

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lexington County
R. Lawton McIntosh, Circuit Court Judge

RECEIVED

OCT 10 2012

S.C. Supreme Court

ANTHONY FRANKLIN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-206046

APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
2 COUNTY OF LEXINGTON

3

4

5 STATE)

6)

V.)

7)

ANTHONY SCOTT FRANKLIN)

8)

DEFENDANT.)

9

10

JUNE 22, 2009
LEXINGTON, SOUTH CAROLINA

11

12

13 B E F O R E:

14

THE HONORABLE WILLIAM P. KEESLEY, JUDGE.

15

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

17

KATE E. WHETSTONE, ASSIST. SOLICITOR
ATTORNEY FOR THE STATE

18

19

MATTHEW C. BUCHANAN, ASSIST. PUBLIC DEFENDER
ATTORNEY FOR THE DEFENDANT

20

21

22

23

24

25

STACY L. SHEPPARD, RPR
CIRCUIT COURT REPORTER

1

I N D E X

2

WITNESSESDIRECT CROSSREDIRECT RECROSS

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(There were no witnesses.)

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1	E X H I B I T S			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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4				
5	(There were no exhibits.)			
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1 (The following proceedings were held on June
2 22, 2009.)

3 **THE CLERK:** Indictment 2009-GS-32-1890, the
4 State versus Anthony Scott Franklin, indicted for
5 assault and battery of a high and aggravated nature.
6 He's pleading as charged. He has waived presentment
7 and he's represented by Mr. Buchanan.

8 **ANTHONY SCOTT FRANKLIN,**
9 having been duly sworn, testified as follows:

10 **THE COURT:** You're Anthony Scott Franklin?

11 **DEFENDANT:** Yes, sir.

12 **THE COURT:** This indictment charges that in
13 Lexington County on or about February 14, 2009, you
14 committed an unlawful act of violent injury to the
15 person of Amy Prigden accompanied by circumstances
16 of aggravation. It's alleged that there's a great
17 disparity in size between you and the victim, she
18 being 5'3" tall and weighing 135 pounds, you being
19 6'1 and weighing about 200 pounds, or the infliction
20 of serious bodily injury, choking her multiple
21 times, or a difference in gender.

22 Upon your arraignment on this charge, it
23 appears you wish to waive presentment to the grand
24 jury and plead guilty; is that right?

25 **DEFENDANT:** Yes, sir.

1 THE COURT: Mr. Buchanan, have you fully
2 explained to your client the nature and elements of
3 the offense, the possible punishment and his
4 constitutional rights, including trial by jury?

5 MR. BUCHANAN: Yes, I have, Your Honor.

6 THE COURT: Are you satisfied there's a factual
7 basis for his plea?

8 MR. BUCHANAN: Yes, I am.

9 THE COURT: Do you agree with his decision?

10 MR. BUCHANAN: Yes, I do, Your Honor.

11 THE COURT: Mr. Franklin, today are you under
12 the influence of any medicine, drug, alcohol or
13 anything affecting your thinking?

14 DEFENDANT: Today?

15 THE COURT: Right.

16 DEFENDANT: No, sir.

17 THE COURT: Do you have any physical or mental
18 problems that affect your thinking today?

19 DEFENDANT: No, sir.

20 THE COURT: You're clearheaded? You know what
21 you're doing today?

22 DEFENDANT: Yes, sir.

23 THE COURT: When you plead guilty, you give up
24 important rights, including your right to remain
25 silent and your right to a jury trial; do you

1 understand?

2 DEFENDANT: Yes, sir.

3 THE COURT: If you want a jury trial, you're
4 presumed innocent. The State has to prove you
5 guilty beyond a reasonable doubt to convict you.
6 You get to see, hear and have your attorney
7 cross-examine every witness against you. Do you
8 understand that?

9 DEFENDANT: Yes, sir.

10 THE COURT: By pleading guilty, you give up all
11 of those rights. You give up defenses. You give up
12 challenges to evidence. You admit the charge is
13 true. Do you know that?

14 DEFENDANT: Yes, sir.

15 THE COURT: Do you want a jury trial?

16 DEFENDANT: No, sir.

17 THE COURT: This carries up to ten years in
18 prison and a fine in my discretion; do you
19 understand?

20 DEFENDANT: Yes, sir.

21 THE COURT: Listen to the State, please.

22 MS. WHETSTONE: Thank you, Your Honor.

23 Mr. Franklin was originally charged with
24 criminal domestic violence of a high and aggravated
25 nature. He is pleading to assault and battery of a

1 high and aggravated nature in exchange for his plea
2 today. He was additionally charged with threatening
3 phone calls, which is being nol prossed in exchange
4 for his plea today.

5 Your Honor, I'm going to go ahead and hand up
6 at the beginning of this plea two letters which I've
7 provided to the defense attorney from the victim,
8 Amy Prigden, of the criminal domestic violence of a
9 high and aggravated nature, and then Karl Reibold,
10 who is the victim of the threatening phone calls.
11 They're both present in the court today, Your Honor,
12 sitting on the front bench on the prosecution side
13 of the courtroom.

14 This incident occurred on February 14th, 2009,
15 around 2:00 a.m. That morning the Defendant called
16 the victim, Ms. Amy Lynn Prigden, whom he has been
17 together with about six or seven years and they have
18 two children in common. He told her he was coming
19 over to get the children and he didn't care what she
20 said about that.

21 He arrived at the house at around 4:00 a.m.
22 that morning. She asked him -- the home was located
23 at [REDACTED] [REDACTED] in the
24 West Columbia area of Lexington County. When he
25 arrived, she asked him to leave. He said he wasn't

1 going to leave, this is his house, she couldn't make
2 him leave.

3 He had discovered prior to this that Ms.
4 Prigden had a new boyfriend. This will be Karl
5 Reibold. He came to confront the victim about this
6 new boyfriend. He began arguing with her. This
7 started in the living room area of the home. While
8 they were on the couch, he hit her in the head
9 multiple times.

10 At some point, this moved to the bedroom area
11 of the home. He wanted to talk about the
12 relationship. This went on for a while. When he
13 was in the bedroom, he became more and more angry.
14 At some point, he began choking her. He choked her
15 multiple times.

16 This happened -- she doesn't call for help
17 until 10:00 a.m. that morning. So he arrives at
18 4:00 a.m., she doesn't call for help until 10:00
19 a.m., so there's hours that go by. He chokes her at
20 some point in the bedroom. She says she remembers
21 not being able to breathe.

22 At some point that morning, I think he calls
23 her sister during this and leaves her a voice mail
24 about why she's causing Amy to leave him. He then
25 tells Amy to call her new boyfriend, Karl Reibold,

1 tell him it's over, that she doesn't want to be with
2 him anymore. He forces her to call Karl.

3 When she calls Karl, he takes the phone from
4 her and begins threatening Karl, threatens to kill
5 Karl, threatens to kill his family. At that point,
6 that's when Karl contacts the police and they ride
7 over to the house to check on Amy. And this occurs
8 around 10:00 a.m. that morning.

9 This case is being reduced because Ms. Prigden
10 is very fearful of the Defendant, as she says in her
11 letter to Your Honor, to the Court. She -- when I
12 first called her, she wouldn't even talk to me on
13 the phone. Karl had her on voice speaker phone. I
14 would ask Karl a question. He would talk to her.
15 He would relay the answer back to me. She's very
16 fearful of the Defendant. And today was the first
17 time I'd actually met with her earlier this morning.

18 Mr. -- and officers noticed bruising on her
19 neck when they arrived that morning.

20 The Defendant's prior record includes a 1997
21 burglary third degree; a 2000 CDV; a 2002 possession
22 of controlled substance scheduled one to five; a
23 public disorderly conduct in 2002; 2006 DUS,
24 malicious traffic offense; a 2007 public disorderly
25 conduct; and a 2008 petit larceny.

1 Your Honor, Ms. Prigden does recognize she has
2 two children with the Defendant, but she does want a
3 no contact order in place in this plea.

4 **THE COURT:** Do you admit you're guilty of this
5 charge, Mr. Franklin?

6 **DEFENDANT:** Yes, sir.

7 **THE COURT:** Has anybody forced you, threatened
8 you, coerced you in any way to get you to plead
9 against your will?

10 **DEFENDANT:** No, sir.

11 **THE COURT:** Any plea bargains the State's made
12 with you, they have to tell me about on the record
13 in open court or you lose; you understand?

14 **DEFENDANT:** Yes, sir.

15 **THE COURT:** Mr. Buchanan, are all plea
16 agreements on the record?

17 **MR. BUCHANAN:** Yes, they are, Your Honor.

18 **THE COURT:** Other than what's on the record,
19 Mr. Franklin, has anybody promised you anything to
20 get you to plead guilty?

21 **DEFENDANT:** No, sir.

22 **THE COURT:** Are you fully satisfied with your
23 attorney?

24 **DEFENDANT:** Yes, sir.

25 **THE COURT:** Is there anything else you want

1 your lawyer to do on the case that he hasn't done?

2 DEFENDANT: No, sir.

3 THE COURT: Any complaint against your
4 attorney, law enforcement officials or anybody else
5 in your case?

6 DEFENDANT: No, sir.

7 THE COURT: You're pleading guilty to something
8 different than you were originally charged with.
9 You have a right to have assault and battery of a
10 high and aggravated nature go before the grand jury.
11 If you want the grand jury to review it, at least 12
12 out of 18 grand jurors must agree you're probably
13 guilty or the case stops there; do you understand?

14 DEFENDANT: Yes, sir.

15 THE COURT: The papers indicate you're giving
16 up that right. Is that your own decision made of
17 your own free will?

18 DEFENDANT: Yes, sir.

19 THE COURT: Mr. Franklin has made a free,
20 knowing, voluntary and intelligent decision to waive
21 his rights and plead guilty. He's done so upon the
22 advice of counsel with whom he's fully satisfied.
23 There's a factual basis for his plea.

24 Okay, Mr. Buchanan.

25 MR. BUCHANAN: Thank you, Your Honor. Beg the

1 Court's indulgence, Your Honor.

2 (Pause.)

3 MR. BUCHANAN: Thank you, Your Honor. May it
4 please the Court.

5 Your Honor, Mr. Franklin, he's 29. He will
6 actually be 30 at the end of this week. He's served
7 128 days basically. He's been incarcerated
8 continuously since the event on the 14th of
9 February.

10 He admits that -- first and foremost, he admits
11 that he has an alcohol problem and he was quite
12 drunk when he was calling and leaving those
13 messages. They're -- certainly, they were angry,
14 they were out of a bitterness of a relationship that
15 was falling apart and the person that he cared for
16 going with someone else. Certainly not appropriate,
17 certainly not allowed and he understands his
18 wrongdoing. And he understands that -- the alcohol
19 is not an excuse, but it is something that Your
20 Honor should be aware of that he has a problem with
21 alcohol and would appreciate having some -- he needs
22 to get a handle on it. He knows that.

23 He's a roofer by trade. He actually has been
24 working in roofing since he was 14. So about, you
25 know, pretty much all of his life, he's been doing

1 that -- doing the roofing job. He was actually
2 planning on starting his own business. He had --
3 had been lining up some folks to work for him and
4 getting some jobs lined up before this happened.

5 And he actually still has some jobs that he can
6 do when he gets out. So he can actually -- he's got
7 plenty to do when he gets out, so hopefully that's
8 still here in this economy. He anticipates being
9 able to work right out of the gate.

10 He does have a couple of bench warrants in
11 Aiken County, though, that he needs to go and serve
12 out before he actually can be released. I believe
13 there's a hold on him because of those bench
14 warrants there, so he's heading there first.

15 Certainly, Your Honor, the two children that he
16 has with Ms. Prigden, they're his as well. One of
17 them is five and the other one is one. And he's
18 really anxious to see them.

19 I know there's some indications, from the
20 letters that the victims passed up, that he used
21 them as parts of his threats. Again, it was partly
22 the alcohol speaking. He does not seek -- he's not
23 interested in removing them and taking them away,
24 but he does want to see them and wants to be an
25 active role in their lives as a father to them. He

1 cares for them deeply. He's talked about them ever
2 since I started representing him about how much it
3 is -- his getting out and seeing them and being a
4 part of their lives.

5 He's -- essentially, Your Honor, he's asking
6 for a chance to be out. He will respect any sort of
7 no contact order, asking Your Honor to put into
8 effect a condition that maybe the family court can
9 rule about visitation rights so that he may actually
10 be a part of his children's lives.

11 He wants to put the fears of the victims at
12 ease, especially with getting control of his alcohol
13 problem. He's been sober now for over four months
14 since he's been incarcerated and he wants to
15 continue that sobriety. I think that's going to
16 really put his life on the right path and certainly
17 should alleviate the fears that the victims might
18 have. He wants to have a chance out in society and
19 working to be a good father and be a good citizen.

20 **THE COURT:** Thank you.

21 Do you want to say anything, Mr. Franklin?

22 **DEFENDANT:** No, sir.

23 **THE COURT:** What happened to your 1997 burglary
24 in the third degree?

25 **MR. BUCHANAN:** Your Honor, he tells me that he

1 had five years of probation on that and he says he
2 completed it.

3 PROBATION AGENT: Your Honor, he was revoked.

4 THE COURT: How much time did you do in prison?

5 DEFENDANT: I didn't do none. I went to court
6 and they dropped it. They took me off probation
7 because I served all my time.

8 THE COURT: You served all your time how?

9 DEFENDANT: I served the probation term. I
10 went to general sessions and they took me off.

11 THE COURT: Who was the victim of the criminal
12 domestic violence in 2000?

13 DEFENDANT: A girl, I don't even know her name
14 no more.

15 THE COURT: What drug did you possess in 2002?

16 DEFENDANT: Drug? Marijuana.

17 THE COURT: What have you got pending in Aiken
18 County?

19 DEFENDANT: Driving under suspension first and
20 a -- I'm not sure what the other one -- oh, I think
21 it's possession of marijuana, simple possession of
22 marijuana.

23 THE COURT: You live in New Ellenton?

24 DEFENDANT: I live actually in Windsor.

25 THE COURT: How old are you?

1 DEFENDANT: I'll be 30 at the end of this week.

2 THE COURT: You went over to her house at four
3 o'clock in the morning?

4 DEFENDANT: It wasn't exactly four o'clock. It
5 was early in the morning, yeah. That was the only
6 way I could get a ride at that time.

7 THE COURT: What did you need a ride over there
8 at -- early in the morning for?

9 DEFENDANT: Because the person that was going
10 to give me a ride had to go to work.

11 THE COURT: Well, what do you need to go over
12 there for?

13 DEFENDANT: I was going to see my kids. I
14 hadn't seen them in a while. She's talking about
15 not letting me see them, so, I mean, I was going to
16 see them. I mean, I love my kids to death.

17 THE COURT: You love your kids to death, so you
18 showed up around four o'clock in the morning drunk?

19 DEFENDANT: Well, I mean, it was the process --
20 I was drunk and it didn't -- I mean, none of it made
21 any sense. I mean, I'd been thinking about it for
22 about a week going over there to see them. And I
23 got drunk and, finally, just didn't have no stopping
24 it, you know, I went, wasn't thinking.

25 THE COURT: So what time did you talk to this

1 new boyfriend?

2 DEFENDANT: I don't have any idea to tell you
3 the truth, sir. She called him and -- she told me
4 that we was going to get back together, that's the
5 only reason I told her to call him. That was the
6 conversation we was having. I wouldn't have even
7 told her to call him if she hadn't of told me we was
8 going to try to work it out and get back together.

9 THE COURT: Were you still drunk then?

10 DEFENDANT: Well, not really, I was coming
11 down. I was actually going to drink a beer that was
12 in the refrigerator before the police showed up, but
13 I put it back in the refrigerator because I didn't
14 want no more.

15 THE COURT: Do you admit you choked her and hit
16 her?

17 DEFENDANT: I grabbed her, yes, sir. I didn't
18 choke her. I wasn't trying to choke her. I grabbed
19 her, because my daughter ran up to me and told me
20 that she'd seen them in the bedroom laying in the
21 bed, so it upset me. I mean, I didn't -- there's no
22 reason my five-year-old daughter should see them
23 laying in the bed doing anything.

24 THE COURT: She should just see you choking
25 this lady.

1 DEFENDANT: I grabbed her, yes, sir. I grabbed
2 I her and got in her face. I mean, you can call it
3 choking -- I got in her face and told her, you know,
4 it wasn't right.

5 THE COURT: Didn't have anything to do with
6 Valentine's day being that day?

7 DEFENDANT: Yeah, that, too.

8 (Pause.)

9 THE COURT: How does Mr. Reibold spell his last
10 name?

11 MS. WHETSTONE: It's R-e-i-b-o-l-d.

12 THE COURT: If there's nothing else, Court
13 accepts your plea.

14 The sentence is you be committed to the South
15 Carolina Department of Corrections for ten years,
16 provided upon the service of eight years plus costs
17 and assessments, the balance is suspended with five
18 years probation. You're subject to the standard
19 conditions of probation. You have to complete the
20 addictions treatment unit. You're given credit for
21 jail time under section 24-13-40, the department of
22 corrections will calculate and apply that.

23 When you are released on probation, you have to
24 complete substance abuse treatment with follow-up,
25 pass random drug and alcohol screens, consume no

1 alcohol. You're placed on intensive supervision for
2 the first six months of your probation. You're to
3 have no contact with Amy Prigden except in strict
4 compliance with the family court visitation order
5 entered after this date. You're to have no contact
6 with Karl Reibold.

7 Pay your court costs at the rate of \$50 a month
8 beginning 180 days after you're released from
9 maximum incarceration in prison. You must complete
10 anger management counseling, provide your DNA sample
11 if you're not already in the data base.

12 Do you understand your sentence?

13 **DEFENDANT:** Yes, sir.

14 **THE COURT:** Good luck.

15

16 **END OF PROCEEDINGS**

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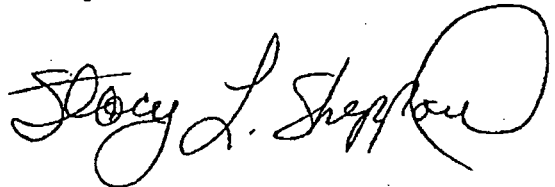
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

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 guilty plea of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 22nd of June, 2009.

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

September 29, 2009



Stacy L. Sheppard, RPR
Circuit Court Reporter

89-1890

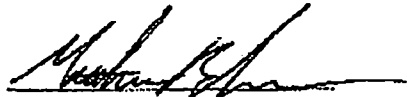
ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA) Warrant Number: J 848256
vs.) JUN 23 2 3:25
ANTHONY FRANKLIN,)
Defendant.) **VW**

TO: KATE WHETSTONE, ASSISTANT SOLICITOR

PLEASE TAKE NOTICE THAT on the next day after service or as soon thereafter as this matter may be heard, the attorney for the Defendant will move before the Court for a Order granting a reconsideration of the sentence that was imposed on June 22, 2009.

WHEREFORE, the Defendant prays that his Motion be granted and that he be granted a reconsideration of his sentence.


Matthew C. Buchanan
206 E. Main Street
Lexington, SC 29072
(803) 957-8873
Attorney for Defendant

June 23, 2009
Lexington, South Carolina

2009 SEP 15 204199
FORM 5
FILED

STATE OF SOUTH CAROLINA

COUNTY OF

IN THE COURT OF COMMON PLEAS

2009 SEP 15 P 2:19

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Full name and prison number (if any) of Applicant

Anthony Scott Franklin
314338

v.

VW

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 Lexington County Detention Center
2. Name and location of Court which imposed sentence Lexington County Court House
3. Name(s) of co-defendant(s) (if any) None 203 E. Main St.
Lexington SC 29072
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2009-65-32-01890
(b) _____
(c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
(a) 2/14/2009
(b) 10 years suspended to 8 years
with 5 years probation first 6 months
intensive.

- (c) _____
6. Check whether a finding of guilty was made:

FILED

(a) after a plea of guilty ✓

(b) after a plea of not guilty _____

2009 SEP 15 P 2:19

(c) after a plea of nolo contendere _____

BETH A. CARRIGG

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. _____

ii. _____

iii. _____

2009CP3204199

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) My Public defender told me that it would
not do any good after I told him that's
what I wanted to do.

(c) _____

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

2009CP3204199

FILED

#

⑩ A. I feel like I was mispersecuted by my lawyer / Public defender

2009 SEP 15 PM 2:49
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON-SC

B. Second I think that I was Judged as an example.

C. I also think that the evidence was not looked at properly before Sentencing

D. I feel like I recieved too much time considering the evidence

#

⑪ A. I feel like my public defender didnt spend enough time on my case or defend me enough that day in front of the Judge

B. I think that I was Judged as an example because of the amount of time that I recieved and the lack of time the Judge looked at my evidence. On a first offense ABH!

C. @ coincides with question B.

⑫ Question D = My lawyer put in a motion for the charges to be dropped to a CDV 2nd and the Judge denied it. That was in bond court at Lexington County Detention Center.

#12 question 11 = My lawyer also put in
a motion for me to be sent to the
SC. Strong program instead of being sent
to prison for 8 years I was accepted already
to this program.

2009CP3204199
FILED

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

in (10):

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

2009 SEP 15 P 2
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

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

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

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

- (a) the specific nature thereof:

- i. → Motion was put in before I went to court to drop the charges to a COV 2nd
ii. → A motion was put in after I was sentenced for me to be sent to SC. Strong program instead of going to prison

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

- i. → Lexington County Detention Center Bond court
ii. → Same court I was sentenced in
iii. Lexington County Court House
iv. 205 E Main St. Lexington SC 29072

- (c) the disposition thereof:

- i. Denied
ii. No Response
iii. _____

- iv. _____
- (d) the date of each such disposition: **FILED**
- i. Not known
- ii. June 24, 2009 **2009 SEP 15 P 2:19**
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. unknown
- ii. unknown **2009CP3204199**
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
~~Yes~~ No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
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) My lawyer told me that it wouldn't do
- (b) any good
- (c) _____
17. Were you represented by an attorney at any time during the course of:

2009 CP 3204199

(a) your arraignment and plea? yes(b) your trial, if any? yes(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of

sentence? no(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes

FILED

2009 SEP 15 P 2:20

BETH A. CARRIGG

CLERK OF COURT

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. Matt Buchananii. Lexington Defender Agency 206 E. Main Street
Lexington SC 29072iii.

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

i. Motion to have charge dropped to CDU andii. Sentencingiii.

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

I would like to request a sentence reduction

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

no

2009CP3204199

STATE OF SOUTH CAROLINA

FILED

VERIFICATION

County of

I, AF, 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.

Anthony Furr

SWORN to and subscribed before me this 9 day of September, 2009.

Hein (L.S.)
Notary Public

My Commission Expires: _____ My Commission Expires November 8, 2017

2009CP3204199

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

2009 SEP 15 P 2:20

I, AP, 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:

BETH A. CARRIG
CLERK OF COURT
LEXINGTON SC

- (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.

Anthony Kimblich
Applicant

SWORN or affirmed to and subscribed before me this

9 day of September, 2009.

Haci Bost
Notary Public

My Commission Expires November 8, 2017

My Commission Expires: _____

FILED

2009 SEP 15 2:20

BETH A. CARRIG
CLERK OF COURT
LEXINGTON SC

Matthew Scott Franklin
Kirkland Correctional Institution
4344 Broad River Road
Columbia SC 29210

2009CF3204199

COLUMBIA SC 292

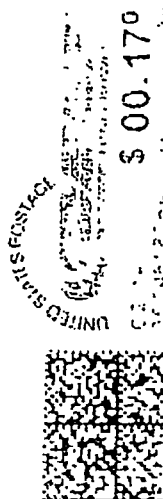
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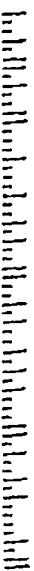
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Lexington County Check # 1007
2009 East Main Street
Lexington SC 29072

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2307242337



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
	)	2009-CP-32-4199
	)	
Anthony S. Franklin, #314338,	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed September 15, 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted at the July 2007 term of the Lexington County Grand Jury for Assault and Battery of a High and Aggravated Nature (2009-GS-32-1890). He was represented by Matthew Buchanan, Esquire. On June 22, 2009, the Applicant pled guilty as charged. He was sentenced by the Honorable William P. Keesley to confinement for a period of ten (10) years, provided that upon the service of eight (8) years the balance would be suspended with five (5) years probation. The Applicant did not appeal his guilty plea or sentence.

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

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

II.

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

- I. Ineffective assistance of counsel;
 - a. Misadvised regarding appeal rights
 - b. "I feel like my public defender didn't spend enough time on my case or defend me enough that day in front of the judge."

III.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was

deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland.

Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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

IV.

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

conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings. Id.

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

V.

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

VI.

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

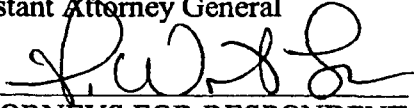
Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

A. WEST LEE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

December 16, 2009.

COPY

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

Anthony Franklin,	)	
	)	
	)	PCR HEARING
PLAINTIFF,	)	2009-CP-32-04199
	)	
-VS-	)	
	)	
State of South Carolina,	)	
	)	
DEFENDANT.	)	
_____	)	

BEFORE THE HONORABLE R. LAWTON McINTOSH, JUDGE

FEBRUARY 2, 2011

LEXINGTON, SOUTH CAROLINA

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

David Belding, Esq.
 For the Applicant

A. West Lee, Esq.
 For the State

REMA K. GANTT THOMAS
 CIRCUIT COURT REPORTER

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E X H I B I T S

THERE WERE NO EXHIBITS MARKED TO THIS HEARING.

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

3 MR. LEE: May it please the Court?

4 THE COURT: Yes, sir.

5 MR. LEE: Actually, Mr. Franklin, if you
6 want to go ahead and come up.

7 This is Anthony Franklin versus the
8 State of South Carolina, 2009-CP-32-4199. It comes
9 to the Court by way of application for
10 post-conviction relief filed September 15, 2009.
11 The applicant was indicted at the July 2007 term of
12 the Lexington County Grand Jury for assault and
13 battery of a high and aggravated nature.

14 He was represented by Matthew
15 Buchanan, and on June 22, 2009, the applicant pled
16 guilty as charged. He was sentenced by the
17 Honorable William P. Keesley to confinement for a
18 period of ten years, provided that upon the service
19 of eight years, the balance would be suspended to
20 five years' probation.

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

6

1 misadvised regarding the appellate rights or appeal
2 rights, and "I feel like my public defender didn't
3 spend enough time on my case or defend me enough
4 that day in front of the Judge." At this time, I
5 will turn it over to the applicant's attorney, Mr.
6 Belding, to expand upon his claims.

7 THE COURT: Yes, sir. Tell me your name
8 again. I know you've been in here in front of me
9 before.

10 MR. BELDING: Yes, thank you, Your Honor,
11 David Belding. It's B-E-L-D-I-N-G.

12 THE COURT: Thank you, I'm sorry.

13 MR. BELDING: No problem, Judge.

14 THE COURT: Yes, sir.

15 MR. BELDING: I have a brief to hand up
16 that we'll be going by. Is it all right if I hand
17 it to you?

18 THE COURT: Yes, sir, please.

19 MR. BELDING: Thank you, Your Honor.

20 THE COURT: Did you provide a copy to Mr.
21 Lee?

22 MR. BELDING: Yes, I did.

23 THE COURT: Very good.

24 MR. BELDING: Your Honor, I think that Mr.
25 Lee stated that he was indicated in a 2007 term, but

1 it was actually 2009 when it went.

2 MR. LEE: Was it?

3 MR. BELDING: Yes.

4 MR. LEE: Maybe I just misread.

5 MR. BELDING: Aside from that, we're ready
6 to proceed.

7 THE COURT: Let's go.

8 MR. BELDING: All right. I'd like to call
9 Mr. Anthony S. Franklin to the stand.

10 (The witness was sworn.)

11 CLERK OF COURT: Have a seat and state
12 your name for the record.

13 MR. FRANKLIN: Anthony Franklin.

14 MR. BELDING: May it please the Court,
15 Your Honor?

16 THE COURT: Yes, sir.

17 MR. BELDING: Thank you.

18 ANTHONY S. FRANKLIN, having first
19 been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. BELDING:

22 Q Mr. Franklin, where are you incarcerated
23 at this time?

24 A At Lexington County Detention Center.

25 Q You're --

Anthony S. Franklin - Direct

8

1 A As in right now?

2 Q Yes, sir.

3 A Oh, at CPC --

4 Q Okay.

5 A -- Campbell Pre-Release.

6 Q And is that in the Columbia metropolitan
7 area?

8 A Yes, sir.

9 Q Okay. How long have you been at Campbell
10 Pre-Release?

11 A I've been there a little -- about a year.

12 Q Okay.

13 A I've been there about a year. I don't
14 know exactly.

15 Q All right. Now, as you heard Mr. Lee
16 state, you were charged with criminal domestic
17 violence of a high and aggravated nature, is that
18 correct?

19 A Yes, sir.

20 Q Okay. When did the alleged offense take
21 place?

22 A February 14, 2009.

23 Q I mean, it was Valentine's Day, wasn't it?

24 A Yes, sir.

25 Q Okay. And where did this offense take

Anthony S. Franklin - Direct

9

- 1 place?
- 2 A At my house.
- 3 Q Okay. Where was that located?
- 4 A [REDACTED]
- 5 Q Okay. Is that in West Columbia?
- 6 A West Columbia.
- 7 Q Okay.
- 8 A Yes, they consider that West Columbia.
- 9 Q Okay. Now, that location, who lived
- 10 there?
- 11 A Me, my girlfriend at the time and, well,
- 12 her and my kids.
- 13 Q Okay. How many kids?
- 14 A Two.
- 15 Q Both by the same lady?
- 16 A Yes.
- 17 Q And what was the lady's name?
- 18 A Amy Presley.
- 19 Q Okay. How long had you lived with her?
- 20 A I'd been with her eight years.
- 21 Q Okay. And did you ever marry her?
- 22 A No, sir.
- 23 Q Okay. How old were the two children?
- 24 A At the time, they were one and five.
- 25 Q Okay. So one was old enough to talk?

Anthony S. Franklin - Direct

10

1 A Yes, sir.

2 Q Good. Now, I want to clear something up
3 right up front. You were charged with criminal
4 domestic violence of a high and aggravated nature.
5 Were you ever charged with something called
6 threatening phone calls?

7 A No, sir.

8 Q Okay. Were you ever indicted or given an
9 arrest warrant for threatening phone calls?

10 A Not that I know of.

11 Q Okay. Nothing was ever given to you in
12 writing?

13 A No.

14 Q -- about threatening phone calls?

15 A I mean, I guess. I mean, I don't know.

16 Q Okay. Now, who represented you in your
17 criminal trial?

18 A Matthew Buchanan.

19 Q Okay. And where does he work, if you
20 know?

21 A At the lawyers. I mean, that's all I
22 know. He's a lawyer.

23 Q Okay. Now, did you pay him to represent
24 you?

25 A No, sir.

Anthony S. Franklin - Direct

11

1 Q Okay. Was he court appointed?

2 A Yes, sir.

3 Q To your knowledge, does he work for the
4 Lexington County Public Defender's Office?

5 A Yes.

6 Q Okay. And now, when were you arrested --
7 on February 14th, is that correct?

8 A Yes, sir.

9 Q All right. Did you make bond?

10 A No, sir.

11 Q Okay. How long were you in jail before
12 you were -- before you pled guilty?

13 A I mean, the whole time. I mean, up until
14 court. I never -- it was like four months, I think.

15 Q Okay.

16 A Somewhere like that.

17 Q All right. During the four months, were
18 you in the Lexington County Detention Center?

19 A Yes, sir.

20 Q Okay. And in those four months after Mr.
21 Buchanan was appointed to represent you, how many
22 times did you get a chance to meet with him?

23 A Twice.

24 Q Okay. Do you remember when those times
25 were?

Anthony S. Franklin - Direct

12

1 A I have no idea.

2 Q Okay. Was once at the detention center?

3 A Oh, yes. I mean, one was at the detention
4 center, and one was at the preliminary hearing.

5 Q Okay.

6 A And then the court.

7 Q Tell me about when you met with him at the
8 detention center. How long did you get to meet with
9 him?

10 A Probably about thirty minutes, at the
11 most.

12 Q Okay. What did y'all talk about?

13 A Just basically what my concept of the case
14 was about. You know what I'm saying?

15 Q At that time, did you -- were you able to
16 tell Mr. Buchanan things that could be used in your
17 defense?

18 A Yes, sir -- I mean, a lot of stuff. I
19 mean, it was my house.

20 Q Well, let's just go through a couple.
21 What kinds of things did you have that could have
22 been used in your defense at a trial?

23 A I mean, pretty much, I mean, I was living
24 there. I mean, they didn't make it -- they made it
25 out like I didn't live there -- you know what I'm

Anthony S. Franklin - Direct

13

1 saying -- like it was her house, and, you know what
2 I'm saying. I lived there. It was my house.

3 Q And when you say it was your house, did
4 you own it, rent it? Was your name on a lease?

5 A No, my name wasn't on the lease because it
6 was easier for her to put hers on it, you know. But
7 my stuff was still in the house. I lived there, you
8 know. I mean, I hadn't gone anywhere.

9 Q And how long had you lived at that
10 location?

11 A I'd been there for a little over two
12 years.

13 Q Okay, all right. Did you have personal
14 possessions in that location --

15 A Yes, sir.

16 Q -- on the day --

17 A Yes, sir.

18 Q -- Valentine's Day 2009?

19 A I didn't get any of my stuff out of that
20 house until after I was in SCDC.

21 Q Okay.

22 A And they sent it -- for somebody, you
23 know, to get it.

24 Q Okay.

25 A What I got, anyway.

Anthony S. Franklin - Direct

14

1 Q So did you tell Mr. Buchanan that you were
2 residing at that location?

3 A Yes, sir. I mean, that's the last place I
4 lived, you know.

5 Q All right. Now, the next -- did you
6 advise Mr. Buchanan as to what time these events
7 took place on that day?

8 A Yes.

9 Q What time did these events take place?

10 A I showed up about 8:00, and I was --

11 Q Was it morning or evening?

12 A In the morning.

13 Q Okay.

14 A And I was arrested around 11:00 -- 10:30,
15 11:00, something. I don't know exactly what time,
16 you know, exactly when I got arrested. But I know
17 it was around that time.

18 Q Okay. Did you -- did the State's witness,
19 your former girlfriend, Ms. Pridgen -- did she ever
20 allege that you had raped her?

21 A Not at the time, not when I was being
22 arrested, no.

23 Q To your knowledge, did she ever allege
24 that you raped her?

25 A Yes. It showed up later on after -- later

Anthony S. Franklin - Direct

15

1 on that day, I think she came up there and tried to
2 allege that I did that.

3 Q Okay. Was that allegation later recanted?

4 A Yes, sir.

5 Q Okay. And in fact, did the sexual assault
6 ever take place?

7 A No, sir.

8 Q Okay. Did you talk to Mr. Buchanan about
9 the -- was there an altercation on Valentine's Day
10 with Ms. Pridgen?

11 A Yes.

12 Q Okay. Did you talk to Mr. Buchanan about
13 that?

14 A Yes.

15 Q Did you talk about whether or not you had
16 attacked her or whether you were --

17 A Yes, sir.

18 Q -- engaging in any self-defense or things
19 like that?

20 A Yes, sir.

21 Q Did you give him some information about
22 what could be used at trial?

23 A I mean, yes. I mean, I told him what
24 happened. I mean, I grabbed her. I did. I'm not
25 going to say I didn't.

Anthony S. Franklin - Direct

16

1 Q Okay.

2 A You know what I'm saying? But I didn't --
3 I didn't do nothing like what they made out. You
4 know what I'm saying? It wasn't what they made it
5 out to be.

6 Q Okay.

7 A I grabbed her, and that was it.

8 Q Now, do you have any idea, even a ballpark
9 estimate, of when this meeting with Mr. Buchanan
10 might have taken place, date-wise?

11 A Which one?

12 Q The one where he met you at the Lexington
13 County Detention Center for about half an hour.

14 A When it happened?

15 Q Yes, the date. Do you have any idea when
16 that was?

17 A I think three months after I was in the
18 county.

19 Q Okay.

20 A I mean, I had been there for about three
21 months.

22 Q Was it not very much longer after that
23 that you had the preliminary hearing?

24 A Yes, it was around June 2nd.

25 Q Okay.

Anthony S. Franklin - Direct

17

1 A I went to court on June 25th, I think. So
2 it was right at the beginning of the month before I
3 went to court.

4 Q Okay. And did you have a chance to talk
5 to Mr. Buchanan about your case prior to the
6 preliminary hearing?

7 A Not very long.

8 Q Okay.

9 A I mean, it wasn't long at all.

10 Q Did Mr. Buchanan have an opportunity to
11 ask any questions of the testifying officers at the
12 preliminary hearing?

13 A Yes.

14 Q Okay. Did he challenge any of the
15 allegations made by the officers?

16 A No, sir, he didn't.

17 Q Okay.

18 A He didn't challenge anything.

19 Q Okay. Now, when did you know -- when were
20 you notified that you were going to be going to
21 court on this charge?

22 A I don't know exactly the date. I just
23 know they came one morning and told me, "You're
24 going to court."

25 Q When did they tell you you were going to

Anthony S. Franklin - Direct

18

1 court?

2 A I mean, that morning.

3 Q Okay.

4 A They woke me up out of the bed and told me
5 I was going to court.

6 Q Oh, okay.

7 A I didn't have no idea.

8 Q It was my understanding you might have
9 been told the day before. Was it actually on the
10 very morning you went to court?

11 A Yes, it was the very morning I went to
12 court.

13 Q Oh, okay.

14 A They woke me up and said, "Get ready for
15 court. You're going."

16 Q Okay. Wow, what time was that?

17 A Early. It was like six.

18 Q How much -- how long did it take you to
19 get ready?

20 A It don't take much when you're in the
21 county. You try to make yourself look all right
22 before you go.

23 Q All right. Did you know -

24 A Brush your teeth.

25 Q I understand. Did you know what you were

1 going to court for?

2 A No, I had no idea.

3 Q Okay.

4 A I didn't even know what it was about.

5 Q Okay. When you arrived here at this
6 courthouse, did you get a chance to meet with Mr.
7 Buchanan?

8 A I sat there for a while, and he finally
9 showed up, yes.

10 Q Okay. Did Mr. Buchanan advise you that
11 your case was being called for trial?

12 A He told me -- yes, he pretty said that
13 that's what I was there for.

14 Q What was your reaction?

15 A I didn't know what was going on. I wasn't
16 ready, you know. I didn't understand. I mean, from
17 the very beginning the whole case was just confusing
18 to me -- you know what I'm saying -- because of the
19 way it was going.

20 Q Did you feel like you were ready to go to
21 trial that day on this charge?

22 A Not really.

23 Q Okay. What had not been done to get you
24 ready to go to trial that day?

25 A I mean, nothing really had been done. I

Anthony S. Franklin - Direct

20

1 mean, it was a spur-of-the-moment thing. I really
2 don't -- I mean, I don't even think he knew I was
3 supposed to be there.

4 Q Did he say anything to you that evidenced
5 that he did not feel like that you were supposed to
6 go to trial that day?

7 A Not really evidence, more -- more
8 reaction, you know what I'm saying. He didn't even
9 know who I was pretty much, you know. When he came
10 in there, he finally realized who I was, you know.
11 It took him a while.

12 Q Had your appearance changed any?

13 A No.

14 Q Okay.

15 A I mean, you can't really change too much
16 in the county.

17 Q Okay. Did Mr. -- did you have a
18 conversation with Mr. Buchanan about going ahead and
19 going to trial and presenting your defense?

20 A Yes, sir.

21 Q Okay. What do you recall him saying to
22 you about going forward to go to trial?

23 A Are you talking about pretty much what the
24 plea deal or anything like that was?

25 Q Well, I mean, did -- did he ask you if you

1 were going to trial, or did he ask you, "Hey, I've
2 got a plea that we can talk about"?

3 A No, he said he wanted to go to trial --
4 the Solicitor.

5 Q Okay.

6 A And he went over there and talked to the
7 Solicitor. And he came back later, and he told me
8 that there was a -- that they had a plea on the
9 table.

10 Q And what was your understanding of what
11 the plea would be?

12 A It was -- they were taking from a CDV high
13 and aggravated nature to assault and battery high
14 and aggravated nature. And pretty much I was
15 expecting a year, maybe some probation. You know
16 what I'm saying. I mean, that's pretty much what I
17 was expecting.

18 Q Let me go back. Criminal domestic
19 violence of a high and aggravated nature, did Mr.
20 Buchanan advise you about what the possible
21 sentencing range was for that offense?

22 A Of CDV high and aggravated?

23 Q Yes.

24 A No. I mean, I never really knew what, you
25 know, it carried. We never really discussed all

Anthony S. Franklin - Direct

22

1 that.

2 Q Okay. Did -- now, assault and battery of
3 a high and aggravated nature, the charge that they
4 ended up changing it to, did he advise you what the
5 sentencing range was for that offense?

6 A He said it was zero to ten.

7 Q Okay. Did he say whether or not it was up
8 to the Judge?

9 A I mean, not really. I mean, he said
10 pretty much it's always up to the Judge, I mean.

11 Q Okay.

12 A But he basically explained to me -- you
13 know what I'm saying -- it carries zero to ten. And
14 I asked him, "Am I going to get ten?" And he said
15 no.

16 Q Okay. I just want to make sure I
17 understand one thing. Did you know -- were you able
18 to compare ABHAN with CDV HAN in terms of what each
19 one carried as a possible --

20 A No.

21 Q -- sentence?

22 A Not until after I was sentenced.

23 Q Okay.

24 A And once I got into the case myself.

25 Q Okay. Was it your understanding at the

1 time that ABHAN was a reduced charge?

2 A No, no, not really. I mean, it's what I
3 thought, you know, when he presented it. I thought
4 it was going to be, you know, reduced. But, I mean,
5 once I got into it later and looked at it, it was no
6 difference between them.

7 Q Okay. At the time, you did not know that?

8 A No, I did not.

9 Q And Mr. Buchanan hadn't advised you about
10 the difference?

11 A No, sir.

12 Q Okay. You testified a minute ago that
13 when you asked Mr. Buchanan about what would happen,
14 what was your understanding of what the Judge was
15 going to sentence you to?

16 A I thought it was going to be a year of
17 probation.

18 Q Now, I'm going to ask you, do you recall
19 whether or not Mr. Buchanan said that pleading to
20 ABHAN was a good deal?

21 A Yes, sir.

22 Q Okay. Do you recall whether or not -- do
23 you recall what he might have told you about what
24 other people had received for pleading --

25 A Yes, he pretty much said everybody that

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1 goes, you know, for ABHAN, you know, pretty much
2 comes out with a year and maybe some probation --
3 more than likely, probation.

4 Q Okay. Did Mr. Buchanan -- do you recall
5 whether he advised you as to how Judge Keesley would
6 view your guilty plea?

7 A He pretty much told me, "You're going to
8 have to admit to what you did. You have to be
9 straightforward with the Judge."

10 Q Okay.

11 A "You admit you're wrong."

12 Q Okay, now, do you recall standing up and
13 giving -- going through the guilty plea in front of
14 Judge Keesley?

15 A Yes, sir.

16 Q Okay. At that time, were you
17 clear-headed, not under the influence of any drugs
18 or alcohol or anything?

19 A I mean, I don't really know exactly what
20 y'all call clear-headed. I mean, I was --

21 Q You hadn't had any taken any drugs while
22 in the county?

23 A -- in the county -- no, no, no.

24 Q Okay. Did you understand what was going
25 on that morning?

1 A Yes.

2 Q Okay. Now, did you listen to the State's
3 attorney, Ms. Whetstone, the Assistant Solicitor,
4 describe the offense and your criminal history to
5 Judge Keesley?

6 A Yes, sir.

7 Q Okay. Did she say anything that you knew
8 was incorrect?

9 A A lot of stuff. I mean, she brought --
10 she said I choked the victim three different times.
11 She said that it happened for four or five hours.
12 She brought up a YOA sentence that I thought I'd
13 never have to deal with again, you know. It was a
14 whole bunch.

15 Q Well, let me ask you this. In addition to
16 that, do you recall whether or not she said you had
17 been charged with threatening phone calls, which is
18 being nol prossed --

19 A Yes.

20 Q -- in exchange for your plea?

21 A Yes.

22 Q Was that the case?

23 A I mean, I never even knew anything about
24 that part. I was never charged with phone calls, as
25 far as I knew.

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1 Q Okay. Have you ever seen the sentence
2 sheet that Judge Keesley signed to send you to the
3 Department of Corrections?

4 A Yes, sir.

5 Q Okay. Do you know whether or not that
6 sentence sheet contains a note that you were to have
7 no contact with someone named Carl Reibold?

8 A Yes, sir.

9 Q Who is Carl Reibold?

10 A That was her boyfriend she was messing
11 with on the side.

12 Q Was this what got you upset?

13 A Yes, that's how the whole situation got
14 started.

15 Q All right. Why were you told not to have
16 contact with Carl Reibold?

17 A Basically, she said -- they said I
18 supposedly had called him and told him I'd kill his
19 mother and him. I knew where he worked, or
20 somewhere along the lines of that.

21 Q Was that supposed to be the basis for the
22 threatening phone call charge?

23 A I guess so.

24 Q Did you in fact make such a phone call?

25 A No, sir.

1 Q Were you ever charged with it?

2 A No.

3 Q You mentioned earlier that she brought up
4 a YOA charge. What did that stem from? What was
5 that about?

6 A It was a burglary second. It was when I
7 was sixteen or seventeen years old.

8 Q Okay. Was it more than ten years before
9 this?

10 A It was -- I think it was right on ten
11 years --

12 Q Okay.

13 A -- if I remember right.

14 Q All right. Ms. Whetstone advised the
15 Court that it was a 1997 burglary third degree. Do
16 you recall that?

17 A I mean, I recall, yes, getting charged
18 with it.

19 Q Okay.

20 A But I don't exactly know -- I didn't think
21 it was a burglary third. I don't even remember, it
22 was so long ago, you know.

23 Q I understand. Let me just ask you this.
24 In the transcript that we all have, Ms. Whetstone
25 advised the Court there is a 1997 burglary third

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1 degree in your record. Do you recall that?

2 A Yes, I recall that.

3 Q Okay.

4 A I remember her saying it.

5 Q And from 1997 to 2009, is that a period of
6 more than ten years?

7 A Ninety- seven to two thousand nine, yes.

8 Q Okay. And in fact, didn't you just
9 testify -- how old were you when that offense
10 occurred?

11 A I was sixteen or seventeen. I'm not sure.

12 Q Okay. What was the result of your YOA
13 sentence? Did you go to prison for a while for
14 that?

15 A No, sir.

16 Q What did you do? What sentence did you
17 get?

18 A I received five years' probation --

19 Q Okay.

20 A -- or a suspended sentence, five years'
21 probation.

22 Q All right. Ultimately, the Judge
23 sentenced you to what?

24 A I think it was fifteen suspended to five,
25 or I don't really recall.

1 Q Okay. I'm talking about on the charge
2 we're on here.

3 A Oh, here?

4 Q Yes.

5 A I was sentenced to ten years suspended to
6 eight with five years' probation.

7 Q Okay.

8 A Among other things.

9 Q Were you surprised at that sentence?

10 A I was very surprised. My knees about fell
11 out from under me.

12 Q Okay. Now, after the sentencing, did Mr.
13 Buchanan file a motion for reconsideration?

14 A Yes, sir, he filed a motion to have me
15 sent to the South Carolina Strong Program. I was
16 accepted probably about three or four months before
17 that.

18 Q What is the Strong Program?

19 A It's a -- it's basically -- I don't really
20 know how to explain it. You go there, and you work
21 for them. You don't get any money. You don't --
22 you work for them, and you rehabilitate yourself.
23 You get yourself back to where you need to be in
24 society.

25 Q Would you have been able to do that

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1 instead of having to face these criminal charges?

2 A Definitely. That's all I needed.

3 Q Was the motion for reconsideration
4 granted?

5 A No, sir, not that I know of. I was never
6 told anything. I was shipped to prison.

7 Q Okay. Did you ever hear back from Mr.
8 Buchanan what the result of the motion was?

9 A I never heard anything else from anybody.

10 Q Prior to your going back, when you were
11 face-to-face talking with Mr. Buchanan, did you ever
12 talk about appealing your sentence?

13 A Not face to face. I called him back when
14 I went to the county right after court and told him
15 that I wanted to appeal this charge.

16 Q Do you recall what Mr. Buchanan told you?

17 A He told me that it wouldn't do me any
18 good.

19 Q Okay. Do you know whether or not a direct
20 appeal was filed in your case?

21 A No, sir, I have no idea.

22 Q Okay. Did you evidence -- did you tell
23 Mr. Buchanan that you wanted to file an appeal?

24 A Yes, sir.

25 Q Okay. Now, were there anything -- any

1 other things that you could have brought up before
2 the Court that would have been exculpatory -- in
3 other words, would have tended to show that you did
4 not commit the offense they accused you of?

5 A I mean, there was a lot of mistakes me in
6 the paperwork.

7 Q Okay.

8 A A whole bunch.

9 Q What kind of mistakes?

10 A I mean, they've got visible injuries
11 marked on one incident report and no visible
12 injuries marked on another report, you know. I
13 mean, they've got me charged with phone calls, and
14 there's no evidence of any phone calls, you know.
15 It's just a whole lot of stuff that just didn't add
16 up to me.

17 Q Okay. I want to make sure I understand.
18 Are you telling me you were never served with an
19 arrest warrant for threatening phone calls?

20 A Never served. I was in the county for a
21 CDV high and aggravated nature charge, and that was
22 all that was on my record.

23 Q Okay.

24 A That was all that was on it. That's all I
25 was there for. And that was the whole time I was in

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1 the county.

2 Q And going back to your guilty plea before
3 Judge Keesley --

4 A Yes.

5 Q -- do you recall that Judge Keesley asked
6 you a lot of questions that you answered "Yes, sir"
7 and "No, sir"?

8 A Yes.

9 Q You recall that. You recall telling Judge
10 -- did you in fact understand what you were doing
11 that day?

12 A Yes, sir.

13 Q Okay. Did you -- so when the Judge asked
14 you questions like "Do you understand you have a
15 right to a jury trial, and you have a right to call
16 witnesses on your behalf? You have a right to --
17 the State has to prove guilt beyond a reasonable
18 doubt," did you understand all those things?

19 A I understood.

20 Q Okay. And when the Judge asked, "Are you
21 pleading guilty because you are guilty?" what did
22 you respond?

23 A Yes.

24 Q Okay. Were you in fact guilty of assault
25 and battery of a high and aggravated nature?

1 A Not the way I looked at it, no.

2 Q Why did you plead guilty?

3 A I mean, I was expecting to get a hearing,
4 you know. I mean, I wasn't expecting ten.

5 Q I just want to make sure I understand
6 this. If you didn't do it, why would you have said,
7 "Okay, I'll just give it a year"?

8 A I mean, it's the way they -- it was the
9 way it was pushed. I was so -- you know, I mean, I
10 was pushed in there early that morning. You know
11 what I'm saying? I didn't really understand what
12 everything was going on, but I just knew what they
13 told me.

14 Q Okay.

15 A I mean, I wasn't expecting this much time
16 for sure.

17 Q Okay. And when you say you didn't
18 understand what they told you, who are "they"?

19 A My lawyer.

20 Q Okay.

21 A Whatever, you know, it was just -- the
22 whole situation was understandable, but at the same
23 time, it was very confusing.

24 Q Did you feel -- is it your testimony today
25 that you pled guilty because you knew you were not

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1 prepared to go to trial?

2 A Yes.

3 Q Okay. And it was your understanding that
4 day, that June 22, 2009, that if you hadn't pled
5 guilty, you would be at trial --

6 A Yes, sir.

7 Q -- in front of Judge Keesley?

8 A Yes, sir.

9 Q Okay. And did you feel that your lawyer
10 was prepared to go to trial with you?

11 A Not really.

12 Q Did you feel you were prepared to go to
13 trial?

14 A I was -- I mean, because I knew there were
15 some mess-ups in the case. I mean, the whole case
16 didn't add up. She -- her testimony was changing
17 hearing that, you know -- it was just -- it just
18 didn't add up, no, to me.

19 Q Okay. Do you feel your lawyer adequately
20 represented you that would have given you an
21 opportunity to go to trial on these charges?

22 A No.

23 Q All right. Thank you, Mr. Franklin.

24 MR. BELDING: No further questions, Your
25 Honor.

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1 THE COURT: Cross-examination, Mr. Lee?

2 MR. LEE: Just briefly, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. LEE:

5 Q Mr. Franklin, you stated that your
6 attorney did tell you that the sentencing range for
7 assault and battery of a high and aggravated nature
8 was between zero and ten years, correct?

9 A Yes, sir.

10 Q And you also said that he said it was
11 always up to the Judge, correct?

12 A I said it was always up to the Judge. I
13 knew that.

14 Q Okay. So you did know that?

15 A Yes. I mean, I knew that.

16 Q And I know your lawyer already asked you
17 about some of these things. But when the Judge
18 asked you if you wanted a jury trial, do you recall
19 saying no?

20 A Yes, sir.

21 Q The Judge asked you, "Do you admit you're
22 guilty of this charge, Mr. Franklin?" Do you recall
23 saying yes?

24 A Yes, sir.

25 Q And do you recall the Judge asking you,

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1 "Has anyone forced, threatened, coerced you in any
2 way to get you to plead guilty?" and you said no?

3 A Yes, sir.

4 Q Okay. Do you recall the Judge asking if
5 you were fully satisfied with your attorney and your
6 saying yes?

7 A Yes, sir.

8 MR. LEE: That would be all my questions
9 for this witness. Thank you, Your Honor.

10 THE COURT: Redirect?

11 MR. BELDING: Just one brief recross -- or
12 redirect, excuse me.

13 REDIRECT EXAMINATION

14 BY MR. BELDING:

15 Q Mr. Franklin, following up on Mr. Lee's
16 question, you were asked, "Did anyone force you,
17 promise you anything, or coerce you into pleading
18 guilty?"

19 A Yes.

20 Q And your answer was no.

21 A Yes.

22 Q And is that true? I mean --

23 A No.

24 Q -- the truth is no one forced you --

25 A No.

1 Q -- had a gun to your head, right?

2 A No.

3 Q No one coerced you. They weren't going
4 to, you know, do anything to your mom if you didn't
5 plead guilty?

6 A No.

7 Q And no one promised you anything, correct?

8 A No.

9 Q But that's not what you're saying to this
10 Court, is it?

11 A I mean, I didn't look at it like that at
12 the time -- you know what I'm saying -- as him
13 saying, you know, "Probably, you're going to get a
14 year." You know what I'm saying? I wasn't looking
15 at it as that he promised me anything. You know
16 what I'm saying? I don't really understand, you
17 know, how the Court works. I don't. I don't spend
18 my time in court.

19 Q Okay. The -- what Judge Keesley -- what
20 he did not ask you was --

21 A Yes.

22 Q -- "Are you prepared to go to trial
23 today?" If he had asked you that question, what
24 would your answer have been?

25 A Yes.

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1 Q That you were ready?

2 A No.

3 Q All right, thank you.

4 MR. BELDING: No redirect. Thank you,
5 Your Honor.

6 THE COURT: You may step down.

7 MR. BELDING: And that would be the
8 petitioner's case.

9 THE COURT: Thank you, sir.

10 MR. BELDING: Thank you, Your Honor.

11 THE COURT: Mr. Lee?

12 MR. LEE: The State would call Matthew
13 Buchanan.

14 (The witness was sworn.)

15 CLERK OF COURT: Have a seat and state
16 your name for the record.

17 MR. BUCHANAN: My name is Matthew Buchanan
18 -- B-U-C-H-A-N-A-N.

19 MATTHEW BUCHANAN, having first been
20 duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. LEE:

23 Q Mr. Buchanan, where do you currently work?

24 A At the Lexington -- or the Eleventh
25 Circuit Public Defender's Office in the Lexington

1 office.

2 Q Were you working at the Public Defender's
3 Office at the time of this case?

4 A I was.

5 Q And were you in your capacity with the
6 Public Defender's Office appointed to represent Mr.
7 Franklin?

8 A I was.

9 Q Subsequent to being appointed, did you
10 have the occasion to meet with Mr. Franklin?

11 A I did.

12 Q Do you have any recollection of how many
13 times you may have met with him?

14 A According to my notes here, it looks like
15 I met with him on three different occasions.

16 Q Okay. And according to your notes, do you
17 have any recollection of what conversation may have
18 taken place during those meetings?

19 A I have them.

20 Q Would you mind filling us in on what you
21 may have talked about with Mr. Franklin?

22 A All right. Well, on -- my initial visit
23 was at the county jail, and it was those occasions
24 when I introduce myself, give the defendant the
25 rundown of what they're charged with, what they're

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1 facing.

2 And that's just kind of a standard thing I
3 do with every single client of mine, to make sure
4 that they're aware not only of their rights but what
5 they're facing, the maximum, the minimums.

6 And then I give them an opportunity to
7 tell me about their side of things so I can try to
8 identify possible defenses, possible mitigation, or
9 things that we may try and use in my representation.

10 Q And when you met with Mr. Franklin, did he
11 give you his side of things?

12 A He did.

13 Q And based on that conversation, did you
14 see any potential defenses?

15 A A few. Certainly, the main thing would
16 have been some of the elements of criminal domestic
17 violence of a high and aggravated nature might have
18 been overstated, overalleged, and it might have been
19 something that could have been addressed at a trial.

20 Q Okay. And did you communicate that with
21 the applicant?

22 A More than likely. I don't have it noted
23 here, but I'm sure that those would have been things
24 that we would have talked about.

25 Q Okay. Do you have in there anywhere in

1 your notes about discussing with the applicant
2 threatening phone calls or unlawful use of a
3 telephone?

4 A Well, I have here noted that there was --
5 he had apparently told me that there was a
6 restraining order filed in Family Court, and then
7 apparently -- I think what it was, is that he was
8 sent down to Family Court to have that restraining
9 order issued, dealt with.

10 Of course, I didn't represent him on that
11 because we only handle the General Sessions side of
12 things. He also mentioned or at least I have
13 written down here unlawful use of the telephone, in
14 parentheses "night before."

15 I'm not exactly sure what -- you know,
16 this is a couple of years removed, so I don't really
17 remember for certain where that conversation was
18 going. But it is in here, in my notes.

19 Q Okay. Now, during the course of your
20 representation of Mr. Franklin, did you seek to
21 engage in plea negotiations on his behalf?

22 A I did, Your Honor -- I'm sorry. I get
23 used to addressing Judges only. I did -- I did
24 engage in plea negotiations.

25 Q And were you able to get an offer from the

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1 State?

2 A I did. Initially, there was no plea
3 offer. I have a plea offer sheet dated March 26,
4 2009, from Kay Whetstone. Plea offer was "none."
5 And I'm -- obviously, I kept at her, and she allowed
6 him to plead to assault and battery of a high and
7 aggravated nature.

8 Q Okay. And did you keep the applicant
9 apprised of all the plea -- or the plea offer?

10 A Yes, yes, because I have -- now, this was
11 a roll call appearance, which I appear on his
12 behalf. He was still incarcerated, so I appear on
13 behalf of my clients when they're incarcerated, at
14 roll call appearances.

15 I do have it marked where the plea offer
16 was -- had been accepted, and this was before our
17 next meeting at the preliminary hearing. So I think
18 that's probably where I relayed this plea offer.

19 Q Let me back up a second. Did you -- did
20 you get the State's evidence in the case? Did you
21 file a Rule 5 Brady motion?

22 A I did.

23 Q And do you recall what the evidence
24 consisted of?

25 A I have it here, so I was able to refresh

1 my memory. It included the police report, witness
2 statements, both by Ms. Pridgen and the fellow I'll
3 call a rival, and a few photographs.

4 Q Okay. And did you review the discovery
5 materials with the applicant?

6 A Yes, I did. I mailed the material to him
7 through my paralegal on March 26th, and I met with
8 him after that, at the jail.

9 Q Based on your review of the discovery and
10 the discussions with the applicant, did you form an
11 opinion about the State's -- the strength of the
12 State's case, whether they would be able to prove
13 him guilty?

14 A I certainly had the feeling that there was
15 -- there was evidence to support ? to get it to
16 trial. There was going to be -- there was
17 definitely going to be a trial.

18 Now, whether or not a jury would find him
19 not guilty or guilty of a reduced charge would have
20 been up to the jury. And so it's -- I didn't have a
21 strong feeling that he would be able to prevail with
22 a not guilty verdict.

23 Q Okay. Did you communicate that opinion to
24 the applicant?

25 A More than likely.

25 I said, "Let's lead with this. Let's do

1 it." And then I said the odds of him getting on
2 probation and going into that program would be very,
3 very high.

4 However, the South Carolina Program is a
5 two-year commitment. Mr. Franklin said, "Well, what
6 if I were to not bring that forward? Could I get
7 probation any other way?"

8 And I said, "You could. It would be up to
9 the Judge." But he was saying, "Well, if I plead
10 guilty, don't mention the South Carolina Strong, and
11 then get probation, I could just get out and not
12 have to worry about doing a two-year commitment at
13 the program," which would have been -- which is
14 correct. I mean, in fact that would have been what
15 would have happened if he had gotten just a straight
16 probationary sentence.

17 But I said, "Look," you know, "this is
18 your best bet, just going with the South Carolina
19 Strong and leading with that." But I left it up to
20 him. I said, "Well, you know, I will do what you
21 want. If you want me to lead with South Carolina
22 Strong, I'll do that. If you want to just ask for
23 probation, I'll do that, too."

24 And he chose he wanted to go with just ask
25 for probation and not mention the South Carolina

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1 Strong. And it didn't go very well for him. The
2 Judge gave him a sentence that he got, the
3 eight-year active time, and then it was after that
4 when I made the motion for reconsideration to
5 present the South Carolina Strong information.

6 And I couldn't find -- I looked for the
7 Judge's order on his decision. I couldn't find it,
8 but I do recall that the Judge denied it, basically
9 saying that we should have led with that during the
10 actual plea and not -- not held that in reserve. So
11 the Judge did not change the sentence.

12 Q Now, after the motion for reconsideration
13 was denied, did the applicant ask you to appeal?

14 A I do not recall that. I know we had a
15 conversation about -- during the motion for
16 reconsideration, because that certainly would have
17 been the first thing that we did, because we had the
18 grounds, the information to present to the Judge
19 about South Carolina Strong.

20 Q Right. Is it your knowledge -- to your
21 knowledge, do guilty pleas waive basically all
22 non-jurisdictional defenses anyway? It leaves
23 nothing available for appellate review, basically?

24 A Yes, there's not a whole lot. I don't
25 think I would have been able to state with any firm

1 conviction that Judge Keesley did something -- that
2 he didn't do the plea correctly.

3 Q But typically, if you had been asked to
4 file an appeal, you would have?

5 A Absolutely.

6 MR. LEE: Beg the Court's indulgence for
7 just one moment, Your Honor.

8 THE COURT: Yes, sir.

9 Q Do you have any independent recollection
10 of whether the applicant was actually charged with
11 threatening phone calls?

12 A No. And if I'm not mistaken, I think
13 threatening phone calls is a misdemeanor. It's a
14 Magistrate level offense. And so I wouldn't have
15 even handled that part anyway, if that's correct.

16 Q Okay.

17 A But, no, I don't remember for sure if he
18 was ever charged with that.

19 Q Did you give the applicant notice that he
20 was being brought over to court on the day of his
21 plea prior to the day of?

22 A I don't recall that. If it was a phone
23 call, it might have been a brief phone call that I
24 didn't even make note in the file. I don't -- I
25 can't tell you when I gave notice of that.

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1 Q Did you ever promise the applicant that he
2 would not get ten years?

3 A I never promise a sentence when it's not a
4 negotiated sentence, and this was not. I always say
5 that here's what I can fight for, what I think
6 they're going to get. But I always tell them it's
7 not up to me. It's up to the Judge.

8 Q Now, you stated that it was your belief
9 that he was brought over on the day of the guilty
10 plea specifically for the guilty plea, correct?

11 A Yes.

12 Q So if he had elected not to pursue a
13 guilty plea and you had ended up having to call the
14 case for trial at some later date, would you have
15 been prepared to proceed to trial?

16 A I would have made every effort to be one
17 hundred percent prepared for when trial was called.

18 Q Thank you. I have no further questions.

19 THE COURT: Cross?

20 MR. BELDING: Thank you, Your Honor.

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. BELDING:

24 Q Mr. Buchanan, just a few questions. You
25 started off noting that you had three meetings, and

1 you talked about the first one in the jail, which is
2 your typical introduction walk-through. And then
3 Mr. Lee asked you another question.

4 I was wanting to know what the other two
5 meetings were, if you recall. I did notice that you
6 said you had a second time you met him.

7 You don't have a date, but you were
8 talking about some plea negotiations, or was that
9 the preliminary hearing?

10 A I think that would have been at the
11 preliminary hearing. That was May 29th of '09 --

12 Q Okay.

13 A -- according to my notes.

14 Q All right. And so you -- so is it two
15 meetings or three?

16 A Well, three counting the meeting before
17 the plea.

18 Q Oh, counting that day?

19 A So that day, yes.

20 Q Okay. So you don't really dispute Mr.
21 Franklin's version of his meetings with you?

22 A I do not.

23 Q It sounds the same -- at the jail,
24 prelimin, at the plea?

25 A I think that's right.

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1 Q Okay. Do you have any explanation for why
2 Mr. Franklin would have thought that he was being
3 called to trial that day or that week if he didn't
4 plead that day?

5 A Not at all. I mean, we had a plea offer,
6 a reduced charge from the criminal domestic violence
7 high and aggravated down to the assault and battery
8 high and aggravated. And I don't know why he would
9 -- he thought that we were definitely going to trial
10 that day.

11 Q Okay. Would you explain the differences
12 between CDV HAN and ABHAN in terms of sentencing?

13 A Absolutely. Criminal domestic violence of
14 high and aggravated nature is a violent felony. It
15 carries one year mandatory minimum, and the way that
16 the Department of Corrections handles that is a 365
17 day-for day, that one year.

18 There's no time that he could not get that
19 -- less than one year. And then the maximum is ten
20 years, of course. But obviously the violent is
21 treated differently at the Department of
22 Corrections. It's like parole eligibility, work
23 release, and other sorts of programs and things
24 would be denied him because he would have been a
25 violent offender.

1 Assault and battery high and aggravated is
2 zero to ten. It does not have that one-year
3 mandatory, and it's also nonviolent, which it
4 doesn't have all those restrictions that the violent
5 has.

6 Q And it's common law, and it's classified
7 as a misdemeanor?

8 A That's true.

9 Q Okay, all right. So do you think Mr.
10 Franklin understood all that? Did you carefully
11 explain it as well as you have to us today?

12 A I -- I don't have an independent
13 recollection of it, but I would always, with my
14 clients, make sure that they're aware what the
15 difference is and why assault and battery of a high
16 and aggravated nature is a step-down, even though it
17 still carries the same maximum.

18 Q Right, okay. A lot of times in pleas in
19 your practice, people are facing mandatory
20 twenty-fives, and if they get a ten-year negotiated
21 plea, that's a deal.

22 A Yes.

23 Q Okay. But in both of these cases, he was
24 facing potentially ten years. It was up to the
25 Judge.

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1 A That's correct.

2 Q So because he didn't have a negotiated
3 plea, it was important at the plea for Mr. Franklin
4 and of course you to say something to Judge Keesley
5 that would get him not give him ten years, correct?

6 A That's correct.

7 Q Okay. Now, in that regard, nobody ever
8 seems to have seen this charge of threatening phone
9 calls. I've looked up a couple.

10 I think I agree with what you said.
11 There's a threatening, you now, misuse of phone
12 calls. It's a misdemeanor where you wouldn't even
13 be involved in that.

14 A That's correct.

15 Q It's thirty days, correct?

16 A Correct.

17 Q Okay. And you never saw a warrant or
18 indictment for threatening phone calls, right?

19 A Earlier today, I looked through the
20 discovery. I did not find a ticket or a warrant for
21 that.

22 Q Correct. And I don't have one either.
23 Now, the point is, at the plea Ms. Whetstone stated
24 that he was also charged with threatening phone
25 calls and that is being nol prossed in exchange for

1 his plea. Was that part of your plea negotiation
2 with her?

3 A I -- you know, I don't have a tremendous
4 solid recollection of the negotiations back and
5 forth. But I do know that it's entirely possible
6 for a Solicitor to straight indict something, and
7 that might have been an issue, because I know that
8 there was this individual that -- Reikard or Reibold
9 --

10 Q Okay.

11 A And even at the day of the plea, I was
12 handed some letters to the Judge from Ms. Pridgen
13 and from Mr. Reibold. That might have been an
14 issue. That might have been something that had been
15 talked about that the Solicitor was just putting on
16 the record she wasn't going to pursue those charges
17 perhaps.

18 Q Well, and I just want to -- you get an
19 opportunity after the State presents the factual
20 basis for the plea to say whether or not you agree
21 with their recitation of the facts, correct?

22 A Yes.

23 Q Okay. And as I read the transcript, I'll
24 just quote you on page seven, that Ms. Whetstone in
25 addressing Judge Keesley says, beginning on line two

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1 and going through four, "He was additionally charged
2 with threatening phone calls, which is being nol
3 prossed in exchange for his plea today." Do you see
4 that in the transcript?

5 A Yes.

6 Q Okay. And normally when there's a nol
7 pros, aren't you given something in writing? Isn't
8 there something to evidence that?

9 A Right. Something would be filed with the
10 Clerk of Court.

11 Q Okay. And to your knowledge, there's
12 nothing filed with the Clerk of Court?

13 A Not to my knowledge.

14 Q Okay. When you got the State's discovery,
15 did you discuss with Mr. Franklin the fact that the
16 State's chief witness, this Ms. Pridgen, had
17 originally told the officers that she was sexually
18 assaulted and then recanted that and obviously not
19 under any pressure from him, because he's in jail?

20 A Right. That was something that I do have
21 a note here in my file from our initial
22 conversation. Also in my notes from the preliminary
23 hearing, that was also -- it was something that I
24 was able to cross-examine the officer about --

25 Q Okay.

1 A -- that she made those accusations and
2 then later on recanted.

3 Q All right. Now, in your experience doing
4 trial or criminal defense work, if you impeach the
5 credibility of the State's chief witness, how does
6 that impact the State's case?

7 A Usually, weakens it.

8 Q Okay. In spite of that, you testified in
9 response to a question of Mr. Lee that you didn't
10 think you had a very strong case to go forward with
11 to trial, is that true?

12 A Well, the fact that the alleged victim was
13 still sticking with the vast majority of her story,
14 if the jury believed that, then he would be likely
15 convicted. You know, I made a motion to have the
16 charge bound over as a lower CDV, not the high and
17 aggravated version, which was denied.

18 But it was -- of course, at all trials,
19 there's no certain outcome. There's going to be a
20 verdict, but we don't know what that verdict's going
21 to be.

22 Q Okay. All right, thank you. Now, Mr.
23 Buchanan, just a couple more questions. One, I
24 believe you testified that you were asking for
25 probation for Mr. Franklin. And as I read the

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1 transcript -- and I might have missed it -- I don't
2 know that the word "probation" ever came out of your
3 mouth.

4 I think what you said is that he would
5 like to get out. Is that the equivalent of what you
6 -- is that what you mean when you say -- "he wants
7 to get out," does that mean "Judge, we're asking for
8 probation"?

9 A More than likely.

10 Q Okay. And on the issue of the filing an
11 appeal, you understand that if you file a notice of
12 appeal, you wouldn't have had to perfect and pursue
13 that appeal, would you? You could have had
14 Appellate Defense do that, correct?

15 A Right, although I --

16 Q So --

17 A -- believe there's an order -- and I don't
18 know if it was in place in 2009 -- that whenever a
19 guilty plea appeal is given, the defense attorney
20 who actually was there for the plea needs to put
21 together an affidavit stating the reasons why we
22 believe that an appeal is necessary.

23 Q But you could have just filed a notice of
24 appeal and filed an Anders brief, correct, in which
25 you basically say, "I'll brief any known issue, but

1 I think it might be non-meritorious. So I'm asking
2 to be relieved," or you could have turned it over to
3 Appellate Defense, correct?

4 A Right.

5 Q Okay. So there really wasn't any downside
6 to your filing a notice of appeal if, in fact, Mr.
7 Franklin wanted one?

8 A That's true.

9 Q And so just because you didn't think it
10 would do any good is not the same as following
11 through on his constitutional right to appeal his
12 conviction, correct?

13 A Right. Well, as I -- I do not recall him
14 telling me to appeal it. I think frequently when I
15 get that -- because probably it was during that --
16 in that courtroom after the plea, I told him I would
17 file the motion for reconsideration because of the
18 South Carolina Strong letter. So I don't recall the
19 issue of also filing an appeal ever coming up.

20 Q Nor did you discuss it with him?

21 A Probably not.

22 Q Okay.

23 MR. BELDING: Thank you, Your Honor.
24 Nothing further.

25 THE COURT: Any further questions?

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1 MR. LEE: Just briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. LEE:

4 Q Mr. Buchanan, I believe you mentioned
5 this. But despite the fact that the possible range
6 of sentencing was more or less the same on the
7 maximum, you still felt that there were several
8 benefits to the applicant's taking the ABHAN charge
9 versus the CDV HAN, correct?

10 A Absolutely.

11 Q And with respect to the threatening phone
12 calls charge -- and the Solicitor did say he was
13 charged with threatening calls, but those were not
14 pressed, correct?

15 A Exactly.

16 Q And so they -- that means they went away?

17 A That means that they're done anyway, yes.

18 Q So he's not serving on any threatening
19 phone calls?

20 A No.

21 Q Now, the applicant -- I believe the State
22 recited his prior history at the guilty plea,
23 correct?

24 A I think she did, yes.

25 Q Did he have priors that were similar in

1 nature, criminal domestic violence, assault and
2 battery, anything like that?

3 A He had one prior criminal domestic
4 violence conviction I believe in 2000. And this I
5 only know because I was reviewing the file and found
6 it before coming up here.

7 Q So you know he did have a prior criminal
8 domestic violence. The applicant had more or less
9 stuck with most of her story, I believe you said, is
10 that fair to say? Not the applicant, the victim had
11 more or less stuck with most of her story, correct?

12 A That's correct.

13 Q And I believe there was also some
14 corroborating testimony from a Mr. Reibold, is that
15 correct?

16 A That's correct.

17 Q Okay. So really if he were to go to
18 trial, credibility would be a big issue, would it
19 not?

20 A Yes.

21 Q And did you feel like he had some
22 credibility problems?

23 A Regarding who?

24 Q Regarding the applicant -- I mean, in
25 comparison that you have the victim's story more or

Anthony Buchanan - Redirect

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1 less stayed the same, and the corroborating
2 testimony, and the applicant's prior record for, you
3 know, similar which may or may not get in. But did
4 you feel credibility might be an issue if you went
5 to trial?

6 A Well, truth be told, I think that the
7 thing that concerned me the most would be if -- the
8 State also has the power to straight indict
9 additional charges, and one might have been that
10 sexual assault, because even though it was alleged
11 and then later on recanted, it might have been
12 something that the Solicitor might have felt after
13 maybe some additional interviews with Ms. Pridgen
14 that the State could go forward on that.

15 Something like that sometimes is a red
16 flag to say that with the trial, you're playing for
17 keeps. And it's been my experience that the
18 Solicitor sometimes will bring everything they
19 possibly can when it comes to trial.

20 Q And, finally, you said you don't remember
21 one way or another about the appeal issue, correct?

22 A I honestly don't remember.

23 Q But typically if you were asked to appeal,
24 it's your practice to file one?

25 A That's correct.

1 MR. LEE: No further questions.

2 THE COURT: All right, you may step down.

3 Thank you.

4 Anything further, Mr. Lee?

5 MR. LEE: No further witnesses for the
6 State.

7 THE COURT: All right, thank you,
8 gentlemen. Thank you for being so prepared. I'm
9 going to take this matter under advisement, and I'll
10 let you know my decision.

11 MR. LEE: Thank you, Your Honor.

12 MR. BELDING: Thank you, Your Honor.

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STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

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

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

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

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
Anthony S. Franklin, #314338,	)	C/A No.: 2009-CP-32-4199
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
State of South Carolina,	)	
	)	
Defendant.	)	

PLAINTIFF'S TRIAL BRIEF

The Plaintiff hereby submits this *Trial Brief* for the Court's consideration in this matter.

I. Statement of Facts of the Case.

A. This case was filed on September 15, 2009, by the Plaintiff, acting *pro se*. Undersigned counsel was appointed to represent Plaintiff by Order of the Hon. Knox McMahon dated August 3, 2010 (filed August 6, 2010).

B. Plaintiff's application states that he is seeking relief from the sentence imposed in Indictment 2009-GS-32-01890 for Assault and Battery of a High and Aggravated Nature (*PCR Application*, paragraph 4). Plaintiff was originally charged with Criminal Domestic Violence of a High and Aggravated Nature (*Transcript of Record*, pg. 6, ln. 23-25). Plaintiff was represented by Matthew C. Buchanan, Esquire, Assistant Public Defender. Plaintiff pled guilty before the Hon. William P. Keesley on June 22, 2009, receiving a sentence of ten (10) years, provided that upon service of eight (8) years, the balance is suspended with five (5) years probation plus payment of costs and assessments (*Transcript*, pg. 18, ln. 14-18).

C. Prior to the date of the guilty plea, Plaintiff saw his court-appointed attorney two (2) times: 1) while being detained in the Lexington County Detention Center

for about thirty (30) minutes; and, 2) at the Preliminary Hearing held on the CDVHAN case on June 2, 2009.

D. During the afternoon of June 21, 2009, an officer at the detention center came to Plaintiff's door and told him that he was "going to court in the morning". Plaintiff had no prior notice of such court date and did not know what type of proceeding was going to be held. Early in the morning of June 22, 2009, Plaintiff was transported from the detention center to the Lexington County Courthouse, where he met briefly with Mr. Buchanan, who advised Plaintiff that the case was being called for trial. Mr. Buchanan did not represent that he was prepared to actually try the case, being unaware, for example, that the State's witness had originally alleged that Plaintiff had raped her only to later recant that allegation. Plaintiff was extremely concerned about going to trial with an unprepared attorney. Mr. Buchanan then told Plaintiff that he had negotiated a plea to the common law misdemeanor of Assault and Battery of a High and Aggravated Nature. Plaintiff was advised that this was a "good deal" for which the judge could sentence from zero (0) to ten (10) years, and that he (Buchanan) had seen people "come back on ABHAN with a one (1) year sentence". Plaintiff specifically asked his lawyer "will I get ten (10)?" and was told "no". Mr. Buchanan advised Plaintiff that "Judge Keesley will be OK as long as you admit to the charge".

E. Plaintiff was not advised that the sentence range for CDVHAN was one (1) to ten (10) years under §16-25-65, *Code of Laws of South Carolina, 1976* (as amended), so Plaintiff was not aware that the potential maximum sentence was identical. At his attorney's urging, Plaintiff pled guilty to ABHAN.

F. During the plea hearing, the State's attorney, Kate E. Whetstone, Esquire, Assistant Solicitor, advised the Court that Plaintiff was also "...charged with threatening phone calls, which is being nol prossed in exchange for his plea today." (*Transcript*, pg 7, ln. 2-4). Plaintiff's attorney did not object, despite the fact that Plaintiff had not been charged with this offense. This statement obviously impacted Judge Keesley because the *Sentence Sheet* notes that Plaintiff is to have no contact with the alleged victim, Carl Reibold.

G. During the plea, Solicitor Whetstone also advised the Court that Plaintiff's prior record "...includes a 1997 burglary third degree...." Plaintiff was born in June 1979, and the offense the State was referring to occurred when Plaintiff was seventeen (17) years old. Plaintiff was given a Youthful Offender Act sentence for this offense and was told that he would "never have to deal with this again". Mr. Buchanan did not object to the introduction of this offense as part of Plaintiff's prior record.

H. After Judge Keesley had handed down Plaintiff's sentence, Mr. Buchanan sprung into action, filing a Motion for Reconsideration in which he moved the Court to vacate the sentence and place Plaintiff in the SC Strong Program. This motion was denied.

I. Plaintiff requested Mr. Buchanan to file an appeal, but was told that "it wouldn't do any good". No direct appeal was filed on Plaintiff's behalf.

II. Legal Issue

Plea counsel was deficient in representing Plaintiff and, but for such errors, there is a reasonable probability that the outcome of a trial would have been different.

III. Legal Authority

For petitioner to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective assistance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Brown v. State, 340 S.C. 590, 533 S.E.2d 308 (2000). This does not only apply to trials - this same standard applies to a guilty plea. Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

When a guilty plea has been entered, the applicant must prove counsel's representation was below the standard of reasonableness and but for counsel's unprofessional errors, there is a reasonable probability the applicant would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Alexander v. State, 303 S.C. 539, 543, 402 S.E.2d 484, 485 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript, as well

as evidence at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984).

In a PCR proceeding, the burden of proof is on the applicant to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRCP. In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result of the trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. *Id.* If there is any probative evidence to support the findings of the PCR judge, those findings must be upheld. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Likewise, a PCR judge's findings should not be upheld if there is no probative evidence to support them. Holland v. State, 322 S.C. 111, 470 S.E.2d 378 (1996).

The Plaintiff did not pursue a direct appeal of any of these pleas; however, since Plaintiff is challenging the voluntariness of those pleas, this PCR proceeding is the only forum to raise this issue. State v. Barton, 325 S.C. 522, 530 n. 6, 481 S.E.2d 439, 443 n. 6 (Ct. App. 1997) (any challenge to the knowing and voluntary nature of appellant's plea could be raised only in a petition for post-conviction relief); In the Interest of Antonio H., 324 S.C. 120, 122, 477 S.E.2d 713, 714 (1996) (where sole issue before appellate court was competency to enter plea and issue was not raised at the time of the plea, issue was procedurally barred; proper avenue to challenge a guilty plea which was not objected to at the time of its entry was through post-conviction relief); State v. McKinney, 278 S.C. 107, 108, 292 S.E.2d 598, 599 (1982) (absent timely objection at a plea proceeding, the unknowing and involuntary nature of a guilty plea can only be attacked through the more appropriate channel of post-conviction relief).

Plaintiff asserts that he did not validly waive his constitutional right to a trial by jury. When a PCR applicant alleges that he was denied the right to exercise one of his constitutional rights, the sole inquiry is whether he was informed of that right, and if so, whether he validly waived it. If there is no knowing and intelligent waiver, then the

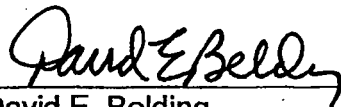
remedy is a new trial. *See, e.g., Wroten v. State*, 301 S.C. 293, 391 S.E.2d 575 (1990) (no valid waiver of right to counsel, new trial ordered); *Prince v. State*, 301 S.C. 422, 392 S.E.2d 462 (1990) (same).

We next turn to the second step in the analysis—whether Plaintiff was prejudiced by the deficient representation. *Strickland v. Washington*, 466 U.S. at 687. As this was a guilty plea, Plaintiff “must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” Here, the evidence shows that Plaintiff had defenses, including the significant ability to impeach the credibility of the State’s chief witness who falsely accused Plaintiff of rape only to recant that allegation later. Unfortunately, Plaintiff’s court-appointed counsel did no investigation or preparation, and simply negotiated a guilty plea that carried the same potential sentence. Plaintiff’s attorney did not demonstrate “reasonableness under professional norms” that satisfies the requirements of the Sixth Amendment. *Cherry v. State*, 300 S.C. 115, 386 S.E. 2d 624 (1989).

Plaintiff was also denied his right to a direct appeal of his conviction. *Roe v. Flores-Ortega*, 120 S.Ct. 1029 (2000), clearly required counsel to consult Plaintiff about such an appeal and to file one since Plaintiff had demonstrated to counsel that he was interested in appealing.

PRAYER FOR RELIEF

Based on the foregoing, Plaintiff prays that the Court vacate his sentence as violative of the Sixth Amendment and remand this case to Lexington County General Sessions Court.



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February 2, 2011

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

2009-CP-32-4199

Anthony Franklin, # 314338,

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed September 15, 2009. The Respondent made its Return on December 16, 2009. An evidentiary hearing into the matter was convened on February 2, 2011, at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by David Belding, Esquire. The Respondent was represented by A. West Lee of the South Carolina Attorney General's Office.

This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Lexington County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant appeared June 22, 2009, before the Honorable William P. Keesley where he waived presentment to one count of Assault and Battery of a High and Aggravated Nature. He was represented by Matthew Buchanan, Esquire, at the plea. Applicant

pled guilty to the charge and was sentenced to ten (10) years imprisonment, provided that upon the service of eight (8) years, the balance would be suspended to five (5) years probation. Applicant did not appeal the plea or sentence.

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

1. Ineffective assistance of counsel.
 - i. "Misadvised regarding my appeal rights."
 - ii. "Public defender didn't spend enough time on my case or defend me enough that day in front of the judge."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985). In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the

charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Ineffective Assistance of Counsel

Applicant first contended counsel's performance as his plea counsel was deficient where counsel failed to properly prepare Applicant's case and sufficiently advise Applicant regarding plea negotiations. Applicant testified he met with counsel twice in the four (4) months from the time he was arrested until he appeared in court for his plea. Applicant contends each meeting was roughly thirty (30) minutes during which time he and counsel discussed the facts giving rise to the charges. Applicant freely admitted he grabbed the victim in this case, but denied he committed criminal domestic violence of a high and aggravated nature. Applicant went on to say he was taken to court on the day of his plea without any knowledge of why he was scheduled to appear there. Upon arriving, Applicant stated, he met with counsel who advised him the solicitor was prepared to go to trial, but that a plea offer had been extended to allow Applicant to plead down from Criminal Domestic Violence of a High and Aggravated Nature (CDVHAN) to Assault and Battery of a High and Aggravated Nature (ABHAN). Applicant testified he was led to believe he would be receiving one (1) year of probation under the plea, despite acknowledging he was aware of the sentences the charges carried and stating counsel had advised him that the sentencing would be left up to the discretion of the judge. Applicant conceded that he fully understood what was going on during the plea hearing, but alleges he was never explained the differences in pleading to CDVHAN and ABHAN by counsel prior to entering his plea.

Counsel testified he met with Applicant three (3) times in preparation for Applicant's case, during which he reviewed the charges with Applicant, Applicant's constitutional rights, the potential sentences he was facing, Applicant's version of the facts giving rise to the charges, and potential defenses to be used at trial. Counsel stated he entered into plea negotiations with the state, initially receiving no offers, but eventually received an offer to allow Applicant to plead down to ABHAN, which he promptly relayed to Applicant. Counsel testified he reviewed all of the discovery materials with Applicant, in addition to mailing the entirety of the discovery file to Applicant for his own review on March 26, 2009. Counsel went on to state that he never promises his clients a particular sentence, and never told Applicant he would receive one year probation for this plea although he did tell Applicant he would request the judge impose such a sentence. Finally, counsel testified that it was ultimately Applicant's voluntary decision to enter the plea, and that had Applicant decided to proceed to trial he would have made every effort to be prepared for such.

Based on the testimony presented at trial and a thorough review of the record, I find counsel's representation was not deficient nor was Applicant prejudiced by any alleged deficiency. Counsel advised Applicant of all relevant issues regarding the charges he was facing, including the facts giving rise to the charges, the potential sentences he was facing, Applicant's constitutional rights, the state's evidence against Applicant, potential defenses that could be used at trial and the consequences of rejecting this plea to proceed to trial. Counsel gave Applicant all the information and advice to make an intelligent and voluntary decision on whether to enter this plea. Counsel diligently entered into plea negotiations on Applicant's behalf where he was able to secure an advantageous plea offer that Applicant ultimately accepted. I further find that Applicant's guilty plea was entered knowingly and voluntarily after being fully and adequately

advised by competent counsel acting within the range of competence demanded of attorneys in criminal cases. Therefore, counsel was not ineffective in this regard and this allegation is without merit.

Failure to Appeal Plea

Applicant also alleges counsel failed to file a direct appeal of the plea and sentence on his behalf. Applicant testified he recalled counsel making a motion to reconsider Applicant's sentence, urging the court to consider sending Applicant to the "Strong Program" rather than the Department of Corrections, but stated he never heard whether the motion was granted. Applicant went on to say that when he returned to the county jail after the plea hearing, he called counsel and asked him to file a direct appeal, but had no knowledge of whether such an appeal was filed.

Counsel similarly testified that he did file a motion for reconsideration after the plea hearing, in which he asked the court to consider re-sentencing Applicant to the "Strong Program" that Applicant had been previously accepted to. Counsel stated that motion was denied and the original sentence remained in place. However, counsel went on to say he did not recall ever discussing a direct appeal with Applicant nor did he remember Applicant asking him to file an appeal, but said that had Applicant asked, he would have certainly filed the appeal.

Based on a review of the testimony presented at the hearing and a thorough review of the record, I find counsel was not ineffective in failing to file a direct appeal. Further, I find counsel's testimony to be credible; conversely, I find Applicant's testimony not to be credible. Counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000). Based on counsel's credible testimony,

Applicant never demonstrated an interest in appealing his plea after the denial of his motion to reconsider, and no extraordinary circumstances existed such that counsel "should have known" Applicant wanted to appeal his plea. Further, counsel plainly testified that had Applicant requested or otherwise shown interest in appealing, he certainly would have done so. Therefore, Applicant has failed to carry his burden in proving counsel was ineffective in this regard or otherwise denied Applicant his right to appeal the plea.

CONCLUSION

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

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

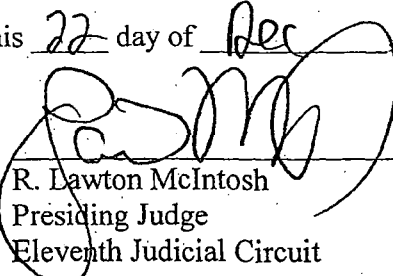
This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the

appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 22 day of Dec 2011.


R. Lawton McIntosh
Presiding Judge
Eleventh Judicial Circuit

Anderson, South Carolina.

Lexington County Sheriffs Department

B Smith

Law Enforcement Case #: 09013035

KEW

ARREST WARRANT NUMBER

J848256

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

The State of South Carolina
County of Lexington

COURT OF GENERAL SESSIONS

JUNE TERM 2009

THE STATE
vs.

Anthony Scott Franklin

CDR #: 0013

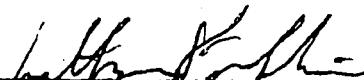
Indictment for

Assault and Battery of a High and
Aggravated Nature

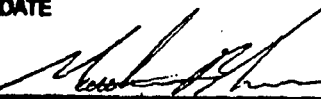
§ 00-00-0000

DONALD V. MYERS, SOLICITOR

I DO HEREBY WAIVE MY RIGHT
TO GRAND JURY PRESENTMENT


DEFENDANT

6/22/09
DATE


WITNESS

12
Lexington
[X]
County
Sta
J
12

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

INDICTMENT FOR
Assault and Battery of a High and Aggravated
Nature

§ 00-00-0000

At a Court of General Sessions, convened on June 2009, the Grand Jurors of Lexington County present upon their oath:

That **Anthony Scott Franklin** did in Lexington County, South Carolina on or about February 14, 2009, commit an unlawful act of violent injury to the person of Amy Prigden accompanied by the following circumstances of aggravation:

1. great disparity in the sizes of the parties to wit: the victim being about 5'03" and weighing about 135 pounds and the Defendant being 6'01" and weighing about 200 pounds; and/or
2. the infliction of severe bodily injury to wit: choking her multiple times; and/or
3. a difference in the sexes of the parties

, in violation of the Common Laws of the State of South Carolina.

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

Nate White

ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE
VS.
Anthony Scott Franklin

INDICTMENT/CASE#: 2009-GS-32-01890

AKA:
Race: W Sex: M Age:
DOB: 00-00-0000 SS#:
Address:
City, State, Zip:
DL# SID#

AW#: J848256
Date of Offense: 2/14/2009
S.C. Code §: 00-00-0000
CDR Code #: 0013

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Assault / Assault and battery of a high and aggravated nature (ABHAN)

In violation of § 00-00-0000 of the S.C. Code of Laws, bearing CDR Code # 0013
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45

The charge is: ☒ As indicated, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury (defendants initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST: [Signature] 76/13 [Signature] [Signature] 73740
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 10 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 8 days/months/years and or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 5
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference. (ATU) TOLL PROBATION WHILE INCARCERATED

☐ 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 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: \$ days/hours Public Service Employment

Payment Terms: Obtain GED ☐
☐ Set by SCDPPPS Attend Voc. Rehab. Or Job Corp.

Recipient: May serve W/E beginning Substance Abuse Counseling ☒ w/ Follow up

Fine:		\$
14-1-206 (Assessments 107.5%)		\$
14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100
14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
16-5-2995 (DUI Assessment)	\$12	\$
16-1-286 (DUI Breath Test)	\$25	\$
7-12 (Public Def/Prob)	\$500	\$ 500
4-1-212 (Law Enforce. Funding)	\$25	\$ 25
4-1-213 (Drug Court Surcharge)	\$100	\$
0-21-114 (BUI Breath Test Fee)	\$50	\$
3-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
1-7 (SCCJA Surcharge)	\$5	\$ 5
to County (if paid in installments)		\$
TAL		\$ 6,300

Random Drug/Alcohol Testing ☒
Fine may be pd. In equal, consecutive weekly/monthly
pmts. of \$ Beginning \$ Paid to Public Defender Fund

Other: DNA IS NOT ALREADY IN
DATABASE. CONSIDER NO ALIBI;
INTENSIVE SUD. FOR 1ST 6 mo.
OF PROBATION. NO CONTIN. W/
ANY PROBATION EXCEPT IN STRICT
☒ Appointed PD or appointed other counsel,
\$47.12 requires \$500 be paid to Clerk
during probation.

COMPLIANCE w/ Family Court
Presiding Judge William P. Hensley
Judge Code: 2050
Sentence Date June 22, 2009

VISITATION ORDER ENTERED
AFTER THIS DATE; NO CONTIN
W/ CARL REIBOLD; PAY P.O. FEE
& COURT COSTS A RATE OF \$50/mo

rk of Court/Deputy Clerk Beth R. Carver / PR
rt Reporter: Shirley Thompson

J-048256

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

THE STATE
against

09013035

Anthony Scott Franklin

Address:

Phone: _____ SSN: _____

Sex: M Race: W Height: 6 I Weight: 198

DL State: _____ DL #: _____

DOB: _____ Agency ORI #: SC0320000Prosecuting Agency: Lexington County SheriffProsecuting Officer: B Smith - XXOffense: Domestic/ Criminal domestic violence of a high and aggravated natureOffense Code: 2988Code/Ordinance Sec: 16-25-0065

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 Anthony S. Franklin
on Feb. 18, 2009

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

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

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

☐ County/ ☐ Municipality of
Lexington

AFFIDAVIT

ORIGINAL

S.C. Attorney General
April 21, 2003
SCCA 518Personally appeared before me the affiant B Smith
being duly sworn deposes and says that defendant Anthony Scott Franklin
did within this county and state on or about 02/14/2009 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Lexington
in the following particulars:DESCRIPTION OF OFFENSE Domestic/ Criminal domestic violence of a high and aggravated natureI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on February 14, 2009 at approximately 0500 am, the Defendant, Anthony Scott Franklin, did commit the crime of Criminal
Domestic Violence of a High and Aggravated Nature, and that he did grab the victim (Pridgen, Amy Lynn) around the throat and
choked her. The victim was unable to breathe. The victim had bruising and swelling around her throat. The subject also hit the
victim in numerous locations in the back of the head with his hands. The subject has a prior CDV conviction on his record. The
Defendant and victim have cohabitated and have children in common. The incident took place at [REDACTED]
West Columbia, SC 29170, which is in Lexington County, SC. Case no. 09013035Signature of Affiant [Signature]

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

Affiant's Address 521 Gibson RoadLexington 29072-Affiant's Telephone (803)785-8230

ARREST WARRANT

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

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

on or about 2/14/2009 defendant Anthony Scott Franklin
did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of Lexington) as set forth below:DESCRIPTION OF OFFENSE: Domestic/ Criminal domestic violence of a high and aggravated natureHaving found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before meon 02/15/2009Signature of Issuing Judge
Brian W. JeffcoatJudge Code: 5058

(L.S.)

Judge's Address Lexington County Judicial CenterLexington, SC 29072-Judge's Telephone (803)951-2595Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

DAIL set by

Judge

on

Type and Amount:

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

CARNED FEB 19 2009

WITNESSES

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

CODEFENDANTS

BETH A. HIGG
CLERK OF COURT
LEXINGTON, ON, SC

2009 FEB 18 AM 10:30