

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Lexington County

R. Lawton McIntosh, Circuit Court Judge

---

**RECEIVED**

SEP 13 2012

**S.C. Supreme Court**

KEVIN D. COOK,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

A P P E N D I X

---

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EXHIBITS

NO EXHIBITS WERE INTRODUCED

1 CLERK OF COURT: INDICTMENT 2008-GS-32-2040, THE  
2 STATE VERSUS KEVIN D. COOKE INDICTED FOR BURGLARY, FIRST  
3 DEGREE. HE IS PLEADING TO BURGLARY, SECOND. INDICTMENT  
4 2008-GS-32-2041, THE STATE VERSUS KEVIN COOKE, INDICTED  
5 FOR ARMED ROBBERY. HE IS PLEADING TO ARMED ROBBERY WITH A  
6 DEADLY WEAPON. INDICTMENT 2008-GS-32-2042, THE STATE  
7 VERSUS KEVIN D. COOKE, INDICTED FOR KIDNAPPING. HE IS  
8 PLEADING AS CHARGED. ALL INDICTMENTS ARE TRUE BILLED AND  
9 HE IS REPRESENTED BY MS. CARBAUGH. RAISE YOUR RIGHT HAND,  
10 PLEASE.

11 KEVIN COOKE, AFTER BEING DULY SWORN, TESTIFIED  
12 AS FOLLOWS:

13 THE COURT: MS. CARBAUGH, YOU REPRESENT KEVIN COOKE?

14 MS. CARBAUGH: I DO, YOUR HONOR.

15 THE COURT: MS. CARBAUGH, HAVE YOU EXPLAINED THE  
16 CHARGE OF THESE INDICTMENTS AND THE RIGHT TO HAVE A JURY  
17 TRIAL?

18 MS. CARBAUGH: I HAVE, YOUR HONOR.

19 THE COURT: AND HOW DOES YOUR CLIENT INDICATE HE  
20 WISHES TO PLEAD?

21 MS. CARBAUGH: GUILTY, YOUR HONOR.

22 THE COURT: ON ALL CHARGES?

23 MS. CARBAUGH: ALL CHARGES.

24 THE COURT: MR. COOKE, YOU ARE CHARGED IN THREE  
25 DIFFERENT INDICTMENTS HERE, SIR. THE FIRST IS THE CHARGE

1 OF KIDNAPPING AND THE CHARGE CARRIES A PENALTY OF 30 YEARS  
2 IN JAIL. DO YOU UNDERSTAND THAT?

3 MR. COOKE: YES, SIR.

4 THE COURT: YOU ARE ALSO CHARGED WITH BURGLARY IN THE  
5 SECOND DEGREE AND IT CARRIES A PENALTY OF UP TO 15 YEARS  
6 IN JAIL. DO YOU UNDERSTAND THAT?

7 MR. COOKE: YES, SIR.

8 THE COURT: YOU ARE ALSO CHARGED WITH ARMED ROBBERY  
9 AND THAT CHARGE CARRIES A PENALTY OF 10 TO 30 YEARS. THAT  
10 CARRIES A MINIMUM OF 10 YEARS. DO YOU UNDERSTAND THAT?

11 MR. COOKE: YES, SIR.

12 THE COURT: UNDERSTANDING THE CHARGES YOU FACE AND  
13 THE PUNISHMENT YOU COULD RECEIVE HOW DO YOU WISH TO PLEAD,  
14 GUILTY OR NOT GUILTY?

15 MR. COOKE: GUILTY.

16 THE COURT: DO YOU UNDERSTAND BY PLEADING GUILTY YOU  
17 ARE GIVING UP YOUR RIGHT TO REMAIN SILENT?

18 MR. COOKE: YES, SIR.

19 THE COURT: DO YOU UNDERSTAND THAT BY PLEADING GUILTY  
20 YOU ARE GIVING UP YOUR RIGHT TO A TRIAL BY JURY?

21 MR. COOKE: YES, SIR.

22 THE COURT: DO YOU UNDERSTAND THAT YOU CAN HAVE A  
23 JURY TRIAL OF TWELVE PEOPLE AND THAT YOU CAN PRESENT ANY  
24 WITNESSES THAT YOU HAVE FROM YOUR OWN DEFENSE AND YOU CAN  
25 CALL WITNESSES AND YOU CAN CROSS-EXAMINE ANY OF THE STATE

1 WITNESSES, THAT THE STATE WOULD PRESENT. THE STATE WOULD  
2 HAVE TO PROVE YOU GUILTY TO A JURY OF TWELVE PEOPLE AND  
3 ALL TWELVE PEOPLE WOULD HAVE TO AGREE THAT YOU ARE GUILTY  
4 IN ORDER FOR YOU TO BE CONVICTED. IF YOU WERE CONVICTED  
5 YOU STILL HAVE A RIGHT TO APPEAL IT. DO YOU UNDERSTAND  
6 THE RIGHTS IN REGARD TO A TRIAL BY JURY?

7 MR. COOKE: YES, SIR.

8 THE COURT: DO YOU STILL WANT TO PLEAD GUILTY OR DO  
9 YOU WANT ME TO SET YOUR CASE FOR TRIAL?

10 MR. COOKE: GUILTY.

11 THE COURT: HAS ANYONE PROMISED YOU ANYTHING, HELD  
12 OUT ANY HOPE OR REWARD TO MAKE YOU PLEAD GUILTY?

13 MR. COOKE: NO, SIR.

14 THE COURT: ANY RECOMMENDATIONS, NEGOTIATIONS ON  
15 BEHALF OF THE STATE?

16 MS. GARRICK: YES, YOUR HONOR, A CAP OF A 20 YEAR  
17 SENTENCE.

18 THE COURT: DO YOU UNDERSTAND THAT, MR. COOKE. IF I  
19 ACCEPT YOUR PLEA THAT I WOULD, THE STATE'S RECOMMENDATION  
20 IS THAT I SENTENCE YOU TO NO MORE THAN 20 YEARS. DO YOU  
21 UNDERSTAND THAT?

22 MR. COOKE: YE, SIR.

23 THE COURT: YOU ALSO UNDERSTAND THAT THAT IS A  
24 RECOMMENDATION; A RECOMMENDATION IS NOT BINDING ON ME.  
25 AFTER I HEAR THE FACTS IN THE CASE AND YOUR PRIOR RECORD,

1 IF YOU HAVE ONE, I STILL COULD SENTENCE YOU TO A MAXIMUM  
2 SENTENCE ON EACH OF THESE. DO YOU UNDERSTAND?

3 MR. COOKE: YES, SIR.

4 THE COURT: AND I COULD RUN THEM CONSECUTIVE IF I  
5 THOUGHT THAT WAS APPROPRIATE. DO YOU UNDERSTAND THAT?

6 MR. COOKE: YES, SIR.

7 THE COURT: ALL RIGHT. DO YOU STILL WANT TO PLEAD  
8 GUILTY?

9 MR. COOKE: YES, SIR.

10 THE COURT: ARE YOU SATISFIED WITH THE MANNER IN  
11 WHICH YOUR ATTORNEY HAS ADVISED AND REPRESENTED YOU IN  
12 THIS CASE?

13 MR. COOKE: YES, SIR.

14 THE COURT: YOU AND YOUR ATTORNEY HAVE FULLY  
15 DISCUSSED THESE CHARGES AGAINST YOU?

16 MR. COOKE: YES, SIR.

17 THE COURT: HAS SHE DONE EVERYTHING YOU HAVE ASKED  
18 HER TO DO IN PREPARATION OF THIS PLEA?

19 MR. COOKE: YES, SIR.

20 THE COURT: ARE YOU SATISFIED WITH HER ADVICE?

21 MR. COOKE: YES, SIR.

22 THE COURT: ARE YOU UNDER THE INFLUENCE OF ANY  
23 ALCOHOL OR BEVERAGES, DRUGS OR PRESCRIPTION MEDICATION AT  
24 THIS TIME?

25 MR. COOKE: NO, SIR.

1 THE COURT: ARE YOU AWARE OF ANY MENTAL, EMOTIONAL OR  
2 NERVOUS CONDITION THAT YOU WOULD HAVE THAT WOULD INTERFERE  
3 WITH YOUR ABILITY TO UNDERSTAND WHAT YOU ARE DOING HERE  
4 TODAY?

5 MR. COOKE: NO, SIR.

6 THE COURT: DO YOU FULLY UNDERSTAND WHAT YOU ARE  
7 DOING HERE TODAY?

8 MR. COOKE: YES, SIR.

9 THE COURT: ARE YOU PLEADING GUILTY OF YOUR OWN FREE  
10 WILL AND ACCORD?

11 MR. COOKE: YES, SIR.

12 THE COURT: SOLICITOR, GIVE ME A FACTUAL BASIS FOR  
13 THIS PLEA.

14 MS. GARRICK: YES SIR, THANK YOU, MAY IT PLEASE THE  
15 COURT. YOUR HONOR, IT WAS MARCH THE 8TH OF 2008 DOWN AT  
16 THE ECONO LODGE ON ST. ANDREWS ROAD AT THE LEXINGTON PART  
17 OF THE COUNTY. YOUR HONOR, THE VICTIM, LLOYD RUSSELL WAS  
18 HERE ON BUSINESS, HE WAS STAYING ALONE IN A ROOM. SOMEONE  
19 KNOCKED ON HIS DOOR, HE WENT TO THE DOOR, IT WAS A FEMALE  
20 AND TWO MALES. WHEN HE HAD OPENED THE DOOR THEY RUSHED  
21 IN. HE DID NOT KNOW THESE PEOPLE. THE VICTIM INDICATED  
22 THAT HE BELIEVED THAT BOTH OF THE MEN WERE ARMED WITH  
23 HANDGUNS. YOUR HONOR, THEY PUSHED HIM INTO THE ROOM, ONE  
24 DEFENDANT STRUCK MR. RUSSELL IN THE MOUTH WITH HIS FIST  
25 THAT HAD THE HANDGUN IN IT. IT ACTUALLY HURT HIS CHIN AND

1 HIS LIPS. THEY DEMANDED HIS MONEY. THE FEMALE  
2 CODEFENDANT WENT TO HIS WALLET, STARTED RUMMAGING THROUGH  
3 HIS WALLET, ACTUALLY WENT INTO THE BATHROOM AND TOOK SOME  
4 PRESCRIPTION BOTTLES OF XANAX. YOUR HONOR, THE TWO MALE  
5 DEFENDANTS WERE VERY VIOLENT AND ROUGH WITH HIM, YELLING  
6 AT HIM THAT THEY WOULD KILL HIM. THE FEMALE HAD FOUND HIS  
7 ATM CARD, THEY WANTED TO KNOW HIS PIN NUMBER. THIS  
8 DEFENDANT PUT THE GUN IN HIS MOUTH AND SAID HE WOULD KILL  
9 HIM IF HE DIDN'T GIVE UP HIS ATM CODE NUMBER. MR. RUSSELL  
10 DID PROVIDE THAT CODE NUMBER. HE ALSO SAID THAT HE HAD  
11 TWO OR THREE DENTURES THAT WERE BROKEN WHEN THE GUN WAS  
12 PUSHED INTO HIS MOUTH. AFTER THEY GOT WHAT THEY WANTED  
13 ONE OF THE DEFENDANT'S TOOK MR. RUSSELL INTO THE BATHROOM,  
14 HAD HIM TAKE HIS CLOTHES OFF, TIED HIM UP AND LEFT. YOUR  
15 HONOR, WHEN THE VICTIM WAS ABLE TO GET LOOSE AND LAW  
16 ENFORCEMENT, THE LEXINGTON COUNTY SHERIFFS DEPARTMENT  
17 BEGAN AN INVESTIGATION. THEY WERE ABLE TO FIND WHERE HIS  
18 ATM CARD HAD BEEN USED AT A BUSINESS. THEY WERE ABLE TO  
19 BACKTRACK TO THAT, GET A VIDEO, SEE MR. COOKE WAS ACTUALLY  
20 ONE OF THE PEOPLE ON THE ATM VIDEO AND ALSO THE FEMALE  
21 CODEFENDANT, MS. TIFFANY ECHEVARRIA, WHEN THESE PEOPLE  
22 WERE IDENTIFIED LAW ENFORCEMENT ACTUALLY FOUND THE FEMALE  
23 CODEFENDANT FIRST. SHE PROVIDED INFORMATION AS TO WHO DID  
24 WHAT. WHEN LAW ENFORCEMENT PUT MR. COOKE'S PICTURE IN A  
25 PHOTO LINEUP, THE VICTIM, MR. RUSSELL INDICATED THAT MR.

1 COOKE WAS THE ONE WHO HAD STRUCK HIM WITH THE GUN. AND  
2 MR. COOKE WAS THE ONE WHO MADE THE VERBAL THREATS TO HIM.  
3 HE SAID TO HIM, I AM A MURDERER, I AM GOING TO KILL YOU IF  
4 YOU DON'T TELL ME WHERE THE MONEY IS, I WILL KILL YOUR  
5 FAMILY, THINGS OF THAT NATURE. LAW ENFORCEMENT WAS  
6 LOOKING FOR MR. COOKE AND THEY WERE ABLE TO FIND HIM  
7 ACTUALLY IN RICHLAND COUNTY JAIL. HE HAD ACTUALLY BEEN  
8 ARRESTED ON A GUN CHARGE THERE SO HE WAS IN JAIL. OUR LAW  
9 ENFORCEMENT DETECTIVES WENT OVER THERE, SPOKE TO MR. COOKE  
10 ABOUT THIS. WHEN THEY SPOKE, MR. COOKE AT FIRST, HE  
11 DENIED ANY KNOWLEDGE IN IT. WHEN LAW ENFORCEMENT WAS  
12 TALKING TO HIM THEY NOTICED THAT HE WAS WEARING A WEDDING  
13 BAND THAT WAS GOLD AND SOMEWHAT UNUSUAL IN THE WAY IT WAS  
14 MADE. AND THE VICTIM IN OUR CASE, MR. RUSSELL, HAD LOST A  
15 WEDDING BAND THAT HE HAD FOR 30 YEARS. AND OUR LAW  
16 ENFORCEMENT CAME BACK HERE, GOT A SEARCH WARRANT, WENT  
17 BACK AND ACTUALLY RETRIEVED THAT WEDDING BAND FROM THIS  
18 DEFENDANT AND IT WAS OUR VICTIM'S. MR. COOKE ALSO HAD IN  
19 HIS POSSESSION, I GUESS AT THE TIME OF ARREST IN RICHLAND  
20 COUNTY, PRESCRIPTION BOTTLES THAT HAD THE VICTIM'S, WERE  
21 PRESCRIBED TO THE VICTIM. YOUR HONOR, MR. RUSSELL  
22 ACTUALLY LIVES OUT OF STATE. HE WAS NOTIFIED OF THIS  
23 PLEA, HE DID NOT WANT TO COME FOR PLEAS BUT HE WAS  
24 AVAILABLE TO COME BACK SHOULD WE GET INTO A TRIAL  
25 SITUATION. MR. COOKE, WE BELIEVE, IS THE MOST CULPABLE.

1 HE IS THE FIRST ONE OF THE DEFENDANTS COMING BEFORE THE  
2 COURT TO ACTUALLY PLEA. MR. RUSSELL DID NOT WANT TO BE  
3 HERE, HE IS NOT ASKING FOR RESTITUTION BUT HE WANTED THE  
4 COURT TO BE AWARE THAT CERTAINLY THAT HE WAS VERY  
5 FRIGHTENED AND AFRAID DURING THIS INCIDENT.

6 THE COURT: IS THAT WHAT HAPPENED, MR. COOKE?

7 MR. COOKE: (THE DEFENDANT AND HIS ATTORNEY TALK.)

8 THE COURT: DID YOU BREAK INTO THE PLACE?

9 MS. CARBAUGH: HIS VERSION IS THAT THEY WERE LET IN,  
10 IT IS A DRUG DEAL GONE BAD, YOUR HONOR. THE VICTIM HAD  
11 GOTTEN DRUGS FROM THIS DEFENDANT EARLIER IN THE DAY, HE  
12 CAME BACK. MY CLIENT DOES NOT DENY IN ANY WAY THAT HE WAS  
13 THERE TO ROB THIS VICTIM, THAT WHEN HE WAS LET INTO THE  
14 HOTEL ROOM THE SECOND TIME THAT, YES, HE DID GO IN THERE  
15 AND INTEND TO ROB THE VICTIM WHEN HE WENT IN.

16 THE COURT: HE HAD A WEAPON?

17 MS. CARBAUGH: THERE WAS A WEAPON INVOLVED. HE  
18 DENIES BEING THE ONE WITH THE WEAPON. HE SAYS THE  
19 CODEFENDANT HAD THE GUN, THE CODEFENDANT SAYS HE HAD THE  
20 GUN.

21 THE COURT: DOES HE UNDERSTAND THE HAND OF ONE IS THE  
22 HAND OF ALL?

23 MS. CARBAUGH: ABSOLUTELY, THAT IS WHY WE ARE  
24 PLEADING TODAY, YOUR HONOR, HE KNOWS THAT IT DOESN'T MAKE  
25 ANY DIFFERENCE WHO HAD THE GUN. HE JUST WANTS THE COURT

1 TO BE AWARE THAT HE SAYS HE DID NOT HAVE IT BUT HE KNOWS  
2 IT MAKES NO DIFFERENCE FOR THE PURPOSES OF TRIAL OR FOR  
3 THE PURPOSES OF PLEADING TO THESE CHARGES.

4 THE COURT: DID HE TAKE ANYTHING?

5 MS. CARBAUGH: YES, OH ABSOLUTELY, YOUR HONOR AND WE  
6 DON'T DENY THAT.

7 THE COURT: MONEY AND THE RING AND THE DRUGS?

8 MR. COOKE: MONEY AND THE RING, IT WAS ON A KEYRING.

9 MS. CARBAUGH: WE MAINTAIN THAT HE LET HIM IN FOR THE  
10 PURPOSES OF BUYING DRUGS AND I DON'T AND I KNOW THAT THAT  
11 IS, THE FACT THAT HE HAS ADMITTED TO ME--

12 THE COURT: THAT IS WHY HE HAS A BURGLARY SECOND,  
13 PROBABLY, INSTEAD OF A BURGLARY THIRD.

14 MS. CARBAUGH: THAT IS CORRECT, YOUR HONOR.

15 THE COURT: ANY OTHER DISPUTE ABOUT THE FACTS, MS.  
16 CARBAUGH?

17 MS. CARBAUGH: NO, YOUR HONOR.

18 THE COURT: I FIND THE DECISION FOR KEVIN COOKE TO  
19 PLEAD GUILTY TO BE FREELY AND VOLUNTARILY AND  
20 INTELLIGENTLY MADE. AND HE HAS REPRESENTATION OF  
21 COMPETENT ATTORNEY TO WHOM HE IS SATISFIED, HIS ATTORNEY,  
22 MS. CARBAUGH. I FIND A FACTUAL BASIS FOR THE PLEA AND I  
23 ACCEPT THE PLEA. MR. COOKE, IF YOU DISAGREE WITH THE  
24 SENTENCE I GIVE YOU AND THE PROCEDURE WE JUST COMPLETED  
25 YOU HAVE TEN DAYS FROM TODAY'S DATE TO WISH TO FILE NOTICE

1 WITH INTENT TO APPEAL. DO YOU UNDERSTAND?

2 MR. COOKE: YES, SIR.

3 THE COURT: HAS HE GOT A RECORD?

4 MS. GARRICK: YES HE DOES, YOUR HONOR. YOUR HONOR,  
5 HE HAS A MISDEMEANOR FIREARM VIOLATION OUT OF  
6 PENNSYLVANIA. AND THEN IN SOUTH CAROLINA IN 1999 HE HAS A  
7 CDV, IN DECEMBER OF '99 HE HAS A POSSESSION OF COCAINE.  
8 IN AUGUST OF 2000 HE HAS A STRONG ARMED ROBBERY AND A  
9 POSSESSION OF COCAINE.

10 THE COURT: WHAT IS THE DISPOSITION OF THAT?

11 MS. GARRICK: THE STRONG ARMED HE GOT 5 YEARS  
12 SUSPENDED TO 18 MONTHS AND THE POSSESSION OF COCAINE HE  
13 DID 7 MONTHS.

14 THE COURT: STRAIGHT SENTENCE?

15 MS. GARRICK: 7 MONTHS, YOUR HONOR.

16 THE COURT: PROBABLY--

17 MS. GARRICK: PROBABLY A REVOCATION. 12/5/01, A DUS.  
18 11 OF 02, HIS STRONG ARMED WAS REVOKED, HE GOT 20 MONTHS  
19 AT THAT TIME ON A REVOCATION. DECEMBER OF '04 HE HAD AN  
20 ABHAN AND A POSSESSION OF A STOLEN VEHICLE. HE GOT 5  
21 YEARS SUSPENDED TO 2 YEARS OF PROBATION. FEBRUARY OF '05  
22 HE HAD A USE OF VEHICLE WITHOUT PERMISSION FOR TIME  
23 SERVED. NOVEMBER OF '05 HE HAD A FAILURE TO STOP FOR A  
24 BLUE LIGHT WHERE HE GOT 2 YEARS AND THEN HE GOT TIME  
25 SERVED ON A POSSESSION OF STOLEN VEHICLE.

1 THE COURT: STRAIGHT 2 YEARS ON THE BLUE LIGHT?

2 MS. GARRICK: YES, SIR. AND A ABHAN, AT THAT TIME, I  
3 CAN'T TELL IF IT IS A NEW ABHAN OR THE SAME ABHAN THAT GOT  
4 REVOKED, 2 YEARS. I BELIEVE IT IS A REVOCATION. IT LOOKS  
5 LIKE HE HAS HAD, BEEN UNDER SUPERVISION THREE DIFFERENT  
6 TIMES FOR PROBATION AND WAS REVOKED THREE DIFFERENT TIMES.

7 THE COURT: ALL RIGHT, MS. CARBAUGH.

8 MS. CARBAUGH: THANK YOU, YOUR HONOR, IF IT PLEASE  
9 THE COURT. MY CLIENT IS 29 YEARS OLD. HE COMPLETED THE  
10 10TH GRADE, HE HAS BEEN A LIFELONG SOUTH CAROLINA RESIDENT  
11 AND HE HAS PRESIDED MOST OF HIS LIFE IN RICHLAND COUNTY.  
12 HIS ENTIRE FAMILY LIVES HERE. HE IS NOT MARRIED, HE DOES  
13 HAVE THREE KIDS WHO HE SUPPORTS, AGES 12, 10 AND 4. THE  
14 FOUR-YEAR-OLD ACTUALLY HAS SICKLE CELL, SHE IS IN THE  
15 HOSPITAL RIGHT NOW. YOUR HONOR, JUST A FEW THINGS. MR.  
16 COOKE, I HAD ASKED HIM IF HE WANTED TO WAIT, WE HAD COME  
17 OVER HERE TODAY TO PLEA, HE HAD NOT GOTTEN WORD TO HIS  
18 FAMILY TO SEE IF THEY WANTED TO COME. I ASKED HIM IF HE  
19 WANTED TO WAIT TO HAVE THEM COME HERE TO SUPPORT HIM. HE  
20 SAID THAT HE DID NOT WANT HIS CHILDREN TO SEE THIS, HE DID  
21 NOT WANT TO PUT THEM THROUGH THIS. THAT IS WHY, THE  
22 FAMILY MEMBERS WOULD BE HERE TO SUPPORT HIM, HE CHOSE FOR  
23 THEM NOT TO BE HERE. HE DOES HAVE A SUPPORTIVE FAMILY,  
24 BOTH WITH HIS CHILDREN AND WITH THEIR MOTHER AND ALSO HIS  
25 MOTHER, HIS BROTHER. THEY DO SUPPORT HIM. AS I HAVE

1 STATED WHEN WE WERE, DURING THE FACTUAL SCENARIO, AS I  
2 SAID, HAD WE GONE TO TRIAL ON THIS IT WOULD OF BEEN A DRUG  
3 DEAL GONE BAD. THIS VICTIM, FROM WHAT I UNDERSTAND FROM  
4 WHAT MY CLIENT HAS TOLD ME, BOUGHT DRUGS FROM HIM EARLIER  
5 IN THE DAY AND AS I STATED MY CLIENT HAS ADMITTED TO ME  
6 THAT HE DID GO THERE THE SECOND TIME THAT DAY WITH THE  
7 INTENTION TO ROB THAT VICTIM. HE TOOK THE MONEY FROM THE  
8 VICTIM, HE TOOK SOME PRESCRIPTION PILLS. HE DOES NOT DENY  
9 THAT THAT WAS HIM ON THE SURVEILLANCE VIDEO, I BELIEVE THE  
10 PICTURES THAT SHE SPOKE OF. HE DOES DENY BEING THE ONE IN  
11 POSSESSION OF THE GUN AT THE TIME OF THE ROBBERY. WE HAVE  
12 SPOKEN OF THAT, HE JUST WANTED ME TO MAKE THE COURT AWARE  
13 OF THAT. AND I WILL SAY, YOUR HONOR, WHEN I FIRST MET MR.  
14 COOKE, HE WAS ARRESTED IN MARCH, I WAS NOT APPOINTED UNTIL  
15 JUNE. WHEN I WAS APPOINTED AND I WENT TO MEET HIM I DID  
16 NOT HAVE DISCOVERY AT THAT POINT. HE WAS VERY HONEST WITH  
17 ME THE FIRST TIME THAT WE HAD MET. HE GAVE ME KIND OF HIS  
18 VERSION OF WHAT HAPPENED. WHEN I GOT DISCOVERY AND WENT  
19 THROUGH IT, FROM MAYBE THE SECOND TIME SINCE I HAVE BEEN A  
20 DEFENSE ATTORNEY. HIS STORY WAS PRETTY SIMILAR TO WHAT  
21 THE DISCOVERY SAID AND I FELT HE HAD BEEN HONEST AND  
22 FORTHCOMING WITH ME FROM THE VERY BEGINNING. HE HAS NEVER  
23 TO ME DENIED HIS INVOLVEMENT WITH THESE CHARGES. HE HAS  
24 ALWAYS HAD THE DESIRE TO PLEAD GUILTY TO THIS, TO ACCEPT  
25 RESPONSIBILITY TO THIS. AND I JUST WANT TO TALK A MINUTE

1 ABOUT HIS PRIOR RECORD BECAUSE HE AND I WENT THROUGH THAT  
2 TOGETHER.

3 THE COURT: WHAT WAS HIS BAIL ORIGINALLY FOR.

4 MS. CARBAUGH: IN RICHLAND COUNTY?

5 THE COURT: YES.

6 MS. CARBAUGH: I THINK UNLAWFUL CARRYING OF A WEAPON.

7 THE COURT: HAS THAT BEEN RESOLVED?

8 MS. CARBAUGH: YES, IT HAS, YOUR HONOR. JUST FOR HIS  
9 PRIOR RECORD. THE REVOCATIONS HE TELLS ME, ON ONE OF THE  
10 REVOCATIONS IT WAS A FAILURE TO REPORT, HE HAD WORKED THAT  
11 DAY, HE HAD CALLED HIS AGENT, HIM AND HIS AGENT I THINK  
12 HAD KIND OF GOTTEN INTO A FIGHT ABOUT HIS REPORTING.

13 THE COURT: HE CAN GET REVOKED FOR FAILURE TO REPORT  
14 ONE TIME.

15 MS. CARBAUGH: I UNDERSTAND THAT, YOUR HONOR, I JUST,  
16 WHEN HE AND I SPOKE THAT IS WHAT HE CAN REMEMBER FROM THAT  
17 REVOCATION AS IT WAS BACK IN 2000, ABOUT EIGHT YEARS AGO.  
18 HE SAID THE STRONG ARMED ROBBERY DID OCCUR BACK WHEN HE  
19 WAS 20 YEARS OLD. AND THE ABHAN THAT IS ON HIS RECORD, HE  
20 SAID, IT WASN'T A PHYSICAL FIGHT, IT WAS WHEN HE WAS DRUNK  
21 AND SPIT ON A POLICE OFFICER. BUT JUST TO CLARIFY, IT  
22 WASN'T A VIOLENT TYPE OF ABHAN WHERE HE BEAT SOMEBODY TO A  
23 PULP. I WANTED TO MAKE THE COURT AWARE OF THAT. AND THEN  
24 THE REST OF HIS PRIOR RECORD, THE TRAFFIC VIOLATIONS, THE  
25 USE OF VEHICLE WITHOUT PERMISSION ARE, THE CDV, THE

1 MISDEMEANOR OFFENSE, OBVIOUSLY THE STRONG ARM AND THE  
2 ABHAN ARE THE ONLY TWO THAT STAND OUT TO ME. I WOULD JUST  
3 ASK THAT YOU TAKE SOME OF THOSE INTO CONSIDERATION THAT  
4 THEY ARE MISDEMEANOR OFFENSES. AND, YOUR HONOR, I GUESS  
5 JUST TO SUM UP FOR MR. COOKE. HE HAS REALLY BEEN THE ONLY  
6 CLIENT THAT I HAVE EVER LIKED. AND I DON'T SAY THAT  
7 OFTEN, IF EVER.

8 THE COURT: YOU HAVE OBVIOUSLY NEVER SAID IT BEFORE.

9 MS. CARBAUGH: HE IS THE ONLY ONE THAT I HAVE EVER  
10 LIKED. AND I APOLOGIZE IF THERE ARE ANY OF MY OTHER  
11 CLIENTS IN THE COURTROOM. HE HAS REALLY BEEN ANXIOUS TO  
12 ACCEPT RESPONSIBILITY FOR THESE CHARGES. LIKE I SAID, I  
13 DIDN'T GET APPOINTED FOR THREE MONTHS. AFTER HE GOT  
14 ARRESTED, I DON'T REALLY KNOW WHAT WAS GOING ON IN BETWEEN  
15 THAT TIME BUT I HAVE WORKED VERY HARD WITH THE SOLICITOR  
16 AND TRYING TO GET THIS CASE TO A PLEA BECAUSE I DON'T  
17 THINK EITHER ONE OF US REALLY WANTED TO GO TO TRIAL ON IT.  
18 THIS WAS ALWAYS GOING TO BE A PLEA AS SOON AS I GOT  
19 INVOLVED WITH IT. HE ALWAYS WANTED TO ACCEPT  
20 RESPONSIBILITY FOR THIS. YOUR HONOR, I WOULD JUST ASK  
21 THAT YOU FOLLOW THE RECOMMENDATION OF THE STATE WITH THE  
22 CAP OF 20 YEARS. AND IF YOU ARE SO INCLINED TO GO BELOW  
23 THAT CAP, SOMEWHERE IN THE RANGE OF 12 TO 15 YEARS, YOUR  
24 HONOR, WOULD BE WHAT WE ARE ASKING FOR. AND THEN JUST ON  
25 A PROCEDURAL NOTE, I KNOW THAT ON THE KIDNAPPING, YOUR

1 HONOR, SOMETIMES THE DEPARTMENT OF CORRECTIONS UNLESS YOU  
2 MAKE A FINDING THAT THE KIDNAPPING WAS NON-SEXUAL IN  
3 NATURE THAT THEY WILL PUT HIM ON THE SEX OFFENDER  
4 REGISTRY. I HAVE DONE A MOTION--

5 THE COURT: NOT SOMETIMES.

6 MS. CARBAUGH: ALWAYS, ALWAYS. I HAVE DONE A MOTION  
7 AND CONSENT ORDER THAT I AM GOING TO HAND UP TO YOU NOW  
8 JUST MAKING A FINDING THAT THIS WAS NOT SEXUAL IN NATURE  
9 AND I BELIEVE THAT THE SOLICITOR HAS SIGNED IT AS WELL.  
10 JUST TO MAKE SURE THAT THAT GETS TAKEN CARE OF. NOTHING  
11 FURTHER FROM THE DEFENSE, YOUR HONOR.

12 THE COURT: MR. COOKE, YOU GOT ANYTHING THAT YOU WANT  
13 TO SAY?

14 MR. COOKE: NO, SIR.

15 THE COURT: THIS IS A TOUGH WAY TO GO HERE. WHAT WAS  
16 THE DISPOSITION OF THE RICHLAND COUNTY CASE.

17 MR. COOKE: I GOT TIME SERVED.

18 THE COURT: SO YOU DON'T HAVE ANYTHING ELSE HANGING  
19 OVER YOUR HEAD?

20 MR. COOKE: NOT THAT I AM AWARE OF.

21 THE COURT: ANYTHING FURTHER FROM THE STATE?

22 MS. GARRICK: JUST, YOUR HONOR, WHEN LAW ENFORCEMENT  
23 INVESTIGATED, I DO A LOT OF DRUG DEALS GONE BAD CASES AT  
24 HOTELS. AND THEY DIDN'T INDICATE THAT IN THEIR REPORT AND  
25 THAT THE FEMALE CODEFENDANT WHO WAS ACTUALLY CLOSER TO MR.

1 COOKE THAN THE OTHER MALE CODEFENDANT, SHE DIDN'T INDICATE  
2 ANYTHING ABOUT A DRUG DEAL SITUATION GONE BAD. AND SHE  
3 ALSO IDENTIFIED MR. COOKE AS THE ONE WITH THE GUN AND THE  
4 ONE WHO STRUCK THE VICTIM. AND I HAD TOLD YOU, THE VICTIM  
5 HAD PICKED HIM OUT OF THE PHOTO LINEUP AS THE ONE WHO  
6 STRUCK HIM.

7 THE COURT: YOU SAID THE VICTIM WAS A, "BUSINESS  
8 MAN".

9 MS. GARRICK: IT JUST SAID HE WAS HERE ON WORK  
10 RELATED. I DON'T KNOW THE DETAILS.

11 THE COURT: WORK RELATED.

12 MS. GARRICK: YES, SIR.

13 THE COURT: AND WHAT IS HIS ARREST DATE?

14 MS. CARBAUGH: HE WAS ARRESTED MARCH 8TH, THE 10TH, I  
15 AM SORRY, MARCH THE 10TH. AND, YOUR HONOR, JUST TO ADD,  
16 THE CODEFENDANT, THE FEMALE CODEFENDANTS STATEMENT, SHE  
17 DOES SAY IN HER STATEMENT THAT SHE WAS SMOKING CRACK WITH  
18 THE VICTIM IN HIS ROOM.

19 THE COURT: ALL RIGHT, MR. COOKE, ON YOUR BURGLARY  
20 SECOND CHARGE. THE SENTENCE OF THE COURT IS YOU WILL BE  
21 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A  
22 PERIOD OF 15 YEARS. ON THE TWO, KIDNAPPING AND YOUR ARMED  
23 ROBBERY CHARGES, THE SENTENCE OF THE COURT IS YOU BE  
24 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A  
25 PERIOD OF 20 YEARS. ALL OF THESE SENTENCES ARE TO RUN

1 CONCURRENT. GIVE CREDIT FOR TIME SERVED SINCE MARCH 10TH  
2 OF 2008. GOOD LUCK TO YOU. AND I HAVE ORDERED HIM NOT TO  
3 BE PLACED ON THE SEX OFFENDER REGISTRY.

4 MS. CARBAUGH: THANK YOU, YOUR HONOR.

5 \*\*\* END OF REQUESTED TRANSCRIPT OF RECORD \*\*\*

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AW

JUN 5 2009

FORM 5

ORIGINAL

STATE OF SOUTH CAROLINA

FILED

IN THE COURT OF COMMON PLEAS

County of Lexington

2009 JUN 1 A 10 21

Kevin D. Cook # 26880f

Full name and prison number (if any) of Applicant

BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON SC

SCANNED

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

2009CP3202714

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 Lieber Correctional Institution  
P.O. Box 205, Ridgeway, South Carolina 29472
2. Name and location of Court which imposed sentence Lexington County  
General Sessions
3. Name(s) of co-defendant(s) (if any) ① Tiffany Behavarran  
② Tosance Beatts
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2008-65-32-2040, 2008-65-32-2042
  - (b) 2008-65-32-2041



(c) N/A

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

(a) September 24 / 2008

(b) 15, Second Degree Burglary 15, Armed Robbery

(c) 20 Kidnapping, Rape, Burning, Carcass

6. Check whether a finding of guilty was made:

(a) after a plea of guilty under duress

(b) after a plea of not guilty \_\_\_\_\_

(c) after a plea of nolo contendere \_\_\_\_\_

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

no

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

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

i. N/A

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

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

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

i. N/A

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

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

(c) the date of each such result:

i. N/A

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

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

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

i. N/A

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

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

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

(a) I did not know, I had a right to appeal,

(b) My self plea

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

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

- (a) The Applicant asserts that he plead guilty under duress;
- (b) The Applicant substantive due process was violated;
- (c) \_\_\_\_\_

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

- (a) The Applicant asserts that he Plead guilty under duress;
- (b) The Applicant substantive due process was violated;
- (c) \_\_\_\_\_

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

- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? \_\_\_\_\_

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

- (a) the specific nature thereof:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

(c) the disposition thereof:

- i. \_\_\_\_\_ *N/A*
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. \_\_\_\_\_ *N/A*
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. \_\_\_\_\_ *N/A*
- 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?

\_\_\_\_\_ *N/A*

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

(a) which grounds have been presented:

- i. \_\_\_\_\_ *N/A*
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_ *N/A*
- 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) these issues has not been adjudicated
- (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? Yes
- (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? NO

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. Allyson Carbaugh Allyson Carbaugh  
2113 Park St
  - ii. PO Box 1452  
Columbia SC 29202
  - iii. Allyson Allyson Carbaugh
- (b) the proceedings at which each such attorney represented you:
  - i. Plea
  - ii. \_\_\_\_\_
  - iii. Sentencing

ORIGINAL

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

Motion to vacate the conviction and sentence & Resentence

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

No

2009CP3202714

STATE OF SOUTH CAROLINA )

VERIFICATION

County of Lexington )

I, Kevin D. Cook, # 268907, 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.

Kevin D. Cook

SWORN to and subscribed before me this 2nd day of June, 2009.

Theresa J. Walker (L.S.)  
Notary Public

My Commission Expires: 4/4/2011

BETH A. CARRIG  
CLERK OF COURT  
LEXINGTON SC

2009 JUN 11 A 11:41

FILED

2009CP3202714

ORIGINAL

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

I, Kevin D. Cook #268881, 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.

Kevin D. Cook  
Applicant

SWORN or affirmed to and subscribed before me this 2nd day of June, 2009.  
Debra J. Walker  
Notary Public

My Commission Expires: 4/4/2011

FILED  
2009 JUN 11 A 11:41  
BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
	)	2009-CP-32-2714
	)	
Kevin D. Cook, #268901,	)	
Applicant,	)	
	)	
v.	)	RETURN AND REQUEST FOR
	)	APPOINTMENT OF COUNSEL
	)	
State of South Carolina,	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed June 11, 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted at the July 2008 term of the Lexington County Grand Jury for Kidnapping (2008-GS-32-2042), Armed Robbery (2008-GS-32-2041), and Burglary—1<sup>st</sup> Degree (2008-GS-32-2040). He was represented by Allyson Carbaugh, Esquire. On September 23, 2008, the Applicant pled guilty to Armed Robbery, Kidnapping and Burglary—2<sup>nd</sup> degree. He was sentenced by the Honorable G. Thomas Cooper to confinement for a period of fifteen (15) years for Burglary—2<sup>nd</sup> Degree, and concurrent periods of twenty (20) years for Kidnapping and Armed Robbery. The Applicant did not appeal his guilty plea or sentence.

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

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

## II.

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

1. Ineffective assistance of counsel;
  - a. "I did not know I had a right to appeal my guilty plea."
2. Involuntary Guilty Plea
  - a. "The Applicant asserts that he plead guilty under duress."
3. "Applicant's substantive due process was violated."

## III.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective

assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. Nevertheless, the allegation of ineffective assistance of counsel probably raises a question of fact which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

#### IV.

Here, in addition to making general allegations pertaining to Plea Counsel's performance, the Applicant also specifically claims that he was denied effective assistance of counsel because his attorney did not inform him of his right to appeal his guilty plea conviction. Absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Jones v. State, 677 S.E.2d 20 (2009). Counsel has a constitutionally imposed duty to consult with the defendant about an appeal only when there is reason to think either: (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal); or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 120 S.Ct. 1029 (2000). In making this determination, courts must take into account all the information counsel knew or should have known.

Id. Although not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings. Id.

There being nothing in the record to indicate that the Applicant reasonably demonstrated to Counsel that he was interested in appealing, the State submits that the allegation is totally without merit and should be dismissed. Nevertheless, the allegation probably raises a question of fact which may not be conclusively refuted by the record and therefore requires that an evidentiary hearing be convened. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v.

U.S., 519 F.2d 347 (4<sup>th</sup> Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4<sup>th</sup> Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

#### VI.

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

VII.

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

Respectfully submitted,

HENRY DARGAN McMASTER  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

A. WEST LEE  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

December 15, 2009.

COPY

nSTATE OF SOUTH CAROLINA )  
 ) COURT OF COMMON PLEAS  
COUNTY OF LEXINGTON )

Kevin Cook, )  
 )  
 )  
 ) PLAINTIFF, ) PCR HEARING  
 ) 2009-CP-32-02714  
 )  
 ) -VS- )  
 )  
 ) State of South Carolina, )  
 )  
 ) DEFENDANT. )  
 )  
 )

BEFORE THE HONORABLE R. LAWTON McINTOSH, JUDGE  
FEBRUARY 2, 2011  
LEXINGTON, SOUTH CAROLINA

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

James O'Connor, Esq.  
For the Applicant

A. West Lee, Esq.  
For the State

REMA K. GANTT THOMAS  
CIRCUIT COURT REPORTER

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## E X H I B I T S

THERE WERE NO EXHIBITS MARKED TO THIS HEARING.

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

3                   MR. LEE: May it please the Court?

4                   THE COURT: Yes, sir.

5                   MR. LEE: Your Honor, this is Kevin Cook  
6 versus the State of South Carolina. It's case number  
7 2009-CP-32-2714, and it comes to the Court by way of  
8 application for post-conviction relief filed June  
9 11, 2009.

10                   The applicant was indicted at the  
11 July 2008 term of the Lexington County Grand Jury  
12 for kidnapping, armed robbery, and burglary first  
13 degree. He was represented by Allyson Carbaugh.  
14 And on September 23, 2008, the applicant pled guilty  
15 to armed robbery, kidnapping, and burglary second  
16 degree.

17                   He was sentenced by the Honorable  
18 Thomas Cooper to confinement for a period of fifteen  
19 years for burglary second and concurrent periods of  
20 twenty years for kidnapping and armed robbery.

21                   The applicant did not appeal his  
22 guilty plea or sentence. In his current  
23 application, the applicant alleges he's being held  
24 in custody unlawfully for ineffective assistance of  
25 counsel, specifically that "I did not know I had the

1 right to appeal my guilty plea," and involuntary  
2 guilty plea, in that the applicant asserts that he  
3 pled guilty under duress; and, finally, that  
4 applicant's substantive due process was violated.

5 At this time, I will turn it over to  
6 the applicant's attorney to expand upon his claims.  
7 Thank you.

8 THE COURT: Would you state your name for  
9 the record, please, sir?

10 MR. O'CONNOR: Yes, sir, Your Honor. My  
11 name is Jim O'Connor.

12 THE COURT: Mr. O'Connor, good to see you  
13 this morning.

14 MR. O'CONNOR: Thank you, Judge.

15 THE COURT: Okay, sir.

16 MR. O'CONNOR: Your Honor, we call Kevin  
17 Cook to the stand.

18 (The witness was sworn.)

19 THE COURT: Yes, sir.

20 MR. O'CONNOR: May it please the Court.

21 KEVIN COOK, having first been duly  
22 sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. O'CONNOR:

25 Q Could you state your name for the record,

1 please?

2 A Kevin Cook.

3 Q Okay. And your date of birth?

4 A Six seven 1979.

5 Q Okay. And, sir, what is your education  
6 level?

7 A Tenth grade.

8 Q Okay. Did you hear the charges and the  
9 sentences that were read out by the prosecuting  
10 attorney just now?

11 A Yes, sir.

12 Q Are those accurate?

13 A Yes, sir.

14 Q Okay. Who was your attorney during those  
15 proceedings?

16 A Ms. Allyson Carbaugh.

17 Q Okay. Was Ms. Allyson Carbaugh, was she -  
18 - both during the plea and the sentencing, she was  
19 your attorney?

20 A Yes.

21 Q Okay. Do you recall what the State  
22 recommended during your plea?

23 A I think they recommended zero to twenty,  
24 with a cap of twenty.

25 Q A cap of twenty, okay. Did you think that

1       there was going to be any other recommendation  
2       besides what was put on the record?

3             A       Yes, I thought that I would -- I mean, I  
4       know it was a cap of twenty. But I thought I would  
5       get no less than ten and no more than twelve.

6             Q       Okay. And why did you think that?

7             A       Because Ms. Carbaugh said that we would  
8       probably get no less than ten and no more than  
9       twelve years.

10            Q       Okay. Were there justifications for that  
11       -- reasons why she thought you were only going to  
12       get ten to twelve?

13            A       She said that she knew the Judge.

14            Q       She said she knew the Judge.

15            A       Yes.

16            Q       Was there anything else?

17            A       No, I can't remember.

18            Q       Okay. What was your understanding of the  
19       agreement?

20            A       Okay, my understanding of the agreement,  
21       it was like I said. It was a cap of twenty, but I  
22       still would get no more than ten to twelve, because  
23       I thought that maybe -- maybe that's something the  
24       Judge and the lawyer had already worked out.

25            Q       Okay. So it read on the record that you

1       were aware that you could get twenty, is that  
2       correct?

3             A     Uh-huh.

4             Q     Okay. But it was your understanding that  
5       you were going to get between ten and twelve?

6             A     Yes.

7             Q     Would you have pled guilty if you knew  
8       that you were going to be sentenced to the twenty?

9             A     No, sir.

10            Q     Would you have asked to go to trial if you  
11       knew that you were going to get twenty years?

12            A     Yes, sir.

13            Q     Okay. Did you accept and plead guilty to  
14       this based on the idea that you were going to get  
15       ten to twelve years?

16            A     Yes.

17            Q     Okay. And where did the numbers ten to  
18       twelve come from?

19            A     Came from my lawyer, Ms. Carbaugh.

20            Q     Okay. Did anybody else hear it?

21            A     I don't think so.

22            Q     Did you discuss it with any of the  
23       prosecuting attorneys prior?

24            A     I'm not sure about that.

25            Q     Okay, okay. We're going to get into the

1 appeal. Were you informed of your right to appeal  
2 by the Court?

3 A Yes.

4 Q Okay. Were you informed by -- of your  
5 right to appeal by your attorney?

6 A Yes.

7 Q Okay. Did you express an interest in  
8 appealing your conviction thereafter?

9 A Yes, we -- we actually went for it. And  
10 Ms. Carbaugh came to Kirkland, and she told me that  
11 I should withdraw the appeal because I would  
12 probably get more time. So it scared me, and I  
13 begged out.

14 Q Okay. Did you withdraw the appeal?

15 A Yes, I withdraw the appeal because I was  
16 afraid.

17 Q Okay. Did you base your decision to  
18 withdraw the decision based on what Ms. Carbaugh  
19 told you?

20 A Yes.

21 Q Okay. Did you personally want to withdraw  
22 the appeal?

23 A No, I wanted to go for it.

24 Q Do you think your jail sentence would have  
25 been different had you continued on with the appeal?

1           A     Yes, I -- I believe if I would have  
2     withdrawed it, I probably could have got a better  
3     deal.

4           Q     You feel that you were pressured into  
5     doing so?

6           A     I was scared into doing so.

7           Q     Okay. You had two co-defendants in this  
8     case. Do you recall their names?

9           A     Yes, sir, Tina Estavaria (PH) and Torrence  
10    Batts.

11          Q     And both of your co-defendants had the  
12    same charges you did?

13          A     They had the same charges I did.

14          Q     And do you know the result?

15          A     Yes, both of them got five years  
16    nonviolent apiece.

17          Q     Okay. And what's your release date?

18          A     February 20, '26.

19          Q     Okay. Did your attorney make you aware of  
20    the classifications between a nonviolent and violent  
21    classification for your charges? Were you made  
22    aware of those?

23          A     Yes, yes, I was.

24                   MR. O'CONNOR: Your Honor, I have no  
25    further questions.

1 THE COURT: Any cross-examination?

2 MR. LEE: Just briefly, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. LEE:

5 Q Mr. Cook, you said that you understood  
6 that the recommendation was for zero to twenty,  
7 correct, with a cap of twenty?

8 A Uh-huh.

9 Q And you did actually get twenty, is that  
10 right?

11 A Yes, I did.

12 Q And you were aware that the Judge could go  
13 against the recommendation if he wanted to?

14 A Yes, I did.

15 Q Okay. And just very briefly, and do you  
16 recall at the guilty plea during the -- the Judge  
17 asking you, actually telling you that he could go  
18 against the recommendation if he wanted to? Do you  
19 recall that?

20 A Yes, I recall that.

21 Q Okay. But, again, he did go with the  
22 recommendation when he gave you exactly twenty?

23 A Yes, he gave me twenty.

24 Q Do you recall stating that you were  
25 satisfied with your attorney's representation?

1 A Yes, I recall saying it.

2 Q And do you recall saying that you were  
3 pleading guilty of your own freewill and accord?

4 A Yes.

5 MR. LEE: No further questions, thank you.

6 THE COURT: Redirect?

7 MR. O'CONNOR: Nothing further, Your  
8 Honor.

9 THE COURT: You may step down.

10 MR. O'CONNOR: That ends our case, Your  
11 Honor.

12 THE COURT: Thank you, sir.

13 Mr. Lee?

14 MR. LEE: Yes, Your Honor. The State  
15 would call Allyson Carbaugh to the stand.

16 (The witness was sworn.)

17 ALLYSON CARBAUGH, having first been  
18 duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. LEE:

21 Q Ms. Carbaugh, could you state your name  
22 for the record, please?

23 A Sure, it's Allyson Carbaugh.

24 Q Were you appointed out retained in this  
25 case?

1           A     I was appointed.

2           Q     After being appointed, did you have the  
3 occasion to meet with the applicant?

4           A     I did. I went and visited him on several  
5 occasions when he was at the Lexington County  
6 Detention Center.

7           Q     During those meetings, would you have gone  
8 over the charges he was facing?

9           A     Yes.

10          Q     Potential punishments for those charges?

11          A     Yes.

12          Q     And originally he was indicted for what?

13          A     Burglary in the first degree, armed  
14 robbery, and kidnapping.

15          Q     Okay. So he was potentially looking at a  
16 life sentence on that burglary charge?

17          A     That's correct.

18          Q     Okay. And did you explain that to him?

19          A     Yes, I did.

20          Q     Also during these meetings, would you have  
21 explained his constitutional rights, such as his  
22 right to a jury trial?

23          A     Yes.

24          Q     Okay. And did you file a Rule 5 Brady  
25 motion in this case?

1           A     I did.

2           Q     And I take it you received the State's  
3 evidence?

4           A     I did.

5           Q     Do you recall what that evidence consisted  
6 of?

7           A     The incident report for the investigation.  
8 There were some photos, surveillance video from a  
9 convenience store that Mr. Cook was alleged to have  
10 used the victim's debit card at, statements from co-  
11 defendants, and I believe the victim's statement.

12          Q     Okay. You made reference to the victim's  
13 ATM card. Could you just briefly recount the facts  
14 of the case?

15          A     From what I can recall, it was a -- what I  
16 characterize as a drug deal gone bad. Mr. Cook and  
17 another co-defendant, Mr. Batts, had arranged to  
18 make a drug transaction with the victim in this  
19 case.

20                     They went to his hotel. The third co-  
21 defendant, Ms. Estavaria -- I think I'm pronouncing  
22 her name correctly -- I think she -- the State's  
23 allegations was that she was used as the bait to  
24 gain them entry into the victim's hotel room.

25                     Once inside, the victim was held at

1 gunpoint. A gun was placed in the victim's mouth.  
2 He was threatened with his life, asked to give him  
3 PIN number for his ATM card.

4 They robbed him, made him take his clothes  
5 off, tied him up, put him in the bathtub, and the  
6 three then left the hotel. I believe they dropped  
7 off Mr. Batts somewhere, and then Mr. Cook and Ms.  
8 Estavaria (PH) used the defendant's ATM card at a  
9 gas station to get gas and some other purchases  
10 there.

11 There was a surveillance video, some still  
12 footage, of them using that card there. And then  
13 they were -- he -- Mr. Cook was eventually arrested  
14 in Richland County on unrelated charges.

15 Q Okay. And when he was arrested on those  
16 unrelated charges, was he in possession of anything  
17 in particular?

18 A When he was arrested in Richland County  
19 and booked into the detention center in Richland  
20 County, he did have at the time a prescription  
21 bottle for Xanax that was the victim's prescription.  
22 And he also was wearing the victim's wedding band.

23 Q Okay. And so your understanding if it had  
24 gone to trial, the State would have introduced this  
25 evidence?

1           A     Yes.

2           Q     Okay.  So upon meeting with the applicant  
3     and upon reviewing the State's evidence in the case,  
4     were you able to form an opinion about the strength  
5     of the State's case, their likelihood of proving the  
6     defendant guilty?

7           A     Mr. Cook and I discussed that and  
8     discussed -- and he was very forthcoming with a lot  
9     of the facts, underlying facts in the case.  There  
10    weren't a lot in dispute as far as he was concerned.  
11    And it was a mutual decision that he would go ahead  
12    and plead guilty to that.  A trial would have pretty  
13    much ascertained a guilty conviction on all charges.

14          Q     Okay.  And so as a result of this  
15    discussion and the decision to sort of look into a  
16    guilty plea, did you engage in plea negotiations on  
17    the applicant's behalf?

18          A     I did.  The original offer from the  
19    Solicitor was a cap of twenty-five years.  I was  
20    able to negotiate that down to a cap of twenty years  
21    and to get the burglary first charge reduced to a  
22    burglary second so Mr. Cook would no longer be  
23    facing a potential life sentence.  But the maximum  
24    sentences on armed robbery and kidnapping could have  
25    been thirty years each on those.

1 Q Okay. And so you were able to talk them  
2 into a recommendation for twenty --

3 A Yes.

4 Q -- is that what you testified to?

5 A Yes.

6 Q And did you explain -- well, first, did  
7 you keep the applicant up to date on plea offers?

8 A I did.

9 Q And did you explain what a recommendation  
10 meant to the applicant?

11 A Yes. I explained that although the State  
12 would be recommending that, the Judge did not have  
13 to follow the recommendation and could go above or  
14 below the recommendation.

15 Q Okay. And did you make some reference to  
16 requesting ten to twelve years?

17 A That's what we were going to ask for, and  
18 we did ask for that at the plea, was a sentence of  
19 ten to twelve years.

20 Q Okay. And did you ever promise him that  
21 he would get ten to twelve years?

22 A No.

23 Q And did he understand that you were just  
24 asking for ten to twelve years?

25 A Yes, that would be what our request to the

1 Judge would be.

2 Q Did you ever have any problems  
3 communicating with the applicant? Did he seem like  
4 he understood your conversations?

5 A Yes.

6 Q Now, whose decision was it ultimately to  
7 plead guilty in this case?

8 A Mr. Cook.

9 Q Okay. Did you pressure or coerce him into  
10 pleading?

11 A No.

12 Q Had he elected to proceed to trial, would  
13 you have been prepared to do so?

14 A Yes.

15 Q He made an allegation or reference that  
16 while you informed him of his right to appeal and  
17 subsequently filed you, you also got him to withdraw  
18 his appeal. Is that accurate?

19 A It was actually a motion to reconsider the  
20 sentence that we filed.

21 Q Okay. And that's the one that he  
22 ultimately withdrew?

23 A Yes. And the -- kind of the reason for  
24 that, during the plea, part of the facts was when he  
25 was arrested in Richland County, he was in

1 possession of a gun that matched the description of  
2 the gun used in the Lexington County armed robbery.

3 During the plea, Mr. Cook told the Judge  
4 that while he agreed with the facts, he did not  
5 agree that he -- the State alleged that he was the  
6 one with the gun and that he was the one that put  
7 the gun in the victim's mouth and threatened the  
8 victim's life.

9 Mr. Cook alleged during the plea that that  
10 was not him, he did not have the gun. And the State  
11 did not dispute that with the evidence that he was  
12 arrested in Richland County with what they believe  
13 to have been the gun used at the time.

14 When -- after I filed the motion to  
15 reconsider, the Solicitor called and said if we went  
16 forward with the motion to reconsider, she would  
17 bring that detail to the Judge's attention.

18 I went and visited Mr. Cook at that time,  
19 at Kirkland, and informed him that it was my opinion  
20 that if we were to go forward with the motion to  
21 reconsider based on the new evidence the Judge would  
22 have, he could go above the cap. And I didn't think  
23 that Mr. Cook wanted to expose himself to the risk  
24 of more time.

25 Q And so that's why you ultimately counseled

1 him that a withdrawal would be in his best interest?

2 A I did.

3 Q And did he ever subsequently express any  
4 desire to actually appeal his guilty plea after  
5 that?

6 A He did not.

7 Q If he had, would you have filed an appeal?

8 A Yes.

9 Q That would be all my questions, thank you.  
10 Please answer any opposing counsel has.

11 A Okay.

12 MR. O'CONNOR: Thank you.

13 CROSS-EXAMINATION

14 BY MR. O'CONNOR:

15 Q Good morning.

16 A Good morning.

17 Q Okay. Do you recall when you provided --  
18 you were provided discovery in the case?

19 A Let me check my file. That would have  
20 been June 4, 2008.

21 Q Is that the same time that you were  
22 appointed?

23 A I can't recall the appointment date,  
24 actually.

25 Q Is it correct that he was arrested in

1 March 2008 and you were appointed about three months  
2 after that? Is that about accurate?

3 A Yes, that would be about accurate.

4 Q Okay.

5 A Somewhere around that time.

6 Q All right. You indicated in the record  
7 that from the very beginning, from the time you were  
8 appointed, that this was going to be a plea case?

9 A Yes.

10 Q Can you explain that?

11 A From my very first meeting with Mr. Cook,  
12 his version of the facts -- I usually say, "Tell me  
13 what happened." And it was exactly along with the  
14 State's evidence in the case.

15 There were very few facts that Mr. Cook  
16 disputed that were in the State's evidence that they  
17 had provided to me. So I didn't really see any --  
18 he basically admitted that he did everything they  
19 said he did, except for the gun issue.

20 Q Okay. Did you make the decision yourself  
21 that perhaps a plea bargain was going to occur  
22 before seeing the discovery?

23 A No.

24 Q Okay. Did you make that decision yourself  
25 prior to ever seeing Mr. Cook?

1           A     No.

2           Q     Okay.  So that was kind of a joint  
3     decision?

4           A     It was after my meeting with him when his  
5     version of the facts matched the version of the  
6     discovery.

7           Q     Okay.

8           A     It didn't seem like there would be  
9     anything different.

10          Q     You indicated from the first time you were  
11     appointed that this was going to be a plea case?

12          A     Well, from my first meeting with him.

13          Q     So -- okay.  You said here today and also  
14     on the record previously that this was a drug deal  
15     gone bad, is that accurate?

16          A     Yes.

17          Q     And that he went there with the intention  
18     of selling drugs?

19          A     There was a drug tran -- I don't know if  
20     he was going to sell or buy.  I know there was a  
21     drug tran -- I can't recall, but there was going to  
22     be a drug transaction taking place from what I  
23     recall.

24          Q     Okay.  You said on the record during the  
25     pleading guilty, when he was pleading guilty, that

1 he actually went there with the intentions of  
2 robbing him. So why the disparity?

3 A There --

4 Q Going there with the intentions to rob  
5 somebody and going there with the intentions to sell  
6 drugs to somebody --

7 A They were going to do both.

8 Q They were going to do both?

9 A They had set it up as a drug deal, but  
10 they were going to rob him when they got there.

11 Q Okay. You think indicating to the Judge  
12 that there were going there with the intentions to  
13 rob may have prejudiced him a bit in what you said  
14 to him?

15 A I think the State had already done their  
16 version of the facts and said that --

17 Q Okay.

18 A -- he had planned on robbing him.

19 Q Okay. Well, everybody called it a drug  
20 deal gone bad, isn't that right --

21 A Yes.

22 Q -- even the prosecutor?

23 A Uh-huh.

24 Q But you had indicated that they went there  
25 with the intentions to rob?

1           A     I mean, if that's what in the record. It  
2 would have been both.

3           Q     Okay. Did you at any time tell your  
4 client that you were going to ask for ten to twelve  
5 years?

6           A     Yes.

7           Q     Okay. Did you ever ask for ten to twelve  
8 years?

9           A     Yes.

10          Q     On the record, it actually indicates on  
11 page fifteen that you actually -- I'm sorry, page  
12 fourteen. You asked for twelve to fifteen, and I  
13 just wanted the clarification because I have  
14 understood from the beginning that you were going to  
15 ask for ten to twelve.

16                    But in the record, it was twelve to  
17 fifteen that you actually asked for. Do you recall  
18 why you went up from ten to twelve to twelve to  
19 fifteen?

20          A     I don't recall.

21          Q     Okay.

22          A     I don't recall why.

23          Q     Did you have any -- what were the prior  
24 negotiations in the pleading? Was there anything  
25 agreed between you and the Solicitor of what the

1 Solicitor would say in terms of recommendation  
2 besides the twenty-year cap?

3 A No.

4 Q Were they ever going to ask or recommend  
5 ten to twelve?

6 A No, no, the Solicitor's Office never was.

7 Q Okay. Did you ever tell your client that  
8 you knew the Judge?

9 A Yes.

10 Q Okay. And did you ever tell your client  
11 that it was likely that the Judge could give him ten  
12 to twelve years?

13 A I said that's what we were going to ask  
14 for.

15 Q Okay. Do you think there's any reason  
16 that your client would have a reasonable expectation  
17 that he'd be getting ten to twelve years?

18 A No, we -- he knew the facts -- I explained  
19 to him the facts of the case were bad.

20 Q Do you think he would have pled guilty if  
21 he knew he was getting twenty years?

22 A Yes.

23 Q Do you think he pled guilty because he  
24 thought he was getting ten to twelve?

25 A I'm not -- I don't know what Mr. Cook --

1       why he would have pled guilty if he thought that. I  
2       can't speak to what he thought.

3           Q     Did you inform your client of his right to  
4       appeal?

5           A     Yes.

6           Q     And did he ever express an interest to  
7       actually go forward with an appeal?

8           A     No. We discussed an appeal versus the  
9       motion to reconsider, and we opted to file the  
10      motion to reconsider.

11          Q     Okay. Why was the motion to reconsider  
12      later withdrawn?

13          A     As I just explained, the -- there was an  
14      admission during the plea by the prosecution as far  
15      as who -- their belief was that Mr. Cook was the --  
16      was the one with the gun, that this was ultimately  
17      his plan.

18                   He was arrested in Richland County with a  
19      gun that matched the description of the gun used in  
20      the Lexington County robbery.

21          Q     Okay.

22          A     It was Mr. Cook's contention that the  
23      Richland County deputies had set him up and that he  
24      actually had the gun that the other person that was  
25      arrested with him in Richland County had, and that

1 person had his gun, and that Richland County had set  
2 it up to make it look like he had that gun.

3 Q Okay, thank you.

4 MR. O'CONNOR: Your Honor, I beg the  
5 Court's indulgence.

6 THE COURT: Yes, sir.

7 MR. O'CONNOR: No further questions, Your  
8 Honor.

9 THE COURT: Mr. Lee?

10 MR. LEE: Just briefly, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. LEE:

13 Q Ms. Carbaugh, your client was pleading  
14 guilty to burglary second, correct?

15 A Correct.

16 Q And in a guilty plea, you essentially  
17 admit the truth of the charges against you, correct?

18 A Correct.

19 Q So stating that they were going there to  
20 commit a robbery, after the State had already given  
21 its version of the facts, wasn't really adding any  
22 prejudice to Mr. Cook's case, was it?

23 A Correct.

24 Q Okay. Now, in your opinion, was there a  
25 benefit to the entry of this guilty plea?



1 proof, and there's no evidence of any due process  
2 violations.

3 MR. LEE: Thank you, Your Honor.

4 THE COURT: Thank you.

5 MR. O'CONNOR: Thank you, Your Honor.

6 THE COURT: Yes, sir.

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT THOMAS, OFFICIAL COURT REPORTER, AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE ABOVE-CAPTIONED CASE ON FEBRUARY 2, 2011, IN LEXINGTON, SOUTH CAROLINA.

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

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL AT LEXINGTON, SOUTH CAROLINA, THIS THE TWENTY-THIRD DAY OF JULY, 2011.

---

REMA K. GANTT THOMAS  
OFFICIAL COURT REPORTER  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES 11/21/2013

STATE OF SOUTH CAROLINA )  
 COUNTY OF LEXINGTON )  
 )  
 Kevin D. Cook, # 268901, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE ELEVENTH JUDICIAL CIRCUIT

2009-CP-32-2714

ORDER OF DISMISSAL

FILED

**PROCEDURAL HISTORY**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 11, 2009. The Respondent made its Return on December 15, 2009. An evidentiary hearing into the matter was convened on February 2, 2011, at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by Jim O'Connor, Esquire. The Respondent was represented by A. West Lee of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, Allyson Carbaugh, Esquire ("counsel"). This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Lexington County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted at the July 2008 term of the Lexington County Grand Jury for Kidnapping, Armed Robbery and Burglary – First Degree (2008-GS-32-2040/2041/2042). He was represented by Allyson Carbaugh, Esquire, on the charges. On

September 23, 2008, the Applicant pled guilty to before the Honorable G. Thomas Cooper, and was sentenced to twenty (20) year terms of imprisonment for Kidnapping and Armed Robbery, as well as a fifteen (15) year term of imprisonment for the lesser offense of Burglary – Second Degree, all sentences to run concurrently. The Applicant did not appeal his guilty plea or sentence.

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

1. Ineffective assistance of counsel.
  - i. "I did not know I had a right to appeal my guilty plea."
2. Involuntary Guilty Plea
  - i. "Applicant asserts that he pled guilty under duress."
3. "Applicant's substantive due process was violated."

#### 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 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington,

466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 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, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of 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, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985). In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to

trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4<sup>th</sup> Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4<sup>th</sup> Cir. 1976).

#### *Ineffective Assistance of Counsel*

Applicant has alleged that his plea was not entered voluntarily and knowingly as counsel coerced him into pleading guilty. As stated above, an Applicant in PCR that pleads guilty on counsel's advice may only collaterally attack the voluntary and knowing nature of his guilty plea by showing (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, supra. Therefore, this allegation is essentially a claim of ineffective assistance of counsel that rendered a guilty plea involuntary. Applicant has also alleged he entered his plea under duress.

At the PCR hearing, Applicant testified counsel had advised him he would probably receive sentences between ten (10) and twelve (12) years on the charges under the terms of the plea because she knew the plea judge. Applicant went on to say, had he known he was going to receive twenty (20) year sentence, he would not have pled but rather would have insisted on proceeding to trial. Applicant articulated that he was aware of the state's recommendation of a twenty (20) year capped sentence and went on to say that counsel had discussed the meaning of a

recommended sentence, including the idea that the judge did not have to follow the recommendation and could exceed the recommended term if he saw fit.

Counsel testified she was appointed to represent Applicant on the charges roughly three (3) months after Applicant's arrest, after which she met with Applicant several times at the Lexington County Detention Center to discuss the charges he was facing. During those meetings, counsel reviewed the facts giving rise to the charges with Applicant, the potential sentences Applicant was facing including a potential life sentence on the Burglary charge, and Applicant's constitutional rights including the right to a jury trial. Counsel testified Applicant had been very forthcoming with his version of the facts giving rise to the charges, and based on those discussions there was very little in dispute with the facts set forth by the state and the evidence. Counsel stated she did tell Applicant she would request the judge impose a ten (10) to twelve (12) year sentence, but denied ever promising or guaranteeing Applicant any such sentence. Counsel went on to say it was ultimately Applicant's decision to enter this plea and, had Applicant insisted on proceeding to trial, she would have been prepared to do so.

I find Counsel's testimony to be credible. Conversely, I find Applicant's testimony to not be credible. Counsel advised Applicant of the relevant issues regarding the charges he was facing, including the facts giving rise to the charges, Applicant's constitutional rights, the potential sentences he was facing, the meaning and implication of a recommended sentence, and the consequences of rejecting this plea to advance to trial. Counsel gave Applicant all the information and advice to make an intelligent and voluntary decision on whether to enter this plea. Applicant readily admits he was aware of the sentence he could receive based on the state's recommendation, but is now unhappy with the sentence he received as he held out hope for a ten to twelve year sentence. (*wishful thinking regarding sentencing does not equal a*

*misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made. Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997).*) Applicant has failed to prove any duress or coercion was wielded upon him such to make his plea involuntary or to render counsel's representation ineffective.

Based on the facts above, I find that Applicant did not prove by a preponderance of the evidence that counsel was ineffective in his representation. Further, I find that Applicant's guilty plea was entered knowingly and voluntarily after being fully and adequately advised by competent counsel acting within the range of competence demanded of attorneys in criminal cases.

#### *Direct Appeal*

Applicant's second contention is counsel was ineffective in failing to advise him of, or otherwise carry out, Applicant's direct appeal. Applicant contends that based on this deficiency, he is entitled to a belated direct appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974).

Applicant testified at the PCR hearing that counsel had filed an appeal on his behalf, but Applicant later agreed to withdraw it after counsel advised him he would receive a longer sentence if the action was granted. Applicant concedes counsel did review the right to appeal with him, but alleges he withdrew the appeal because he was afraid of a longer sentence based on his discussions with counsel. Counsel conversely testified that the actual matter filed after Applicant's plea was a motion to reconsider, not a direct appeal. She agreed she never filed an appeal on Applicant's behalf, as Applicant never expressed an interest in appealing after she advised him of that right. Further, counsel testified she had counseled Applicant to withdraw his

motion to reconsider after learning from the solicitor of an additional, highly-incriminating piece of evidence not introduced at the plea that the State planned to bring to the judge's attention if Applicant pursued the motion. Counsel ultimately stated that, had Applicant expressed an interest in appealing his plea or sentence, she would have done so on his behalf.

In Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000), the United States Supreme Court found that counsel does not always have to consult with a defendant regarding an appeal. Counsel must only consult with a defendant about an appeal in two situations: (1) where a rational defendant would want to appeal, as when there are non-frivolous grounds for an appeal, or (2) where a defendant reasonably demonstrated to counsel that he was interested in an appeal. Id. Courts must take into account all information counsel knew or should have known in making this determination. Id. Based on the testimony at trial and a thorough review of the record, I find Applicant has failed to carry his burden in proving this allegation. Further, I find counsel's testimony on the subject to be credible. Counsel fully advised Applicant of his right to appeal, after which Applicant never requested or exhibited a desire to appeal his plea. Additionally, Applicant failed to set forth any non-frivolous grounds for appeal which a rational defendant would have pursued. Therefore, I find this allegation is without merit and must be dismissed.

#### CONCLUSION

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

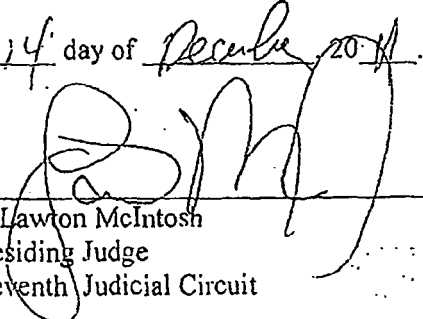
Except as discussed above, this Court finds that the Applicant failed to raise any other allegations cognizable in PCR at the hearing and has, thereby, waived them. The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

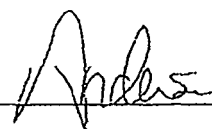
This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a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

**IT IS THEREFORE ORDERED:**

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

AND IT IS SO ORDERED this 14 day of December, 2011.

  
 \_\_\_\_\_  
 R. Lawton McIntosh  
 Presiding Judge  
 Eleventh Judicial Circuit

  
 \_\_\_\_\_, South Carolina.

FILED  
 2011  
 12/14

ARREST WARRANT

J-846304

STATE OF SOUTH CAROLINA

County/ Municipality of

Lexington

THE STATE against

ORIGINAL

Kevin D Cooke

Address:

Columbia, SC 29203-4721

Phone: SSN

Sex: M Race: B Height: 5 9 Weight: 220

DL State: SC DL #:

DOB: 6/7/1979 Agency ORI #: SC0320000

Prosecuting Agency: Lexington County Sheriff

Prosecuting Officer: E. D. Prestigiacomio - 0660

Offense: Burglary / Burglary (After June 20, 1985) - First degree

Offense Code: 0079

Code/Ordinance Sec: 16-1k-0311

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant KEVIN D. COOKE on 4-25-08

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions Lexington County Judicial Center MAR 11 2008 205 East Main Street Lexington, SC 29072

RECEIVED

ORIGINAL

TRUE COPY ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Lexington

Personally appeared before me the affiant E. D. Prestigiacomio who being duly sworn deposes and says that defendant Kevin D Cooke did within this county and state on or about 03/08/2008 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Lexington) in the following particulars:

DESCRIPTION OF OFFENSE Burglary / Burglary (After June 20, 1985) - First degree

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

That on or about 03-08-08 at approximately 8:30 AM the defendant, Kevin Cooke, along with two co-defendants, did, without permission to enter and while armed with a handgun, forcibly enter into the victim, Lloyd Russell's, room # 213 "Econo Lodge" at 773 Saint Andrews Road in the Columbia area of Lexington County. Once inside the defendants and co-defendants did point the handgun at the victim as they all demanded money and threatened to kill the victim. The defendant then hit the victim several times with the gun about the face as the co-defendants took money, jewelry, and an ATM card. Law Enforcement obtained a statement from a co-defendant who confessed to the crime who implicates the defendant.

Signature of Affiant

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Lexington

Affiant's Address P O Box 639

Lexington, SC 29071-

Affiant's Telephone

FILED BETH A. CARRICO CLERK OF COURT LEXINGTON, SC APR 30 8 35

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 3/8/2008 defendant Kevin D Cooke

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of Lexington) as set forth below.

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

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

Sworn to and subscribed before me on 03/11/2008

Signature of Issuing Judge (L.S.)

Brian W. Jeffcoat

Judge Code: 5058

Judge's Address Lexington County Judicial Center

Lexington, SC 29072-

Judge's Telephone (803)951-2595

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ORIGINAL

ORIGINAL

CASE # 08022150

73  
ARREST WARRANT  
J-846305

STATE OF SOUTH CAROLINA  
 County/  Municipality of  
Lexington

THE STATE  
against  
Kevin D Cooke

Address:  
Columbia, SC 29203-4721.

Phone: \_\_\_\_\_ SSN: \_\_\_\_\_

Sex: M Race: B Height: 5 9 Weight: 220

DL State: SC DL #: \_\_\_\_\_

DOB: 6/7/1979 Agency ORI #: SC0320000

Prosecuting Agency: Lexington County Sheriff

Prosecuting Officer: E. D. Prestigiaco

Offense: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Offense Code: 0139

Code/Ordinance Sec: 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the  
 County/  Municipality of

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

(L.S.)

Signature of Judge

Date:

RETURN  
A copy of this arrest warrant was delivered to defendant KEVIN D COOKE on 4/29/08

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:  
General Sessions  
Lexington County Judicial Center  
205 East Main Street  
Lexington, SC 29072

RECEIVED

MAR 11 2008

A TRUE COPY ORIGINAL ORIGINAL ORIGINAL ORIGINAL  
Lexington Co. Sheriff's Dept.

STATE OF SOUTH CAROLINA )  
 County/  Municipality of )  
Lexington )

AFFIDAVIT

ORIGINAL  
S.C. Attorney General  
April 21, 2003  
SCCA 518

Personally appeared before me the affiant E. D. Prestigiaco who being duly sworn deposes and says that defendant Kevin D Cooke did within this county and state on or about 03/08/2008 violate the criminal laws of the State of South Carolina (or ordinance of  County/  Municipality of Lexington) in the following particulars:

DESCRIPTION OF OFFENSE Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

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

That on or about 03-08-08 at approximately 8:30 AM the defendant, Kevin Cooke, along with two co-defendants, did, without permission to enter and while armed with a handgun, forcibly enter into the victim, Lloyd Russell's, room # 213 "Econo Lodge" at 773 Saint Andrews Road in the Columbia area of Lexington County. Once inside the defendants and co-defendants did point the handgun at the victim as they all demanded money and threatened to kill the victim. The defendant threatened the victim several times with the gun about the face as the co-defendants took money, jewelry, and an ATM card. Law Enforcement obtained a statement from a co-defendant who confessed to the crime who implicates the defendant.

APR 30 A 8:35  
JEROME A. CARRIGG  
CLERK OF COURT  
LEXINGTON, SC

Signature of Affiant

*E. D. Prestigiaco*

STATE OF SOUTH CAROLINA )  
 County/  Municipality of )  
Lexington )

Affiant's Address P O Box 639  
Lexington, SC 29071-

Affiant's Telephone \_\_\_\_\_

ARREST WARRANT

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

It appearing from, the above affidavit that there are reasonable grounds to believe that

on or about 3/8/2008 defendant Kevin D Cooke

did violate the criminal laws of the State of South Carolina (or ordinance of  County/  Municipality of Lexington) as set forth below.

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.  
Sworn to and subscribed before me

03/11/2008

Signature of Issuing Judge Edgar W. Jeffcoat (L.S.)

Judge Code: 5058

Judge's Address Lexington County Judicial Center  
Lexington, SC 29072-

Judge's Telephone (803)951-2595

Issuing Court:  Magistrate  Municipal  Circuit

ORIGINAL ORIGINAL ORIGINAL

CASE# 08072150

J-846306

STATE OF SOUTH CAROLINA

County/  Municipality of

Lexington

THE STATE  
against

ORIGINAL

Kevin D Cooke

Address: Columbia, SC 29203-4721

Phone: \_\_\_\_\_ SSN: \_\_\_\_\_  
Sex: M Race: B Height: 5 9 Weight: 220

DL State: SC DL #: \_\_\_\_\_  
DOB: 6/7/1979 Agency ORI #: SC0320000

Prosecuting Agency: Lexington County Sheriff  
Prosecuting Officer: E. D. Prestigiacoemo - 0660

Offense: Kidnapping / Kidnapping

Offense Code: 0095  
Code/Ordinance Sec: 16-03-0910

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

(L.S.)

Signature of Judge

Date: \_\_\_\_\_

RETURN

A copy of this arrest warrant was delivered to defendant Kevin D. Cooke on 4/25/08

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions  
Lexington County Judicial Center MAR 11 2008  
205 East Main Street  
Lexington, SC 29072

ORIGINAL

A TRUE COPY

ORIGINAL

ORIGINAL

ORIGINAL

Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA )  
 County/  Municipality of )  
Lexington )

AFFIDAVIT

ORIGINAL

Form Approved by  
S.C. Attorney General  
April 21, 2003  
SCCA 518

Personally appeared before me the affiant E. D. Prestigiacoemo who being duly sworn deposes and says that defendant Kevin D Cooke did within this county and state on or about 03/08/2008 violate the criminal laws of the State of South Carolina (or ordinance of  County/  Municipality of Lexington) in the following particulars:

DESCRIPTION OF OFFENSE Kidnapping / Kidnapping

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

That on or about 03-08-08 at approximately 8:30 AM the defendant, Kevin Cooke, along with two co-defendants, did, without permission to enter and while armed with a handgun, forcibly enter into the victim, Lloyd Russell's, room # 213 "Econo Lodge" at 773 Saint Andrews Road in the Columbia area of Lexington County. Once inside the defendants and co-defendants did point the handgun at the victim as they all demanded money and threatened to kill the victim. The defendant then hit the victim several times with the gun about the face as the co-defendants took money, jewelry, and an ATM card. Law Enforcement obtained a statement from a co-defendant who confessed to the crime who implicates the defendant.

Signature of Affiant

Affiant's Address P O Box 639  
Lexington, SC 29071-  
Affiant's Telephone \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 County/  Municipality of )  
Lexington )

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 3/8/2008 defendant Kevin D Cooke did violate the criminal laws of the State of South Carolina (or ordinance of  County/  Municipality of Lexington) as set forth below:

DESCRIPTION OF OFFENSE: Kidnapping / Kidnapping

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as

Sworn to and subscribed before me on 03/11/2008  
Signature of Issuing Judge Brian W. Jeffcoat (L.S.)  
Judge Code: 5058

Judge's Address Lexington County Judicial Center  
Lexington, SC 29072-  
Judge's Telephone (803)951-2595

Issuing Court:  Magistrate  Municipal  Circuit  
ORIGINAL ORIGINAL ORIGINAL

CASE # 08022150

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
 )


INDICTMENT FOR  
BURGLARY FIRST DEGREE

§ 16-11-0311

At a Court of General Sessions, convened on JULY 2008, the Grand Jurors of Lexington County present upon their oath:

That Kevin D. Cooke did in Lexington County, South Carolina on or about March 8, 2008, did knowingly and willfully enter a dwelling, to wit: room #213 at the Econo Lodge being the room of Lloyd Russell, without consent and with the intent to commit a crime therein and was armed with a handgun, in violation of § 16-11-311 of the Code of Laws of South Carolina, 1976, as amended.

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

  
\_\_\_\_\_  
ASSISTANT SOLICITOR

A TRUE COPY  
  
\_\_\_\_\_  
Tax. Cl. C. J. C. G. S. & F. C.

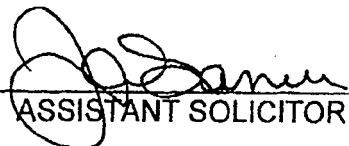
STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
 )

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

At a Court of General Sessions, convened on JULY 2008, the Grand Jurors of Lexington County present upon their oath:

That Kevin D. Cooke did in Lexington County, South Carolina on or about March 8, 2008 knowingly and willfully while armed with a deadly weapon, to wit: a handgun, did feloniously take from the person or presence of Lloyd Russell, by means of force, threats or intimidation goods or monies being described as follows: U. S. currency and/or jewelry and an ATM card with intent to deprive the owner of the use of such property, in violation of Section 16-11-330 (A) 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 case made and provided.

  
ASSISTANT SOLICITOR

A TRUE COPY  
  
Lex. Co. C.C.C.P., G.S. & E.C.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON. )  
 )

INDICTMENT FOR  
KIDNAPPING

§ 16-03-0910

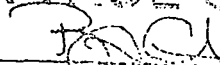
At a Court of General Sessions, convened on JULY 2008, the Grand Jurors of Lexington County present upon their oath:

That Kevin D. Cooke did in Lexington County, South Carolina on or about March 8, 2008, knowingly, willfully, and unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Lloyd Russell by any means whatsoever without authority of law, and without his consent, to wit: the defendant did enter the victim's room and held him at gunpoint, in violation of § 16-3-910 of the Code of Laws of South Carolina, 1976, as amended.

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

  
\_\_\_\_\_  
ASSISTANT SOLICITOR

A TRUE COPY

  
\_\_\_\_\_  
Lex. Co. S.C.G.P., G.S. & F.C.

STATE OF SOUTH CAROLINA

0-15 LOVE IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE VS. Kevin Cooke
AKA:
Race: B Sex: M Age: 29
DOB: SS#: 2
Address: Columbia, SC 29203-4721
DL#: SID#:

INDICTMENT/CASE#: 2008GS3202040
A/W#: J846304
Date of Offense: 3/8/2008
S.C. Code § : 16-11-0311
CDR Code #: 0079

SENTENCE SHEET

concurrent

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Burglary Second Degree

in violation of § 16-11-312 of the S.C. Code of Laws, bearing CDR Code # 0080
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, (Defendant initial)

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

ATTEST: Solicitor, Defendant, Attorney for Defendant, SC Bar# 72769

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

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

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 pmts. of \$ beginning

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$ paid to Public Defender Fund

§ 35.13 (Public Def/Prob) \$500 \$ Other:

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$

§ 90.11 TP (SCCJA Surcharge) \$5 \$5.00

TOTAL \$130.00

PRESIDING JUDGE Judge Code: 211216 Sentence Date: 4-23-08

Clerk of Court/ Deputy Clerk Court Reporter: J. Holster

STATE OF SOUTH CAROLINA

LCDC

IN THE COUNTY OF GENERAL SESSIONS

COUNTY OF Lexington  
STATE VS.

Kevin Cooke

INDICTMENT/CASE#: 2008GS3202041

A/W#: J846305

Date of Offense: 3/8/2008

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

AKA:

Race: B Sex: M Age: 29

DOB: SS#:

Address

Columbia, SC 29203-4721

DL#: SID#:

SENTENCE SHEET

Cap 20 yrs

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

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly we

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

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

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (Defendant initial)

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

ATTEST:

*James P. Cooke*  
Solicitor

Defendant

*Allyson Kay* 72769  
Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 20 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: \_\_\_\_\_

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. *MARCH 10, 2008*

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

SPECIAL CONDITIONS:

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

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

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 pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_ \$ \_\_\_\_\_ paid to Public Defender Fund

§ 56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_ Other: \_\_\_\_\_

§ 35.13 (Public Def/Prob) \$500 \$ \_\_\_\_\_

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ \_\_\_\_\_

§ 50-21-114(BUI Breath Test Fee) \$50 \$ \_\_\_\_\_

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_

3% to County (if paid in installments) \$ \_\_\_\_\_

§ 90.11 TP (SCCJA Surcharge) \$5 \$5.00

TOTAL \$130.00

*Beth A. Canigg*  
Clerk of Court/ Deputy Clerk

Court Reporter: *A. Holston*

PRESIDING JUDGE *[Signature]*

Judge Code: 211216

Sentence Date: 9-23-08

STATE OF SOUTH CAROLINA

COUNTY OF Lexington  
STATE VS.

Kevin Cooke

AKA:

Race: B Sex: M Age: 29

DOB: SS#: 2

Address:

Columbia, SC 29203-4721

DL#: SID#:

LCDC IN THE COUNTY OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008GS3202042

A/W#: J846306

Date of Offense: 3/8/2008

S.C. Code § : 16-03-0910

CDR Code #: 0095

SENTENCE SHEET

*Copy of 20 yrs*

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

TO: Kidnapping / Kidnapping

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095

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

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (Defendant initial)

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

ATTEST:

[Signature]  
Solicitor

[Signature]  
Defendant

[Signature]  
Attorney for Defendant

72769  
SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 20 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: \_\_\_\_\_

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. MARCH 10, 2008

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

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms: \_\_\_\_\_

set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine: \$ \_\_\_\_\_

§ 14-1-206 (Assessments 107.5 %) \$ \_\_\_\_\_

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_

§ 56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_

§ 35.13 (Public Def/Prob) \$500 \$ 1

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ \_\_\_\_\_

§ 50-21-114(BUI Breath Test Fee) \$50 \$ \_\_\_\_\_

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_

3% to County (if paid in installments) \$ \_\_\_\_\_

§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00

TOTAL \$ 130

Beth A. Baugh  
Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

PTUP \_\_\_\_\_

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED \_\_\_\_\_

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling \_\_\_\_\_

Random Drug/Alcohol testing \_\_\_\_\_

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

No sex off. work.

Appointed PD or appointed other counsel §35.13 TP

Requires \$500 be paid to Clerk during probation.

[Signature]  
PRESIDING JUDGE

Judge Code: 2111216

Sentence Date: 9-23-08