

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lexington County

Brooks P. Goldsmith, Circuit Court Judge

RECEIVED

MAR - 9 2016

SC SUPREME COURT

RICHARD O. HATCHELL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001876

A P P E N D I X

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Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

2 COUNTY OF LEXINGTON

3
4
5 STATE OF SOUTH CAROLINA)

6 -vs-)

TRANSCRIPT OF RECORD

7 RICHARD O. HATCHELL,)

12-GS-32-0265, et al

8 Defendant.)

9
10
11 July 9, 2012
12 Lexington, South Carolina

13
14
15 B E F O R E:

16 HONORABLE WILLIAM H. SEALS, JR., Judge.

17
18
19 A P P E A R A N C E S:

20 J. ANGELA GARRICK, Senior Asst. Solicitor
21 Attorney for the State

22 ELIZABETH C. FULLWOOD, Deputy Public Defender
23 Attorney for the Defendant

24
25 L. COCONUT PANTSARI, R.P.R.
Circuit Court Reporter

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INDEX OF WITNESSES

(Court Reporter's Note: There was no direct or cross
examination of any witnesses.)

INDEX OF EXHIBITS

(Court Reporter's Note: No exhibits were marked or
received into evidence.)

1 (The following proceedings are reported on
2 July 9, 2012.)

3 (Court Reporter's Note: The Court gave the
4 following instructions to those present in the
5 courtroom.)

6 THE COURT: Everybody in the courtroom that is
7 here and you are thinking about pleading guilty or you
8 are signed up to plead guilty, I want to go over certain
9 rights that you have; and I want you to understand these
10 rights. If you have any questions about these rights
11 you come to me, and I will try to clear them up for you.

12 The first thing I want you to understand is
13 you do not have to plead guilty. If would rather have a
14 jury trial instead, all you have do is ask me; and I
15 will make sure you get one.

16 Furthermore, I want you to understand that you
17 have nothing to prove if you have a jury trial. The
18 burden of proof is on the State of South Carolina to
19 prove you guilty beyond a reasonable doubt.

20 Furthermore, if you have a jury trial, you
21 would have a jury made up of 12 people. It would have
22 to take all 12 people to agree unanimously to convict
23 you before the Court could sentence you. Furthermore,
24 if you had a trial, your lawyer would have the right to
25 cross examine and confront each and every one of the

1 State's witnesses.

2 Furthermore, if you had a trial, you could
3 testify. You could take the stand, and you could tell
4 your side of the story. However, it's important to
5 understand that you have the constitutional right to
6 remain silent, and you do not have to testify; and
7 nobody can make you testify.

8 In fact, if you chose to exercise that right,
9 I want you to understand that I would tell the jury that
10 they could not use that against you in any way
11 whatsoever.

12 I would tell the jury that fact you did not
13 testify would have absolutely no prejudice against you.
14 Furthermore, I would even order the jury that they could
15 not discuss the fact that you did not testify in the
16 jury room.

17 Furthermore, if you had a jury trial or you
18 plea in front of me and you are not happy with something
19 that takes place, you can appeal it; but you've got to
20 do so within ten days.

21 If you come up here and you decide to plead
22 and you have any questions about these rights, you ask
23 me; and I will clear them up or we will get your lawyer
24 to clear them up. Thank you.

25 Solicitor, I am ready when you are.

1 (Court Reporter's Note: After several cases
2 were heard, the following requested guilty plea is
3 reported as follows.)

4 CLERK: 2012-GS-32-264, the State versus
5 Richard O'Neil Hatchell, indicted for failure to stop
6 for a blue light, he is pleading as charge.

7 2012-GS-32-265, the State versus Richard
8 O'Neil Hatchell, indicted for burglary first degree, he
9 is pleading as charged.

10 Both indictments are true billed, and he is
11 represented by Ms. Fullwood.

12 Raise your right hand, please.

13 RICHARD O'NEIL HATCHELL is
14 first duly sworn.

15 THE COURT: Mr. Hatchell, you are pleading
16 guilty to burglary first degree, which carries a minimum
17 of 15 years in jail and a maximum of life in jail; is
18 that correct?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And you are also pleading guilty
21 to failure to stop for a blue light, which carries up to
22 three years in jail; is that correct?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Also, were you in the courtroom
25 when I went over your rights to a jury trial?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Did you understand those rights?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you have any questions about
5 your rights to a jury trial?

6 THE DEFENDANT: No.

7 THE COURT: Do you want to give up your right
8 to a jury trial and plead guilty today?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Are you satisfied with your
11 lawyer?

12 THE DEFENDANT: Yes, sir.

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

15 THE DEFENDANT: Yes, sir.

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

18 THE DEFENDANT: No, sir.

19 THE COURT: Let's take a break and let her
20 answer your questions.

21 THE DEFENDANT: No, I mean, during my -- what
22 I asked her to do, she didn't do. See, I was going to
23 go a different way, but she -- I don't know. I will
24 just go on with it. I just as soon get it over with now
25 and be done with it.

1 THE COURT: Let's take a little break. You
2 sit down at that table right there and talk with your
3 lawyer.

4 UNIDENTIFIED WOMAN: Judge, if you think
5 really hard about what you are doing today. That's my
6 grandbaby right there.

7 (Whereupon there is a recess.)

8 THE COURT: Have you had time to talk with
9 your lawyer?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Has she answered all your
12 questions?

13 THE DEFENDANT: Yes, sir.

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

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you need anymore time with your
18 lawyer?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Is that a yes or a no?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You need more time with your
23 lawyer?

24 THE DEFENDANT: No, sir. No, sir.

25 THE COURT: Has anybody promised you any type

1 of reward or gift to get you to plead guilty?

2 THE DEFENDANT: No, sir.

3 THE COURT: Anybody threatening you or
4 coercing you into pleading guilty?

5 THE DEFENDANT: No, sir.

6 THE COURT: Are you under the influence of any
7 drugs or alcohol at this time that would affect your
8 ability to think, reason, and understand and know what
9 you are doing?

10 THE DEFENDANT: Yes, sir, I understand what I
11 am doing.

12 THE COURT: Are you under the influence of any
13 drugs or alcohol at this time?

14 THE DEFENDANT: No, sir.

15 THE COURT: Are you guilty?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Have you understood all of my
18 questions?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Have you answered them truthfully?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Thank you.

23 MS. GARRICK: Thank you, Your Honor. May it
24 please the Court. Your Honor, this incident occurred on
25 November 21, 2011. The address where the burglary took

1 place was [REDACTED] in the [REDACTED] area of
2 Lexington County.

3 Your Honor, it's the home of [REDACTED] [REDACTED],
4 and [REDACTED] [REDACTED]. They are here on the front row.
5 They lived there. [REDACTED] was actually a senior in
6 high school. She was home there alone, home sick from
7 school; and it was in the afternoon.

8 She was sitting on her couch and she heard
9 some noises. She heard the dog start barking. She
10 heard something bam on one of the doors of the home. I
11 mean, it was such that when law enforcement investigated
12 later and they took photographs, there is a photograph
13 that clearly shows a huge dent in the door.

14 She had just gotten a new cell phone. So she
15 took her cell phone and she ran into the laundry room
16 and she called 9-1-1. There is an 18-minute 9-1-1 call
17 where she is calling to authorities asking for help.

18 Your Honor, she is telling them that she hears
19 something, that someone is in her house, that there
20 should be no cars in the yard because her parents are
21 gone. The dad was at work and the mom had left to run
22 some errands, and she was home alone.

23 She is terrified. She hears movement within
24 the house. She feels like there was a glass that was
25 broken, that maybe first initial entry was through a

1 screen that was removed. Then she hears glass breaking.
2 She hears movement down the hall.

3 She hears him in her area of the house where
4 her bedroom is. So she is on the phone with law
5 enforcement. Law enforcement responds very, very
6 quickly. The Sheriff's Department had many, many
7 officers who responded.

8 One of the first officers that responded was
9 Ty Haigler, who is present in court today. When he gets
10 there -- and I think they weren't dispatched for about
11 three or four minutes before the Sheriff's Department
12 was asked to hurry up and get there -- and when Deputy
13 Haigler gets there, he sees some kind of brown van that
14 is pulling out of the driveway of the home.

15 They knew -- law enforcement knew -- there
16 shouldn't have been any vehicles there. So he turns on
17 his blue lights and sirens after they both had to have
18 turned around in the yard, and a failure to stop
19 situation ensues.

20 Your Honor, like I said, the whole incident is
21 probably -- it's less than 20 minutes. There is a
22 failure to stop that goes about six miles. Speeds get
23 up to about 65 at one point, but they didn't go too
24 high; and traffic luckily was pretty light.

25 But it did go into downtown, Main Street in

1 the Gilbert -- like I said, in Gilbert. At some point
2 Deputy Auckerman, who is also present in court, used
3 what is called the stop sticks.

4 They were able to kind of figure out which way
5 the defendant was going to go. They deployed the stop
6 sticks in the road. Certainly when his car or the van
7 hit it, there were several flats tires. I think
8 eventually ended it up all four were flat according to
9 the photographs that I have.

10 The defendant, he didn't stop. They see him
11 on a phone talking to people. They find out later when
12 he eventually does stop, he was talking to his ex-wife
13 telling her he was getting ready to go away for a while.

14 He was coming there to tell her bye. He
15 actually does pull up, I think, at her yard. He has
16 alcohol in the car. Law enforcement -- many officers as
17 you can imagine, have responded to that area.

18 Main Street, Gilbert, there was a concern
19 because there are two schools right there, the primary
20 school and the middle school were there. It was in the
21 afternoon getting ready to get the kids out of school.
22 They had to put the schools on lockdown.

23 Your Honor, when they got him out of the car,
24 his family did come out; but they didn't want to be
25 involved. They had nothing to do with this. They said,

1 yeah, he had called and told us he was coming here.

2 They get him out of the car. They handcuff
3 him. They find, of course, he was driving under
4 suspension. So that was the first arrest. Then the
5 open container was another arrest. There in plain view
6 is a jewelry case and a pillowcase that is full of
7 items.

8 When they inventory the car, they find that
9 sure enough everything that was in his car or the van
10 were items that were taken from Savannah's bedroom. She
11 had been with -- other deputies had responded to her
12 house, including investigator Brad Melton.

13 They had to go into the home. They finally
14 told her, Run out of the laundry room. We are here.
15 They get her to safety, and then they clear the house
16 because they didn't know how many people -- if maybe
17 somebody had been left in the house.

18 They clear the house and then they have her
19 start looking around trying to see what is missing. She
20 noticed her jewelry case is missing. She noticed that
21 one of her pillowcases has been stripped from her bed
22 and filled with jewelry and items from her clothing.

23 There are drawers that are pulled out. Her
24 closet door is open. She has already told law
25 enforcement what kinds of things to look for. Sure

1 enough, like I said, within minutes all of these items
2 are found in his van.

3 So certainly from an evidentiary standpoint,
4 it's a very strong case, Your Honor. Law enforcement
5 turned over the stolen items back to the family that
6 day. They photographed them and turned them back over.

7 Your Honor, it's a burglary first because of
8 his prior record. Some of his prior record is difficult
9 to ascertain; but as you know, I only need two prior
10 burglaries to make this a burg first. I feel like I
11 have probably seven priors that I could use to enhance
12 this should we have gone to trial. I can give you his
13 complete record now, Your Honor.

14 THE COURT: Sure.

15 MS. GARRICK: It's starts in 1977 with a DUI.
16 He has an August of 1982, out of Simpsonville, receiving
17 stolen goods where he got ten years suspended to
18 probation.

19 He has in August of '82, out of Mauldin, two
20 housebreakings and grand larcenies. On that one he got
21 15 years, suspended to five years probation. In March
22 of '83 out of Abbeville, he has a housebreaking and
23 larceny. He got two years on each.

24 Also in March of '83, he has Newberry
25 convictions for an attempted housebreaking and a

1 housebreaking where he got five years suspended to two
2 years and three years probation.

3 Also, in March because of those pleas, he was
4 revoked on one of his prior offenses. He was revoked
5 four years. In May of 1983 out of Abbeville, four
6 counts each of housebreaking and larceny. He got ten
7 years on each of those.

8 In 1988 he had possession of a pistol by a
9 convicted felon. He got two years suspended to five
10 years probation. He has a DUI out of Pickens in 1988.
11 In December of '89 out of here, Lexington County, he had
12 has a burg second. He got 15 years suspended to five
13 years and five years probation. He has a grand larceny
14 where he got ten years.

15 Your Honor, I also see on his rap sheet that
16 there is a burg second and a grand larceny where it says
17 he got a consecutive 15-year sentence. It's not clear
18 what it's consecutive to; so that is confusing. Also,
19 it looks like in '89, that possession of a pistol by a
20 convicted felon, that got revoked.

21 Your Honor, in 2004 I know he went to SCDC
22 because he had some kind of parole that was revoked. In
23 January of 2007 out of Calhoun County, he has a burg
24 second. He pled to attempted burg second. He got five
25 years.

1 Your Honor, he has a prior failure to stop out
2 of Lexington County from February of '07. He got 18
3 months. July of 2011, DUS second. Then January 2012
4 the open container and the transporting alcohol without
5 seal, which are part of this case. He was convicted of
6 those.

7 Your Honor, so certainly he has two prior
8 burglaries that would make this a burglary first. I do
9 have victim impact and law enforcement impact. If you
10 would hear from them after you accept the plea.

11 THE COURT: I will accept the plea and find
12 that he is doing so freely and intelligently and with
13 the advice of very competent counsel.

14 MS. GARRICK: Your Honor, if you could have
15 hear from Mr. Calvert, Savannah's dad. Savannah didn't
16 really want to address the Court, but her dad is going
17 to address for the family.

18 MR. [REDACTED]: We moved to Gilbert and have a
19 beautiful house, thought we would be safe, never thought
20 about something like this. My daughter survived an
21 injury on her knee and worked through all that bravely.

22 For six weeks afterwards, I have had to -- she
23 slept in our guest bedroom. She wouldn't even sleep in
24 her own room. She still has nightmares and problems
25 with it.

1 She will start, I hear something. Our dogs
2 stay inside now. I had to put a security system on the
3 house that I can't really afford but for my wife to feel
4 safe when she is there in the afternoon or when she is
5 taking a nap.

6 This guy has had a lot of opportunity to
7 change, and now my family is affected by it; and I'm
8 going to deal with this the rest of my life. Just not
9 too long ago, I wanted to go get a coke right around the
10 corner at the store. Savannah didn't want me to go.

11 I said, You are going to be okay. He is in
12 jail. You don't have to worry about it. That's what I
13 told her when she was staying in the guest bedroom.
14 Don't worry about it. He is in jail. He's not going to
15 be coming back and knock on this door, a door that
16 was -- I can't fix it either because it's under my
17 insurance.

18 So I have got lasting effects of this, but the
19 house, we can fix. The alarm, that is okay. But my
20 daughter not wanting me to go to the store, I can't
21 change that, and I wish I could.

22 THE COURT: Thank you.

23 MS. GARRICK: Your Honor, if I could fill you
24 in a little bit more, and I hope Savannah doesn't mind
25 me saying some of this stuff. We had been working this

1 case up for trial this week. It would go to trial
2 either tomorrow afternoon or Wednesday if Mr. Hatchell
3 had not indicated he would plead.

4 Your Honor, after this happened she did
5 receive counseling because of some of the issues her
6 daddy was saying. She was able to do better, had to
7 completely rearrange her room, throw away those sheets,
8 throw away a lot of things that had been recovered from
9 his van just because she didn't want to be reminded of
10 it.

11 Then when I notified her and her family that
12 we were getting ready for trial, she had to go to trauma
13 resources to just work through having to face him in a
14 trial. So certainly we are all glad that it did not
15 have to go to trial, but we were prepared and we were
16 ready.

17 Another thing that is just something minor in
18 the big scheme, but just the dogs that were outside in
19 the pen, one of the dogs injured himself horribly trying
20 to get inside the house to help their loved ones.

21 In fact, law enforcement had to help
22 Ms. [REDACTED] load the dog up and go with her to the vet
23 where he had hurt himself trying to get through the
24 fence to get to Mr. Hatchell.

25 Your Honor, it's a bad situation. His record

1 is just horrendous. It's one of the most horrible
2 records I have seen. The burglaries, just so you know,
3 some were to churches, some were to businesses. Most
4 were to homes. Most were to homes. I just tell you
5 that for informational purposes.

6 Lastly if you could hear from Investigator
7 Brad Melton who is the case officer.

8 THE COURT: All right.

9 INVESTIGATOR MELTON: Your Honor, Brad Melton,
10 investigative sergeant in Lexington County. I'm just
11 here to represent the State and the family. I won't
12 reiterate or won't go into details that Solicitor
13 Garrick did.

14 He is a danger to the community. You heard
15 that from his record. He was not only a danger during
16 the incident with the victim but the pursuit afterwards.
17 I want to elaborate a little bit.

18 That pursuit ended one minute before all those
19 schools let out. We are very fortunate in that, but it
20 could have went a lot different for the officers
21 involved and the defendant in this case. With that
22 being said, we feel like he is a significant danger to
23 society.

24 THE COURT: Anything further?

25 MS. GARRICK: No, Your Honor.

1 THE COURT: I would be glad to hear from you,
2 Ms. Fullwood.

3 MS. FULLWOOD: Your Honor, Mr. Hatchell is in
4 court this morning. One of his daughters has been asked
5 to step out. She was very emotional. I think earlier
6 this morning, she was having asthma attacks and whatnot.
7 However, she was here and I am sure if she could be in
8 right here now, she would be.

9 Your Honor, this case is what it is. There is
10 nothing that Mr. Hatchell or I can do to change it. We
11 are very sorry for the effects that this has had on the
12 [REDACTED] and sympathize and know that they have had a
13 hard time.

14 What we are asking though, Judge, is for you
15 to consider giving him a 15-year sentence, and here is
16 why. Judge, he is 57 years old. He has had a lifelong
17 severe alcohol problem.

18 He tells me that everything he has ever been
19 convicted of resulted from him getting just really,
20 really, really drunk. He was extremely drunk the day
21 that this happened.

22 His daughter told me that he had drunk a fifth
23 of like bourbon and a fifth of vodka before this
24 happened. In fact, he was in our jail detox for like a
25 couple of weeks before he was suitable go out into the

1 general population.

2 We know that is not an excuse for a crime, but
3 he does have this addiction. He also has other health
4 problems. He has been dealing with high blood pressure
5 for years. He does have high blood pressure, and they
6 have been treating him at the jail.

7 So between the decades-long alcoholism and the
8 blood pressure problems -- and he tells me has other
9 health problems. The fact of the matter is, Judge, a
10 15-year sentence is probably a life sentence for this
11 man.

12 At first he didn't know what he wanted to do,
13 but he finally decided to plead guilty. He has spared
14 Miss Calvert apparently the great anxiety she would have
15 to go through if we had gone to trial.

16 So he has at least been able to do that for
17 her. His daughter tells me -- she showed me a picture
18 of a little baby she had while he has been in prison.
19 She tells me her mother, his wife or ex-wife, is
20 terminally ill. She tells me that he is all that she
21 has.

22 I have explained to her that Your Honor had no
23 discretion in whether or not to send him to prison. It
24 was going to happen. But there are people out there who
25 care about him. He is well into middle age and in poor

1 health. I hope Your Honor believes that a 15-year
2 sentence would serve the interests of justice for this
3 man.

4 THE COURT: Thank you.

5 MS. FULLWOOD: Would you like to address the
6 Court?

7 THE DEFENDANT: (Shakes head.) (Indicating
8 negative response.)

9 THE COURT: Did he say yes or no?

10 MS. FULLWOOD: He said no.

11 THE COURT: Taking into account his criminal
12 record and what happened and as many chances as he has
13 had to continue to correct his life, the sentence of the
14 Court is the defendant is committed to the State
15 Department of Corrections for a term of life. I will
16 give him three years on the blue light and run them
17 concurrent.

18 MS. GARRICK: Thank you, Your Honor.

19 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
20
21
22
23
24
25

C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal, in the Criminal Court for Lexington County, South Carolina on the 9th day of July, 2012.

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

May 3, 2014

L Coconut Pantsari

Court Reporter

FORM 5

ORIGINAL

STATE OF SOUTH CAROLINA

FILED

IN THE COURT OF COMMON PLEAS

County of LexingtonRichard O. Hatchell #114745

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Inst.
Post Office Box 205 Ridgeville, S.C. 29472
2. Name and location of Court which imposed sentence Lexington County
Court of general Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012-GS-32-0264 Failure to stop for blue light - 2 years
 - (b) 2012-GS-32-0265 First Degree Burglary - Life

A TRUE COPY
[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence: **FILED**
 (a) July 9, 2012 - Two year sentence
 (b) July 9, 2012 - Life without parole **2013 JUN 17 2:15**
 (c) _____
6. Check whether a finding of guilty was made: **BETH A. CARRIGG**
 (a) after a plea of guilty Yes **CLERK OF COURT**
 (b) after a plea of not guilty N/A **LEXINGTON SC**
 (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
 (a) the name of each Court to which you appealed:
 i. South Carolina Court of Appeals
 ii. _____
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. Denied
 ii. _____
 iii. _____
 (c) the date of each such result:
 i. Unknown
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. Unknown
 ii. _____
 iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
 (a) _____
 (b) _____

- FILED**
2013 JUN 17 2:15
CLERK OF COURT
JANESVILLE, WI
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of trial counsel and Appellate counsel
- (b) Involuntary plea, violation of due process, conflict of interest
- (c) Violation of Fifth, Sixth, & Fourteenth Amendment rights.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Applicants trial counsel made numerous errors and his appellate counsel failed to raise and argue issues
- (b) of merit on appeal. Applicants plea was involuntary
- (c) in that his agreement to plea was under negotiated terms that were not upheld. Counsel's representation was a conflict
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Appeal
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Appeal of plea
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

i. **Denied**

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. **Unknown**

ii. _____

iii. _____

iv. _____

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

i. **Unknown**

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?

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

FILED

2013 JUN 17 2:16

BETH A. CARRING
CLERK OF COURT
LEXINGTON, MA

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:
- FILED
2013 JUN 17 2:16
BETH A. CARRIGGS
CLERK OF COURT
LEXINGTON S.C.
- (a) _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
- (b) your trial, if any? _____
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
- _____
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. Elizabeth C. Fullwood, 407½ W. Main St. Lexington, S.C. 29072
~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
- ii. S.C. Office of Appellate Defense Columbia S.C.
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. At trial/plea
- ii. On Appeal
- iii. _____

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

Sentence and/or conviction vacated and original negotiated
plead be imposed. **FILED**

2013 JUN 17 3:21 PM

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

No

THA CARRIGG
 CLERK OF COURT
 LEXINGTON SC

STATE OF SOUTH CAROLINA)

County of Lexington)

VERIFICATION

I, Richard Hatfield, 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.

Richard Hatfield

SWORN to and subscribed before me this 12th
 day of June, 2013.

Lucretia Bryant (L.S.)
 Notary Public

My Commission Expires: May 26, 2020

2013 CP 3202083

ORIGINAL

FILED

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

BETH A. CARRIGG
CLERK OF COURT
JUN 11 2:16 PM

I, Richard O. Hatchell 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.

Richard Hatchell
Applicant

SWORN or affirmed to and subscribed before me this
12th day of June, 2013.

Ludheen Bryant
Notary Public

My Commission Expires: May 26, 2020

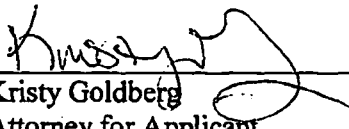
STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON)	2013-CP-32-02083
RICHARD HATCHELL)	
SCDC # 1144745,)	
Applicant,)	
vs.)	AMENDED APPLICATION
STATE OF SOUTH CAROLINA,)	FOR POST CONVICTION RELIEF
Defendant.)	

Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby Amended as follows:

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

- (a) Ineffective assistance of trial counsel – failure of trial counsel to object when Applicant was not specifically and personally advised regarding his rights at the beginning of his guilty plea.
- (b) Ineffective assistance of trial counsel - failure to trial counsel to present sufficient mitigation.
- (c) Ineffective assistance of trial counsel – failure to sufficiently advise Applicant regarding the consequences of his prior record and properly explain how it could be used in prosecuting his criminal charges.
- (d) Ineffective assistance of trial counsel – failure to advise Applicant that his plea offer would be revoked on a particular date.
- (e) Ineffective assistance of trial counsel - failure of counsel to sufficiently obtain documents necessary for the Applicant to make his decision regarding plea or trial prior to the expiration of his plea offer on March 13, 2012.

- (f) Ineffective assistance of trial counsel – failure of counsel to request a hearing for the Court to determine whether uncounseled convictions could be used for enhancement purposes.
- (g) Ineffective assistance of counsel – failure of trial counsel to object during the guilty plea regarding the Solicitor's withdrawal of their plea offer.
- (h) Ineffective assistance of counsel – involuntary guilty plea as the Applicant decided to plead guilty in reliance on his attorney's statement that he would receive a 15 year sentence.



Kristy Goldberg
Attorney for Applicant

Kristy Goldberg
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803-799-4059 (fax)
kristy@kristygoldberglaw.com

Columbia, South Carolina

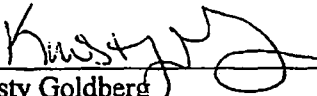
This 8TH day of April, 2015

SOUTH CAROLINA)
COUNTY OF LEXINGTON)
)
RICHARD HATCHELL)
SCDC # 1144745,)
Applicant,)
)
vs.)
)
)
STATE OF SOUTH CAROLINA,)
Defendant.)

IN THE COURT OF COMMON PLEAS
2013-CP-32-02083

AMENDED APPLICATION
FOR POST CONVICTION RELIEF

I certify that on this date I served the Amended Application for Post-Conviction Relief in this case on The State of South Carolina by delivering a copy of this application to the Office of the Attorney General via U.S. mail at Post Office Box 11549, Columbia, South Carolina 29211-1549.



Kristy Goldberg
Attorney for Defendant

Kristy Goldberg
Law Office of Kristy Goldberg, LLC.
1720 Main Street, Suite 301
Columbia, SC 29201
803-252-2299
803-799-4059 (fax)
kristy@kristygoldberglaw.com

Columbia, South Carolina

This 8th day of April, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
	)	
Richard O. Hatchell,	)	C.A. No. 2013-CP-32-2083
S.C.D.C. No. 114745	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed June 17, 2013, 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 Clerk of Court for Lexington County. The Applicant was indicted at the February 2012 term of the Court of General Sessions for Lexington County for burglary, first-degree (2012-GS-32-0265) and failure to stop for a blue light (2012-GS-32-0264). The Applicant was represented by Elizabeth Fullwood, Esq., On July 9, 2012, Applicant pled guilty as indicted. The Honorable William H. Seals sentenced Applicant to a term of life imprisonment for burglary and to a term of three (3) years imprisonment for failure to stop for a blue light. The sentences were to be served concurrently.

A notice of Appeal was filed on Applicant's behalf. By order dated September 2, 2012, the South Carolina Court of Appeals dismissed Applicant's appeal¹. The remittitur was issued on October 15, 2012.

Attached herewith and incorporated herein by reference are the records of the Lexington County Clerk of Court regarding the subject conviction(s), the Applicant's records from the Department of Corrections, the transcript from Applicant's plea hearing, and Applicant's appellate records. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

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

1. Ineffective Assistance Counsel:
 - a. "trial counsel made numerous errors;"
 - b. conflict of interest.
2. Ineffective Assistance of Appellate Counsel:
 - a. "appellate counsel made numerous errors."
3. Involuntary Guilty Plea:
 - a. "negotiated terms of Applicant's guilty plea were not upheld;"
4. Due Process Violation:
 - a. "violation of 5th, 6th, & 14th Amd. rights."

III.

The Applicant's first claim is an allegation of ineffective assistance of trial counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

¹ Pursuant to Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules.

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. 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, 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, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The

Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant further alleges his guilty plea was not voluntarily made. The Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

The Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not

conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

Applicant also alleges that he was denied due process of law. Applicant's allegation fails to state what claim he is raising. The lack of facts does not support a cognizable claim for post-conviction relief under any of the statutory grounds. The allegations presented by Applicant raise direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Therefore, the Court should summarily dismiss this allegation for failing to state a claim upon which relief can be granted.

The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code '17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney

appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VII.

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

VIII.

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

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

By: *A. Waller*
ATTORNEYS FOR RESPONDENT

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

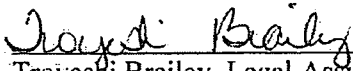
May 19th, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE ELEVENTH CIRCUIT
COUNTY OF LEXINGTON	)	
	)	2013-CP-32-2083
	)	
RICHARD O. HATCHELL	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent	)	
_____	)	

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

Kristy Grafton Goldberg, Esquire
1720 Main St, Suite 301
Columbia, SC 29201

DATED this 19th day of May, 2014


 Troyeshi Brailey, Legal Assistant
 For Respondent

1 State of South Carolina) In the Court
2 County of Lexington) Of Common Pleas
3) Case No.: 2013-CP-32-2083
4 Richard O. Hatchell,)
5 Plaintiff,)
6 vs.) Transcript of Record
7 State of South Carolina,)
8 Defendant.)

9 April 21, 2015
10 Lexington, South Carolina

11
12 BEFORE:

13 The Honorable Brooks P. Goldsmith, Judge

14
15 APPEARANCES:

16 Kristy G. Goldberg, Esquire
17 Attorney for the Plaintiff

18
19 Walt Whitmire, Assistant Attorney General
20 Attorney for the Defendant

21 ALSO PRESENT:

22 Richard O. Hatchell
23
24
25

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CERTIFICATE OF REPORTER

52

1 Thereupon, the following proceedings were had;

2 THE COURT: Whenever you're ready.

3 MR. WHITMIRE: The final case today, Your Honor, is
4 Richard O. Hatchell v. State of South Carolina. Mr.
5 Hatchell was originally indicted for burglary first
6 degree and fleeing a blue light. Circumstances of the
7 crime show Mr. Hatchell broke into a residence. The
8 family was gone except the 18 year old daughter who was
9 home from school. She calls the police. Hears someone
10 in the house. Numerous police officers respond. On
11 converging on the scene catch Mr. Hatchell leaving.
12 Chased him down. He eventually stops at some point close
13 to his ex-wife's house.

14 He was represented by Ms. Fullwood on these charges.
15 The burglary first degree was enhanced from a prior
16 burglary second. He eventually pled guilty as indicted
17 before Judge William Seals. At that guilty plea
18 Judge Seals sentenced Mr. Hatchell to life imprisonment
19 for burglary and I believe these run concurrent. At the
20 very last page of the plea transcript he puts on the
21 record his reasoning for it being substantially his prior
22 criminal record and the circumstances of this case.

23 He's present represented by Ms. Goldberg. And in
24 this application he's alleging three sets of allegations.
25 Several allegations of ineffective assistance of counsel

1 relating to the advice that Ms. Fullwood provided him
2 when he decided to enter his plea. One allegation on
3 failure to submit mitigation evidence for sentencing. A
4 final allegation resulting in the manner in which his
5 prior burglary second convictions were utilized to get
6 him up to a burglary first.

7 The State intends to produce evidence and counter
8 those allegations. At this time I turn matters over to
9 Ms. Goldberg.

10 THE COURT: Ms. Goldberg.

11 MS. GOLDBERG: Thank you, Your Honor. May it please
12 the Court. We are proceeding on an amended application
13 that was filed April 10th of 2015. It does address
14 failure of trial counsel to object when applicant was not
15 specifically and personally advised regarding his rights
16 of the guilty plea, failure of trial counsel to present
17 sufficient mitigation, failure to sufficiently advise the
18 applicant the consequences of his prior record and
19 explain how it could be used in prosecuting his charges,
20 failure to advise applicant that his plea offer would be
21 revoked on a particular date, failure of counsel to
22 sufficiently obtain documents necessary for the applicant
23 to make his decision regarding a plea or trial prior to
24 the expiration of his plea offer, failure of counsel to
25 request a hearing for the court to determine whether any

1 convictions could be used for enhancement purposes,
2 failure of trial counsel to object during the guilty plea
3 regarding Solicitor's withdrawal of their offer, and an
4 involuntary guilty plea if the applicant decided to plea
5 guilty in reliance on his attorney's statement that he
6 would receive a 15 year sentence. At this time I would
7 call the applicant to testify.

8 Thereupon,

9 RICHARD O. HATCHELL

10 after having been first duly sworn, testified as follows,

11 THE CLERK: Please have a seat. After you're
12 seated, please state your full name for the record.

13 THE WITNESS: Richard Hatchell.

14 DIRECT EXAMINATION

15 BY MS. GOLDBERG:

16 Q. Mr. Hatchell, can you hear me from here?

17 A. Yes, ma'am.

18 Q. Okay. Where are you housed?

19 A. Broad River Correctional Institution.

20 Q. What sentence are you serving?

21 A. Life without parole.

22 Q. Did you plead guilty or go to trial?

23 A. I pled guilty because I -- I pled guilty.

24 Q. Who was your lawyer?

25 A. Ms. Fullwood.

1 Q. Was she appointed or did you hire her?

2 A. She was appointed to me.

3 Q. Was she your attorney the entire time your charges
4 were pending?

5 A. Yes, ma'am.

6 Q. You were arrested November 21st?

7 A. Yes, ma'am. Yes, ma'am.

8 Q. 2011?

9 A. Yes, ma'am.

10 Q. Did you stay in jail after that?

11 A. Yes, ma'am.

12 Q. Did you have bond set at any time?

13 A. No, 'cus the bond wasn't set so I wrote -- Can I
14 say?

15 Q. Yes.

16 A. I wrote disciplinary counsel to the State Supreme
17 Court because I was wondering why I couldn't get bond set.
18 And then they sent it back saying, well, she's gonna get a
19 bond set or get a bond set now or denied, but I had to write
20 the State Supreme Court six different times. I did have
21 letters, but they didn't tell me what they did. They just
22 said that's my only, you know -- They won't tell me what
23 disciplinary action they took.

24 Q. So while you were in jail your bond wasn't denied,
25 it just hadn't been set yet; is that right?

1 A. Yes, ma'am.

2 Q. And then eventually did you go in front of a judge
3 for that?

4 A. Yes, ma'am.

5 Q. What did the judge do then with the bond?

6 A. He denied me bond and then I asked him about could I
7 fire Ms. Fullwood and he said that I couldn't because I didn't
8 have enough education to stand for myself.

9 Q. He said it wasn't his practice to let people pick
10 their own attorneys, right?

11 A. Yes, ma'am.

12 Q. How often did you meet with Ms. Fullwood while your
13 charges were pending?

14 A. I think it was three separate times and two times at
15 the courthouse.

16 Q. So five total?

17 A. Yes, ma'am.

18 Q. While your charges were pending, were you wanting to
19 have a trial or were you wanting to plea?

20 A. I wanted to plea but I kept asking for 15 non
21 violent. She said 15 violent. And I was asking about a
22 charge in '89 that they couldn't find. They can't find it or
23 hadn't found it as of yet and that's why I was holding out
24 like a dummy. I don't know the law. I didn't know what was
25 actually was happening. I must be ignorant to the fact of the

1 law.

2 Q. So what was your biggest -- What didn't you
3 understand? What was your biggest problem while your charges
4 were pending that you didn't understand?

5 A. I didn't understand why I couldn't -- See, I have
6 been in trouble a little bit. Let's see. I had -- I was in
7 trouble one time and I had some proof and evidence and that's
8 what I kept right in this folder and with Beth about my past
9 record because they date back to '82 and '83 and that's what
10 they used in order to convict me to start off with. They
11 convict me with charges prior.

12 Q. So some of your burglaries were like 1982, 1983; is
13 that right?

14 A. Yes, ma'am.

15 Q. And then not again until 1989; is that right?

16 A. Yes, ma'am.

17 Q. Why did you think these couldn't be used against
18 you?

19 A. Because the '89 charge -- No, the '74 charge, I got
20 out of penitentiary and my wife was having problems with her
21 brother-in-law. He was a peeping Tom on my wife so I went
22 down to, uh, St. Matthews and I found him. I thought I was
23 gonna find him because I was gonna sort of get, you know, sort
24 of put a little fear into him because he was a peeping Tom on
25 my wife and my sister-in-law, but I end up going to the wrong

1 place and they had a charge of 19 - a 2004 charge where
2 attempted breaking and entering, but all I did was pull up in
3 the yard and asked for directions and they got me because he
4 was a - he worked for the - he was a Clerk of Court of St.
5 Matthews. Because I did that they charged me with attempting
6 breaking and entering. With B and E. Breaking and
7 entering.

8 Q. All right. But talking about the '80s, '82, '83,
9 '89, did you think those charges could not be used against
10 you?

11 A. Yes, ma'am, I did. I didn't think they could be
12 used against me.

13 Q. Because of the time?

14 A. Yes, ma'am. The time limit. The ten years
15 suppression of evidence, I think it goes back ten years on
16 that and it was 23 years from the time I got arrested to --

17 Q. Had you read that in a law book somewhere?

18 A. Yes, ma'am. I did have copies of it. I still got
19 copies of it at the house. I didn't know I was coming here
20 today. I thought I was going to the heart doctor.

21 Q. So you were under the impression that convictions
22 over ten years old couldn't be used against you?

23 A. Yes, ma'am.

24 Q. Did your lawyer ever explain to you that that wasn't
25 the case to enhance a burglary?

1 A. She tried. She tried to but I - I - I say she
2 tried. She did and she didn't. But I didn't think they could
3 use it because I had Jack Swerling and I thought Jack Swerling
4 was the best there was so I was going by another lawyer.

5 Q. Did you also think you couldn't be convicted because
6 you didn't have any strikes?

7 A. I didn't think I had any strikes, you know, since
8 ten years.

9 Q. Did you fully understand that your burglary was
10 being enhanced rather than a three strikes law situation? Did
11 you understand how you were being charged?

12 A. No, ma'am, I didn't.

13 Q. What did you believe at the time?

14 A. I believed I got 15 years. I mean....

15 Q. What did you think was happening though?

16 A. I still ain't got it straight. I mean, I just
17 knowed that they said I can get convicted and I thought I was
18 gonna get 15 years. When I signed that piece of paper that
19 day, I thought we was going to court, I was gonna get 15 years
20 violent because I finally caved in and accepted the 15 years,
21 but I got up there and Judge Seal give me life.

22 Q. At one point in time your lawyer told you there was
23 an offer for 15 years?

24 A. Yes, ma'am.

25 Q. And you rejected it; is that right?

1 A. Yes, ma'am, because I was holding out for non
2 violent because when I got charged to start off with, it was a
3 non violent offense. It was a second degree burglary.

4 Q. The burglary that you committed happened during the
5 day; is that right?

6 A. At 2:05.

7 Q. No guns were stolen?

8 A. No, ma'am. Nothing.

9 Q. No one was hurt?

10 A. Nobody seen nobody.

11 Q. Did your lawyer tell you that the plea offer of 15
12 years was going to expire at some point?

13 A. No, ma'am. Not that. Not directly. Not that. I
14 didn't know it had expired. I thought actually it went all
15 the way up to the time I went to court and then you make a
16 decision then if you gonna go with a jury trial or take the 15
17 years. That's my understanding. That was my understanding.

18 Q. When you were woken up at the jail that morning to
19 be brought to court, did you know why you were going to
20 court?

21 A. No, ma'am.

22 Q. What happened when you got to court?

23 A. They was talking about a bond hearing. Then after
24 the bond hearing, well, then I asked them is there any way we
25 can ask the judge can I fire you now, I mean, so I can get

1 another lawyer, and it went from there so...

2 Q. On the day of your guilty plea when you got to court
3 that morning, what happened when you got to court?

4 A. She set - they set there and said you can - you can,
5 um, sign this paper for 15 years now or you can go to court
6 on July the 9th I think it was for jury trial. And I said,
7 no, I'll go ahead and sign it because I actually thought I was
8 getting 15 years violent. I wouldn't have signed it for a
9 life sentence.

10 Q. When you first had that discussion in court that
11 morning, did you agree to plea or did you decide later on in
12 the day?

13 A. I waited.

14 Q. At the first conversation you had, what did you tell
15 her your decision was?

16 A. No. I wasn't going to take no plea right then.

17 Q. What happened later?

18 A. Later on, it's a heavy set guy she come up with and
19 it was two or three people with her because she had to have
20 witnesses that I signed the paper and I thought I was signing
21 for 15 years violent. I didn't know I was signing for a life
22 sentence.

23 Q. She told you that you would receive 15 years if you
24 pled guilty?

25 A. Yes, ma'am. I thought she did. That was my

1 understanding. I can't hear that good and sometimes it gets
2 bad. When I was talking to her or listening to her, I was
3 looking at her because this ear is gone and this one is about
4 gone (indicating) and SCDC is getting me a hearing aid now.
5 But, uhm, I had to look at her. I reckon everybody thought I
6 was a pervert. I don't know.

7 Q. Earlier that morning did the judge read off
8 instructions and rights to all the defendants in the jury
9 box?

10 A. Well, to be honest with you, I ain't being smart
11 about this, he was talking. I didn't understand nothing he
12 said.

13 Q. You couldn't hear him?

14 A. No, ma'am. The only thing I know he was talking and
15 he looking toward us. That's the only thing I can tell you.
16 I was sitting over there something like that - something like
17 that right there, and that man right there was standing right
18 back here with another fellow.

19 Q. If you had known that you could get a life sentence
20 in the guilty plea, would you have pled guilty?

21 A. No, ma'am.

22 Q. Why not? Why not?

23 A. Wait a minute. Say that again.

24 Q. If you had known you could get a life sentence after
25 pleading guilty, would you still have pleaded guilty?

1 A. No, ma'am. I never would have pleaded guilty. I
2 would have went to a jury trial --

3 Q. Why?

4 A. -- and asked for freedom of evidence so they
5 couldn't go back but ten years.

6 Q. You would have challenged your record?

7 A. Ma'am?

8 Q. You would have challenged your record?

9 A. I would have challenged my record and I would have
10 also challenged the '89 conviction that I had that they ain't
11 never found yet.

12 Q. Explain that.

13 A. Well, it had a lot to do with James "Powerful" Metts
14 and Barnes, Odell Barnes' associate Myers. What's his name?
15 The head Solicitor. Well, all of them, they was in a --

16 MR. WHITMIRE: Objection.

17 BY THE WITNESS:

18 A. Well, you said explain it. I was just --

19 MS. GOLDBERG: That's okay. You're fine. Go
20 ahead.

21 MR. WHITMIRE: Relevance, unless - at this point
22 unless there's a document where it pertains to his
23 conversations with his attorney during the course of
24 representation.

25 MS. GOLDBERG: This is not a conversation with an

1 attorney. It's conversations he had with political
2 figures in the area that he alleges were --

3 BY THE WITNESS:

4 A. I was working for them.

5 MS. GOLDBERG: It's okay, Mr. Hatchell. -- that he
6 alleges has to do with why some of the convictions never
7 could be found.

8 THE COURT: Overruled. Go ahead.

9 BY MS. GOLDBERG:

10 Q. Go ahead, Mr. Hatchell.

11 A. He said that he would give me -- What they call that
12 when somebody, a governor gives you a, not a stay but a --

13 Q. Pardon?

14 A. Pardon. That - that he could - that they could do
15 away with my records. And you know what? 1989 records got
16 missing in action from the courthouse two years prior to me
17 going to court and I didn't know it and that's what I was
18 thinking when I went to court, that I wasn't gonna get in no
19 trouble for no first degree burglary when I didn't have
20 nothing the past ten years.

21 Q. And you thought some of your records were missing?

22 A. Yes, ma'am. They told me they would be gone and I
23 would get a pardon. He would work it out. Knotts. Metts
24 didn't personally tell me that, but Jack Knotts.

25 Q. Were you happy with what your lawyer told the judge

1 about you when your judge was considering what sentence to
2 impose?

3 A. I'm sorry.

4 Q. During your guilty plea, the judge had to decide
5 what sentence to impose. Were you satisfied with how your
6 lawyer described you and represented you?

7 A. No, ma'am. I didn't hear her say nothing. I mean,
8 uh, at one time, uh, we had a break one time because she said
9 something and then, uh, the judge asked her, well, you need to
10 talk to your lawyer then because they start saying something
11 like we gonna go back there, we gonna talk for a few seconds.
12 Then he said, you ready, Mr. Hatchell? He said, what you say?
13 I said, well, she said she wasn't gonna help me one way or the
14 other or wasn't gonna say nothing against me one way or the
15 other. So that's the only thing. I said that out loud from
16 standing right over by the same --

17 Q. Okay. Where did you grow up?

18 A. I grewed up in Lexington County, Leesville.

19 Q. Who raised you?

20 A. Odell and Millie Cameron.

21 Q. Are those your parents?

22 A. No. Mmm-mmm. (Witness shaking head.)

23 Q. How did they come to raise you?

24 A. I was put in a foster home at the age of four years
25 old. We come out at five. We went to Millie Cameron, then I

1 stayed there 12 years and some change, then I went in the
2 Marine Corps.

3 Q. How old were you when you went in the Marine
4 Corps?

5 A. 17.

6 Q. How long did you stay in the Marines?

7 A. It was two years, something like that. You had to
8 go two years or four years. It was a six year term, so you
9 went four years, two years or three years. Three years. I
10 think I went two full.

11 Q. Two years active, four years guard?

12 A. Reserve.

13 Q. Reserve. What health conditions do you have?

14 A. Ma'am?

15 Q. What health conditions do you have?

16 A. I won't be long. I'll be out. I got a heart
17 condition, heart disease, cholesterol. Everything's wrong
18 with me right now. I'm about to the end of it. I thought I
19 was going there today.

20 Q. To the hospital?

21 A. (Witness nodding head.)

22 Q. When is your birthday?

23 A. 12/13/54.

24 Q. The first time you started getting in trouble were
25 in 1982; is that right?

1 A. Yes, ma'am.

2 Q. So you were not in any trouble for the first 30
3 years of your life; is that right?

4 A. Yes, ma'am. I think I was 27, 20 something like
5 that, 27 or 28.

6 Q. Then you committed several crimes in 1982 and '83
7 and you went to prison for a while for those; is that right?

8 A. I didn't actually commit the crimes, but I was part
9 of it because the little fella, I used my ID to go into a pawn
10 shop because he said he didn't have his ID in Greenville and I
11 went in with him and I used my ID and it went from there and
12 it had escalated. He said - he got in the courtroom and told
13 them I didn't have nothing do to with it. The judge said it
14 didn't matter. I was 27 years old.

15 MR. WHITMIRE: Objection. Hearsay and relevance.

16 THE COURT: Sustain the objection.

17 MS. GOLDBERG: Thank you, Your Honor.

18 BY MS. GOLDBERG:

19 Q. Did you have an attorney when you went to plead
20 guilty to those?

21 A. No. No, ma'am.

22 Q. Then you got out of prison, right?

23 A. Yes, ma'am.

24 Q. In trouble again in '89 about?

25 A. Yes, ma'am.

1 Q. Did you have an attorney when you went to prison
2 that time?

3 A. Yes, ma'am. I think his name was Richard Blackman
4 out of Sumter, South Carolina. That's my daddy's lawyer.

5 Q. All of your convictions have always been non violent
6 offenses; is that true?

7 A. Yes, ma'am.

8 Q. When this burglary happened in November 2011, you
9 had been out of prison for three years; is that right?

10 A. That was two years.

11 Q. Two years?

12 A. Yes, ma'am. A little better than two years, if
13 that.

14 Q. Do you have any addiction or substance abuse issues
15 that contributed to this incident?

16 A. Alcohol.

17 Q. Were you intoxicated at the time it happened?

18 A. Yes, ma'am. Two weeks in detox they said.

19 Q. Once you got to the jail?

20 A. Yes, ma'am.

21 Q. You stayed in detox for two weeks?

22 A. Yes, ma'am.

23 Q. So alcohol contributed to all of your offenses?

24 A. Yes, ma'am. You know, they call it equil -- I don't
25 know all about that. You know, it's just that one side of

1 your brain work, the other side don't or whatever. I don't
2 know. But whenever I drink it seem like I forget.

3 Q. Were you able to explain all of these things about
4 you, were you able to tell any of this to the judge?

5 A. Didn't have a chance to. My lawyer advised me she
6 would handle everything.

7 Q. Did she explain to the judge all of these facts
8 about you?

9 A. If she didn't -- If she did, I don't remember.

10 Q. Have you read the transcript?

11 A. I read the transcript, but I don't believe I -- She
12 did mention something about it whenever she took up the -- that
13 ten day appeal decision of the judge, however you call it.
14 She did say something about it in that transcript.

15 Q. In the motion to reconsider?

16 A. Yes, ma'am. She - she - she went out on a limb on
17 that one, but she didn't go out on a limb the first time.

18 Q. What do you want this court to do?

19 A. Ma'am?

20 Q. What do you want this court to do?

21 A. Well, I am guilty, but 15 years violent is a long
22 time which I ain't gonna make it no way, but I didn't bring my
23 medical record with me. But, you know.

24 Q. You want the opportunity to plea to the 15 year
25 offer?

1 A. Yes, ma'am, I would like to.

2 Q. You testified you never knew it was going to be
3 withdrawn?

4 A. No. I didn't know that. I thought I had -- The
5 last day -- Every time I went to court, they give you an
6 offer. They generally don't pull it off the table until you
7 go right there at court and you sign the paper saying you will
8 or you won't.

9 MS. GOLDBERG: All right. Thank you, Mr. Hatchell.
10 Please answer Mr. Whitmire's questions and obviously try
11 and speak up.

12 CROSS EXAMINATION

13 BY MR. WHITMIRE:

14 Q. Good afternoon. Mr. Hatchell, I believe I heard you
15 testify that Jack Swerling advised you your prior convictions
16 for burglary couldn't be used to enhance you because they were
17 over ten years old?

18 A. Yes, sir.

19 Q. When did he advise you of that?

20 A. Sir?

21 Q. When did he advise you of that?

22 A. When I had him in 2004. I paid up a thousand
23 dollars up front. I did have that paper. Everything. They
24 didn't give me a chance to get nothing this morning because
25 they said I was going to Richland Hospital this morning to go

1 on another -- I forgot what they -- Where they go in with the
2 thing and go in and check you.

3 Q. Did he advise you in writing?

4 A. Yeah. Actually when I went down there, I end up
5 getting five years instead of 25.

6 Q. Are you talking about a guilty plea hearing?

7 A. Yes.

8 Q. And he put on the record you can't get --

9 A. Yeah. I had it right there in writing. I still got
10 it in writing. I give it to Ms. Fullwood, too, but it didn't
11 do no good. I think I must have mailed her about four or five
12 times, four letters and I never did hear back from her. She
13 never did put a motion in for it so that's the only thing I
14 know.

15 Q. Did Ms. Fullwood at least talk to you about the law
16 and what you could and you couldn't do with your prior
17 convictions?

18 A. When I met with her, when she was talking, yes, sir,
19 we did.

20 Q. I'm sorry. We were both talking at the same time.
21 Do you mind repeating that for the record?

22 A. When I wasn't angry because, see, some people tell
23 me some things, the lawyer tell me the other thing, Beth
24 telling me this and I'm listening. I'm trying to comprehend
25 what's going on 'cus we in a little cage. I can't hear half

1 of what she says half the time because she was a very low
2 talker.

3 Q. Did you tell her this during your conversations?

4 A. Oh, I told her I couldn't hear.

5 Q. Did you tell her this?

6 A. Oh, yeah.

7 Q. Would she change the volume of her voice to help you
8 out?

9 A. Not with me hollering sometime. I ain't gonna lie
10 to you.

11 Q. You're talking about hollering out of anger?

12 A. Well, yeah. Out of anger for being angry at myself
13 mostly for being so stupid getting caught up in something I
14 couldn't get out of. I didn't know that I could get in
15 trouble over that. I mean...

16 Q. Before your July 9th guilty plea, I think I believe
17 I heard you say that there was an offer for 15 years for
18 burglary first?

19 A. Yes, sir.

20 Q. And Ms. Fullwood brought this to you?

21 A. Mm-hmm. I held out because I thought I was gonna
22 get it down to -- I told her I would take a second degree
23 burglary all day long, but I wasn't gonna plead guilty to a
24 first degree burglary when it wasn't a first degree burglary
25 because I thought first degree burglary meant you had to have,

1 be armed and dangerous going at midnight in a dwelling.

2 Q. You told her you were not going to plea to this or
3 take the second?

4 A. To start off with no. I didn't know it was coming
5 off the table.

6 Q. I recall you said you had an attorney in 1989?

7 A. Yes, sir.

8 Q. Now, on these Lexington County convictions referring
9 to your record, burglary second non violent, grand larceny,
10 burglary second non violent, larceny, house breaking, were
11 those a guilty plea or trial?

12 A. Guilty plea.

13 Q. And who was your attorney on that?

14 A. '89?

15 Q. If you can remember.

16 A. Richard Blackman. It was a guilty plea because, you
17 know, he said 15 years is a lot, you know, on each charge.

18 Said if you got two charges, you got 30 years unless they run
19 them concurrent, you know. That's the way I understand the
20 law. Maybe I'm wrong, but you can run a hundred of them if
21 you want to.

22 Q. When you pled guilty -- I don't mean to interrupt --
23 when you pled guilty, did you plead straight up as indicted or
24 was this part of a plea negotiation?

25 A. No. I just pled guilty. I mean, I thought I was

1 only gonna get the five years.

2 Q. Did your attorney at this time tell you how the
3 state could or could not proceed on its case in making plea
4 offers?

5 A. No. I can't remember that far back '89.

6 Q. 2006 Calhoun County conviction burglary second, was
7 that a trial or a guilty plea?

8 A. That was a guilty plea.

9 Q. Do you recall who your attorney was on that?

10 A. Okay. He lives right down here. The courthouse
11 here, you go right across the road right here and you hang a
12 left and you go right down here and he was -- I don't want to
13 say it like this -- he was Spanish. I think he was Spanish.
14 I can't remember his name.

15 Q. I see you served five years or had a five year
16 sentence. Was this part of an offer or negotiations with the
17 State?

18 A. That was it. That's when you couldn't go back but
19 ten years in your thing, so they couldn't -- you know, they
20 offered me five years. That's the same thing with the Calhoun
21 County Clerk of Court.

22 Q. And you told all of this to Ms. Fullwood? You told
23 all of this to Ms. Fullwood?

24 A. Yeah. Not only did I tell her that, I even went and
25 sent for the paperwork from Calhoun County because the

1 paperwork come to me and I give the paperwork to Ms.
2 Fullwood.

3 Q. Did Ms. Fullwood do anything like show you the
4 statutes or show you the law in 2011?

5 A. Well, not really because, not half the time because
6 she said at the time they fired, a couple got fired or they
7 quit and she had a case load to take on 70 or 80 more cases on
8 her own right then and she didn't have time to take care of
9 all the cases all the time. She was busy. She was running
10 around back and forth. She seen more people there while I was
11 there waiting to see her and she come and see them and poof,
12 she was gone again.

13 Q. Did she ever bring you an indictment or a code
14 section showing how your older convictions could be used by
15 the State to enhance you up?

16 A. Mmm-mmum. If she did, I don't remember it. I ain't
17 got -- I've been -- I've been going through this a while, but
18 a lot of my paperwork I got myself. The only paperwork I
19 didn't give her was Newberry and I wrote Newberry, but I never
20 could get the paperwork from Newberry myself. But she would
21 come up with charges. Like 2004 when I made parol, I asked to
22 go back to SCDC and she said that was a charge, that that was
23 the burglary. That wasn't the burglary. That was a parol
24 violation. I asked to go back.

25 Q. Mr. Hatchell, the judge has all of these documents

1 in front of him, the court records. Just to kind of fill in
2 for the record overall because all we have here is the guilty
3 plea right now. When did you learn the State was taking that
4 offer off the table?

5 A. I didn't know they was gonna take the thing off the
6 table.

7 Q. So it's your testimony today that you entered that
8 guilty plea thinking you were going to get that offer?

9 A. 15 years, yes, sir, violent. I wouldn't have pled
10 guilty to a life sentence when I can go to court. And then
11 when I go to court, I can put up the supreme evidence and then
12 that could hold it back then and I knowed they couldn't go
13 back then on it then and then I wouldn't have got the life
14 sentence. I would have got the 15 years. Well, it would have
15 been non violent because it was a non violent sentence.

16 Q. Mr. Hatchell, on your 12 prior convictions, did you
17 -- Let me go back. On your 12 prior convictions, these were
18 all guilty pleas. Just for the record, you never went to
19 trial?

20 A. Never went to trial on any one.

21 Q. Did you sign a plea sheet before each one?

22 A. Yeah, because I didn't have a lawyer. Majority of
23 mine, like I said, the only lawyer I had was Richard Blackman
24 besides Ms. Fullwood so, I mean, you can rest that beside the
25 2504 charge.

1 Q. But you signed -- and what I'm showing you is a
2 sentencing sheet -- you signed this before you went into the
3 guilty plea hearing?

4 A. Yeah. Yeah. Yes. That's what I signed. It said
5 15 years on top of it.

6 Q. Mr. Hatchell, I'm showing you something that's
7 already part of the clerk's record in this case. It is the
8 sentencing, copy of a sentencing sheet that you signed before
9 your guilty plea for the burglary first charge. Do you
10 recognize that document?

11 A. Yes, sir.

12 Q. Is that your signature?

13 A. Yes, sir, that's my signature.

14 Q. Does that document say without negotiations or
15 recommendations in the little box?

16 A. Yes, sir, it does.

17 Q. Does the sentencing sheet look like your prior
18 sentencing sheets through your experience with the courts?

19 A. But none of this right here was marked. The only
20 thing that was marked on that is right there. My signature
21 was the only thing right there. Right here, right here where
22 they wrote right there. None of this other stuff today or
23 none of this other stuff --

24 Q. Mr. Hatchell, I hate to interrupt you. I'm not
25 trying to. I want you just to make a clear record so we know

1 what we're talking about. Can you read specifically what you
2 say wasn't marked?

3 A. Huh?

4 Q. Can you read specifically what you say wasn't
5 marked? I don't want to interrupt you. I want us all to be
6 on the same page.

7 A. The last one wasn't marked at the time that I went
8 up there. Today wasn't marked on there. And that's it. And
9 these names down here where they have how much money they
10 charged me for court and then signed where the judge signed it
11 right there, that wasn't marked until after. He sent it to me
12 and then he signed it and they put all that extra on there.

13 Q. So it's your testimony today that everyone pulled a
14 fast one on you?

15 A. Well, I thought --

16 MS. GOLDBERG: Objection.

17 BY THE WITNESS:

18 A. -- it was a fast one when he said life and I didn't
19 hear life. When I went out the door, that's when they told me
20 I had a life sentence because I didn't even hear that.

21 BY MR. WHITMIRE:

22 Q. Just a few more questions. I recall you testified
23 that when you couldn't hear something at the detention center,
24 you would tell Ms. Fullwood I can't hear you? You would let
25 her know?

1 A. Yeah. I told her my hearing was bad. I'm trying to
2 get a hearing aid now.

3 Q. And I also recall, and if I'm wrong, please correct
4 me, but during the guilty plea hearing you never stopped and
5 told her I can't understand the judge?

6 A. She told me not to say nothing. I'm getting
7 excited. She told me not to say nothing and I done just what
8 she told me to. She advised me that she would handle it point
9 blank. She was my lawyer and I done what she told me to do.

10 Q. Just a few more matters to clear up the record. You
11 said you brought a motion to have her relieved as your
12 attorney?

13 A. Yeah. I asked her to when I went to court that day
14 and she said she wanted to be not my attorney, too. She said
15 she would be glad to get off the case, too. She said exact
16 words to that.

17 Q. And this is all at the guilty plea hearing?

18 A. No. This was at the bond hearing.

19 Q. That's what I'm asking. Do you remember what judge
20 it was in front of?

21 A. Cottingham. Ain't but one and I think he's deceased
22 now, I think. I ain't certain.

23 Q. To the best of your memory what did Judge Cottingham
24 tell you?

25 A. He said if I couldn't represent myself, then I had

1 to keep her. I said, well, Your Honor, if you got so much
2 faith in her, then why don't we just go ahead and have this
3 courtroom, do it right now then. Did I not, Ms. Beth? Did I
4 not say that? I said let's do it now then if you think you
5 got more faith in her than I do.

6 Q. Final question, Mr. Hatchell. You put all your
7 reasons why you were at that time unhappy with Ms. Fullwood in
8 front of Judge Cottingham?

9 A. I wasn't happy with her from the day I had her.

10 Q. You put the reasons in front of him? You told him
11 everything? You had the opportunity?

12 A. No. I just told him she wasn't on her job. And I
13 had all the paperwork what I need from the courthouse, but
14 they didn't let me turn that into them, I mean, from the State
15 Supreme Court of Disciplinary Counsel. I went through the
16 ringer to try to get rid of her before I went to court because
17 I know she wasn't gonna do nothing. She done said she wasn't
18 gonna do nothing.

19 Q. Final question. This is kind of important to your
20 interactions with the court and what we do here today. Were
21 the rest of your attorneys like this or was it just Ms.
22 Fullwood?

23 A. I didn't have but one other attorney and that was
24 Richard Blackman. I ain't never had no other attorneys --

25 MR. WHITMIRE: Nothing further, Your Honor.

1 BY THE WITNESS:

2 A. -- besides this one, I mean, but you can't claim her
3 yet. We ain't done nothing. We still working on this. I
4 mean, that's the only other attorney I ever had.

5 MR. WHITMIRE: Thank you, Your Honor.

6 THE COURT: Yes, sir. Redirect?

7 MS. GOLDBERG: Your Honor, no redirect.

8 THE COURT: Thank you. You may step down.

9 MS. GOLDBERG: No additional witnesses for the
10 applicant.

11 THE COURT: The applicant rests.

12 MR. WHITMIRE: At this time, Your Honor, the State
13 would call Ms. Fullwood to the stand.

14 Thereupon,

15 ELIZABETH FULLWOOD

16 after having been first duly sworn, testified as follows,

17 DIRECT EXAMINATION

18 BY MR. WHITMIRE:

19 Q. Good afternoon, Ms. Fullwood.

20 A. Good afternoon.

21 Q. Again, just a few questions for the record. We have
22 been through this earlier today. How long have you been the
23 public defender of Lexington County?

24 A. Since 1991.

25 Q. Do you recall your representation in this matter?

1 A. I do.

2 Q. Have you had a chance to review your file?

3 A. I have.

4 Q. When were you appointed to Mr. Hatchell's case?

5 A. The Clerk of Court's Office appointed my office as
6 counsel on December 7th, 2011. Our office did an intake
7 interview on December 15 and I received the file the next
8 day.

9 Q. I would like you to briefly put on the record how
10 many times you met with him, if you have that, and kind of a
11 brief summary of those meetings.

12 A. I first met with Mr. Hatchell on December 21, 2011.
13 At that time I discussed with him his version of what had
14 occurred. I advised him of the nature and elements of the
15 offense charged which was first degree burglary, the penalty
16 for that crime, the fact that it was a most serious crime,
17 that it was a violent crime, that it was a no parole crime,
18 discussed with him his trial rights. That discussion would
19 have included the fact that if he had two prior convictions
20 for burglary, they could foresee it as first degree burglary.
21 Then I also got some background information from him.

22 We held, well, actually we held the preliminary
23 hearing in the case the day before my first meeting with him.
24 That was on December 20th, 2011 before Judge Morgan and it was
25 bound over. His appearance, that probably was a first

1 appearance, but at his first appearance the Solicitor's Office
2 made a plea offer of a negotiated 15 years. The Solicitor
3 said she was not open to negotiating any farther in this case.
4 He had an extensive prior history of burglary convictions.

5 The case that he was being charged on at that time
6 had received quite a bit of publicity in the media due to the
7 fact that it involved a young pre-teen or teenage girl who had
8 been home alone and had sort of hidden and called the police.
9 In the weeks that followed, I tried to sweet talk the
10 Solicitor into giving me a better deal for Mr. Hatchell.
11 Explained that he was older and in poor health and things of
12 that nature, but she was locked into that position.

13 I next talked to Mr. Hatchell on February 14. That
14 would be in 2012, although I wrote 2011 in the file. At that
15 time we reviewed his record in detail. Uhm, we discussed the
16 plea offer. Aside from Mr. Hatchell basically wanting to talk
17 about how unfair the offer was, he was claiming that his rap
18 sneet was wrong, that he hadn't been convicted of that many
19 burglaries. He said that some of it was actually his wife's
20 convictions.

21 So what I had my staff do is to seek out certified
22 true copies of his prior convictions and we got records from
23 the Calhoun County Clerk of Court, from the Greenville County
24 Clerk of Court, from the Newberry County Clerk of Court, and
25 we were having - some of those were so old that it was hard to

1 actually get the indictments so we made a try at by
2 subpoenaing his South Carolina Department of Corrections
3 records. We got limited records from Lexington County.
4 Something odd had happened. I have no idea what or why, but
5 about, as I recall, six months before this offense was
6 committed somebody unknown had checked out his file from the
7 Clerk of Court Office and they could not locate it.
8 Eventually it's my understanding that they did locate it.
9 In fact, on the day that Mr. Hatchell pled, the
10 Solicitor's Office gave me some certified true copies of
11 indictments as additional discovery. At this point I don't
12 know what counties they were from. Might have been Lexington
13 though. Mr. Hatchell saw that I had gotten it and he insisted
14 that I give them to him so I did and that's noted in my file.
15 I gave him the additional discovery at his insistence. I
16 really didn't have an opportunity to make a copy of that.
17 Let's see. On March 13th of 2012 Mr. Hatchell was
18 brought to court to plea to a negotiated 15 years if he wanted
19 to do so. He said that he would not plea to 15 years violent.
20 I explained to him that that was the only offer that the
21 Solicitor was going to make in his case in light of the
22 strength of the State's case. I explained to him that we
23 received the court records from Greenville and Newberry and he
24 had at least at that point without all of his records he had
25 at least three prior burglary convictions.

1 He said he didn't want a trial, that he just wanted
2 a better offer. He wanted to wait. He said that he had
3 written ODC, Office of Disciplinary Counsel, to get another
4 lawyer to delay the case. I explained to him that if he
5 didn't want to take the offer on that day, it was going to be
6 withdrawn and it was not going to come back and he
7 acknowledged to me that he understood that.

8 The next time I talked to Mr. Hatchell was on May
9 14th of 2012 and my notes show that we discussed the fact that
10 there is no time limit in the burglary statute as far as when
11 you can use prior convictions for enhancement and I explained
12 to him he was probably thinking about the ten year limit on
13 impeachment, but it wasn't so under the burglary statute. I
14 know he understood that, but he just thought he knew more law,
15 I guess, than I do. Then he raised the claim that he never
16 ever had been represented by an attorney except once he had
17 Richard Blackman.

18 And I looked on those old indictments. Most of the
19 people here wouldn't remember this, but in the old days before
20 we had all the forms, these indictments would be stamped on
21 the back and there would be a place for the person to see, you
22 know, different counties had different customs, but normally
23 the names of the attorneys would be written on there and on
24 some of these prior indictments there was a name but it looked
25 like an attorney's name. There were some that said no

1 attorney, and there were a couple from one county that said no
2 attorney. But it did appear that on at least two occasions
3 which is all that the State needed he had been represented by
4 an attorney when he had been convicted of burglary.

5 Q. Just to clear up the chronology here, he brought
6 this to your attention May 13th for the first time?

7 A. May 14th.

8 Q. May 14th?

9 A. Mm-hmm.

10 Q. After he rejected the --

11 A. After he rejected. Yes. Yes. And then we talked
12 with how voluntary intoxication is not a defense.

13 Q. There's been some testimony here today on the
14 subject, but at any point in the representation did he make a
15 motion to have you relieved or have a hearing on the matter?

16 A. Uhm, yes. In fact, it looks like, let's see, yes.
17 That would have been on June the 4th of 2012. We had a bond
18 hearing before Judge Cottingham. At that time Mr. Hatchell
19 asked Judge Cottingham for another lawyer and that motion was
20 denied.

21 Q. Do you remember the basis for his motion?

22 A. No. He just didn't like me. I next met with Mr.
23 Hatchell on July the 2nd of 2011 and I told him that he was
24 going to be on the trial docket for the next term of court and
25 it looks like I had had some additional Lexington County

1 material that would have been indictments that I showed him.
2 We looked again at the Newberry County indictments. He asked
3 me to get his medical records from the jail which I did. We
4 talked about his alcoholism. I got some just general
5 background information about who he is, where he comes from,
6 some of the stuff that he testified to here today.

7 I met with him again on July 5, 2012. At that time
8 he told me he was going to plead probably. He said the court
9 would hear from him. Looks like I asked him if he wanted me
10 to let his wife know that he was going to court. He said no.
11 She doesn't have a ride. Besides she took care of a relative.
12 The next day we got a phone message saying that he did want
13 his wife there so we tried to notify her of that through his
14 brother.

15 Q. Just a few more questions for the record and I
16 really appreciate your patience here today. What's your
17 general policy on advising a client of the consequences and
18 the pros and cons of a guilty plea offer or pleading guilty?
19 I'll restate the question. Move to strike that one. How do
20 you go about advising a client on the pros and cons of
21 pleading guilty on the precipice of a plea hearing?

22 A. It always depends on the situation. Basically with
23 a plea offer in a case like this there is no uncertainty of
24 what you're going to get. You know what your sentence is
25 going to be and you know in a case like this one where there's

1 a huge sentencing range that you are not going to get
2 something on the real high end of the spectrum.

3 Unfortunately Mr. Hatchell found himself in a
4 situation where he could either go to trial and certainly be
5 convicted because he was basically caught red handed and based
6 on his record more likely than not would get the maximum
7 penalty for plea guilty, spare the juvenile victim the trauma
8 of a trial, try to use that and other things about his
9 background to try to persuade the court to give him the
10 mandatory minimum and that's what he decided to do. He was
11 never told that on the day that he pled that he was getting a
12 15 year sentence. He always knew that the sentence he
13 received would be up to the judge.

14 Q. During your representation, did you observe any
15 physical limitations or disabilities that affected your
16 ability to communicate with Mr. Hatchell?

17 A. He is hard of hearing, but when he said he couldn't
18 hear me, I would always turn up the volume and speak louder.

19 Q. You have represented clients throughout your
20 practice who have had hearing problems before?

21 A. Oh, certainly.

22 Q. Did you guys at the initial point of representation
23 kind of go over if you can't hear something, you need to let
24 me know immediately? Any type of general procedure in that
25 regard?

1 A. Yes. He let me know right away he had a hearing
2 problem and he would have been told if you don't know what I'm
3 saying, let me know and I can tell you.

4 MR. WHITMIRE: No further questions. Thank you so
5 much, Ms. Fullwood.

6 THE COURT: Cross examination.

7 MS GOLDBERG: Thank you, Your Honor. May it please
8 the Court.

9 CROSS EXAMINATION

10 BY MS. GOLDBERG:

11 Q. Good afternoon, Ms. Fullwood.

12 A. Good afternoon.

13 Q. The plea offer in this case was withdrawn March 13th
14 of 2012; is that right?

15 A. Let me double check. That's right. March 13th.

16 (Plaintiff's exhibit #1 marked for identification.)

17 MS. GOLDBERG: All right. May I approach, Your
18 Honor?

19 THE COURT: Yes.

20 BY MS. GOLDBERG:

21 Q. Ms. Fullwood, I'm handing you Plaintiff's exhibit
22 number 1. What is that document?

23 A. It's a brief on our motion to reconsider sentence.
24 Judge Seals asked us to brief.

25 Q. And you drafted that?

1 A. I did.

2 MS. GOLDBERG: All right. Your Honor, at this time
3 it is a part of the record already, but I would just
4 offer it as a court's exhibit. I think there is no
5 objection.

6 MR. WHITMIRE: Without objection.

7 THE COURT: Be admitted without objection.

8 MS. GOLDBERG: Thank you, Your Honor.

9 BY MS. GOLDBERG:

10 Q. On page 3 towards the bottom half of that page you
11 discuss that a plea offer was extended and withdrawn on March
12 13th, 2012?

13 A. That's right.

14 Q. And you provide a reason why Mr. Hatchell didn't
15 accept the offer within the time limits. What did you tell
16 the court?

17 A. That the State hadn't produced certified true copies
18 in discovery of enough predicate convictions.

19 Q. By that time on March 13th?

20 A. By that time. But he knew that we had found them so
21 he knew that it was out there.

22 Q. I think that you had even discussed that the State
23 provided you some of the documentation in July and then again
24 on the very date of the plea. You said that in your
25 testimony?

1 A. Yes. Yes.

2 Q. Do you believe it was improper for the State to have
3 withdrawn their plea offer at that early date?

4 A. No. Not necessarily.

5 Q. Did you object during the guilty plea based on
6 that?

7 A. No.

8 Q. In the order you do reference that the State
9 withdrawing a plea offer without providing full discovery is
10 in violation of Supreme Court order; is that right?

11 A. That's correct.

12 Q. The plea was on July 9th in front of Judge Seals?

13 A. That's right.

14 Q. That morning when Mr. Hatchell was brought here to
15 the courthouse and you first spoke with him -- Let me back up.
16 I believe you just mentioned that shortly before the plea you
17 went to go meet with Mr. Hatchell?

18 A. That's right.

19 Q. And at that point in time he said that he might
20 plea?

21 A. That's right.

22 Q. On the day of his plea when he first got here to the
23 courthouse, what did he say his intention was?

24 A. I don't recall completely what happened. It could
25 be that he stalled a little while like he said. I don't

1 really have an independent recollection of that.

2 Q. Do you recall Judge Seals advising all of the
3 inmates as to their rights for a guilty plea as a group prior
4 to meeting each one individually for their plea?

5 A. No. I don't remember that.

6 Q. You have seen judges do that before?

7 A. I have. I just don't know if Judge Seals did it on
8 that day.

9 Q. You mentioned earlier that in a case such as this
10 where there is such a huge sentencing range, the 15 years to
11 life, that what you would have to typically do is try to use
12 things about the defendant's background to sway the judge
13 towards the minimum sentence; is that right?

14 A. That's right.

15 Q. Did any family members of Mr. Hatchell speak on his
16 behalf at the plea?

17 A. They did not.

18 Q. Did you ever talk to the Court about his history in
19 the foster care system growing up?

20 A. The record would show whether I did or not and my
21 notes don't show that he ever told me that.

22 Q. What about his military history?

23 A. Let me look at the notes to make sure. Okay?

24 Q. That's fine.

25 A. Let's see. Yes. When I met with him on July 2nd,

1 he told me that he had served in the Marines and that he
2 received an honorable discharge. Then I have written "dis
3 hon", so that would have been under dishonorable conditions.
4 Then that line is struck through and underneath is written
5 "doesn't want me to use." So apparently he felt there was
6 something about his military record that wouldn't be
7 beneficial if we discussed it.

8 Q. Did you ever go through his prior criminal record in
9 a way to explain it to the court, explain what his history was
10 criminally? Does that make sense?

11 A. Kind of. I mean, what I did at the plea hearing,
12 you know, the record I think would speak for itself.

13 Q. That's fair. The Solicitor never requested a life
14 sentence; is that right?

15 A. That's right.

16 Q. Neither did the victim or law enforcement?

17 A. Not to my recollection.

18 MS. GOLDBERG: No further questions, Your Honor.

19 MR. WHITMIRE: The State rests. Nothing further.

20 Request that Ms. Fullwood be released from her
21 subpoena.

22 MS. GOLDBERG: No objection.

23 THE COURT: Thank you, ma'am. Step down. You're
24 released from your subpoena. The State rests. Anything
25 in reply?

1 MS. GOLDBERG: Nothing in reply.

2 THE COURT: Be glad to hear argument.

3 MS. GOLDBERG: Thank you, Your Honor. May it please
4 the Court. I will go through the amended application and
5 order to make that the easiest thing. Allegation (a),
6 failure of trial counsel to object when the applicant was
7 not specifically and personally advised regarding his
8 rights. That I believe is clear even though Ms. Fullwood
9 stated that she could not recall what happened. If you
10 look on page 3 of the transcript, it does specifically
11 say the court gave the following instructions to those
12 present in the courtroom. That is all of page 3 and 4.

13 Your Honor, Mr. Hatchell has testified that when he
14 initially came to court, he was not pleading, not
15 planning on pleading guilty that day. He wasn't paying
16 attention. Further he was in the jury box farther away
17 from the judge than he would have been during a plea, and
18 he testified that he could see he was talking to them,
19 but wasn't able to hear.

20 Your Honor, for those two reasons combined and
21 because a life sentence was imposed I would argue that
22 Ms. Fullwood should have either objected or asked that
23 the court issue him special instructions in this
24 particular case especially because he states he couldn't
25 hear.

1 I don't believe that Mr. Hatchell was properly
2 advised. I understand the Attorney General is obviously
3 going to argue that due to his lengthy experience in
4 court and guilty pleas before he should have been aware.
5 But as Your Honor knows, the law changes all the time.
6 Mr. Hatchell clearly from how he testified today is not
7 sophisticated in the law even though he does have
8 experience in court, not experienced in what his rights
9 are and what evidence can and cannot be used against him
10 so that would be the basis for that allegation.

11 Your Honor, as to the failure of trial counsel to
12 present sufficient mitigation I'll also argue on that one
13 that this was a case where he could have received
14 anywhere from 15 years to life. Nobody was asking for a
15 life sentence, but that's what he received. Ms.
16 Fullwood, her mitigation in this case is extremely brief
17 and she doesn't go into his background at all. She
18 doesn't have family members speak on his behalf. I know
19 there was one family member present who wasn't allowed
20 to. Mr. Hatchell testified that she told him not to
21 speak. I think the mitigation in such a serious matter
22 is insufficient.

23 Allegation (c), failure to advise applicant
24 regarding the consequences of his prior record. He's
25 testified that he didn't understand that at the time. He

1 thought that the ten year impeachment rule, he thought
2 being told only the convictions in the past ten years can
3 be used against you meant that that's what can be used
4 against you. He didn't understand the difference between
5 impeachment and enhancing a charge. He did testify as to
6 that.

7 He also testified as to allegation (d) that his
8 lawyer did not tell him that the plea offer would be
9 revoked and that he would have taken the plea offer had
10 she explained that. I think Mr. Hatchell is credible in
11 his testimony that had he known he could have received a
12 life sentence he would have pled guilty rather than going
13 to trial because he clearly does have issues that he
14 thinks would have been meritorious. Whether that's true
15 or not he believes them to be meritorious and it does not
16 make sense that he would intentionally expose himself to
17 this life sentence when he thought - if he truly knew
18 that there was no guarantee as to a particular sentence.

19 Allegation (f), we did not really issue testimony on
20 that so I will leave that. Let that stand on the record.
21 There was no testimony offered.

22 Allegation (g), failure of trial counsel to object
23 during the guilty plea regarding the Solicitor's
24 withdrawal. Ms. Fullwood said in her motion to the court
25 that the reason he rejected the plea offer was because

1 the Solicitor had not provided full discovery and had not
2 provided copies of the certified convictions. Judge
3 Toal's order which she references in that motion does
4 state that it's improper for a Solicitor to condition
5 acceptance of a plea on not receiving full discovery yet.
6 He hadn't received it yet. I think Ms. Fullwood could
7 have legitimately objected at the time of the plea and
8 asked. She still would have entered the plea, but it
9 would have made for an appealable issue for the Appeal
10 Court to consider.

11 And then finally applicant decided to plea guilty
12 and relied on his attorney's statement that he would get
13 a 15 year sentence. He did testify that Ms. Fullwood
14 told him that he would get a 15 year sentence on that
15 day. That's why he pled. That's why he gave up his
16 trial rights.

17 THE COURT: Thank you.

18 MR. WHITMIRE: May it please the Court. The vast
19 majority of Mr. Hatchell's PCR allegations inevitably
20 devolve into a swearing match that's typical many times
21 of guilty plea PCR cases. In comparison to Mr.
22 Hatchell's suspect, incredible, mostly unsupported and at
23 times contradictory testimony, we had Ms. Fullwood who
24 made a substantial record who not only gave credible but
25 convincing testimony in almost every one of these

1 allegations.

2 As a matter of law in allegation (a) we have Holten
3 v. State that directs this court and future courts to
4 look to the record in its entirety. If there were
5 something deficient about a colloquy, we look to see the
6 PCR testimony and whether the applicant was aware of such
7 things. And it goes to the inverse, too. Here Ms.
8 Fullwood testified extensively on her communications and
9 advice to Mr. Hatchell.

10 In the last allegation which concerns a matter of
11 law, this failure to object to basically compel the State
12 to make that plea offer again relying on the chief
13 justice's order, specifically there is case law four or
14 five years old out of the Twelfth Circuit involving a CI
15 buy bust in which we get to the end of plea and it comes
16 down to the defendant or the defense attorney having an
17 opportunity to view the control buy video and potentially
18 learn of the CI's identity and it's always a case by case
19 analysis and you try to find what's fair and equitable
20 allowing full disclosure so the defendant can make a
21 knowing, intelligent, voluntary decision on the plea and
22 allowing to protect the state's interest in this case.

23 It all hinges on the motion of reconsider which goes
24 to just absolutely incredible lawyering where Ms.
25 Fullwood makes this argument, introduces it to the trial

1 judge, however, under discovery 5D otherwise
2 discoverable, she provided him all those documents. She
3 just simply said the State hasn't provided the documents
4 to me yet.

5 And last, the larger picture directly under the case
6 law is he knew of this. He was not harmed in any way.
7 We have a record of credible testimony today and the
8 State would rest on that and be happy to answer any
9 questions Your Honor may have.

10 THE COURT: All right. Anything in reply?

11 MS. GOLDBERG: No, Your Honor.

12 THE COURT: I understand your client's argument that
13 he didn't hear what was said by the judge when the judge
14 read the rights to everyone in the courtroom, but he told
15 the judge that he was there when that was done. It's
16 hard to argue that he didn't know that he was going to
17 get more than 15 years when the Court tells him that it's
18 15 to life. Whether I would have given him the same
19 sentence or not is irrelevant. Ms. Goldberg, for all the
20 reasons stated by the Attorney General I feel compelled
21 to deny applicant's motion and I'm going to ask
22 Mr. Whitmire to prepare an order.

23 MR. WHITMIRE: Thank you, Your Honor.

24 MS. GOLDBERG: Thank you, Your Honor.

25 MR. WHITMIRE: I'll get that to Ms. Goldberg before

1 presenting it to you.

2 END OF PROCEEDINGS.

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1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

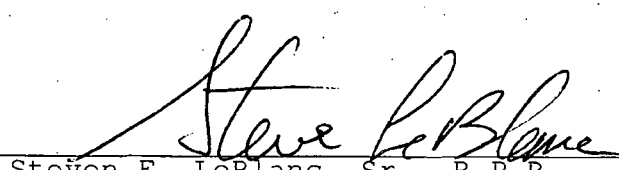
3 (COUNTY OF LEXINGTON)

4
5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Court Reporter for the Eleventh Judicial Circuit
7 in and for the State of South Carolina, do hereby certify that
8 I reported the proceedings in the before captioned case in the
9 Court of Common Pleas in and for the State of South Carolina
10 on the 21st day of April, 2015.

11 I FURTHER CERTIFY that the forgoing 51 pages
12 constitute a true, accurate, and complete record of said
13 proceedings.

14 I FURTHER CERTIFY that I am neither related, counsel
15 to, nor of interest to any party hereto.

16 IN WITNESS WHEREOF, I have hereunto set my hand at
17 Lexington County, this 3rd day of November, 2015.

18
19
20 
21 Steven E. LeBlanc, Sr., R.P.R.
22 Eleventh Circuit Court Reporter
23 State of South Carolina.
24
25

ORIGINAL

STATE OF SOUTH CAROLINA)

FILED

COUNTY OF LEXINGTON)

2012 APR 12

IN THE COURT OF GENERAL SESSIONS

BETH A. GARRICK
CLERK OF COURT
LEXINGTON, SC

INDICEMENT NOS. 12-GS-32-0264

12-GS-32-0265

The State,)

vs.)

Richard O. Hatchell,)

Defendant.)

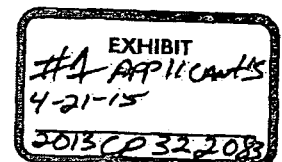
DEFENDANT'S BRIEF ON
RECONSIDERATION OF SENTENCE

I. INTRODUCTION

Richard O. Hatchell was indicted for burglary in the first degree and failure to stop for a blue light by the grand jury for Lexington County. He pled guilty as charged before the Honorable William H. Seals, Jr., on July 9, 2012. He received a sentence of life imprisonment for burglary and a sentence of two years, concurrent, for failure to stop for a blue light. Mr. Hatchell mailed a *pro se* motion to reconsider his sentence to the Lexington County Clerk of Court on July 16, 2012. The motion was filed by the clerk's staff on July 20. When defense counsel learned of the defendant's motion, she adopted it and asked that it be set for disposition. The court directed that briefs be filed as provided by Rule 29(a), SCRCrP.

II. STATEMENT OF THE CASE

This is the factual basis for Mr. Hatchell's plea: On November 21, 2011, Mr. Hatchell broke into the residence of Mr. and Mrs. Barton Calvert, located in the Gilbert area of Lexington County. Their 17 year old daughter, Savannah, was at home. She heard knocking, then the noise made by the break in. She hid in the laundry room and called law enforcement. While waiting for their arrival, she heard noises made by someone moving in the residence. The noises stopped



when police car sirens became audible. Meanwhile, the first responding officer saw Mr. Hatchell's van coming out of the Calvert's driveway. A short six mile chase ensued. Stop sticks successfully flattened all of the van's tires, but Mr. Hatchell continued on to his ex-wife's residence. There, he surrendered peacefully to police. Found in his possession was a pillow case containing small items taken from Savannah's room. He later gave a written statement confessing to the burglary.

The state relied on the following prior convictions to enhance the burglary charge to first degree: 1983 convictions for housebreaking in Greenville and Newberry Counties and two 1989 convictions for second degree burglary in Lexington County. In addition, the Court was informed that Mr. Hatchell has 1983 convictions for receiving stolen goods, grand larceny and attempted housebreaking; two 1988 convictions for possession of a pistol; 1989 convictions for two counts grand larceny and for driving under the influence; 2007 convictions for attempted burglary in the second degree and failure to stop for a blue light; and a 2011 conviction for driving under suspension.

Savannah Calvert was present at the plea, accompanied by her parents. Her father spoke on her behalf. He told the court that the incident has had an adverse effect on his daughter. She is fearful of being alone in the house, frequently seeks reassurance from her parents, and suffers pervasive anxiety as a result of the experience.

Defense counsel told the court that Mr. Hatchell is 57 years old. He is from Batesburg-Leesville and attended high school there. He has worked at a variety of occupations, primarily in construction and manufacturing. His last job was for O'Dell Barnes, a contractor, for whom he worked at the time of his arrest.

Mr. Hatchell suffers from long-term alcoholism. All of his prior arrests and convictions arose from alcohol consumption. He was drunk on the day of this incident. He was drinking beer when he stopped by the police. His alcohol dependency at the time of his arrest was so severe that he was given detox medication for two weeks at the detention center.

Mr. Hatchell has additional health problems, including high blood pressure and a hernia. Counsel noted that he is not in overall good physical condition. Any sentence he may have received, even the mandatory minimum of 15 years imprisonment, would most likely be a life sentence for him. Counsel stated that Mr. Hatchell is remorseful for his conduct. He has family in Lexington County who were concerned about the outcome of his plea.¹ His decision to plead guilty spared Savannah Calvert the anxiety and fear of testifying against and confronting him. In light of this mitigation, counsel asked the court to impose a 15 year sentence.

III. ARGUMENT

Counsel asks the court to consider the factors discussed below and modify Mr. Hatchell's sentence to 15 years imprisonment.

First, Mr. Hatchell would like the court to consider the difficulties that arose in the discovery and plea bargaining process. Plea negotiations occurred during the months between arrest and disposition of the case. The state's final plea offer to Mr. Hatchell was a negotiated 15 year sentence. That offer was withdrawn March 13, 2012, after he would not accept the offer and plead guilty. The primary reason he did not accept the offer within the time limits is that the state did not produce in discovery certified true copies of documents that would prove he had two prior convictions for burglary or housebreaking.²

¹ Mr. Hatchell's young adult daughter attended court on the day of his plea. However, she was emotionally overwrought about the possible outcome of the case, and was asked to leave the courtroom by law enforcement.

² Convictions that enhance a second degree burglary to first degree are only those for burglary or housebreaking. S.C. Code Ann. §16-11-311. Attempted housebreaking and attempted burglary are not enhancing offenses.

Mr. Hatchell's prior Newberry and Greenville county convictions occurred 29 years ago, and his two Lexington County convictions are 23 years old. His convictions in Newberry and Greenville counties occurred prior to implementation of the judicial index system. Both the state and defense had difficulty obtaining these documents. The state provided the Greenville County indictment first. It clearly shows that he was not represented by counsel at that proceeding. Defense counsel advised Mr. Hatchell that an argument could be made that the state cannot use an uncounseled conviction for enhancement purposes.³ The state was not able to obtain certified true copies of the Newberry county indictments and sentencing sheets until shortly before Mr. Hatchell's plea.

Even though Mr. Hatchell's Lexington County convictions are on the judicial index system, it initially seemed the Clerk of Court's office had lost those files. Counsel learned that in August 2010, a member of the clerk's staff signed out Mr. Hatchell's files for unknown reasons. The files were not located until June 28, 2012. Hence, it was not until shortly before his plea, and well after the deadline for accepting the plea offer, that Mr. Hatchell received discovery that showed that the state was able to prove an essential element of its case: two or more valid prior convictions.

Defense counsel is not insinuating that the state withheld discovery or was dilatory. Circumstances beyond the control of either party prevented both from obtaining crucial documents until just before resolution of the case. The practical effect of these problems, though, was to place Mr. Hatchell in the untenable position of forgoing discovery concerning an essential element of the burglary charge in order to take advantage of a plea offer. The practice of conditioning plea offers upon waiving discovery has been condemned by our Supreme Court. *See*, Memorandum of Chief Justice Toal to Solicitors dated March 1, 2004. While the state did

³ *See, e.g., Robinson v. State*, 380 S.C. 201, 669 S.E.2d 588 (2008).

not engage in the practices criticized by Chief Justice Toal's order, Mr. Hatchell nevertheless faced the same type of dilemma addressed by the order.

Granted, a defendant probably knows the extent of his prior criminal record. And, of course, a defendant knows whether or not he is guilty of the offenses charged. But decision making in the context of criminal defense does not generally turn on these considerations. Decisions are made using the premise that the state has the burden of proof. Defendants use the discovery process to ascertain the strength of the state's case against them. They rely on what information is given them rather than try to predict what might be provided in the future. This was the position Mr. Hatchell was in when he declined the state's 15 year plea offer. Again, the defense does not allege that the state withheld discovery or was not diligent in obtaining all the documents it needed to prosecute him. But the fact remains that Mr. Hatchell's decision about the plea offer was hampered when documents necessary to the state's case were not readily accessible because his prior convictions occurred before the digital age and his Lexington County files were lost by the clerk's office.

Second, Mr. Hatchell asks the court to give weight to the fact that he ultimately pled guilty. He acknowledges that the court has wide discretion in determining a defendant's sentence. He knows the court must weigh considerations concerning the state, the victim, the defendant, and the public at large. He is remorseful that the burglary had an adverse effect on Savannah Calvert, but asks the court to consider that a 15 year sentence was at one time offered by and considered acceptable to the state and to the Calvert family. Though he did not plead guilty as quickly as the state wished him to, he ultimately did, thereby accepting responsibility for his actions and sparing Savannah the stress of testifying at trial.

Mr. Hatchell knows the extent of his prior criminal record. He asks the court to consider the age of his predicate convictions. He also asks the court to consider that he has never been charged and convicted of any offense that involved actual physical violence against another. He cooperated with law enforcement in this case and gave a written confession. He is rapidly approaching advanced age and is in failing health. While his criminal record would probably result in a sentence of incarceration no matter what charge he faced, it does not show him to be an individual who is an ongoing threat to the safety of others. Although his conduct has been far from exemplary, he respectfully submits that he is not the type of individual who deserves a sentence of life imprisonment.

CONCLUSION

For the foregoing reasons, Richard Hatchell respectfully asks the court to reconsider the sentence it imposed on July 9, 2012, and modify the sentence to 15 years imprisonment.

Respectfully submitted,



Elizabeth C. Fullwood

407 ½ West Main St.
Lexington SC 29072
(803) 785-8873

ATTORNEY FOR DEFENDANT

August 8, 2012

FILED

ORIGINAL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
Richard O. Hatchell,	)	C.A. No. 2013-CP-32-2083
S.C.D.C. No. 114745	)	
Applicant,	)	
v.	)	ORDER OF DISMISSAL
State of South Carolina,	)	(with prejudice)
Respondent.	)	

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on June 17, 2013. Respondent made its return on May 19, 2014. An evidentiary hearing into the matter was convened on April 21, 2015, at the Lexington County Courthouse. Applicant was present at the hearing and was represented by Kristy G. Goldberg, Esq. Respondent was represented by Walt Whitmire, Esq., of the Office of the Attorney General.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lexington County. The Applicant was indicted at the February 2012 term of the Court of General Sessions for Lexington County for burglary, first-degree (2012-GS-32-0265) and failure to stop for a blue light (2012-GS-32-0264). The Applicant was represented by Elizabeth Fullwood, Esq., On July 9, 2012, Applicant pled guilty as indicted. The Honorable William H. Seals sentenced Applicant to a term of life imprisonment for burglary and to a term of three (3) years imprisonment for failure to stop for a blue light. The sentences were to be served concurrently.

A notice of Appeal was filed on Applicant's behalf. By order dated September 2, 2012, the South Carolina Court of Appeals dismissed Applicant's appeal.¹ The remittitur was issued on October 15, 2012.

ALLEGATIONS

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

- (a) Ineffective assistance of trial counsel – failure of trial counsel to object when Applicant was not specifically and personally advised regarding his rights at the beginning of his guilty plea
- (b) Ineffective assistance of trial counsel - failure of trial counsel to present sufficient mitigation.
- (c) Ineffective assistance of trial counsel – failure to sufficiently advise Applicant regarding the consequences of his prior record and properly explain how it could be used in prosecuting his criminal charges.
- (d) Ineffective assistance of trial counsel – failure to advise Applicant that his plea offer would be revoked on a particular date.
- (e) Ineffective assistance of trial counsel - failure of counsel to sufficiently obtain documents necessary for the Applicant to make his decision regarding plea or trial prior to the expiration of his plea offer on March 13, 2012.
- (f) Ineffective assistance of trial counsel - failure of counsel to request a hearing for the Court to determine whether uncounseled convictions could be used for enhancement purposes.
- (g) Ineffective assistance of counsel - failure of trial counsel to object during the guilty plea regarding the Solicitor's withdrawal of their plea offer.
- (h) Ineffective assistance of counsel - involuntary guilty plea as the Applicant decided to plead guilty in reliance on his attorney's statement that he would receive a 15 year sentence.

SUMMARY OF TESTIMONY

At the PCR hearing, Applicant testified to his interactions and perceptions of counsel during his case. Applicant testified that he rejected the State's initial negotiated plea offer because he would have had to plea to a violent offense. Applicant reasoned that actual term of incarceration at issue equated to a presumptive life sentence. Furthermore, Applicant testified

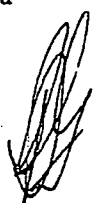
¹ Pursuant to Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules.

that offer was as indicted where Applicant was under the impression that the burglary did not meet the elements of Burglary, first-degree. Applicant testified that one would have had to commit a burglary at night and while armed with a deadly weapon to meet the elements of burglary first-degree. Applicant also testified that Jack Swerling, Esq., previously told him that convictions that were ten years or older could not be used to enhance a burglary, second-degree, to a burglary, first-degree. Applicant testified that he did not heed counsel's advice on this matter. Applicant testified that he believed that his "rap sheet" was incorrect in that it included burglary convictions where he was unrepresented by counsel and convictions that did not belong to him.

Applicant testified that he motioned to have counsel relieved during the case because he had yet to get the opportunity for a bond hearing. He noted that he wrote various South Carolina Bar entities on this matter. Applicant reasoned that counsel's continued representation on his case constituted a conflict of interest after the Motion Hearing Judge rejected his motion to have counsel relieved.

Applicant testified that he was unaware that the State could have withdrawn it's original plea offer for a negotiated fifteen year sentence on the indicted offense of burglary, first-degree. Applicant testified that on the day of Applicant's plea hearing, he was under the impression that he was pleading guilty pursuant to the State's plea offer. Applicant testified that when he signed the sentencing sheet, counsel assured him that he was going to get the negotiated fifteen year sentence. Applicant testified that "everyone pulled a fast one" on him at the plea hearing. Applicant testified that if he had known that the State terminated its original plea offer, he would have wanted counsel to make a motion to compel the State to re-convey the original offer.

Applicant testified that he was unable to hear or understand Judge Seals' during the plea



hearing. In relevant part, Applicant testified that he never heard Judge Seals' direct him on his sentencing exposure of life imprisonment. Applicant testified that he communicated this problem to counsel during the plea hearing where she told him to not say anything and to just go along.

Applicant testified that counsel told him that she apparently had no desire to help him. Applicant opined that he wished counsel would have apprised Judge Seals of his military service, childhood hardship in foster care, his rapidly declining health, and his intoxication and struggles with substance abuse during the mitigation phase of the plea hearing. Applicant did testify that counsel covered some of these points in her motion for reconsideration of sentence.

Counsel testified to her course of conduct during the course of the representation. Counsel has served as the Lexington County Public Defender since 1991. On December 7, 2011 counsel was appointed to Applicant's case. Counsel obtained Applicant's file on December 15, 2011. On December 21, 2011, counsel appeared at the preliminary hearing on behalf of Applicant. On the following day, counsel held a consultation with Applicant where they discussed: Applicant's version of the facts of the incident that led to his arrest, and the elements of burglary, first-degree, and its penalty and violent classification. Counsel noted that she would have apprised Applicant that prior burglary convictions could have operated to enhance a second-degree offense to a more serious first-degree offense.

Counsel testified that she engaged in plea negotiations with the State at an early point in her representation. Her labor yielded a plea offer of burglary, first-degree, for a negotiated sentence of fifteen years imprisonment, the mandatory minimum. Counsel apprised Applicant of the State's offer and met with him to discuss the matter. Counsel testified that she told Applicant that the plea offer was very beneficial to him where aggravating factors of the offense were heinous and garnered media attention, and where the litany of prior burglary convictions most



certainly qualified Applicant for an enhancement to burglary, first-degree. When Applicant insisted that his prior criminal record was inaccurate, counsel engaged in an extensive investigation and evaluation of the matter. Counsel noted that she obtained and provided Applicant copies of his numerous prior convictions for burglary, first-degree. Even after extensive discussions with Applicant on the matter, he remained resistant to counsel's advice.

Counsel testified that on March 13, 2012, Applicant was transported to the Court where counsel explained to him that he could accept the State's offer and plead at the time or the offer would terminate. Counsel testified that Applicant maintained his stubborn and incorrect posture. After plea negotiations terminated, counsel held a consultation with Applicant on May 14, 2012, where they discussed the merits of the State's case. Counsel testified that on June 4, 2012, Judge Cottingham heard Applicant's motion to have counsel relieved and the motion for bond. Judge Cottingham rejected both and Applicant's motion to have counsel relieved to be without merit. Counsel testified that "Applicant just didn't like me."

Counsel testified that on July 5, 2012, Applicant communicated his desire to her to plead guilty. Counsel testified to her general practice in advising a client on the consequences and implications of pleading guilty. Counsel further testified to her specific advice to Applicant in this case. Counsel was adamant that she discussed the sentencing discretion at ultimate exposure at issue with Applicant.

Counsel testified that Applicant was hard of hearing. During the course of the representation and at the plea hearing counsel took remedial measures to address Applicant's disability. Counsel testified that she instructed Applicant to let her know immediately when he could not hear Judge Seals; when Applicant complied, she took immediate action on the matter.

Counsel testified that she filed a motion for reconsideration of sentence on Applicant's



behalf. In part, counsel made a motion to have the plea withdrawn and compel the State to revive the original fifteen year offer because she had not been provided certified copies of at least two of Applicant's previous burglary convictions at the time the plea was withdrawn in March. However, counsel testified that her argument was technical in nature and non-prejudicial to Applicant where her staff obtained the certified copies at issue prior to the expiration of the plea offer.

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).

As a matter of general impression, this Court finds Applicant has entirely failed to produce credible evidence in support of his allegations. Ultimately, Applicant ignored the sound advice of counsel to his detriment. Although Applicant's sentence may seem harsh, this PCR action is without merit. This Court's review of the entire record completely negates Applicant's bold allegation that his purported hearing disability rendered his guilty plea involuntary.

EFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of 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, (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). After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action.

A.

This Court finds Applicant's allegation "(c) failure to sufficiently advise Applicant regarding the consequences of his prior record and properly explain how it could be used in prosecuting his criminal charges" to be without merit. This Court finds counsel's testimony to be

credible and dispositive. "The Sixth Amendment right to effective assistance of counsel extends to the consideration of plea offers that lapse or are rejected. That right applies to "all 'critical' stages of the criminal proceedings." Missouri v. Frye, --- U.S. ---, ---, 132 S.Ct. 1399, 1402 (2012). "The question is whether defense counsel has the duty to communicate the terms of a formal offer to accept a plea on terms and conditions that may result in a lesser sentence, a conviction on lesser charges, or both." Id., --- U.S. at ---. 132 S.Ct. at at 1408. "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness." Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). "To show prejudice from ineffective assistance of counsel in a case involving a plea offer, petitioners must demonstrate a reasonable probability that (1) they would have accepted the earlier plea offer had they been afforded effective assistance of counsel, and (2) the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it, if they had the authority to exercise that discretion under state law." Merzbacher v. Shearin, 706 F.3d 356, 366 (4th Cir. 2013) cert. denied, 134 S. Ct. 71, 187 L. Ed. 2d 56 (U.S. 2013) reh'g denied, 134 S. Ct. 725, 187 L. Ed. 2d 580 (U.S. 2013) (internal quotations omitted).

In light of Applicant's attempt to mitigate his decision to stubbornly ignore counsel's sound advice here, counsel took extraordinary and timely action to fully investigate, evaluate, and strenuously communicate to Applicant that his decades long record of numerous burglary convictions qualified him for burglary, first-degree. This Court finds Applicant's testimony that he rejected the State's offer because he reasoned that violent classification equated to a life sentence be telling as it showed: (1) Applicant was a sophisticated participant in General Sessions' Court; (2) Applicant's wrongful insistence that his record was incorrect, among other

things, was just nothing more than a smoke screen to delay the disposition of his case. This Court finds Applicant's prostrations here evidenced his wishful thinking for a non-existent and more favorable "option c" that the State was simply unwilling to offer him. See Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367, 371 (1997). Therefore, this allegation is denied and dismissed with prejudice.

For the reasons announced above, this Court finds Applicant allegation "(d) Ineffective assistance of trial counsel - failure to advise Applicant that his plea offer would be revoked on a particular date" to be without merit. In light of counsel's convincing and dispositive testimony that she advised Applicant that the State would withdraw its offer if he did not enter his plea on March of 2012, Applicant has offered no credible testimony or evidence on the matter. Therefore, this allegation is readily denied and dismissed with prejudice.

Again, for reasons announced above, this Court finds Applicant's allegation "(e) Ineffective assistance of trial counsel - failure of counsel to sufficiently obtain documents necessary for the Applicant to make his decision regarding plea or trial prior to the expiration of his plea offer on March 13, 2012" to be without merit. Not only did counsel offer dispositive testimony that she in fact labored extensively to investigate and advise Applicant on this matter prior to March of 2012, this Court notes that absence of any record from Applicant requesting a revival of the offer because of purported deficient performance of counsel to be noteworthy. Notably, Applicant was a difficult client who sought redress for his issues with counsel on other matters. Therefore, this allegation is readily denied and dismissed with prejudice.

B.

This Court finds Applicant's allegation "(g) Ineffective assistance of counsel - failure of trial counsel to object during the guilty plea regarding the Solicitor's withdrawal of their plea"

offer” to be without merit. This Court finds counsel’s dispositive testimony renders the allegation per se non-prejudicial. Rule 5 permits inspection of evidence in the State’s possession “which [is] material to the preparation of his defense or [is] intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant” upon request by the defendant. Rule 5(a)(1)(C), SCRCP. Compliance with Rule 5 is a fact-based inquiry.” Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012).

Counsel testified that the underlying evidence at issue, certified copies of at least two prior burglary convictions that met the requisite criteria for enhancement were otherwise obtained by counsel’s independent efforts. Counsel’s efforts allowed Applicant to make knowing, intelligent, and voluntary decision on whether or not accept the plea offer in March of 2012. Therefore, this allegation is readily denied and dismissed with prejudice.

For reasons noted above, this Court finds Applicant’s allegation “(f) Ineffective assistance of trial counsel - failure of counsel to request a hearing for the Court to determine whether uncounseled convictions could be used for enhancement purposes” to be equally without merit. This Court finds counsel’s testimony on this matter to be convincing. This Court finds Applicant has entirely failed to meet his most basic burden of production to produce any evidence that any on his numerous burglary convictions were in fact uncounseled convictions. In light of counsel’s credible testimony that her independent labor led to her obtaining at least two or more prior certified convictions that qualified for enhancement, further discussion on this matter is unnecessary. This Court finds that Applicant’s failure to show a meritorious basis for the purported motion at issue, precludes further inquiry into either one of Strickland’s prongs. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (“failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the



allegation is supported only by mere speculation as to the result"). Therefore, this allegation is readily denied and dismissed with prejudice.

C.

This Court finds Applicant's allegation "(h) Ineffective assistance of counsel - involuntary guilty plea as the Applicant decided to plead guilty in reliance on his attorney's statement that he would receive a 15 year sentence" to be without merit. "Specifically, the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing." Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000). "A guilty pleas act as a waiver of all non-jurisdictional defects and defenses, including claims of constitutional violations." Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981).

This Court finds Applicant fell well short of meeting his burden of proof here where the allegation was entirely supported by his suspect, incredible and dubious testimony on the matter. Again, this Court finds counsel's testimony on the matter to be convincing. This Court notes that allegation itself was incredible in light of Applicant's decades long experience with the procedures of General Sessions plea court. Alternatively, Applicant signed a sentencing sheet prior to the plea that announced the "straight up" structure of his plea in certain plain terms. See James v. State, 377 S.C. 81, 85, 659 S.E.2d 148, 150 (2008) ("The plea sheet is instructive because it contains a written manifestation of Respondent's desire to plead guilty and was executed by Respondent immediately prior to the plea hearing"). Therefore, this allegation is readily denied and dismissed with prejudice.

Similarly, this Court finds Applicant's allegation "(a) Ineffective assistance of trial counsel - failure of trial counsel to object when Applicant was not specifically and personally advised regarding his rights at the beginning of his guilty plea" to be without merit. This Court finds counsel's testimony concerning her advice to Applicant on the terms and consequences of pleading guilty prior to the plea hearing to be convincing. Although it is undisputed that Applicant suffers some hearing loss, Applicant has produced no credible evidence that showed counsel's remedial measures during the representation constituted a legitimate basis for deficient performance. Furthermore, Applicant has not produced a compelling reason to persuade this Court to allow him to depart from presumption of truthfulness in the assurances and representations that he made to Judge Seals at the plea hearing. See Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367, 371 (1997) ("A statement that questions are "routine" is not an invitation to answer them untruthfully, nor does it constitute a reason to believe the questions and statements of the judge during a guilty plea proceeding mean nothing"). Therefore, this allegation is readily denied and dismissed with prejudice.

D.

This Court finds Applicant fell well short of meeting his burden to prove the allegation "(b) Ineffective assistance of trial counsel - failure of trial counsel to present sufficient mitigation." Generally, what motion to make is within the exclusive province of counsel." Leavitt v. Arave, 646 F.3d 605,611 (9th Cir. 2011). "Counsel is not required to file a reconsideration motion to rehash a position once rejected." U.S. v. Tajeddini, 945 F.2d 458, 463 (1st Cir. 1991). In light of counsel's credible testimony that (1) Applicant told her not to mention his prior military service because of unhelp nature of his discharge; (2) Applicant failed to communicate his childhood history of foster care; (3) and that none of Applicant's family made

themselves available to speak on his behalf, this Court finds Applicant's allegation is ancillary and entirely unconvincing. Applicant even acknowledges that counsel even provided facts in mitigation in the motion for sentence reconsideration in addition to her representations to Judge Seals during the mitigation phase of the plea hearing. Therefore, this allegation is readily denied and dismissed with prejudice.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

CONCLUSION

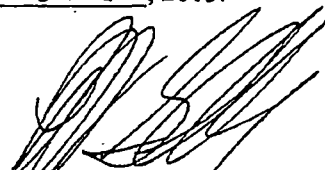
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. 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 3 day of JUNE, 2015.



HONORABLE BROOKS P. GOLDSMITH
Presiding Judge
Eleventh Judicial Circuit

_____, South Carolina

WITNESSES

Lexington County Sheriffs Department

Bradley S. Melton

Law Enforcement Case #:

DOCKET NO. 2012GSS3200265

The State of South Carolina

County of Lexington

JAG

ARREST WARRANT NUMBER

J827472

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2012

ACTION OF GRAND JURY

TRUE BILL

Richard Oneil Hatchell

THE STATE
vs.

CDR #: 0079

Indictment for

BURGLARY FIRST DEGREE

§ 16-11-0311

DONALD V. MYERS, SOLICITOR

Foreperson of Grand Jury

Date: 2/6/2012

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
BURGLARY FIRST DEGREE

§ 16-11-0311

At a Court of General Sessions, convened on FEBRUARY 2012, the Grand Jurors of Lexington County present upon their oath:

That **Richard Onell Hatchell** did in Lexington County, South Carolina on or about November 21, 2011, knowingly and willfully enter a dwelling, to wit:

, Gilbert, SC, being the dwelling of _____, without consent and with the intent to commit a crime therein and the defendant has a prior record of two or more convictions for burglary or housebreaking or a combination of both, in violation of § 16-11-311 of the Code of Laws of South Carolina, 1976, as amended.

A TRUE COPY



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

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



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.Richard Oneil Hatchell

AKA: _____

Race: _____ Sex: M Age: 57

DOB: _____ SS#: _____

Address: _____

City, State, Zip: Leesville, SC 29070-9222

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Burglary / Burglary (After June 20, 1985) - First degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS3200265A/W#: J827472Date of Offense: 11/21/2011S.C. Code § : 16-11-0311CDR Code #: 0079

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079☐ 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's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] Solicitor SC Bar# 064062 [Signature] Defendant [Signature] Attorney for Defendant SC Bar# 000000WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of Life 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: today

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

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$130

Clerk of Court/ Deputy Clerk [Signature]Court Reporter: [Signature]

SCCA/217 (03/2011)

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: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge [Signature]Judge Code: 2657Sentence Date: 2-9-2012

ARREST WARRANT

J-827472

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

THE STATE
ORIGINAL
against

Richard Oneil Hatchell

Address:

Lexville, SC 29070-9222

Phone:

Sex: M

Race: W

Height: 5

Weight: 200

DL State: SC

DL #: 004882715

DOB: _____

Agency ORI #: SC0320000

Prosecuting Agency: Lexington County Sheriff

Prosecuting Officer: B. S. Melton - 0648

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

Offense Code: 0079

Code/Ordinance Sec: 16-11-0311

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant B. S. Melton
on 11-23-2011

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

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

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

Personally appeared before me the affiant B. S. Meltonbeing duly sworn deposes and says that defendant Richard Oneil Hatchelldid within this county and state on or about 11/21/2011State 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 11/21/2011 at approx 2:02 P.M. at 538 Summ Sease Road in the Gilbert area of Lexington City, SC, the def Richard O
Hatchell did forcibly enter the victim's residence and stole jewelry and electronics valued at approx \$800. The def forced entry to
the side porch by removing a screen. Once inside the residence the def did take, steal, and carry away jewelry and electronics from
the bedroom area. Deputies were alerted by a witness and arrived on scene as the def was pulling out of the victim's driveway in a
Van bearing GLE688. Def was apprehended after a short pursuit and confessed to the burglary. The stolen items from the victim
were recovered from the def's vehicle. The def has two or more convictions of Burglary. Case #11033998

Signature of Affiant

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:

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

on or about 11/21/2011defendant Richard Oneil Hatchell☒ 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 11/23/2011

Signature of Issuing Judge

Thomas Bawf

Judge Code: 5683

Judge's Address

139 East Main Street, Suite B
Lexington, SC 29072

Judge's Telephone

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

WITNESSES

Name: _____
Address: _____

PRELIMINARY HEARING held by

Judge

10

Defendant Attorney:

Decision:

DISPOSITION before

Judge

9

by

(indicate jury trial, bench trial, plea, not pros., etc.)

Disposition:

Sentence:

JURORS

Name: _____
Address: _____

Telephone: _____

Telephones:

Name: _____

Address:

Telephones

CODEFENDANTS

BETH A. CARPIS
CLERK OF COURT
LEXINGTON SC

20:6 W 87. ADM 1162

FILED

WITNESSES

Lexington County Sheriffs Department

T Haigler

Law Enforcement Case #:

DOCKET NO. 2012GSS3200264

The State of South Carolina

County of Lexington

ARREST WARRANT NUMBER

57930EP

JAG

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2012

THE STATE

vs.

Richard Oneil Hatchell

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 2/16/2012

VERDICT

CDR #: 0065

Indictment for

FAILURE TO STOP FOR BLUE LIGHT

§ 56-05-0750(B)(1)

DONALD V. MYERS, SOLICITOR

Foreperson of Petit Jury
Date:

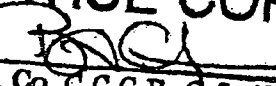
STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)

INDICTMENT FOR
 FAILURE TO STOP FOR BLUE LIGHT

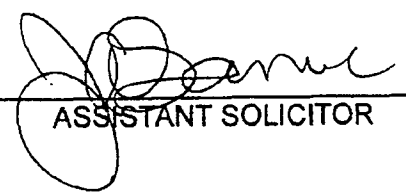
§ 56-05-0750(B)(1)

At a Court of General Sessions, convened on FEBRUARY 2012, the Grand Jurors of Lexington County present upon their oath:

That **Richard Oneil Hatchell** did in Lexington County, South Carolina on or about November 21, 2011, willfully, knowingly and unlawfully fail to stop a motor vehicle, while driving said motor vehicle on a road, street or highway of this State when Deputy T. Haigler, a law enforcement officer with the Lexington County Sheriff's Department, signaled and sounded his siren and/or turned on his flashing blue light, and no great bodily injury or death resulted from said failure to stop, in violation of § 56-5-750 (B) (1), Code of Laws of South Carolina, 1976, as amended.

A TRUE COPY

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

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


 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE VS.Richard Oneil Hatchell

AKA: _____

Race: _____ Sex: M Age: 57

DOB: _____ SS#: _____

Address: _____

City, State, Zip: Leesville, SC 29070-9222

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Failure to stop for a blue light/sirenINDICTMENT/CASE#: 2012GS3200264A/W#: 57930EPDate of Offense: 11/21/2011S.C. Code § : 56-05-0750(B)(1)CDR Code #: 0065

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 56-05-0750(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0065
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation ☐ Negotiated Sentence, ☐ Recommendation by the State.James O. G. 064062 Richard Oneil Hatchell
Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 3 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.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: today Lex. Co. C.C.P., G.S. & P.C.
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
Total: \$ _____ plus 20% fec: \$ _____Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$130

Clerk of Court/ Deputy Clerk Patricia A. Hargrave
Court Reporter: C. Hargrave
SCCA217 (03/2011)_____ 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: _____☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge 2157
Judge Code: 2157
Sentence Date: 2-9-2012

ORIGINAL

Form 9-408
Rev. 12-08

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF LEXINGTON VERSUS
FIRST NAME REINHARD MIDDLE NAME ONEIL LAST NAME HATHNELL
STREET AND NO. LEXINGTON CITY LEXINGTON STATE SC ZIP CODE 29070

STATE LICENSED NIA ORL. LIC. CLASS ED
VEH. LIC. NO. 6EA-688 STATE SC MAKE OF VEH. PLY YEAR 96 HAZ. MAT. NO MOPED NO MOTORCYCLE NO

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER
NAME OF TRIAL OFFICER MORGAN STREET AND NO. 231 WEST. MURPHY ST.
DATE OF TRIAL 12/10/01 TIME OF TRIAL 10:00 CITY BATESVILLE STATE SC ZIP CODE 29026

VIOLATION - COURT APPEARANCE REQUIRED YES NO NO VIOLATION SECTION NO. 56-5-750
OWNER OF VEHICLE SAME DATE OF ARREST 11/17/01
ADDRESS OF OWNER SAME DATE OF VIOLATION 11/17/01

BAIL DEPOSITED JAIL NAME OF ARRESTING OFFICER T. HATHNELL RANK DE
DESCRIPTION OF ACCUSED NIA COUNTY LEXINGTON NUMBER 32
DATE BAIL REC'D. BY 12/13/01 BADGE 967 DISTRICT 2

CASE BEFORE
MAGISTRATE ☐ MUN. COURT ☐
CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐

NAME OF TRIAL OFFICER 1
IF DIFFERENT FROM ABOVE

DEFENDANT: DID NOT APPEAR ☐ APPEARED ☐

DISPOSITION
NOLLE PROSSSED ☐ GUILTY ☐
FORFEITED BOND ☐ PLED: HOLD CONTENDERS ☐

TRIAL BY: TRIAL OFFICER ☐ JURY ☐

VERDICT OF TRIAL IF ANY
GUILTY ☐ NOT GUILTY ☐

DATE OF TRIAL IF ANY 12/10/01

Let 0 Long 0

COMMITTED TO: AD OFFENSE CODE 80 B.A. LEVEL 1

CERTIFIED CORRECT DATE 12/10/01 57930 EP

TRIAL OFFICER'S COPY

A TRUE COPY

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