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STATE OF SOUTH CAROLINA

S.C. Supreme Court

IN THE SUPREME COURT

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Appeal from Richland County

Edgar W. Dickson, Circuit Court Judge

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QUINCY HOLLEY,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000817

---

APPENDIX

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STATE OF SOUTH CAROLINA ) COURT OF GENERAL SESSIONS  
 ) NINTH JUDICIAL CIRCUIT  
COUNTY OF LEXINGTON ) INDICTMENT NO.: 2011-GS-32-00358

THE STATE OF SOUTH CAROLINA )  
 )  
VS. )  
 )  
QUINCY HOLLEY, )  
 )  
 )  
DEFENDANT. )  
 )

PLEA

held before the Honorable Thomas A. Russo  
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit  
in the Lexington County Courthouse  
Lexington, South Carolina  
on Thursday, May 12, 2011, Commencing at 10:22 a.m.

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EXHIBITS

[None]

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PROCEEDINGS

- - - - -

ADVISEMENT OF RIGHTS

THE COURT: Ladies and gentlemen, I want to welcome everyone here this morning.

We're going to be doing a lot of different work here today. Some of it will involve -- my understanding is that there are some of you that wish to have your cases resolved today through a guilty plea. And we'll be taking up those matters, as well as other matters such as bond issues or anything else that the solicitor's office has for the Court.

But if you are here today and you're thinking of entering a guilty plea, I want to -- I need to go over with you your constitutional rights. When I do guilty pleas, I do them individually but when you do pleas individually, part of the plea process is to make sure that the folks that are before you understand their constitutional rights. And so I go through those rights with you.

Well, if there's fifteen or twenty of you that come before the Court to plea today, rather than repeat those rights fifteen or twenty times, I'm going to go over with -- go over them with you as a group. And the reason it's easy to do that is because these rights

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1 that I'm going to go over with you are common to all of  
2 us. We all have these rights. They're the same rights  
3 for everybody, so it doesn't matter what you are  
4 charged with, what agency brought the case against you.  
5 The rights, the constitutional rights that we all have,  
6 are the same for all of us.

7 It's important you understand them, though,  
8 because if you do go forward with a guilty plea, for  
9 purposes of your plea you will be giving up or waiving  
10 those rights and you will not have a jury trial. So  
11 it's important you understand these rights.

12 Now, also, the fact that I'm going to go over  
13 these rights with you as a group --

14 [Off the record momentarily]

15 THE COURT: Now, the fact that I'm going over  
16 these rights with you here today as a group does not  
17 bind you or commit you to do anything. It's my  
18 understanding that some of you are here to enter guilty  
19 pleas. But if I go over these rights with you and at  
20 the conclusion of these right the State calls your case  
21 and you've changed your mind and you don't want to go  
22 forward, that's fine. That's your call to make.  
23 Nobody is going to force you to go forward. Nobody is  
24 going to force you to do something you don't want to  
25 do.

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1 But if you do decide to go forward, it's  
2 important that you understand these rights. Now, I'm  
3 going to go over with them with you. You may have  
4 questions about these rights. Hold those questions  
5 because if you have any questions about these rights,  
6 I'll give you an opportunity to talk with your attorney  
7 about them and get those questions answered. If you  
8 don't have a lawyer, I'll be happy to answer those  
9 questions for you.

10 But these rights, as I said, are common to all  
11 of us. The first of these rights I'm going to go over  
12 with you involve your right to have the grand jury of  
13 Lexington County consider your charges for probable  
14 cause purposes. This right is a right that we all  
15 have.

16 Now, for most of you, your case has probably  
17 already been presented to the grand jury and so even  
18 though you have this right, it doesn't apply. And you  
19 may be thinking, well, wait a minute; how did my case  
20 go before a grand jury and I don't know anything about  
21 it. Well, the grand jury -- every county in South  
22 Carolina, all forty-six counties, empanel every year a  
23 grand jury. A grand jury is made up of eighteen  
24 people. Those people serve for a one-year period.

25 A grand jury does not decide whether somebody is

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1 guilty or not guilty. A grand jury is simply going to  
2 look at the case to see if there's probable cause for  
3 that case to come into court. You don't attend a grand  
4 jury proceeding. Your lawyer is not there, the State's  
5 attorneys are not there, there's no judge there. The  
6 people that attend a grand jury proceeding is the law  
7 enforcement agency that brought the case against you,  
8 if it was the police department or the sheriff's  
9 department, SLED, FBI, ATF, CIA, whoever.

10 Whatever agency brought the charge against you,  
11 a representative from that agency will appear before  
12 the grand jury. The grand jury doesn't hear both  
13 sides. They only hear one side. They hear the State's  
14 side because their only job is to decide is there a  
15 reason or is there probable cause that this case should  
16 go forward, should go on to court.

17 Now, using me as an example, if I'm charged with  
18 a criminal offense, and, say, by the police department,  
19 a representative from the police department would go to  
20 the grand jury hearing and they would say, ladies and  
21 gentlemen of the grand jury, this is the evidence that  
22 we've collected on Tommy Russo. The grand jury will  
23 look at that evidence. They'll review it. And what  
24 they are looking to see is is there some indication in  
25 this evidence that Tommy Russo may have been involved

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1 in this activity.

2 It takes twelve of the eighteen members of the  
3 grand jury to find probable cause. If they do find  
4 probable cause, if they find that there is some  
5 indications that I may have been involved in that  
6 activity, then that indictment is what we call true  
7 billed. And they'll stamp it and sign it, and it will  
8 come to court, and then you're here facing that charge.  
9 If they do not find probable cause, then the charge is  
10 dismissed. Now, as I said, it takes twelve of the  
11 eighteen members of the grand jury to find probable  
12 cause.

13 The only way I can hear a case is one or two  
14 ways: either the grand jury true billed the  
15 indictment, and so I have a true billed indictment here  
16 before me; or another way is that you can waive  
17 presentment to the grand jury.

18 Any person charged with a criminal offense can  
19 say, Judge, I know I have the right to have the grand  
20 jury consider my case for probable cause but I want to  
21 waive that; I don't want to go through that process;  
22 I'm asking you to go ahead and take my plea here today.  
23 And if that's your decision and that's what you want to  
24 do, then you can waive your right to grand jury  
25 presentment and then that gives me jurisdiction to hear

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1 your case and then I can hear your case.

2 So as I said, with most of you, your case has  
3 probably already been before the grand jury and it's  
4 already true billed. If you're here today, it's  
5 already been true billed and you don't have to worry  
6 about that waiver. If your case has not been before  
7 the grand jury but you still want to go forward and  
8 have your case heard today, then you would have to  
9 waive presentment to the grand jury for me to do that.  
10 Okay?

11 Now, these other rights that I'm going to review  
12 with you are a little bit more common. Most people  
13 know these rights. If you've had a civics class or a  
14 government class in school or -- you know, now, lately,  
15 you can't swing a dead cat without hitting a police  
16 show or a lawyer show on TV. And you hear these rights  
17 all the time on those shows.

18 The fact that you hear them a lot on TV or  
19 whatever doesn't minimize them. It doesn't make them  
20 trivial. They're very important. These are our  
21 constitutional rights and we all must be very aware of  
22 them before we end up waiving them or giving them up  
23 for purposes of a plea.

24 All of us have the right to remain silent and we  
25 all have the right to a jury trial. Now, that right to

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1 a jury trial encompasses other rights that you have.  
2 For example, if you were to have a jury trial, you  
3 would be presumed innocent of the charge that you're  
4 facing and that presumption of innocence places the  
5 burden of proof on the State to prove guilt. The State  
6 carries the burden of guilt -- or proving guilt.  
7 Excuse me. And the way they would attempt to do that  
8 is during the course of a trial they would call  
9 witnesses. Those witnesses would be placed under oath  
10 and they would take the witness stand and then during  
11 the course of that trial, those witness will testify  
12 and more than likely they would be testifying against  
13 your best interest.

14 Now, the constitution of the United States says  
15 that every person who is charged with a criminal  
16 offense has the right to confront or to face their  
17 accusers. And what that means is during the course of  
18 that jury trial you have the right, through your  
19 attorney, to question the State's witnesses, confront  
20 them about their testimony, ask them questions about  
21 their testimony, before the jury. That's your right of  
22 confrontation under the constitution.

23 But when you plead guilty, by pleading guilty  
24 you give up that presumption of innocence and you  
25 relieve the State of their burden. They no longer have

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1 to prove your guilt. And so since they don't have to  
2 prove you're guilty, they're not required to bring  
3 their witnesses into court. And so you waive or you  
4 give up the right to confront their witnesses.

5 Now, if you had a jury trial, you -- the State  
6 is not the only one that can call witnesses. You could  
7 call witnesses in your defense to testify on your  
8 behalf. Or you, yourself, could take the witness stand  
9 and you could testify in your own defense. You can do  
10 either one of those things or you can do both of those  
11 things, but you don't have to do any of them. In other  
12 words, in this country, a person who's charged with a  
13 criminal offense is never required to prove themselves  
14 innocent.

15 The burden of proof is on the State. The State  
16 has to prove guilt. You don't have to prove anything.  
17 And so what you could do is if you had a jury trial,  
18 you could exercise your constitutional right to remain  
19 silent. And if you did that, I would instruct the jury  
20 -- when I gave them the charge on the law, I would tell  
21 the jury that the State carries the burden of proof and  
22 that you, as a defendant, are not required to do  
23 anything, you're not required to prove anything. I  
24 would instruct the jury that the fact that you chose to  
25 exercise your constitutional right to remain silent,

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1 that that could not be held against you in any way. I  
2 would tell the members of the jury that when they go  
3 back into the jury room to deliberate the case, I would  
4 tell them that the fact that you chose not to testify  
5 could not even be discussed in the jury room, they  
6 couldn't talk about it at all.

7 Now, if you had a jury trial, as I told you, the  
8 State has the burden of proof and they have to carry  
9 that burden to a unanimous decision. In other words, a  
10 jury cannot find a defendant guilty unless all twelve  
11 members of the jury agree that that person is guilty.  
12 Eleven to one doesn't convict anybody. Ten to two does  
13 not convict anybody. It has to be all twelve members  
14 of the jury. They have to agree that you are guilty or  
15 they cannot convict you of the crime that you're  
16 facing.

17 If you go before a jury and you have a jury  
18 trial and you are convicted, you can appeal that  
19 conviction to a higher court if you feel that that is  
20 appropriate.

21 Now, finally, there is one -- there is one last  
22 thing I want to go over with you, and that is if you  
23 decide to go forward with a guilty plea here today, you  
24 have an appellate right with regards to that issue. In  
25 other words, after the conclusion of that hearing if

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1       you wish to appeal my decision, you can do that but you  
2       must file that notice of intent to appeal within ten  
3       days of today's date.

4               Now, these are the rights that we all have. You  
5       need to understand them because if you do decide to go  
6       forward with a guilty plea, then for purposes of your  
7       plea you waive or you give up these rights and you will  
8       not have a jury trial and your case will be disposed of  
9       pursuant to your plea. All right?

10              So if you have questions about these rights, as  
11       I said, I'll give you an opportunity to talk to your  
12       attorney and get that cleared up. But it's important  
13       you understand those rights.

14              [Off the record momentarily]

15  
16  
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24       - - -  
25       - - -

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THE COURT: Sir, you are Quincy Maurice Holley?

MR. HOLLEY: Yes, sir.

THE COURT: All right. Mr. Holley, indictment 2011-GS-32-358 is a true billed indictment for the offense of burglary in the first degree. That charge, burglary in the first degree, Mr. Holley, carries a sentence of not less than fifteen years up to life in prison.

Do you understand that, sir?

MR. HOLLEY: Yes, sir.

THE COURT: And, Mr. Holley, it is also -- under our code of laws it's considered or it's classified as a violent offense and a most serious offense.

Do you understand that, sir?

MR. HOLLEY: Yes, sir.

THE COURT: Now, understanding the nature of the charges -- the charge against you and the possible punishment that is associated with that offense, how do you plead to that charge, Mr. Holley? Guilty or not guilty?

MR. HOLLEY: Guilty.

THE COURT: Thank you, sir.

Mr. Johnson, you represent Mr. Holley in this matter?

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1 MR. JOHNSON: Yes, sir.

2 THE COURT: Have you discussed with him the  
3 charge that he is pleading guilty to and his  
4 constitutional rights to a trial, sir?

5 MR. JOHNSON: Yes, sir.

6 THE COURT: Have you also, in discussing the  
7 charge with him, spoke with him about the  
8 classification as a most serious offense and how that  
9 can affect his future if he were to get in any further  
10 trouble?

11 MR. JOHNSON: Yes, sir, I have.

12 THE COURT: All right. And that this is an  
13 offense that is a non parolable offense?

14 MR. JOHNSON: Yes, sir.

15 THE COURT: Okay. Mr. Holley, am I correct that  
16 you are twenty-four years of age, sir?

17 MR. HOLLEY: Yes, sir.

18 THE COURT: Sir, prior to getting locked up on  
19 these charges, did you work anywhere? Or what type of  
20 work have you done?

21 MR. HOLLEY: Yes, sir. I was working with a  
22 friend on tree -- doing tree services.

23 THE COURT: Okay. Are you married or single,  
24 sir?

25 MR. HOLLEY: Single.

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1 THE COURT: Do you have any children?

2 MR. HOLLEY: Yes, sir.

3 THE COURT: How many?

4 MR. HOLLEY: Six.

5 THE COURT: Now, how long have you been locked  
6 up on these charges, sir?

7 MR. HOLLEY: For eleven months, sir.

8 THE COURT: Okay. Mr. Holley, when I went over  
9 the constitutional rights just now, you were present  
10 for that; correct?

11 MR. HOLLEY: Yes, sir.

12 THE COURT: Did you understand those rights as I  
13 went over them, sir?

14 MR. HOLLEY: Yes, sir.

15 THE COURT: Do you have any question about those  
16 rights, or do you need anymore time to discuss those  
17 rights with Mr. Johnson?

18 MR. HOLLEY: No, sir.

19 THE COURT: Okay. You understand that if you go  
20 forward with your plea here today that you will not get  
21 a jury trial, your case will be resolved pursuant to  
22 this plea.

23 Do you understand that?

24 MR. HOLLEY: Yes, sir.

25 THE COURT: All right, sir.

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1 Now, Mr. Holley, has anyone promised you  
2 anything, held out any hope of reward, or threatened  
3 you in any way to get you to enter this plea?

4 MR. HOLLEY: No, sir.

5 THE COURT: Mr. Johnson is your attorney. Are  
6 you satisfied with the representation and the advice  
7 that he has provided?

8 MR. HOLLEY: Yes, sir.

9 THE COURT: Do you have any complaints against  
10 him or any member of his office?

11 MR. HOLLEY: No, sir.

12 THE COURT: Sir, as you stand here before the  
13 Court today, are you under the influence of any  
14 substance that would affect your ability to understand  
15 what you're doing?

16 MR. HOLLEY: No, sir.

17 THE COURT: Have you told Mr. Johnson everything  
18 that you know about the facts and circumstances  
19 surrounding this charge so that he could look into  
20 these matters and help you with this matter?

21 MR. HOLLEY: Yes, sir.

22 THE COURT: Have you cooperated with him and  
23 given him the names of -- I don't know if there would  
24 be any witnesses. But have you given him the names of  
25 everybody you know that would know anything about this

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1 or is involved in this?

2 MR. HOLLEY: [No response]

3 THE COURT: In other words, I'm just trying to  
4 make sure that you have shared with Mr. Johnson  
5 everything you know so that he can help you with this  
6 matter. Have you done that?

7 MR. HOLLEY: Yes, sir.

8 THE COURT: Okay. Have you understood the  
9 questions that I have asked you here today?

10 MR. HOLLEY: Yes, sir.

11 THE COURT: And the answers that you've given me  
12 to those questions, have those answers been truthful,  
13 sir?

14 MR. HOLLEY: Yes, sir.

15 THE COURT: Are you pleading guilty on this  
16 charge of your own free will?

17 MR. HOLLEY: Yes, sir.

18 THE COURT: And are you guilty of this offense,  
19 sir?

20 MR. HOLLEY: Yes, sir.

21 THE COURT: All right. Mr. Holley, I'm going to  
22 get the solicitor to give me the facts. I'm going to  
23 get you to listen carefully, please, and then I'll get  
24 with you in just a minute.

25 Solicitor?

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1 MR. WEDEKIND: Yes, sir. The facts are that on  
2 June 16th, 2010, at the address of [REDACTED] at  
3 [REDACTED] at West Columbia, here in Lexington County, Mr.  
4 Holley, along with his codefendant, Mr. Ricky Bell, and  
5 a driver, Ms. Kerry Callahan, had approached that  
6 address. They waited outside and they saw an  
7 individual by the name of Abdul Bargas [phonetic] leave  
8 his vehicle. And as he approached that residence,  
9 which is a single-wide trailer, they approached him at  
10 gunpoint and told him to open the door and go inside.

11 They went inside the trailer and inside was a  
12 little boy named Alexander Jolero Aldeolde Jolero  
13 [phonetic]. Merna Jolero [phonetic] was the mother.  
14 She was also present with her children. And there was  
15 another male by the name of Rigoverto Ramirez  
16 [phonetic]. They were the occupants of that trailer.  
17 They were then -- Mr. Holley, along with Mr. Bell,  
18 forced their way in at gunpoint, demanded all their  
19 money in cash, and any drugs that they thought was  
20 contained inside the house. So originally there was  
21 charges of armed robbery, burg first, possession of a  
22 stolen pistol, and I think criminal conspiracy. We're  
23 going to nol-pros all of these charges, with the  
24 exception of the burglary first, and proceed solely on  
25 that one as a straight plea with a fifteen to life

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1 sentence facing Mr. Holley.

2 The individuals inside were demanded to have the  
3 cash and anything else of value that they could get  
4 their hands on. Ms. Merna Jolero, she gave up her  
5 wallet, a pink nylon wallet, then Mr. Ramirez gave up  
6 his wallet. And both of them had their identification  
7 inside and small amounts of cash, about a hundred bucks  
8 or so in each. Then -- Mr. Bargas -- they still  
9 demanded more, and Mr. Bargas had a gold chain around  
10 his neck. He ripped that off his neck and handed it to  
11 Mr. Bell and they then exited the trailer and went out  
12 to their vehicle and drove away.

13 A 911 call was place and, fortuitously, there  
14 was a police officer nearby. The description of the  
15 vehicle was matched. They quickly got the vehicle,  
16 pulled it over and when they asked them to step out of  
17 the vehicle, a gold chain dropped to the ground.

18 Officers arrived at the trailer. They also  
19 found the identification. They found the two pistols  
20 and those -- when they were checked, one of them was  
21 reported stolen from Richland County. There are other  
22 charges in Richland County that are pending against Mr.  
23 Callahan -- Ms. Callahan, Mr. Bell, and Mr. Holley.

24 We're making no such deals or representations as  
25 part of this plea today.

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1 And that would pretty much be the facts except  
2 for the detail that when the cash was demanded, they  
3 grabbed the little boy and held him upside down and put  
4 a gun to his head and demanded the cash. And that was  
5 attributed to Mr. Holley, according to the victims.

6 They are present in the courtroom. They have a  
7 translator and I think at the appropriate time they  
8 would like to address the Court.

9 [Off the record momentarily]

10 MR. WEDEKIND: No, they don't want to -- they  
11 don't want to address the Court, but they are here.  
12 And they've had some difficulties on this. I'll  
13 elaborate about that later. But they've been very  
14 courageous about coming forward, Your Honor. And,  
15 also, there's Investigator Paige Moore from the West  
16 Columbia Police Department, and I don't know if she  
17 would like to address the Court at the present time.

18 MS. MOORE: Just on behalf of the victims: you  
19 know, this was a very upsetting crime for them,  
20 especially with their child. Feared for their lives.

21 THE COURT: Well, thank you very much.

22 Any prior record, prior history, on Mr.  
23 Holley?

24 MR. WEDEKIND: His record, sir, is -- let's see.  
25 He got a probation violation for possession of a

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1 stolen vehicle back in 2007. That stems from a charge  
2 that was on April, 2005. There is a driving under  
3 suspension from September, 2008. And that would -- I  
4 think other than the pending charges that we are  
5 dismissing, that would be the extent of his record of  
6 convictions, Your Honor.

7 THE COURT: All right. Mr. Holley, the facts  
8 that the solicitor gave the Court regarding this case,  
9 are those facts essentially correct, sir?

10 MR. HOLLEY: No, sir.

11 THE COURT: All right. Well, how are --

12 MR. JOHNSON: Judge, there's a detail of that  
13 that my client disputes. He clearly admits he was  
14 involved in this and he went into that residence. From  
15 the very first day that we talked about this incident,  
16 he just made it clear to me that he did not put a gun  
17 to a child and that was not him; however, he fully  
18 regrets everything that he's involved with. He admits  
19 that he was involved in this, Judge.

20 THE COURT: Other than that issue that the  
21 solicitor raised regarding the little boy, were the  
22 other facts correct, sir?

23 MR. HOLLEY: Yes, sir.

24 THE COURT: All right. I find that the State  
25 has provided a substantial factual basis to support the

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1 charge that Mr. Holley has pled guilty to, that his  
2 decision to enter this plea I believe has been done  
3 freely, voluntarily, and intelligently. He has had the  
4 advice and counsel of an outstanding attorney in Mr.  
5 Johnson and Mr. Holley has indicated he is satisfied  
6 with the representation and the advice Mr. Johnson has  
7 provided.

8 I've asked Mr. Holley to make sure that he  
9 understands the classification of this charge that he  
10 is pleading to as a violent and a most serious offense.  
11 He's also discussed that with Mr. Johnson. Mr. Johnson  
12 has related to the Court that he has explained that to  
13 Mr. Holley and that this is a non parolable offense.  
14 And I think Mr. Holley understands the classification  
15 of this offense and how it affects -- how it affects  
16 him, and I'm going to accept his plea.

17 Mr. Johnson, I'll be happy to hear from you,  
18 sir.

19 MR. JOHNSON: Thank you, Judge.

20 I would just like to point out that initially  
21 the thing that really controlled this whole situation  
22 for Mr. Holley, motivated this whole situation, he's  
23 had a drug addiction problem since his father passed  
24 away back in 2006. Mr. Holley became addicted to  
25 cocaine and it's just something that's controlled his

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1 life since that point. He regrets all of his actions  
2 and freely admits that he was involved in this crime,  
3 Your Honor.

4 I've talked to him. And I've talked to his  
5 family. His mother, Ruth Holley, is present. She  
6 would like to address the Court at the appropriate  
7 time. He has additional people here to support him in  
8 the courtroom.

9 Based on what I have heard about Mr. Holley and  
10 his demeanor, it just seems like cocaine just kind of  
11 turned him into a different person, Judge. It really  
12 changed his attitude and affected his behavior to an  
13 extreme degree.

14 From the very beginning he has told me that he  
15 would never put a gun to a child, he did not do that  
16 during this crime. And certainly he regrets his role  
17 in this crime in entering that residence, Judge.

18 He grew up in Columbia, completed the eleventh  
19 grade. I believe he has one brother and one sister.  
20 He has six children total. He's got a family that he  
21 has tried to support but over the past five years his  
22 drug addiction has really affected his life.

23 And of course he freely admits that he's made  
24 some big mistakes, Judge, and that was his choice to --  
25 he got involved with drugs, and he understands that,

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Plea  
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1 and that he is suffering the consequence today.

2 But I would point out to the Court that since my  
3 initial conversation with Mr. Holley, he had no  
4 interest in taking this to trial or putting the victims  
5 through any sort of trial experience. He simply  
6 explained to me that he had a communication problem  
7 with his previous attorney when there was an offer made  
8 by the solicitor. I believe it was a zero to twenty  
9 offer for attempted armed robbery. He did not accept  
10 that because he had a communication situation with his  
11 attorney.

12 And I was appointed to the case and when we  
13 talked he made it very clear that he did not want to  
14 put the victims through a trial and he wanted to  
15 initially take -- basically take that offer but he  
16 realized that was off the table after he rejected it  
17 initially. But he felt as though he just needed  
18 different representation. He really didn't have a  
19 problem with the offer. And I think he was basically  
20 in a position where he just felt like he needed someone  
21 else to talk to.

22 And from day one, Judge, I can tell you he's  
23 been sorry about this whole thing. He's regretted his  
24 actions during this entire crime and throughout this  
25 thing.

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1           We talked about his Richland County Charge. Did  
2 not want me to pursue that, as far as dealing with that  
3 today. He had no interest in dealing with that as a  
4 sort of one plea in Lexington County. But, basically,  
5 Judge, his rap sheet is a conviction for the possession  
6 of a stolen vehicle.

7           He's worked hard to try to take care of his  
8 children for many years. And I've talked to his mother  
9 about the things that he's done. And I've just -- it  
10 appears to me that he had a serious impact, from his  
11 drug addiction, that changed his behavior. But without  
12 that drug addiction, I think he's -- he's a kind  
13 individual. He has a gentle way about him. When I  
14 talk to him, he's -- he really did express a great deal  
15 of regret over what happened and the trauma that was  
16 caused for the victims, Judge.

17           And I would allow his mother to speak at this  
18 time, if the Court is all right with that.

19           THE COURT: Sure. Be happy to.

20           Just need to get your name for the record,  
21 please, ma'am.

22           MS. HOLLEY: Judge, my name is Ruth Holley.

23           THE COURT: All right, Ms. Holley.

24           MS. HOLLEY: My husband did pass away back in  
25 here in 206 [sic]. Quincy did have a drug problem

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1 after my husband did pass away. He did have a major  
2 problem with that after he passed away. He do have six  
3 kids. And he did have a major breakdown after that,  
4 the passing of my husband.

5 With his passing -- I'm sorry.

6 THE COURT: That's okay. I understand.

7 MS. HOLLEY: With my husband passing away, we  
8 all had a tough time. I only have three kids. I only  
9 have three kids. But Quincy had a tough time. He had  
10 took to drugs. And we all had a tough time. But  
11 Quincy went to the street. And I tried to deter him  
12 from the streets, but that's the route he took.

13 MR. JOHNSON: Your Honor, I would point out:  
14 during the investigation, I believe that my client did  
15 give a statement to law enforcement. He provided  
16 details of the events to law enforcement upon  
17 questioning. I just want to mention that to the Court.

18 And, as well, the fifteen minimum, there's no  
19 parole time, Judge. Considering his rap sheet is  
20 limited to a possession of stolen vehicle, I would ask  
21 the Court to consider the minimum. The offer  
22 originally was a zero to twenty range. And since he  
23 knows he's going to do all of that time on whatever  
24 sentence he gets, we would ask for fifteen, Judge.

25 THE COURT: All right, sir.

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1           Anything further, Mr. Holley? Anything you wish  
2           to tell the Court, sir?

3           MR. HOLLEY: Yes, sir.

4           First of all, I would like to state to the Court  
5           that I apologize for my actions that took place the  
6           night when everything occurred. And I just want to say  
7           my time -- since my time incarcerated, I been doing a  
8           lot of thinking of folks and myself about things. I'm  
9           going to do better when I get back out into society and  
10          everything. But I know all the mistakes I made. I  
11          know there's no sympathy for me. But I'm going to ask  
12          that.

13          THE COURT: All right, sir.

14          MR. JOHNSON: Judge, I think the count is 321  
15          days time served.

16          THE COURT: 321?

17          MR. JOHNSON: I believe so, Judge, if my math is  
18          right.

19          THE COURT: All right. You know, I would like  
20          to believe that something good comes out of stuff.  
21          And, you know, I don't know that it will. But this is  
22          a whole courtroom full of folks and all of y'all have  
23          heard everything that's been said in here.

24          I go around and I talk to folks all the time  
25          about the evil of drugs and sometimes I just think when

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1       it comes from a guy who's a judge, who's never used  
2       drugs before, who never had to battle that addiction,  
3       sometimes I just think it doesn't register, it doesn't  
4       -- you know, it's not that I don't have any  
5       credibility, it's just that I think folks don't look at  
6       it and go, what -- how does he know what he's talking  
7       about; he's never been there.

8               Well, here it is. Okay? Here it is. So you  
9       don't have to believe anything that comes out of my  
10      mouth. But this is a young man that is an example of  
11      what I see every day that I hold general sessions court  
12      in this state. Drugs destroy, they kill, they take  
13      away our future, they destroy children's parents, they  
14      destroy kids. There's not one good thing about them,  
15      because again -- and I'm admitting I've -- I've never  
16      done crack, I've never done cocaine. I don't know what  
17      that high feels like.

18             But I can tell you this: it ain't worth a crap  
19      compared to the time that this young man is going to  
20      spend in prison. I'll bet you he would give up all of  
21      that high to be able to just walk out of here and go  
22      home.

23             Wouldn't you?

24             MR. HOLLEY: Yes, sir.

25             THE COURT: Sure you would.

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1           We've got to wake up in this country, people.  
2           I'm telling you, I'm telling you, it's killing this  
3           nation.

4           To the family of the victims, I want to  
5           apologize to you. And I hope you'll accept Mr.  
6           Holley's apology. You should never have had to go  
7           through this. And I just hope that you'll be able to  
8           get past it and find safety and security in your home  
9           in the future. And I know nothing I do here today can  
10          give you that back. But I'm sorry that you've had to  
11          go through that.

12          On indictment 2011-GS-32-358, on the charge of  
13          burglary in the first degree, the sentence of the Court  
14          is that you are to be committed to the State Department  
15          of Corrections for a period of twenty years. You are  
16          to be given credit for the 321 days time that you have  
17          served.

18          Good luck to you, sir.

19                 [PLEA CONCLUDES AT 10:44 P.M.]  
20  
21  
22  
23  
24  
25

State v. Quincy Holley  
Plea  
May 12, 2011

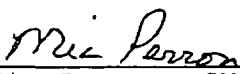
C E R T I F I C A T E

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the plea held before the Honorable Thomas A. Russo, on Thursday, May 12, 2011.

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

Dated this 6th day of January, 2012.

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

MIA PERRON, CVR-CM

-31-

## FORM 5

STATE OF SOUTH CAROLINA )

County of Lexington )Quincy Holley 332439 )

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

v. )

State of South Carolina )

FILED  
IN THE COURT OF COMMON PLEAS

2011 NOV -3 3:55

J. T. A. CARRIGE  
CLERK OF COURT  
LEXINGTON

APPLICATION FOR

POST-CONVICTION RELIEF

2011CP3204154

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 Lexington County Jail
2. Name and location of Court which imposed sentence Lexington County Court House
3. Name(s) of co-defendant(s) (if any) Ricky Bell, Carrie Callan
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2011 GS 3200358
  - (b)

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

2011CP3204154

- (c) FILED
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) May 12, 2010
- (b) 20 years and acquitted all other charges
- (c) FILED 2011 NOV -3 P 3:55
6. Check whether a finding of guilty was made:
- (a) ☒ after a plea of guilty Yes
- (b) ☐ after a plea of not guilty No
- (c) ☐ after a plea of nolo contendere No
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Lexington County Court House
- ii.
- iii.
- (b) the result in each such Court to which you appealed:
- i. pending - waiting on appeal
- ii.
- iii.
- (c) the date of each such result:
- i. pending - waiting on appeal
- ii.
- iii.
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i.
- ii.
- iii.
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a)
- (b)

2011CP3204154

(c) \_\_\_\_\_

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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) \_\_\_\_\_

(c) \_\_\_\_\_

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JETHA A. CARRIGG  
CLERK OF COURT  
LEXINGTON

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

(a) if not for existence of counsel I would have(b) went to trial(c) Deficient Performance

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? \_\_\_\_\_

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. Direct Appeal

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. Lexington County Court Houseii. 407 1/2 West Main St.iii. Lexington, S.C. 29058

iv. \_\_\_\_\_

2011 CPB 04154

(c) the disposition thereof:

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i. pending - still waitingii. 2011 NOV - 3 3 55

iii. \_\_\_\_\_

iv. \_\_\_\_\_

DETH A. CARRIG  
CLERK OF COURT

(d) the date of each such disposition:

i. N/Aii. N/Aiii. N/Aiv. N/A

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

i. N/Aii. N/Aiii. N/Aiv. 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?

Direct Appeal

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

(a) which grounds have been presented:

i. See belowii. That the Court of Appeals

iii. \_\_\_\_\_

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

i. Pending state courtii. N/Aiii. N/A

2011CP3204154

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:

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(a) N/A(b) N/A(c) N/AJETHA A. CARRIGG  
CLERK OF COURT  
LEWIS & CLARK CO.

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

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. Dia Johnson  
PO Box 549, Lexington, SC 29071

ii. \_\_\_\_\_

iii. David Michael Beaudin  
407 1/2 New Main St. Lexington, SC 29072

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

i. Sentencing - and last plea

ii. \_\_\_\_\_

iii. 1<sup>st</sup> arraignment, 1<sup>st</sup> and 2<sup>nd</sup> plea bargain

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

New Trial or  
Vacate all charges

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

no

LETHA CARRIGS  
CLERK OF COURT  
LEXINGTON SC

2011CP3204154

STATE OF SOUTH CAROLINA )

County of Lexington )

VERIFICATION

I, Quincy M. Hollis, 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.

Quincy M. Hollis

SWORN to and subscribed before me this 27th  
day of October, 2011.

Sylvia Jones (L.S.)  
Notary Public

My Commission Expires: 1/24/2018

FILED

2011 NOV -3 3:55

Revised 3/2003

LETHA CARRIGS  
CLERK OF COURT  
LEXINGTON SC

2011CP3204154

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

I, Quincy M. Hollen, 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.

Quincy M. Hollen  
Applicant

SWORN or affirmed to and subscribed before me this  
24th day of October, 2011.

Sylvia Jones  
Notary Public

My Commission Expires: 1/24/2018

DETHA CARRIGO  
CLERK OF COURT

2011 NOV - 3 2 3:55

FILED

|                          |   |                              |
|--------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS |
|                          | ) |                              |
| COUNTY OF LEXINGTON      | ) | Case No: 2011-CP-32-4154     |
|                          | ) |                              |
| Quincy Holley, #332439,  | ) |                              |
|                          | ) | <b>RETURN</b>                |
| Applicant,               | ) |                              |
|                          | ) |                              |
| v.                       | ) |                              |
|                          | ) |                              |
| State of South Carolina, | ) |                              |
|                          | ) |                              |
| Respondent.              | ) |                              |

---

The Respondent, making its Return to the application for post-conviction relief (PCR) filed November 3, 2011, 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 Lexington County Clerk of Court. The Applicant was indicted at the February 2011 term of the Lexington County Grand Jury for Burglary First Degree (2011-GS-32-0358). Applicant was represented by Ola A. Johnson, Esquire. On May 12, 2011, the Applicant pled guilty as charged. The Honorable Thomas A. Russo sentenced the Applicant to confinement for a period of twenty (20) years. Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the guilty 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
2. Involuntary Guilty Plea

## III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a

reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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

#### IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant 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 defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4<sup>th</sup> Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4<sup>th</sup> Cir. 1976).

Respondent submits that 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 which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

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

VI.

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

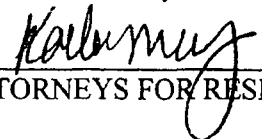
Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY ELLIOTT  
Senior Assistant Deputy Attorney General

KAELOE E. MAY  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
Telephone: (803) 734-3737

April 5, 2012

|                          |   |                              |
|--------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA  | ) |                              |
|                          | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF LEXINGTON      | ) |                              |
|                          | ) |                              |
|                          | ) | 2011-CP-32-4154              |
|                          | ) |                              |
| QUINCY HOLLEY, #332439,  | ) |                              |
|                          | ) |                              |
| 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:

**Francis M. Hinson, IV, Esquire**  
**500 Taylor St.**  
**Columbia, SC 29201**

DATED this 9<sup>th</sup> day of April, 2012.

*Lena Pelishenko*

\_\_\_\_\_  
 Lena Pelishenko, Legal Assistant  
 For Respondent

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

Quincy Holley,  
  
PLAINTIFF,  
  
-VS-  
  
State of South Carolina,  
  
DEFENDANT.

BEFORE THE HONORABLE EDGAR W. DICKSON, JUDGE

AUGUST 15, 2013

LEXINGTON, SOUTH CAROLINA

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

Francis M. Hinson, IV, Esq.  
For the Applicant

J. Walt Whitmire, Esq.  
For the State

REMA K. GANTT THOMAS  
CIRCUIT COURT REPORTER

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## E X H I B I T S

THERE WERE NO EXHIBITS INTRODUCED AT THIS PROCEEDING.

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

3           MR. WHITMIRE: May it please the Court,  
4 the current matter before this Court is Quincy  
5 Holley v. State of South Carolina, Case Number 2011-  
6 CP-32-4154. Mr. Holley was indicted for burglary  
7 first, armed robbery, criminal conspiracy,  
8 possession of a stolen weapon.

9           On May 12, 2011, Mr. Holley pled guilty to  
10 burglary. The Solicitor nol prossed the remaining  
11 charges. The Honorable Judge Russo sentenced Mr.  
12 Holley to 20 years' imprisonment. Mr. Holley did  
13 not appeal his conviction or sentence. Mr. Holley  
14 did file a timely application for post-conviction  
15 relief.

16           Mr. Holley is present and is represented  
17 by Frank Hinson. At this time, Your Honor, I'd turn  
18 matters over to Mr. Hinson.

19           THE COURT: Mr. Hinson.

20           MR. HINSON: Thank you, Your Honor. The  
21 applicant -- and I see Mr. Johnson has already taken  
22 the stand, but I'd like to start off with Mr. Holley  
23 himself.

24           THE COURT: You're going to make Mr.  
25 Johnson work.

1 MR. HINSON: My apology, Mr. Johnson.

2 THE COURT: I appreciate your eagerness to  
3 be under oath.

4 MR. JOHNSON: Yes, sir.

5 (Whereupon, the applicant was sworn.)

6 CLERK OF COURT: Have a seat and state  
7 your name for the record, please.

8 MR. HOLLEY: Quincy Holley.

9 THE COURT: All right, Mr. Hinson, it's  
10 all yours.

11 MR. JOHNSON: Thank you, Your Honor.

12 QUINCY HOLLEY, having first been duly  
13 sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. HINSON:

16 Q Mr. Holley, would you please tell the  
17 Court your educational background? How far did you  
18 go in school?

19 A I went to the 11th grade.

20 Q Did you get your GED?

21 A No.

22 Q Did you complete the 11th grade?

23 A Yes, I dropped out in the 12th.

24 Q So you dropped out during your senior  
25 year?

Quincy Holley - Direct

6

1           A     Yes.

2           Q     And never got your GED?

3           A     Huh-uh.

4           Q     Mr. Holley, you were accused of a crime  
5     that was alleged to have occurred on June 16, 2010.  
6     How old were you at the time?

7           A     Twenty-three.

8           Q     And in your past when you were 23 years  
9     old, tell me about any criminal activity you had had  
10    before.

11          A     The only thing that I was -- I mean, I had  
12    a stolen vehicle charge. That was the only thing.

13          Q     Okay. That was the only thing you had  
14    ever been involved in a courtroom for?

15          A     Yes, sir.

16          Q     Okay. Were you familiar with the legal  
17    process, the criminal legal process?

18          A     No, sir.

19          Q     And you pled guilty to burglary first on  
20    May 12, 2011, is that correct?

21          A     Yes, sir.

22          Q     And who was your counsel at the time?

23          A     Mr. Ola Johnson.

24          Q     And how many times prior to May 12, 2011,  
25    had you met with Mr. Johnson?

1           A     Two times, sir.

2           Q     Two times. And how long had you met with  
3 him at each of those two times, approximately?

4           A     It was a two-week span.

5           Q     I'm sorry?

6           A     It was a two-week span that I met with him  
7 two times.

8           Q     Okay. If Mr. Johnson represents to the  
9 Court that he met with you on March 25th, would that  
10 seem right to you -- March 25, 2011?

11          A     No, sir.

12          Q     Okay. When did you first meet with Mr.  
13 Johnson?

14          A     I would have to say it was in April. I  
15 don't have an exact date, but I know it was in  
16 April. I met with him in April. And then  
17 approximately two weeks after that, I was brought  
18 before the Court.

19          Q     So the first time you met with your  
20 attorney for the guilty plea here was two weeks  
21 before the hearing?

22          A     Yes, sir.

23          Q     Okay. And that first time you met with  
24 him, about how long was that meeting?

25          A     Maybe 30 minutes.

Quincy Holley - Direct

8

1           Q     Okay. In that 30 minutes, did Mr. Johnson  
2 go over all of the evidence against you and any  
3 discrepancies that there might be in the evidence?

4           A     No, sir. The only thing Mr. Johnson was  
5 stating was that I didn't -- me going to trial was  
6 not nowhere in, you know.

7           Q     Did he explain to you any defenses that  
8 there might be for you?

9           A     No, sir.

10          Q     Okay. Did he go over any -- did he  
11 explain to you or point out to you anything in the  
12 State's evidence that might contradict itself?

13          A     No, sir. There was things that I brought  
14 forth towards him that he didn't have no knowledge  
15 of.

16          Q     So you were showing him things --

17          A     Yes, sir.

18          Q     -- that were discrepancies within the  
19 evidence?

20          A     Yes, sir.

21          Q     Okay. So that was the first meeting about  
22 two weeks before the guilty plea?

23          A     Yes, sir.

24          Q     That was, you said, about 30 minutes?

25          A     Yes, sir.

Quincy Holley - Direct

9

1 Q When was the second meeting?

2 A The second meeting was in the beginning of  
3 May.

4 Q Okay. And about how long was that  
5 meeting?

6 A Probably about 30 minutes, too.

7 Q Okay. And at that second meeting, did Mr.  
8 Johnson go over any discrepancies in the evidence  
9 that was against you?

10 A No, sir. At the second meeting, he stated  
11 to me -- he asked me did I really want to go to  
12 trial. I told him yes. And his response was, "Do  
13 you have a suit?" I told him yes and called my mom  
14 to get that right now. And after that, a phone call  
15 was made to my mother stating that if I go to trial,  
16 I'll receive a life sentence. And that was the last  
17 time I talked to Mr. Johnson.

18 Q Okay. And who made the phone call to your  
19 mother stating you'd get a life sentence if you went  
20 to trial?

21 A Mr. Johnson.

22 Q Okay. And your mother relayed that to you  
23 at some point?

24 A Yes, sir.

25 Q At any point in your meetings with Mr.

Quincy Holley - Direct

10

1 Johnson, did he ever convey to you any defense you  
2 might have?

3 A No, sir.

4 Q You said earlier you pled guilty on May  
5 12, 2011. When you entered the courthouse on that  
6 day, did you understand why you were going to court?

7 A No, sir. I didn't receive any record of  
8 appearance that I was receiving throughout my time  
9 in the county for going back for bond.

10 Q Okay. And so when you arrived at court,  
11 did you speak with Mr. Johnson before the hearing?

12 A Yes, sir.

13 Q Okay. And so that was your --

14 A My third time.

15 Q -- your third time ever meeting your  
16 attorney?

17 A Yes, sir.

18 Q And tell me about that interaction there  
19 on May 12, 2011.

20 A When I came in the courtroom, I didn't  
21 actually know what I was coming for. I came here,  
22 and Mr. Johnson approached me. He stated the plea  
23 was 15 to life. I didn't have no chance going to  
24 trial, to go ahead and take the plea. But anything  
25 else, he wasn't -- basically, I ain't had no

1 witness, you know. He made it seem as if I didn't  
2 take the plea that I wouldn't be able to beat the  
3 State.

4 Q And so with that representation from  
5 counsel, you pled guilty that day, correct?

6 A Yes, sir.

7 Q Okay. And since then, you've gone over  
8 the evidence in the State's -- within the State's  
9 file, correct?

10 A Yes, sir.

11 Q Okay. Let me back up for a second. Do  
12 you know if your attorney, Mr. Johnson, ever filed  
13 what's called a Rule 5 motion, a Brady motion,  
14 asking for the State's evidence? Do you know if he  
15 ever did that?

16 A Well, no, sir, I don't know if he did.  
17 But to my knowledge, there was no motion filed.

18 Q Okay.

19 A And I also requested for Mr. Johnson to  
20 also file a motion to suppress evidence due to the  
21 fingerprints and everything. None of my motions was  
22 filed.

23 Q Okay. Do you know if your attorney ever  
24 met with the alleged victims in your case?

25 A Well, during Mr. Johnson's second time to

Quincy Holley - Direct

12

1       come visit me, he stated to me that the Solicitor  
2       wouldn't give him the whereabouts or any information  
3       with regard to the victims because he said it was a  
4       security issue.

5               Q       Okay. So he didn't -- so you never heard  
6       any information about what the victims -- well, let  
7       me just ask this way. Mr. Johnson never relayed to  
8       you anything he had ever ascertained from the  
9       victims?

10              A       No, sir.

11              Q       Okay. Since the time that you pled  
12       guilty, have you gone over the evidence in the  
13       State's file?

14              A       Yes, sir.

15              Q       Okay. Have you found discrepancies in  
16       that evidence?

17              A       Yes, sir.

18              Q       Okay. And there's numerous discrepancies,  
19       correct?

20              A       Yes, sir.

21              Q       Okay. I'd like you to go over them for  
22       the Court. Explain to the Court what you found in  
23       the evidence that wasn't explained to you.

24              A       Well, I found 60 technicalities within my  
25       case, which I found when I was in the county, and I

1       also have awared [sic] Mr. Johnson of the 60  
2       technicalities.

3               Q       What's the first one, Mr. Holley? What's  
4       one of the -- well, let me ask you this. There was  
5       one technicality dealing with the birthdays that the  
6       victims gave to the police officers, correct?

7               A       Yes, sir.

8               Q       Okay. And tell me that discrepancy.

9               A       Well, one of the victims, Ms. -- I don't  
10       know how to pronounce the name -- Marina, she stated  
11       that her birthday was               -- no, I'm sorry, I'm  
12       sorry, that's not right.

13              Q       Take your time.

14              A       One victim stated his birthday was

15                      But my motion, page 78, states that he  
16       gave another statement that his birthday was

17

18              Q       Okay. So --

19                      THE COURT: Is the point that the victim  
20       had a different birthday?

21                      MR. HINSON: The point is, Your Honor,  
22       that the victims were giving conflicting evidence --  
23       or conflicting testimony -- to law enforcement  
24       officers.

25                      THE COURT: About their birthdays?

Quincy Holley - Direct

14

1 MR. HINSON: About their birthdays.

2 THE COURT: Okay. You can lead if you  
3 want to.

4 MR. HINSON: Thank you, Your Honor.

5 Q So, Mr. Holley, at different points in the  
6 Solicitor's -- the State's evidence, the victims  
7 were giving inconsistent statements, is that what  
8 you discovered?

9 A Yes, sir.

10 Q Okay. And was there also inconsistency in  
11 the State's evidence from the victims as far as the  
12 license plate number of the automobile that was  
13 allegedly involved in this burglary?

14 A Yes, sir. There was three different  
15 license plate numbers.

16 Q Okay. And did Mr. Johnson ever bring that  
17 up to you? Did he ever tell you of this  
18 discrepancy?

19 A No, sir.

20 Q Okay. Did the witnesses' statements as  
21 far as what occurred on the alleged date of this  
22 burglary, did that vary in any way -- besides the  
23 birthdays, besides the license plate number?

24 A No, sir.

25 MR. WHITMIRE: I'm going to object as to

1 hearsay, Your Honor, unless the State was sent the  
2 applicant's discovery.

3 THE COURT: I will note your objection on  
4 the record.

5 And I'm going to let you go ahead.

6 MR. HINSON: Thank you, Your Honor.

7 A No, sir. Actually, each victim gave a  
8 different statement.

9 Q And were there variances within those  
10 victims' statements?

11 A Yes, sir.

12 Q And could you tell the Court one of those  
13 variances within the victims' statements?

14 A Well, on page 52 in my motion, it stated  
15 Reynolds stated he snatched the chain up in the  
16 house. On page 5, it states he snatched the chain  
17 off outside the house.

18 Q Okay. So one victim is saying the chain  
19 -- you're talking about a gold chain, correct?

20 A Yes, sir.

21 Q Okay. And so one victim is saying it was  
22 snatched off inside the house, and the other victim  
23 is saying it was snatched off outside the house?

24 A Yes, sir.

25 Q Okay. Was that discrepancy in the

Quincy Holley - Direct

16

1 victims' stories ever brought to your attention  
2 before your guilty plea?

3 A No, sir.

4 Q Did one of the victims say that there was  
5 a gun fired?

6 A Yes, sir.

7 Q Okay. And was there any -- once you  
8 reviewed the evidence against you, was there any  
9 evidence that the police or law enforcement found  
10 that a gun was discharged within the house?

11 A No, sir.

12 Q Were there any fingerprints on the gun?

13 A No, sir.

14 Q Did these -- any of this that we've talked  
15 about, was it ever brought up to you before your  
16 guilty plea?

17 A No, sir.

18 Q Any other discrepancies you would like to  
19 tell the Court?

20 A Well, just the fact that I only had two  
21 weeks in order to prepare an adequate defense for my  
22 case and everything, and he did not show -- Mr.  
23 Johnson did not show me any proof where he had done  
24 any investigation.

25 Q What did he tell you he had done?

Quincy Holley - Direct

17

1           A     Well, he told me that he looked over my  
2     Rule 5. And I asked him about the police tape from  
3     that night that there was money and drugs that was  
4     taken from the scene. And he said he had it, but he  
5     couldn't show me any of it.

6           Q     Were you ever ID'd in a photo lineup by  
7     any of the alleged victims?

8           A     No, sir.

9           Q     Mr. Holley, if you had known about these  
10    discrepancies in the evidence against you, would you  
11    have pled guilty?

12          A     No, sir.

13          Q     Anything else you'd like the Court to  
14    know?

15          A     Yes, sir. Well, my plea was an  
16    involuntary plea. I was basically coerced to plead  
17    because my whole year within the county I was  
18    prepared to go to trial. And my heart was at going  
19    to trial, and then on May the 12th, I was brought  
20    here to Lexington County to a plea hearing.

21                And at the time, I was lacking law due to  
22    Lexington County not having a law library or  
23    anything, so I wasn't up on my law like I was  
24    supposed to be, like I am now. And so that played a  
25    major part of me pleading because I didn't have no

Quincy Holley - Direct

18

1 -- you know, my counsel, he was ineffective with me.  
2 He couldn't show me anything -- he couldn't.

3 Q Did you ever try to reach Mr. Johnson and  
4 not have your phone calls returned?

5 A Yes, sir. I let my mom make all the calls  
6 for him.

7 MR. WHITMIRE: Objection to hearsay.

8 Q Did you ask your mother to make phone  
9 calls for you?

10 A Yes, sir.

11 Q Okay. Did your mother ever tell you that  
12 she was -- did she ever relay to you that she was  
13 unable to reach your attorney?

14 A I can't remember right now.

15 Q Okay. Did you try to reach your attorney  
16 -- did you try to have more meetings with your  
17 attorney, more conversations with your attorney  
18 besides the two you had prior to your guilty plea  
19 hearing?

20 A It was impossible, because after two weeks  
21 I was brought before the Court.

22 Q Mr. Holley, there's one more discrepancy  
23 I'd like to ask you about. Did one of the victims  
24 say that he was -- alleged victims say that he was  
25 pistol-whipped during the July 16, 2010, incident?

1 A Yes, sir.

2 Q And did --

3 MR. WHITMIRE: Objection, Your Honor,  
4 hearsay.

5 Q Did the witness statements reveal that?

6 A Sir?

7 Q Reading the witness statements in the  
8 State's evidence --

9 A Yes, sir.

10 Q -- there's a reference to one of the  
11 victims saying he was pistol-whipped?

12 A Yes, sir.

13 Q Okay. And did the State's evidence reveal  
14 any injury to that victim?

15 A No, sir.

16 Q Okay. Did that victim seek medical  
17 attention, according to the State's evidence?

18 A No, sir.

19 Q Mr. Holley, have you in your life ever  
20 been treated in any kind of mental or psychiatric  
21 way?

22 A Yes, sir. I was diagnosed with  
23 depression, ADHD, and bipolar.

24 Q And did you receive --

25 MR. WHITMIRE: Objection, no foundation.

Quincy Holley - Direct

20

1                   THE COURT: I'll note your objection, and  
2 I'm going to let him go ahead.

3                   MR. HINSON: Thank you, Your Honor.

4           Q     Did you receive treatment for bipolar  
5 disorder?

6           A     Yes, sir.

7           Q     Okay. How old were you then?

8           A     Twelve.

9           Q     And what treatment did you receive?

10          A     I was sent to Baptist Hospital, the mental  
11 health ward, and stayed there approximately a couple  
12 of months.

13          Q     And did you take medications for  
14 depression and bipolar disorder?

15          A     Yes, sir.

16          Q     Thank you, Mr. Holley. Anything else you  
17 want the Court to know?

18          A     No, sir.

19          Q     Thank you.

20                   THE COURT: All right, Mr. Whitmire.

21                   MR. WHITMIRE: May it please the Court.

22                   THE COURT: Yes, sir.

23                               CROSS-EXAMINATION

24           BY MR. WHITMIRE:

25           Q     Good morning, Mr. Holley.

1           A     Good morning, sir.

2           Q     Do you recall your guilty plea in front of  
3 Judge Russo?

4           A     Yes, sir.

5           Q     Do you recall Judge Russo placing you  
6 under oath?

7           A     Yes, sir.

8           Q     And do you recall at one point during your  
9 guilty plea hearing Judge Russo asked you if you  
10 were telling the truth today?

11          A     Yes, sir.

12          Q     And do you also recall the State's  
13 presentation of the facts of your guilt?

14          A     Yes, sir.

15          Q     Didn't you, along with your co-defendants,  
16 rob several victims in their home?

17          A     Several victims?

18          Q     Family.

19          A     No, sir. I mean, I can't say that.

20          Q     But you told Judge Russo that was correct?

21          A     I was -- I mean, basically I was told to  
22 say -- I mean, I was told to go along with  
23 everything because I didn't have a chance.

24          Q     Furthermore, weren't you and your co-  
25 defendants caught fleeing the scene?

Quincy Holley - Cross

22

1           A     Yes, sir.

2           Q     And didn't actual possessions of the  
3 victims turn up in your car?

4           A     Yes, sir.

5           Q     An ID?

6           A     Yes, sir.

7           Q     A gold bracelet?

8           A     Yes, sir.

9           Q     And you subsequently talked to the police  
10 and gave a confession, is that correct?

11          A     Yes, sir.

12               MR. WHITMIRE: Beg the Court's indulgence.

13               THE COURT: Yes, sir, take your time.

14          Q     And didn't Mr. Johnson go over all this  
15 evidence with you prior to your plea?

16          A     No, sir, not -- no, sir.

17          Q     In fact, didn't Mr. Johnson inherit this  
18 case from your first Public Defender, is that  
19 correct?

20          A     Yes, sir.

21          Q     And didn't you tell Judge Russo that Mr.  
22 Johnson had done a really good job in your case?

23          A     Yes, sir.

24          Q     That you were pleased?

25          A     I didn't say I was pleased.

1           Q     And didn't Judge Russo give you the  
2     opportunity to put on the record anything you wished  
3     Mr. Johnson to have investigated that he didn't  
4     investigate?

5           A     Yes, sir.

6           Q     That was your opportunity then to tell the  
7     Court?

8           A     Yes, sir.

9           Q     And you told him you were satisfied, is  
10    that correct?

11          A     Yes, sir.

12          Q     Now, regarding your testimony concerning  
13    your past mental health history, didn't you tell  
14    Judge Russo that you were competent to plead guilty?

15          A     I mean, he didn't ask me that question.

16          Q     If you had a clear head?

17          A     Have I had a clear head?

18          Q     On the day of your guilty plea.

19          A     Yes, sir.

20                MR. WHITMIRE:  No further questions, Your  
21    Honor.

22                THE COURT:  All right, anything on  
23    redirect?

24                MR. HINSON:  Very briefly, Your Honor.

25                THE COURT:  Okay.

Quincy Holley - Redirect

24

1 REDIRECT EXAMINATION

2 BY MR. HINSON:

3 Q Mr. Holley, when you told Judge Russo that  
4 you were pleased with your counsel, at that time did  
5 you know of the discrepancies in the evidence  
6 against you?

7 A No, sir.

8 Q Had you gone over the evidence with Mr.  
9 Johnson --

10 A Yes.

11 Q Had you gone over the discrepancies in the  
12 evidence with Mr. Johnson at that time?

13 A Yes, sir.

14 MR. HOLLEY: No further questions, Your  
15 Honor.

16 THE COURT: All right.

17 RECROSS EXAMINATION

18 BY MR. WHITMIRE:

19 Q These discrepancies that you allege today  
20 don't change the fact that the victims' possessions  
21 were found in the car with you, is that correct?

22 A No.

23 THE COURT: Sir, you may step down. I  
24 appreciate it.

25 Mr. Hinson, I assume now you're going to

1 make Mr. Johnson walk up?

2 MR. HINSON: Actually, real briefly, Your  
3 Honor, I'm going to call Ruth Holley.

4 THE COURT: Okay, Ms. Holley.

5 THE COURT: Mr. Hinson, I'm not trying to  
6 call witnesses for you. I apologize.

7 MR. HINSON: That's quite all right.

8 (Whereupon, the witness was sworn.)

9 CLERK OF COURT: Have a seat and state  
10 your name for the record, please, ma'am.

11 MS. HOLLEY: Ruth Holley.

12 THE COURT: Ms. Holley, do you mind  
13 speaking up a little.

14 MS. HOLLEY: Ruth Holley.

15 THE COURT: Thank you, ma'am.

16 All right, Mr. Hinson, your witness.

17 RUTH HOLLEY, having first been duly sworn,  
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. HINSON:

21 Q Ms. Holley, what's your relationship with  
22 Quincy?

23 A My son.

24 Q And, Ms. Holley, as a child was Quincy  
25 ever treated for any psychiatric or mental issues?

Ruth Holley - Direct

26

1           A     Yes, he was.

2           Q     And briefly just tell me about when that  
3 was and what the mental issue or concern was.

4           A     During middle school, he has been treated  
5 for ADHD and bipolar. He has been on Adderall, and  
6 he has been on night medication, also.

7           MR. WHITMIRE: I'm going to object as  
8 hearsay and a lack of foundation for the record.

9           THE COURT: Okay, I'm going to overrule  
10 your objection. She can testify as to what  
11 medicines he took as a child.

12                  Okay, go ahead.

13           A     He has been on Adderall, and he's also  
14 been on night medication to help him sleep at night  
15 because of the Adderall overactive him so he  
16 couldn't sleep at night. The Adderall was because  
17 he's been overactive and he couldn't concentrate  
18 during school.

19           Q     Was he ever treated as an inpatient for  
20 any psychiatric issues?

21           A     Yes, he had to stay in the hospital. I  
22 notice he said that he's been in the hospital for a  
23 couple of months. But he's actually been in the  
24 hospital for more than a couple of months.

25           Q     About how long would you estimate it was?

1           A     He's been in there for approximately about  
2     I think it's been about six months probably.

3           Q     Okay. And he wasn't in the hospital for  
4     attention deficit disorder, was he?

5           A     It's been -- yes.

6           Q     Did it deal with his bipolar disorder?

7           A     Yes.

8           Q     After Quincy was arrested on June 16,  
9     2010, did you try to contact his attorney?

10          A     Yes, sir, I did.

11          Q     How did you attempt to contact his  
12     attorney?

13          A     I've been calling him because Quincy had  
14     been calling at home asking me to call him because  
15     he hasn't been seeing his attorney while he's been  
16     incarcerated.

17          Q     And did the attorney -- was that attorney  
18     Mr. Johnson?

19          A     Yes.

20          Q     Okay. Did he return your phone calls?

21          A     No.

22          Q     Okay. Were you calling on behalf -- why  
23     were you calling?

24          A     I wanted to know what's been going on.

25          Q     And did Quincy ask you to contact his

Ruth Holley - Direct

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1 attorney?

2 A Yes.

3 Q Did you leave messages for him to contact  
4 Quincy?

5 A Yes, I left my phone number so he could  
6 call me back, and I left messages because I wanted  
7 to know -- I wanted him to contact Quincy and give  
8 him something to know -- I mean, to let him know  
9 what was going on with his case.

10 Q Did Mr. Johnson ever call you back?

11 A No.

12 Q Is there anything else, Ms. Holley, you'd  
13 like the Court to know about Mr. Johnson's  
14 representation of Quincy that you have knowledge of?

15 A The only time when I had spoke to Mr.  
16 Johnson was probably right before the case, when he  
17 called me back right before the case, and then I  
18 spoke to him when we came to court, right before  
19 court started.

20 Q Did you speak with Quincy right before  
21 court started on that guilty plea?

22 A Yes, I think I got a chance to speak to  
23 him.

24 Q Did you understand that he was about to  
25 plead guilty?

1           A     No.

2                     MR. HINSON:  Nothing further.

3                     THE COURT:  All right, anything on cross?

4                     MR. WHITMIRE:  May it please the Court.

5                                 CROSS-EXAMINATION

6     BY MR. WHITMIRE:

7           Q     Ms. Holley, you spoke on behalf of Quincy  
8     at his guilty plea, is that correct?

9           A     No.

10                     MR. WHITMIRE:  One second, Your Honor.

11                     THE COURT:  All right, I've read it.

12           A     Wait -- yes, I did.

13                     THE COURT:  I see what's there.

14           A     Yes, I did.

15           Q     Did you hear Quincy tell Judge Russo that  
16     he was happy and satisfied with Mr. Johnson, is that  
17     correct?

18           A     Yes, I did.

19           Q     Now, if you had concerns, why didn't you  
20     tell Judge Russo that day?

21           A     Well, I mean, I said what I said, you  
22     know, when I spoke to him, you know.  And I told him  
23     about his mental issues.  That's what I said.

24           Q     But during mitigation, Ms. Johnson [sic],  
25     you told the judge to take it easy on Quincy, is

Ruth Holley - Cross

30

1       that correct?

2           A     That's right.

3           Q     Why didn't you tell the judge that Mr.  
4       Holley had any alleged mental defect?

5           A     I thought I did.

6           Q     Wouldn't that have helped him at  
7       sentencing?

8           A     I thought I did mention that to him.

9           Q     Ms. Holley, you don't want to see your son  
10      in jail, is that correct?

11          A     Right.

12                MR. WHITMIRE:  No further questions, Your  
13      Honor.

14                THE COURT:  All right, anything on  
15      redirect?

16                       REDIRECT EXAMINATION

17      BY MR. HINSON:

18           Q     Ms. Holley, did Mr. Johnson ever tell you  
19      that if this case went to trial, your son would get  
20      a life sentence?

21          A     Yes.

22          Q     Did he ever explain to you any defenses  
23      your son might have?

24          A     No.

25          Q     Did he ever explain to you any

1 discrepancies in the State's evidence against  
2 Quincy?

3 A No.

4 THE COURT: Anything on recross?

5 MR. WHITMIRE: One question, Your Honor.

6 RECROSS EXAMINATION

7 BY MR. WHITMIRE:

8 Q Ms. Holley, wasn't Mr. Johnson Quincy's  
9 attorney and not your attorney?

10 A Right..

11 MR. WHITMIRE: No further questions, Your  
12 Honor.

13 THE COURT: Thank you. You may step down.  
14 Thank you, ma'am.

15 All right, Mr. Hinson, I'm going to leave  
16 this up to you. Who are you calling next?

17 MR. HINSON: Thank you, Your Honor. Kim  
18 Thompson -- Thompkins.

19 MR. WHITMIRE: Your Honor, may we  
20 approach?

21 THE COURT: Sure.

22 (Whereupon, a sidebar was held at the  
23 bench.)

24 THE COURT: We just had a brief  
25 conference, and, Mr. Whitmire, you indicated you

Ruth Holley - Recross

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1       were not aware of some of the witnesses that were  
2       going to be called?

3               MR. WHITMIRE:   Yes, Your Honor.

4               THE COURT:   Okay.   And you object to them  
5       being called without notice to the State, is that  
6       correct?

7               MR. WHITMIRE:   Just for the record, Your  
8       Honor.

9               THE COURT:   Okay.   I know, I know.

10              MR. WHITMIRE:   Yes, sir.

11              THE COURT:   That's why we're putting it on  
12       the record.

13              MR. WHITMIRE:   Yes, sir.

14              THE COURT:   Okay, thank you, sir.

15              (Whereupon, the witness was sworn.)

16              CLERK OF COURT:   Have a seat and state  
17       your name for the record, please, ma'am.

18              MS. THOMPCKINS:   Kimberly Thompson.

19              KIMBERLY THOMPCKINS, having first been duly  
20       sworn, testified as follows:

21                               DIRECT EXAMINATION

22       BY MR. HINSON:

23               Q       Ms. Thompson, what's your relationship  
24       with Mr. Holley?

25               A       I've known Quincy since he was probably 12

1 or 13, and my grandson, Anthony Holley, is his son.

2 Q And you've heard testimony today about  
3 Quincy having some mental or psychiatric issues when  
4 he was a child. Are you aware of those?

5 A Certainly.

6 Q Okay. Before Mr. Holley's guilty plea in  
7 2011, did you ever try to contact his attorney, Mr.  
8 Johnson, on behalf of Quincy?

9 A Several times.

10 Q How did you try to contact him?

11 A I would be in my apartment on my cell  
12 phone calling his number, getting his voice mail  
13 repeatedly, leaving several messages, but he never  
14 returned the phone calls.

15 Q Okay. How many times would you estimate  
16 you called Mr. Johnson?

17 A Forty or fifty.

18 Q Forty or fifty?

19 A Easily, yes.

20 Q How many times would you estimate those  
21 phone calls were returned?

22 A Never. The day Quincy was sentenced, I  
23 actually tried several times to talk with him. I  
24 was sick that day. Several days after that, I left  
25 work and I came up here to the courthouse one day.

Kimberly Thompkins - Direct

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1 I took some of Quincy's paperwork over down there  
2 where they sign, and they did that. I tried to call  
3 him several times.

4 Eventually, he did finally return my call.  
5 Basically, I explained to him that Quincy was, you  
6 know, wanting to know what was going on with his  
7 appeal, and he was trying to file an appeal. And he  
8 basically just very rudely told me he was no longer  
9 Quincy's attorney.

10 Q Okay. That phone call, the returned phone  
11 call you're speaking of, was before or after the  
12 guilty plea hearing?

13 A After.

14 Q Okay. Ms. Thompkins, anything else you  
15 want the Court to know about Mr. Johnson's  
16 representation of Quincy?

17 A I don't feel like there was any  
18 representation of Quincy.

19 THE COURT: Anything on cross?

20 Ma'am, not quite yet. If you'd wait one  
21 second.

22 MR. WHITMIRE: One quick question, Your  
23 Honor.

24 THE COURT: Sir?

25 MR. WHITMIRE: I said one quick question.

1 THE COURT: Okay.

2 CROSS-EXAMINATION

3 BY MR. WHITMIRE:

4 Q Ms. Thompkins, you like the applicant a  
5 lot, is that correct?

6 A Excuse me?

7 Q You hold the applicant in high regard, is  
8 that correct?

9 A We've had our ups and downs. I love  
10 Quincy.

11 Q Ms. Thompkins, you don't want to see him  
12 in jail, is that correct?

13 A No, no one wants to see their family --

14 MR. WHITMIRE: No further questions, Your  
15 Honor.

16 THE COURT: Anything on redirect?

17 MR. HINSON: No, Your Honor.

18 THE COURT: Thank you, Ms. Thompkins.

19 All right, Mr. Hinson, who's next?

20 MR. HINSON: The applicant rests, Your  
21 Honor.

22 THE COURT: Okay, thank you, sir.

23 Mr. Whitmire, any witnesses for the State?

24 MR. WHITMIRE: May it please the Court,  
25 the State calls Ola Johnson.

Kimberly Thompkins - Cross

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1 (Whereupon, the witness was sworn.)

2 THE COURT: Mr. Whitmire, your witness.

3 OLA JOHNSON, having first been duly sworn,  
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WHITMIRE:

7 Q Mr. Johnson, how long have you been  
8 practicing criminal law?

9 A A little over 12 years.

10 Q Can you just briefly describe your  
11 experience?

12 A Well, my first job -- my very first job --  
13 was non-criminal for about a year with Nexsen  
14 Pruitt, but I then took a job as a Public Defender  
15 in Aiken. I worked there for two years. Then I  
16 went in private practice in Columbia for about a  
17 year, and then I went to work for the Aiken County  
18 Solicitor's Office for a little over two years.

19 Then I was offered a job in Lexington, and  
20 I came to work here as a Solicitor for about three  
21 years. And then I went into private practice, and  
22 that was about three and a half years ago. And I've  
23 done a lot of criminal law for three and a half  
24 years.

25 Q Mr. Johnson, can you explain the

1       circumstances surrounding the State's case against  
2       Mr. Holley?

3             A       Well, I received the notice. I got an e-  
4       mail from the Solicitor's, and I got a copy of the  
5       order appointing me to represent him, because he had  
6       Mr. David Mauldin, who was a Public Defender, and he  
7       had been representing him for a long time, I believe  
8       for about a year.

9             And there was an indication that Mr.  
10       Holley had been given an offer and that Mr. Holley  
11       did not accept it. I actually received  
12       communication from Mr. Wedekind, who was the  
13       Solicitor on the case, who said that Mr. Holley was  
14       offered a 10-to-20 range I think on attempted armed  
15       robbery if he testified against co-defendants.

16            He turned that down. He then stated that  
17       he wanted to plead guilty to the armed robbery of  
18       the Mexicans. And then apparently they brought him  
19       over, and he turned that down and refused to enter a  
20       guilty plea then. He had made a motion to relieve  
21       or have Mr. Mauldin relieved.

22            He felt that Mr. Mauldin was not going  
23       over or not communicating with him properly about  
24       all the evidence. So the judge relieved him and  
25       appointed me. I talked to Mr. Mauldin, and if I can

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1 refer to my notes.

2 I met with David Mauldin March 21st. He  
3 gave me some more detailed information. We had a  
4 HIPAA (PH) release signed by the client. We got a  
5 copy of his file from the State Department of Mental  
6 Health indicating a depressive disorder, a  
7 prescription for Paxil.

8 There was nothing in there that made me  
9 think that he would be incompetent. But I wanted  
10 to, of course, talk to him before I made that  
11 determination. I got the records from Mr. Mauldin.  
12 We met -- let's see. I believe I met with the  
13 client a total of three times prior to the day of  
14 the plea, which would be the fourth meeting.

15 I had met him first on March 25th. I had  
16 some contact phone numbers for Ruth Holley and Emma  
17 Jean Harris and basically contacted Mr. Holley to  
18 get an idea of what he wanted to go with. He had a  
19 very detailed account of the evidence.

20 He had been provided a full copy. I had  
21 been given a copy of the evidence from the Public  
22 Defender's Office that they received from the  
23 Solicitor's Office. And I went over that with him  
24 in great detail for several hours on that day.

25 I also related to him that prior to that

1 meeting, on March the 23rd it looks like I had --  
2 that was the day I went to the evidence room of the  
3 West Columbia Police Department and met with Al --  
4 Larry Wedekind from the Solicitor's Office, Al from  
5 the Solicitor's Office, and Chuck Brown, and we went  
6 over that.

7 We basically reviewed all the physical  
8 evidence. They had two stolen handguns that they  
9 went into -- with multiple rounds. Item C, they had  
10 an Arizona driver's license. It looks like it could  
11 have been a picture of a co-defendant on that, Mr.  
12 Bell. And there were just multiple items in there.

13 I got some photographs of the evidence as  
14 well as all that. They notified me that they were  
15 going to possibly proceed against my client. They  
16 were worried that he had contacted someone to burn  
17 the car and burglarize the home of the victim. And  
18 they basically warned me, "Tell your client this  
19 better not be him basically doing this."

20 I talked to Mr. Wedekind, the Solicitor.  
21 I informed him that I needed to talk to the victims.  
22 I informed him that I had about 12 to 15 Spanish  
23 language interpreters on speed dial because I've  
24 been doing immigration work in Charlotte. And I had  
25 no problem getting an interpreter, but I needed to

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1 make contact with them.

2 The information I had did not allow me to  
3 contact them. And he said he was going to set up an  
4 interview at the Solicitor's Office, and I asked him  
5 to do that. At some point -- I don't have the date  
6 -- I believe I actually went to the trailer park,  
7 and I was going around knocking on some doors. I  
8 don't think I ever found the victims out there, so I  
9 did not have that meeting.

10 But Mr. Wedekind indicated he was going to  
11 work on that and set that up. Then after the  
12 meeting at the evidence room -- you want me to just  
13 continue?

14 Q I'll just ask you one quick question. Had  
15 Mr. Holley decided he wanted to go to trial, would  
16 you have further pursued an investigation of the  
17 victims?

18 A Yes, that was my plan. And I told Mr.  
19 Holley when I met with him the first time, which was  
20 on March the 25th, I believe -- let's see. We  
21 talked in great detail.

22 There was a set of discovery given to me  
23 that was actually the Solicitor sent it out with  
24 numbered pages, and there were two sets of charges.  
25 There was an armed robbery from another incident,

1       and that was about 50 pages.

2               Then there was another larger group of  
3       paperwork. I think it was one through 168. That  
4       was provided to me. So when I got to talk to Mr.  
5       Holley, he had a very detailed list of all the  
6       discrepancies that were noted within the file.

7               He wanted to talk about it, and I told him  
8       that I had been reviewing the file and let's go over  
9       it. So the first time we did that was March the  
10      25th. Just for detail, we talked about no  
11      fingerprints found. And these are from my notes.

12              Defendant showed me his motion for a  
13      speedy trial. He did not want to pursue it, but he  
14      showed that to me. He had already had a bond motion  
15      that was heard and denied. Mr. Mauldin represented  
16      him. He said that his cousin did commit -- him, and  
17      his cousin did commit the crime.

18              We talked about page 46. It says on June  
19      7, 2010, page 81, there was a discrepancy there with  
20      the date, I guess. Page 81, that the victims I'd  
21      only one firearm. Page 83, victim says she did not  
22      have a chance to turn around and see the person.

23              And there were some -- page 111, there was  
24      a difference in the tab between pages 112 and 135.  
25      And we went on and on. I can send you the list of

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1       that if you want me to. But we had a lot of  
2       discussions with each other.

3               Q       That's fine, Mr. Johnson. Mr. Holley did  
4       mention that he desired a suppression defense. Did  
5       you review a suppression defense with him?

6               A       I did. I talked about pre-trial motions,  
7       and I told him that if we were going to go forward  
8       with a trial, we would, of course, file a motion.  
9       But I asked him what he wanted to do, and he seemed  
10      to indicate to me that he did not want to go to  
11      trial, but he did not want to plead guilty.

12              I said, "Well, you know, we have to figure  
13      out what we're going to do." And obviously the  
14      State, I told him, was going to proceed with the  
15      case since he had rejected the original offer. I  
16      talked with Solicitor Wedekind. I believe what they  
17      indicated was that "Well, if you want to plead  
18      guilty now, he's going to have to plead guilty to  
19      two counts of armed robbery and burglary first."

20              And the recommendation I think was  
21      concurrent, which, of course, he did not want to do  
22      every time I met with him up until that last time he  
23      was saying that he did not want to do that. And I  
24      said, "Well, we're going to" -- I told him I was  
25      going to continue to work the case and prepare it

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1       for trial, because obviously the State was not going  
2       to dismiss the charges, from the impression I was  
3       getting.

4               I told him about my meeting at the  
5       evidence room and review of the evidence. I told  
6       him that I would be more than happy and that I was  
7       going to set up a meeting with the victims, and that  
8       was something I would definitely do before trial.

9               I talked to his mother, Ms. Holley. She  
10       contacted me -- let's see. On March 27th, I called  
11       the defendant's mother, Ruth Holley, to discuss the  
12       case and the evidence after Mr. Holley gave me  
13       consent to do that when we spoke again. I talked to  
14       his mother again -- let's see -- March 27th, and I  
15       talked to her March 29th. I met with him several  
16       other times, if you want me to go into that.

17              Q       I believe that's sufficient, Mr. Johnson.  
18       But specifically relating to Mr. Holley's request  
19       for a suppression defense, did you see any merits in  
20       having evidence contained in that vehicle  
21       suppressed?

22              A       Well, I talked about the idea that he said  
23       that -- he mentioned -- I believe in the notes he  
24       mentioned that one of the victims had seen him at  
25       bond hearing. And of course, we talked about the

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1 possibility of suppressing the testimony of the  
2 victim from an in-court identification because if  
3 she had not been shown a lineup and she had seen him  
4 in that setting where he was in custody, I told him  
5 that, of course, I would make that motion.

6 And, of course, we talked about in general  
7 can we suppress the evidence. I told him that, you  
8 know, if he had a vehicle that belonged to him and  
9 there was a search of that vehicle, we could -- of  
10 course, we could make the motion there. If he had  
11 items that were in his pockets and there was a  
12 search of his person, it's my understanding, I  
13 believe, that this evidence was seized from the  
14 floorboard of the vehicle and item falling out.

15 So we talked about in general many  
16 motions, including suppression motions, and I gave  
17 him my opinion of the case so far. It didn't seem  
18 like since they were caught leaving the scene -- I  
19 believe they were caught right there leaving the  
20 trailer park, and they had the items with them, and  
21 they all confessed, and there was a Miranda form  
22 indicating that --

23 Q Okay, that's fine. Just a few more quick  
24 questions for you today, Mr. Johnson. Did you have  
25 any concerns or problems communicating with Mr.

1       Holley?

2           A     No, I talked to him -- at my initial  
3       meeting, I kept asking him questions. I wanted to  
4       find out if he was competent in addition to  
5       discussing the evidence. And I sort of would talk  
6       about the evidence, and I would ask him basic  
7       questions, "You know what year it is?" "You know  
8       who I am?", talked about the process of going to  
9       trial, and "Who is the Solicitor?" and "What does a  
10      judge do"? and all those things, and he seemed very  
11      well versed, and he understood perfectly what was  
12      going on.

13               And I talked to him about his records from  
14      the Department of Mental Health, and there was  
15      nothing indicating to me that he was not competent.  
16      So he seemed to understand it.

17           Q     Just a few more quick questions. Didn't  
18      Mr. Holley have virtually a life sentence hanging  
19      over his head?

20           A     Well, he did have a potential life  
21      sentence, 15 to life on the first degree burglary in  
22      addition to two counts of armed robbery. I believe  
23      they carried 10 to 30 each. And then if you just  
24      add up time, if he had gotten 30 plus 30 plus if he  
25      got 15, he could have spent his life in prison just

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1 off of those sentences.

2 But he had an actual 15 to life, which  
3 means he could have been sentenced to that, although  
4 I told him there was no automatic strikeout because  
5 he did not have a sufficient record. I don't  
6 believe he had anything other than possession of a  
7 stolen vehicle, I think. He had two armed robberies  
8 separate that were pending. Of course, they could  
9 have tried those separately. But since they were  
10 separate incidents, there's no real connection.  
11 But, yes, he could have gotten life.

12 Q At the date of his guilty plea, if Mr.  
13 Holley indicated any desire to withdraw his plea,  
14 what would you have done?

15 A I would have informed the Solicitor and  
16 judge we're not going with the plea, but he did not  
17 do that.

18 Q And whose decision is it to take a guilty  
19 plea?

20 A That would be the client's decision.

21 Q One more question. I believe one of Mr.  
22 Holley's witnesses briefly touched on this, but it's  
23 not in his application. Did Mr. Holley ever request  
24 an appeal?

25 A He sent me a letter, but it was past the

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1       10 days. And I've got a copy of the envelope. It's  
2       postmarked more than 10 days, so definitely I  
3       received it more than 10 days because it's  
4       postmarked more than 10 days after the plea. I  
5       instructed him at the plea that he had to give me  
6       notice.

7               Then I could file it within the 10 days,  
8       and the judge told him that I believe on the record.  
9       But he failed to do that. We called the Court of  
10      Appeals, and they reminded me once again that too  
11      much time had passed, so it was not possible.

12             Q     One final question. Had Mr. Holley timely  
13      requested an appeal, would you have filed the  
14      notice?

15             A     Yes.

16             Q     No further questions. Thank you, Mr.  
17      Johnson.

18             THE COURT: Mr. Hinson, anything on cross?

19             MR. HINSON: Briefly, Your Honor.

20             THE COURT: Okay.

21             MR. HINSON: If I might beg your  
22      indulgence for one second.

23                       CROSS-EXAMINATION

24             BY MR. HINSON:

25             Q     Mr. Johnson, before Mr. Holley's guilty

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1 plea, were you aware that he had had mental issues  
2 as a child?

3 A I was aware through review of the  
4 Department of Mental Health files that he had been.  
5 There's I believe a diagnosis in there, and they  
6 talked about depressive disorder. I talked to Mr.  
7 Mauldin about his conversations with Mr. Holley. I  
8 reviewed the file, so I was aware of it. And I  
9 brought that to him, and we discussed it.

10 Q But you never told Mr. Holley that he  
11 could use that to his benefit at trial as to his  
12 mental state, did you?

13 A I told him that I didn't feel he had any  
14 record or any disorder that I could ascertain that  
15 could be used. I don't think he was insane. I  
16 don't think there was a basis there for an insanity  
17 defense. And I reviewed his file with him, and we  
18 discussed it. And I said, "Well, based on the  
19 records and the information I had, I didn't think  
20 that there was a sufficient basis for that. But, of  
21 course, it is a defense that some people use."

22 Q Did you ever have him evaluated?

23 A I did not have him evaluated based on my  
24 conversations with him over -- I believe we had a  
25 total of four meetings, and discussions with his

1 mother, and a review of the mental health files.

2 There was nothing that indicated to me that he was  
3 not competent before and not criminally responsible  
4 based on the record and based on my memory.

5 Q You were sitting here when Mr. Holley went  
6 over some discrepancies he saw in the State's  
7 evidence. Did you and Mr. Holley discuss those  
8 before his guilty plea?

9 A Yes, sir, we discussed them in great  
10 detail.

11 Q Did he find those, or did you find those?

12 A Some of them I found, and some of them he  
13 found. He found a lot of them, and we discussed  
14 them. And then I think we discussed some other  
15 things. I talked to him about the general -- you  
16 know, the difficulty the State could have in  
17 bringing victims to court if they're Hispanic.

18 I've represented a couple of hundred  
19 Hispanic people, and I told him that oftentimes they  
20 don't show up for trial. And when he actually  
21 entered his guilty plea, the State walked him into  
22 the courtroom, and I put my hand on Mr. Holley's  
23 shoulder and said, "Please turn around."

24 And I pointed to the victims, and I said,  
25 "Those are the victims that's been indicated to me

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1 by the State. And I have an interpreter that I can  
2 call immediately, and I'll walk out there in the  
3 hallway and I'll take them outside and I'll talk to  
4 them."

5 And I asked him if he'd like me to do  
6 that, and he said no, he wanted to put the case  
7 behind him before his plea. But I indicated to him  
8 that if he goes forward with a trial, they would  
9 reschedule for another day, and there's a chance  
10 they just might not show up.

11 But since they showed up for the plea,  
12 they were available. We talked about -- I asked him  
13 if he had been forced to enter the residence, if  
14 there's some defense there, and he kept telling me  
15 that he felt that his defense was that they were  
16 Mexican and therefore not citizens and so they  
17 couldn't testify against him.

18 I instructed him that that was not true  
19 and that, of course, the circumstances of the case  
20 were that someone put a gun to a child's head and  
21 demanded money. He said, "Well, it was a drug buy  
22 gone wrong, and they bought cocaine from these  
23 people. So therefore, that would be a defense."

24 And I instructed him that testifying in  
25 front of a jury that he was a cocaine dealer would

1 not cause him to be acquitted. And I felt that that  
2 was not something that would help him in his case.  
3 So he kept insisting that drugs were involved.

4 He said that he thought there was some  
5 cocaine that should have been seized in his  
6 possession or that it was in the car. He didn't  
7 know where that was at. I told him I went to the  
8 evidence room, and I had no evidence of large  
9 quantities of cocaine.

10 Q Move to strike the nonresponsive portion  
11 of that answer. Mr. Johnson, my question is the  
12 technicalities that Mr. Holley brought up, the vast  
13 majority of them he found, not you, correct?

14 A Well, I found some of them, but I wrote  
15 down what he had and then matched them to the things  
16 I found. I'm not saying I found all of them. He  
17 found a lot of inconsistencies in the report.

18 Q So were there actually inconsistencies?

19 A Yes, we discussed --

20 MR. WHITMIRE: Objection, Your Honor,  
21 asked and answered.

22 THE COURT: I'm going to let him answer  
23 it. But just on your request for me to strike as  
24 nonresponsive, I'm doing that. That's all a part of  
25 his representation of him. But nice try.

Ola Johnson - Cross

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1           A     There were inconsistencies. I wrote them  
2     down here. But I explained, you know, in my  
3     experience at trial if he was going to testify that  
4     he had robbed his cocaine supplier that simply  
5     because the police typed the tag number wrong on two  
6     different pages and he was caught leaving the scene  
7     with the evidence in the car, I just told him that I  
8     didn't think that would result in an acquittal.

9                 We talked about some other things. He did  
10    have some good points and some things that I had  
11    noticed. When he said that there was no sign of  
12    injury, the victim claims he had been struck. I  
13    said, "Well, I believe that's correct," and I didn't  
14    see any medical reports or anything. And he was  
15    correct about that.

16                The problem, of course, would be they  
17    would tell the story about the child being  
18    threatened with a gun. And since he had confessed  
19    to the crime and I believe the confession was  
20    admissible, I thought that was pretty strong  
21    evidence. So I didn't think that these  
22    inconsistencies would be sufficient to result in  
23    acquittal.

24                But we talked about them, and some of them  
25    I had noticed and some of them he noticed before me

1       and brought them to my attention. We talked about  
2       it in great detail. If you want me to go into the  
3       details of that, I'll be happy to do it.

4               Q       Well, Mr. Johnson, are you aware of the  
5       circumstance that Mr. Holley had an attorney prior  
6       to yourself?

7               A       Yes.

8               Q       Okay. And did you understand that Mr.  
9       Mauldin was relieved of counsel because Mr. Holley  
10      was unhappy with the communication he was getting  
11      with Mr. Mauldin?

12              A       Yes.

13              Q       Okay. And do you understand that there  
14      had been an offer of no greater than 20 years that  
15      was rejected during the time Mr. Mauldin was  
16      counsel?

17              A       It was an offer of I believe 10 to 20, and  
18      it was rejected.

19              Q       Okay. And did you understand from your  
20      client, Mr. Holley, that the reason he rejected was  
21      miscommunication with Mr. Mauldin?

22              A       That's what he told me.

23              Q       Okay.

24              A       He said that he wanted to talk about all  
25      of his details and couldn't.

Ola Johnson - Cross

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1           Q     And because he hadn't taken that offer, it  
2     was taken off the table?

3           A     Yes.

4           Q     Okay. So when he came to trial or came  
5     and made his guilty plea, at that point you had not  
6     spoken with the victims?

7           A     No, I had not had a meeting with the  
8     victims.

9           Q     Okay. And the State had not made them  
10    available to that point?

11          A     No. I told them that we would do that,  
12    but I asked him, "Do you want to go forward? I have  
13    not met with them." I pointed them out in the  
14    courtroom, and I said, "I'll meet with them today  
15    and drag them in the hallway." And he said, "I want  
16    to get this behind me."

17          Q     Okay. But until that day, the State  
18    hadn't made them available?

19          A     That's correct.

20          Q     Okay. And when Mr. Holley had not taken  
21    an offer, a plea offer prior, that offer had been  
22    withdrawn from him?

23          A     That's correct.

24          Q     And was there an offer on the day he pled  
25    guilty?

1           A     Well, I told him that the offer they  
2     communicated to me I believe was Mr. Wedekind said  
3     he wants him to plead guilty basically to two armed  
4     robberies and a first-degree burglary, which he  
5     didn't want to do.

6                 And he said, well -- I believe what he  
7     said was offers concurrent. And I talked to him  
8     about that, but ultimately we got the offer of plead  
9     guilty to first-degree burglary, and of course it's  
10    15 to life, and it's a scary thing to do.

11                I told him that I thought there was a  
12    chance that we could get 20 since the co-defendants  
13    had that deal. But, of course, we would ask for 15.  
14    We did, and I believe we got 20, but we asked for  
15    15, which is the mandatory minimum.

16           Q     Had you ever explained -- at the time you  
17    met him at the courthouse on the day of his guilty  
18    plea, had you previously discussed pleading guilty?  
19    Had he indicated to you that he wanted to plead  
20    guilty?

21           A     He did before we met at the courthouse.  
22    There was a last meeting. I told him, I said, you  
23    know, "We're going to have to figure out what we're  
24    going to do." And I contacted the Solicitor because  
25    he had indicated he wanted to plead guilty.

Ola Johnson - Cross

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1                   And I asked the Solicitor about cutting  
2                   out the armed robberies and cutting out the burglary  
3                   first degree or the armed robberies and see what  
4                   they would do to whittle down that offer. And I  
5                   didn't know what they were going to offer, if  
6                   anything.

7                   And then they said -- well, I guess they  
8                   were happy finally just dropping the armed  
9                   robberies. But we asked for 15, and we didn't get  
10                  it, but we didn't get life.

11                  MR. HINSON: Nothing further at this time,  
12                  Your Honor.

13                  THE COURT: All right, thank you, sir.

14                  Mr. Whitmire, anything on redirect?

15                  MR. WHITMIRE: The State rests, Your  
16                  Honor.

17                  THE COURT: Mr. Johnson, you may step  
18                  down. Thank you, sir.

19                  All right, gentlemen, I'll look over what  
20                  I have been given, and I will get back with you with  
21                  my decision. Thank you.

22                  MR. WHITMIRE: Thank you, Your Honor.

23                  MR. HINSON: Thank you, Your Honor.

24                  --End of Transcript of Record--

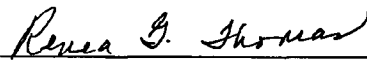
STATE OF SOUTH CAROLINA    )  
COUNTY OF LEXINGTON        )

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT THOMAS, OFFICIAL COURT  
REPORTER, AND NOTARY PUBLIC IN AND FOR THE STATE OF  
SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING  
IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF  
RECORD OF THE PROCEEDINGS HAD AND EVIDENCE  
INTRODUCED IN THE ABOVE-CAPTIONED CASE ON AUGUST 15,  
2013, IN LEXINGTON, SOUTH CAROLINA.

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

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

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

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FILED

**ORIGINAL**

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

2014 AUG 11 PM 12:26

BETH A. CARRIGG  
 CLERK OF COURT  
 LEXINGTON, SC

Case No: 2011-CP-32-4154

Quincy Holley,  
 S.C.D.C. No. 332439

Applicant,

**ORDER OF DISMISSAL**

v.

State of South Carolina,

Respondent.

This matter comes before the Court pursuant to an Application for Post-Conviction Relief (PCR) filed November 3, 2011. Respondent made its Return on April 9, 2012. An evidentiary hearing into the matter was convened on at the Lexington County Courthouse on August 15, 2013. Applicant was present at the hearing and was represented by Francis M. Hinson IV, Esq., Respondent was represented by Walt Whitmire, Esq., of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Sarah A. Hahn, ("plea counsel") Esquire, testified. This Court also had before it the records of the Lexington County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the February 2011 term of the Lexington County Grand Jury for Burglary, first-degree (2011-GS-32-0358). He was represented by Ola A. Johnson, Esq. On May 12, 2011, the State called its case.

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Applicant pled guilty as charged. The Honorable Thomas A. Russo sentenced Applicant to a term of twenty (20) years imprisonment. Applicant did not appeal his conviction or sentence.

At the PCR hearing, Applicant moved forward on the following allegations:

1. Ineffective assistance of counsel:
  - a. failure to investigate the State evidence;
  - b. failure to prepare a defense;
  - c. failure to move to suppress an unlawful in-court identification and evidence obtained from an illegal search and seizure;
  - d. failure to make a Brady motion<sup>1</sup>;
  - e. failure to file a notice of appeal;
2. Involuntary guilty plea:
  - a. counsel allegedly coerced Applicant to plead guilty

#### SUMMARY OF TESTIMONY

Applicant testified counsel was ineffective for failing to prepare a defense and He claimed that since his incarceration, he has discovered sixty errors in the State's evidence. Applicant spent a year confined at the Lexington County Detention Center prior to the disposition of his charges. He testified his mother made numerous phone calls to counsel but could not remember if his mother was able to reach him. Since the plea hearing, Applicant received his case file and has extensively reviewed it in preparation for the hearing. He noted the alleged absence of a filed Brady motion and claimed he was prejudiced because counsel was not provided adequate access to the victims prior to the plea. For instance, he explained that one of the victim's birthdays was inaccurately recorded. He further elaborated that the three victims gave inconsistent statements. He stated that each victim provided different identifications of the license plate on the getaway vehicle. Applicant also testified to the alleged variances in the statements provided by the victims. Applicant testified he met with counsel two times in March

<sup>1</sup>Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963)

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and once in May prior to his plea. Applicant testified counsel advised him that he reviewed the discovery disclosures from the State. Applicant claimed that he showed counsel "things he did not know about" regarding the State's evidence. Applicant testified that he was never identified in a photo lineup by the victims. He also claimed State did not collect latent prints from the gun used by the assailants in the robbery. Last he claimed the State did not have medical records to support one of the victim's accounts that he incurred injuries from being pistol whipped by one of the assailants. Applicant testified that he would not have pled guilty had he known of these alleged weaknesses in the State's evidence. Its Applicant's contention that counsel advised him that he had a chance of success at trial. However, Applicant also testified that counsel never discussed "going to trial" with him.

Applicant alleged counsel was ineffective for failing to have State's evidence suppressed. Applicant testified that he asked counsel to make a motion to suppress the post-burglary items recovered during immediate traffic stop and asserted counsel never followed through. He believed the evidence constituted fruits of an unlawful search and seizure.

Applicant alleged counsel was ineffective for failing to file a Brady motion in his case. This allegation was supported by Applicant's own post-disposition review of his case file. He noted the alleged absence of a filed Brady motion and claimed he was prejudiced because counsel was not provided adequate access to the victims prior to the plea. Next, Applicant alleged counsel was ineffective for failing to file a timely notice of appeal on his behalf.

Applicant alleged his guilty plea was rendered involuntary as a result of counsel's conduct. Applicant claimed he always wanted a trial despite counsel's contrary advice. Applicant claimed he was confined in the Lexington County Detention Center for a year while he waited for his day in Court. Applicant claimed he recently spoke with counsel about the merits of his

case prior to entering the plea. He claimed they were set to take the case to trial when counsel had Applicant's mother advise him he was looking at a life sentence upon conviction, the State was going to present overwhelming evidence of guilt, and that he would be a monumental mistake to decline a favorable plea offer from the State. He claimed that he was brought to Court on the day of plea without knowing the purpose of the appearance. He explained that he did not feel personally prepared for a jury trial and stated, "I spent an entire year in county and was prepping to go to trial. I was coerced because I didn't have access to be up on my law like how I was supposed to be." He testified that he suffered from behavioral disorders and mood defects.

At the PCR hearing, Applicant's mother, Ruth Holley, testified to efforts she made in helping Applicant reach a favorable disposition in the case. She testified she would leave messages for counsel throughout the case and noted she had numerous conversations with counsel at the outset of representation and prior to the plea hearing. She testified that she did not know Applicant was going to Court to enter a guilty plea on the day of his plea hearing. However she testified she spoke in mitigation during the sentencing phase of the hearing. She detailed Applicant's mental health history but noted she conveyed this information to the Plea Judge. Holley testified counsel explained to her Applicant's possible sentencing exposure without discussing the evidence of the case.

At the PCR hearing, Kimberly Tompkins, a distant relative, testified to her attempts to contact counsel during Applicant's case. She testified that she allegedly phoned counsel forty or more times to get information about Applicant's case. After the plea, she phoned counsel and requested an appeal but was informed counsel was no longer Applicant's attorney. She believed counsel provided meaningful representation to Applicant. Last, she testified that she did not want to see Applicant imprisoned.

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At the PCR hearing, counsel testified to his course of conduct during the representation. Counsel had over twelve years experience as a criminal attorney in South Carolina. He worked as a Public Defender in the Second Judicial Circuit and he worked as a Solicitor in both the Second and Eleventh Judicial Circuits. As a result of Applicant's motion to have his prior counsel, David Mauldin, Esq., relieved, counsel was appointed on the case. Counsel met with Mauldin to obtain necessary files and to discuss Applicant's case. Counsel also discussed Applicant's mental health among other relevant matter with Holley. Counsel reviewed Applicant's Department of Mental Health files and noted Applicant had no problem communicating with him. Counsel found Applicant to be competent and well-versed in aiding the defense. Based on counsel's experience, he did not believe an insanity defense was applicable in Applicant's case.

Counsel testified to the posture of the case from the outset of his representation. Counsel met with Applicant four times prior to the plea hearing. Counsel reviewed the State's discovery disclosure and testified to his detailed notes on the matter. Counsel's investigation of the State's case included a visit to the police department to inspect the State's evidence. While at the police department, counsel photographed the evidence and catalogued it to aid in his subsequent review. Two days later, counsel met with Applicant and discussed his findings. Additionally, counsel traveled to the residence of the victims and attempted to interview them. Furthermore, counsel discussed the viability of a suppression defense had the case gone to trial with Applicant. Applicant claimed one of the victim's saw him at a previous bond hearing which led to discussions about a motion to suppress a future in-court identification. Yet, counsel advised Applicant on the strength of the State's evidence where Applicant and his co-defendants were apprehended while in flight from the scene of the offense. Personal effects that belonged to the

victims were found in the vehicle at the time of arrest. Applicant brought the technical discrepancies not discovered by counsel to his attention during their consultations. Counsel noted that he had exhausted a possible investigation in Applicant's case and was fully prepared to take Applicant's case to trial had Applicant not voluntarily entered a guilty plea.

According to counsel, Applicant's ultimate goal was unclear. Applicant did not want to proceed to trial yet he did not want to plead guilty. Applicant's version of the facts comported with the State's evidence of guilt. He told counsel that he and his cousin did commit the offense. Counsel testified Applicant explained his version of the facts of the offenses as a narcotics deal gone bad.

It was counsel's opinion that the case turned on the availability of the victims as trial witnesses. Counsel advised Applicant that just because the victims were foreign nationals, it did not mean they would shy away from testifying against him. Counsel also advised Applicant that minor inconsistencies, such as a variation in the victims' identification of the license tag, would not have resulted in an acquittal. Applicant changed course and decided to plead guilty during Counsel's last consultation with Applicant. Ultimately, the victims were present at the plea hearing. At that time, the State provided counsel the opportunity to meet with the victims with an interpreter present. Applicant instructed counsel to decline the occasion and explained that he just wanted to put these charges behind him and enter the guilty plea. Counsel advised Applicant that based upon his experience, Applicant was looking at a sentence in the neighborhood of twenty-years. At the plea hearing, counsel would have notified the Court had Applicant expressed a desire to withdraw his plea. Last, counsel expressly notified Applicant that if he desired an appeal, the burden was on him to contact counsel within ten days. Counsel received a

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letter on the matter from Applicant over ten days after the plea hearing. Counsel contacted the Court of Appeals for advice and was informed that the statute of limitations was non-negotiable.

#### APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 668, 104 S.Ct. at 2064. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland, *supra*. 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.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

As a matter of general impression, ~~this~~ <sup>the</sup> Court finds that Applicant was not deprived of effective assistance of counsel. This Court finds counsel's testimony credible and Applicant's testimony not credible. Furthermore, this Court finds Holley and Thompkins' testimonies to be suspect and irrelevant. Defense counsel's decisions and conduct were reasonable in the circumstances, and did not fall below professional norms of reasonableness. This Court finds that the evidence against Applicant was overwhelming. Applicant also claims that his guilty plea was not entered into voluntarily. The Court disagrees. The Court finds that defendant was aware of the discrepancies in eyewitness testimony, and that this did not affect his plea. The Court finds that Applicant's plea was freely and voluntarily given. Counsel's preparation for the PCR hearing equated to the quality expected in representation of Applicant.

A.

This Court finds Applicant's allegation that counsel was ineffective for failing to investigate the State's evidence and prepare a defense is without merit. "Without a doubt, [a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007) (citing Thompson v. Wainwright, 787 F.2d 1447, 1450 (11th Cir.1986) (internal citations omitted). This Court's

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denial of this allegation is of a rudimentary nature when counsel in fact investigated everything at issue at the PCR hearing. Counsel independently investigated the victims' statements, the absence of fingerprint evidence, was provided the opportunity to interview the victims, etc. Not only was counsel's investigation sufficient, this Court finds the manner in which he complied materials and presented them to Applicant to be exemplary. Counsel's wealth of experience in criminal law was evident. Furthermore, counsel testified that the possible benefits to presenting minor inconsistencies in the State's evidence and a meritorious suppression defense to the victims' identification of Applicant would not have resulted in an acquittal at trial. This Court agrees. Applicant made an exculpatory admissible statement subsequent to his arrest. A statement is not admissible unless it was voluntarily made. See State v. Von Dohlen, 322 S.C. 234, 243, 471 S.E.2d 689, 694 (1996) ("A statement is not admissible unless it was voluntarily made."). Similar admissions from co-defendants strengthened the potency of the statement. In addition, guilt was corroborated by the personal effects of the victims found in the vehicle. Not only did the Applicant lack standing to challenge the search, the search was a valid <sup>search.</sup> ~~See~~ State v. Tynes, 402 S.C. 211, 217, 740 S.E.2d 512, 515 (Ct. App. 2013) (citing State v. Bultron, 318 S.C. 323, 332, 457 S.E.2d 616, 621 (Ct.App.1995) ("upholding a warrantless search of a vehicle in which police agents observed a handgun on the floor before arresting the occupants and stating the standard for a warrantless search as "a justifiable determination, based on the totality of the circumstances and in view of all the evidence available to law enforcement officials at the time of the search.")). See State v. Tynes, 402 S.C. 211, 217, 740 S.E.2d 512, 515 (Ct. App. 2013). Applicant has posited no logical reason to explain how it would have been in his best interest to forgo a guilty plea to have the opportunity to mount a suppression defense at trial. Therefore, these allegations are denied and dismissed.

This Court finds Applicant failed to prove counsel was ineffective for failing to properly prepare a defense. This Court finds counsel's preparations in formulating a defense theory of the case to be reasonable. Notably, the overwhelming evidence of Applicant's guilt provided counsel few options in pursuing potential defenses. Counsel advised Applicant of the insignificant manner in which he would poke holes in the State's case at trial. The only substantial defense was to hold out and see if the State would be able to make its case and present the victims as witnesses at trial. In light of the victim attendance at court appearances, including the plea hearing, this prospect was product of wishful thinking. See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997). Regardless, Applicant did not produce credible evidence of what defense strategy counsel should have pursued but did not. See Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) ("Respondent failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial."). Therefore, this allegation is denied and dismissed.

Last, this Court finds Applicant failed to meet his burden to prove counsel was ineffective for failing to file a Brady motion. This allegation rests solely on Applicant's suspect testimony that because he did not locate a Brady motion in the file provided to him after his plea, then counsel by inference did not file one. Again this Court reiterates its finding that counsel's testimony was credible and Applicant's testimony was not credible. In addition, counsel inherited the case where prior counsel certainly would have made the fundamentally preliminary motions. Counsel notably had full access to the State's evidence and witnesses. See Strickler v. Greene, 527 U.S. 263, 283 n. 23, 119 S.Ct. 1936, 1949 n. 23 (1999). Regardless, this allegation rests upon mere speculation. Porter v. State, 368 S.C. 378, 386, 629 S.E.2d 353, 358 (2006)

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("Mere speculation of what a witness' testimony may be is insufficient to satisfy the burden of showing prejudice in a petition for PCR."). Therefore, this allegation is denied and dismissed.

B.

Applicant failed to meet his burden to prove counsel was ineffective for failing to file a notice of appeal on Applicant's behalf. "[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S.Ct. 1029 (2000). In the present case, Applicant received the approximate sentence that counsel advised him was most probable within the sentencing scheme. Counsel testified Applicant committed to the plea. This Court finds that there was no rational reason that a criminal defendant in Applicant's position would have desired an appeal. Thus, counsel adequately put Applicant on notice that he had exactly ten days to inform counsel that he desired an appeal. The credible evidence shows Applicant had an untimely case of buyer's remorse.

C.

Last, this Court finds Applicant failed to prove his plea was entered involuntarily as a result of counsel's allegedly coercive conduct. "In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of the plea." Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). "To ensure the defendant understands the consequences of his guilty plea, the trial judge usually questions the defendant about the facts surrounding the crime and punishment that could be imposed." Id. at 434-435, 405 S.E.2d at 392. "Defendant's knowing and voluntary waiver of statutory or constitutional rights 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." State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993). Here, the Plea Judge's colloquy was sufficiently thorough. This Court finds Applicant was competent. From the onset of representation, counsel determined Applicant was able to effectively communicate and aid in his defense. Applicant testified before this Court in a matter that failed to indicate otherwise. Thus there was no reason to believe Applicant's mental faculties would bolster his allegation. Applicant has presented no credible reason of why this Court should depart from statements and assurances he made at the plea hearing. See Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621 (1977) ("A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed.")). Therefore, this allegation is denied and dismissed.

D.

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

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**CONCLUSION**

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

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

**IT IS THEREFORE ORDERED:**

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

AND IT IS SO ORDERED this 4<sup>th</sup> day of August, 2014.



EDGAR W. DICKSON  
Presiding Judge  
Eleventh Judicial Circuit

Orangeburg, South Carolina

Ola Johnson

WITNESSES

West Columbia Police Department

David Myers

Law Enforcement Case #: 1016637

LGW

ARREST WARRANT NUMBER

J033804

DOCKET NO. 2011GS3200358

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2011

THE STATE

VS.

Quincy Maurice Holley

ACTION OF GRAND JURY

**TRUE BILL**

Ola Johnson  
Foreperson of Grand Jury  
Date: 2/2/11

VERDICT

CDR #: 0079

Indictment for

BURGLARY FIRST DEGREE

§ 16-11-0311

DONALD V. MYERS, SOLICITOR

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA     )  
                                                            )  
 COUNTY OF LEXINGTON         )  
                                                            )

INDICTMENT FOR  
 BURGLARY FIRST DEGREE

§ 16-11-0311

At a Court of General Sessions, convened on FEBRUARY 2011, the Grand Jurors of Lexington County present upon their oath:

That **Quincy Maurice Holley** did in Lexington County, South Carolina on or about June 16, 2010 did knowingly and willfully enter a dwelling, to wit: [REDACTED] [REDACTED], West Columbia, SC, being the dwelling of Alexander Herrera, Ailodi Herrera, Mirna Herrera, Rigobert Ramirez, and Adul Bargas, without consent and with the intent to commit a crime therein and was armed with a handgun, in violation of § 16-11-311 of the Code of Laws of South Carolina, 1976, as amended.

**A TRUE COPY**

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

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

*[Signature]*  
 ASSISTANT SOLICITOR