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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Allendale County

Donald B. Hocker, Circuit Court Judge

JEFFREY LEE MOORE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLANT CASE NO. 2015-000889

APPENDIX

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State of South Carolina)
County of Greenwood) Court of General Sessions
2012-GS-24-0830

State of South Carolina)
vs.) Transcript of Record
Jeffrey Moore)
DEFENDANT)

May 14, 2012
Greenwood, South Carolina

B E F O R E:

Honorable J. Cordell Maddox, Judge.

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

Andrew Hodges, Assistant Solicitor
Attorney for the State

Charles Grose, Public Defender
Janna Nelson, Assistant Public Defender
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

EXHIBITS

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(NO. EXHIBITS WERE INTRODUCED.)

1 THE COURT: Ms. Nelson.

2 MS. NELSON: Your Honor, I think this is all in
3 general a motion for a continuance, Your Honor. And I
4 know we have already discussed some of these issues with
5 you briefly in-chambers. But I think the primary thing
6 would be to address would be that I believe Mr. Moore
7 would like to have the opportunity to hire private
8 counsel. And he can probably tell you more about why he
9 wants to do that, Your Honor. But I think in general he
10 feels, correct me if I am wrong. I think he feels like I
11 have maybe mislead him or given him some misinformation
12 about the possibility of a plea in this case. And that
13 perhaps I haven't done everything that I needed to do to
14 prepare for trial. I am sure that one of the State's
15 responses would be that this case has been pending for I
16 think for somewhere in the neighborhood of 16 to 17
17 months. However, as I have already explained to Your
18 Honor a significant portion of that time, initially we
19 were waiting for an evaluation on criminal responsibility
20 that took an excessive amount of time. But that took
21 months where we were waiting even for the evaluation to
22 happen and then for the results. After that the State had
23 some, had an item that they wanted a DNA sample from Jeff
24 and since we elected not to consent to that so they had
25 SLED develop a profile, actually I think there were about

1 seven different profiles developed and then we had a
2 Schmerber which was granted. And then of course the SLED
3 results had to be obtained. So it took quite a number of
4 months through really no fault of anyone's before the case
5 was even right for trial. This is the first time that it
6 has been put on the docket. And it wasn't until last
7 month that there was even any discussion of any kind of
8 plea offer in this case. And I think that Jeff had the
9 impression that that offer was going to be held open and
10 now he finds out today, even as late as week before last I
11 was telling him that there was another case ahead of this
12 one that I expected to be tried, that I expected was going
13 to go the entire week. And that if we did not get reached
14 that I was hoping that Mr. Hodges would still discuss a
15 plea resolution with me. And since none of that has
16 worked out the way I told Jeff he is asking for the Court
17 to continue the case to give him the opportunity to hire
18 private counsel. So I would ask the Court to hear from
19 him if there is anything he wants to add on that
20 particular issue. And then I have some more to give you
21 on the motion for continuance as well, Your Honor.

22 THE COURT: Yes, sir. Is there anything you want to
23 tell me just in regard to the motion to get another
24 lawyer?

25 MR. MOORE: I have been locked up since December of

1 2009. And I just found out last week my case was going to
2 go to trial. I was under the assumption that I was going
3 to get a plea offer. She had told me once that Mr. Hodges
4 had made an offer and that he was willing to go down on
5 that offer and I was looking forward to it and expecting
6 it. But since I have been sitting over there in the
7 County for the last 17 months there is a lot of things
8 should have been done that wasn't done that would have
9 determined the outcome of this case. There is a lot of
10 things I asked Ms. Nelson to do that wasn't done. And
11 like I said, I just found out last week there was a
12 possibility that this case was going to become a trial. I
13 had never had an opportunity to really sit down and
14 discuss this case with her. I never had a chance to give
15 her the witnesses that I had in this case. And really I
16 don't think we are prepared to go to trial. Like I said,
17 I have been in the County jail for the last 17 months with
18 no bond. I have had no opportunity to get out and try to
19 get some counsel and I just want to have somebody to
20 represent me. I was willing to go ahead with that public
21 defender thinking that I was going to get a plea. So, I,
22 we didn't have enough time to prepare for this trial.

23 MS. NELSON: The only other thing that I would add is
24 that Mr. Moore did have the means to hire private counsel
25 it is always a position of our office that, obviously we

1 have got plenty of business and if people can afford to
2 hire private counsel then we certainly want them to do
3 that and be afforded the opportunity to do that so we can
4 direct our efforts towards the people who cannot.

5 THE COURT: Well, the problem is we are ready for
6 trial. I mean, I understand you have witnesses that you
7 still haven't told your lawyer about.

8 MR. MOORE: Yes, sir. I have been sitting over there
9 18 months and just last week I learned that it was going
10 to be tried. If I had of knew that 18 months ago I could
11 have gave her all the information we need. But I was
12 there--

13 THE COURT: But why wouldn't you give that to her?

14 MR. MOORE: Sir?

15 THE COURT: Why wouldn't you give her that
16 information right up front so she could start working on
17 it?

18 MR. MOORE: Because she never told me, gave me any
19 indication it was going to trial. I assumed that I was
20 going to get a plea offer so I could plead guilty to it.

21 THE COURT: Okay. Y'all have a position on this?

22 MR. HODGES: Your Honor, from the State's perspective
23 it just appears to be a delay tactic. Assistant Solicitor
24 Taylor was reminding me the last time Mr. Moore had a jury
25 trial on a burglary case that he was, his recollection was

1 that he was represented by the public defender. He made
2 an eleventh hour motion to have the public defender
3 relieved. Mr. Carson Henderson was actually appointed and
4 was the one who actually tried the case last time. So it
5 just seems to be right out of the Jeffrey Moore trial
6 delay playbook. That is what it appears to be is he is
7 just trying to delay the inevitable.

8 THE COURT: It seems to me, have you talked to him
9 about witnesses?

10 MS. NELSON: That was another part of what I was
11 going to discuss with you, Your Honor, if you did say I
12 needed to stay on the case. Just before we came out to
13 qualify the jury I was given, I was given a witness name
14 which of course is not on my witness list. And I was
15 given some information that I need to subpoena and I don't
16 know if I will be able to get that information tomorrow.
17 I need to subpoena some video surveillance from various
18 places that I did not know about before. So that is
19 another part of the reason we need a continuance on this
20 case, Your Honor.

21 MR. MOORE: My other part about this surveillance
22 video, I am just now, like I said, been 18 months and I
23 never got, know anything about what is going on with this
24 case. So just last week I found out they got a so called
25 witness that said that I was with him at the time, during

1 the time that this--

2 MS. NELSON: You probably don't need to say a whole
3 lot about this.

4 THE COURT: Don't say too much. Here is what I am
5 going to do. I am going to deny your motion to get a new
6 lawyer. You need to meet with your lawyer and tell her
7 this stuff, don't say it out here and then we will deal
8 with it tomorrow. I mean, look, it is one thing if it is
9 a motion to just put the trial off. It is another if it
10 is a legitimate motion about a witness you didn't know
11 about. So I am going to keep you on the case and meet him
12 and then we will talk about it tomorrow. I don't know
13 what else to do. I don't want to continue it now because
14 it is up for trial. And if I do that then every time
15 somebody is ready for trial and they try to do it all the
16 time, they just change lawyers. But I need you to find
17 out if it is a legitimate problem. Why don't you get some
18 information on that and how hard it is going to get and
19 then we will deal with that tomorrow. I will give you the
20 evening to talk with him and figure out what is going on.
21 We have got the jury coming in at 11:30.

22 MS. NELSON: I could go subpoena this stuff in the
23 morning but I don't know that I will be able to get it.

24 THE COURT: Okay. I want to keep you on the case
25 until we figure out whether this is just a delay tactic or

1 something legitimate.

2 MS. NELSON: I have the name of one witness that I
3 was unaware of until this afternoon and three places that
4 I need to subpoena something from. I can of course try to
5 contact the witness tonight. But I don't know if I will
6 have the means to get things subpoenaed tomorrow morning.

7 THE COURT: Okay.

8 MS. NELSON: And the other basis for a continuance,
9 Your Honor, would be the same thing that I discussed with
10 you in-chambers. The other thing we talked about
11 in-chambers was that I feel that, I feel that if this
12 other case had caught today and if there was more
13 available to be tried that, I think there is at least a
14 possibility if not a probability that if we were after the
15 primary which takes place on June 12th that the State
16 might be in a position where they were willing to
17 negotiate this case. And I say that just based on some
18 conversations I have had with Mr. Hodges to that effect.
19 I certainly don't have any promise that his position on
20 negotiating the case would change but that seemed to be
21 the indication that it was at least possible. And again,
22 as I explained to you earlier, Your Honor, I don't think
23 that Jeff's position on having to either go to trial or
24 plead to a burglary first should be dependent on, should
25 be politically motivated. And he really wants to work

1 this case out. I really want to work this case out. And
2 I think that given this is the first time it has been on
3 the docket given this new information that I need to
4 attempt to uncover in an order to effectively represent
5 him and given the possibility that we could totally
6 dispense with any need for trial if we just wait one
7 month. Those are all reasons, Your Honor, that I am
8 asking for the case to be continued just for one term.

9 THE COURT: Mr. Hodges, is there any chance that the
10 State is going to change their position on this?

11 MR. HODGES: Your Honor, I am not trying to soften my
12 position on this case. There was a plea offer out there
13 to my understanding from Jeffrey which is how we get to
14 the point where we are at. I have had conversations with
15 the sheriff, this defendant has been a problem in this
16 jail. He has asked the case to be pushed forward to a
17 trial. Both law enforcement officers involved in the case
18 and the victim in the case have indicated they think this
19 defendant is a problem. So that is where we are and why
20 we are where we are. I don't know that anything will
21 change.

22 MS. NELSON: Not knowing that anything will change
23 doesn't mean it wouldn't change. And I would just
24 reiterate that Mr. Moore is absolutely willing to do
25 something that would get him out of the jail. And my

1 understanding is not that the jail wants this pushed to
2 trial but just they want it resolved. And to have Mr.
3 Moore go from, either to be released if he is acquitted or
4 to be in the prison system if he is convicted either with
5 a plea or trial. I don't think the jail has a position on
6 how it is resolved. I think they just want it resolved
7 and all I am saying is that we, he is perfectly willing to
8 resolve it with a plea to, the same plea offer that was
9 made to a reduced charge, Jeff is still willing to do or
10 now willing to do. I think sometimes it takes realizing
11 that the trial is really actually going to happen
12 sometimes before people kind of, especially when they are
13 having to go to prison for a long period of time.

14 THE COURT: What was the offer last time?

15 MS. NELSON: We discussed a plea to burglary second
16 violent for, 15 years was discussed. Jeff asked me to go
17 back to Mr. Hodges with 5. I went back with 5 and what I
18 recollect and what my notes reflect was that the response
19 was I could maybe come down a couple of years but I can't
20 come down to where you want it. And since there was such
21 a big disparity we were not able to resolve it at that
22 time. But I think now that Jeff knows they are really
23 going to bring him to trial on this and not work with him
24 that he is willing to be a whole lot more flexible.

25 MR. GROSE: And, Judge, I don't want to lead a

1 misconception here. Mr. Hodges says he has been a problem
2 in the jail. What he means is that he has sued the jail.
3 He hasn't hurt anybody or done anything like that.
4 Essentially he has exercised legal right that everybody
5 has and it is to some extent it is being retaliated
6 against him. That is the reason why they are pushing it
7 because the jail and the sheriff say they want him out of
8 there because of the lawsuit. That gets back to the whole
9 issue of Solicitor control, prosecutorial control of the
10 docket and how they can manipulate those.

11 THE COURT: My assumption is that that is going to
12 change but it didn't yet. I mean they call what they want
13 and that creates a problem every time. What I will do is
14 leave you on it, meet with him tonight. What I need for
15 you to tell me tomorrow as an officer of the court is, are
16 there difficulties getting this information. And if they
17 are how difficult. And then I am going to have to weigh
18 the fact that he waited until the week of court to tell
19 you that because it may not be enough to continue it. I
20 mean, if I do that every defendant every week can hold
21 back one witness and tell their lawyer and say, you know,
22 got a new witness.

23 MS. NELSON: I wish I had of known earlier too. I
24 think what Jeff is telling me was correct, Your Honor,
25 that he really did believe that we would be able to work

1 this case out.

2 THE COURT: Okay. All right. Do we have any pleas
3 tomorrow morning or is this what we are going to do
4 tomorrow?

5 MR. HODGES: I will find out.

6 THE COURT: I will get here between 10:00 and 10:30
7 and we will figure it out. We will address this first.

8 MS. NELSON: Thank you, Your Honor.

9 May 15, 2012.

10 THE COURT: Yes, sir.

11 MR. HODGES: Your Honor, standing before you is
12 Jeffrey Lee Moore. Mr. Moore is entering a plea of guilty
13 on indictment 2012-GS-24-830 to the offense of burglary in
14 the first degree. He is represented by Janna Nelson of
15 the Greenwood Bar. We have negotiated a 15 year sentence
16 on that charge. In consideration of his plea on that
17 indictment the State will be dismissing the larceny
18 indictment which was 11-1128 and there was an original
19 burglary indictment, this is actually a reindict before
20 you. That original indictment was 11-1127 and we will be
21 dismissing that as well.

22 THE COURT: So all of that will be dismissed.

23 MR. HODGES: Correct. And the plan is, Judge, is to
24 just to enter the plea today and defer sentencing until
25 tomorrow morning. The victim in the case was planning on

1 being here tomorrow morning for the jury trial, she is at
2 work this morning and it is also my understanding that Mr.
3 Moore has got some family that he wanted to notify before
4 sentencing.

5 THE COURT: Are they going to be up here tomorrow?

6 MS. NELSON: Yes.

7 THE COURT: If you would raise your right hand.

8 JEFFREY MOORE, being

9 first duly sworn, testified as follows:

10 THE COURT: Mr. Moore, do you understand I am going
11 to go through the colloquy and ask you about your rights
12 and take your plea but I am not going to sentence you
13 until tomorrow. Do you understand that?

14 MR. MOORE: Yes, sir.

15 THE COURT: You are okay with that?

16 MR. MOORE: Yes, sir.

17 THE COURT: How old are you?

18 MR. MOORE: I am 46.

19 THE COURT: And how far did you go in school?

20 MR. MOORE: GED.

21 THE COURT: How long have you been in jail?

22 MR. MOORE: Since December of--

23 MS. NELSON: It is 511 days today, Your Honor.

24 THE COURT: Have you had any drugs or alcohol in the
25 last twenty-four hours?

1 MR. MOORE: No, sir.

2 THE COURT: Are you taking any kind of prescriptions
3 or medication that I need to know about?

4 MR. MOORE: No, sir.

5 THE COURT: Has anybody threatened you in any way or
6 promised you anything to get you to plead guilty here
7 today?

8 MR. MOORE: No.

9 THE COURT: And you understand that this is a
10 negotiated sentence and the sentence tomorrow will be 15
11 years. If for some reason after hearing all the facts I
12 think that that is insufficient, I think you should get
13 more time I will let you withdraw your plea. Do you
14 understand that, no worries.

15 MR. MOORE: Yes, sir.

16 THE COURT: You will either get the 15 years or you
17 can withdraw it. Do you understand that?

18 MR. MOORE: Yes, sir.

19 THE COURT: In order to plead guilty you have to
20 waive your constitutional rights. Do you understand that?

21 MR. MOORE: Yes, sir.

22 THE COURT: And in particular you have to waive your
23 right to a jury trial, your right to remain silent, your
24 right to confront the witnesses that the State would be
25 required to bring in to testify against you and your right

1 to put up a defense. Are you waiving all of those rights?

2 MR. MOORE: Yes, sir.

3 THE COURT: Do you have any questions about those
4 rights?

5 MR. MOORE: No, sir.

6 THE COURT: Have you talked to your lawyer about your
7 waiver of constitutional rights?

8 MR. MOORE: Yes, sir.

9 THE COURT: Have you had plenty of time to speak with
10 your lawyer?

11 MR. MOORE: Yes, sir.

12 THE COURT: And are you satisfied with her services?

13 MR. MOORE: Yes, sir.

14 THE COURT: Has she done everything you have asked
15 her to do?

16 MR. MOORE: Yes, sir.

17 THE COURT: Has she answered all of your questions?

18 MR. MOORE: Yes, sir.

19 THE COURT: And have you had plenty of time to speak
20 to your client?

21 MS. NELSON: Yes sir, I believe I have.

22 THE COURT: And you think he understands the elements
23 of this charge and his waiver of constitutional rights?

24 MR. MOORE: Yes, Your Honor.

25 THE COURT: Mr. Moore, you want to plead guilty to

1 burglary first?

2 MR. MOORE: Yes, sir.

3 THE COURT: And are you guilty of that charge?

4 MR. MOORE: Yes, sir.

5 THE COURT: Yes, sir.

6 MR. HODGES: Your Honor, this occurred on December
7 the 22nd of 2010 at [REDACTED], it is the residence
8 of Ms. Patterson. Ms. Patterson was at her mother's
9 residence and received notification from ADT that there
10 was an alarm at her house, she had an ADT alarm system at
11 her residence. She indicates that she made it home within
12 about five minutes of receiving that alert. And as she
13 pulled into the driveway saw an individual walking across
14 her backyard wearing a tan jacket. There is a fence that
15 runs down the right side of her yard and partly across the
16 back, back in where the driveway is there is a gap in the
17 fence and she saw the individual walking towards the gap
18 in the fence. When her headlights illuminated the
19 backyard, it was nighttime, she saw the individual turn
20 and go jump the fence in kind of the corner in her yard in
21 the back right. She then called 911, backed out of her
22 driveway and turned and went down the side street where
23 she encountered the same individual being Mr. Moore. He
24 basically made a comment that, I didn't take any of your
25 stuff, why are you following me. He then went down and

1 the officer who happened to be very close by had gotten
2 the dispatch, caught up with Mr. Moore, took him into
3 investigative detention. Noticed that there was some rips
4 to his clothing, he was bleeding from a couple of places.
5 They went back up her residence, found a broken window at
6 the back of the residence, a side door had been opened and
7 a number of her items of personal property were across the
8 property line back there where there is a gap in the
9 fence. They also located a black glove caught in the top
10 of the wire of the chain linked fence in the corner where
11 she saw him jump over. And when Mr. Moore was arrested
12 they found the matching glove in his coat pocket. We did
13 do DNA testing on the glove. It was consistent with being
14 Mr. Moore's. There were, I think, four different
15 individuals DNA on it and it was a very weak sample so I
16 think it was a 1 and 7 so it was fairly weak but it was
17 consistent with his DNA. But again, the two gloves
18 matched. There was also a individual across the street
19 who had been speaking with Mr. Moore before the burglary
20 and indicated that he had made some comments about needing
21 money and that he may break in somewhere.

22 THE COURT: Mr. Moore, you agree with those facts?

23 MR. MOORE: No.

24 THE COURT: What don't you agree with?

25 MR. MOORE: It wasn't an individual across the street

1 that I was talking to at any time.

2 THE COURT: But you agree that you broke in and took
3 the stuff out and across the property line?

4 MR. MOORE: Yes.

5 THE COURT: Okay. Anything today that you would like
6 to add.

7 MS. NELSON: I do have a request to make on behalf of
8 Mr. Moore and he might want to illuminate further on,
9 after I ask. He would like to be permitted to go home and
10 be with his family, Your Honor. He is asking, I mean he
11 would be satisfied I think with anything you allowed him
12 to do even if it was just overnight. I think he would
13 prefer having a couple of days and coming back Thursday or
14 Friday. But I think he would take any consideration you
15 would be able to give him. He is asking he be allowed to
16 leave until you determine that he be sentenced, whether
17 that is tomorrow or later in the week. He has a cousin
18 named Derrick Moore who lives in the Matthews Mill Village
19 right down South Main Street. I did speak with Derrick on
20 the phone earlier today, he was at work at McAlister's but
21 he confirmed that he was agreeable for Jeff to come to his
22 house and that he was willing to be responsible for him
23 and would see to it that he got back to court. So Jeff
24 told me he would do that but I actually did confirm it
25 with Mr. Derrick Moore over the phone. Jeff is going to

1 be gone away for a long time and he just would like one
2 last opportunity to be with his family. His son has got,
3 he has a new grandchild that was born since he has been
4 incarcerated that he has never gotten to hold. And he is
5 asking for any consideration that you would give him in
6 that regard, Your Honor.

7 THE COURT: Did y'all talk about that?

8 MR. HODGES: I knew that Ms. Nelson was going to make
9 that request. I am certainly not comfortable with that
10 given his lengthy prior record and amount of time that he
11 is facing. That is just too much temptation.

12 THE COURT: What is his prior record.

13 MR. HODGES: I don't have it in front of me, I was
14 going to present it tomorrow. But he has got quite a
15 number of prior burglaries and shoplifting and all sorts
16 of things on there.

17 MS. NELSON: I don't really think there is violence
18 on there, Your Honor. But he does have--

19 MR. HODGES: We could probably coordinate something
20 with the sheriff if he wants to have a visitation with his
21 grandchild before he is shipped or something. But I am
22 certainly not comfortable with recommending that he be--

23 THE COURT: Mr. Moore, I completely understand and I
24 would ask for the same thing. But the problem is, it is
25 so unusual to do that. What I will do and I just got to

1 tell you man to man, I am probably not going to let you go
2 home but I will take it under advisement until tomorrow
3 when we do the sentencing and we will figure out
4 something. I understand what you want to do. It is just,
5 that is real unusual to do, I probably can't do it but if
6 I can work something out.

7 MR. MOORE: I never got to see the grandchild. I
8 have got five granddaughters.

9 THE COURT: We will work something out. I mean I am,
10 I understand your request. I probably can't let you go
11 home but we will work something out tomorrow.

12 MR. HODGES: If the family can bring them up here to
13 the court house we might be able to put them in a room
14 together or something.

15 THE COURT: I don't mind. They can come up here
16 tomorrow and let you have some privacy in a room. I mean
17 privacy with somebody with you. Why don't you check, I
18 will take it under advisement and we will work something
19 out. What I am going to do now is accept your plea, I
20 find it freely and voluntarily made based upon the advice
21 of counsel. I find he has waived his constitutional
22 rights and do so knowingly and voluntarily. And that you
23 have spoken to your lawyer about that. And I will defer
24 sentencing until tomorrow.

25 MR. HODGES: Thank you, Your Honor.

1 MS. NELSON: Thank you, Your Honor. Can you tell me
2 what time tomorrow we will be expecting to do the
3 sentencing.

4 THE COURT: About 11:00 o'clock. Okay.

5 MS. NELSON: Okay.

6 May 16, 2013.

7 THE COURT: All right.

8 MS. NELSON: May I have just a second, Your Honor?

9 THE COURT: Yes.

10 (Whereupon, Ms. Nelson and Mr. Moore have a
11 discussion off the record.)

12 MS. NELSON: Your Honor, Mr. Moore wants to say
13 something to you.

14 THE COURT: Okay, Mr. Moore.

15 MR. MOORE: Your Honor, the witness they said, he
16 never mentioned the part that, that witness stated that I
17 wasn't at his house.

18 THE COURT: My recollection is, I asked if you agreed
19 and you said, well, I don't agree that I talked to this
20 guy. And then I said, well, that is okay, do you agree
21 that you went in the house and took the stuff that was
22 brought outside. And you said you did. I understand you
23 may disagree with the report and I am not really concerned
24 about the report. You told me yesterday that you went
25 into the house and took some stuff. And did you? You

1 told me you did on the record.

2 MR. MOORE: I am just saying, I probably, I was under
3 the impression that this witness was telling them point
4 blank that I was at his house. If I had knew that this
5 witness said I wasn't at his house that would discredit
6 this witness.

7 MS. NELSON: Your Honor, I think we, I think Jeff and
8 I talked about some various ways that we would be
9 discrediting the witness because there were other
10 statements he made that were not as strong as the
11 statements that I was told that he would be making at
12 trial. And I thought we would be able to do some things
13 with that but I also didn't think that got us around the
14 other circumstances that the State was going to present.
15 I ask Jeff if this meant that he wanted to withdraw his
16 plea and I am not sure. I don't know what the answer to
17 that is.

18 THE COURT: I am not sure he can withdraw his plea.
19 He plead yesterday and told me he did it. He had some
20 disagreements obviously with the incident report. But I
21 mean that is all peripheral information. Basically that
22 is why I asked you, are you telling me that you went into
23 the house and took the stuff out and you said you did.

24 MR. MOORE: Yes, sir. That was before I had this
25 information. I am saying this is evidence that was

1 withheld from me.

2 THE COURT: How would that change what you told me
3 you did.

4 MR. MOORE: Because this discredits this witness
5 against me.

6 THE COURT: How would that change what you told me
7 you did.

8 MR. MOORE: If I had that added information I never
9 would have told you that. I would probably had to have to
10 take it to trial if I had known that this witness first
11 statement that I wasn't at his house. They was telling me
12 basically that they was going to bring this witness up
13 here and testify against me and he was going to tell them
14 I was at his house. But his first statement proved that I
15 wasn't at his house.

16 MS. NELSON: It would have been something I could
17 have impeached him with and there were other things that I
18 could have impeached him with.

19 THE COURT: Yesterday I took the plea. I asked you,
20 you told me you did it. I am stuck here to let you
21 withdraw a plea. I have already taken it. So, the fact
22 that you might have gone to trial and risk a jury trial
23 because you thought you might discredit a witness is one
24 thing. The fact that you told me yesterday that you did
25 this and that you were guilty of it pretty much ends it.

1 MR. MOORE: Like I said, if I had known, if my lawyer
2 had told me about this I never would have pleaded. And
3 like I said, when we was talking yesterday he even read it
4 out to you but that part he failed to mention. And there
5 is a reason why he failed to mention that part.

6 THE COURT: Well, then you said you didn't agree with
7 him. And I said, okay, tell me what you agree with. And
8 I asked you, did you go in the house. And you said, yes.
9 And you were under oath.

10 MR. MOORE: I understand what you are saying. But if
11 he had mentioned this part yesterday of the man's first
12 initial statement was that I wasn't at his house then I
13 never would have pleaded.

14 THE COURT: Okay. Well, I understand that but I am
15 sort of stuck.

16 MR. HODGES: Your Honor, just so the record is
17 complete I did provide a copy of the report to Ms. Nelson
18 which I assume went over the evidence with her client. I
19 also provided to them a copy of that witnesses criminal
20 history so they had that for impeachment purposes as well.
21 And I would assume they had that that they could go over.

22 THE COURT: I took the plea yesterday and all we do
23 today is sentencing this. That is all I can do. Okay.
24 Anything you want to put on the record before sentencing?

25 MR. HODGES: I don't, I mean I don't know that there

1 is any necessity for the Court to hear his prior record.
2 He did have two or more prior burglaries which we would
3 have used as evidence of enhancement and has a substantial
4 prior record otherwise. But it is a negotiated plea.
5 Anything you want to tell me.

6 MS. NELSON: Your Honor, it appears that Jeff wants
7 to withdraw his plea and be put back in a position to go
8 to trial and I would just reiterate on the record that, is
9 that what you want?

10 (Whereupon, the defendant shook his head.)

11 MS. NELSON: He is confirming that that is what he
12 wants, Your Honor. And if there is a piece of information
13 that I did not give him that would have changed his
14 decision I am asking to let him do that and put him back
15 in the position he was in before he came before you
16 yesterday.

17 THE COURT: Well, I mean for the purposes for any
18 kind of appeal or, y'all are protected for the record.
19 But I have got to deny your motion. Once you do a
20 negotiated plea, he tells me he did it I am stuck.

21 MS. NELSON: If you are denying that motion, Your
22 Honor, then I am asking that you accept the negotiation
23 and today, by today is 512 days credit he has. I would
24 ask that you go along with that. That is a very
25 significant amount of time as you know, Your Honor. I

1 think per Jeff's prior history, he has a prior history
2 with Mr. Hodges as a prosecutor. I certainly had hopes
3 the entire time I was working on it that I would have been
4 able to work something better out. Given where we are I
5 am asking that you accept the minimum. And would also
6 renew the request that we made yesterday that he be
7 allowed to spend some time with his family.

8 THE COURT: And like I said yesterday, my heart tells
9 me I would love to do that for you. I just can't. I mean
10 the risk is too great. Can y'all work out something so he
11 can see these grandchildren.

12 MR. HODGES: Yes, I can do that here in the court
13 house.

14 MS. NELSON: I was not able to, I actually asked my
15 secretary, she lives in the same neighborhood as Jeff's
16 cousin that I talked to yesterday. And I asked that he
17 call me, that she let him know to call me and give him my
18 cell phone number. I haven't heard anything. I heard
19 from a different, I think a different cousin this morning.
20 And I thought he was going to come in here and I let him
21 know that Jeff wanted to see some other family members.
22 But I, he didn't give me any indication that he was going
23 to arrange that.

24 THE COURT: Okay. How long will it be before they
25 send him down the road.

1 MR. HODGES: Sometime this week.

2 MS. NELSON: They usually do that on Tuesday and
3 Thursdays is my understanding.

4 THE COURT: Okay. All right. I accepted the plea
5 yesterday. Found it freely and voluntarily made based
6 upon the advice of counsel. And I am going to accept the
7 negotiated sentence. I am not going to do the maximum
8 obviously. I mean this is the minimum. Sentence on this
9 charge is 15 years. I give him credit for 512 days and I
10 am not going to put him on probation afterwards.

11 MS. NELSON: He will come out on supervision?

12 THE COURT: Yes, I am not going to add anything else
13 to it. But you are protected on the record. If y'all
14 want to do a PCR appeal of course you can. And y'all are
15 covered as far as that goes. Good luck to you.

16 MS. NELSON: Thank you, Your Honor.

17 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

18

19

20

21

22

23

24

25

WITNESSES

Jeremy Adams
Greenwood Police Department

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

May Term, 2012

Indictment # 12GS24-0830

WARRANT NUMBER

2012GS2400830

DIRECT INDICTMENT

True Bill

THE STATE

vs.

Jeffrey Lee Moore

Foreman of the Grand Jury

Date: 5/4/12

INDICTMENT FOR

BURGLARY
16-11-0311

VERDICT

Foreman

ATTEST A TRUE COPY

[Signature]
CLERK OF COURT
GREENWOOD COUNTY
S.C.

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

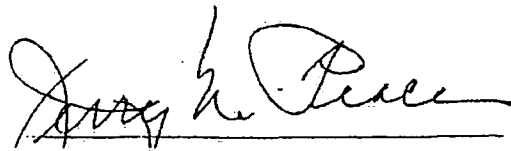
INDICTMENT FOR

BURGLARY
16-11-0311

At a Court of General Sessions, convened on the 4th day of May, 2012 the Grand Jurors of Greenwood County present upon their oath:

That Jeffrey Lee Moore, did in Greenwood County, state aforesaid, on or about the 22nd day of December, 2010 with a prior record of two or more convictions for burglary and/or housebreaking, willfully and unlawfully enter a dwelling without consent and with intent to commit a crime therein, or the entering or remaining occurred in the nighttime, the said dwelling being owned and/or occupied by Ytovah Patterson, in violation of Section 16-11-311 of the South Carolina Code of Laws, 1976, as amended.

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



Jeffrey Lee Moore

STATE OF SOUTH CAROLINA)
COUNTY OF Greenwood)
STATE VS. Jeffrey Lee Moore)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 126524-0830

AKA:)
Race: B Sex: M Age:)
DOB: [redacted] SS#: [redacted])
Address: [redacted])
City, State Zip [redacted])
DL# SID#)

AW#: on info)
Date of Offense: 2010-12-22)
S.C. Code §: 16-11-311)

CDR Code # 0079

SENTENCE SHEET

CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Burglary 1st (15 yrs - LIFE)

in violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0079

NON VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS 17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury. (Defendant Initial

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

ATTEST: [Signature] 11713 [Signature] [Signature] 70306
Solicitor SC Bar # Defendant Attorney for Defendant SC Ba

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, 15 days/months/years or under the Youthful Offender Act not to exceed 5/16 years and/or to pay a fine of \$ 100.00; provided that upon the service of 52 days/months/years and/or payment of \$ 25.00; plus costs and assessments as applicable*; the balance is suspended with probation for 30 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 52 days (P)

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to SC Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred, Def. Waives Hearing Ordered PTUP
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: Obtain GED
 set by SCDPPPS Attend Voc. Rehab. or Job Corp.

Recipient: May serve W/E beginning
*Fine: \$ _____ Substance Abuse Counseling
\$14-1-206 (Assessments 107.5%) \$ _____ Random Drug/Alcohol Testing
\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal, consecutive weekly/monthly
\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ pmts. of \$ _____ beginning _____
\$56-5-2995 (DUI Assessment) \$12 \$
\$56-1-286 (DUI Breath Test) \$25 \$
\$35.13 (Public Def/Prob) \$500 \$
\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
\$33.7, 1B TP (Drug Court Surcharge) \$150 \$
\$50-21-114(BUI Breath Test Fee) \$50 \$

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$
\$90.11 TP (SCCJA Surcharge) \$5 \$ 5.00
3% to County (if paid in installments) \$

TOTAL \$ 132.00

Clerk of Court/ Deputy Clerk
PRESIDING JUDGE
Judge Code: 211131

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

Court Reporter: [Signature]
Sentence Date: 5-15-12

GREENWOOD COUNTY
311

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.

2012 NOV 24 11 09:20

STATE OF SOUTH CAROLINA)

County of GREENWOOD)

JEFFERY MOORE #268264)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

12CP240378

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention PERRY CORRECTIONAL INST

2. Name and location of Court which imposed sentence GREENWOOD GENERAL SESSIONS COURT, GREENWOOD, S.C.

3. Name(s) of co-defendant(s) (if any) NONE

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) # 126524-0830 Burglary 1st
 - (b) _____

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 5-16-2012 15 YEARS
 - (b) _____
 - (c) _____
- 6. Check whether a finding of guilty was made:
 - after a plea of guilty _____
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?

YES
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. SOUTH CAROLINA COURT OF APPEALS
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. MATTER WERE DISMISSED
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. 10/10/2012
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. UNKNOWN
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) _____
 - (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
 - (b) Omission of Evidence
 - (c) Involuntary Guilty Plea
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Ineffective Assistance of Counsel
 - (b) Omission of Evidence
 - (c) Involuntary Guilty Plea
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? yes
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 - (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. the South Carolina Court of Appeals
 - ii. to Request that this case be Reversed
 - iii. and sentence be vacated
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. the South Carolina Court of Appeals
 - ii. _____
 - iii. _____
 - iv. _____

10-22-2012
 430 BAKLAWAN RD
 PELZER, S.C. 29669

Application for
 Post-Conviction Relief

Jeffery Moore
 Kirkland Reception and Evaluation Center
 F1-245
 4344 Broad River Road
 Columbia, SC 29210

- 10) A. Ineffective Assistance of Counsel
- B. Omission of Evidence
- C. Involuntary Guilty Plea

Ineffective Assistance of Counsel

11) A. Counsel failed to conduct an sufficient Pretrial Investigation. Counsel's only attempt at a investigation of this case began the week of the trial date, and sixteen (16) months after my arrest, during these (16) months I received very little to no communication with my attorney. During this time period my attorney refused to respond to any of my letter to her.

Counsel failed to investigate my alibi in a timely manner which led to some video tapes of me being at a different location at the time that the state witness said that I were with him being recorded over.

Counsel failed to consult with me about a conversation the Major of the Greenwood County Detention had with the prosecution about some recent lawsuit that I failed on the county detention center which led to my plea offer being withdrawn.

CONTINUING 11) A.

ANSWER TO QUESTIONS 10-11

PAGE 3

Jeffery Moore
Kirkland Reception and Evaluation Center
F1-245
4344 Broad River Road
Columbia, SC 29210

INEFFECTIVE ASSISTANCE OF COUNSEL

11) A. Counsel failed to file a motion for a continuance, counsel had only 3 to 4 days to prepare for trial.

Counsel failed to make a motion to withdraw my Guilty Plea before sentencing with the knowledge that it was made involuntary.

Counsel failed to advise me of my Appellate Rights before nor after sentencing nor after I asked counsel to file for a notice of appeal.

conducted by the state, counsel failed to consult with me about my case until my trial date.

(c) the disposition thereof:

- i. Matter Dismissed
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. 10/10/2012
- ii. _____
- iii. _____
- iv. _____

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

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

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

Yes

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

(a) which grounds have been presented:

- i. Ineffective Assistance of Counsel
- ii. Omission of Evidence
- iii. Involuntary Guilty Plea

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

- i. A letter to the South Carolina Court of Appeals.
- ii. _____
- iii. _____

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

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

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

- (a) your arraignment and plea? YES
- (b) your trial, if any? NO
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
YES - A motion for an intent to Appeal

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. JANNA A NELSON - Suite 203, Park Plaza
600 Monument Street, Box P-133
 - ii. Greenwood, SC 29646
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Motion for an intent to Appeal
 - ii. _____
 - iii. _____

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

SENTENCE VACATED, SET ASIDE, CORRECTED
OR REDUCED

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

NO

STATE OF SOUTH CAROLINA)

VERIFICATION

County of GREENWOOD)

I, JEFFERY MOORE # 263267, 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.

Jeffery Moore 10/22/2012

SWORN to and subscribed before me this 22nd day of October, 2012.

Robert M. Milantay (P.S.)
Notary Public

My Commission Expires: January 7, 2016

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

I, JEFFERY MOORE #263267, 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.

Jeffery Moore 10/22/2012
Applicant

SWORN or affirmed to and subscribed before me this
29th day of October, 2012.

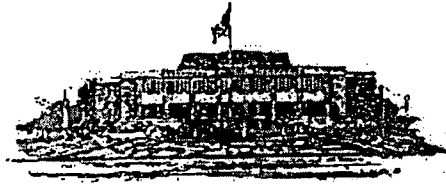
Steven F. Mautley
Notary Public

My Commission Expires: November 7, 2016

S

County of Greenwood

CLERK OF COURT

TELEPHONE
(864) 942-8551ROOM 114
GREENWOOD COUNTY COURTHOUSE
528 MONUMENT STREET
GREENWOOD, SOUTH CAROLINA 29646

November 27, 2012

Rutledge Johnson
South Carolina Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

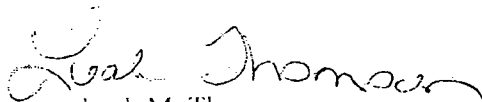
RE: Jeffery Lee Moore vs. State of South Carolina; 2012-CP-24-01387

Dear Mr. Johnson:

Enclosed please find the Post Conviction Relief application in the above referenced matter. Also, I included the warrants, indictments and other appropriate paperwork from the General Sessions case file.

If you require anything further, please do not hesitate to contact me.

Sincerely,


Leah M. Thomson
Deputy Clerk

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENWOOD)	EIGHTH JUDICIAL CIRCUIT
)	
)	
Jeffery Moore, #263267,)	2012-CP-24-1378
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
)	

In response to the post-conviction relief application filed on November 26, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenwood County Clerk of Court’s orders of commitment. The Applicant was indicted by the May 2012 term of the Greenwood County Grand Jury for Burglary, 1st degree (2012-GS-24-0830). The Applicant was represented by Janna Nelson, Esquire. On May 15, 2012, the Applicant pled guilty as indicted. The Honorable J. Cordell Maddox, Jr. sentenced the Applicant, pursuant to a negotiated sentence, to imprisonment for fifteen (15) years.

A notice of appeal was filed on Applicant’s behalf but the appeal was dismissed for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) SCACR on October 10, 2012. The Remittitur was issued on October 31, 2012.

II.

In his application for post-conviction relief, the Applicant alleges that he is being held in

custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
2. "Omission of Evidence"
3. "Involuntary Guilty Plea"

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

III.

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

Where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner 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 v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. 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, 104 S. Ct. 2052. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney

performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland v. Washington. 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, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

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

IV.

The Applicant further alleges his guilty plea was not voluntarily made. The 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 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

The 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, the 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, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

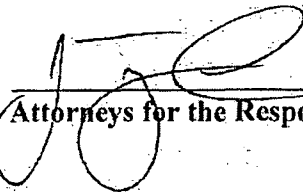
JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

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

By:


Attorneys for the Respondents

Columbia, South Carolina
August 25, 2014

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENWOOD)
)
)
)
 JEFFERY MOORE, #263267)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

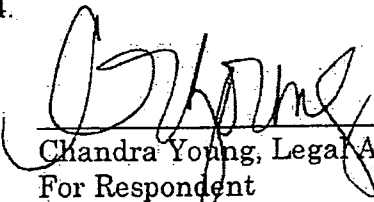
2012-CP-24-1378

AFFIDAVIT OF SERVICE BY MAIL

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

Jeffery Moore, 263267
 Perry Correctional Institution
 430 Oaklawn Road
 Pelzer, South Carolina 29669

DATED this 25th day of August 2014.



 Chandra Young, Legal Assistant
 For Respondent

State of South Carolina)
County of Greenwood)

In the Court of Common Pleas
Eighth Judicial Circuit
2012-CP-24-1378

Jeffrey Moore,)
Applicant,)
vs.)
State of South Carolina,)
Respondent.)
_____)

Transcript of Record

February 17, 2015
Greenwood, South Carolina

B E F O R E:

The Honorable Donald B. Hocker, Judge

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

Carson Henderson, Esquire
Attorney for Applicant

J. Rutledge Johnson, Esquire
Attorneys for Respondent

Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

I N D E X

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
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No exhibits introduced during proceeding.

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 11:52 a.m.)

THE COURT: Okay. Mr. Johnson, you want to call the next case, please, sir?

MR. JOHNSON: Yes, sir. May it please the Court, Your Honor: This is the case of *Jeffrey Moore v. the State of South Carolina*. It's Case No. 2012-CP-24-1378. Mr. Moore was indicted at the May 2012 term of the Greenwood County Grand Jury for burglary first-degree. He was represented by Janna Nelson.

On May 15th, 2012, he pled guilty as indicted. The Honorable J. Cordell Maddox, Jr. sentenced the applicant, pursuant to a negotiated sentence, for 15 years. A notice of appeal was filed on his behalf. The appeal was dismissed for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(4) of the South Carolina Rule of Appellate Procedure. The remittitur was thereafter issued on October 31st, 2012.

He filed a timely PCR application on November 26th, 2012. The state filed its return August 25th, 2014. And he is represented here today by Mr. Carson Henderson.

THE COURT: Okay. Mr. Henderson, you represent Mr. Moore?

MR. HENDERSON: I do, Your Honor. And Mr. Moore would like to ask the Court for a continuance. He just sprung

1 that one on me. And I told him I would be glad to ask the
2 Court. And he might be able to fill the Court in on more
3 than I can on the ---

4 THE COURT: All right.

5 MR. HENDERSON: --- matter, Your Honor.

6 THE COURT: You -- you want Mr. Moore to articulate
7 the -- the grounds for his request for a continuance?

8 MR. HENDERSON: I -- that would be nice, Your Honor,
9 just to make sure the record is clear.

10 THE COURT: Okay. All right. Madam clerk, would you
11 swear Mr. Moore in please?

12 JEFFREY MOORE, having been first duly sworn,
13 testified as follows:

14 THE COURT: Okay, Mr. Moore. Be glad to hear from
15 you.

16 THE APPLICANT: Well, Your Honor, I've been -- I got
17 tried, as he said, in May of 2012. And I've been waiting
18 since then on this transcript so I could prepare for my
19 case. I just received it 30 minutes ago, so ain't no way I
20 -- I would be prepared to go forward with this case today.
21 And I ask that this case be continued until the next PCR
22 hearing.

23 MR. HENDERSON: And -- and -- and for the record, Your
24 Honor, I just received the transcript on January the 15th.
25 I think there was some miscommunication between the office

1 and the -- actually, I don't know where it got sent to, but
2 it wasn't sent to me. And so obviously I have not seen Mr.
3 Moore in the last 30 days. So I had the copy of it to
4 bring with us today.

5 THE COURT: Now, this was a guilty plea, correct?

6 THE APPLICANT: (Nodded head up and down.)

7 THE COURT: Okay.

8 MR. HENDERSON: That's correct, Your Honor.

9 THE COURT: So the -- the transcript of the -- of the
10 plea would not be -- unless Judge Maddox conducted one heck
11 of a -- a colloquy, I mean, the transcript would -- would
12 not be that thick. What is all those papers, Mr.
13 Henderson?

14 MR. HENDERSON: Your Honor, those are other documents
15 I've given him: discovery ---

16 THE COURT: I see ---

17 MR. HENDERSON: --- responses ---

18 THE COURT: Okay.

19 MR. HENDERSON: --- other stuff I've come up with.

20 THE COURT: Okay.

21 MR. HENDERSON: So ---

22 THE COURT: But is it just the -- the transcript of
23 the guilty plea itself that Mr. Moore has just received,
24 Mr. Henderson? Is that -- is that it?

25 MR. HENDERSON: I've just given him all of this. I

1 think he already had the discovery stuff ---

2 THE COURT: Right.

3 MR. HENDERSON: --- from Ms. Nelson. But literally,
4 the transcript -- I've recently just gotten it and I've
5 given it to him on the spot. So it's -- oftentimes ---

6 THE COURT: Okay.

7 MR. HENDERSON: --- it's hard to mail stuff ---

8 THE COURT: Okay.

9 MR. HENDERSON: --- to inmates.

10 THE COURT: All right. Okay. Mr. Johnson, do you
11 want to respond to Mr. Moore's request for a continuance?

12 MR. JOHNSON: Yes, sir. I -- I would oppose. We have
13 had -- we've had Ms. Nelson here, ready to testify. This
14 case is over two years old. And I didn't know that we had
15 just gotten you the -- the transcript. But I believe
16 counsel has reviewed it and read over it and he should be
17 prepared to go forward to attack the -- this case. And so
18 I -- I don't know what Mr. Moore having the transcript or,
19 you know, not having it for the two years that he filed
20 this application, what that would hinder him in his
21 testifying.

22 THE COURT: Right.

23 MR. JOHNSON: So we would ask that you deny the ---

24 THE COURT: Right.

25 MR. JOHNSON: --- deny the ---

1 THE COURT: Okay.

2 MR. JOHNSON: --- the continuance request.

3 THE COURT: All right. Mr. Moore, you remember the --
4 the guilty plea that was entered before Judge Maddox?

5 THE APPLICANT: I remember the plea, Your Honor. But
6 I -- I -- I'm not familiar with everything that was said.
7 And like I said, it's a lot of paperwork here. And when
8 Ms. Nelson did give me a copy of anything, it was only a
9 copy of a incident report that I received from her, one
10 single page. And that was after the plea.

11 THE COURT: All right. Now, in reviewing the -- the
12 application and the -- and the return, the -- I -- I
13 believe you -- the basis for this application, Mr. Moore,
14 is that you -- you -- you maintain that the -- the plea
15 that you made was not voluntarily made ---

16 THE APPLICANT: Yes, sir.

17 THE COURT: --- correct? I mean, I -- I understand
18 there's some other allegations. But basically, that's what
19 it comes down to, correct?

20 THE APPLICANT: Yes, sir.

21 THE COURT: Okay. All right. I mean, I don't mind,
22 Mr. Henderson, giving y'all a -- a -- a few more minutes to
23 discuss the transcript. But the plea transcript can't be
24 very long and -- and would not require, I don't think, a --
25 a continuance until the -- the next term. But if you need

1 a few moments to sit down with him and -- and read through
2 the transcript, I don't mind giving you a little time to do
3 that. Ms. Nelson, you're still able to be with us for a
4 little while longer?

5 MS. NELSON: Your Honor, I -- I do have an appointment
6 at 1:30 that I rescheduled from 11.

7 THE COURT: Okay.

8 MS. NELSON: I -- I mean, I -- I know I'm here under
9 subpoena. I would really love to be out before 1:30 ---

10 THE COURT: Sure. Okay.

11 MS. NELSON: --- as ---

12 THE COURT: All right.

13 MS. NELSON: --- I -- if ---

14 THE COURT: Well ---

15 MS. NELSON: --- I'm not, I'm not.

16 THE COURT: Okay. All right. Well, let's -- let me
17 just give you some time and y'all can sit down and -- and
18 go through the -- the -- the transcript and just -- just
19 let us know when you're -- when you're ready, okay? All
20 right. We'll ---

21 MR. HENDERSON: Sounds good.

22 THE COURT: --- we'll ---

23 MR. HENDERSON: I appreciate ---

24 THE COURT: All right.

25 MR. HENDERSON: --- it, Your Honor.

DIRECT EXAMINATION BY MR. HENDERSON - JEFFREY MOORE 10

1 THE COURT: Okay. We'll be in recess for a little
2 while.

3 (Whereupon, the Court was in recess from 11:58
4 a.m. until 12:10 p.m.)

5 THE COURT: Okay. We're back on the record. Mr.
6 Henderson, have you had enough time to review the
7 transcript with your client?

8 MR. HENDERSON: We have, Your Honor.

9 THE COURT: Okay. Ready to proceed?

10 MR. HENDERSON: Yes, sir.

11 THE COURT: Okay. All right. Call your first
12 witness.

13 MR. HENDERSON: I call Jeffrey Lee Moore.

14 THE COURT: Okay.

15 (Whereupon, the witness came forward.)

16 JEFFREY MOORE, having been first duly sworn,
17 testified as follows:

18 THE COURT: Okay. You may proceed.

19 DIRECT EXAMINATION

20 BY MR. HENDERSON:

21 Q Jeffrey, I'm going to have you speak up and speak into
22 the microphone, okay?

23 A Yes, sir.

24 Q Okay. And the bailiff's going to move the microphone
25 around to you. Jeffrey, please state your full name for

1 the record.

2 A Jeffrey Moore.

3 Q And where are you currently incarcerated at?

4 A Allendale Correctional Institution.

5 Q Now, Jeffrey, you were arrested on December 22nd, of
6 2010. Were you arrested for burglary in the first degree?

7 A Yes, sir.

8 Q And after that were you appointed a lawyer?

9 A Yes, sir.

10 Q And who was that lawyer?

11 A Janna Nelson.

12 Q And that's Ms. Nelson in the courtroom?

13 A Yes, sir.

14 Q I want to skip ahead some. On May the 5th, 2012, did
15 you plead guilty to burglary in the first degree?

16 A Yes, sir.

17 Q Okay. And do you recall what day of the week that
18 was?

19 A On a Tuesday.

20 Q Do you know if you were on the jury-trial roster for
21 that week? Was your case subject to being called in front
22 of a trial jury?

23 A Well, no, sir. It was a jury trial, but it wasn't for
24 me. It was somebody else that was supposed to be tried.

25 Q And -- and do you know what happened to that trial?

DIRECT EXAMINATION BY MR. HENDERSON - JEFFREY MOORE 12

1 A That person pled to guilty, so they tried to put me in
2 front of that jury.

3 Q Let me ask you: Was your case then called for a jury
4 trial?

5 A Yes, sir.

6 Q And to the best of your recollection, was that a
7 Monday or a Tuesday or ---

8 A A Monday.

9 Q A Monday when you learned that your case was on the
10 jury -- subject to being called?

11 A Yes, sir.

12 Q Let me ask you: When was the first time that you
13 learned that you were on the jury-trial roster at all?

14 A Sunday, the day before the jurors.

15 Q Okay. And that's the first time you learned that you
16 were on the jury-trial roster?

17 A Yes, sir.

18 Q Prior to that Sunday, had there been any negotiations
19 between your lawyer and the state to resolve this matter?

20 A Yes, sir.

21 Q And -- and -- and to your understanding, had an offer
22 been made to you?

23 A Yes, sir.

24 Q And do you know what that offer was?

25 A A nonviolent, second-degree, 15-year sentence.

1 Q When you say "second-degree," what do you mean by
2 that?

3 A Second-degree burglary.

4 Q Second-degree burglary?

5 A Yes, sir.

6 Q And -- and -- and -- and who communicated that offer
7 to you?

8 A Ms. Nelson.

9 Q And when did she communicate that offer to you?

10 A It was the -- the term before the -- the term that I
11 was to go to trial.

12 Q And was that in April of 2012?

13 A Yes, sir.

14 Q Okay. And I believe your previous testimony was you
15 were arrested on December the 22nd of 2010?

16 A Yes, sir.

17 Q Prior to that offer being communicated to you, had
18 there been any plea negotiations at all?

19 A No, sir.

20 Q And at that point in time, you'd been in jail, what,
21 16/17 months?

22 A Yes, sir.

23 Q Okay. And so that was the first time that an offer
24 had been made?

25 A Yes, sir.

DIRECT EXAMINATION BY MR. HENDERSON - JEFFREY MOORE 14

1 Q Did you accept or reject that offer?

2 A Well, I didn't accept or reject it. I asked that it
3 could -- would it -- could it be come down a little lower
4 and was told that she would work on it and that she came
5 back and told me ---

6 Q Hold on. Let me stop you right there.

7 A Okay.

8 Q Okay. So Ms. Nelson told you that she'd work on
9 getting the offer lower?

10 A Yes, sir.

11 Q Do you know if she actually did that?

12 A No, sir.

13 Q I mean, you just don't know?

14 A I don't know.

15 Q Did y'all have any subsequent conversations after she
16 communicated the 15-year offer to you?

17 A When she came back and told me that the solicitor say
18 he was willing to go down but he didn't know if he can come
19 down to what we wanted, which was a five-year sentence.

20 Q Okay. Do you know what they were willing to come down
21 to?

22 A She said he wouldn't go below the double digits. So I
23 don't know what the offer would have been, but it was round
24 ten, I think.

25 Q Now, were -- where were you and Ms. Nelson when y'all

1 were having this communication, this conversation?

2 A In the back.

3 Q In the back of what?

4 A The courthouse.

5 Q Okay. Over here in the public defender's office?

6 A Yes, sir.

7 Q Okay. And was that in April of 2012?

8 A Yes, sir.

9 Q At that point in time, did you know you were going to
10 be on the May trial -- jury-trial docket?

11 A No, sir.

12 Q Okay. Did Ms. Nelson give you any indication that you
13 needed to make your decision immediately?

14 A No, sir.

15 Q Okay. What did Ms. -- how long did Ms. Nelson tell
16 you that you had to make your decision, or did she?

17 A She didn't.

18 Q Okay. And how long did you think you had to make your
19 decision?

20 A I thought I had until the -- the following court
21 docket.

22 Q The May term?

23 A Yes, sir.

24 Q Okay. And -- and during that April term, you didn't
25 go in front of a judge?

1 A No, sir.

2 Q Okay. And -- and -- and your testimony is that you
3 didn't learn that you were on the jury-trial docket till
4 that Sunday?

5 A Yes.

6 Q But in May?

7 A Yes.

8 Q Okay. And do you recall who the trial judge was?

9 A I can't recall his name.

10 Q Okay. But they -- in fact, and you previously told
11 His Honor, Judge Hocker, that you pled guilty to burglary-
12 first; is that right?

13 A Yes, sir.

14 Q Did you feel that you had any -- any choice but to
15 plead guilty?

16 A No, sir.

17 Q Okay. Prior to you pleading guilty, what discovery
18 had you seen? You understand what I mean by "discovery"?

19 A Uh-huh. Yes, sir.

20 Q What evidence had you seen that Ms. -- Ms. Nelson had
21 given you that the state would use in an attempt to convict
22 you?

23 A None prior.

24 Q You know -- you know, previously, His Honor mentioned
25 a whole stack of stuff you had out here with you.

1 A Right. I seen none of that.

2 Q You hadn't seen any of this prior to pleading guilty?

3 A No, sir.

4 Q Had -- had Ms. Nelson discussed any of it with you?

5 A No, sir.

6 Q Okay. And, in fact, you pled guilty on one day, but
7 your sentencing was on the next day; is that correct?

8 A Yes, sir.

9 Q Okay. And -- and -- and during that overnight, I
10 think Judge -- it was actually Judge Maddox. Does ---

11 A Yes.

12 Q --- that name sound familiar?

13 A That's who ---

14 Q In fact ---

15 A --- it was.

16 Q --- I think he gave you and your lawyer some more time
17 to talk after you had pled guilty; is that correct?

18 A Yes.

19 Q And -- and during that conversation, did your lawyer
20 give you -- show you any discovery, any documents?

21 A She gave me a ---

22 Q Yes or no.

23 A Yes.

24 Q Okay. What did she show you?

25 A A -- it was a incident report.

DIRECT EXAMINATION BY MR. HENDERSON - JEFFREY MOORE 18

1 Q An incident report for the night of your arrest?

2 A Yes.

3 Q Prior to you seeing this -- and this was after you
4 pled guilty ---

5 A Yes.

6 Q --- is that correct?

7 Prior to then had you seen this document?

8 A No, sir.

9 Q And did any piece of information in that document
10 cause you concern?

11 A Yes.

12 Q And what was that information?

13 A The -- they -- the witness statement against me.

14 Q Okay. One witness's statement against ---

15 A Yes.

16 Q --- you?

17 And what part of that caused you concern?

18 A His initial statement was they had been telling me
19 that there was a witness against me that was going testify
20 ---

21 Q And when you ---

22 A --- against me.

23 Q --- say "they," who are you talking about?

24 A Janna Nelson.

25 Q Ms. Nelson, your attorney?

1 A Yes.

2 Q Okay. Keep on.

3 A She was telling me that she had spoken with this
4 witness and this witness had told her ---

5 MR. JOHNSON: Objection ---

6 A --- that I ---

7 MR. JOHNSON: --- to hearsay, Your Honor.

8 A --- that I was at his ---

9 THE COURT: Let -- wait a minute. Sustained.

10 Q Let me ask you: Upon you looking at this document,
11 does it appear that this particular witness had given
12 conflicting statements?

13 A Yes, sir.

14 Q Okay. And one of them was favorable to you?

15 A Yes, sir.

16 Q And one of them was not favorable to you?

17 A Yes, sir.

18 Q Prior to you pleading guilty, had you seen the
19 statement that was favorable to you?

20 A No, sir.

21 Q Okay. So the first time you saw a favorable statement
22 to you was after you pled guilty?

23 A Yes, sir.

24 Q And, in fact, the next day you asked Judge Maddox to
25 be able to undo your plea?

1 A Yes, sir.

2 Q And -- and part of your reason was, if I'm not
3 mistaken, was that this was evidence that you did not know
4 about?

5 A Yes, sir.

6 MR. JOHNSON: Objection to leading, Your Honor.

7 MR. HENDERSON: Okay.

8 THE COURT: Okay.

9 Q Let me ask you: Did you know about this evidence
10 prior to asking Judge Maddox to undo your plea?

11 A No, sir.

12 Q Okay. And he refused -- did he -- did he refuse to
13 undo your plea?

14 A Yes.

15 Q Okay. And you asked him repeatedly -- did you ask him
16 repeatedly?

17 A Yes, sir.

18 Q Okay. And did he refuse to let you withdraw your
19 plea?

20 A Yes, sir.

21 Q Okay. Jeffrey, knowing what you knew after you had
22 pled guilty, if you had known that prior to pleading
23 guilty, would you have pled guilty?

24 A No, sir.

25 Q Okay. And -- and is it fair to say that you wouldn't

1 have pled guilty because of the favorable witness
2 statement?

3 A Yes, sir.

4 Q Okay. Did you feel that you had any choice but to
5 plead guilty?

6 A No, sir.

7 Q And -- and -- and very briefly, tell the Court why.

8 A Because they had said that ---

9 Q No.

10 A --- someone ---

11 Q No. When -- when you say "they" ---

12 A Okay.

13 Q --- be clear who ---

14 A Ms. Nelson had told me that she had went and spoke to
15 this person that he was going come and testify against me.
16 And I felt that I was being railroad because there -- it
17 wasn't no such person. They had got somebody that was
18 going come up here and testify against me. And she had --
19 Ms. Nelson had told me that even though there wasn't any
20 physical evidence against me in this case, that there
21 wasn't a possibility that she could win it and that if I go
22 to trial, I would be sentenced to 25 years.

23 Q Now, Jeffrey, is it fair to say that back in May of
24 2012, did you have a bad criminal record?

25 A Yes.

DIRECT EXAMINATION BY MR. HENDERSON - JEFFREY MOORE 22

1 Q Did what Ms. Nelson told you scare you?

2 A Yes, sir.

3 Q Okay. Were you worried about spending the rest of
4 your life in prison?

5 A Yes, sir.

6 Q Are you telling the Court that's why you pled guilty?

7 A Yes, sir.

8 Q Are you telling the Court that if you'd known about
9 these favorable witness statements, that you wouldn't have
10 pled guilty?

11 A Yes, sir.

12 Q Okay. Are you asking the Court to vacate -- to
13 overturn your conviction and let you have a new jury trial?

14 A Yes, sir.

15 Q Okay. And do you believe that Ms. Nelson was
16 ineffective by not sharing this discovery with you up
17 front?

18 A Yes, sir.

19 Q Okay. And you don't believe that your plea was
20 voluntary?

21 A No, sir.

22 Q And again, you're asking the Court to undo this plea?

23 A Yes, sir.

24 Q And, Jeffrey, you're clear -- again, I want to repeat
25 -- that -- that you said -- correct me if I'm wrong -- that

1 you first learned about an offer in April of 2012?

2 A Yes, sir.

3 Q And all this happened in the next 30 days or so?

4 A Yes, sir.

5 Q Okay. And did they -- did that catch you by surprise?

6 A Yes, sir.

7 Q Okay.

8 MR. HENDERSON: If I may have one moment, Your Honor.

9 THE COURT: Take your time.

10 (Off the record briefly.)

11 MR. HENDERSON: I don't have anything further at the
12 time, Your Honor.

13 THE COURT: Okay. Cross-examination?

14 MR. JOHNSON: Briefly.

15 CROSS-EXAMINATION

16 BY MR. JOHNSON:

17 Q Mr. Moore, you understand that this burglary-first-
18 degree charge carries 15 to life?

19 A Yes, sir.

20 Q And you got the very minimum?

21 A Yes, sir.

22 Q Okay. And that -- and that if you go back, you're not
23 guaranteed to get the minimum again?

24 A Yes, sir.

25 Q You face life in prison?

1 A Yes, sir.

2 Q Matter of fact, you told that to the -- to the plea
3 judge, didn't you, that you understood it was 15 to life?

4 A Yes, sir.

5 Q Okay. And that at the time of your plea, you had no
6 drugs or alcohol in your system?

7 A Yes, sir.

8 Q That you were on no medications?

9 A Yes, sir.

10 Q That nobody threatened you or promised you anything to
11 get you to plead guilty?

12 A Yes.

13 Q That the -- the Court read you your constitutional
14 rights and said you wanted to waive those?

15 A Yes.

16 Q That's the right to a jury trial, correct?

17 A Yes.

18 Q Right to present a defense?

19 A Yes.

20 Q Right to call witnesses on your behalf?

21 A Yes.

22 Q White to -- right to confront any of the state's
23 witnesses?

24 A Yes.

25 Q Right to challenge any of the evidence?

1 A Yes.

2 Q Including those statements?

3 A (No audible response.)

4 Q You waived the right to challenge those statements ---

5 A No. I ---

6 Q --- by ---

7 A --- don't -- no. I never agreed with the statements,
8 never.

9 Q Okay. But the -- but the judge asked you about your
10 constitutional rights, and you said I want to waive those,
11 correct?

12 A I told judge I didn't agree with the statements.

13 Q And then -- then you agreed with the facts of the
14 case, as presented by the solicitor, did you not?

15 A I don't recall.

16 Q If I show you a copy of your transcript, would that
17 refresh your recollection?

18 A Got it right here.

19 Q All right. If you'd turn to page 19, please.

20 A (Complied.)

21 Q Where the Court asked (as read): "But you agree that
22 you broke in and took the stuff out and across the property
23 line?" And you, on line 4, state: "Yes."

24 A Yes, sir.

25 Q Okay. And you admitted that you were guilty of this

REDIRECT EXAMINATION BY MR. HENDERSON - JEFFREY MOORE 26

1 charge?

2 A Yes, sir.

3 MR. JOHNSON: No further questions, Your Honor.

4 THE COURT: Anything in redirect, Mr. Henderson?

5 MR. HENDERSON: Very briefly.

6 THE COURT: Sure.

7 REDIRECT EXAMINATION

8 BY MR. HENDERSON:

9 Q Jeff, at the time you waived your constitutional
10 rights that Mr. Johnson just asked you about, you knew ---

11 A Yes.

12 Q --- what he was talking about?

13 A Yes, sir.

14 Q At that point in time, did you know about this
15 favorable statement?

16 A No, sir.

17 Q At this point in time, did you only know about the
18 unfavorable statement?

19 A Yes, sir.

20 Q And the statements, if I'm not mistaken, came from the
21 same person?

22 A Yes, sir.

23 Q And -- and -- and you're telling this Court again that
24 if you'd known about this favorable statement, that you
25 would not have pled guilty?

1 A Yes, sir.

2 Q Did you feel that you had any choice but to plead
3 guilty?

4 A No, sir. I had no choice.

5 Q Okay. You had a bad record?

6 A Yes.

7 Q And you and I have discussed that if the Court granted
8 you a new trial, that you were facing up to life in prison;
9 you ---

10 A Yes, sir.

11 Q --- understand that?

12 A Yes, sir.

13 Q And you're clear about that?

14 A Yes, sir.

15 Q And yet you're still asking His Honor to grant you a
16 new trial?

17 A Yes, sir.

18 Q Okay.

19 MR. HENDERSON: I don't have anything further, Your
20 Honor.

21 THE COURT: Anything in recross?

22 MR. JOHNSON: No, Your Honor.

23 THE COURT: Thank you for your testimony, sir. You
24 can step down.

25 (Off the record briefly.)

1 (Whereupon, the witness exited the witness stand.)

2 (Whereupon, Mr. Johnson and Mr. Henderson conferred.)

3 MR. JOHNSON: Your Honor, just for clarification, you
4 do have a copy of the transcript?

5 THE COURT: I -- I do not.

6 MR. JOHNSON: Oh, okay.

7 THE COURT: And I was going to -- I was going to ask
8 for that.

9 (Off the record briefly.)

10 *(Reporter Note: Electrical power to the courtroom
11 was temporarily unavailable.)*

12 THE COURT: Yeah. Yeah. Just hold up a minute.

13 (Off the record briefly.)

14 THE COURT: All right. Mr. Henderson, do you have any
15 other witnesses?

16 MR. HENDERSON: No, sir, Your Honor.

17 THE COURT: Okay. And do you rest your case?

18 MR. HENDERSON: Yes, sir, Your Honor.

19 THE COURT: Okay. Thank you very much. Mr. Johnson?

20 MR. JOHNSON: The state calls Janna Nelson.

21 THE COURT: Okay. Come around, please, ma'am.

22 (Whereupon, the witness came forward.)

23 JANNA NELSON, having been first duly sworn,
24 testified as follows:

25

1 DIRECT EXAMINATION

2 BY MR. JOHNSON:

3 Q Good afternoon, Ms. Nelson.

4 A Hi.

5 Q Can you please explain your position, your place of
6 occupation?7 A I work at the public defender's office for the eighth
8 circuit.

9 Q And are you the chief public defender?

10 A I am. I wasn't at the time I represented Mr. Moore,
11 but I am now.12 Q And can you tell the Court a little bit of how -- how
13 you became involved in this case.14 A It -- it was assigned to me when the application came
15 into the office.

16 Q And did you file the discovery and Rule 5?

17 A I did. We do that as soon as we open the file.

18 Q And what all would've been contained in that discovery
19 information?20 A I -- I honestly don't know the order that it came in.
21 But we would've gotten -- we got the incident report and
22 some supplemental reports, Mr. Moore's criminal history.
23 There was a DNA report. There was a -- can I look back at
24 my file?

25 Q Sure.

1 A I have a CD that would have some discovery information
2 on it. They took Mr. Moore's clothes as evidence. I went
3 to the police department and looked at those. The DNA may
4 have been the only SLED report. And I don't believe there
5 were any separate witness statements, actually. I don't
6 think law enforcement -- unless there were some audio
7 statements on the CD, I don't think they had any written
8 statements in this case. It seems like everything was
9 contained in the -- in the police reports.

10 Q And did you review those reports?

11 A Yes.

12 Q And did you review those with Mr. Moore?

13 A Yes.

14 Q Were you able to determine that they were conflicting
15 statements in this case?

16 A There was one witness who was the -- Mr. Hackett, who
17 lived across the street from the alleged victim. And he --
18 the way the report words it, what it says is the officer
19 spoke to Mr. Hackett. He tells us initially that Mr. Moore
20 was not at this house. I -- I think they meant at Mr.
21 Hackett's house. He then told us that Mr. Moore had been
22 at the house with him. He did say to Capt. Morgan that Mr.
23 Moore said he was going and Mr. Hackett felt Mr. Moore was
24 about to do something wrong, so he did not go with him.
25 Mr. Hackett said he felt Mr. Moore was going to steal

1 something.

2 Q And did you explain that to Mr. Moore?

3 A What -- my -- I don't remember the -- I don't remember
4 the details of the conversation. I remember meeting with
5 Mr. Moore at the jail. My typical practice is to go over
6 what the reports say. I sometimes read them verbatim; I
7 sometimes paraphrase them. But I -- my normal practice
8 would've been to communicate what was in that paragraph --
9 or what's in any paragraph of the report to a client.

10 Q Is there any reason to think that was not done in this
11 case?

12 A I believe that it was done.

13 Q Okay. And did you engage the state in any
14 negotiations as far as plea offers are concerned?

15 A Yes.

16 Q And what were the results of that engagement?

17 A The -- my notes reflect that Mr. Hodges and I were
18 discussing a potential plea in -- in February of 2012 and
19 that the initial offer was a plea to a burglary second-
20 violent for 15 years. Mr. Moore wanted something in the
21 neighborhood of five years. I went back to Mr. Hodges, and
22 he indicated that he might be able to come down a few years
23 but that he wouldn't be able to come down much. And Mr.
24 Moore was not happy with that because he wanted it to be
25 closer to five. And I did not ever get any sense from Mr.

1 Hodges that I was going to be able to get the solicitor's
2 office to come out of double digits on the case. And so my
3 impression was that we were -- that we were going to trial.

4 Q Did you have a certain date by which to accept or
5 reject the offer to burg second-nonviolent?

6 A I -- I don't know. If I did, I don't have it
7 documented and I don't remember.

8 Q But had there been a date by which you -- he must've
9 either accepted or rejected, would you have relayed that
10 information to Mr. Moore?

11 A Yes.

12 Q Okay. And did Mr. Moore accept or reject this offer?

13 A He rejected the offer of 15 to burglary second-
14 violent.

15 Q And whose decision was it to reject that?

16 A Mr. Moore's.

17 Q Was it -- were there any threats or promises involved
18 in -- in him making that decision?

19 A Not by me.

20 Q Did you keep him informed on when this case was going
21 to be called to trial?

22 A I -- I honestly don't remember. It's -- it's
23 typically my practice to. But I don't know when I told him
24 that the case was on the trial docket.

25 Q And the state finally offered him 15 years on burg

1 first?

2 A Well, when we -- when it got to the point where it was
3 scheduled for trial, I tried to get Mr. Hodges to -- to go
4 back to the offer that he had made in February. And he
5 refused and said that, you know, it had not been accepted
6 previously and he was not going to go back to that offer.

7 This was also occurring at a time when the former
8 solicitor was -- was running for reelection; the primary
9 was coming up in June. I felt like there was a lot of
10 political motivation going on with this, which is reflected
11 in the -- in the transcript when I moved for a continuance
12 of the case, because I felt like if -- if the primary was
13 -- wasn't going on and we could postpone things until that
14 was over, that we might have a better chance of -- of
15 getting them to come back to the table with something less
16 than burglary first.

17 And I brought all that up to Judge Maddox. But he did
18 not continue the case. So I guess your question was the
19 offer became 15. Yes. We -- we worked out a -- an offer
20 of a negotiated 15 in exchange for a plea once the case was
21 set for trial.

22 Q And whose decision was that to accept that 15-year
23 plea offer?

24 A Mr. Moore's.

25 Q Okay. Did he ever relate to you that he wanted a

1 trial in this case?

2 A I -- I don't remember if he ever specifically looked
3 at me and said, "I want a trial." But he didn't -- he --
4 he didn't want any plea offer that had been made previously
5 to the -- to the time the case was set for trial. And that
6 always translates into if -- if you're not taking the
7 offer, then it's -- then it's going to trial.

8 Q So you have one of two options: either accept the
9 plea offer or take it to a trial.

10 A If the -- if the state won't dismiss, then it's
11 generally two options.

12 Q And you relayed that information to Mr. Moore?

13 A Yes, sir.

14 Q And he still decided to plead guilty in this case?

15 A I -- I think he didn't feel like he had any good
16 choices. But yes, he did decide to plead guilty.

17 MR. JOHNSON: That's all I have at this time, Your
18 Honor. Thank you, Ms. Nelson.

19 THE COURT: Cross-examination ---

20 MR. HENDERSON: Yes, sir.

21 THE COURT: --- Mr. Henderson?

22 CROSS-EXAMINATION

23 BY MR. HENDERSON:

24 Q Ms. Nelson, I believe you said that you and Mr. Hodges
25 discussed this 15-year offer in February of 2012?

1 A That's what my notes are reflecting.

2 Q And -- and you've got that in writing -- I mean, your
3 notes?

4 A It -- I have it in my letter to ODC when I responded
5 to Mr. Moore's grievance against me.

6 Q Okay. And -- and -- and what was that date based off
7 of, another written note or your memory?

8 A I -- I don't know -- I don't know, sitting here today.

9 Q Okay.

10 A I don't know what I -- I -- I would've had something
11 that I was looking at, at the time that I wrote the letter.
12 But I don't know what it is.

13 Q Regardless of when you and Mr. Hodges discussed the 15
14 years, when do your notes reflect that you communicated
15 that offer to Mr. Moore?

16 A The -- it would've been at that time, because Mr.
17 Moore was over here in the courthouse. I -- I don't know
18 if I'm remembering right. But I thought Mr. Hodges even
19 came in the room with us at one point. But we had those
20 discussions, and I believe that was all in February in the
21 room right back there in the corner.

22 Q Is it possible that you're off on your dates? I mean,
23 do you have anything in writing confirming your time line?

24 A It is -- no, I don't, other than -- other than what I
25 compiled when I reviewed the file to respond. But yet --

1 yes, it's possible.

2 Q Okay. So it's your position that Mr. Moore rejected
3 the 15 years or at least told you, "Ms. Nelson, try to do
4 me better," or something along those lines?

5 A He -- he knew that -- he knew that the 15 had been
6 made. He knew -- I mean, he's testified to all that. He
7 knew that I counter-offered five and that Mr. Hodges's
8 response to me was that the best he would be able to do was
9 come down a few years, and -- and Mr. Moore was not happy
10 with only coming down a few years.

11 Q When Mr. Hodges told you that you could only come down
12 a few years, did he put a time limitation on that?

13 A I don't remember.

14 Q Okay. If -- if he would have, would you have put it
15 in your notes?

16 A I would've either -- I might -- I don't know whether I
17 would've put it in my notes or not. But I would've told
18 Mr. Moore if there had been a time limit.

19 Q Okay. And -- and -- and you didn't hear -- and -- and
20 ---

21 A I never got any further indication after that that he
22 was interested in -- in a plea that was 15 or close to 15.

23 Q Okay. So sometime he went back to the jail, correct?
24 I mean, after the ---

25 A Yes.

1 Q --- term of court, he went back to the jail?

2 Did you go back over and discuss any further
3 communications that you may have had with Mr. Hodges? Did
4 you go back to the jail and discuss that with Mr. Moore?

5 A I went to the jail and discussed the -- the case and
6 the discovery and the further investigation that was going
7 to be done. But there wasn't anything else to communicate
8 about -- about plea negotiations because there weren't any
9 more.

10 Q Did you let Mr. Moore know that? It -- it -- us as
11 lawyers, we may have known that. Did you let Mr. Moore
12 know that?

13 A I don't know.

14 Q Okay. Do you recall what day that you would -- or
15 days that you would have discussed the discovery responses
16 to him? And you've heard testimony about this incident
17 report, right?

18 A Right.

19 Q And you would agree that there's a witness who gives
20 conflicting statements?

21 A He tells the police first that Jeff wasn't at his
22 house -- Mr. Moore wasn't at his house and then says he
23 was.

24 Q And you agree one of those could be helpful to Mr.
25 Moore?

1 A Yes.

2 Q And one of those could be harmful to Mr. Moore?

3 A Yes.

4 Q And -- and -- and -- and you agree that he should've
5 been told about those statements?

6 A Yes.

7 Q Can you recollect or do you know when you told him
8 about the favorable statement?

9 A I don't know what day it happened, but it was the day
10 that I went over there and -- and we reviewed the
11 discovery. Now, he didn't have a copy of the report at
12 that time. But I would have read it to him or paraphrased
13 it to him at that time.

14 Q Okay. You said paraphrase it. Why -- why didn't you
15 take him a copy?

16 A I don't usually take copies unless I'm asked to
17 because I don't like that stuff floating around the jail
18 unless people want to have it.

19 Q Okay. So you're clear he didn't have a copy of it?

20 A He -- I don't believe that he had a copy of the report
21 until after he entered his plea.

22 Q Okay. You would agree, then, that the first time he
23 actually laid hands on that report in his possession was
24 after he'd already pled guilty?

25 A I don't remember whether he looked at it when I was

1 over at the jail discussing the discovery with him. But
2 the first -- I would agree that the first time he had his
3 own copy was after. Yes.

4 Q Okay. When was the first date that you informed Mr.
5 Moore that he was on the trial docket for May of 2012 -- or
6 potentially on the trial docket, not No. 1 up but -- but
7 down the food chain?

8 A I -- I don't know the date. So I'd have to rely on
9 Mr. Moore's memory for that.

10 Q Okay. So you wouldn't dispute that it was the Sunday
11 before the term of court?

12 A I -- I don't have any means to dispute that.

13 Q Okay. So -- so nothing was in your notes or ---

14 A That's ---

15 Q --- nothing was ---

16 A --- right.

17 Q --- in your notes? Okay.

18 A That's right.

19 Q And -- and you've testified that during this time
20 frame -- well -- well, you knew that at that point in time,
21 Jeff had a bad record, correct?

22 A That's right.

23 Q Okay. That's nothing that he can run from?

24 A Well, that was -- I mean, one of the things I was
25 worried about for trial purposes is that they -- they were

1 going to -- they had him indicted in such a way that his
2 two prior burglary convictions were an element of the crime
3 and I was concerned about that. So yes, I know about his
4 record.

5 Q Right. And -- and -- and you've also mentioned this
6 DNA: that DNA testing was done?

7 A Yes.

8 Q Is that correct?

9 And that came back not linking Mr. Moore to the
10 evidence? Do -- do you recollect that?

11 A It came back that there were several -- it was gloves.
12 There was a glove on the fence at the house and, then, I
13 think another glove in the pocket of the jacket he was
14 wearing. And I thought that the DNA came back that there
15 were several contributors and he could not be excluded ---

16 Q But ---

17 A --- as a contributor.

18 Q But nothing pinpointed him as being a contributor?

19 A It was the way I just said ---

20 Q Okay.

21 A --- I believe, in ---

22 Q Okay.

23 A --- the report.

24 Q And -- and -- and, you know -- and you also said the
25 election-year politics going on?

1 A I -- absolutely.

2 Q Okay. And --- and -- and did you explain the election-
3 year politics to Mr. Moore?

4 A I did.

5 Q Okay.

6 A I mean, and he heard me talk about it during the
7 motion for a continuance. But we had discussed it before
8 that too.

9 Q And I believe also at the time Mr. Moore had filed a
10 complaint or lawsuit against the sheriff's department?

11 A He told me that he had. Yes.

12 Q Okay. And -- and -- and plus, with a bad record, he
13 was well known to law enforcement?

14 A I -- I guess so.

15 Q Okay. So is it fair to say he had a lot stacked
16 against him?

17 A I do not disagree with that.

18 Q Okay. I mean, forget guilt or innocence; he had a lot
19 stacked against him, being put on the jury-trial roster?

20 A He was in a bad position.

21 Q Okay.

22 A Yes.

23 Q And I believe your testimony was on direct that Mr.
24 Hodges didn't put his plea offer in writing?

25 A I ---

1 Q I -- I ---

2 A I -- I don't know if I testified to that. But I don't
3 recall ever seeing anything in writing. I think it was all
4 just oral communications that we had.

5 Q And like you said, again, that you don't recollect
6 hearing any time frame for when that offer would be null
7 and void?

8 A I don't remember that.

9 Q Okay.

10 MR. HENDERSON: Can I have one moment ---

11 THE COURT: Sure.

12 MR. HENDERSON: --- Your Honor?

13 THE COURT: Take your time.

14 (Whereupon, Mr. Henderson and the applicant
15 conferred.)

16 (Off the record briefly.)

17 MR. HENDERSON: Nothing further, Your Honor.

18 THE COURT: Okay. Mr. Johnson ---

19 MR. JOHNSON: No redirect ---

20 THE COURT: --- anything in ---

21 MR. JOHNSON: --- Your Honor.

22 THE COURT: --- redirect? Okay.

23 MR. JOHNSON: And the state would rest, Your Honor.

24 THE COURT: Okay. All right.

25 (Whereupon, the witness exited the witness stand.)

1 THE COURT: Anything in rebuttal?

2 MR. HENDERSON: No, sir, Your Honor. I think Mr.
3 Moore has told his story ---

4 THE COURT: Okay.

5 MR. HENDERSON: --- up front, so ---

6 THE COURT: All right. Okay. All right. Thank you
7 very much. I'll take this under advisement. I want an
8 opportunity to read the -- the transcript, and I'll
9 probably have a decision tomorrow, I think. Of course, Mr.
10 Johnson, naturally, you're going to be back over here and I
11 see where you're going to be back over here.

12 MR. HENDERSON: I will, Your Honor.

13 THE COURT: Okay. I ---

14 MR. HENDERSON: So ---

15 THE COURT: --- should have a decision tomorrow.

16 Thank you very much.

17 MR. HENDERSON: Thank you.

18 THE COURT: This hearing's adjourned.

19 MR. JOHNSON: Thank you.

20 MR. HENDERSON: Thank you.

21 (Whereupon, the proceeding was concluded at 12:45 p.m.)

22 --- END OF TRANSCRIPT OF RECORD ---

23

24

25

CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND
COMPLETE TRANSCRIPT OF RECORD IN THE HEARING OF THE
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR GREENWOOD COUNTY, SOUTH CAROLINA, ON THE
17TH DAY OF FEBRUARY, 2015.

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



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

JULY 27, 2015

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENWOOD)
)
 Jeffery Lee Moore, #263267,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 EIGHTH JUDICIAL CIRCUIT
 2012-CP-24-1378

ORDER OF DISMISSAL

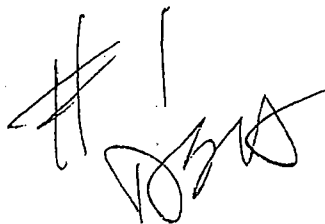
FILED COMMON PLEAS
 8th JUDICIAL CIRCUIT
 GREENWOOD, SC
 2015 MAR 27 PM 1:58

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 26, 2012. The Respondent made its Return on August 25, 2014. An evidentiary hearing into the matter was convened on February 17, 2015, at the Greenwood County Courthouse. Carson M. Henderson, Esquire, represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General’s Office, represented the Respondent.

At the hearing, Applicant testified on his own behalf. Janna A. Nelson, Esquire, who represented Applicant at his guilty plea, also testified. This Court also had before it a copy of the records of the Greenwood County Clerk of Court, records from the South Carolina Department of Corrections, and the guilty plea transcript.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenwood County Clerk of Court’s orders of commitment. Applicant was indicted by the May 2012 term of the Greenwood County Grand Jury for Burglary, 1st degree (2012-GS-24-0830). Applicant was represented by Janna A. Nelson, Esquire. On May 14, 2012, Applicant



appeared before the Honorable J. Cordell Maddox, Jr.; on May 15, 2012, Applicant pled guilty as indicted; and on May 16, 2012, Applicant was sentenced. Judge Maddox sentenced Applicant, pursuant to a negotiated sentence, to imprisonment for fifteen (15) years.

A notice of appeal was filed on Applicant's behalf, but the appeal was dismissed on October 10, 2012, for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) SCACR. The Remittitur was issued on October 31, 2012.

In his Application for Post-Conviction Relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

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

At the PCR hearing, the Applicant proceeded on his claim of ineffective assistance of counsel for Counsel's failure to provide and to review all of the State's discovery responses with him.

SUMMARY OF TESTIMONY

During direct examination, Applicant testified as follows:

1. He pled guilty to Burglary, 1st degree.
2. He was represented by Counsel at his guilty plea.
3. He learned for the first time that his case was on the May 2012 term jury trial roster when Counsel visited him in jail on the Sunday (which was May 13, 2012) before he pled guilty.
4. Prior to this, his case had not been placed on the jury trial roster.
5. Prior to pleading guilty, his only plea offer from the solicitor was to plead guilty

to Burglary, 2nd degree for a fifteen (15) year sentence.

6. The Burglary, 2nd degree offer was communicated to him by Counsel during the April 2012 term.

7. He did not accept or reject the offer because he thought Counsel could get a lower offer from the solicitor.

8. He asked Counsel to ask the solicitor for five (5) years, and Counsel told him that she might be able to get a lower offer but that the solicitor was not going to offer five (5) years.

9. Counsel did not communicate the solicitor's response to Applicant's counteroffer to Applicant after Counsel talked with the solicitor.

10. He did not know his case was going to be on the May 2012 term jury trial docket.

11. He thought he had until the May 2012 term to decide whether to accept the solicitor's initial Burglary, 2nd degree offer.

12. He did not know the solicitor's initial offer would expire.

13. He had no other choice but to plead guilty.

14. He did not see the State's discovery responses or discuss them with Counsel before pleading guilty.

15. It was only after he pled guilty that he saw and received copies of the discovery responses from Counsel, which included an incident report that included both a favorable statement and an unfavorable statement from the same witness who would have testified at Applicant's trial.

16. There were conflicting statements in the incident report from the same witness.

17. He would not have pled guilty if he had known about the favorable statement

from the witness.

18. Counsel said this witness would have testified against, and not for, Applicant at trial.

19. Judge Maddox refused to allow Applicant to withdraw his guilty plea on May 16, 2012.

20. His main PCR claim is ineffective assistance of counsel for Counsel's failure to share the evidence, including potential exculpatory evidence, with him prior to the guilty plea.

On cross-examination, Applicant testified as follows:

1. He was facing fifteen (15) years to life in prison without possibility of parole on the Burglary, 1st degree charge.

2. During the guilty plea, he waived his constitutional rights, including the right to challenge any witness statements.

3. Nobody threatened him or promised him anything to plead guilty.

4. He agreed with the facts as presented by the solicitor at the guilty plea hearing.

5. He admitted he was guilty of the charge at the guilty plea hearing.

During re-direct examination, Applicant testified as follows:

1. He would not have pled guilty had he known about the "favorable witness."

During direct examination, Counsel testified as follows:

1. She was appointed to Applicant's case and filed a Motion for Discovery and Rule 5/Brady material.

2. She received the incident report, Applicant's criminal history, the DNA report from SLED (South Carolina Law Enforcement Division), and photographs of the clothing taken

from Applicant.

3. She reviewed the witness statements and found no inconsistent statements.
4. She reviewed all of the discovery responses with Applicant, and it is her typical practice to review statements made by witnesses with defendants.
5. Concerning the plea offer, Counsel said she discussed a plea offer with the solicitor in February 2012, and the solicitor offered to allow Applicant to plead guilty to Burglary, 2nd degree for fifteen (15) years.
6. Applicant wanted a five (5) year plea offer, but the solicitor would not negotiate that low of a sentence. Applicant was not satisfied with this.
7. She anticipated this case proceeding to trial.
8. She would have relayed the solicitor's response to Applicant's counteroffer to Applicant and that it was Applicant's decision to reject the plea offer.
9. She would have communicated with Applicant about when his case was on the jury trial docket.
10. When the case was scheduled for trial, she attempted to negotiate with the solicitor for the prior Burglary, 2nd degree offer, but the solicitor would not extend this offer again.
11. There was a political atmosphere surrounding this case because it was an election year and Applicant had sued the jail during his incarceration.
12. Judge Maddox denied her continuance request.
13. She negotiated with the solicitor for a fifteen (15) year sentence to the Burglary, 1st degree charge as indicted.



14. Applicant's choices were to accept the Burglary, 1st degree plea offer or proceed to trial.

On cross-examination, Counsel testified as follows:

1. She discussed a fifteen (15) year plea offer to Burglary, 2nd degree with the solicitor in February 2012.
2. She relayed the solicitor's offer to Applicant at that time.
3. She has no notes in her file indicating that this communication occurred in February 2012, and not in April 2012 as testified to by Applicant.
4. She did not remember receiving a written plea offer from the solicitor regarding the Burglary, 2nd degree offer, but only an oral offer.
5. She told Applicant about the solicitor's fifteen (15) year offer, Applicant knew Counsel countered with a five (5) year offer, and Applicant knew the solicitor responded that a five (5) year offer was too few years.
6. She did not remember if there was a time limit during which Applicant had to accept the Burglary, 2nd degree offer, but she would have told Applicant about any time limit.
7. There were no further plea negotiations between the time the solicitor withdrew the Burglary, 2nd degree offer and the case was placed on the May 2012 jury trial roster.
8. She went to the jail and discussed the State's discovery responses with Applicant, including witness statements.
9. Counsel provided Applicant with a written copy of the statements only after he had pled guilty. Counsel previously had read the statements to Applicant.
10. Counsel did not have in her notes that she first told Applicant the Sunday before

the May 2012 term that his case was scheduled for trial during the May 2012 term.

11. Applicant's two (2) prior burglary convictions were elements of Applicant's Burglary, 1st degree charge.

12. A SLED DNA test was conducted on the gloves found on the fence outside the victim's house, and Applicant could not be excluded as a contributor.

13. Applicant was caught up in the political atmosphere surrounding the on-going solicitor's primary race, and Applicant was in a "tight spot" because the solicitor could not be seen as being soft on crime.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, 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 v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing Strickland*. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Reviewing Discovery Responses

Applicant alleges Counsel failed to review all of the State's discovery responses with him. Applicant testified that had Counsel reviewed all of the discovery responses with him, specifically the witnesses statements, he would not have pled guilty, but instead pursued a trial.

Counsel testified that she did, in fact, review all of the discovery responses with Applicant including the witness statements, and she found no inconsistencies in the statements. Counsel also testified it was Applicant's decision to plead guilty.

This Court finds Counsel's testimony more credible than Applicant's. This Court finds

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Counsel reviewed all of the discovery with Applicant and that Applicant was fully aware of all of the evidence before he made the decision to plead guilty. This Court further finds Counsel rendered effective assistance of counsel in this case as she was able to negotiate the minimum sentence for Applicant's Burglary, 1st degree charge.

Involuntary Guilty Plea

To be knowing and voluntary, a guilty plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

A defendant who enters a guilty plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360,

426 S.E.2d 795 (1993).


Applicant alleged his guilty plea was not voluntarily entered because Counsel did not fully discuss the State's discovery responses with him, and Counsel did not provide Applicant with copies of the discovery responses before Applicant's plea. As discussed above, Counsel testified she discussed all of the discovery responses with Applicant prior to the guilty plea. Once again, this Court finds Counsel's testimony more credible. Further, this Court finds the guilty plea transcript, Counsel's testimony, and Applicant's answers during cross-examination at the PCR hearing directly refute his claims. This Court also finds Applicant pled guilty freely, voluntarily, and without any coercion, threats, or promises. Therefore, this allegation is denied.

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in her representation of Applicant.

This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

CONCLUSION

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

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED!



~~Hon.~~ Donald B. Hocker
Presiding Circuit Court Judge
Eighth Judicial Circuit

3-27, 2015
Cameron, South Carolina

