appeal, in the Court of General Sessions
15 for Aiken County, on the 19th day of June, 2013.

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

18 I have hereunder set my hand this Thursday, the 12th
19 day of June, 2014.

20
21 

22 Cheri L. Young, RPR
23 Official Court Reporter
24
25

2012A0220100675
2012A0220100773
FORM 5
ASK

2014-CR-02-00803
2013-CR-02-0055457

STATE OF SOUTH CAROLINA

2012A0220100674
2012A0220100672

IN THE COURT OF COMMON PLEAS

Filed: _____
CCCR & GA, Aiken County
Deputy Clerk: _____
Trial Judge: _____
Trial Atty: _____
Court Reporter: _____
Sec: PCR Petitioner _____
General Sessions _____
Appointed Atty. _____

County of Aiken

Timothy Clement #320509

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Aiken County Detention
2. Name and location of Court which imposed sentence Aiken county
General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) (2013650200567) (2013650200556)
 - (b) (2013650200557) (2013650200551)

(c) (2013 650200570)

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

- (a) (Kidnapping 25 years June 19th 2013) / (Robbery 25 years June 19, 2013)
- (b) (Carjacking 20 years Jun 19th 2013)
- (c) (Burglary 2nd 15 years June 19th 2013) / (Burglary 2nd 10 years June 19 2013)

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

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

NO

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

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

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

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

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

(c) the date of each such result:

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

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

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

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

- (a) was not advised to do so.
- (b) _____

(c) _____

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

(a) Ineffective assistance of counsel

(b) Involuntary guilty Plea

(c) Violation of the 6 and 14 Amendment of US Constitution

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

(a) lawyer failed to object to judge stating offenses was a crime spree.

(b) Misinformated about parole eligibility of sentence by judge

(c) lawyer failed to file Appeal at guilty plea procedure

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

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. NIA

iv. _____

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

i. _____

ii. NIA

iii. _____

iv. _____

(c) the disposition thereof:

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

N/A

(d) the date of each such disposition:

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

N/A

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

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

N/A

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

NO

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

(a) which grounds have been presented:

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

N/A

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

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

N/A

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

- (a) _____
- (b) _____
- (c) _____

N/A

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? 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

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

- (a) the name and address of each attorney who represented you:
 - i. Debra Libbons 410 Barnwell Avenue
Aiken SC 29802
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Guilty Plea
 - ii. Sentencing
 - iii. _____

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

New Trial

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

NO

STATE OF SOUTH CAROLINA)
County of Aiken)

VERIFICATION

I, Timothy Clout, 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.

Timothy Clout

SWORN to and subscribed before me this 31 day of March, 2014.

Tamaia Conwell (L.S.)
Notary Public

My Commission Expires

My Commission Expires: September 25, 2023

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

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

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

Timothy Clement
Applicant

SWORN or affirmed to and subscribed before me this
31 day of March, 2021.

Tamara Conwell
Notary Public

My Commission Expires
My Commission Expires: September 25, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	FOR THE SECOND JUDICIAL CIRCUIT
)	
Timothy Clement, # 320509,	)	2014-CP-02-00803
)	
Applicant,)	
)	
v.	)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed April 7, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was true bill indicted at the April 2013 term of the Aiken County Grand Jury for Armed Robbery (2013-GS-02-00567); Kidnapping (2013-GS-02-00556); Carjacking (2013-GS-02-00557); Burglary – Second Degree (2013-GS-02-00551). DeGrant Gibbons, Esquire represented Applicant. On June 19, 2013, Applicant pled guilty as indicted before the Honorable Doyet A. Early, III. Judge Early sentenced Applicant without negotiations or recommendations to twenty five year term of imprisonment for Armed Robbery, twenty five year term of imprisonment for Kidnapping, twenty year term of imprisonment for Carjacking, and fifteen year term of imprisonment for Burglary – Second Degree, with all sentences running concurrently. The Applicant did not appeal his guilty plea or sentence.

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

Department of Corrections, and the plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective Assistance of Counsel
 - a. Counsel failed to object to judge stating offenses were a crime spree.
 - b. Counsel failed to file an appeal
2. Involuntary Guilty Plea
 - a. Misinformed about parole eligibility of sentence by judge
3. Due Process Violation

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State 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.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged 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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel

“rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Applicant’s assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d

742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

The Respondent submits the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248.

V.

The Applicant alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VI.

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

VII.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

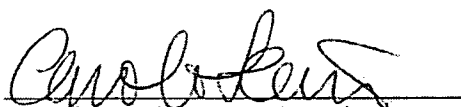
August 6, 2014.

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN)	
)	
	)	2014-CP-02-00803
)	
TIMOTHY CLEMENT, #320509,)	
)	
Applicant,)	
)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	
_____)	

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

Lance S. Boozer, Esquire
The Boozer Law Firm, LLC
1331 Park Street
Columbia, SC 29201

DATED this the 6th day of August, 2014.


 Caroline Kaiser, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA

2 COUNTY OF AIKEN

CIRCUIT COURT
2015-CP-02-01425

3

4 TIMOTHY CLEMENT,
Applicant,

5

-vs-

TRANSCRIPT OF RECORD

6

7 STATE OF SOUTH CAROLINA,
Respondent.

8

Post-Conviction Relief Hearing

9

Heard on Monday, May 18, 2015

10

Aiken, South Carolina

11

12 BEFORE:

13

THE HONORABLE TANYA A. GEE

14

15 APPEARANCES:

16

Counsel on Behalf of the Applicant:
Lance S. Boozer, Esq.

17

18

Counsel on Behalf of the Respondent, State of SC:
Daniel F. Gourley, II, Esq.

19

20

21

22

23

Cheri L. Young, RPR
Circuit Court Reporter
P O Box 5232
Aiken, SC 29803-5232

24

25

EXAMINATION INDEX

TIMOTHY CLEMENT

DIRECT BY MR. BOOZER

5

CROSS BY MR. GOURLEY

12

DE GRANT GIBBONS

DIRECT BY MR. GOURLEY

18

CROSS BY MR. BOOZER

21

EXHIBIT INDEX

(NO EXHIBITS IDENTIFIED/INTRODUCED.)

1 ON MONDAY, MAY 18, 2015 AT 9:40 A.M.:

2 MR. BOOZER: Good morning.

3 THE COURT: All right. We are here for PCRs this
4 morning. And I have asked Mr. Gourley from the AG's
5 Office to call the case and give a brief opening
6 statement.

7 MR. GOURLEY: Certainly, Your Honor. We would call
8 Timothy Clement first.

9 May it please the Court, Your Honor.

10 THE COURT: Yes, sir.

11 MR. GOURLEY: This is Timothy Clement versus the
12 State of South Carolina. Docket Number 2014-CP-02-803.

13 He is presently confined in the South Carolina
14 Department of Corrections pursuant to orders of commitment
15 of the Aiken County Clerk of Court. He was true bill
16 indicted at the April 2013 term of the Aiken County Grand
17 Jury for armed robbery, kidnapping, car jacking and
18 burglary in the second degree. Mr. Gibbons represented
19 him. On June 19th, 2013, he pled guilty as indicted
20 before the Honorable Doyet A. Early the Third. Judge
21 Early sentenced the Applicant without negotiations or
22 recommendation to a 25-year term of imprisonment for armed
23 robbery, 25-year term of imprisonment for kidnapping, a
24 20-year term of imprisonment for car jacking, and a
25 15-year term of imprisonment for burglary in the second

1 degree. Those sentences were run concurrent.

2 He did not appeal the guilty plea or sentence. He
3 filed a timely application for post-conviction relief on
4 April 7, 2014, alleging that he was being held in custody
5 unlawfully based on ineffective assistance of counsel, an
6 involuntarily guilty plea and a due process violation.

7 The State filed its return on August 6, 2014. And
8 he's represented in this matter by Mr. Boozer.

9 THE COURT: All right.

10 Mr. Clement, before we begin, I have a couple of
11 questions I'd like to ask you. Could you please stand for
12 me?

13 When you asked for a post-conviction relief I just
14 want to make sure that you understand that there are two
15 things that can happen as a result of this. If you are
16 denied post-conviction relief then you would have to serve
17 out your sentence, the remainder of your sentence as you
18 were sentenced before. If I were to grant you post-
19 conviction relief, I would vacate your conviction which
20 means you would start back from the beginning. This is
21 not just a re-sentencing process. This is a process where
22 we'd start from the beginning. And I just wanted to make
23 sure you would understand that you'd be facing your
24 original charges again. Do you understand that?

25 THE APPLICANT: Yes, ma'am.

TIMOTHY CLEMENT - DIRECT BY BOOZER

1 THE COURT: All right. And, Mr. Boozer, have you
2 explained all of that to your client?

3 MR. BOOZER: I have, Your Honor. And I do believe
4 that he understands that. We've had questions at length
5 about this and I'm certainly going to ask again probably
6 when he goes to testify just to make sure he understands
7 what he's asking for today.

8 THE COURT: Excellent. Thank you so much.
9 Mr. Boozer, you may begin.

10 MR. BOOZER: Thank you, Your Honor. If it please
11 the Court. We would call Mr. Clement to the stand.

12 TIMOTHY CLEMENT, having been duly sworn, was
13 examined and testified as follows:

14 THE CLERK: Please have a seat in the witness box.
15 State your full name for the Court.

16 THE APPLICANT: Timothy Clement.

17 DIRECT EXAMINATION

18 BY MR. BOOZER:

19 Q. How are you doing today, Mr. Clement?

20 A. All right.

21 Q. Good. The Judge has asked you a couple of
22 questions today about the process of a PCR. Now you
23 understand why you're here today?

24 A. Yes, sir.

25 Q. Okay. And just for the -- madam court reporter, we

TIMOTHY CLEMENT - DIRECT BY BOOZER

1 need you to speak up a little bit. I think you can speak
2 a little bit quietly. So just speak up for her she's
3 taking everything that you say down. Okay?

4 A. Yes, sir.

5 Q. Okay. Now obviously you filed a post-conviction
6 relief application. And you understand that if you're
7 successful today, the only thing that this Court can do in
8 granting you relief for post-conviction relief is
9 basically start this case and the original charges you
10 faced over from day one. Meaning any plea deal that you
11 had is going to come undone and you can face the same
12 charges that you were originally charged with and the max
13 -- you could face the maximum amount of time that you
14 could get if you were found guilty at trial. Do you
15 understand that?

16 A. Yes, sir.

17 Q. And we've discussed that?

18 A. Yes, sir.

19 Q. And do you still want to go forward knowing that?

20 A. Yes, sir.

21 Q. Okay. Now, you're currently serving a 25-year
22 sentence for armed robbery concurrent with 25 for
23 kidnapping, 20 for car jacking and then 15 for burglary
24 second?

25 A. Yes, sir.

TIMOTHY CLEMENT - DIRECT BY BOOZER

1 Q. Okay. Now, obviously you filed an application for
2 post-conviction relief and you've had a few allegations
3 that you've alleged?

4 A. Yes, sir.

5 Q. If you would, tell the Court what your allegations
6 are.

7 A. The very first one is failure -- my lawyer failed
8 to object to judge stating -- well, the solicitor stating
9 that my offense was a crime spree, basically slandering my
10 name in front of the solicitor -- or basically the judge
11 and made me look as if the things that I did was on a
12 numerous time, it was separate incidents.

13 The second one is the misinformed, that he -- I was
14 misinformed on the parole eligibility. He basically told
15 me to say, you know, basically say yes to whatever the
16 judge says. Had I known that it woulda changed the
17 outcome of my sentence because the 25-year sentence, well,
18 basically, you know, that's something I could have took to
19 trial because 25 year's a long time anyway.

20 Q. Okay. So explain that a little bit more. Are you
21 saying that you didn't feel like your plea was voluntary?

22 A. I feel like it was -- I feel like he basically told
23 me to go ahead and say yes to the judge or whatever the
24 judge said.

25 He also failed to appeal. He also failed to get

TIMOTHY CLEMENT - DIRECT BY BOOZER

- 1 the plea as well as a reconsideration.
- 2 Q. Okay. Are those all of your claims that you've
3 got?
- 4 A. Yes, sir.
- 5 Q. Let's talk a little bit more in detail about each
6 of those claims. Who was your lawyer for your plea?
- 7 A. De Grant Gibbons, 410 Barnwell Avenue, Aiken, South
8 Carolina.
- 9 Q. Were you appointed -- was he appointed, your
10 lawyer?
- 11 A. Yes, sir.
- 12 Q. All right. Tell me this: Why was it that you went
13 in there and pled guilty?
- 14 A. Because I really, I was at the point to where, you
15 know, I had my back against the wall basically, you know.
16 I didn't have a choice.
- 17 Q. Well, let me ask you this: Did you want a trial?
- 18 A. Initially no, but as I, as I went, as I read my
19 case and, you know, after I got sentenced I should have
20 went to trial basically.
- 21 Q. Okay. When you were saying that he was telling
22 you -- did you say that he told you how to answer the
23 questions at your plea?
- 24 A. Yeah. He said say yeah to the judge.
- 25 Q. Tell me about what he did or didn't do in regards

TIMOTHY CLEMENT - DIRECT BY BOOZER

1 to filing an appeal. Did you ask him to file an appeal
2 from your plea?

3 A. Yeah, at the end. You know, I told him to file an
4 appeal. But, you know, I never got a chance to get
5 back -- I never got a chance to write him and find out if
6 he did or not. I don't think he did it maliciously not
7 filing it but, you know, I never did get a chance to write
8 him and find out anything on it. I don't think he did it
9 maliciously. I don't think he did it on purpose not file
10 it, you know, but he didn't file it initially.

11 Q. So you say you asked him. Did you ask him after
12 the plea was over?

13 A. After the plea was over, yeah.

14 Q. But you're not sure if -- you're not sure if you
15 wrote him or if you had a chance to write him?

16 A. No, I didn't get a chance to write it because I
17 thought he was going to file -- I thought I was going to
18 get a letter first. If he filed it I assumed that I would
19 get a letter saying that he did file a motion of
20 reconsideration or a motion of appeal.

21 Q. Now do you recall when Mr. Gibbons first was
22 appointed to represent you?

23 A. I do.

24 Q. When was that?

25 A. It was around January 2013.

TIMOTHY CLEMENT - DIRECT BY BOOZER

1 Q. Okay. How many times did you think you met with
2 him prior to your plea?

3 A. I know how many times. It was one time. I met
4 with some of his, maybe his assistants. I talked to him
5 personally one time.

6 Q. You talked -- you only talked to him personally one
7 time before your plea?

8 A. One time.

9 Q. And where was that?

10 A. It was at the Aiken County Detention Center.

11 Q. How long did that meeting last?

12 A. It was lengthy. It lasted about an hour.

13 Q. Do you recall what y'all discussed during that
14 one-hour meeting?

15 A. Basically I was facing a lot of time and it would
16 be in my best interests to plead. And he was trying, he
17 was basically running down the charges on how much time it
18 carried, how much time I could get and, you know, things
19 of that nature.

20 Q. Did you talk about any trial strategy or anything
21 like that?

22 A. Not at all.

23 Q. How about any defenses that you may have had to the
24 charges?

25 A. Any what?

TIMOTHY CLEMENT - DIRECT BY BOOZER

1 Q. Any defense you may have had to those charges?

2 A. Not at all.

3 Q. Did he review discovery materials that were turned
4 over by the State with you?

5 A. Yes and no. I mean, he said -- he basically told
6 me what the evidence they had against me. And I, you
7 know, say yeah, I understood that. I never got a chance
8 to review the tape. They said they had some tapes of a
9 confession. I never reviewed those. He said that I
10 couldn't at the time, but...

11 Q. Is there anything else regarding the PCR
12 application or Mr. Gibbons' representation of you you'd
13 like to bring before the Court that you haven't already
14 talked about today?

15 A. Not at the moment. I just didn't, you know, I
16 don't feel like I'm prepared to win at trial but, you
17 know, I was looking for some relief on this post
18 conviction, you know, basically a reconsideration. I
19 didn't -- I don't feel there's any substance as far as me
20 going, taking it back to trial.

21 THE COURT: Can you say that again? I'm sorry. I
22 didn't understand.

23 THE APPLICANT: I just -- I was basically looking
24 for some relief on this PCR because I just feel like
25 taking to trial I won't get any substance as far as

TIMOTHY CLEMENT - CROSS BY GOURLEY

1 relief.

2 THE COURT: Thank you.

3 BY MR. BOOZER:

4 Q. And like we were talking about earlier, the only
5 thing that this Court can do, though, they can't cut your
6 time, can't reduce your sentence or anything like that.
7 The only thing that this Court can do is send you back as
8 though you were starting from day one as though you first
9 got these charges and then of course there would be a
10 trial.

11 A. Yes, sir.

12 Q. Do you understand that?

13 A. Yes, I do.

14 Q. Okay.

15 MR. BOOZER: Your Honor, I don't have any further
16 questions.

17 THE COURT: Okay.

18 MR. GOURLEY: May it please the Court, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. GOURLEY:

21 Q. Mr. Clement, how many times did you meet with
22 Mr. Gibbons?

23 A. Once.

24 Q. Once?

25 A. Yeah. I met with some of his assistants a couple

TIMOTHY CLEMENT - CROSS BY GOURLEY

1 times.

2 Q. And during that meeting did you all go over your
3 discovery material, stuff like that?

4 A. As I said before, yes or no. We did. He basically
5 went over the charges and ran down what the time carried,
6 you know. I didn't go over any of the evidence. No, he
7 says -- said about a confession that I had but I never
8 reviewed the confession or anything like that.

9 Q. Well, let's talk a minute just about that. You
10 cooperated with the police in this crime, right?

11 A. Yes, sir.

12 Q. Okay. And just to kind of give Judge Gee a little
13 bit of background, this was kind of a -- the solicitor
14 characterized it as a crime spree, but that you broke into
15 multiple peoples' cars and houses while you were high on
16 crack cocaine, right?

17 A. Yeah.

18 Q. And during your colloquy you to explained to Judge
19 Early that it was the cocaine and your drug habit that
20 caused you to do these things, it wasn't particularly you
21 yourself, right?

22 A. Yes, sir.

23 Q. And you felt very remorseful about that and you
24 cooperated with the police and wanted to get this behind
25 you in a sense?

TIMOTHY CLEMENT - CROSS BY GOURLEY

- 1 A. Yes, sir.
- 2 Q. Correct?
- 3 A. That's correct.
- 4 Q. Okay. Now, did you have any discussions with your
5 attorney about any kind of defenses to these charges or
6 anything like that?
- 7 A. Basically he said there wasn't no way -- it wasn't
8 no way I could win, you know.
- 9 Q. Yes, sir.
- 10 A. So, you know, so basically I pled, you know.
11 Wasn't no way I could win if I took it to trial, so it
12 wasn't no need to go over trial strategy.
- 13 Q. Okay. So did you give him any kind of witnesses or
14 leads to look into or anything on your behalf?
- 15 A. No.
- 16 Q. Okay. Now during your plea colloquy do you recall
17 waiving your constitutional rights? Your right to a jury
18 trial, present witnesses on your behalf, direct and cross-
19 examination of --
- 20 A. During what?
- 21 Q. Sir?
- 22 A. You said during what?
- 23 Q. During your colloquy do you remember Judge Early
24 going over your constitutional rights?
- 25 A. Yes.

TIMOTHY CLEMENT - CROSS BY GOURLEY

1 Q. Okay. Now during that colloquy Judge Early advised
2 you of, you know, when you pled guilty the possibility of
3 or the requirement of a 85 percent on these crimes, that
4 you had to serve 85 percent of the sentence, right? Do
5 you remember that?

6 A. Yeah. Vaguely, yes, sir.

7 Q. So he advised of your parole eligibility and
8 everything like that and you stated you understood,
9 correct?

10 A. Yes, sir. But as I said, I was under the
11 understanding to say, you know, my lawyer told me to
12 basically say yeah to everything. So as I went back and
13 looked, you know, I was kind of confused at the time but,
14 like I said, my lawyer told me to, you know, basically say
15 yes to everything that he asked me.

16 Q. So when Judge Early told you you would be serving
17 85 percent of the time you didn't have any concerns about
18 that at that point? You didn't feel the need to speak up
19 and say what does this mean?

20 A. Well, I felt in the best interests of my lawyer,
21 you know, to go with what he's saying.

22 Q. Okay. Do you recall telling Judge Early that you
23 were satisfied with your attorney?

24 A. Yes, sir.

25 Q. Okay. And do you recall telling Judge Early that

TIMOTHY CLEMENT - CROSS BY GOURLEY

1 no one was promising you or threatening you in order to
2 get you to plead guilty?

3 A. Yes, sir.

4 Q. And that you wanted to plead guilty, right?

5 A. Yes, sir.

6 Q. And that you were in fact guilty?

7 A. Yes, sir.

8 Q. And you still are guilty, right?

9 A. (No audible answer.)

10 Q. I need you to answer for the court reporter.

11 A. Yes, sir.

12 Q. Thank you. And as we previously discussed you
13 cooperated with the police on these charges?

14 A. I did.

15 Q. Okay. And during your plea colloquy you apologized
16 to the victims for everything that you had done, right?

17 A. I did.

18 Q. Now, Mr. Clement, I know Mr. Boozer asked you but I
19 just want to clarify. Do you want a new trial on these
20 charges?

21 A. Sir?

22 Q. Do you want a trial on these charges?

23 A. At the time? You're talking about now?

24 Q. Now. Yes, sir.

25 A. Yeah.

1 Q. Okay. Now during the plea colloquy do you recall
2 the judge advising you that you had 10 days to file an
3 appeal?

4 A. Do I recall hearing that?

5 Q. Yes.

6 A. Yeah, I did.

7 Q. Okay. And did you ask Mr. Gibbons to file an
8 appeal?

9 A. Later on, yeah.

10 Q. When did you do that?

11 A. In the hallway.

12 Q. In the hallway after your plea?

13 A. Yeah, after the plea was over.

14 Q. Okay. Thank you, Mr. Clement.

15 I have no other questions, Judge.

16 THE COURT: Thank you. Any redirect?

17 MR. BOOZER: No questions, Your Honor.

18 THE COURT: All right. Mr. Clement, you can step
19 down.

20 Sir?

21 MR. BOOZER: No further witness on behalf of the
22 Petitioner.

23 THE COURT: Okay.

24 MR. GOURLEY: Your Honor, we call Mr. Gibbons to
25 the stand.

DE GRANT GIBBONS - DIRECT BY GOURLEY

1 DE GRANT GIBBONS, having been duly sworn, was
2 examined and testified as follows:

3 THE CLERK: Please have a seat in the witness box.
4 State your full name for the Court.

5 THE WITNESS: De Grant Gibbons. G-I-B-B-O-N-S.

6 MR. GOURLEY: May it please the Court, Your Honor.

7 THE COURT: You may.

8 DIRECT EXAMINATION

9 BY MR. GOURLEY:

10 Q. Mr. Gibbons, how long have you been practicing law?

11 A. Since 1991.

12 Q. And were you appointed or retained in this case?

13 A. I was appointed.

14 Q. And how many times did you meet with the Applicant
15 prior to his plea, roughly?

16 A. I myself, I believe I met with him once at the jail
17 and once at the courthouse. I think my investigator met
18 with him a couple times and my secretary may have met with
19 him.

20 Q. Did you file Rule Five and Brady motions in this
21 case?

22 A. I did.

23 Q. Did you have an opportunity to review that material
24 with Mr. Clement?

25 A. I did.

DE GRANT GIBBONS - DIRECT BY GOURLEY

1 Q. Did you all have an opportunity to discuss his
2 version of the facts?

3 A. We did.

4 Q. Did you after meeting with Mr. Clement, did you
5 feel there was any kind of defense to the charges he was
6 facing?

7 A. When we met we talked about what had happened and
8 that he had given a full confession in detail that matched
9 up with what the investigation had found. And so we both
10 agreed pretty soon after we met that trial was not going
11 to be a good idea, and that we should pursue trying to
12 mitigate his plea sentence.

13 Q. Would you characterize the State's evidence as
14 overwhelming?

15 A. It's one of the stronger cases I've had to deal
16 with.

17 Q. Did you -- during your discussion did you ever tell
18 Mr. Clement to answer Judge Early's questions just
19 strictly yes?

20 A. I tell all my clients to be truthful with the
21 judge, don't try and play games, just answer whatever the
22 question is to the best of your ability.

23 Q. Did you have the opportunity to explain the parole
24 eligibility requirements or the 85 percent, 65 percent?

25 A. We went over that when I was telling him what

DE GRANT GIBBONS - CROSS BY GOURLEY

1 everything carried. We talked about it.

2 Q. Did had seem to understand those discussions?

3 A. He did. He never asked me anything further about
4 that.

5 Q. Whose decision was it to plead guilty, Mr. Gibbons?

6 A. It was Mr. Clement's decision.

7 Q. Did he ever indicate he wanted to go to trial?

8 A. No, sir.

9 Q. Is it your typical practice to discuss their right
10 to an appeal?

11 A. I do on occasions. I don't recall if I did with
12 him. This was a case where our biggest fear was that it
13 was going to be a consecutive sentence --

14 Q. Yes, sir.

15 A. -- due to the strength of the case. When it ended
16 up being concurrent I felt like that was a victory. I
17 never heard anything about wanting an appeal or
18 reconsideration from Mr. Clement, and so I didn't do so.

19 Q. Were there any objections made during the guilty
20 plea?

21 A. There were not.

22 Q. Okay. Did you feel there was any factual or legal
23 basis to file an appeal off of this guilty plea?

24 A. I did not.

25 MR. GOURLEY: MR. GOURLEY: Beg the Court's

DE GRANT GIBBONS - CROSS BY GOURLEY

1 indulgence, Your Honor.

2 Judge, I don't have any other questions. Thank
3 you, Mr. Gibbons.

4 THE COURT: All right. Mr. Boozer?

5 MR. BOOZER: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. BOOZER:

8 Q. Mr. Gibbons, do you recall whether you explained to
9 Mr. Clement about these charges that he was pleading
10 guilty to, that there was no parole eligibility for those?

11 A. Well, I explained to him that he would have to
12 serve 85 percent. There was no good time, anything like
13 that. I did that when I was reviewing the charges with
14 him. I always do that on the first meeting.

15 Q. Do you think that he understood that?

16 A. I had no reason to think he didn't. We had a
17 pretty good conversation. He was steady wanting help,
18 he'd been trying to get help before this happened. He
19 wanted help from the judge to deal with his addiction
20 problem.

21 Q. You've heard Mr. Clement's testimony regarding
22 filing an appeal. Do you recall him asking you at the
23 plea or following a plea to file an appeal or a motion to
24 reconsider for him?

25 A. I do not.

1 Q. Do you have any notes with you that would reflect
2 whether that was asked or not?

3 A. I have reviewed the file and there's nothing in
4 there indicating anything about an appeal or a
5 reconsideration request.

6 Q. If he had asked you to file an appeal would you
7 have done that for him?

8 A. Sure. That's easy.

9 Q. Okay. But you're not sure whether he asked you
10 that or not?

11 A. My recollection is he did not ask me and my file
12 reflects that there was no request made.

13 MR. BOOZER: Court's indulgence, Your Honor?

14 THE COURT: Sure.

15 (Pause.)

16 MR. BOOZER: Your Honor, I don't have any further
17 questions.

18 THE COURT: All right.

19 MR. GOURLEY: No other questions, Your Honor.

20 THE COURT: All right. You may step down.

21 MR. GOURLEY: Your Honor, the State has no further
22 witnesses.

23 THE COURT: Would either of you gentlemen like to
24 do a brief closing?

25 MR. GOURLEY: Your Honor, unless you would prefer

1 it.

2 MR. BOOZER: And, Your Honor, I don't think I have
3 anything to add to the testimony.

4 THE COURT: All right.

5 I'm going to go ahead and rule on this matter from
6 the bench.

7 Having heard this matter, I order that the
8 application for post-conviction relief be denied. I'm
9 going to ask the attorney general's office to prepare a
10 proposed order for me.

11 MR. GOURLEY: Certainly.

12 THE COURT: How long does it take you to prepare a
13 proposed order?

14 MR. GOURLEY: It depends. Depending on how many we
15 have, 20 to 30 days typically.

16 THE COURT: Well, I'm going to ask you do it within
17 30 days, please.

18 MR. GOURLEY: Thank you, Your Honor.

19 THE COURT: With regard to each of the issues that
20 were raised in the application, I do not find there was
21 deficient performance in failing to object when the
22 solicitor said that it was a crime spree.

23 With regard to the allegation that Mr. Clement was
24 misinformed on parole eligibility, I find as a fact that
25 Mr. Clement was not misinformed. His attorney testified

1 that he explained the parole eligibility to him. And
2 furthermore, in the record it reflects that Judge Early
3 properly informed Mr. Clement of the parole eligibility
4 effect that this charge had.

5 Finally with regard to the question of the appeal,
6 I find as a fact that Mr. Clement did not ask his attorney
7 to appeal. Furthermore, Mr. Gibbons noted that had he
8 been asked he would have filed the appeal. He did not
9 remember being asked and there was no note in his records
10 saying that he had been asked.

11 Mr. Clement also testified that he at all points
12 leading up to the guilty plea wanted to plead guilty. And
13 only at the PCR has he suggested that he would now want a
14 trial, but he never suggested that he wanted a trial prior
15 to this PCR hearing.

16 And so that is the order of the Court.

17 Thank you both.

18 MR. GOURLEY: Thank you.

19 MR. BOOZER: Thank you, Your Honor.

20 THE COURT: Any issues that need further
21 addressing?

22 MR. GOURLEY: No, Your Honor.

23 THE COURT: Okay. Thank you very much.

24 END OF PROCEEDINGS: 10:07 A.M.

25 ***

1 CERTIFICATE OF REPORTER

2 STATE OF SOUTH CAROLINA)

3 COUNTY OF AIKEN)

4 I, Cheri L. Young, Registered Professional Reporter
5 and Official Court Reporter for the State of South
6 Carolina, Second Circuit-At Large, do hereby certify that
7 the foregoing proceedings were written stenographically by
8 me using computer-aided translation; further, that the
9 foregoing is a true, accurate and complete record, to the
10 best of my skill and ability, of all the proceedings had
11 and evidence introduced in the hearing of the captioned
12 case, relative to appeal, in the Court of Common Pleas for
13 Aiken County, on the 18th day of May, 2015.

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

16 I have hereunder set my hand this 4th day of
17 September, 2015.

18
19
20 -----
Cheri L. Young, RPR
21 Official Court Reporter
22
23
24
25

STATE OF SOUTH CAROLINA)
 COUNTY OF AIKEN)
)
 Timothy Clement, # 320509,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE SECOND JUDICIAL CIRCUIT

2014-CP-02-00803

ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on April 7, 2014. Respondent filed a return on August 6, 2014. An evidentiary hearing was convened on May 18, 2015, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Lance Boozer, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was true bill indicted at the April 2013 term of the Aiken County Grand Jury for Armed Robbery (2013-GS-02-00567); Kidnapping (2013-GS-02-00556); Carjacking (2013-GS-02-00557); and Burglary – Second Degree (2013-GS-02-00551). DeGrant Gibbons, Esquire, represented Applicant. On June 19, 2013, Applicant pled guilty as indicted before the Honorable Doyet A. Early, III. Judge Early sentenced Applicant without negotiations or recommendations to a twenty-five-year term of imprisonment for Armed Robbery, a twenty five year term of imprisonment for Kidnapping, a twenty-year term of imprisonment for Carjacking, and a fifteen year term of imprisonment for Burglary –

FILED 10.29.15
Luis Andrad
 C.C.P. & G.S.
Veronica...
 Deputy Clerk

Second Degree, with all sentences running concurrently. The Applicant did not appeal his guilty plea or sentence.

ALLEGATIONS

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

1. Ineffective Assistance of Counsel
 - a. Counsel failed to object to judge stating offenses were a crime spree.
 - b. Counsel failed to file an appeal.
2. Involuntary Guilty Plea
 - a. Misinformed about parole eligibility of sentence by judge
3. Due Process Violation

This Court finds Applicant failed to present any testimony or evidence in support of his Due Process allegation. Therefore, this allegation is abandoned.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from DeGrant Gibbons (hereinafter "Plea Counsel"). This Court also had before it a copy of the plea transcript, the Aiken County Clerk of Court records, Applicant's South Carolina Department of Correction records, the PCR application, and return.

At the start of the evidentiary hearing this Court advised Applicant of the dangers of proceeding with his PCR application. The Applicant stated to this Court that he understood the risks and wanted to proceed with his Application

During the evidentiary hearing, Applicant testified that he met with Plea Counsel one time prior to his guilty plea. Applicant stated the meeting lasted approximately one hour. Applicant recalled reviewing discovery with Plea Counsel. Applicant stated that he did not give Plea Counsel any witnesses or leads to investigate on his behalf. Applicant recalled waiving his constitutional rights during his guilty plea. Applicant recalled the plea court advising him of his parole eligibility during the

guilty plea. However, Applicant stated that he was told by Plea Counsel to answer "yes" to everything the plea judge asked.

Applicant recalled admitting his guilt to the plea court and apologizing to the victims during the plea colloquy. Applicant stated that he felt Plea Counsel should have objected to the Solicitor's characterization of Applicant's various charges as a "crime spree." According to the Applicant, he asked Plea Counsel to file an appeal. Applicant admitted that he initially did not want to go to trial, but felt he should have gone to trial after he received his sentence.

Following Applicant's testimony, Plea Counsel was called to testify on behalf of the State. Plea Counsel stated he has been practicing law since 1991. Plea Counsel stated he reviewed Rule 5 and Brady material with Applicant and discussed with him Applicant's version of the facts. Plea Counsel stated Applicant confessed, and his confession matched up with Plea Counsel's independent investigation. Plea Counsel stated that he discussed parole eligibility with Applicant and advised Applicant that he would be required to serve 85% of his sentence.

According to Plea Counsel, he and Applicant both agreed that success at trial was not likely. Plea Counsel characterized the State's evidence against Applicant as overwhelming. Plea Counsel stated that he does not remember Applicant ever requesting be filed, and counsel testified that if applicant had requested an appeal, then counsel would have filed a notice of appeal. Plea Counsel stated that in his opinion there was no basis for an appeal, and he noted that there were no objections made during the plea.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony

accordingly. Specifically, this Court finds Plea Counsel's testimony credible while Applicant's testimony is not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of Plea Counsel is alleged as a ground for relief, the Applicant must prove that "Plea 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, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that Plea Counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption 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 Plea Counsel. First, the Applicant must prove that Plea Counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, Plea Counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for Plea 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 Plea 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, 106 S.Ct. 366 (1985).

*Plea Counsel was not in effective for failing to object to when the solicitor described the offenses as a crime spree.*¹

Applicant argues that Plea Counsel for should have objected to the solicitor's characterization of Applicant's charges as a "crime spree." I disagree. During the plea, Deputy Solicitor Weeks characterized Applicant's various charges as a crime spree. Applicant's charges stemmed from incidents that occurred on December 20, 2012 and December 2, 2012. On those dates, Applicant broke into Victim Holly's house twice and robbed, kidnapped, and car jacked Victim Victim.² I find that three independent sets of charges in a two-day span is properly characterized as a crime spree. Accordingly, this Court finds Plea Counsel's decision not to object was reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Plea Counsel's performance. This Court notes Applicant knowingly and intelligently pled guilty to kidnapping, carjacking, burglary-second degree violent, burglary-second degree (non-violent), and armed robbery.

¹ This Court notes. Applicant alleges the trial judge characterized Applicant's various charges as a crime spree. However, the Solicitor actually characterized Applicant's various charges as a "crime spree."

² Applicant pled guilty to charges occurring on December 20, 2012 which included kidnapping, armed robbery, and carjacking of victim Victim. (Pl. tr. p. 15 lines 2-6). Applicant further pled guilty to charges occurring on December 20, 2012, which included burglary-second degree (violent) of Victim Holly. (Pl. tr. p. 15). Additionally, Applicant pled guilty to charges occurring on December 21, 2012, which included burglary - second degree (non-violent) of Victim Holly. (Pl. tr. p. 17 lines 4-10).

Plea Counsel was not ineffective for failing to file an appeal.

Applicant next argues that Plea Counsel was ineffective for failing to file an appeal is meritless. Plea Counsel stated that he could not specifically recall whether Applicant requested an appeal. However, Plea Counsel stated if Applicant had requested an Appeal then he would have filed a notice of appeal. I find that the Applicant's testimony that he had requested an appeal was not credible. Accordingly, the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms.

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, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on the foregoing, I find that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

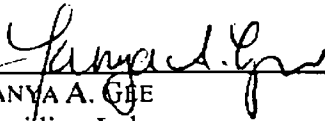
This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by Plea Counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate Plea Counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review,

post-conviction relief Plea Counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant is remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 25th day of June, 2015.



TANYA A. GEE
Presiding Judge
Second Judicial Circuit

Columbia, South Carolina

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP0200803

Timothy Clement

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 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. See Page 2 for additional information.
- 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: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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.

6/29/2015

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on **June 29, 2015**, and a copy mailed first class or placed in the appropriate attorney's box on **June 29, 2015**, to attorneys of record or to parties (when appearing pro se) as follows:

Lance S. Boozer 807 Gervais Street Suite 203 Columbia, SC
29201 *emailed*

Daniel Francis Gourley II P.O Box 11549 Columbia, SC
29211 *emailed*

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard

Court Reporter

Liz Godard - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

DOCKET NO. 2013GS0200567

WITNESSES

Aiken Department Of Public Safety

The State of South Carolina

Margaret Moore

County of Aiken

Law Enforcement Case #:

JMW

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

APRIL TERM 2013

FILED

April 4 2013

2012A0220100675

Jay Godard

C.C.P. & G.S.

THE STATE

Sherry Langley

vs.

Deputy Clerk

TIMOTHY CLEMENT

ACTION OF GRAND JURY

True Bill
Rennie M. Hall

CDR #: 0139

Foreperson of Grand Jury

Date: April 4, 2013

Indictment for

VERDICT

ARMED ROBBERY

§ 16-11-0330(A)

Foreperson of Petit Jury

Date:

J. STROM THURMOND, SOLICITOR

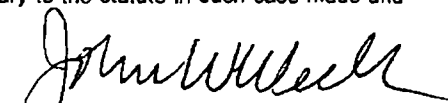
STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
ARMED ROBBERY
§ 16-11-0330(A)

At a Court of General Sessions, convened on April 15, 2013, the Grand Jurors of Aiken County present upon their oath:

That TIMOTHY CLEMENT did in Aiken County on or about December 20, 2012, while armed with a deadly weapon or while alleging either by action or words that he was armed while using a representation of a deadly weapon or an object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: a gun, feloniously take from the person or presence of [REDACTED] [REDACTED] by means of force or intimidation goods or monies of [REDACTED], such goods or monies being described as follows: Bank of America debit card, an iPod and an automobile, all in violation of §16-11-330, Code of Laws of South Carolina (1976), as amended.

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


J. STROM THURMOND, SOLICITOR

COUNTY OF Aiken
STATE VS.
Timothy Clement
AKA:
Race: R Sex: M Age: 28
DOB: [REDACTED] SS# [REDACTED]
Address: [REDACTED]
City, State, Zip: [REDACTED]
DL#: [REDACTED] SID#: [REDACTED]

INDICTMENT/CASE#: 2013GS0200567
A/W#: 2012A0220100675
Date of Offense: 12/20/2012
S.C. Code §: 16-11-0330(B)
CDR Code #: 0026 0139

SENTENCE SHEET

10 - 20 yrs 509 Feb

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was

CONVICTED OF or PLEADS

TO: Robbery / Attempted armed, or allegedly armed, robbery *Armed Robbery*

in violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026139
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

TEST
Weeks, John W. "Bill" 5959 SC Bar# Defendant Attorney for Defendant 664124 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 25 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 2013 GS 02 00556
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment

Total: \$ _____ plus 20% fee: _____ \$ _____
Payment Terms: _____
 Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
mnts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Charlene Rankin
Court Reporter: Cheri Young
SCCA/217 (03/2011)

Presiding Judge [Signature]
Judge Code: 0136
Sentence Date: June 11, 2013

ARREST WARRANT
2012A0220100675

STATE OF SOUTH CAROLINA
County Municipality of

City of Aiken
THE STATE
13-16454

Timothy Greg Clement
Address:

Phone: [redacted]
Sex: M Race: B Height: [redacted] Weight: 241
DL State: SC DL #: [redacted] Agency ORI #: SC0020100
DOB: [redacted] 1985
Prosecuting Agency: Aiken Public Safety
Prosecuting Officer: Kirk Owen
Offense: ROBBERY/attempted armed or allegedly armed r.
Offense Code: 00026
Code/Ordinance Sec: 16-11-0130(B)

This warrant is CERTIFIED FOR SERVICE in the
County Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

Date: _____ (L.S.)
Signature of Judge

RETURN
A copy of this arrest warrant was delivered to
defendant Timothy Greg Clement 12-21-12 1547
on

Signature of Court Clerk
Aiken Municipal Court
251 Laurens St., N.W.
Aiken, SC 29801

STATE OF SOUTH CAROLINA
County Municipality of
City of Aiken

Personally appeared before me the affiant Kirk Owen being duly sworn deposes and says that defendant Timothy Greg Clement did within this county and state on 12/20/2012 County Municipality of City of Aiken violate the criminal laws of the State of South Carolina (or ordinance of) in the following particulars:

DESCRIPTION OF OFFENSE: ROBBERY/attempted armed or allegedly armed robbery.

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

Upon information and belief, the above named defendant did commit the crime of Armed Robbery. On December 20, 2012, the defendant, Timothy Greg Clement did rob the victim [redacted] of her Bank of America Debit Card, cash, and her 2001 Toyota 4-Runner. The defendant did infer, and had the victim believing, that he was armed, and was going to kill her if she did not comply with his demands. This offense occurred within the City of Aiken and is in violation of the 1976 South Carolina Code of Laws as amended.

Signature of Affiant
Affiant's Address: 251 LAURENS ST NW
Affiant's Telephone: AIKEN, SC 29801
Signature of Deputy Clerk: [redacted]

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

It appearing from the above affidavit that there are reasonable grounds to believe that on 12/20/2012 defendant Timothy Greg Clement did violate the criminal laws of the State of South Carolina (or ordinance of) as set forth below:

DESCRIPTION OF OFFENSE: ROBBERY/attempted armed or allegedly armed robbery
Having found probable cause and the above and having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on 12-21-2012
Judge's Address: 251 Laurens St NW
Aiken, SC 29801
Judge's Telephone: (803) 647-7620 X 0000
Issuing Court: Municipal Circuit

ORIGINAL

WITNESSES

DOCKET NO. 2013GS0200556

Aiken Department Of Public Safety

The State of South Carolina

Margaret Moore

County of Aiken

Law Enforcement Case #:

JWW

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

APRIL TERM 2013

FILED

April 4, 2013

2012A0220100673

Leif Godard
C.S. JAGS.

THE STATE

vs.

Timothy C. Langley
Deputy Clerk

TIMOTHY CLEMENT

ACTION OF GRAND JURY

Tama Bill

Rennie M. Hall

CDR #: 0095

Foreperson of Grand Jury

Date: April 4, 2013

Indictment for

VERDICT

KIDNAPPING

§ 16-03-0910

Foreperson of Petit Jury

Date:

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	KIDNAPPING
COUNTY OF AIKEN)	
	)	§ 16-03-0910

At a Court of General Sessions, convened on April 15, 2013, the Grand Jurors of Aiken County present upon their oath:

That TIMOTHY CLEMENT did in Aiken County on or about December 20, 2012, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away [REDACTED] without authority of law, all in violation of §16-3-910 of the Code of Laws of South Carolina (1976), as amended.

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



J. STROM THURMOND, SOLICITOR

WITNESSES DOCKET NO. 2013GS0200557

Aiken Department Of Public Safety

The State of South Carolina

Margaret Moore

County of Aiken

Law Enforcement Case #:

JMW

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

APRIL TERM 2013

FILED

2013

2012A0220100674

THE STATE

vs.

TIMOTHY CLEMENT

J. P. Hodard

C. G. P. & G. S.

Drewery D. Langley

Deputy Clerk

ACTION OF GRAND JURY

Laura Bille

Ronnie M. Hall

CDR #: 2599

Foreperson of Grand Jury

Date: April 4, 2013

Indictment for

VERDICT

CARJACKING

§ 16-03-1075(B)(1)

Foreperson of Petit Jury

Date:

J. STROM THURMOND, SOLICITOR

ARREST WARRANT

2012A0220100674

STATE OF SOUTH CAROLINA
County/ Municipality of
City of Aiken

THE STATE
13-16454
against
Timothy Greg Clement

Address: _____
Phone: _____
Sex: M Race: B Height: _____ Weight: 240
SSN: _____
DL #: _____
DOB: _____ Agency ORI #: SC0020100
Prosecuting Agency: Aiken Public Safety
Prosecuting Officer: Kirk Owen
Offense: CARJACKING/take or attempt a vehicle from per
Code/Ordinance Sec: 16-3-1075(B)(1) Offense Code: 02599

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

Date: _____
Signature of Judge _____ (L.S.)

RETURN
A copy of this arrest warrant was delivered to
defendant Timothy Greg Clement 12-21-12 1540
on _____
Signature of Deputy Sheriff/Arrestment Officer
Sgt. [Signature] 12-21-12 1540

RETURN WARRANT TO:
Aiken Municipal Court
251 Laurens St., N.W.
Aiken, SC 29801

STATE OF SOUTH CAROLINA
County/ Municipality of
City of Aiken

AFFIDAVIT
Personally appeared before me the affiant Kirk Owen
being duly sworn deposes and says that defendant Timothy Greg Clement
did within this county and state on 12/20/2012
State of South Carolina (or ordinance of _____ County/ Municipality of
in the following particulars: City of Aiken)

DESCRIPTION OF OFFENSE:
CARJACKING/take or attempt a vehicle from person by force w/out great bodily ha
I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

Upon information and belief, the above named defendant did commit the crime of Carjacking. On December 20, 2012,
the defendant, Timothy Greg Clement did by force, violence, or intimidation, and with the threat of a firearm, take a
2001 Toyota 4-Runner belonging to the victim [redacted] while she was in the car. This offense occurred within
the City of Aiken and is in violation of the 1976 South Carolina Code of Laws as amended.

Signature of Affiant _____
STATE OF SOUTH CAROLINA
County/ Municipality of
City of Aiken
Affiant's Address 251 LAURENS ST NW
Affiant's Telephone AIKEN, SC 29801
Deputy Clerk [Signature]

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that
on 12/20/2012 defendant Timothy Greg Clement
did violate the criminal laws of the State of South Carolina (or ordinance of
County/ Municipality of City of Aiken) as set forth below.

DESCRIPTION OF OFFENSE:
CARJACKING/take or attempt a vehicle from person by force w/out great bodily ha
Having found probable cause and the above affiant having sworn before me you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable.

Sworn to and subscribed before me
on 12/21/2012
Judge's Address 251 Laurens St. Nw
Judge's Telephone (803)642-7020 x.0000
Aiken, SC 29801
Magistrate Circuit

COUNTY OF Aiken
 STATE VS.
Timothy Clement
 AKA:
 Race: B Sex: M Age: 23
 DOB: [REDACTED] SS#: [REDACTED]
 Address:
 City, State, Zip: Aiken, SC 29803
 DL#: [REDACTED] SID#: [REDACTED]

INDICTMENT/CASE#: 2013GS0200557
 A/W#: 2012A0220100674
 Date of Offense: 12/20/2012
 S.C. Code §: 16-03-1075(B)(1)
 CDR Code #: 2599

SENTENCE SHEET

20 years 3090

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Carjacking / Take or attempt a vehicle from person by force without great bodily harm

in violation of § 16-03-1075(B)(1) of the S.C. Code of Laws, bearing CDR Code # 2599
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted. Lesser Included Offense. Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

John W. Weeks 5987 Timothy Clement [Signature] 06424
 Weeks, John W. "Bill" SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 20 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.
 CONCURRENT or CONSECUTIVE to sentence on: 2013 GS 02 00556
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
 Payment Terms: _____
 Set by SCDPPPS _____

Recipient: _____
 Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk: Shannon D. Rosenkrantz Presiding Judge: [Signature]
 Court Reporter: Chen Young Judge Code: 0136
 SCCA/217 (03/2011) Sentence Date: June 19, 2013

WITNESSES

DOCKET NO. 2013GS0200551

Aiken Department Of Public Safety

The State of South Carolina

Margaret Moore

County of Aiken

Law Enforcement Case #:

JMW

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

APRIL TERM 2013

April 4

2013

2012A0220100672

C.G.S.

THE STATE

Sherry Langley

vs.

Deputy Clerk

TIMOTHY CLEMENT

ACTION OF GRAND JURY

Tate Bill

Bonnie M. Hall

CDR #: 0086

Foreperson of Grand Jury

Date: April 4, 2013

Indictment for

VERDICT

BURGLARY IN THE SECOND DEGREE

§ 16-11-0312(B)

Foreperson of Petit Jury

Date:

J. STROM THURMOND, SOLICITOR

