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SC SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Edgefield County

R. Lawton McIntosh, Circuit Court Judge

JULIUS L. ROGERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002305

APPENDIX

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ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....i

PLEA TRANSCRIPT DATED AUGUST 5, 2013.....1

APPLICATION FOR POST-CONVICTION RELIEF.....28

RETURN.....47

POST-CONVICTION RELIEF HEARING TRANSCRIPT
APRIL 23, 2015.....54

STATE'S EXHIBIT #1 (PHOTO).....99

STATE'S EXHIBIT #2 (ROGERS' WRITTEN STATEMENT).....100

STATE'S EXHIBIT #3 (WAIVER OF RIGHTS).....103

ORDER OF DISMISSAL (WITH PREJUDICE).....105

INDICTMENT AND SENTENCING SHEET.....113

I N D E X

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

WITNESSES

DIRECT CROSS

REDIRECT

RECROSS

(There were no witnesses.)

E X H I B I T S

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NO.

DESCRIPTION

ID.

EVD.

(There were no exhibits.)

1 (The following proceedings were held on
2 August 5, 2013.)

3 MR. MAYE: Your Honor, before you stands Julius
4 Levern Rogers, charged on indictment 2013-GS-19-496.
5 He was originally indicted for burglary in the first
6 degree, Your Honor, based on the theft of firearms
7 from this burglary. Pursuant to plea agreement, he
8 is pleading without negotiations or recommendation
9 of burglary second violent, Your Honor.

10 I note on this indictment, it says, Concurrent
11 with GS -- 13-GS-19-0456, and I'm not sure what that
12 indictment was.

13 MR. CHESSER: That was an accompanying grand
14 larceny. It was decided to nol pros that, so that
15 was what happened on that.

16 MR. MAYE: Okay. That's fine.

17 He's pleading straight up to burglary second
18 violent, Your Honor.

19 JULIUS LEVERN ROGERS,
20 having been duly sworn, testified as follows:

21 THE COURT: You're Julius Levern Rogers?

22 DEFENDANT: Yes, sir.

23 THE COURT: I need you to speak louder so I can
24 hear you, please, sir.

25 DEFENDANT: Yes, sir.

1 **THE COURT:** It says that you're 44; is that
2 correct? It says that you're 44 years old?

3 **DEFENDANT:** Yes, sir.

4 **THE COURT:** How far did you go in school?

5 **DEFENDANT:** Tenth grade.

6 **THE COURT:** Do you have a GED?

7 **DEFENDANT:** No, sir.

8 **THE COURT:** Before you were incarcerated, did
9 you have a job?

10 **DEFENDANT:** Yes, sir.

11 **THE COURT:** Where did you work?

12 **DEFENDANT:** Kraft Food in Newberry, Louis Rich.

13 **THE COURT:** Ralph O'Neal --

14 **DEFENDANT:** Kraft Food.

15 **THE COURT:** Kraft Foods. Okay. Is that a
16 manufacturing plant around here?

17 **DEFENDANT:** Turkey plant in Newberry, South
18 Carolina.

19 **THE COURT:** How long did you work there?

20 **DEFENDANT:** January of next year will be three
21 years.

22 **THE COURT:** Three years continuously?

23 **DEFENDANT:** Yes, sir.

24 **THE COURT:** Are you married?

25 **DEFENDANT:** Separated.

1 **THE COURT:** How long have you been separated?

2 **DEFENDANT:** This month makes it a year.

3 **THE COURT:** Do you have any children that are
4 18 years or younger?

5 **DEFENDANT:** I have a son will be 21 this month,
6 and then I have a nine-year-old daughter will be ten
7 this month, and an eight year old that will be nine
8 next month.

9 **THE COURT:** Where does your eight and nine year
10 old live?

11 **DEFENDANT:** With their mother in Dillon, South
12 Carolina.

13 **THE COURT:** When you're not incarcerated, do
14 you pay support?

15 **DEFENDANT:** Yes, sir.

16 **THE COURT:** How do you do that?

17 **DEFENDANT:** They were taking it out of my
18 check.

19 **THE COURT:** They take it out of your check?

20 **DEFENDANT:** Yes, sir.

21 **THE COURT:** Is that by a court order?

22 **DEFENDANT:** Yes, sir.

23 **THE COURT:** It is?

24 **DEFENDANT:** Yes, sir.

25 **THE COURT:** And you're pleading guilty to

1 burglary second degree violent; is that correct?

2 DEFENDANT: Yes, sir.

3 THE COURT: Do you understand that carries,
4 what, zero to 15?

5 MR. CHESSER: Yes, Your Honor.

6 THE COURT: And there's no recommendation, so I
7 might sentence you to 15 years today. You
8 understand that?

9 DEFENDANT: Yes, sir.

10 THE COURT: Knowing that, do you still want to
11 go forward with your plea?

12 DEFENDANT: Yes, sir.

13 THE COURT: Are you under the influence of any
14 medications, drugs or alcohol today?

15 DEFENDANT: Just high blood pressure medicine.

16 THE COURT: And does the fact that you've taken
17 your high blood pressure medications impact on your
18 ability to comprehend and understand what you're
19 doing?

20 DEFENDANT: No, sir.

21 THE COURT: Any other drugs that you should be
22 taking that you're not taking?

23 DEFENDANT: No. No, sir.

24 THE COURT: Counsel, are you satisfied that
25 Mr. Rogers is competent to plead?

1 **MR. CHESSER:** Yes, Your Honor.

2 **THE COURT:** Has anybody forced, threatened or
3 promised you anything, Mr. Rogers, to get you to
4 plead guilty?

5 **DEFENDANT:** No, sir.

6 **THE COURT:** Are you pleading guilty freely and
7 voluntarily?

8 **DEFENDANT:** Yes, sir.

9 **THE COURT:** Do you understand that you have the
10 right to a jury trial on this charge?

11 **DEFENDANT:** Yes, sir.

12 **THE COURT:** During that trial, you would be
13 presumed innocent and the State would have to prove
14 each and every element of the charge against you
15 beyond a reasonable doubt before you can be found
16 guilty. Do you understand that?

17 **DEFENDANT:** Yes, sir.

18 **THE COURT:** Now, if you go forward with your
19 plea today, you will give up or waive your right to
20 have a jury trial. Is that what you want to do?

21 **DEFENDANT:** Yes, sir.

22 **THE COURT:** Do you freely and voluntarily waive
23 your right to a jury trial in favor of pleading
24 guilty today?

25 **DEFENDANT:** Yes, sir.

1 **THE COURT:** Mr. Rogers, if you were to choose
2 to have a trial, you would have the constitutional
3 right to confront and cross-examine any witness that
4 the State presents to testify against you. You'd
5 have a right to present evidence in your own
6 defense.

7 **DEFENDANT:** Yes, sir.

8 **THE COURT:** You'd have a right to subpoena
9 people to come to court to testify on your behalf.
10 And you'd have the Fifth Amendment right to remain
11 silent. Have these rights been explained to you?

12 **DEFENDANT:** Yes, sir.

13 **THE COURT:** Do you understand them?

14 **DEFENDANT:** Yes, sir.

15 **THE COURT:** Do you understand that if you were
16 to go to trial and not testify, that the trial judge
17 would instruct the jury that they could not consider
18 your failure to testify whatsoever because that's
19 your constitutional right under the Fifth Amendment
20 to the United States Constitution; you understand
21 that?

22 **DEFENDANT:** Yes, sir.

23 **THE COURT:** Now, if you go forward with your
24 plea, as a condition of your plea, you will be
25 required to admit your guilt. Is that what you want

1 to do? 1

2 DEFENDANT: Yes, sir. 2

3 THE COURT: Also, if you go forward with your 3

4 plea, you'll waive or give up the other 4

5 constitutional protections I've just gone over with 5

6 you. Do you understand? 6

7 DEFENDANT: Yes, sir. 7

8 THE COURT: Do you have any questions of me? 8

9 DEFENDANT: No, sir. 9

10 THE COURT: Do you have any questions of your 10

11 attorney at this juncture? 11

12 DEFENDANT: Yeah, one. 12

13 THE COURT: Okay, sir. You might want to just 13

14 whisper in his ear. 14

15 (Pause.) 15

16 THE COURT: Did you have sufficient time, 16

17 Mr. Rogers, to speak with your attorney? 17

18 DEFENDANT: Yes, sir. 18

19 THE COURT: Do you still want to go forward? 19

20 DEFENDANT: Yes, sir. 20

21 THE COURT: Do you still want to go forward 21

22 with your plea? 22

23 DEFENDANT: Yes, sir. 23

24 THE COURT: Under indictment 2013-496, are you 24

25 guilty of burglary second degree violent? 25

1 **DEFENDANT:** Yes, sir.

2 **THE COURT:** Are you satisfied with the services
3 of your attorney?

4 **DEFENDANT:** Yes, sir.

5 **THE COURT:** Has he reasonably done all that
6 you've asked him to do?

7 **DEFENDANT:** Yes, sir.

8 **THE COURT:** As we stand here in court today, is
9 there anything you contend that your attorney has
10 not done to investigate or to prepare your case that
11 he should have done before coming to court today?

12 **DEFENDANT:** No, sir.

13 **THE COURT:** Are you totally and completely
14 satisfied with his services?

15 **DEFENDANT:** Yes, sir.

16 **THE COURT:** Counsel, have you gone over the
17 elements of burglary second degree violent with your
18 client and explained to him the time he could get on
19 that charge, explore whether he has any defenses to
20 that charge and explain to him his constitutional
21 rights?

22 **MR. CHESSER:** Yes, Your Honor.

23 **THE COURT:** And do you agree with his decision
24 to plead guilty?

25 **MR. CHESSER:** Yes.

1 **THE COURT:** Is there a substantial, factual
2 basis behind it?

3 **MR. CHESSER:** Yes.

4 **THE COURT:** And this is pled down from a
5 burglary first?

6 **MR. CHESSER:** Yes, Your Honor.

7 **THE COURT:** All right. Well, tell me the facts
8 of the case, please.

9 **MR. MAYE:** May it please the Court, Your Honor.
10 Investigator Phil Ireland has the facts in this
11 case. And the victim would like to be heard prior
12 to sentencing.

13 **THE COURT:** Very good. Where is the victim?

14 **MR. MAYE:** She is here.

15 **THE COURT:** Okay. We'll get you around in just
16 one moment.

17 Officer, be glad -- if you'd state your name
18 for the record, please, sir.

19 **INVESTIGATOR IRELAND:** Investigator Phil
20 Ireland with Edgefield County. If it please the
21 Court.

22 **THE COURT:** Yes, sir.

23 **INVESTIGATOR IRELAND:** On 6/13 of 2013, between
24 2:47 and 3:52, the defendant, Julius Lavern Rogers,
25 did knowingly, willfully, unlawfully enter the

1 victim Richard Wall's residence.

2 Once inside, the defendant did take, steal and
3 carry away one Smith and Wesson stainless steel 10mm
4 handgun, one synthetic black Remington 270, one
5 synthetic Remington .22 rifle, one synthetic
6 Remington 20 gauge, one synthetic Tree Bark Camo
7 Remington 12-gauge pump, four competition hunting
8 bows. The defendant also took a HP and a Dell
9 laptop. Other items taken were jewelry boxes,
10 jewelry and three chain saws. All of the missing
11 items totaled more than \$10,000.

12 This occurred at _____ in
13 Edgefield, South Carolina, 29824, same being in
14 Edgefield County.

15 What happened here, sir, was that the subject,
16 Mr. Rogers, was going from Edgefield into Greenwood.
17 He stated -- he told me that he needed some money
18 for help pay for his children.

19 **THE COURT:** For his what, please?

20 **INVESTIGATOR IRELAND:** Children for some
21 reason. He saw this house and decided to go drive
22 into the house.

23 **THE COURT:** Based on your investigation, did he
24 have any prior knowledge of these victims?

25 **INVESTIGATOR IRELAND:** No, he didn't.

1 So he drove into what looked like an empty
2 house. He drove behind the house. And the good
3 thing about this was that the victim was trying out
4 a brand new deer camera. He was caught -- the deer
5 camera took pictures of his vehicle, took pictures
6 of him with several of the victim's guns on his
7 back, caught him -- a picture of him carrying three
8 chain saws and also a picture of him carrying out
9 some laptops.

10 After we saw these pictures on the deer camera,
11 we took the SIM card from the deer camera and got
12 the pictures. We still didn't know who he was, so
13 we put pictures out all over the state through our
14 NCIC, news channels, all law enforcement agencies,
15 and we just kind of waited. We processed the scene
16 with no results. And, finally, McCormick County got
17 a tip from a CI there that this subject may possibly
18 be living in McCormick County at an address.

19 So we did -- I caught up to the investigator
20 over there, and I asked, I said, Well, let's just go
21 to the house and see what's there, see if the car is
22 there. Because it had a -- on the camera was a
23 beautiful 2001 white Concord. So we drove by the
24 house and there was a Concord at that house. So I
25 wanted to take some pictures of it and -- so we

1 worked that out. The investigator went there first
2 and then called me to the scene where I actually did
3 talk with Mr. Rogers here and I advised him why I
4 was there. And I had a picture of the car at the
5 scene and he did tell me that it did look like his
6 car and I could take some pictures of it.

7 So I took some pictures of the vehicle and I
8 took them back to the office and compared -- I had
9 SLED do a comparison with the -- his facial
10 recognition, which I got nothing, but the car I got
11 some information. And they did some -- when I took
12 pictures at the scene -- I'm sorry -- not at the
13 scene, but at the house he was at, there was a
14 broken front headlight. There's also a sticker on
15 the back that I wanted SLED to enhance and they did
16 enhance it for me and the car ended up being a
17 match.

18 As I looked at Mr. Rogers there, I knew myself
19 that that was him in the pictures. So I went back
20 and I did get a warrant for him for burglary first.

21 When the warrant was ready, I went back with
22 McCormick. I was -- I met McCormick there and we
23 arrested him for burglary first, then took him back
24 to Edgefield County where he voluntarily gave me a
25 statement saying that he did this himself. He acted

1 alone, that he had some kids he had to feed,
2 support, and that was the reason that he had broken
3 into the house.

4 **THE COURT:** Were you able to recover --

5 **INVESTIGATOR IRELAND:** I was not -- I went in
6 depth with him with this and he took -- he knows a
7 person in Dillon, and they took the -- all the items
8 to a place in Marion County where he said he took it
9 to a house, and shortly thereafter, a white man came
10 and bought everything he had brought there except
11 for the chain saws. He tried to work with me.

12 And I called Marion County. They did find the
13 house. They were unable to get a search warrant to
14 get the items, but said they would try to get in it
15 other ways. I've called them back two or three
16 times, and I've -- they've yet to do anything about
17 that.

18 Thank you, sir.

19 **THE COURT:** Ma'am, you want to step around,
20 please?

21 Good afternoon. Would you state your full name
22 for the record?

23 **MS. WALL:** Virginia Wall.

24 **THE COURT:** Ms. Wall, and you're the victim in
25 this matter?

1 **MS. WALL:** Yes, sir.

2 **THE COURT:** Okay. I'll be glad to hear from
3 you.

4 **MS. WALL:** I would just like for y'all to take
5 into consideration that we are a hard-working
6 Christian family. That day he not only robbed us of
7 personal property, but our hobbies as a family is
8 hunting and doing archery tournaments, competitions
9 and things of that nature. We also -- our laptops
10 had, you know, memories on it, our pictures, our
11 videos, that I'll never get back.

12 He also robbed us of our peace of mind. I
13 mean, even though I've spent over \$3,000 on upping
14 our security around our house, my kids don't want to
15 sleep in their bed at night now, you know. They're
16 scared.

17 I'm paranoid. I don't like being there by
18 myself with the kids. I'm always second guessing
19 things, wanting to -- trying to figure out what I
20 would do to defend me and my children or my family
21 if something -- if I did drive up in the yard and I
22 saw a car that I didn't know and they were robbing
23 us again, you know, things like that.

24 So I just -- it's just -- it's -- I know it's
25 going to take time, but this has been -- it's robbed

1 us of our whole summer. We didn't even go on
2 vacation. We cancelled it because we don't even
3 want to leave the house anymore.

4 You know, I was at -- it was an emergency deal
5 where someone couldn't go to a Carowinds trip on a
6 youth group for our church that day. I should have
7 been home all day long with my two young daughters
8 and God just worked it out that I wasn't there
9 because if I had, it would have been a different
10 situation all together. So I just, really just
11 wanted y'all to take all that in consideration for
12 me. Thank you.

13 **THE COURT:** Thank you, ma'am.

14 Mr. Rogers, do you agree that you went into
15 that home and stole the items as outlined by the
16 officer on the record just a minute ago?

17 **DEFENDANT:** Yes, sir. Yes, sir.

18 **THE COURT:** Did you know who these folks were?

19 **DEFENDANT:** No, sir.

20 **THE COURT:** Did you know that they were
21 reported to have weapons of the type that they had
22 there?

23 **DEFENDANT:** No, sir.

24 **THE COURT:** What made you choose this house?

25 **DEFENDANT:** It's just that what Investigator

1 Ireland said about my kids, but, also, February of
2 last year I was trying to help my ex-wife out, her
3 and her kid, and I moved her in with me and helped
4 her get a job. And one night I came home from work,
5 she had, you know, took a lot of my stuff. And it
6 was, like, the house I was living in, you know, the
7 rent is 581 a month, you know. And I, like, always
8 kept, like, extra money on my nightstand to help me
9 with my bills and when she did that, it was like
10 everything start falling behind.

11 So I had went home to Dillon in June to ask my
12 family members for some help, but, you know, like,
13 me, I always been in trouble growing up and stuff.
14 And then the last time I got out of prison, I
15 changed my life, got a job, something I never did,
16 you know what I'm saying, started, you know, got my
17 own house and stuff. But when I went to my family,
18 you know, they was happy for me changing my life,
19 and then when I went to my family, it was like
20 everybody turned their backs on me. And so, you
21 know, it's like I dropped back into that stage of,
22 you know, things I used to do, you know.

23 And, like, when this happened, you know, I felt
24 bad about it, and, you know, it was constantly
25 bothering me. And so it was like the Thursday

1 night, me and my friend, nephew, we went to the car
2 wash to wash some cars in McCormick and so on our
3 way back home, we was turning by the BP station,
4 there was three officers out there and one of them
5 -- I heard one of them say, That's the car right
6 there. So when he said that, I knew, you know, why
7 he said it. But they didn't come to the house.

8 And then it was Friday morning when one of the
9 officers came from McCormick to the house. And she
10 had a picture of my car, and, you know, the license
11 plate was blotted out, but she had, you know, the
12 license plate number at the bottom. And so she
13 talked to me first and told me that Mr. Ireland was
14 coming. So when he came and he told me what was --
15 like he said, he took the pictures and everything.
16 And this was on Friday, and, you know, he didn't
17 come back and arrest me till that Monday, you know.

18 And just like I say, I often pray about it, you
19 know what I'm saying, what I did because, you know,
20 that's not the life I was living again, you know, I
21 had a job, you know. And just like I said, things
22 just, you know, started getting messed up, you know
23 what I'm saying, my situation.

24 And so, you know, by me not being from up here,
25 you know, I could have left, you know, but I didn't,

1 you know, because like I said, you know, on that
2 Thursday night, the police said what he said and I
3 still stayed. Then Friday they came and I was still
4 in McCormick the whole weekend, you know, you know,
5 I wasn't going to run.

6 And when he locked me up and had me -- asked me
7 about it, I told him and I wrote the statement. You
8 know, and at the end of the statement, you know, I
9 apologized to the family, you know. I really am
10 sorry. That's not the life I wanted to go back to,
11 you know. And I just felt, you know, betrayed by my
12 own family that they wouldn't help me in my
13 situation.

14 You know, I understand how she feels, you know.
15 I betrayed, you know what I'm saying, their trust,
16 you know, and I'm sorry. That's all I can say.

17 **THE COURT:** Tell me his prior record. I want
18 to have a -- just go through it slowly with me,
19 please, sir.

20 **MR. MAYE:** Yes, sir. In 1986, he was convicted
21 of grand larceny and got a YOA, an indeterminate of
22 one to six in December of 1986. In '87, he got an
23 attempted robbery charge, Your Honor, that it looks
24 like he also got a YOA on. Those charges were then
25 -- they were handled within just a couple of days of

1 each other -- well, within 30 days of each other.

2 So I assume he had those at the same time.

3 Then we go forward to 1989, he got a burglary
4 second and grand larceny charge, Your Honor, and was
5 sentenced June of 1989. He's got a forgery,
6 multiple counts, consolidated down to one in 1992.
7 Receiving stolen goods in 1991, he got 18 months on.
8 He got an attempted armed robbery in 1992. He got a
9 nine-year sentence on that.

10 Your Honor, he got a burglary second in 1997.
11 He had a petit larceny. He got five years suspended
12 to -- down to a year with five years of probation.
13 Looks like he was sentenced in January of 1998 on
14 that. Possession of stolen vehicle looks like he
15 got five years on in 1998, a burglary third in 1998
16 and a resisting. Petit larceny and a burglary in
17 2005, Your Honor, burglary second nonviolent, 2005,
18 CDV. 2007, he got a burglary second, Your Honor,
19 and a failure to stop. He got three years on those
20 -- three years on the failure to stop and five years
21 on the burglary. And looks like, at that time, Your
22 Honor, he had probably 10 or 11 charges that were
23 consolidated down to one. He pleaded to one count
24 on that.

25 But he's got, obviously, a pretty substantial

1 benefit to that. He could have had a burglary first
2 based on the prior burglaries or on the stealing of
3 the weapons, either one. So either one of those
4 would have put him in a burglary first category.
5 He's received a pretty substantial discount in this
6 case reducing it from burglary first down to a
7 burglary second violent.

8 **THE COURT:** Thank you, sir.

9 All right. Counsel.

10 **MR. CHESSER:** May it please the Court. I
11 believe that what has been said to you so far is
12 accurate. Mr. Rogers stated that he did turn his
13 life around for a period of time. He got that
14 job --

15 **THE COURT:** I don't know for what period
16 because it was a very short one, if at all, from
17 when I'm looking at his record.

18 **MR. CHESSER:** Well, what -- in terms of his
19 work period, what I understood him to say is that
20 next January would be three. So, really, we're
21 talking about two and a half years.

22 But when he was telling me about it, you know,
23 he was talking about what he does, and I know this
24 kind of work has to be done, but when they process
25 these turkeys, you know, it's some sort of manual

1 labor involved, you know, like cutting their, you
2 know, gutting them or taking -- it's something --
3 it's sort of -- what I'm saying is that sometimes
4 the poverty of these people we don't really perceive
5 in our position.

6 But in any event, so he went through this
7 period where he was working for two and a half years
8 at a very, I'll call it, demanding job. And -- and
9 this is by no means an excuse, he's here pleading
10 guilty for it, he's not excusing himself, but what
11 he was saying about what happened to him is that, as
12 I understood it, about February of this year, he
13 moved back in, reunited with his ex-wife. And then
14 after a period of time, she took most of his
15 furniture and basically stole \$600.

16 And that may not seem, again, like a lot of
17 money to us, it may or may not, but to him, he has
18 this certain budget where he's paying for his
19 children, he's paying for this, you know, they're
20 taking the money out of his check and then somebody
21 comes and they steal \$600 and his furniture. So he
22 goes to his family. His mother died about a year
23 and a half ago. She has money and property and so
24 forth, and they just -- they basically don't help
25 him.

1 What I'm suggesting to you is, again, by no
2 means an excuse, but if you look at it, what you're
3 really seeing is something that is equivalent to,
4 like, somebody who just gives up. It's almost like
5 a depression where nobody's helping him, where
6 somebody has stolen from him, where he's got
7 nothing, all of a sudden it seems like nothing is
8 working. Now, again, that's not an excuse, but I'm
9 trying to tell you what I think may have happened in
10 this case.

11 Having said that, Your Honor, the State has
12 given a benefit to this defendant. He did assist
13 the State in trying to find the weapons and so
14 forth. He's willing to continue to assist the
15 State. And that's all I have, Your Honor.

16 **THE COURT:** Mr. Rogers, do you have anything
17 you want to add other than what you've stated?

18 **DEFENDANT:** No. I just want her to know I
19 really apologize for what I did.

20 **THE COURT:** Thank you, sir.

21 All right. I'm going to accept your plea as
22 knowingly, voluntarily and intelligently made with
23 the advice of counsel with whom you're well
24 satisfied, and find there is a substantial, factual
25 basis to your plea. In fact, you admitted the

1 factual basis behind the underlying charge. That
2 being said, the sentence of the Court will be 14
3 years. Good luck to you.

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5 END OF PROCEEDINGS
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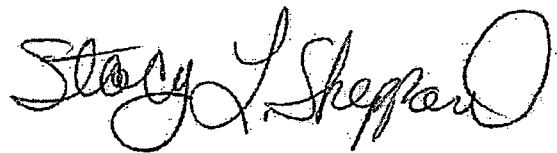
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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD

I, the undersigned, Stacy L. Sheppard, Circuit Court 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 Edgefield County, South Carolina, on the 5th of August, 2013.

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

February 9, 2014



Stacy L. Sheppard, RPR
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

EDGEFIELD COUNTY
CLERK OF COURT
SHERILY E. WETZEL
IN THE COURT OF COMMON PLEAS

County of EDGEFIELD

Julius L. Rogers # 247422
Full name and prison number (if any) of Applicant

2013 DEC 16

AN ID: 48

2013-CP-19-376

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 McCormick Corr. Inst. 386 Redemption way McCormick, SC 29899
2. Name and location of Court which imposed sentence General Sessions Edgetfield
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) 2013-GS-19-496 / Burglary 2nd degree
 - (b) _____

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Aug 5, 2013
 - (b) _____
 - (c) _____

- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO

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

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

i.	<u>N</u>	
ii.		
iii.		<u>A</u>

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

i.	<u>N</u>	
ii.		
iii.		<u>A</u>

- (c) the date of each such result:

i.	<u>N</u>	
ii.		
iii.		<u>A</u>

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

i.	<u>N</u>	
ii.		
iii.		<u>A</u>

- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) Counsel did not preserve any matters for appeal review
 - (b) _____

(c) _____

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

(a) Ineffective Assistance of counsel

(b) Guilty plea "was not" voluntary nor intelligently made

(c) _____

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

(a) SEE ATTACHED SHEETS ¹⁻⁶

(b) 6-9

(c) _____

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

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

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

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

(d) any other petitions, motions or applications in this or any other Court? None

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

(a) the specific nature thereof:

i. N

ii. _____

iii. _____

iv. A

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

i. NI

ii. _____

iii. _____

iv. _____

A

(c) the disposition thereof:

i.	N	
ii.		
iii.		
iv.		A

(d) the date of each such disposition:

i.	N	
ii.		
iii.		
iv.		A

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

i.	N	
ii.		
iii.		
iv.		A

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

NO

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

(a) which grounds have been presented:

i.	N	
ii.		
iii.		A

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

i.	N	
ii.		
iii.		A

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

- (a) See 10(2) Applicant first time presenting ground
- (b) " " (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? None
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? None
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? None

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. Michael Chesser
PO BOX 1018 - Aiken, SC 29802-1018
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Plea & Sentence
 - ii. _____
 - iii. _____

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

Any relief that I am entitled to, and any relief the court deems just and fair - but not limited to the above relief(s)

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

No

STATE OF SOUTH CAROLINA)
County of McCormick)

VERIFICATION

I, Julius Levered Roberts, 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.

Julius Roberts

SWORN to and subscribed before me this 5th day of December, 2013.

Penny G. Minton (L.S.)
Notary Public

My Commission Expires: Feb 28, 2018

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

I, Julius Leveane Rogers, 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.

Julius Leveane Rogers
Applicant

SWORN or affirmed to and subscribed before me this 5th day of December, _____.

Renny G. Minton
Notary Public

My Commission Expires: Feb 28, 2018

INEFFECTIVE ASSISTANCE OF COUNSEL

2013 DEC -6 AM 10:47

(1) Per. the Bill of Rights to the Federal

Constitution I was denied the right to effective assistance of counsel.

Thereby, my conviction, plea and sentence violates the Constitutions and laws of the United States, as guaranteed by the 6th and 14th Amendments of the U.S. and S.C. Const. - Article

I see 3 and sec 14; Strickland v

Washington 104 S.Ct. 2052 Also see

Hill v Lockhart 474 U.S. 52

I will clearly show prejudice, where there is a reasonable probability that but for counsel Michael Chesser

unprofessional errors, the result would have been different SEE: Porter v State 629 SE2d 356. Where MR. Chesser undermined the confidence in the outcome of my plea SEE: Hill v Lockhart 474 U.S. 52; Cherry v State 386 SE2d 624; Johnson v State 480 SE2d 733 and Butler v State 334 SE2d 813.

Here, MR. Chesser's acts and or omissions including but not limited to - failure to properly research and investigate the facts and laws surrounding the entitlement of my whole case SEE: Ard v Catoe 642

Pelzer v State 672 SE2d 790; Ray v State
401 SE2d 151

Counsel failed to inform me that if I would have went to trial upon the burglary first degree charge, the State could not have gotten a conviction where indictment did not have the aggravating circumstances to constitute a first degree burglary in my case..

Thus, the State could not have found me guilty beyond a reasonable doubt. Where the State was and would have also been required to prove "NIGHT TIME..." SEE: State v Stagers 525 SE2d 260 which states

that the early common law required that the hour of committing the crime be alleged in the indictment, the rule now, is that its not necessary in charging night burglary to aver the particular hour of the night, its sufficient to aver that the crime was committed in the nighttime. If a statute does not change the common law offense regarding the time of breaking and entering, an indictment MUST allege in express terms or otherwise show on its face that the breaking and entering were in the nighttime, which neither happen in my case
SEE: Also State v Thompson 6475E2d 702
(regarding the elements of first degree burglary)

Also see: State v James Lynch III
Op. No # 25281

(2) I further argue that counsel failed to properly research and investigate. How was the victim "Richard Dennis" tell "aunt" Sharon Wall was also a victim when her address on the supplemental incident report was a totally different address from the victim's address

Where the victim's was the only address on the warrant(s) and his name only appeared on the Indictment(s)

(3) Also counsel failed to properly research and investigate the inconstancy in the times... upon the pictures - surrounding the crime, being reported and what was actual stolen. And, the missing pictures from the camera during the time the Aunt said she left the home - came back and the victim coming home.

(4) Moreover, Counsel (s) never gave or went over my Rule (5) with me

GUILTY PLEA "WAS NOT" VOLUNTARY NOR INTELLIGENTLY MADE

(1) Not limited to.... the above arguments
I was not aware of the true consequences

quences of my plea, and my guilty plea was not voluntary nor intelligently made due to counsel's prejudicial errors.

I would not have pled guilty but would have insisted on going to trial.

SEE: Hill v Lockhart 474 U.S. 52;

Rolen v State 683 SE2d 471

(2) Further, I will prove by the preponderance of evidence my above issue, but not limited.... with the aid of appointed P.C.R. counsel SEE: Frasier

v State 570 SE2d 172; Also see S.C.

R. Civil P. Rule 71.1(d) and Rule 407

"Rules of Professional Conduct"

(3) Moreover, I argue that grounds set

out in my original application for PCR expressly or not argued, is subject to amendment(s) after appointment of PCR counsel per. SCR Civil P. Rule 71.1 (d) and S.C. Code Ann § 17-27-90

(4) Therefore, I argue that I am entitled to a FULL and FAIR evidentiary hearing to prove "any" and "all" my claims SEE: Odom v State 523 SE2d 753 and Sharper v State 305 SE2d 247.
Carter v State 495 SE2d 773

(5) Which I _____ move for an investigator per. 17-3-50 - 17-27-60 costs/fees to help find and locate my witnesses - to support my claim(s).
SEE: Pending motion for investigator costs

This issue/motion is to be immediately follow-up by appointed PCR counsel

And, to find my witnesses SEE: Glover v State 458 SE2d

538 and Bannister v State 509 SE2d 807.

NOTICE: I would also like to bring to this Hon. Court, opposing counsel and appointed P.C.R. counsel's attention, that I am also aware, that I am entitled to a ruling upon "all" issues, that is brought up during my P.C.R. hearing SEE: S.C. Code Ann 17-27-80: Marler v State 653 SE2d 266 Also see Bostick v Stevenson 589 F3d 164 .

Date: 12-05-13

Respectfully submitted
Spencer Roper

PROOF OF SERVICE

2013 DEC -6 AM 10:47

T Julius Lavigne Lopez certify that I have served my notice / motion for Inv. costs / fees and my application for PCR upon the below Hon. Clerk of Ct. By placing the above said into the Mc Carr. Inst. mail room on the 5th day of December 2013 to be placed in the U-S. mail with postage prepaid

Shirley F. Newby
Clerk of Ct. & R.M.C
PO Box 34
Edgetfield SC 29824

S Worn to before me
this 5th day of December, 2013 s/ ~~Shirley F. Newby~~

Penny G. Minton
Notary Public

my Commission Expires Feb 28, 2018

cc: personal file

CLERK OF COURT
JULIE E. REWIS

2013 DEC -6 AM 10:48

Date 12-05-13

Dear Hon. Clerk Hewby

Please find enclosed for filing my notice/motion for Inv. costs/fees and my application for PCR.

Would you be so kind as to forward the Admin Judge a copy of my motion for Inv. Costs.

And, the Atty Gen's Office --- and a copy of my P.C.R. - and me one back filed for my records.

Thanking you in advance, I am

cc: personal file

Sincerely
Julie Roggen

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD

IN THE COURT OF COMMON PLEAS

2013 DEC -6

2013-CP-19-376

Julius L. Rogers # 247422

Applicant
vs.

NOTICE AND MOTION
FOR COSTS / FEES

The State
Respondent

NOW COMES the above named Applicant who moves this Hon. Court in the above entitled matter per. SC Code Ann § 17-3-50 and 17-22 60 for an investigator to aid Applicant, appointed counsel to find and locate witnesses upon Applicant's case. SEE: Glover v State 458 SE2d 538; Bannister v State 309 SE2d 807.

Date: 12-05-13

Respectfully submitted
Julius L. Rogers

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF EDGEFIELD)	
)	Case No. 2013-CP-19-376
Julius L. Rogers,)	
S.C.D.C. No. 247422,)	
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
_____)		

Respondent, making its Return to the application for post-conviction relief filed on December 6, 2013 would respectfully show this Court:

I.

Attached herewith and incorporated herein are the records of the Edgefield County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Edgefield County Clerk of Court. Applicant was indicted by the Edgefield County Grand Jury for burglary, first-degree (2013-GS-19-496). Applicant was represented by Michael W. Chesser, Esq. On August 5, 2013, the State called its case. Applicant accepted the plea agreement and entered a guilty play to the lesser-included offense of burglary, second-degree. The Honorable R. Lawton McIntosh sentenced Applicant to a term fourteen (14) years imprisonment. Applicant did not appeal his guilty plea or sentence.

II.

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

1. Ineffective Assistance of Counsel:
 - a. "[counsel's] acts and or omissions including but not limited to – failure to properly research and investigate the facts and laws surrounding the entitlement of my whole case"
 - b. "[Applicant] would have went to trial upon the burglary first degree. The State could not have gotten a conviction where indictment did not have aggravating circumstances to constituet [sic] a first degree burglary in [Applicant's] case;"
 - c. "counsel failed to properly research and investigate how was the victim Richard Dennis Wall aunt Sharon Wall was also a victim where her address on the supplemental incident report was 140 Virgil Wall Rd. a totally different address;"
 - d. "counsel failed to investigate the inconstancy in the times... upon the pictures – surrounding the crime. Being reported and what was stolen. And, the missing pictures from the camera during the time the aunt said she left the home – came back the victim coming home;"
 - e. failure to review the State's discovery disclosures;
2. Involuntary Guilty Plea:
 - a. "[Applicant] was not aware of the true consequences my the plea:"

Any claims not specifically enumerated in the PCR application or amendments **not filed timely ten (10) days prior of the evidentiary hearing** will be opposed by the State, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. 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 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of

fact that the record does not conclusively refute. Accordingly, 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 also alleges that he did not plead guilty freely and voluntarily. The State submits this allegation has no merit. To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The State submits the transcript reflects that the pleas were knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Boykin, supra; Dover, supra. Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). The State submits Applicant should not be allowed to depart from the truth of the statements he made during his guilty plea hearing.

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's

errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Respondent submits that Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it should therefore, be treated as such.

V.

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

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. WALT WHITMIRE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

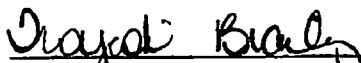
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	IN THE ELEVENTH CIRCUIT
COUNTY OF EDGEFIELD)	
)	
)	2013-CP-19-376
)	
JULIUS L. ROGERS)	
)	
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:

Elizabeth A. McLeod, Esq.
Post Office Box 1477
Augusta, GA 30903

DATED this 14th day of March, 2014.



 Troyeshi Brailey, Legal Assistant
 For Respondent

1 State of South Carolina)
 2 County of Edgefield)
 3)
 4 Julius L. Rogers,)
 5 Applicant,)
 6 vs.)
 7 State of South Carolina,)
 8 Respondent.)

In the Court
 Of Common Pleas
 Case No.: 2013-CP-19-376

Transcript of Record

9 April 23, 2015

10 Lexington, South Carolina

11
 12 BEFORE:

13
 14 The Honorable Brooks P. Goldsmith, Judge

15
 16 APPEARANCES:

17 Courtney C. Pope, Esquire
 18 Attorney for the Applicant

19
 20 Walt Whitmire, Assistant Attorney General
 21 Attorney for the Respondent

22 ALSO PRESENT:

23 Julius L. Rogers
 24
 25

1	INDEX			
2	WITNESS			PAGE
3	JULIUS L. ROGERS			
4	Direct Examination by Ms. Pope			9
5	Cross Examination by Mr. Whitmire			23
6	Redirect Examination by Ms. Pope			28
7				
8	MICHAEL W. CHESSER			
9	Direct Examination by Mr. Whitmire			29
10	Cross Examination by Ms. Pope			39
11	Redirect Examination by Mr. Whitmire			41
12				
13	RULING OF THE COURT			44
14				
15	Certificate of Reporter			45
16				
17				
18	EXHIBITS			
19	STATE'S			
20	NO.	DESCRIPTION	ID	EVDS.
21	1	Photo	34	39
22	2	Rogers Written Statement	34	39
23	3	Waiver of Rights	35	39
24				
25				

1 Whereupon, the following proceedings were had;

2 MR. WHITMIRE: Last case of the day, Your Honor.
3 Julius Rogers v. State of South Carolina.
4 2013-CP-19-376. Mr. Rogers was indicted for burglary in
5 the first degree in Edgefield County. He relatively soon
6 after entered a guilty plea pursuant to negotiations with
7 the State to a lesser included burglary second degree.
8 It's a case where all the evidence is pretty much
9 straight up. It's developed. It's identification.
10 Leads to a confession. Mr. Rogers' statements at the
11 plea is pretty telling, accepting of guilt, very candid.
12 Judge McIntosh in sentencing explained that you have
13 already gotten the benefit of getting this plea bargain
14 based on your extensive record. Mr. Rogers filed a
15 timely application for post conviction relief. He's
16 present and represented by Courtney Pope. This matter
17 was originally called last year to a PCR hearing and over
18 my objection continued so Mr. Rodgers could look into
19 more things and investigate a few things. All of his
20 allegations concern his attorney's performance in
21 investigating and evaluating the State's evidence ranging
22 from some of the actual deer camera stills to
23 supplemental reports and syntax errors. At this time I
24 turn matters over to Ms. Pope. I believe she has a
25 matter before Your Honor.

1 MS. POPE: May it please the Court, Your Honor. We
2 were here as Mr. Whitmire has said earlier in this year.
3 At that time we did receive a continuance so I could look
4 further into some matters with my client. Your Honor,
5 since that time has past my client has written both my
6 myself and I believe he wrote Mr. Whitmire or the
7 Attorney General's Office, I'm not quite sure, but he did
8 at a minimum write me and tell me that he wanted me to be
9 relieved as counsel. I did notify the Attorney General's
10 Office and was advised that he could do that once we were
11 present for the PCR hearing. Subsequent to that I did
12 meet with my client several times regarding this case in
13 preparation for this case. He did advise me at that
14 point that we would continue forward. He wanted me to
15 continue forward as his counsel. In speaking with my
16 client today he has expressed to me that he would like to
17 move forward with his motion for me to be relieved as PCR
18 counsel. If Your Honor would indulge him, I think that
19 he would like to go forward with that motion, Your
20 Honor.

21 THE COURT: All right. Be glad to hear from you
22 then, Mr. Rogers. Do you wish to give me the reasons why
23 you wish to have your attorney relieved?

24 MR. ROGERS: Yes, sir. At my PCR last year in April
25 after I came down -- Well, before that while in court I

1 stated that I needed witnesses, you know, to my case so
2 the judge granted me the continuance so my witnesses
3 could be subpoenaed other than Mr. Chesser. But today I
4 still don't have no witnesses in court. And also, right
5 after my PCR, the investigator on my case went back out
6 to my house, uhm, it was like witness intimidation, one
7 of my witnesses, and I wrote a complaint to the Edgefield
8 County Sheriff which he never responded back.

9 THE COURT: Help me understand something. You had
10 some witnesses that were supposed to be here today on
11 your behalf?

12 MR. ROGERS: In April of last year the judge give me
13 a continuance until - a continuance until, because my
14 next court date which was in October 2014 so I could get
15 my witnesses subpoenaed and be in court with them. So
16 October came. One of the lawyers wasn't present so they
17 postponed it until mid December which I knew I wasn't
18 coming to court mid December because it was around
19 Christmas time, and so January this year, January 8th
20 this year, she came, my lawyer came and she was like I
21 was going on the 12th but for some reason I didn't go on
22 the 12th so now I'm here now so I still don't know
23 because my witnesses is still not here.

24 THE COURT: Did you tell your lawyer that you wanted
25 some witnesses here?

1 MR. ROGERS: The judge, that was the reason for
2 getting the continuance to the next time from April so
3 she could subpoena my witnesses.

4 MR. WHITMIRE: Your Honor, if I may be heard briefly
5 and put something on the record? The judge continued the
6 case because the first time it was called and at
7 Mr. Rogers insistence Ms. Pope did so to further
8 investigate. There was no contingency in that
9 continuance upon actual subpoena. No witnesses were ever
10 named. He's made an allegation that some investigator
11 has intimidated his witnesses. I have no knowledge of
12 any of that. This case itself is pretty simple. All of
13 the discovery disclosure, everything is right here. Mr.
14 Chesser has provided me and his attorney a copy of all of
15 this. This is the first time I am hearing of any of
16 this. I would say it's not grounds for further
17 continuance and if he does wish to have Ms. Pope
18 relieved, the State would insist on going forward today
19 with Mr. Rogers pro-se.

20 THE COURT: Mr. Rogers, in 25 words or less tell me
21 what your witnesses would be testifying to if they were
22 here.

23 MR. ROGERS: Yes, sir. This also, this is a motion
24 I wrote to the Clerk of Court about that situation after
25 April. I also when I did my PCR, I asked for an

1 investigator for my case as far as a lot of the items
2 that they have on the list was stolen from the house. It
3 wasn't stolen. So I asked the court to give me an
4 investigator to investigate that. The court was supposed
5 to have paid for it when I did my PCR. Also, about the
6 plea deals and stuff with the Solicitor, Ervin Maye,
7 Investigator Ireland, the arresting officer on my case,
8 about the promise of a deal, Gregory Seigler, he known
9 about the deal. Mr. Chesser, I have in here for
10 ineffective assistance of counsel. And then it was Mr.
11 Lamar Robinson, I helped him with a case and he was
12 supposed to help me with my case which he didn't and they
13 took a statement from me at the courthouse and when I got
14 my, all my stuff in the Clerk of Court, I never got my
15 statement back and I had sent him - I had a four page
16 letter sent to him, taken to him and when I got the
17 letter back, it was only three pages.

18 THE COURT: Let me interrupt you just for a minute,
19 Mr. Rogers. I need for you to tell me specifically
20 though why you wish for Ms. Pope to be relieved as your
21 attorney.

22 MR. ROGERS: Because, Your Honor, the only people,
23 the only person knew about my case, about my witnesses
24 was, you know, dealing with my case was my lawyer. Right
25 after my case, like I said, after I left here April, I

1 think it was like a week or two later Investigator
2 Ireland, the investigator from the prison Charlie Cox and
3 some more Columbia police went back out to my house and
4 since then Lamar Robinson Investigator, he's been back to
5 my witness, too, since my PCR hearing which he was
6 supposed to have been here. He was supposed to have been
7 subpoenaed, too, and he is not here either.

8 THE COURT: All right. Mr. Rogers, I understand.
9 I'm going to deny your motion to have your attorney
10 relieved. Ms. Pope, are you ready to proceed?

11 MS. POPE: I am ready to proceed, Your Honor.

12 THE COURT: All right.

13 MS. POPE: Your Honor, I would like to call -- Just
14 to give a summary of the case, Mr. Rogers did take a plea
15 in 2013. His allegations do include that he had
16 ineffective assistance of counsel during that time by
17 Mr. Michael Chesser. He also states that he did not take
18 his plea voluntarily. Your Honor, if I may call my first
19 witness Mr. Julius Rogers to the stand.

20 THE COURT: All right.

21 Thereupon,

22 JULIUS ROGERS
23 after having been first duly sworn, testified as follows,

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

1 THE WITNESS: Julius Rogers.

2 DIRECT EXAMINATION

3 BY MS. POPE:

4 Q. Mr. Rogers, can you tell me where you are currently
5 housed now?

6 A. McCormick Correctional Institution.

7 Q. Thank you, Mr. Rogers. Back in 2013 you pled to a
8 burglary first; is that correct?

9 A. Yes, ma'am.

10 Q. Well, you were charged with a burglary first; is
11 that correct?

12 A. Yes, ma'am.

13 Q. Who was your attorney when you first began that
14 case?

15 A. Gregory Seigler.

16 Q. Okay. Now, what was the date of your court
17 hearing?

18 A. August 5th.

19 Q. August 5th of 2013?

20 A. 2013.

21 Q. Yes. 2013?

22 A. 2013.

23 Q. Thank you. When you arrived to court that day, can
24 you tell me what happened?

25 A. Well, they had me in the holding cell and --

1 MS. POPE: Your Honor, may I approach? I'm sorry.

2 THE COURT: Sure.

3 BY MS. POPE:

4 Q. Can you again tell me what happened the day of your
5 plea?

6 A. Yeah. Could I, Your Honor?

7 BY MS. POPE:

8 Q. Mr. Rogers?

9 A. Ma'am.

10 Q. Can you tell me what happened the day of your
11 plea?

12 A. I was sitting in a holding cell in the courtroom and
13 they called me out. I was thinking I was going in front of
14 the judge then, but Mr. Chesser was standing at the door and
15 told me that he was hired to, uhm, represent me in court.

16 Q. Thank you. Is that your first time meeting
17 Mr. Chesser?

18 A. Yes, ma'am.

19 Q. You had not been aware before that date that he was
20 your appointed attorney?

21 A. No, ma'am.

22 Q. Okay. To your knowledge Mr. Seigler was your
23 appointed attorney?

24 A. Yes, ma'am.

25 Q. Did you have a chance to speak with Mr. Chesser?

1 A. Right after he told me that he was appointed to my
2 case.

3 Q. How long were you able to speak with Mr. Chesser?

4 A. Probably about at first - at first we went into a
5 room and he told me who he was, where he was from. He was
6 appointed to represent me at my court case and so he asked me
7 how was my record and before I could tell him, he said hold
8 on. He said he would go outside and get it from Investigator
9 Ireland.

10 Q. Let me stop you right there. That conversation was
11 roughly how many minutes?

12 A. Just a couple of seconds.

13 Q. So maybe two or three minutes?

14 A. Yeah, two or three minutes.

15 Q. Okay. Thank you. Please continue.

16 A. Yeah. So he left me in the room, went out and he
17 came back in. So when he come back in, he told me he was
18 like, uhm, he said a deal - a deal was that they had, the
19 State had -- No. He told me, he say normally when he take a
20 new case, he said that he would normally take three months to
21 investigate the case and then he told me, he said that the
22 deal that they offered was zero to 15.

23 Q. Okay. Let me ask you about that deal.

24 A. Mm-hmm.

25 Q. Okay. I want to clarify some things for the judge.

1 A. Mm-hmm.

2 Q. All right. And the first thing that I want to
3 clarify is that when you went to court that day, were you
4 expecting to take a plea?

5 A. Yes.

6 Q. You were expecting to enter into a guilty plea; is
7 that correct?

8 A. Yeah.

9 Q. And Mr. Seigler was aware that you were going to
10 enter into a guilty plea; is that correct?

11 A. Yes, ma'am.

12 Q. Prior to that, did you speak with any
13 investigators?

14 A. I spoke to Investigator Ireland when I first got
15 locked up.

16 Q. Okay. When you were first arrested, you spoke with
17 Investigator Ireland; is that correct?

18 A. Yes, ma'am.

19 Q. And you gave him some information about this
20 particular burglary; is that correct?

21 A. Yes, ma'am.

22 Q. Did you admit to participating in the burglary?

23 A. At first no, but then he told me that, uhm, he had
24 five pictures of me at the scene so then he told me to help
25 him get the stuff back.

1 Q. When you say he, you're speaking about Investigator
2 Ireland; is that correct?

3 A. Yes, ma'am.

4 Q. So you began to cooperate with Investigator
5 Ireland?

6 A. Yes, ma'am.

7 Q. Okay. Why did you cooperate with Investigator
8 Ireland?

9 A. Because he told me that the Wahl family was a good
10 Christian family and all they wanted was their stuff back. He
11 told me that if I helped him get the property back, that he
12 would talk to the Solicitor and try to help me get five years.
13 Well, he said he would talk to him to get five years.
14 Whatever time I got on my first degree burglary, they would
15 drop it down to a second degree and whatever time I got on the
16 second degree burglary would be suspended to five years, five
17 years suspended to probation and restitution.

18 Q. So let me just clarify that. In speaking with
19 Investigator Ireland it was your understanding that you would
20 receive a burglary second nonviolent and would receive five
21 years suspended to a probationary period?

22 A. Plus drop the grand larceny charge which they did
23 drop it.

24 Q. Yes, sir. But that was your understanding that you
25 would receive some type of probationary period?

1 A. Yes, ma'am.

2 Q. From Investigator Ireland?

3 A. Yes, ma'am.

4 Q. Again is that why you agreed to cooperate with the
5 State?

6 A. Yes, ma'am.

7 Q. Okay. Now, was Mr. Seigler aware of your
8 cooperation?

9 A. Yes, ma'am.

10 Q. You gave a confession?

11 A. Yes.

12 Q. You gave a confession; is that correct?

13 A. Yes, ma'am.

14 Q. Okay. When Mr. Chesser introduced himself to you,
15 did you make him aware of your communication with Investigator
16 Ireland?

17 A. Yes, ma'am.

18 Q. You told him that Investigator Ireland said he would
19 try to get you a five year probationary period?

20 A. Yes, ma'am.

21 Q. What did Mr. Chesser tell you?

22 A. Well, he told me that he would - he would go back
23 out there and talk to Investigator Ireland.

24 Q. Okay. To your knowledge did he speak with
25 Investigator Ireland?

1 A. I don't know because after - after I spoke with him,
2 uhm, they put me back in the holding cell and I was waiting
3 for his response, but that's when Investigator Lamar Robinson
4 came and got me up and took me in the back to talk to me.

5 Q. Okay. And we'll address that as well. To your
6 knowledge did Mr. Chesser speak with the Solicitor?

7 A. Not that I know of.

8 Q. Okay. After you were in that holding cell and
9 Mr. Chesser came back to consult with you, can you tell me
10 what happened at that point?

11 A. Well, Mr. Chesser after I talked to him the first
12 time in the courtroom, I didn't talk to him again because they
13 put me back in the holding cell and then, uhm, when I got
14 called out again, they took me inside the courtroom.

15 Q. Mr. Rogers, before you went to the courtroom and
16 took your plea and stood before the judge, how long did you
17 speak with Mr. Chesser?

18 A. Probably about ten minutes.

19 Q. Did you ask Mr. Chesser about your plea deal?

20 A. I know at first when I spoke with him, he did come
21 back and he told me he was like, uhm, the deal was on the
22 table, but he said that I couldn't say nothing about it in
23 open court in front of the family. If I did, then the deal
24 was off.

25 Q. What deal was he referring to?

1 A. About the five years probation and restitution.

2 Q. Okay. Now, you did mention in your prior testimony
3 that you spoke with Investigator Robinson. Who is
4 Investigator Robinson?

5 A. Investigator Robinson is the person that I was
6 helping with another case.

7 Q. Okay. To clarify for the judge, you were in your
8 holding cell and before you took your plea you did speak with
9 Mr. Robinson again; is that correct?

10 A. Yes, ma'am. That's my first time to talk with
11 Investigator Robinson when he came and got me out of the
12 holding cell.

13 Q. Why did you speak with Investigator Robinson?

14 A. Because it was information of another, it was a home
15 invasion or either a burglary of this older fellow.

16 Q. And you had knowledge of that burglary?

17 A. Yes. I overheard conversation.

18 Q. Okay. And you were going to help the State in the
19 prosecution of the defendants in that burglary?

20 A. Yes, ma'am.

21 Q. Okay. What did Investigator Robinson tell you?

22 MR. WHITMIRE: Objection. Hearsay and relevance.

23 THE COURT: Sustained.

24 MS. POPE: Okay. Let's move forward. I want to
25 give you a copy of the transcript.

1 MR. WHITMIRE: It's in the record.

2 BY MS. POPE:

3 Q. I want to give you a copy of the transcript. Is
4 that a copy of your transcript from August the 5th, 2013?

5 A. Yes, ma'am.

6 Q. Okay. Is that when you took your plea?

7 A. Yes, ma'am.

8 Q. Okay. Can you look on page 8 of that transcript.
9 Is that what page you're looking at?

10 A. Yes, ma'am.

11 MS. POPE: Okay. May I approach, Your Honor?

12 THE COURT: Sure.

13 MS. POPE: I'm sorry. I didn't ask before.

14 BY MS. POPE:

15 Q. During this line of questioning that begins on page
16 8, the judge is asking you if you are pleading guilty freely
17 and voluntarily; is that correct?

18 A. Yes, ma'am.

19 Q. What did you answer to that? It's line 8.

20 A. "Yes, sir."

21 Q. And you answered yes to your right that you
22 understood you had a right to jury trial; is that correct?

23 A. Yes, ma'am.

24 Q. And also he's going through a line of questioning
25 and he's asking you if you understand everything that he's

1 saying and if you are willing to give up your rights to a jury
2 trial; is that correct?

3 A. Yes, ma'am.

4 Q. And you were saying to the judge, yes, sir; is that
5 correct?

6 A. Yes.

7 Q. Okay. And you were telling the judge that you want
8 to plead guilty; is that correct?

9 A. Yes, ma'am.

10 Q. And it continues on to page 9 where he explains you
11 have the right to confront your witnesses; is that correct?

12 A. Yes, ma'am.

13 Q. Okay. And that questioning continues through page
14 10; is that correct?

15 A. Yes, ma'am.

16 Q. Now, during those questions you did say yes, sir, to
17 the judge that you understood and you were willing to go
18 forward; is that correct?

19 A. Yes, ma'am.

20 Q. Mr. Rogers, can you explain to me and to the judge
21 why you answered those questions correctly that you were
22 willing to go forward at that time?

23 A. Because I was still thinking that they was gonna
24 still give me the deal that was promised.

25 Q. Okay. Now, at some point during that questioning

1 did the judge ask you if you had any questions for your
2 attorney?

3 A. Yes, ma'am.

4 Q. Did you have a question for your attorney?

5 A. Yes, ma'am.

6 Q. Did you pause and ask your attorney questions?

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

8 Q. Can you tell me what you asked your attorney at that
9 time?

10 A. I asked him was everything still be the same. Was
11 they still gonna honor the deal.

12 Q. What did your attorney tell you?

13 A. He told me yes. But like I said, he told me, he say
14 I couldn't say anything in open court. If I said anything in
15 open court, then the deal was off.

16 Q. He said that at that time?

17 A. Yes.

18 Q. And subsequent to, after that, the judge asked you
19 if you wanted to go forward; is that correct?

20 A. Yes, ma'am.

21 Q. And you told him yes?

22 A. Yes.

23 Q. Were you satisfied with what your attorney had told
24 you at that point?

25 A. Yeah. I thought the deal was still the same.

1 Q. And your impression of the deal is what?

2 A. That I would get the five years probation and
3 restitution.

4 Q. The judge also asked you if you were satisfied with
5 the services of your attorney; is that correct?

6 A. Yes, ma'am.

7 Q. And you told him yes?

8 A. Yes.

9 Q. Were you satisfied with his services at that
10 point?

11 A. Yes, ma'am.

12 Q. Okay. You gave an extensive testimony during your
13 plea; is that correct?

14 A. Yes, ma'am.

15 Q. Okay. And you did admit to wrongdoing; is that
16 correct?

17 A. Yes, ma'am. And I also, when I spoke with
18 Investigator Ireland, I also told him, you know, I admitted to
19 it, you know, after he told me he had pictures and stuff and I
20 wrote --

21 MR. WHITMIRE: Objection. Hearsay.

22 THE COURT: Sustained.

23 BY MS. POPE:

24 Q. Mr. Rogers, after the plea, did you speak with
25 Mr. Chesser?

1 A. Yes, ma'am.

2 Q. What was your conversation after you had taken the
3 plea, Mr. Rogers?

4 A. I asked him what happened and he told me that
5 matters could have been, he said things could have been
6 worse.

7 Q. Did you ask -- Did Mr. Chesser inform you that you
8 could appeal your plea?

9 A. No, ma'am.

10 Q. Did you file an appeal for your plea?

11 A. No, ma'am.

12 Q. Did Mr. Chesser offer to file a motion to reduce
13 your sentence?

14 A. No, ma'am.

15 Q. Did you file a motion to reduce your sentence?

16 A. I didn't know I could.

17 Q. Did you receive -- Excuse me. You pled to a violent
18 offense; is that correct?

19 A. Yes, ma'am. I thought it was gonna be non violent
20 though.

21 Q. So you were not aware that this would be a violent
22 offense?

23 A. No, ma'am. Because when I, uhm, when Gregory
24 Seigler, my lawyer Gregory Seigler brought the sentencing
25 sheet, there was nothing on it. It just had, uhm, lesser

1 offense, uhm, checked and there wasn't no time or anything on
2 it.

3 Q. Okay. Did Mr. Chesser explain to you that this was
4 a violent charge that you were pleading to?

5 A. No, ma'am, because I thought it was non violent.

6 Q. Mr. Rogers, is there anything that you would like to
7 tell the judge in regards to your PCR?

8 A. Well, I wouldn't -- I didn't -- I didn't come back
9 for a new trail. I just came back because I relied on
10 Investigator Ireland promise, you know, with the probation and
11 stuff.

12 Q. Okay. So it's your testimony that you don't want a
13 new trial, you would just like a new plea?

14 A. I was just - just in reliance. I relied on him, you
15 know, with the promise that he made.

16 Q. Okay. Mr. Rogers, do you understand that if you are
17 granted the PCR, you may receive a new trial? Did you and I
18 speak about that?

19 A. Yes, ma'am.

20 Q. And still knowing that, you still wanted to go
21 forward with your PCR; is that correct?

22 A. Yes, ma'am.

23 MS. POPE: Please answer any questions that the
24 Attorney General has for you.

25 THE COURT: Mr. Whitmire.

1 MR. WHITMIRE: May it please the Court.

2 CROSS EXAMINATION

3 BY MR. WHITMIRE:

4 Q. Just a few questions for you, Mr. Rogers. It's my
5 understanding that you just testified that you were instructed
6 by your attorney and investigators to not say anything about
7 this promised five year sentence; is that correct?

8 A. It wasn't an investigator. It was Mr. Chesser.

9 Q. You were instructed?

10 A. Yeah.

11 Q. And that's the reason that you didn't say anything
12 to Judge McIntosh?

13 A. No. Because he said if I did, all the deal was
14 off.

15 Q. Now, this isn't your first guilty plea hearing, is
16 it?

17 A. No, sir.

18 Q. I believe in 1998 you pled guilty to a string of
19 burglary seconds and burglary thirds, correct?

20 A. Yes, sir.

21 Q. Out of Dillon?

22 A. Yes, sir.

23 Q. Who was your attorney, if you remember?

24 A. I think LaVonda Grant.

25 Q. Do you remember the judge that you pled guilty in

1 front of?

2 A. No, sir.

3 Q. Now, in 2005 you got some more Dillon guilty pleas.
4 Do you remember anything about those?

5 A. I do.

6 Q. The plea hearing, the judge, do you remember
7 anything about that?

8 A. I can't remember.

9 Q. What about 2007 in Marlboro, again some more
10 burglaries and some larcenies?

11 A. Judge Cottingham.

12 Q. Judge Cottingham. At any point in your prior
13 experience in pleading guilty and getting your cases over
14 with, did any of your attorneys tell you that it's okay to
15 keep things off the record and not tell the judge about it?

16 A. No. They never did because if somebody made a
17 promise, the investigator or the arresting officer made a
18 promise, they always kept their word.

19 Q. But they put those promises on the record, right?
20 They told the judge you're getting a plea offer for something
21 you did and the help?

22 A. No, sir.

23 Q. So in all your experience all this stuff is done off
24 the record and it's just a formality, the questions the judge
25 asks you?

1 A. They say they talk to, uhm, they talk to the
2 Solicitor.

3 Q. I recall you said you wanted an appeal in this
4 case?

5 A. No, sir. I was just trying to get, like I said, the
6 promise that Investigator Ireland made because when actually
7 the statement, I wrote a statement because I explained to him
8 what I was going through and the reason why I did it is
9 because I did have a job, you know, and I explained to him why
10 I did it. And I wrote the statement. I have the statement,
11 you know, pertaining to that.

12 Q. You shared all of these concerns with Mr. Chesser
13 before the plea?

14 A. I didn't have time.

15 Q. I recall you just testified that you told him that
16 you were promised --

17 A. I told him that, yeah, but the statement and all the
18 other stuff I didn't get a chance to tell him.

19 Q. So he let you plead guilty without all those
20 important details?

21 A. Like I said, Mr. Chesser told me normally he take 90
22 days to investigate once he get a new case and he was
23 appointed to me the same day I went to court. I never spoke
24 with him till that day.

25 Q. But you knew that you were showing up to plead

1 guilty that day, correct?

2 A. (Witness nodding head.)

3 Q. Did you stop and say I want to think about this for
4 a few weeks?

5 A. He told me, Mr. Chesser told me, he said that if I
6 didn't take the plea, then if he take 90 - if he take three
7 months and then bring me back to court, he say the deal that
8 was on the table wouldn't be there no more and then I'd be
9 facing a life sentence.

10 Q. He was your second attorney?

11 A. Mm-hmm. Because all I had -- I had Greg Seigler
12 from the time I got locked - from - Let's see. I got locked
13 up July 1st, 2013. My first time seeing Greg Seigler was July
14 30th, 2013 and the second time was in the same -- No. It was
15 July. What it was? No. August when he came back with a plea
16 deal and after that I didn't see him no more.

17 Q. Have you ever filed a PCR before?

18 A. No, sir.

19 Q. This is your first one?

20 A. Yes, sir.

21 Q. At no point from 1998 up until the date of this plea
22 you ever had an issue with your attorneys?

23 A. No, sir.

24 Q. Did anything strike you odd about Mr. Chesser when
25 he took over the case? Did you get a bad feeling?

1 A. He didn't explain why he took over the case.

2 Q. Why didn't you tell the judge all this when you had
3 the opportunity to at the plea hearing and let him know?

4 A. Because I didn't know what would happen, if the
5 State was still gonna do the same thing because like I say, he
6 told me, he said if I didn't take - if I didn't plead to the
7 zero to 15, then if he bring me back in three months, he said
8 the deal was off the table and, uhm, I would be facing a life
9 sentence so I'm thinking anything I got between the zero to 15
10 would be suspended to probation and restitution like it was
11 promised.

12 Q. So you thought you were getting -- I just want to
13 make this clear. You thought you were getting probation?

14 A. Yes, sir.

15 Q. Did you sign any sentencing sheets before
16 entering?

17 A. Like I said, the sentencing sheet that Greg Seigler
18 brought to me, it had only, uhm, my name, some more stuff,
19 uhm, less, what it was, lesser offense.

20 Q. I'm interested in that more stuff part.

21 A. Mm-hmm.

22 Q. When you pled guilty before, did you plead guilty to
23 negotiated sentences or without recommendation if you can
24 remember and recall?

25 A. Without recommendation.

1 Q. You didn't have a recommendation in this case, did
2 you?

3 A. Sir?

4 Q. You didn't have a recommendation in this case, not
5 on the sheet, did you?

6 A. I can't remember.

7 MR. WHITMIRE: No further questions.

8 THE COURT: Redirect.

9 MS. POPE: Just briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MS. POPE:

12 Q. Mr. Rogers, you just testified and I just want to be
13 clear on your testimony, you testified that you have had some
14 issues before with the law; is that correct?

15 A. Yes, ma'am.

16 Q. You have had different attorneys; is that correct?

17 A. Yes, ma'am.

18 Q. You have never PCR'd?

19 A. Well, actually from - from like early on, my teenage
20 years, it always been the same attorney. It was never a
21 different attorney.

22 Q. Sure. Okay. But did you PCR that attorney?

23 A. No.

24 Q. Okay.

25 A. I didn't know - I didn't -- You know, I was young.

1 I didn't know nothing about PCR's or anything at the time.

2 Q. Well, my question is, you did not - you don't have a
3 history of frivolous PCR's, do you?

4 A. No, ma'am.

5 Q. And you are filing this because you do truly believe
6 there is an ineffective assistance of counsel; is that
7 correct?

8 A. Yes, ma'am.

9 MS. POPE: Those are all the questions that I have,
10 Your Honor.

11 THE COURT: Thank you. You may step down. Anything
12 else from the applicant?

13 MS. POPE: No, Your Honor.

14 THE COURT: Applicant rests. Mr. Whitmire.

15 MR. WHITMIRE: The State calls Mr. Chesser to the
16 stand, please.

17 Thereupon,

18 MICHAEL W. CHESSER

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

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

22 THE WITNESS: Michael Chesser.

23 DIRECT EXAMINATION

24 BY MR. WHITMIRE:

25 Q. Good afternoon, Mr. Chesser. How long have you

1 practiced law?

2 A. 25 years.

3 Q. Primary area of practice?

4 A. Criminal defense.

5 Q. Do you recall your representation in this case?

6 A. Yes.

7 Q. A chance to review your file?

8 A. Yes.

9 Q. Do you recall the circumstances as the case stood
10 when you were substituted on it?

11 A. Well, this is Edgefield and in Edgefield they have
12 court, at that time they were having it about once every three
13 months. Seems like we have it more often here. But I mean
14 now. But in any event it's about once every three months and
15 so the term of court there, I went up there. I was appointed
16 to represent Mr. Rogers and court was in process. It's a duly
17 appointment while they have court and so what that means is
18 either you do what you are going to do then or you wait three
19 months to do it. This case was - when I got there, Mr. Rogers
20 up to that point had been represented by the what they call
21 the tri-county public defender Greg Seigler and the case was,
22 in fact, I would say pretty much worked out.

23 Uhm, it was, he was charged with burglary first, of
24 course, which carries 15 to life with no parole, and he had a
25 significant prior record and I would say that there was pretty

1 much overwhelming proof. These people had some deer cameras
2 which I'm really not familiar with, but they are like cameras
3 that they have out in their yard and they took some just
4 amazing photographs that you would not want if you were
5 defending a case. One of them, for example, just shows
6 Mr. Rogers virtually a close up and he's got two or three
7 rifles, long rifles on his back. And then you had, of course,
8 he had given a statement to law enforcement so on and so forth
9 so he had a case where there was overwhelming evidence or I
10 would submit there was and the case was handled by Donnie
11 Myers who is the actual Solicitor for the Eleventh Circuit so
12 he was up there and so I get there and they, in fact, in the
13 materials that I was given they actually had a sentencing
14 sheet that had already been signed by Mr. Rogers and
15 Mr. Seigler.

16 Q. If we could back up for a second. What were the
17 circumstances that lead to Mr. Seigler getting off this
18 case?

19 A. That, you know, I don't know what his conflict was.
20 I mean, they told me there was a conflict and I just looked at
21 it and said this is my case and so as far as what his conflict
22 was actually I don't know.

23 Q. Did you have a chance to meet with Mr. Seigler and
24 review his file?

25 A. Well, I certainly had a chance. I was given the

1 file, that is a copy of the discovery and his notes and so on
2 so and then I normally would discuss the case with him. I
3 can't say that I remember specifically but normally up there
4 is a very small area where you have and you have the Public
5 Defender whose office is right there with the prosecutors and
6 there's almost a common room and so you're running into
7 everybody. You're running into the investigators. You're
8 running into the Solicitors. The Public Defender. And so I
9 would say this, that I'm sure I discussed the case with
10 Mr. Seigler and he just simply explained, would have explained
11 that it was a burglary first; that they're offering a burglary
12 second violent. And again the paperwork that he gave me
13 that's in my file which is not signed by me is the sentencing
14 sheet with his signature, Mr. Rogers, and it indicates a plead
15 to burglary second violent with no negotiations.

16 I would just say that as far as Mr. Rogers saying
17 that there was some deal or something, there wasn't a deal.
18 And in addition, I would just say --

19 Q. I would like to back up on that just for the record
20 and I'm sorry to interrupt you. You reviewed Mr. Seigler's
21 notes in the file?

22 A. Yeah.

23 Q. Had you seen that there was some deal or something
24 that didn't compute with what you knew the ultimate deal to
25 be, what would you have done?

1 A. Certainly I would have asked him about it or I would
2 taken it into account or I would have confirmed that there was
3 a deal, but actually it's very clear in my memory, I mean, I
4 was talking to Donnie Myers and like I said, I'm sure I talked
5 to Greg Seigler, but there was just never any deal. The idea
6 was that he was pleading. He was in a very vulnerable
7 situation with a burglary first with a significant prior
8 record and a lot of proof and the way that it's presented up
9 there, particularly by Mr. Myers is if you don't take this
10 deal, we're offering you this deal, we want to move this case,
11 if you choose not to move it, then as Mr. Rogers indicated,
12 this deal would not be there the next term of court.

13 So actually to me a burglary second violent is not a
14 great charge to plead to, but it is much better than burglary
15 first and so under the circumstances it was apparent to me
16 that it was a reasonable plea deal and it was something that
17 it behooved Mr. Rogers to take advantage of and we talked
18 about that. It's really fairly simple. You got 15 to life.
19 They're talking about taking away this offer of letting you
20 plead to this lesser included offense, lesser included zero to
21 15 and we had these discussions and I would say this, I wasn't
22 happy with the sentence because it was 14 of the 15, but I
23 wasn't surprised. I mean, I knew that could happen and we did
24 have a discussion after and I just told him that it would be
25 much worse if he had been subject to an actual burglary first

1 charge.

2 Q. Did you have a chance to review the State's
3 discovery and disclosure in this case?

4 A. Yes.

5 Q. Was it extensive?

6 A. Well, I wouldn't say it was extensive, but it was
7 significant. It was more than in a lot of cases.

8 Q. 30 or 40 pages; am I correct?

9 A. Right.

10 Q. Did you have a chance to review all that and
11 independently evaluate it before bringing Mr. Rogers in front
12 of a judge to plea?

13 A. Yes.

14 MR. WHITMIRE: May I approach, Your Honor.

15 THE COURT: Sure.

16 (Whereupon, State's exhibits 1 and 2 marked for
17 identification.)

18 BY MR. WHITMIRE:

19 Q. Mr. Chesser, I'm showing you State's exhibit 1 and
20 State's exhibit 2. Do you recognize these documents?

21 A. Yes.

22 Q. What is State's exhibit 1?

23 A. 1 is a picture that I was referring to which is a
24 picture that was as I understand taken by a deer camera and
25 the lady, as I recall it was a lady whose house was

1 burglarized had just set up, happened to set up these system
2 of deer cameras and I'm not sure for what purpose. I assume
3 it had something do with wildlife. It's motion activated and
4 it ended up taking a picture of Mr. Rogers and this State's
5 exhibit 1 is the picture I would say of the perpetrator of
6 this crime carrying some weapons away from the house that was
7 taken by the deer camera. And then State's exhibit number 2
8 is Mr. Rogers' written statement to law enforcement.

9 Q. This is all part of the discovery file that you got
10 from the original attorney's file?

11 A. Yes.

12 MR. WHITMIRE: Just one more, Your Honor. State's
13 exhibit number 3, waiver of rights.

14 (Whereupon, State's Exhibit #3 marked for
15 Identification.)

16 BY MR. WHITMIRE:

17 Q. And this is --

18 A. This is actually Mr. Rogers explanation to
19 Mr. Seigler more or less is what it is.

20 MR. WHITMIRE: As I have just realized that. May I
21 approach, Your Honor?

22 THE COURT: Yes.

23 BY MR. WHITMIRE:

24 Q. Mr. Chesser, I'm handing you what's marked as
25 State's exhibit 3. Do you recognize this one?

1 A. Yes.

2 Q. What is that?

3 A. This is a statement that Mr. Rogers made actually to
4 law enforcement to Investigator Ireland.

5 Q. After reviewing the State's evidence in its
6 entirety, were you able to have a discussion with Mr. Rogers
7 on his desire to plead guilty?

8 A. Yes.

9 Q. In your practice would you have represented him at a
10 guilty plea had you not had an opportunity to review that
11 entire file?

12 A. No.

13 Q. Mr. Chesser, can you describe your general practice
14 on advising clients of their rights and consequences of
15 entering a guilty plea?

16 A. Well, of course, it's important that they understand
17 the penalties that they're facing. In other words, if they're
18 pleading to burglary second violent, I would explain to them
19 that you have a delayed max out date, delayed eligibility for
20 parole. I think your parole is reviewed every two years
21 instead of one year. Particularly I would explain that to
22 them, what they're facing in terms of the sentence and
23 sometimes collateral consequences like if it's an 85 percent
24 type of plea or what have you. This is, of course, violent is
25 not 85 percent, but it's one where you are restricted in your

1 ability to do work release, things of that nature so typically
2 your max out date is longer than it is on the lowest type of
3 offenses. But that's one thing.

4 And then the other thing, of course, they're asking
5 about in the plea which I generally talk about is simply their
6 right to a jury trial. A jury trial being 12 people. The
7 State has to prove the elements of the case beyond a
8 reasonable doubt and I usually explain that to them, talk
9 about their right to testify, the rights that they're giving
10 up.

11 And then, of course, we talk about any benefits that
12 you get from a plea and in this case again the benefit is very
13 significant. For example, if he had pled to burglary first
14 and got the lowest sentence which, of course, is not
15 necessarily likely, but if he had, he would essentially do
16 about twice as much time as he's ended up doing on this
17 burglary second plea. But the idea is to explain to them the
18 benefit, the advantages or disadvantages I suppose of what
19 they're actually doing.

20 Q. In your discussions leading up to that plea was
21 there anything different from his point of view in comparison
22 to Mr. Seigler's notes and what was in the file regarding
23 specifically the plea negotiations?

24 A. The plea deal we had was exactly the plea that they
25 had. I would say based on this signed plea agreement which

1 indicates it was a violent plea to a burglary second the only
2 difference is that this plea agreement that I inherited so to
3 speak, excuse me, it's a sentencing sheet which is signed by
4 Mr. Rogers and Greg Seigler indicates, the only difference is
5 that it says it's going to be concurrent with some of the
6 charge and in our case we just for - there was no aspect of
7 being concurrent to a 13-GS-19-456 so we struck that out. I
8 don't recall the significance of that. But that was the
9 difference.

10 Q. Did he ever tell you that he had been promised a
11 probationary sentence or a five year sentence?

12 A. No. And I really -- I just think that is almost
13 ridiculous. I mean, it could not have happened in a plea that
14 I would do or for that matter I just can't believe Mr. Rogers
15 would do that. I mean, that just had nothing to do with
16 reality.

17 Q. Based on your late arrival on this case, had
18 Mr. Rogers expressed any trepidation or concerns about
19 pleading, would you have insisted about delaying the plea?

20 A. Well, I would have asked him if he insisted on
21 delaying it I suppose. I mean, there is a considerable sort
22 of pressure that Mr. Myers or they can exert, but I would just
23 tell him, you know, if he didn't want to do it, I would not
24 put pressure on him to do it. But, I mean, if he didn't want
25 to do the plea, we wouldn't do it. I would have no problem

1 with that.

2 Q. You felt as if you had ample opportunity and time to
3 represent Mr. Rogers on this case?

4 A. Yes. The answer is yes. And, in fact, under the
5 circumstances it was a good result.

6 MR. WHITMIRE: At this time, Your Honor, the State
7 moves exhibits 1, 2 and 3 into evidence.

8 MS. POPE: No objection.

9 THE COURT: Without objection. All right.

10 BY MR. WHITMIRE:

11 Q. One final question. Did you represent Mr. Rogers to
12 the best of your ability on this case?

13 A. Yes.

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

15 THE COURT: Cross examination.

16 CROSS EXAMINATION

17 BY MS. POPE:

18 Q. Good morning, Mr. Chesser. Just briefly, when did
19 you receive a copy of Mr. Rogers' discovery file?

20 A. The day that I was appointed.

21 Q. And that was the day of his?

22 A. The plea.

23 Q. The plea. Okay. Did you and Mr. Rogers ever go
24 over that discovery before the plea together?

25 A. We met shortly. We didn't go over it in detail, but

1 my understanding was that he had gone over it with
2 Mr. Seigler.

3 Q: Mr. Chesser, did you advise him to take the plea
4 without negotiations, with any negotiations?

5 A. Yes.

6 Q. Okay. And you felt that that was - you felt that
7 that was good advise based on the evidence?

8 A. Yes.

9 Q. Okay. Did he ask you any questions regarding that
10 open plea?

11 A. Well, we did not know what sentence he was going to
12 get. I don't recall specifically questions about it. The
13 idea is that we were doing this straight up plea to burglary
14 second violent, carries zero to 15, but I don't recall any
15 specific questions that he asked.

16 Q. At some point during the plea he did pause and ask
17 you a question. Do you remember what that question was?

18 A. No.

19 Q. Did you have the opportunity to speak with any
20 investigators before his plea?

21 A. I don't have a specific recollection but as I
22 mentioned earlier, they're all milling around in the same
23 room, but typically what I would do is talk with Investigator
24 Ireland about something like this but I don't have a specific
25 recollection.

1 Q. Did you advise, after this plea was taken, did you
2 advise Mr. Rogers of his right to appeal?

3 A. I don't recall advising him of his right to
4 appeal.

5 Q. Did you file a motion to reduce the sentence or
6 advise him that he had an opportunity to reduce the sentence,
7 to file a motion to reduce the sentence?

8 A. No.

9 MS. POPE: Those are all the questions that I have,
10 Your Honor.

11 THE COURT: Any redirect.

12 MR. WHITMIRE: Just a few, Your Honor. May it
13 please the Court.

14 REDIRECT EXAMINATION

15 BY MR. WHITMIRE:

16 Q. Mr. Chesser, how much experience do you have
17 practicing General Sessions in the tri-county?

18 A. Between 20 and 25 years.

19 Q. Was anything - were any of the circumstances of this
20 case out of the ordinary to cause a red flag to pop up based
21 on your experience?

22 A. No.

23 Q. One final question regarding Ms. Pope's latest
24 inquiry. At a point in the transcript where Mr. Rogers asked
25 you a question, if he was hesitant or had some serious

1 concerns, would you at that time have taken him over and
2 stopped the plea?

3 A. Yes. If he had concerns or indicated doubts about
4 whether he wanted to go forward, I certainly would have not
5 had him plea.

6 MR. WHITMIRE: No further questions. Thank you, Mr.
7 Chesser.

8 THE COURT: Anything else?

9 MS. POPE: None, Your Honor.

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

11 MR. WHITMIRE: The State requests Mr. Chesser
12 released from his subpoena.

13 THE COURT: Without objection?

14 MS. POPE: Yes.

15 THE COURT: Yes, sir. You may be released.

16 Anything else from the State?

17 MR. WHITMIRE: No, Your Honor. The State rests.

18 THE COURT: Any reply? Anything?

19 MS. POPE: Well, Your Honor, just in closing, I
20 think based on the testimony that has been given here I
21 think it's clear that Mr. Rogers did not have a very
22 clear understanding enough to make a voluntary decision
23 to make his plea. Mr. Chesser did admit that he does not
24 have but a certain amount of time before that plea was
25 taken to meet with Mr. Rogers. I do not think he had

1 adequate time to conduct discovery, Your Honor. There
2 also was not a motion filed on the client's behalf and he
3 was not advised of his right to appeal the plea. Your
4 Honor, just given those circumstances we would ask that
5 you grant his motion for PCR. Nothing further.

6 THE COURT: Thank you, Ms. Pope. Mr. Whitmire.

7 MR. WHITMIRE: May it please the Court.

8 Brevity of consultations or investigations does not
9 create a presumption of ineffective assistance of counsel
10 or deficient performance. There are Fourth Circuit cases
11 that our courts have relied on heavily for decades.
12 Certainly this would have been a very brief
13 representation but Mr. Chesser has testified to his
14 experience relating to these courts. They get limited
15 court time. This wasn't an extensive State's case. They
16 filed less than 30 or 40 pages of discovery. Everything
17 here indicates that everything was done the way it should
18 have been done. It's another swearing match PCR guilty
19 plea case and the State would submit that Mr. Chesser's
20 testimony is substantially, substantially more credible
21 than applicant's. If the Court has no further questions,
22 that concludes my presentation.

23 THE COURT: All right. Thank you, sir. Anything in
24 response, Ms. Pope?

25 MS. POPE: No, Your Honor.

1 THE COURT: Ms. Pope, I'm compelled to deny
2 applicant's request in this case. I agree with the
3 statements made by the State in this case. Further I
4 would like to go ahead and say it, I just think it's
5 highly unlikely to expect the Solicitor to have ever
6 agreed to probation particularly given the extensive
7 record of the defendant. I also find it incredible that
8 the defendant's attorney would have told him that they
9 could not discuss the plea deal in the presence of the
10 judge on the record. For all those reasons and the
11 reasons argued by the State I deny the application.

12 MS. POPE: Thank you.

13 MR. WHITMIRE: Thank you, Your Honor. I'll get an
14 order to opposing counsel before sending it your way.

15 (End of hearing.)

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1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

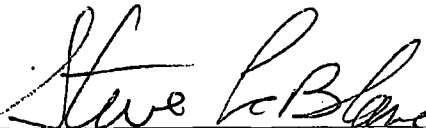
3 (COUNTY OF LEXINGTON)

4
5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of Common Pleas in and for the
10 State of South Carolina on the 23rd day of April, 2015.

11 I FURTHER CERTIFY that the forgoing 44 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 20th day of December, 2015.

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



STATE'S
EXHIBIT
#1 4-23-15
2013CP19376



THE night before the police came to my ^{FRANCE} house me and my
 France nephew had went to the car wash. On the way back
 home we were turning and 3 McCormick police was standing
 outside a store and one said that's the car right there.
 Then the next day they came out and spoke to me and then we
 waited for Tim Terland and when he came he spoke to me about
 what was going on and took photos of my car even though the
 female officer from McCormick had a photo of the back of
 my car with my license plate number already. After that
 everybody left and I wasn't arrested until that following
 Monday. I was living in Chester, S.C. and from Dillon, S.C. why
 I say this is because after they left I googled Edgefield news
 and saw my photo & car and read the article, but I know that
 Thursday night coming from the car was what was going on.
 I didn't run when I could have. I stayed because I only made
 a mistake this time because I needed help with money because all
 my bills was behind cause in February I came home one night from
 work and to find out my ex-wife had taking furniture and \$600.00
 from me after I was helping her and her 15 year old son out because
 she had no where to go. I had went home to borrow money from family
 members who was suppose to be proud of me for changing my life but
 everybody turned me down and that really hurt me even a uncle
 who owns a car lot saying he didn't have it. I never worked a job
 in my life over (2) months until I turned my life around moved
 to Chester and started working at Kraft Foods where I worked

2 years 4 months and I left there because I was being used by my line tech to train new people learning my job without getting trainer's pay and my hands had calluses in my hands and on my fingers and between my right forefinger & thumb. EVERYTIME I went to first aid my line tech would come in there with his mess because neither one of them wanted to go and do the job themselves so the nurse would only wrap my hand and send me right back on the line with my hands still hurting.

My fiancé and I had only known each other for like 46 days when this happened we fell in love the first night I came to McCormick to see her. She and her family is another reason I didn't run. I love her with all my heart along with her kids, brother and the rest of their family and they all are the same about me.

My mother passed last year on May 18th and I had to be the one to have her taken off life support and we were so close and if she was still living I wouldn't be here now because anytime I or she would need money we would send it to each other.

I have cooperated since day one about where all the property was sold and I wrote a statement about what happened and how. I also sent a grievance/statement form to TUV, Ireland on the 7th telling him I wanted to go help get the stuff back but never heard from him. I also apologized to Mr. Wall and his family at the end of my statement. I'm not a bad person and wouldn't hurt anyone. I don't do drugs or drink I just made the wrong choice in love because family heard their backs are on me who I needed them most.

— OVER —

I NEVER had probation for anything in my life I always get a prison sentence. I need help with this situation and I need a bond so I can get out and see my kids on their first day of school they don't want me to miss that nor do I. My kids and my fiance kids.

IF Possible do you think you could get me 5 years probation with the ankle bracelet and since I'm not from this area Ask Inv. Ireland if I could help them make busts in the Area they need me anything to help me not leave my fiance we love each other dearly and want to get married soon. I wouldn't care if I got weekend time TOO whatever it is I would do for them. Also Pay RESTITUTION. I've had two collapsed lungs right and left and two surgeries.

Edgefield County Sheriff Dept.
Edgefield, S.C. 29824

WAIVER OF RIGHTS

I, Julius L. Rogers, am 44 years old. My address is 140 Victory Ln.. I have finished the 11th grade in school and can / cannot read. I have been told by Inv. Ireland, who I understand is a law enforcement officer, that he/she would like to question me concerning the crime of Burglary.

This officer has also explained to me and I understand that:

SLR
(Initials)

(1) I have the right to remain silent. That means I do not have to say anything or answer any questions.

SLR

(2) Anything I say can be used against me in a court of law.

SLR

(3) I have the right to talk to a lawyer and to have a lawyer here with me now to advise and help me before and during questioning.

SLR

(4) If I want to have a lawyer with me before and during questioning but cannot afford to pay a lawyer, one will be provided to me at no cost before and while I am questioned.

SLR

(5) If I decide to answer questions now, without a lawyer here, I still have the right to stop answering questions whenever I want to.

SLR

(6) I also have the right to stop answering questions until I have talked to a lawyer.

I understand my rights as explained to me by Officer Ireland.

I now state that I DO wish to answer questions at this time and that I DO NOT wish to have a lawyer here before or during questioning.

My decision to answer questions now, without a lawyer, is made freely and is my own choice. No one has threatened or coerced me in any way or promised me special treatment. To show my decision, I am signing my name in the space below.

Signed: _____ Date: _____

Time: _____

(Witness)

(Witness)



EDGEFIELD COUNTY
 CLERK OF COURT
 STATE OF SOUTH CAROLINA CHARLES L. HEDGECOCK IN THE COURT OF COMMON PLEAS
 COUNTY OF EDGEFIELD 2015 OCT 13 AM 9:32 ELEVENTH JUDICIAL CIRCUIT

Julius L. Rogers,
 S.C.D.C. No. 247422

C.A. No. 2013-CP-19-376

Applicant,

v.

**ORDER OF DISMISSAL
 (with prejudice)**

State of South Carolina,

Respondent.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on December 6, 2013. Respondent made its return on March 14, 2014. An evidentiary hearing into the matter was convened on April 23, 2015 at the Lexington County Courthouse. Applicant was present at the hearing and was represented by Courtney Pope, 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 Edgefield County. Applicant was indicted for burglary, first-degree (2013-GS-19-496). He was represented by Michael W. Chessner, Esq. Applicant entered a guilty plea to the lesser-included offense of burglary, second-degree. The Honorable R. Lawton McIntosh accepted Applicant's plea and imposed a term of fourteen (14) years imprisonment. Applicant did not appeal his guilty plea or sentence.

At the PCR hearing, Applicant alleged that he is being held in custody unlawfully for the following reasons:

- (a) Ineffective assistance of counsel for failing to investigate the circumstances surrounding Applicant's confession to law enforcement;

- (b) Ineffective assistance of counsel for failing to investigate the victim's statement to show discrepancies in the State's case;
- (c) Ineffective assistance of counsel for failing to advise Applicant on the consequences of entering the guilty plea.

SUMMARY OF TESTIMONY

At the PCR hearing, Applicant testified to his impressions of counsel and to his concerns on the competency of representation that he received. Applicant testified that he met counsel on the day of his plea hearing. Applicant testified that Investigator Ireland was present and involved with his case on the day of his plea. Applicant testified that Investigator Ireland had previously tricked him into confessing in lieu of a false promise of probation sentence. Applicant testified to an elaborate conspiracy that apparently occurred at his plea hearing. Applicant testified that counsel failed to properly advise him of his constitutional waivers prior to the plea.

Counsel testified to his course of conduct during the representation. Counsel has practiced criminal law for over twenty-five years. Counsel stated that he was substituted on Applicant's case the week of his guilty plea. He explained that Edgefield County typically holds a single General Sessions, non-jury, term every three months. Prior counsel, the current Judge Seigler, approached counsel and requested that he take over the representation because of a conflict. Counsel was adamant that the current Judge Seigler would not have asked him to take over the case at the late hour if Applicant had been in a vulnerable posture. As counsel noted, the State made a favorable plea offer despite Applicant's substantial record. Counsel obtained the current Judge Seigler's file and reviewed it prior to the plea. After his review of the State's discovery disclosures, among other things, counsel developed the opinion that the State possessed overwhelming evidence of Applicant's guilt. Counsel testified to his general practice is advising clients on the constitutional waivers, benefits, and detriments of entering a guilty plea in lieu of proceeding to trial. Counsel noted that Applicant did not waive on his desire to accept



the State's plea offer. Despite the late substitution, counsel was adamant that had ample time to provide Applicant sound legal representation.

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 and exhibits 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's allegations were solely supported by his dubious and fanciful storytelling. In comparison to Applicant's incredible testimony, counsel offered convincing testimony in line with his reputation as a battle tested defense attorney in the local bar.

INEFFECTIVE 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), SCRPC; 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).

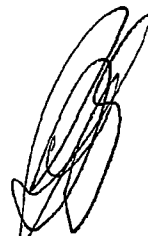
Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d 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 denies Applicant's motion to have PCR counsel relieved. Despite Applicant's unfounded consternation, PCR counsel had previously successfully moved to continue a merits hearing in order to have the time to fully prepare Applicant's case. In light of PCR counsel's representations, this Court denies Applicant's motion.

B.

This Court finds Applicant's allegation: (a) Ineffective assistance of counsel for failing to investigate the circumstances surrounding Applicant's confession to law enforcement to be entirely without merit.



“Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case.” Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted). “A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the defendant would not have pled guilty, but would have insisted on going to trial.” Kolle v. State, 386 S.C. 578, 588, 690 S.E.2d 73, 78 (2010)

In light of counsel’s dispositive testimony that he fully reviewed the current Judge Seigler’s file and found no cause for concern, this Court finds Applicant’s testimony on this matter to be not credible. Because Applicant failed to produce any competent evidence to corroborate his incredible testimony, this Court readily denies and dismisses this allegation with prejudice. 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”).

Similarly, this Court finds Applicant’s allegation: (b) Ineffective assistance of counsel for failing to investigate the victim’s statement to show discrepancies in the State’s case was without merit. This Court finds that any minor discrepancy in the victim’s accounting of inventory did nothing to negate the overwhelming evidence of guilt against Applicant concerning the home invasion. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001) (finding overwhelming evidence of guilt negated any claim that counsel’s deficient performance could have reasonably affected the result of defendant’s trial). Therefore, this allegation is readily denied and dismissed with prejudice.

C.

Last, this Court finds Applicant's allegation: (c) Ineffective assistance of counsel for failing to advise Applicant on the consequences of entering the guilty plea to be fatally conclusory and without merit.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 242, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Roddy v. State, 339 S.C. 29, 33-34, 528 S.E.2d 418, 421 (2000). "A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both." Pittman v. State, 337 S.C. 597, 600, 524 S.E.2d 623, 625 (1999). An applicant may attack the voluntary, knowing, and intelligent character of a guilty plea entered on the advice of counsel by demonstrating that counsel's representation was below an objective standard of reasonableness. Porter v. State, 368 S.C. 378, 383-84, 629 S.E.2d 353, 356 (2006).

This Court finds the allegation is facially defective. Miller v. Johnson, 200 F.3d 274, 282 (5th Cir. 2000) (A conclusory allegation of ineffectiveness raises no constitutional issue because a petitioner must show how counsel was deficient and how there was prejudice). Applicant failed to make a prima facie case of how counsel's performance was either deficient or prejudicial here. Regardless, Judge McIntosh's thorough plea colloquy in conjunction to counsel's credible testimony concerning his general practices in advising clients on pleading guilty, inter alia, cured any prospect of error on this matter. See Bennett v. State, 371 S.C. 198, 205 n. 6, 638 S.E.2d 673, 676 n. 6 (2006) (reversing grant of PCR and stating that "even where counsel offers misinformation, this deficiency can be cured where the trial court properly informs the defendant

about the sentencing range"). Further, this Court notes that Applicant was an experienced accused and went into the plea hearing with eyes wide open. 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



WITNESSES

ECSO

IRELAND

ARREST WARRANT NUMBER

2013A1910100383

ACTION OF GRAND JURY

RUE BIL

Linda H. Kense
Foreperson of Grand Jury

Date: 7-31-13

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-19- 496

The State of South Carolina

County of EDGEFIELD

COURT OF GENERAL SESSIONS

AUGUST TERM 2013

THE STATE

vs.

JULIUS LEVERN ROGERS

CDR#0079

Indictment for

**BURGLARY
1ST DEGREE**

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF EDGEFIELD)

INDICTMENT FOR

BURGLARY
1ST DEGREE

At a Court of General Sessions, convened on July 31, 2013 the Grand Jurors of Edgefield County present upon their oath:

That JULIUS LEVERN ROGERS, did in Edgefield County on or about June 13, 2013, willfully and unlawfully enter, without consent and with the intent to commit a crime therein, the dwelling of Richard Wall, and while therein, during entry or flight therefrom, was armed with, used, threatened or displayed what appeared to be a firearm, knife or dangerous instrument, in violation of §16-11-311(A), South Carolina Code of Laws, 1976, as amended, with penalties provided for in §16-11-311(B), South Carolina Code of Laws, 1976, as amended.

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



SOLICITOR

ARREST WARRANT

2013A1910100383

STATE OF SOUTH CAROLINA

County/

Municipality of

Edgefield

2013 JUL -3 PM 12:10

THE STATE against

Julius Levern Rogers

Address:

McCormick, SC 29835-

Phone: SSN: 2 Sex M Race: B Height: 5 10 Weight: 240

DL State: DL #:

DOB: Agency ORI #: SC0190000

Prosecuting Agency: Edgefield County Sheriff

Prosecuting Officer: Sgt./Inv. Phil Ireland - 0017

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 of

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Julius Rogers

on 7-1-13

Dep. Aladip Mason (Mason) Signature of Uniformed Law Enforcement Officer

RETURN WARRANT TO:

General Sessions 129 Courthouse Square P O Box 34 Edgefield, SC 29824

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIG

STATE OF SOUTH CAROLINA

County/ Municipality of

Edgefield

AFFIDAVIT

Personally appeared before me the affiant Sgt./Inv. Phil Ireland

being duly sworn deposes and says that defendant Julius Levern Rogers

did within this county and state on or about 6/13/2013

State of South Carolina (or ordinance of County/ Municipality of Ed

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 in the crime set forth and that probable cause is based on the following facts:

In that on 06/13/13 between 1447 and 1542 hours, the defendant Julius Levern Rogers did enter the victim Richard Wall's residence. Once inside the defendant did take, steal and carry Steel 10MM Handgun, 1 synthetic black Remington .270 with 10 x 50 scope, 1 synthetic black Remington 20 gauge, 1 synthetic and tree bark camo Remington 12 gauge pump sl and 4 hunting bows. The defendant also took 1 silver 14 in HP and one silver Dell laptop jewelry and 3 chainsaws. All of the items missing total more than \$10,000.00. This occurred 29824. Same being in Edgefield County.

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Edgefield

Affiant's Address 200 Railroad St

Edgefield, SC 29824

Affiant's Telephone (803)637-5337

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTAB

It appearing from the above affidavit that there are

on or about 6/13/2013 defendant Julius Levern Rogers

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

County/ Municipality of Edgefield

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 her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to soon thereafter as is practicable

Sworn to and subscribed before me

on 6/28/2013

Signature of Issuing Judge James A McLaurin Jr

Judge Code: 7200

Judge's Address P O Box 664

Edgefield, SC 29824

Judge's Telephone (803)637-4090

Issuing Court: Magistrate

BAIL set by

Judge Brenda Carpenter
on July 2-13
Type and Amount: BOND DENIED
Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____
Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)
Disposition: _____
Sentence: _____

JURORS

WITNESSES

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
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Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS



I certify original

Date

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

117

COUNTY OF Edgefield
STATE VS.
Julius Levern Rogers
AKA:
Race: 44
DOB: SS#:
Address:
City, State, Zip: McCormick, SC 29835
DL#: SID#:

INDICTMENT/CASE#: 2013GS1900496
A/W#: 2013A1910100383
Date of Offense: 6/13/2013
S.C. Code § : 16-11-0311
CDR Code #: 0079

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Burglary 2nd Degree (Violent)

in violation of § 16-11-312(B) of the S.C. Code of Laws, bearing CDR Code # 0086
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

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

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

ATTEST: [Signature] Solicitor SC Bar# [Signature] Defendant Attorney for Defendant SC Bar# 16711

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 14 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 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 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$3.90, TOTAL \$133.90

Clerk of Court/ Deputy Clerk Shirley J Newby
Court Reporter: Tracy Sheppard
SCCA/217 (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
Judge Code: 2155
Sentence Date: 8-5-13