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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

SC SUPREME COURT

Appeal from Horry County

Thomas A. Russo, Circuit Court Judge

DAVID L. BARNES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000194

APPENDIX

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STATE OF SOUTH CAROLINA)
)
VS.)
)
DAVID LEE BARNES,)
)
)
DEFENDANT.)
)

held before the Honorable Larry Heyman
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Horry County Courthouse
Conway, South Carolina
on Tuesday, March 11, 2014, Commencing at 9:45 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
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1-706-231-6028

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EXHIBITS

[None]

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PROCEEDINGS

THE COURT: Yes, ma'am. Call your case.

MS. RICHARDSON: Your Honor, this is the State of South Carolina vs. David Lee Barnes. It's going to be indictment 2013-GS-26-2578, charging him with -- Your Honor, he was originally charged with burg first. He is going to be pleading guilty to a burglary second violent on that charge, with the recommendation of ten years.

Also, before Your Honor is indictment 2013-GS-26-2581. It looks like he's pleading guilty under Alford to that charge, Your Honor, again to a burglary second violent. The State is recommending seven years consecutive, Your Honor.

THE COURT: All right. So Alford is to the second indictment?

MS. RICHARDSON: Yes, sir, Your Honor.

THE COURT: And guilty as to the first indictment?

MS. RICHARDSON: Yes, sir, Your Honor.

THE COURT: Very well. Okay.

MS. RICHARDSON: With a consecutive sentence.

THE COURT: All right. Mr. Barnes, how are you today?

MR. FLOYD: Answer yes or no.

MIA PERRON, CVR-CM-M

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1 MR. BARNES: Good.

2 THE COURT: Mr. Barnes, I see you're here with
3 your attorney, Mr. Floyd; is that right?

4 MR. BARNES: Yes, sir.

5 THE COURT: Has Mr. Barnes been placed under
6 oath yet?

7 THE CLERK OF COURT: No, sir.

8 THE COURT: Please do so.

9 THE CLERK OF COURT: Please raise your right
10 hand.

11 [Whereupon, Mr. Barnes is duly sworn by the
12 clerk of court as follows: do you solemnly swear or
13 affirm to tell the truth, the whole truth, and nothing
14 but the truth, so help you God]

15 MR. BARNES: Yes, ma'am.

16 THE COURT: All right. Mr. Barnes, I am advised
17 that you are here today to enter a guilty plea to a
18 burglary in the second degree violent and a plea,
19 under North Carolina vs. Alford, to a burglary in the
20 second degree violent, separately. Is that your
21 understanding, as well?

22 MR. BARNES: Yes, sir.

23 THE COURT: Mr. Barnes, you were originally
24 indicted. In fact, we're about to pull a jury to try
25 you on burglary in the first degree. Do you know what

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1 burglary in the first degree is?

2 MR. BARNES: Yes, sir.

3 THE COURT: And do you understand the difference
4 between that and burglary in the second degree
5 violent?

6 MR. BARNES: [Indicates affirmatively]

7 THE COURT: You need to speak up, Mr. Barnes.

8 MR. BARNES: Yes, sir.

9 THE COURT: Now, has Mr. Floyd had an
10 opportunity to explain to you the nature of this
11 offense that you're pleading to -- these two offenses?
12 Do you know what they mean?

13 MR. BARNES: Yes, sir.

14 THE COURT: Okay. Mr. Barnes, were you aware of
15 the fact that for burglary in the second degree
16 violent, you could receive up to fifteen years per
17 offense? Do you understand that?

18 MR. BARNES: Yes, sir.

19 THE COURT: Do you understand that?

20 MR. BARNES: Yes, sir.

21 THE COURT: All right, sir. Now, Mr. Barnes,
22 have you had an opportunity to go over the evidence in
23 this case, or the discovery materials, with Mr. Floyd?

24 MR. BARNES: Yes, sir.

25 THE COURT: Has he explained to you -- or has he

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1 explained to you how the State would use those
2 materials or that evidence against you if you had a
3 jury trial?

4 MR. BARNES: Yes, sir.

5 THE COURT: Then there's no question, Mr.
6 Barnes, that you and Mr. Floyd have discussed your
7 right to a jury trial?

8 MR. BARNES: Yes, sir.

9 THE COURT: Do you understand that that's an
10 absolute right? In fact, we were about to have one.
11 But you do have an absolute right to a jury trial. No
12 one can make you plead guilty. You don't have to
13 plead guilty. You have the option of a jury trial,
14 albeit, as I have informed you, you would be tried for
15 the offense of burglary in the first degree. Do you
16 understand that?

17 MR. BARNES: Yes, sir.

18 THE COURT: Okay. Do you wish to have a jury
19 trial?

20 MR. BARNES: No, sir.

21 THE COURT: Do you understand that if you enter
22 these pleas, you are forever waiving your right to a
23 jury trial on these offenses?

24 MR. BARNES: Yes, sir.

25 THE COURT: If you do that, Mr. Barnes, you give

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1 up many, many other rights that go along with your
2 jury trial, your general right to a jury trial. Some
3 of those that I would just point out to you -- and, as
4 I said, there are so many that if we just spent the
5 rest of the year, you and I and Mr. Floyd sitting
6 around talking, we could talk for the rest of the year
7 about all of the rights that go along with a jury
8 trial.

9 But some of those that I would like to point out
10 to you, just by way of illustration, would be things
11 like you would have the right to remain silent.
12 That's what we call your fifth amendment right. If we
13 had a jury trial, you wouldn't have to testify. Of
14 course, you could if you wanted to. But if you didn't
15 want to, no one could make you testify. And that
16 right is so important that I would even tell the jury
17 that they couldn't use that against you in any way,
18 form or fashion. Do you understand that?

19 MR. BARNES: Yes, sir.

20 THE COURT: You would have the right to have an
21 attorney with you throughout the trial. Of course,
22 you have an attorney now. But all during the trial
23 you have the right to an attorney. And that's what we
24 call your sixth amendment right. Do you understand
25 that?

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1 MR. BARNES: Yes, sir.

2 THE COURT: And of course at the end of the
3 trial I would inform the jury that they could not
4 convict you unless they were convinced beyond a
5 reasonable doubt, that is, the State had convinced
6 them beyond a reasonable doubt, of your guilt. Do you
7 understand that?

8 MR. BARNES: Yes, sir.

9 THE COURT: Do you realize that by pleading
10 guilty you're giving up these many other rights, along
11 with your general right, to a jury trial?

12 MR. BARNES: Yes, sir.

13 THE COURT: And that's what you want to do?

14 MR. BARNES: [Indicates affirmatively]

15 THE COURT: Now, tell me about Mr. Floyd. Are
16 you satisfied with his representation?

17 MR. BARNES: Yes, sir.

18 THE COURT: Has he answered all your questions?

19 MR. BARNES: Yes, sir.

20 THE COURT: Do you need anymore time with him
21 today?

22 MR. BARNES: No.

23 THE COURT: Is there any question that I can
24 answer for you? I can't give you legal advice but, as
25 far as this process is concerned, I would be happy to

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1 answer any questions about it.

2 MR. BARNES: No.

3 THE COURT: Okay. You're fully satisfied with
4 the representation that you have received?

5 MR. BARNES: [Indicates affirmatively]

6 THE COURT: Is that correct? You need to speak
7 up, Mr. Barnes.

8 MR. BARNES: Yes, sir.

9 THE COURT: My court reporter here has to record
10 all of your answers and all my questions and if you
11 don't speak up she will miss it.

12 Mr. Barnes, I am told that on indictment number
13 25 -- excuse me -- 2013 General Sessions 2581, which
14 is an indictment that alleges that on or about March
15 the 18th of 2013 you did enter the dwelling of Nathan
16 Windburn [phonetic] and it was under such
17 circumstances that it would constitute the offense of
18 burglary in the first degree. I'm informed that you
19 intend to plead under North Carolina vs. Alford to
20 that particular charge. Is that right?

21 MR. BARNES: [Indicates affirmatively]

22 THE COURT: Do you understand what an Alford
23 plea is?

24 MR. BARNES: Not really.

25 THE COURT: Let me explain it to you and make

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1 sure you understand. In an Alford plea, what you're
2 doing is telling me that you deny that charge but that
3 you acknowledge that the State has enough evidence
4 that if you went to trial you would probably be
5 convicted of it so you want to go ahead and just enter
6 a plea to it. It's a lot like a nolo contendere plea.
7 Do you understand that?

8 MR. BARNES: Yes, sir.

9 THE COURT: All right, sir. Now, do you realize
10 that a North Carolina vs. Alford plea essentially has
11 the same consequences of a guilty plea? I mean, it
12 goes on your record and I can sentence to you to the
13 same sentence, if I choose to. Do you understand all
14 of that?

15 MR. BARNES: Yes, sir.

16 THE COURT: Knowing that, do you still wish to
17 enter a North Carolina vs. Alford plea to that
18 particular indictment?

19 MR. BARNES: Yes, sir.

20 THE COURT: Okay. Now, Mr. Barnes, I see here
21 by looking at your sentencing sheet that -- well, one
22 says you're forty-three and one says you're forty-
23 four. How old are you?

24 MR. BARNES: Forty-three, sir.

25 THE COURT: You're forty-three. All right.

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1 And you're -- one says you live over in Mullins
2 and one says you live over in Loris. Where do you
3 live?

4 MR. BARNES: I was living in Mullins at the time
5 I got --

6 THE COURT: Okay. Are you from Horry County or
7 Marion County?

8 MR. BARNES: Loris.

9 THE COURT: You're from Loris? You're from --
10 did you grow up here in Horry County?

11 MR. BARNES: No.

12 THE COURT: All right, sir. How far did you go
13 in school, Mr. Barnes?

14 MR. BARNES: Ninth grade.

15 THE COURT: Are you married?

16 MR. BARNES: Yes, sir.

17 THE COURT: Okay. You're still with your wife?

18 MR. BARNES: No, sir.

19 THE COURT: Y'all are separated? How long have
20 you been separated?

21 MR. BARNES: Since 2000.

22 THE COURT: And you haven't gotten a divorce
23 yet?

24 MR. BARNES: No, sir.

25 THE COURT: Are you hoping to reestablish that

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1 relationship, or you're just kind of slow on getting
2 your divorce?

3 MR. BARNES: No, sir. She won't give me a
4 divorce. I tried to get it but she won't give me one.

5 THE COURT: Okay. Well, Mr. Barnes, how about
6 children? Have you got any children?

7 MR. BARNES: Yes, sir. I've got three.

8 THE COURT: How many?

9 MR. BARNES: Three.

10 THE COURT: Three. Okay. How old are your
11 children?

12 MR. BARNES: I've got one nineteen and twenty-
13 one, and one twenty-three.

14 THE COURT: So all of your children are grown,
15 then?

16 MR. BARNES: Yes, sir.

17 THE COURT: Okay. What kind of work do you do,
18 Mr. Barnes?

19 MR. BARNES: Set up mobile homes.

20 THE COURT: How long have you been doing that?

21 MR. BARNES: About twenty years.

22 THE COURT: You've done that your whole work
23 career?

24 MR. BARNES: Yes, sir.

25 THE COURT: All right, sir. Who do you work

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1 for?

2 MR. BARNES: I was working for Donnie Tolver
3 [phonetic].

4 THE COURT: Okay. I know Donnie. How long --
5 did you work for him all that time?

6 MR. BARNES: Yes, sir. Him and -- for him and
7 his wife, Linda Tolver [phonetic], yes, sir.

8 THE COURT: All right. Mr. Barnes, have you
9 ever had any mental health problems or addiction
10 issues that might keep you from understanding what
11 we're doing here today?

12 MR. BARNES: I was on drugs heavy at one time
13 and I tried to commit suicide a few times.

14 THE COURT: How long ago was that?

15 MR. BARNES: In 2004 I shot myself four times.

16 THE COURT: That was back ten years ago?

17 MR. BARNES: Yeah. 2004.

18 THE COURT: All right. Have you had any
19 problems in the recent past that you feel would cause
20 you not to understand what we're doing here today?
21 That's what I want to know. Do you understand what
22 we're doing here today?

23 MR. BARNES: Yes, sir.

24 THE COURT: Okay. Have you ever had, again, any
25 problems that you feel would keep you from

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1 understanding what we're doing here today?

2 MR. BARNES: No, sir.

3 THE COURT: All right, sir. Have you taken any
4 drugs or alcohol in the last twenty-four hours?

5 MR. BARNES: No, sir.

6 THE COURT: I want you to listen carefully.
7 Ms. Richardson is going to tell me why the State has
8 charged you with these offenses. All right, sir?
9 Listen carefully, now.

10 MS. RICHARDSON: Thank you.

11 As it relates to 2013-2578: Your Honor, this
12 defendant did in Horry County, on or about February
13 14th, 2013, enter the victims', Mr. and Ms. Grainger's
14 home. While he was in the home, Your Honor, he did
15 take a safe that was loaded with some weapons. Your
16 Honor, they did sell those weapons to a codefendant in
17 this case and that's eventually how we got Mr. Barnes,
18 as well as his codefendant, as well.

19 As it relates to indictment 2581, Your Honor,
20 that the defendant did, on or about March 18, 2013,
21 along with a codefendant, forcefully enter the
22 victim's residence in Horry County, Your Honor. Once
23 inside, they did take and carry away a TV, as well as
24 some weapons from that home.

25 Your Honor, he does have two prior burglaries

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1 that would qualify this for a burglary first. He pled
2 guilty to one before Your Honor on 9/6/12, as well as
3 he pled guilty to another burglary second non-violent
4 on May 4th, 2005. In addition to the burglary
5 charges, Your Honor, he does have an extensive prior
6 record, if you would like to hear that.

7 THE COURT: All right. We will at the end of
8 the plea.

9 MS. RICHARDSON: Okay.

10 THE COURT: Is there a probation matter here?

11 MS. RICHARDSON: No, sir.

12 THE COURT: Mr. Barnes, you've heard the
13 solicitor describe these offenses. Now, as to the one
14 that you're entering a guilty plea for -- that would
15 be the Grainger burglary -- is that what occurred?

16 MR. BARNES: Yes, sir.

17 THE COURT: All right. That's what you did?

18 MR. BARNES: Yes, sir.

19 THE COURT: And that's why you're pleading
20 guilty; is that right?

21 MR. BARNES: Yes, sir.

22 THE COURT: All right. Now, as to the Windburn
23 [phonetic] burglary, I will not ask you to admit that
24 because you are denying it. But do you understand the
25 factual basis for the State's charge and why you are

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1 being -- or why you're entering this plea? Do you
2 understand what the State would show in that case?

3 MR. BARNES: Yes, sir.

4 THE COURT: All right, sir. Do you need to ask
5 me any questions about that?

6 MR. BARNES: No, sir.

7 THE COURT: All right. Ms. Richardson, it's my
8 understanding that the State has entered into an
9 agreement to make a recommendation in these cases
10 whereby -- as to the Grainger break-in, you are
11 recommending a ten-year sentence and as to the
12 Windburn, a seven-year sentence. These are to run
13 consecutive; is that correct?

14 MS. RICHARDSON: That is correct, Your Honor.

15 THE COURT: And it's my understanding that there
16 will be a dismissal of the remaining outstanding
17 charges here in Horry County.

18 MS. RICHARDSON: That is correct, Your Honor.

19 THE COURT: Is that your understanding,
20 Mr. Barnes?

21 MR. BARNES: Yes, sir.

22 THE COURT: Mr. Floyd, is that the full deal?

23 MR. FLOYD: Yes, sir.

24 THE COURT: Mr. Barnes, have you been promised
25 anything else, other than that?

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1 MR. BARNES: No, sir.

2 THE COURT: Okay. You understand, now, I don't
3 have to follow that? It's a recommendation?

4 MR. BARNES: Yes, sir.

5 THE COURT: Okay. Mr. Barnes, has anyone
6 intimidated you, threatened you, coerced you, done
7 anything inappropriate to make you feel like you had
8 to enter this plea?

9 MR. BARNES: No, sir.

10 THE COURT: Do you feel like you've had enough
11 time to talk with your attorney and get legal advice
12 concerning these pleas?

13 MR. BARNES: Yes, sir.

14 THE COURT: Okay. Have you had enough time to
15 consider this and it's consequences?

16 MR. BARNES: Yes, sir.

17 THE COURT: Do you need to talk any further with
18 your attorney and do you need to ask me any questions
19 about this?

20 MR. BARNES: No, sir.

21 THE COURT: Do you believe, Mr. Barnes, that
22 this plea is in your best interest; that is, the best
23 way for you to resolve this matter here?

24 MR. BARNES: Yes, sir.

25 THE COURT: You think that's right?

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1 MR. BARNES: Yes.

2 THE COURT: All right. I find that there is a
3 substantial factual basis for the plea and that the
4 plea is made freely, voluntarily, knowingly and
5 intelligently, after the advice of a very competent
6 attorney with whom Mr. Barnes tells me he is
7 satisfied, and I will accept his plea.

8 All right. Victims? Anything further from the
9 State? You want to tell me about his record?

10 MS. RICHARDSON: Yes, sir, Your Honor.

11 Just for the record, the victims are present.
12 Mr. and Ms. Grainger are here, were prepared to
13 testify here today. Your Honor, they are fully aware
14 of the plea negotiations. They do not wish to address
15 the Court at this time.

16 As far as his prior record, he has an '88
17 failure to stop for a blue light, '91 burglary third,
18 a '98 prescription drugs by fraud, habitual offender,
19 '99 escape, and, Your Honor, 2005 burglary second non-
20 violent in which he received a three-year sentence.
21 It looks like after that, he's had a 2007 B&E alluding
22 arrest, an assault with a deadly weapon on an
23 emergency personnel, 2009 petit larceny, 2011
24 marijuana charge, 2012 petit larceny, malicious injury
25 to personal property and a burglary second, Your

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1 Honor, which he received a one-year sentence for.

2 THE COURT: All right. Mr. Floyd, I'll hear
3 from you.

4 MR. FLOYD: May it please the Court, Your Honor.

5 David is, as he's told you, forty-three years
6 old. He was born right here in Horry County. Finds
7 himself in a very unfortunate position here.

8 He was scheduled for trial on this burglary
9 first degree and the evidence against him was
10 overwhelming. He recognizes that.

11 THE COURT: I understand that he even gave a
12 confession or made a statement; is that correct?

13 MR. FLOYD: Yes, sir.

14 THE COURT: All right, sir.

15 MR. FLOYD: We contacted the State hoping to get
16 what we could to get him out of that burglary first
17 degree sentencing range and all, and this was the deal
18 that the State came back to us with. I would have
19 liked for it to have been a little bit better and I'm
20 sure David --

21 THE COURT: You got him a really -- you got him
22 a good deal, Mr. Floyd. He was looking at life.

23 MR. FLOYD: But that is where we stand.

24 We stand in front of you asking you to accept
25 the negotiations between the State and the defense.

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1 He has been in jail for one year, Judge.

2 THE COURT: I'll give him credit for that.

3 Have you -- or does Mr. Barnes want to speak?

4 MR. BARNES: No.

5 MR. FLOYD: No, sir.

6 THE COURT: All right. The sentence of the
7 Court on indictment number 2013-GS-26-2578 is he be
8 confined to the State Department of Corrections for a
9 period of ten years. On indictment 2013-GS-26-2581,
10 the sentence of the Court is seven years. And these
11 are consecutive sentences. Thank you very much.

12 [PLEA CONCLUDES AT 10:02 A.M.]

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C E R T I F I C A T E

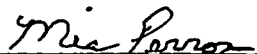
STATE OF SOUTH CAROLINA

COUNTY OF HORRY

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the hearing before the Honorable Larry Heyman, on Tuesday, March 11, 2014.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 1st day of August, 2014.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM-M

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FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

DAVID LEE BARNES #266974
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2014 CP26 3625

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (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 TURBEVILLE CORR. INST.
2. Name and location of Court which imposed sentence HORRY CNTY. GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) BRADLEY COOK
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-2602578; BURGLARY 2ND DEGREE, VIOLENT
 - (b) 2013-GS-2602581; BURGLARY 2ND DEGREE, VIOLENT
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 3-11-14; 10 YEARS CONSECUTIVE
 - (b) 3-11-14; 7 YEARS CONSECUTIVE

CLERK OF COURT
JULIAN HUGGINS
JUN -3 AM 8:23
HORRY COUNTY

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty GUILTY PLEA
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (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) PETITIONER IS ILLITERATE AND FULLY RELIED ON HIS COUNSEL TO ACT IN HIS BEHALF;
- (b) PETITIONER HAD NO KNOWLEDGE HE COULD APPEAL AS A RESULT; AND
- (c) PETITIONER MADE NUMEROUS DOCUMENTED ATTEMPTS TO CONFER W/ COUNSEL.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: TO NO AVAL

- (a) EXTREMELY PREJUDICIAL INEFFECTIVE ASSISTANCE OF COUNSEL
 (b) CRUEL AND UNUSUAL PUNISHMENT, EXCESSIVE SENTENCING
 (c) REQUEST LEAVE TO FILE SUPPLEMENTAL PLEADING

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

- (a) COUNSEL DID NOT PERFORM BASIC MINISTERIAL FUNCTIONS WHICH RESULTED IN:
 (b) INVOLUNTARY GUILTY PLEA; AND [ALSO SEE NO. 8 ANSWERS] ↗
 (c) CONSECUTIVE VIOLENT SENTENCES ↗ SUPPLEMENTAL WILL FOLLOW!

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? No

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

(a) the specific nature thereof:

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

N/A

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

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

N/A

(c) the disposition thereof:

- i. _____
 ii. _____
 iii. _____

N/A

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

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) _____

(b) _____

(c) _____

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? No
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. W. THOMAS FLOYD; PUBLIC DEFENDER; 203 LAUREL AVE, CONWAY SC 29526
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. ARRAIGNMENT AND PEA; INCLUDING SENTENCING.
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
VACATE GUILTY PLEA AND SENTENCE. FOR APPROPRIATE CHARGES AND SENTENCE CONSISTANT W/ EVIDENCE.
20. Are you now under sentence from any other court that you have not challenged?
No.

STATE OF SOUTH CAROLINA

County of CLARENDON20 14 CP26 3625
VERIFICATION

I, DAVID LEE BARNES, 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.

X David Barnes

SWORN to and subscribed before me this 29th
day of May, 2014

Evelyn Huggins-Ward (L.S.)
Notary Public

My Commission Expires: 4-27-2016

FILED
CLARENDON COUNTY
2014 JUN -3 AM 8:23
EVELYN HUGGINS-WARD
CLERK OF COURT

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

I, DAVID LEE BARNES hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

X David Barnes
Applicant

SWORN or affirmed to and subscribed before me this
29th day of May, 2014
Emily Hogg
Notary Public

My Commission Expires: 4-27-2016

FILED
JAY COUNTY
2014 JUN -3 AM 8:23
MELANIE HUGGINS-WARD
CLERK OF COURT

20 14 CP26 3625

To:

Horry County Clerk of Court

Ann Mary Huggins - Ward

P.O. Box 111

Conway, SC 29528-0111

From:

David Lee Barnes #260974

Turbeville, SC 29515 SA 111

P.O. Box 252

Turbeville, SC 29512

Re: P.C.R. Application and Court Order

SUBJECT: WARRANT NO. 2013-926-1020-0115

FILED
Horry County
2014 JUN -3 AM 8:26
MELANIE HUGGINS-WARD
CLERK OF COURT

To: Mr. David Barnes

Enclosed, please find P.C.R. Application (Completed). Please return

the stamped copy for verification and record keeping purposes.

Also, concerning the above referenced warrant no. 2013-926-1020-0115, I was interviewed, phone-wise, by the Turbeville Police Department, Turbetta, (843) 915-5350, by a former member, stating this is an outstanding warrant. As a result of this interview, I would like to advise that as a result of my interview, I have been informed that the person being taken to resolve this situation

SCDC

MAY 29 2014

MAIL ROOM

Sincerely,

S/ David Barnes

DAVID LEE BARNES #260974

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT

David L. Barnes, #266974,

) Case No. 2014-CP-26-3625
)

Applicant,

)

v.

)

RETURN

State of South Carolina,

)

Respondent.

)

)

Respondent, making its Return to the Application for Post-Conviction Relief filed June 23,

2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In June 2013, the Horry County Grand Jury indicted Applicant for two counts of first degree burglary (2013-GS-26-2578, -2581). William Thomas Floyd, Esquire, represented Applicant. On March 11, 2014, Applicant pled guilty to the lesser included offense of second degree burglary on one indictment, and pled under North Carolina v. Alford, 400 U.S. 25 (1970), to the lesser included offense of second degree burglary on the other indictment. The Honorable Larry B. Hyman Jr. sentenced Applicant to consecutive terms of ten (10) years imprisonment on the guilty plea and seven (7) years imprisonment on the Alford plea. Applicant did not appeal his plea or sentence.

II.

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

1. "Extremely Prejudicial Ineffective Assistance of Counsel"
 - a. "Counsel did not perform basic ministerial Functions which resulted in involuntary guilty plea"
2. "Cruel and Unusual Punishment; Excessive Sentencing"
 - a. "Consecutive Violent Sentences"

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRPC.

Attached to this return and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegation of ineffective assistance of plea counsel is without merit. 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, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v.

Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes plea counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea 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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show 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, 59 (1985).

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

IV.

Respondent submits this application should be dismissed for failure to state a cognizable claim under the Post-Conviction Procedure Act. An applicant may commence a post-conviction relief action based on the following grounds:

- “(1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
- (2) That the court was without jurisdiction to impose sentence;
- (3) That the sentence exceeds the maximum authorized by law;
- (4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
- (5) That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
- (6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....”

S.C. Code Ann. § 17-27-20(a). Applicant pled to charges of second degree burglary. The maximum sentence for these crimes is fifteen (15) years. S.C. Code Ann. § 16-11-312(c)(2). Therefore, Applicant's sentences of ten (10) and seven (7) years are not constitutionally repugnant. See Cummings v. State, 274 S.C. 26, 28, 260 S.E.2d 187, 188 (1979) (sentence not excessive if within within the statutory limitations). Thus, Applicant cannot demonstrate his “sentence exceeds the maximum authorized by law.” S.C. Code Ann. § 17-27-20(a)(3). Accordingly, Respondent moves to dismiss this allegation pursuant to Rule 12(b)(6), for failing to state a cognizable claim for relief.

V.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VI.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held on those issues so requiring one.

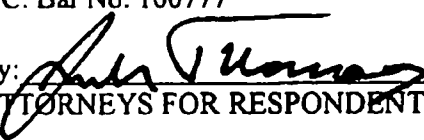
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

Jan. 16, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

DAVID L. BARNES, #266974)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2014-CP-26-3625

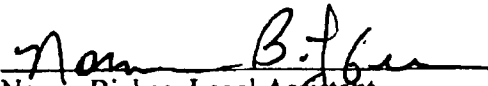
AFFIDAVIT OF SERVICE BY MAIL

FILED
2015 JAN 15 PM 1:49
IN THE COURT OF COMMON PLEAS
HORRY COUNTY, SOUTH CAROLINA

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

Steven W. Fowler, Esquire
1019 Highway 17 South #222
North Myrtle, SC 29582

DATED this 16TH day of January, 2015.


Norma Bigbee, Legal Assistant
For Respondent

1 State of South Carolina) Court of Common Pleas
2 County of Horry) 2011-CP-26-03625

3

4

David L. Barnes)

5

vs.)

6

State of South Carolina)

7

8

November 12, 2015

9

Conway, South Carolina

10

11 BEFORE:

12 Honorable Thomas A. Russo, Judge.

13

APPEARANCES:

14

Steve Fowler, Esq.

15

Attorney for the Applicant

16

Jessica Kinard, Esq.

17

Attorney for the State

18

19

20

Teresa J. F. Bautz, RPR
Official Court Reporter

21

22

23

24

25

ORIGINAL

I N D E X

WITNESS

DIRECT CROSS REDIRECT RECROSS

David L. Barnes

Mr. Fowler

4

--

31

--

Ms. Kinard

--

25

--

--

William Thomas Floyd

Ms. Kinard

36

--

--

--

Mr. Fowler

--

41

--

--

E X H I B I T S

NO.

DESCRIPTION

ID

EV

Plaintiff's-1

PD Inquiry Form 10/3/13

--

9

Plaintiff's-2

PD Inquiry Form 10/20/13

--

10

Plaintiff's-3

PD Inquiry Form 2/19/14

--

12

Plaintiff's-4

PD Inquiry Form 10/18/13

--

14

Plaintiff's-5

PD Inquiry Form 10/18/13

--

14

Plaintiff's-6

PD Inquiry Form 9/24/13

--

14

1 (The hearing commenced at approximately 2:46 p.m.)

2 THE COURT: All right. You ready to proceed?

3 MS. KINARD: Yes, Your Honor, thank you. This is
4 the matter of David L. Barnes versus the State of South
5 Carolina, Case Number 2014-CP-26-3625. The applicant
6 filed his application for post conviction relief on
7 June 3rd, 2014. He's presently confined in SCDC
8 pursuant to orders of commitment from the Horry County
9 Clerk of Court.

10 In June of 2013 the Horry County grand jury
11 indicted the applicant for two counts of first degree
12 burglary. Those are indictment numbers 2013-GS-26-2578
13 and 2581. Mr. William Thomas Floyd represented the
14 applicant.

15 On March 11th, 2014, the applicant pled guilty to
16 the lesser included offense of second degree burglary
17 on one indictment and pled under North Carolina versus
18 Alford to the lesser included offense of second degree
19 burglary on the other indictment.

20 The Honorable Larry B. Hyman, Jr. sentenced the
21 applicant to consecutive terms of ten years
22 imprisonment on the guilty plea and seven years
23 imprisonment on the Alford plea. The applicant did not
24 appeal his plea or sentence. The applicant is present
25 today represented by Mr. Steve Fowler. The State is

1 ready to proceed.

2 THE COURT: All right. Mr. Fowler, you ready to
3 proceed, sir?

4 MR. FOWLER: Yes, sir.

5 THE COURT: All right, sir.

6 MR. FOWLER: At this time, I would like to call
7 Mr. Barnes to the stand, please.

8 THE COURT: All right. Mr. Barnes, sir, if you'd
9 please come around. Thank you.

10 DAVID L. BARNES, after being duly sworn, testified
11 as follows:

12 THE CLERK: Please have a seat, state your name
13 for the Court.

14 THE WITNESS: David Lee Barnes.

15 DIRECT EXAMINATION

16 BY MR. FOWLER:

17 Q Mr. Barnes, where are you currently incarcerated?

18 A At Turbeville, South Carolina.

19 Q So you're in Turbeville. And if you would, lean
20 into the microphone a little bit and speak clearly for
21 the court reporter; okay?

22 A Yes, sir.

23 Q In your petition you mention several different
24 items that are of concern to you in this PCR. One is
25 that you state in there that the petitioner is

DAVID LEE BARNES-DIRECT BY MR. FOWLER

5

1 illiterate and fully relied on his counsel's -- on your
2 legal counsel to act on your behalf?

3 A Yes, sir.

4 Q Okay. So you are illiterate; right?

5 A Yes, sir.

6 Q Can you write?

7 A I can write my name, that's about it.

8 Q Okay. Well, how did this affect you in terms of
9 depending on your legal counsel on these matters?

10 A I would ask Mr. Floyd if there was some stuff in
11 my case with doing with the film from the courthouse.
12 And his response to me whenever I would ask him, I
13 haven't had a chance to do it, or I haven't done it
14 yet. And at the end he told me that they recorded over
15 the film every three to six days.

16 Q But with you being illiterate and can barely
17 write, you put a lot of dependence on him; is that
18 correct?

19 A Yes, sir.

20 Q Okay. So basically do you feel like you were at a
21 disadvantage by not being able to read and write in
22 your defense?

23 A Yes, sir.

24 Q Okay. And you put an extra amount of
25 responsibility on your attorney; right?

1 A Yes, sir.

2 Q Okay. Tell me a little bit about your
3 relationship with your attorney. Did you meet with him
4 before your plea, or how did that go, I mean?

5 A I might have seen Mr. Floyd three, maybe four
6 times at most the whole year I was in there. Every
7 time I called he was otherwise at a funeral, on
8 vacation or he was sick. I ain't never seen nobody at
9 that many funerals or vacations in my life.

10 Q Okay. So basically how long did he represent you?

11 A For a whole year.

12 Q Okay, so for a whole year. And you rarely saw
13 him; would that be --

14 A Rarely saw him. I was -- I would get my roommate
15 to help me, and we would fax it to him from the county
16 jail where here I gave you the faxes of it. And I've
17 even tried to fire him through Ms. Oralea West a couple
18 times, and she wouldn't let me fire him.

19 Q Okay. So you're contending that you made some
20 attempts to fire him; correct?

21 A Yes, sir.

22 Q Or change attorneys?

23 A Attorneys.

24 Q Okay.

25 MR. FOWLER: May I approach the witness, Your

DAVID LEE BARNES-DIRECT BY MR. FOWLER

1 Honor?

2 THE COURT: Yes, sir.

3 Q Okay. Now, you've already indicated you can't
4 read or write?

5 A No, sir.

6 Q But this is something you've provided. Let me
7 show counsel. You have provided me this transmission
8 log. Does that look -- can you tell anything about
9 that; does it look like it was faxed on October 3rd,
10 2013?

11 A Yes, sir.

12 Q Okay. Tell me a little bit about this letter.
13 Did you write it, or who wrote that?

14 A No. My roommate wrote it, Mr. Ronald Leggs
15 (phonetic). He was the inmate in J. Reuben Long at the
16 time.

17 Q Okay. So --

18 MS. KINARD: Objection, hearsay. His roommate
19 wrote this, it hasn't been authenticated.

20 MR. FOWLER: Your Honor, he said -- go ahead.

21 THE COURT: He can read it and tell whether or not
22 that's what he asked his roommate to write.

23 THE WITNESS: I can't read or write.

24 THE COURT: Have you read it to -- have y'all gone
25 over that?

1 MR. FOWLER: Yes, sir, we have. And he's familiar
2 with it.

3 THE COURT: Mr. Barnes?

4 THE WITNESS: Yes.

5 THE COURT: That letter, even though you can't
6 read, Mr. Barnes has read it to you -- I mean, Mr.
7 Barnes --

8 THE WITNESS: Mr. Fowler.

9 THE COURT: Mr. Fowler has read it to you, y'all
10 have gone over it?

11 THE WITNESS: Yes, sir.

12 THE COURT: Is the contents of that letter what
13 you asked your roommate to write?

14 THE WITNESS: Yes, sir.

15 THE COURT: Is it accurate?

16 THE WITNESS: Yes, sir.

17 THE COURT: All right.

18 MS. KINARD: Thank you, Your Honor.

19 THE COURT: All right, I'll allow it.

20 MR. FOWLER: Okay.

21 Q All right. So what does this basically say? This
22 is about you trying to get some information from him;
23 correct?

24 A Yes, sir.

25 Q Okay.

DAVID LEE BARNES-DIRECT BY MR. FOWLER

9

1 MR. FOWLER: I would like to enter this into
2 evidence at this point as Exhibit A. And I have one
3 for you, Your Honor, as well.

4 THE COURT: I'm going to allow it in. I'm going
5 to note the State's objection.

6 MS. KINARD: Thank you, Your Honor.

7 MR. FOWLER: This one is for you, Your Honor.
8 This is for the court reporter. It's No. 1, then. So
9 that's Exhibit No. 1.

10 (WHEREUPON, Plaintiff's Exhibit No. 1 was admitted
11 in evidence.)

12 Q The second one that you claim to be familiar with
13 is this one. And this is -- this was sent on
14 October 23rd, 2013; correct?

15 A Yes, sir.

16 Q And are you familiar with the status of this, what
17 this is?

18 A That's when I was asking him about the video, if I
19 ain't mistaken.

20 Q So you asked him to do a video; right?

21 A Yes, sir. No. The video is from when I was in
22 court.

23 Q Okay. And we're going to get to that as far as
24 this goes. Are you familiar with this document? You
25 presented this to me earlier; right?

1 A Yes, sir.

2 Q And it basically asks that you want some evidence
3 for your case; is that correct?

4 A Yes, sir.

5 Q And it was sent on October 23rd, 2013 --

6 A Yes, sir.

7 Q -- at 1:55. Is this accurate?

8 A Yes, sir.

9 MR. FOWLER: I'd like to enter this into evidence,
10 Your Honor.

11 MS. KINARD: The State would renew its objection
12 regarding this too.

13 THE COURT: I'll allow it subject to the State's
14 objection.

15 MR. FOWLER: That's No. 2, Your Honor.

16 (WHEREUPON, Plaintiff's Exhibit No. 2 was admitted
17 in evidence.)

18 MR. FOWLER: If I may approach the witness?

19 THE COURT: Yes, sir.

20 MR. FOWLER: If I might have a moment, Your Honor,
21 these all look alike, and I just want to make sure I
22 get these in order.

23 Okay, if I may approach the witness?

24 THE COURT: Yes, sir.

25 Q Now, this is a document that says, transmission

DAVID LEE BARNES-DIRECT BY MR. FOWLER

11

1 log. And are you familiar with this document?

2 A Yes, sir.

3 Q Okay. And this basically says, back in August you
4 said I could get a bond reduction. It now -- it
5 basically talks about a bond reduction; is that
6 correct?

7 A Yes.

8 Q Are you familiar with this document?

9 A Oh, yeah.

10 Q Okay. And you are saying that you had somebody
11 write this; right?

12 A Yes, sir.

13 Q And you can authenticate it; right?

14 A Yes.

15 Q Okay. And this was on -- the date of this was
16 February 19th, 2014; correct?

17 A Yes.

18 Q Okay.

19 MR. FOWLER: Your Honor, I'd like to enter this
20 into evidence at this time.

21 THE COURT: All right.

22 MS. KINARD: State has an objection, hearsay.

23 THE COURT: Subject to the objections.

24 MR. FOWLER: Yes, sir. And that's No. 3, Your
25 Honor.

1 (WHEREUPON, Plaintiff's Exhibit No. 3 was admitted
2 in evidence.)

3 MR. FOWLER: And, Your Honor, I got a couple more
4 of these. If I could approach the witness on both of
5 them if it's acceptable.

6 THE COURT: Let me get y'all to step up here real
7 quick before we go any further.

8 MR. FOWLER: Yes, sir.

9 (Discussion off the record.)

10 THE COURT: All right, look. There's three more
11 of these. Can I assume, Mr. Fowler and Mr. Barnes,
12 that for purposes of the record so the record's clear,
13 that all three of these remaining memos, Mr. Barnes,
14 you basically dictated to your roommate and asked him
15 to write it out?

16 THE WITNESS: Yes, sir.

17 THE COURT: And those reflect what you asked your
18 roommate to write?

19 THE WITNESS: Yes, sir.

20 THE COURT: And those were sent, allegedly sent,
21 to Mr. Floyd at some point; is that correct?

22 MR. FOWLER: Yes, sir, Your Honor.

23 THE COURT: All right. And the State has objected
24 based on the hearsay nature of these items. And I'm
25 going to note your objection, Madam Attorney General,

DAVID LEE BARNES-DIRECT BY MR. FOWLER

13

1 to all of these matters. I'm going to allow them in.
2 I'm going to overrule the objection, I'm going to allow
3 them in based on Mr. Barnes' verification of the
4 information on these and that it came from him. And so
5 these are all into evidence.

6 MR. FOWLER: Yes, sir.

7 MS. KINARD: One point of clarification, Your
8 Honor. I was given a different handwritten document,
9 and I just want to make sure this is not included in --

10 MR. FOWLER: That's not included in those.

11 MS. KINARD: Okay.

12 MR. FOWLER: At this point we only have these
13 transmission logs.

14 THE COURT: Give her copies of what's being
15 admitted.

16 MS. KINARD: He gave me those as well.

17 THE COURT: Okay.

18 MS. KINARD: I just wanted to make sure this was
19 separate.

20 MR. FOWLER: They're just not in order, Your
21 Honor.

22 THE COURT: That is fine. Now, they are in
23 evidence. Go ahead and let the court reporter mark
24 them, and then we'll proceed with your question.

25 MR. FOWLER: Yes, sir.

1 (WHEREUPON, Plaintiff's Exhibit Nos. 4 through 6
2 were admitted in evidence.)

3 Q Mr. Barnes?

4 A Yes, sir.

5 MR. FOWLER: If I might have a moment, Your Honor?

6 THE COURT: Yes, sir.

7 (Discussion off the record.)

8 Q Mr. Barnes, you're alleging that your attorney did
9 not fight for you to the best of his ability; is that
10 what you're saying?

11 A Yes, sir.

12 Q Okay. And these transmission logs that we have
13 shown to the Court as evidence indicate that you wanted
14 certain items that might help you?

15 A Yes, sir.

16 Q One of those items is a video. And you tell me,
17 I'm not on the witness stand here, what was one of
18 those items; was one of those items a piece of video?

19 A It was a video where on one of the days they got
20 me charged for a crime, I was in court with my sister.
21 She was in here for child support, and I was up here
22 with her. And you know they got videos from the time
23 you pull up into the parking lot and in the courtroom
24 until the time you leave. And I kept asking Mr. Floyd
25 to get me them videos, if they can get them videos.

DAVID LEE BARNES-DIRECT BY MR. FOWLER

15

1 He tell me he hadn't had time to get to them or --
2 and the last minute he come and told me, he said, they
3 recorded over the video. They record over them every
4 three to six days. And we all know that's garbage
5 because they supposed to hold them anywhere from 90
6 days to a year.

7 Q Well, now, how do you know they are supposed to
8 hold them from 90 days to --

9 A Because I asked a fellow, when you first come in
10 downstairs where they bring us in in the back at, one
11 of the fellows that works in the -- where they got all
12 the videos and stuff at, he said they have to keep
13 them.

14 MS. KINARD: Objection, hearsay.

15 THE COURT: Sustained.

16 Q But you're saying that he made no effort at all --

17 A No.

18 Q -- to get any video regardless of how long they
19 keep the video?

20 A Never, he never. Because every time I would ask
21 him, he said, no, I haven't had a chance, I hadn't
22 gotten to it. It was always something different.

23 Q Okay. So there was no subpoena of any documents?

24 A No, sir.

25 Q Okay. Now, you're saying that in the time of his

1 representation, not only did you want the video that
2 would probably give you an alibi as of the time of the
3 crime --

4 A Yes.

5 Q -- but you're also saying that you wanted a bond
6 hearing; correct?

7 A Yes.

8 Q Tell me about that; how did you proceed? And I
9 think it might be in evidence or it is in evidence at
10 this time, you contacted him to set up a bond hearing;
11 right?

12 A Bond hearing, yeah.

13 Q And that was through your letter; correct?

14 A Yes.

15 Q Did you ever get a response from him on a bond
16 hearing?

17 A Yeah. They got me up on a bond hearing for that,
18 and they denied the bond hearing.

19 Q Okay, all right. Tell me about the witnesses that
20 you -- were there any witnesses that would have helped
21 you in the case?

22 A Yes, sir.

23 Q Okay. Was one of these witnesses Harvey Prince?

24 A Yes, sir.

25 Q Okay. Now, who is Harvey Prince?

DAVID LEE BARNES-DIRECT BY MR. FOWLER

17

1 A He is my stepbrother. My mom adopted him when we
2 was children.

3 Q All right. So what would he have -- what
4 knowledge would he have potentially brought to the
5 table with his?

6 A Because on a couple of these crimes that they say
7 I committed, I was at his house with him and his wife.

8 Q Okay, all right. And he could have testified to
9 that?

10 A Yes, sir.

11 Q And that would have helped you with the case?

12 A With my trial, yeah. He never -- my attorney
13 never contacted Harvey Prince at all.

14 Q Okay. Now, who is Jeannie Adams?

15 A That's my cousin.

16 Q Now, how could she have potentially been a
17 witness?

18 A Because I was living with her at the time and she
19 drove -- she went to the detective's office and she
20 wrote statements to the detectives which was never
21 admitted to my evidence.

22 Q Okay.

23 MS. KINARD: Your Honor, I'm going to object on
24 this whole line of questioning for relevance. I don't
25 see how any of it is relevant. He ultimately pled,

1 said he was happy with his attorney and seems to be
2 going into a lot of detail.

3 MR. FOWLER: Your Honor, his contingent to me has
4 been the whole time is that his attorney did not flush
5 out witnesses, do subpoenas for videos, things along
6 those lines. And I'm just trying to get from him
7 basically who and how they might have been able to help
8 out in terms of building a case on his behalf.

9 THE WITNESS: Can I say something, Your Honor?

10 MR. FOWLER: Just wait a minute.

11 THE COURT: I'm going to overrule the objection,
12 I'm going to allow you to continue.

13 MR. FOWLER: Yes, sir.

14 MS. KINARD: Thank you, Your Honor.

15 MR. FOWLER: Thank you, Your Honor.

16 Q All right, we were talking about Jeannie Adams.

17 A Adams.

18 Q Do you know how to spell her name or?

19 A No, sir.

20 Q Okay. But it's Jeannie Adams. And you
21 mentioned -- what was her relationship again, please?

22 A She's my cousin.

23 Q Okay. And would she have been able to help you
24 out in terms of a witness?

25 A Yes, sir. Because she was the one I was in court

DAVID LEE BARNES-DIRECT BY MR. FOWLER

19

1 with, on the 18th I was with her up here, for her and
2 her husband was going through a child support battle.

3 Q Okay.

4 A And on the 19th I was living with her in Mullins.
5 I was in Mullins during the time they say I committed
6 these crimes. And I had just left her house, and they
7 pulled me over the side of the road and they arrested
8 me.

9 Q Okay. So you're saying that she is somebody that
10 could have -- there's court documentation showing the
11 date of her attending court?

12 A Yes, sir. And there was two more witnesses, there
13 was Robin Markham and Sheila Prince that I was trying
14 to get him to get to the Court too, and he never
15 subpoenaed them either.

16 Q Okay. Well, did you feel like any responsibility
17 to contact these witnesses, or did you --

18 A Yes, sir.

19 Q -- leave that up to the attorney?

20 A I left it up to my attorney because he could help
21 me. I couldn't -- I had no way of getting in contact
22 with them.

23 Q Okay. So you think that he had a duty to help you
24 in terms of --

25 A Yes, sir.

1 Q -- trying to get some witnesses? Okay. And also,
2 did he help you out in terms of getting any like
3 fingerprint evidence or any DNA evidence?

4 A He didn't help me do nothing.

5 Q Okay. So basically he didn't do his due diligence
6 on --

7 A No.

8 Q -- helping you out; right? So by him -- so by him
9 not being fired by you, you keeping him as an attorney,
10 and him not doing these -- getting in touch with these
11 witnesses and not subpoenaing the videotape or even
12 making an effort to do the videotape --

13 A No, sir.

14 Q -- where did that leave you? Did you feel like
15 you needed to do something, to plea, or how did all of
16 that affect what you did in terms of pleading to the
17 Court?

18 A I came up here, on the way to the last day and was
19 going -- and still was going to go to trial. And then
20 he came to me at the last minute and said that my
21 witnesses didn't want nothing to do with my trial. And
22 if I went to trial with this without no witness, said I
23 could probably get life in prison because of my back
24 past. And I feel like that's what they did, I feel
25 like they gave me this time because of my back past.

DAVID LEE BARNES-DIRECT BY MR. FOWLER

1 Q But he didn't subpoena those witnesses?

2 A No, sir, he didn't.

3 Q Did he do any kind of deposition of them or
4 anything that he could have got a statement from them?

5 A No, sir. I gave you a letter from one of my
6 witnesses where she even said that he called her on the
7 last minute and told her not to worry about coming up
8 here.

9 Q Yeah. You're talking about the Jeannie?

10 A Jeannie, yeah.

11 Q Okay.

12 MR. FOWLER: Your Honor, if I may approach the
13 witness throughout this.

14 THE COURT: Yes, sir.

15 Q This is documentation that you provided me
16 earlier; correct?

17 A Yes.

18 Q And how was this -- how did you get custody of
19 this letter?

20 A She wrote -- I had my roommate to write her. And
21 then she wrote me back and said that she was on her way
22 up here when they called her and told her not to come.

23 Q All right. So repeat, did she mail it to you
24 or --

25 A Yeah, she mailed it to me in the Department of

1 Corrections.

2 Q Okay. So did you recognize the handwriting?

3 A Yes.

4 Q And whose handwriting is that?

5 A It's Jeannie Adams.

6 Q Okay. And she's the one that you talked about
7 earlier as a potential witness to help you?

8 A Yes.

9 Q Right, okay. And what does this letter basically
10 -- to go into detail, I mean, what you've heard and
11 what you've seen on this letter, what does it say?

12 A She just said that she was on her way up here, and
13 they called her and told her not to worry about coming
14 up here because I had already took a plea. And that's
15 before I ever took the plea.

16 Q Okay.

17 MR. FOWLER: Your Honor, at this time I would like
18 to enter this into evidence.

19 MS. KINARD: Objection as to hearsay evidence.

20 THE COURT: What is that now?

21 MS. KINARD: It's a letter.

22 THE COURT: From?

23 MS. KINARD: From Jeannie Adams --

24 MR. FOWLER: Jeannie Adams.

25 MS. KINARD: -- supposedly, who is not here to

1 authenticate it.

2 THE COURT: No.

3 MS. KINARD: It was not produced by the Defendant.

4 THE COURT: Sustained, I will not allow it.

5 Q But you are saying that Jeannie indicated to you
6 that --

7 A She was on her way up here.

8 Q And he told her not to come; right?

9 A Yes.

10 MS. KINARD: And objection to hearsay.

11 THE COURT: Yes, that's -- all that is stricken
12 from the record, those responses regarding what Jeannie
13 Adams had to say.

14 MR. FOWLER: Yes, sir.

15 Q So with all that background that you just
16 mentioned, once again, you felt like you were coerced
17 into a plea; is that right?

18 A Yes, sir.

19 Q Okay. Is there anything else about this that you
20 think that should be brought to the Court's attention
21 on this matter?

22 A I just think I should have been done fairly
23 instead of the way I was done. I mean, he could have
24 -- he could have subpoenaed my witnesses like he was
25 supposed to, and he never did. I mean, I'm just asking

1 for a fair trial. Anytime I've ever got in trouble
2 before, I did my time and I got it over with and I went
3 home. But I just don't feel like I was treated fairly
4 on this one.

5 Q Okay.

6 MR. FOWLER: If I might have a moment, Your Honor.

7 THE COURT: Yes, sir.

8 THE WITNESS: And if you could look at the
9 statement from Ms. Tammy --

10 THE COURT: No, sir.

11 MR. FOWLER: May we approach, Your Honor, just a
12 moment.

13 THE COURT: Yeah.

14 (Discussion off the record.)

15 MR. FOWLER: Thank you. I have no further
16 questions.

17 Q Well, just to reiterate, you feel like you didn't
18 get a fair shake?

19 A Yes.

20 Q And your attorney -- let me ask you this question
21 in final. In your opinion, do you think he was
22 deficient in his representation of you?

23 A No, sir.

24 Q Well, let me rephrase that. Do you think he did
25 his duty in defending you?

DAVID LEE BARNES-CROSS BY MS. KINARD

1 A No, sir.

2 Q Okay. Do you think that if you had had another
3 lawyer, that the result may have been better for you?

4 A Yes, sir. I think if I had another lawyer and my
5 witnesses would have been subpoenaed, I think I would
6 have had a better chance than what I had.

7 Q And you think if he did live up to his duty, you
8 would have had a better chance?

9 A Yes, sir.

10 MR. FOWLER: I have no further questions, Your
11 Honor.

12 MS. KINARD: Thank you, Your Honor.

13 THE COURT: Cross?

14 CROSS-EXAMINATION

15 BY MS. KINARD:

16 Q Good afternoon, Mr. Barnes. Just a few questions
17 for you. You did indeed plead guilty to these charges?

18 A At the last minute, yes, ma'am.

19 Q You were originally charged with two counts of
20 burglary in the first degree?

21 A Yes. Yes, ma'am.

22 Q And you pled to the lesser included offense --
23 well, I'm sorry, the lesser offense of burglary in the
24 second degree?

25 A Yes, ma'am.

1 Q Was one of these pleas an Alford plea?

2 A No. The first offered plea was ten years
3 nonviolent.

4 Q Not an offer, an Alford, A-L-F-O-R-D.

5 A I don't understand what that is.

6 Q Okay.

7 MS. KINARD: Your Honor, I direct you to page ten,
8 line 25, where he testified at the plea that -- well,
9 actually the Court went into an explanation of an
10 Alford plea, and he stated that he understood.

11 Q When you pled, did you understand you were giving
12 up a jury trial right?

13 A At the last minute I did.

14 Q But you did understand?

15 A When he told me what it was, I mean. He told me
16 that if I didn't -- if I went on with the trial and I
17 took a jury trial without my witnesses, I could get
18 life in prison. He said that's what the solicitor was
19 shooting for. So it scared me being that my witnesses
20 wasn't here.

21 Q Yes, sir. And you understood that you had the
22 right to remain silent?

23 A Yes, ma'am.

24 Q And you testified that you were not impaired in
25 any way?

DAVID LEE BARNES-CROSS BY MS. KINARD

1 A No, ma'am.

2 Q You testified you were not threatened or coerced
3 into this plea?

4 A I feel like I was coerced, I mean.

5 MS. KINARD: Your Honor, that's page 18, line
6 five.

7 Q You were not promised anything in exchange for
8 this plea?

9 A No. But I was threatened, I feel like.

10 Q Did you testify --

11 THE COURT: Well, Ms. Kinard, I mean, ask him
12 about it. You got the transcript.

13 MS. KINARD: Okay. I will do it. Okay. May I
14 approach the witness, Your Honor?

15 THE COURT: Yes, ma'am.

16 MR. FOWLER: And what page is she referring to?

17 MS. KINARD: I'm referring to page 18, line 5.

18 MR. FOWLER: Thank you.

19 THE COURT: And you'll need to read it to Mr.
20 Barnes because he doesn't know how to read.

21 MS. KINARD: I will. Just so you can follow
22 along, sir.

23 Q This is where the Court says, okay, Mr. Barnes,
24 has anyone intimidated you, threatened you, coerced
25 you, done anything inappropriate to make you feel like

1 you had to enter this plea? And you answered, no, sir.

2 Do you remember that?

3 A Yes, ma'am.

4 Q Okay. Right after that, the Court asked, do you

5 feel like you've had enough time to talk with your

6 attorney and get legal advice concerning these pleas?

7 And you said, yes, sir. The Court then asked, have you

8 had enough time to consider this and its consequences?

9 And, you said, yes, sir.

10 And then to paraphrase, you also said that you

11 were satisfied with your attorney, you did not have any

12 other questions for him and you believed that this plea

13 was in your best interest, that's line 22. Do you

14 remember that?

15 A Yes, ma'am.

16 Q Okay.

17 MS. KINARD: And also to briefly step back for

18 just a moment, because one of these was an Alford plea,

19 I would like to review that if I may approach the

20 witness again?

21 THE COURT: Yes, ma'am.

22 MR. FOWLER: And if she could --

23 MS. KINARD: It's page 10, line 22.

24 MR. FOWLER: Thank you.

25 Q The Court asked, do you understand what an Alford

1 plea is? And you said, not really. So Judge Hyman
2 explained it to you. And he says here, next page, line
3 one, what you're doing is telling me that you deny that
4 charge but that you acknowledge that the State has
5 enough evidence that if you went to trial you would
6 probably be convicted of it, so you want to go ahead
7 and just enter a plea to it. It's a lot like a nolo
8 contendere plea; do you understand that? Yes, sir.

9 And then he says, all right, sir. Now, you
10 realize it's essentially the same consequences of a
11 guilty plea?

12 A Um-hum.

13 Q It goes on your record and I can sentence you to
14 the same sentence if I choose to; do you understand
15 that? Yes, sir. Knowing that, do you still wish to
16 enter an Alford plea? Yes, sir.

17 Do you remember all that happening?

18 A Yes, ma'am.

19 Q So you understood at the time and you understood
20 now the consequences of the Alford plea?

21 A No, I didn't. I understood that if I did -- if I
22 went on to trial with this, and the way he explained it
23 to me, Mr. Floyd, that if I went to trial with this and
24 I didn't have my witnesses, that the solicitor coming
25 from his mouth said that she was going to make sure

1 that I got life in prison.

2 So therefore it scared me into taking the plea.

3 So of course I agreed on what they said. I mean, I
4 feel like I was threatened all the way around with this
5 thing, because I was going to go to trial with this
6 thing all the way up to the last minute.

7 Q You were threatened by the idea of more time?

8 A With that and that if I didn't have my witnesses
9 with my past record, this is how they scared me, they
10 said being that I had a past record, that if I went to
11 trial with this thing, that they were going to make
12 sure I got life in prison. This is the way Mr. Floyd
13 explained to me that the solicitor was going to do if I
14 didn't take a plea. Which they come at me with ten
15 years nonviolent to start with. If you had all that
16 proof on me for first degree burglary or whatever it
17 may have been, you ain't going to come at nobody with
18 no ten years nonviolent to start with.

19 Q So you have a little bit of experience?

20 A Yes, ma'am, I been in trouble before.

21 Q And has Mr. Floyd represented you on other
22 charges?

23 A One other charge, I think it was.

24 Q Just one?

25 A Yes, ma'am. I think, I'm not for sure.

DAVID LEE BARNES-REDIRECT BY MR. FOWLER

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1 Q Okay. And just to speak quickly about your
2 reading and writing abilities, did you ever need to
3 write, did you feel a need to write in order to help
4 your own representation?

5 A Yes, ma'am. But I've tried, I been in school. I
6 mean, I got my reading records from R and E where they
7 took my test scores. I mean, I'm in school now in
8 prison.

9 Q Yes, sir. And did Mr. Floyd read everything to
10 you?

11 A No, ma'am.

12 Q He did not?

13 A No, ma'am.

14 Q So you felt like you couldn't understand things?

15 A Yes, ma'am.

16 MS. KINARD: Okay. No further questions at this
17 time, Your Honor.

18 MR. FOWLER: If I may briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. FOWLER:

21 Q In reference to the earlier reference to page 10,
22 lines 22 through 25, that's where the Court -- if I may
23 approach -- this is what she just read a few minutes
24 ago, Mr. Barnes, into the record.

25 Line 22, the Court: Do you understand what an

1 Alford plea is? Line 24 on page ten: Not really.

2 So at that point in Mr. Floyd's representation of
3 you, he did not explain to you what an Alford plea was?

4 A No. He just explained to me if I went to trial
5 with this and I didn't have my witnesses here, being
6 that I had a past record, that I could get life in
7 prison and that the solicitor was going to make sure
8 that I got life in prison if I went.

9 Q So he didn't go over the details --

10 A No, sir.

11 Q -- of this North Carolina versus Alford plea?

12 A Not until we got in here in front of the judge.

13 MS. KINARD: Objection, asked and answered.

14 THE COURT: Well, all right. Overruled.

15 Q And you say you felt threatened, but the Attorney
16 General mentioned that you agreed to this?

17 A Yes, sir.

18 Q Is it possible that you felt that if you did not
19 go through with this, there would be worse consequences
20 for you?

21 A Yes, sir. Because of my past record, I felt like
22 I would have probably got life in prison if I didn't
23 take the 17 years.

24 Q So by pleading -- okay, strike that.

25 MR. FOWLER: No further questions, Your Honor.

1 THE COURT: Well, I have a couple of questions.
2 Mr. Barnes?

3 THE WITNESS: Yes.

4 THE COURT: If you prevail here today, if I
5 believe everything you're saying and I agree with you
6 and everything, what do you think I can do for you?

7 THE WITNESS: I'm just asking for a fair chance,
8 Your Honor.

9 THE COURT: Well, what do you think I can do for
10 you? You seem to be very afraid of facing a life
11 sentence.

12 THE WITNESS: Yes.

13 THE COURT: Which is what the possible penalty is
14 for a burglary in the first degree.

15 THE WITNESS: Yes, sir.

16 THE COURT: You understand, all I can do is put
17 you back facing that life sentence?

18 THE WITNESS: Yes, sir. But I feel like with my
19 witnesses and the right lawyer that could subpoena my
20 witnesses like they were supposed to and get all the
21 evidence that I was asking for, that I got a better
22 shot than what I had.

23 THE COURT: Then let me ask you this. You like to
24 lean pretty heavily on the fact that you don't know how
25 to read and you don't know how to write.

1 THE WITNESS: No, sir, I'm --

2 THE COURT: But you're not -- you may not know how
3 to read and how to write, but from what I heard up here
4 today, you're not a stupid gentleman.

5 THE WITNESS: No, sir.

6 THE COURT: Okay. Do you know what it means when
7 you place your hand on that Bible and you raise your
8 hand, and you say, I swear to tell the truth, the whole
9 truth and nothing but the truth, so help me God?

10 THE WITNESS: Yes, sir.

11 THE COURT: And that means that you take that
12 oath, and when you respond to questions you tell the
13 truth.

14 THE WITNESS: Yes, sir.

15 THE COURT: You understand during this entire plea
16 that you entered, you were placed under oath?

17 THE WITNESS: Yes, sir.

18 THE COURT: And you answered the judge's
19 questions?

20 THE WITNESS: Yes.

21 THE COURT: You answered them truthfully?

22 THE WITNESS: No, not at the end, not when they
23 asked me --

24 THE COURT: Why not?

25 THE WITNESS: Because I was scared. I was scared

1 if I went to trial -- I was going to go to trial all
2 the way through that day. And then when they said that
3 if I didn't take it --

4 THE COURT: So in this plea back when you entered
5 this plea in March of 2014, you lied to the Court?

6 THE WITNESS: Yes, sir, I mean.

7 THE COURT: Okay.

8 THE WITNESS: Because at the end I didn't want to
9 take the plea, I wanted to go to trial with it. But
10 then when they come at me and said if I didn't take the
11 plea, being that I had a past record, if my witnesses
12 didn't show up, they were going to make sure -- the
13 solicitor said she was going to make sure I got life in
14 prison.

15 THE COURT: All right. You may step down sir,
16 thank you.

17 (Witness excused.)

18 MR. FOWLER: I have no further witnesses, Your
19 Honor.

20 THE COURT: All right. State?

21 MS. KINARD: Yes, sir. We would call Mr. Tom
22 Floyd.

23 THE COURT: All right. Mr. Floyd, please come
24 around, sir.

25 WILLIAM THOMAS FLOYD, after being duly sworn,

1 testified as follows:

2 THE CLERK: Okay, please have a seat, and state
3 your name for the Court.

4 THE WITNESS: William Thomas Floyd.

5 MS. KINARD: May it please the Court?

6 THE COURT: Yes, ma'am.

7 DIRECT EXAMINATION

8 BY MS. KINARD:

9 Q Good afternoon, Mr. Floyd. I'm going to start
10 with some background questions. How long have you been
11 practicing law?

12 A I started November of 1988.

13 Q How did you become involved with this case?

14 A I was appointed by the Court.

15 Q And you are and were at the time a member of the
16 public defender's office?

17 A Correct.

18 Q Did you file a Rule 5 Brady motion?

19 A Yes, I did.

20 Q Did you have any trouble getting discovery?

21 A No, ma'am.

22 Q Did anything seem to be missing from the
23 discovery?

24 A No, ma'am.

25 Q Did you go over all of these discovery materials

WILLIAM THOMAS FLOYD-DIRECT BY MS. KINARD

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1 with the applicant?

2 A Yes, ma'am.

3 Q And in this case, that involved reading them to
4 him?

5 A Yes, ma'am.

6 Q How many times do you believe you met with the
7 applicant?

8 A I documented six times that I met with him.

9 Q And that was over the course of approximately a
10 year?

11 A Correct.

12 Q What was your view of the evidence against the
13 applicant?

14 A There were two different burglary charges. And I
15 think that's important to understand. There was a
16 charge where allegedly David was at the courthouse
17 during the time that it occurred with his sister, I
18 believe, for either child support or a divorce hearing,
19 I don't remember which one. That was one we attempted
20 to get the video of, and we were told that it had been
21 taped over.

22 There was another burglary charge, one that he
23 confessed to, it was a burglary first degree.
24 Throughout the course of this the solicitor wanted a
25 plea on both, and that was the plea offer they offered,

1 ten years nonviolent originally.

2 David repeatedly turned it down, focused on going
3 to trial, just as he said, on the case that involved
4 him being at the courthouse. Well, that wasn't the
5 case that the State was going to try. When it was up
6 for trial, I went out to the jail to see David, and I
7 said, all right, David, we're on the trial roster,
8 we're first up. This is the case they're trying.
9 David's response was, we can't go to trial on that
10 case, I did that.

11 So I was at a point at that point looking at
12 burglary first degree, confession, him admitting he had
13 done it to me and telling me, I don't want to go to
14 trial on that, to go back to the solicitor and say,
15 okay, what can you give me to take me out of this 15 to
16 life, no parole, sentence. And this was the plea offer
17 they offered us. This is what I took back to David.
18 This is what he took.

19 Q Do you think it was a fair offer?

20 A I thought it was a little steep.

21 Q Okay.

22 A But the alternative was a lot steeper.

23 Q Absolutely. Did the applicant other than his
24 confession explain his version of the events to you?

25 A No. He would always start talking about the

1 burglary that he was at the courthouse for. He never
2 really wanted to talk about the one where there was a
3 confession in or statement in. He always wanted to
4 talk about the one where he was at the courthouse.

5 And when I tried to talk to him about that one,
6 his response would be, I'm not worrying about that one.
7 And he would go back to this one, I'm not guilty of
8 this one.

9 Q What would your defense strategy have been at
10 trial?

11 A For the one we were going to trial on?

12 Q Yes, sir.

13 A I'd be questioning the evidence that the State put
14 up.

15 Q Okay. And did you explain that to the applicant?

16 A I did.

17 Q And you felt that he understood that?

18 A I do.

19 Q Did you explain the elements of the offense and
20 the nature of the charges?

21 A Yes, ma'am.

22 Q Did you explain to him what the State would have
23 to prove at trial?

24 A Yes, ma'am.

25 Q Did you explain to him his constitutional rights

1 that he was waiving by pleading guilty?

2 A Yes, ma'am.

3 Q And that would include the right to a jury trial?

4 A Yes, ma'am.

5 Q The right to confront his accusers?

6 A Yes, ma'am.

7 Q Right to remain silent?

8 A Yes, ma'am.

9 Q Among many others. Ultimately, whose decision was
10 it to plead guilty?

11 A David's.

12 Q And you agreed with that decision?

13 A Yes, ma'am.

14 Q Did you explain the advantages and disadvantages
15 of going to trial?

16 A Yes, ma'am.

17 Q Not only just the constitutional rights but what
18 the end result would be?

19 A Yes, ma'am.

20 Q And did the applicant ever indicate that he wished
21 to go to trial?

22 A On the charge where he was at the courthouse, he
23 adamantly wanted to go to trial on that. It was the
24 other charge, though, that the State was going for.

25 Q And would you have gone to trial if he indicated

WILLIAM THOMAS FLOYD-CROSS BY MR. FOWLER

1 that was what he wanted to do?

2 A Absolutely.

3 MR. FOWLER: No further questions at this time,
4 Your Honor.

5 THE COURT: Cross?

6 CROSS-EXAMINATION

7 BY MR. FOWLER:

8 Q You say he adamantly wanted to get information
9 about the videotapes at the courthouse; correct?

10 A He wanted videotapes from the courthouse, yes.

11 Q Did you ever file any kind of subpoena to get any
12 kind of videotapes from the courthouse?

13 A I did not.

14 Q Okay. And he presented that he was in court that
15 day with a family member; correct?

16 A Correct.

17 Q Did you ever get any kind of evidence of court
18 records or transcripts or anything official through the
19 Court that might show that there was a court date that
20 day?

21 A I did not recall. I do know I talked to his
22 sister that he was supposed to be up here with.

23 Q Okay. And what did you tell her?

24 A I told her that if we needed her, we would be in
25 contact with her.

1 Q So you didn't ask her any questions before he
2 pled; right? And by his sister, are you referring to
3 Jeannie Adams?

4 A I don't remember her name.

5 Q Jeannie Adams, okay. But Jeannie Adams, you never
6 interviewed her about her potential knowledge about
7 this case; right?

8 A She was not involved in the case that we were
9 going to trial on.

10 Q Okay. Was she the -- but she was the one at the
11 courthouse that he contends that he was with that day;
12 right?

13 A If David said that was her name, I don't recall
14 her name.

15 Q Did you ever talk to Harvey Prince?

16 A I don't know if I talked with Harvey or not. I
17 won't say I didn't, because one of the things going on
18 was that wasn't the case they were trying.

19 Q But it was also a case that your client mentioned
20 to you over and over as needed to be -- to discuss. He
21 encouraged you to talk to Harvey Prince; is that
22 correct?

23 A He gave me his name as a witness, yes.

24 Q Okay. But you never spoke to Harvey Prince?

25 A I don't believe I ever did.

WILLIAM THOMAS FLOYD-CROSS BY MR. FOWLER

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1 Q Okay. Tammy Parrott (phonetic), are you familiar
2 with that name?

3 A Not off the top of my head.

4 Q So did he ever present that as a possible witness
5 on any of these matters?

6 A He may have.

7 Q Okay. In terms of the negotiation with the
8 solicitor's office, did you have him set in on any of
9 those discussions, or was it just you and the solicitor
10 talking about potential opportunities for a plea or
11 trial or any of that type thing, anything like that?

12 A He was in jail so it would have been just the
13 solicitor and I. He was what they called arraigned
14 where he was in court in front of a judge, and the
15 judge went over the charges, the plea offer with him,
16 asked him if he wanted to accept or reject the plea
17 offer.

18 Q Did you ever send any of -- so the solicitor did
19 on those two -- did the solicitor offer a plea on both
20 those charges, the one where you said he was at the
21 courthouse that day and the other charge, did the
22 solicitor's office offer pleas on both of those?

23 A Both of those were ten years nonviolent.

24 Q Okay. Did you ever communicate that in writing to
25 Mr. Barnes, or did you just orally tell him?

1 A I communicated it in writing with him, but also
2 orally told him that. He was also informed of that
3 when he was at the arraignment in court.

4 Q Do you have any documentation showing those
5 letters from your office to him?

6 A On the plea offer?

7 Q Yes, sir.

8 A I can go through here and get that for you.

9 Q Well, just my question is do you have one or not?

10 A Yes.

11 Q Okay. Now, in terms of in the evidence today, we
12 have had several faxes with receipts attached showing
13 that he asked for you to be relieved from the case.
14 Did you receive any of those?

15 A I don't recall him ever asking to relieve me.

16 Q So you're not familiar with any of the faxes that
17 he apparently sent to the office asking for a change in
18 counsel?

19 A I am not familiar with that.

20 Q Did he ever indicate to you personally that he
21 wished he had a -- that he wanted another attorney on
22 his case?

23 A I do not recall that. If he would have asked for
24 another attorney, I would have got him in front of the
25 Court. I think he mentioned Ronald Legg was his

1 roommate. I was representing Ronald Legg. Ronald Legg
2 got in court and he fired me. So if he had asked for
3 another attorney, I'd had got him in court.

4 Q All right. Was there anything in court in any of
5 the arraignments or bond hearings or anything like that
6 that spelled out that he could fire you through the
7 Court or that he could present a petition to the Court
8 to have you removed from the case?

9 A I don't think so.

10 Q Okay. As far as the evidence of this case goes,
11 was there any kind of fingerprint evidence that showed
12 him at the scenes of the crime or anything?

13 A On the case that we were up for trial -- I really
14 don't recall. I mean, that would be my fairest answer
15 to you is I don't recall unless I went through it
16 specifically.

17 Q Okay. But you have become familiar with this
18 case, you've had your memory refreshed by going through
19 your file in preparation for today; correct?

20 A I've looked through it just to look at plea offers
21 that were made originally and just kind of refreshed my
22 memory. But as far as were there fingerprints, I don't
23 recall if there were fingerprints or not. I believe
24 there was property found, and I know the case we were
25 up for trial for there was a statement that he made.

1 Q Well, not only in terms of the fingerprints, but
2 in terms of DNA, was there any DNA found of him at the
3 sites?

4 A I do not believe there was any DNA whatsoever
5 involved in either one of his burglary charges.

6 Q So that would be good for him in terms of him not
7 having DNA at the -- well, are you saying there was DNA
8 testing or not DNA involved?

9 A No DNA evidence.

10 Q Okay.

11 MR. FOWLER: If I might have a moment, please.

12 THE COURT: Yes, sir.

13 Q Are you familiar with Terry Elliott as a detective
14 in this case?

15 A I am.

16 Q Okay. Did you get any information from Terry
17 Elliott about this case in terms of what was done? I
18 mean, what kind of evidence -- what kind of information
19 did Terry Elliott present to you on this matter?

20 A I would have to go through and basically read you
21 the police reports.

22 Q Okay. But you were familiar with the police
23 reports at the time; right?

24 A At the time.

25 Q Okay. Now, his son, Mr. Barnes has a son named

1 Bradley; is that correct?

2 A I believe that's correct.

3 Q Bradley Cook. Was he charged with these crimes
4 too, or was he not?

5 A He was charged with one of them, I think. I could
6 be wrong about that, I mean.

7 Q Did you ever interview Bradley Cook about this
8 case?

9 A I did not.

10 Q Okay. Don't you think it would be important if
11 Mr. Barnes mentioned him as a potential interview
12 person, person to interview, that it would be important
13 to discuss the case with Bradley Cook to get his
14 perspective on it?

15 THE COURT: I need some clarification. You're
16 starting to confuse me. There's two cases here.
17 There's one you pled guilty to and one he pled under
18 Alford to. Which one are you referring to? Is this
19 the one where he was at the courthouse and didn't --

20 MR. FOWLER: It's my understanding, Your Honor,
21 after speaking with Mr. Barnes that this is Bradley
22 Cook was involved in both of them. And certainly he
23 could clarify it if you wanted to ask him, Your Honor.

24 Q But my understanding was that Bradley Cook was in
25 both of these cases; is that correct?

1 A I believe he was.

2 Q Okay. And you never spoke to him?

3 A I did not speak with Bradley, no.

4 Q In regards to the Alford plea, did you explain to
5 Mr. Barnes what an Alford plea was before going to
6 court?

7 A Yes.

8 Q Okay. But the judge had to discuss it with him
9 during that day at court; correct?

10 A Yes.

11 Q Okay.

12 MR. FOWLER: If I might have a moment with my
13 client, Your Honor.

14 THE COURT: Yes, sir.

15 (Discussion off the record.)

16 Q If I may just go back to the evidence on
17 Mr. Barnes, there was no evidence against him on these
18 cases; is that correct? What evidence were there
19 against him if there was no DNA and no fingerprints?

20 A I believe it was Bradley's -- in two cases. I
21 believe one of them was Bradley's statement, I believe
22 some property was found. Again, I'd have to look
23 through that to verify that, some property that I think
24 he said he'd bought from Bradley. I could be getting
25 that confused.

1 The other one, it was that along with his own
2 statement about his involvement.

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

4 MS. KINARD: No redirect, Your Honor.

5 THE COURT: All right. Thank you very much, sir.
6 You may step down.

7 (Witness excused.)

8 MS. KINARD: That's the State's witnesses, aside
9 from closing argument which we would request.

10 THE COURT: All right. Mr. Fowler, I'll be happy
11 to hear from you any closing remarks.

12 MR. FOWLER: Yes, sir, Your Honor. And, Your
13 Honor, I've spoken with Mr. Barnes several times on
14 this case, and he is just really doing in my opinion a
15 good job in terms of documenting his discussions, his
16 requests to the public defender's office and his
17 attorney. He's gone over with me several witnesses
18 that could potentially have been helpful to him. I
19 spoke with Mr. Harvey Prince who Mr. Prince indicated
20 to me by telephone recently that he was traveling
21 across the country. Jeannie Adams and Tammy Parrott
22 are also names of people that he said could be helpful
23 to him. Those leads were not pursued by Mr. Floyd and
24 the public defender's office on this.

25 There was no -- my client has indicated to me

1 several times that the film at the courthouse would
2 have shown him entering and exiting.

3 THE COURT: All right. I'm going to stop you
4 right there.

5 MR. FOWLER: Yes, sir.

6 THE COURT: I don't want to hear any more about
7 the courthouse instance --

8 MR. FOWLER: Yes, sir.

9 THE COURT: -- and the Alford plea to that
10 criminal offense. And my reason being is this, to that
11 he pled guilty under North Carolina versus Alford, so
12 he did not admit to that. And more importantly, for
13 purposes of this proceeding, he wasn't going to trial
14 on that one. And so all of the witnesses and all of
15 the videotapes and everything that would have proven
16 that he didn't commit that crime, at least for benefits
17 for me, doesn't appear to be relevant.

18 MR. FOWLER: Okay.

19 THE COURT: So...

20 MR. FOWLER: All right. Well, Your Honor, we did
21 indicate earlier and my client testified that he
22 requested another attorney. Apparently Mr. Barnes
23 stated that he was -- he felt threatened or felt that
24 he had to do what he had to do in this case, Your
25 Honor. And it's my indication from what Mr. Barnes

1 said on the stand that he would have liked to have had
2 a new attorney, and that would have made a difference
3 in this case, Your Honor.

4 It's my understanding that my client has done a
5 good job in terms of getting his knowledge of this case
6 together and that he was displeased with Mr. Floyd's
7 representation, and that caused various problems
8 throughout this case.

9 So with the Court's indulgence, we would like to
10 ask for this PCR to be granted and Mr. Barnes be
11 allowed a new trial and a new day in court, and I
12 believe from his testimony, a fair shake to go back to
13 court and work on this again.

14 THE COURT: All right.

15 MS. KINARD: Thank you, Your Honor. Very briefly,
16 the applicant has based most of the testimony and
17 information presented here today on the fact that there
18 were witnesses that were not involved. Quite simply,
19 this is improper. It's speculation regarding what they
20 might say, and there are several cases on point that
21 say that if there is no evidence of the testimony such
22 as an affidavit provided or a transcript of a
23 deposition, then that kind of information is not
24 relevant in a PCR to consider whether bringing these
25 witnesses would have changed the outcome.

1 Furthermore, an applicant cannot show prejudice or
2 satisfy that prong of the Strickland test without
3 producing testimony. And I can provide citations to
4 those cases if you would like. And just as you said
5 earlier, most of this is irrelevant because these
6 witnesses are related to the case that was not going
7 forward.

8 So a lot of the information presented by the
9 applicant is simply not important. And also referring
10 back to what Your Honor said, Mr. Barnes pled guilty,
11 put himself under oath, promised to tell the truth and
12 then admitted today he did not. So as you've stated
13 earlier and I have a feeling you'll state again, it's
14 very important to take your oath seriously. And it's
15 unfortunate that we are in this position again with
16 having to decide when the truth was told and when it
17 wasn't.

18 All of that being said, the State believes that
19 the applicant has not met his burden to proof of
20 ineffective assistance of counsel, and we respectfully
21 request that you deny his application for post
22 conviction relief.

23 THE COURT: All right. It's difficult, it's
24 constantly difficult. When you have people come in and
25 admit to the Court that the transcript of my plea,

1 judge, you can't believe any of it because I lied
2 throughout the whole thing, because I was scared or for
3 whatever reason, there's all a number of reasons. But
4 it's all -- none of it's true. But yet, judge, I want
5 you to believe my testimony here today.

6 Well, I don't know what to do. I don't know if
7 Mr. Barnes is lying to me today or if he's lying to
8 Judge Hyman back then. So that makes it extremely
9 difficult. But in this particular case, all of the
10 focus and all of the dissatisfaction that Mr. Barnes
11 seems to have generated, and seems to be because in his
12 belief Mr. Floyd was unwilling to contact all these
13 witnesses and all these folks that could come forward
14 and prove that Mr. Barnes did not and could not have
15 been involved in the burglary to which he pled guilty
16 under Alford. That wasn't the case they were trying.

17 In talking with -- according to Mr. Floyd's
18 testimony, in talking to Mr. Barnes about the case they
19 were going to go forward on, he had no interest in
20 discussing that case because he didn't want to go
21 forward on that case, because he was guilty of that
22 case.

23 You can stop your head nodding and your head
24 moving. I sat right here and listened to your
25 testimony.

1 And so all of these witnesses that he alleges that
2 Mr. Floyd refused to contact weren't relevant anyway.
3 But even if they were, Ms. Kinard raises a very valid
4 point in that there's no testimony here from any of
5 those witnesses as to what they would have testified
6 to, as to whether or not they would have been helpful
7 or whether or not they would even have come if they
8 would have been notified. All I have is the word of
9 Mr. Barnes who says they would have. But that's not
10 sufficient under the law. None of those witnesses have
11 appeared here to make that testimony.

12 Was he dissatisfied with Mr. Floyd, I don't think
13 there's any question about that. But we also seem to
14 be under the misguided understanding that because a
15 defendant is not thrilled with his appointed counsel
16 that he has the right for that lawyer to be fired and
17 have a new lawyer appointed. And the law doesn't
18 provide for that, that's not what the law says. The
19 law says you're entitled to appointed counsel. Not
20 counsel of your choosing, not counsel of your liking
21 but to appointed counsel.

22 So I look at what did occur here, I look at what
23 Mr. Floyd did do. And I don't see anything in this
24 record that would cause me concern that he wasn't
25 prepared to go to trial on the case that the State was

1 going to call for trial other than the fact that
2 Mr. Barnes didn't want to discuss that case with him
3 because he had confessed to that case.

4 Now, I don't know how you prepare a case for trial
5 where your client is focused on the case that they're
6 not going to call and not the case that they're
7 calling. But the bottom line is, and Mr. Barnes, you
8 were informed correctly, that if you were to have gone
9 to trial of the case they were going to try, it was a
10 burglary first charge.

11 If you would have been convicted, I don't know
12 that you would have been, but I'm just saying if you
13 would have been convicted, you were properly informed
14 that you could receive a life sentence on that charge.
15 Burglary first carries a sentence of anywhere between
16 15 to life. So you could have been facing, you were
17 facing a possible life sentence.

18 The State negotiated, offered a plea to ten years
19 on that charge. And they insisted that there be a plea
20 as to the charge which you clearly have indicated and
21 felt that you were here at the courthouse and couldn't
22 have been involved in that case.

23 And in that case, I don't have anything to go on
24 other than this plea transcript and your testimony here
25 today. The plea transcript says that you didn't quite

1 understand what an Alford plea was. And I get that,
2 because most people, I would venture to say almost all
3 people who appear before me don't understand what an
4 Alford plea is. Most people who don't do this for a
5 living don't know. And you shouldn't. It doesn't
6 matter how much education. My wife is extremely
7 intelligent and educated, but she doesn't know what an
8 Alford plea is, there's no reason for her to know.

9 So you didn't know, and you were honest with the
10 judge when he asked you if you understood an Alford
11 plea, you said no, I don't, I really don't. And so the
12 judge proceeded to explain to you what an Alford plea
13 was. And at the conclusion of his understanding, he
14 asked you, do you now understand, and you indicated
15 that you did.

16 And he went to great lengths to repeat on several
17 occasions, do you understand that you do not have to
18 plead, that you can go to trial on these matters. And
19 you indicated you understood that. And so at that
20 point the judge at the time, Judge Hyman, is under the
21 belief that you understand that even though you did not
22 commit that second burglary, the law, there is a
23 provision in the law that you can plead guilty to it
24 without admitting guilt -- or without admitting fault,
25 because you're trying to accept an offer which has been

1 made. And that offer on that case, I believe, was
2 seven years to run consecutive.

3 And there's nothing in this record that would lead
4 me to believe that you did not understand what you were
5 doing and why you were doing it. Would you be the
6 first person to come into court and say -- the State
7 says we're calling your case for trial, you can either
8 take the offer or the offer is off the table and you're
9 going to trial, and take the plea offer because the
10 jury is here ready to go to work and do the job. You
11 would not be the first person who pled guilty for that
12 reason.

13 But the plea is here. And as I go through it,
14 Judge Hyman did an outstanding job of going over the
15 rights, explaining them, to those instances where you
16 didn't understand, he went back over it until you did
17 understood, at least you shared with him you
18 understood. And you answered all of his questions
19 appropriately.

20 And at the time, Judge Hyman had no other option
21 other than to take you at your word because you had
22 sworn to tell the truth. And that's all we can do when
23 we sit up here. I have a hard time taking your -- what
24 you testified to today as truth, but that's only
25 because it's contrary to what was said here. And you

1 admitted here in court today that you did not honor
2 your oath back then and that you lied to Judge Hyman,
3 and so that causes me concern as to whether or not
4 you've lied to me here today.

5 I'm not saying you have or you haven't, I'm just
6 saying it calls that into question. But if you were
7 before me entering this plea and I went through these
8 questions with you, I would assume and I would take
9 your responses as being truthful.

10 And so we go through all this. And there was an
11 offer made that took you out of facing a life sentence,
12 so it met the criteria of an Alford plea. You know,
13 you can't enter an Alford plea on a straight up guilty
14 plea. There has to be some concession, there has to be
15 some benefit, you have to receive a benefit when you
16 enter an Alford plea, and that was done here. So there
17 was nothing inappropriate about the Alford plea.

18 And as far as the other plea, again, it just --
19 everything appears to have been done appropriately.
20 And under Strickland you have to be able to show that
21 counsel's performance was deficient. And that may be
22 the case if the State was going to try the case that
23 you pled guilty under Alford to. You may very well
24 have proven that the people that you asked Mr. Floyd to
25 talk to and he didn't talk to, and those people may

1 have been helpful to you. But I don't know that
2 because they didn't come in here and testify today.
3 All I have to go on is what you've testified to.

4 But all of that is moot because that's not the
5 case that the State was going to call. The State was
6 calling the other case to which you had confessed to
7 and which you had pled guilty to or which you were
8 pleading guilty to.

9 And so I don't think you have met the burden under
10 Strickland to show that Mr. Floyd's representation was
11 deficient or not up to the proper standard and that
12 there would have been any other result or that his
13 deficiencies created a result, negative result or a
14 different result that was negative. I don't think any
15 of that has been shown here today.

16 And so I don't think I have any other option other
17 than to deny the application. And that's what I'm
18 going to do.

19 MS. KINARD: Thank you, Your Honor.

20 (The hearing concluded at approximately 3:54 p.m.)

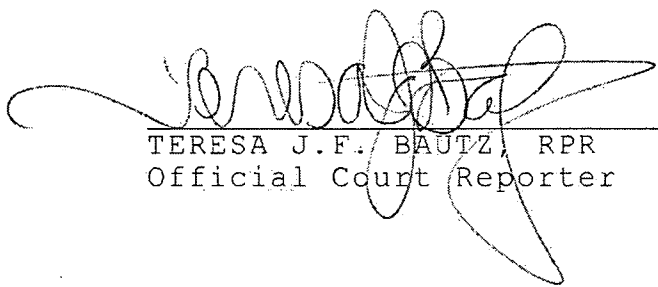
21 (End of Transcript of Record.)
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

I, TERESA J.F. BAUTZ, Official Court
Reporter for the Fifteenth Judicial Circuit of 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 trial of the captioned case, relative
to appeal, in the Court of Common Pleas for Horry
County, South Carolina, on the 11th day of April, 2016.

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



TERESA J.F. BAUTZ, RPR
Official Court Reporter

Transmission Log

UM_3RD

Thursday, 2013-10-03 11:26

9156136

Date	Time	Type	Job #	Length	Speed	Station Name/Number	Pgs	Status
2013-10-03	11:24	SCAN	05498	0:34	31200	9156385	1	OK -- V.34 AM31

HORRY COUNTY SHERIFF'S OFFICE
J. Reuben Long Detention Center
GENERAL SESSIONS/PUBLIC DEFENDER INQUIRY FORM

Use this form to provide information concerning your case to your attorney. This is not a prison document.

Inmate: Last: Barnes First: David MI: L
Pod: D-1 Cell: 201-C Assigned Public Defender (if known): osie west

Miss West my name is David Barnes. I have been
trying to get together with Miss West on 5-18-13
was to the court all the time. I was not here to
get the suspension. I was not here to get the
the other side was not here. I was not here to
help the up 7 months. I was not here to
this. I was not here to help the up 7 months.
even now and can't see.

In signing below, you acknowledge that you are signing at your own free will and that you have not been coerced to plead guilty to the listed charges by an officer or any other person representing the J. Reuben Long Detention Center or the Horry County Sheriff's Office.

Inmate Signature: David Barnes Date: 10-3-13

*Note: Inmate Signature correspondence is a jurisdictional act. Do not use this form to provide information concerning your case to your attorney. THIS AREA IS FOR OFFICE USE ONLY and may be read by employees and other persons within the facility prior to being submitted to the intended person or court and this case may be used against you as a result of law. DO NOT SIGN OR SIGNATURE IN THE PRESENCE OF ANY OTHER PERSONS.

For Office Use Only:

PLAINTIFF'S
EXHIBIT
11-2-15 tb

* * * Communication Result Report (Oct. 23, 2013 2:01PM) * * *

33

Date/Time: Oct. 23, 2013 1:55PM

File No. Mode	Destination	Pg(s)	Result	Page Not Sent
6254 Memory TX	Public Defender	P. 1	OK	

Reason for error

1) Hang up or line fail	E. 2) Busy
2) No answer	E. 4) No facsimile connection
3) Exceeded max. E-mail size	

HORRY COUNTY SHERIFF'S OFFICE
J. Rouben, Jr. Sheriff
GENERAL ARREST/PUBLIC DEFENDER INQUIRY FORM

I need Copy Please.

Please use this form to provide information concerning your case to your attorney. This is not a private document.

Investigator: Barrios File: David MR. LEE
Post: D-1 Oct 2013 Assigned Public Defender (If known): Thomas Floyd

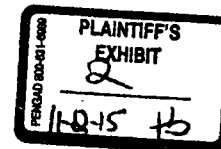
I need to see you this week about my charges. It is very urgent you know since we in the jail I need you to get things to get this matter taken care of as soon as possible.

By signing below, you, the detainee, certify that you are signing as your own free will and that you have read and understood the contents of this form. This form is not a private document and may be used by any person for any purpose without your consent. The Sheriff's Office is not responsible for the contents of this form. The Sheriff's Office will not be held responsible for the contents of this form.

Detainee Signature: David Barrios Date: 10/23/13

The Office Use Only:

Faxed 10/24/13





9156136

Date	Time	Type	Job #	Length	Speed	Station Name/Number	Pgs	Status
2013-10-08	10:37	SCAN	05609	0:34	21600	9156385	2	OK -- V.34 AM31

HORRY COUNTY SHERIFF'S OFFICE
J. Reuben Long Detention Center
GENERAL SESSIONS/PUBLIC DEFENDER INQUIRY FORM

(Please)

During use this form to provide information concerning your case to your attorney. This is not a prison document.

Tomate: Last: Parno First: David MI: _____
Pod: DL Cell: 201 Assigned Public Defender (if known): Thomas Floyd

Been asking you to get the Texas State Court House on
3-18-2013. Gina Sells Adams issued in final report at 3:30
the report on my 1st report in my report and then I went
to check the court house in which court room the signed in
the sec and 1st court on the 1st court room. I got the 5th
agent: Brian Robt. Mackay - talk to me and Gina Adams. I was on the
1st court room. I can see that the 5th agent. That
is the 1st court room. I can see that the 5th agent. That

*By signing below, you, the inmate, certify that you are signing as your own free will and that you have not been coerced to plead guilty to the charged crime(s) or to offer an alibi for any other person or persons in the J. Reuben Long Detention Center or the Horry County Sheriff's Office.

*Inmate Signature: David Parno Date: Dec 18-13

*Note: Inmate's attorney will acknowledge it is a prison matter. Do Not use this form to provide information concerning your case to your attorney. **INMATE'S attorney should not rely on this form by employees and other persons without the facility's prior approval to the inmate's prison record and information.** Inmate's attorney should not rely on this form to be used against you in a court of law. **This form will not be submitted to the District Attorney or State Attorney's Office.**

For Office Use Only

9156136

Date	Time	Type	Job #	Length	Speed	Station Name/Number	Pgs	Status
2013-10-08	10:37	SCAN	05609	0:34	21600	9156385	2	OK -- V.34 AM31

HORRY COUNTY SHERIFF'S OFFICE

J. Reuben Long Detention Center

GENERAL SESSIONS/PUBLIC DEFENDER INQUIRY FORM

(Copy placed)

Please use this form to provide information concerning your case to your attorney. This is not a private document.

Inmate: Last: Pearce First: Dwain MI: _____

Pod: 01 Cell: 201 Assigned Public Defender (if known): Thomas Floyd

I am asking you to get the Court's Civil Court Room on
3-18-2013. Give John Jones signed in County Court at 9:30
He works on my 1st trial. My wife's trial was 7:00 AM.
I'll check the court room with John Jones. I'll let him sign in
for me and go to court on his travel. Terry Ellet has the state
agent. Brian Robt. Jackson - Health Prince and Ginner Adams. When
it was on the 19th March 1st. Can you find more details. Thank
you for your place. See you Mr. V. Bowery v. it.

If signing below, you, the inmate, affirm that you are signing as your own free will and that you have not been coerced or placed under duress (charged) by an
officer or any other person representing the J. Reuben Long Detention Center or Horry County Sheriff's Office.

*Inmate Signature: Dwain Pearce Date: Oct 18-13

*Note: Inmate's Attorney must acknowledge in a private matter. The Note also serves to provide information concerning our case to your attorney. It shall be used by employees and other persons within the facility prior to being submitted to the assigned person to report and determine
concerned with the facts that the inmate signs upon as a matter of fact. This form will not be returned to the inmate unless he/she requests it.

For Office Use Only

ENGAD 600-037-0009

HORRY COUNTY SHERIFF'S OFFICE

J. Reuben Long Detention Center

GENERAL SESSIONS/PUBLIC DEFENDER INQUIRY FORM

please
write
clearly

Do Not use this form to provide information concerning your case to your attorney. This is not a private document.

Inmate: Last: Barnes First: David MI: 201
Pod: D1 Cell: 201 Assigned Public Defender (if known): Thomas Floyd

I need to know if you are going to represent me, or not.
so I can begin processing having you represent if you continue
to fail to respond to the procedural matters concerning my case.
I have made several attempts to contact you regarding
specific elements of my case. If you continue to fail to
corresponding with me, or to visit me.

If I do not hear from you within 30 days from the date
of this form, I will be writing to the BARR Association and
the district attorney's counsel. And also to the court to have
you removed from the position of counsel.

I am aware of the rules for inmate representation lawyer
in the state of the West. The law for a lawyer to be
admitted must abide by, and your position is subordinate to
the state constitution.

By signing below, you, the inmate, attests that you are signing at your own free will and that you have not been coerced to plead guilty to the listed charge(s) by an officer or any other person representing the J. Reuben Long Detention Center or the Horry County Sheriff's Office.

*Inmate Signature: David Barnes Date: Sept 24, 13

**Note: Inmate/Attorney correspondence is a private matter. Do Not use this form to provide information concerning your case to your attorney. This is not a private document and may be read by employees and other persons within this facility prior to being submitted to the intended person or court and information submitted on this form may be used against you in a court of law. This form will not be submitted to the intended person or court without your signature.*

For Office Use Only:

Filed 9/25/13



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FOR THE FIFTEENTH JUDICIAL CIRCUIT

David L. Barnes, #266974,) Case No. 2011-CP-26-3625
)

Applicant,)

v.)

State of South Carolina,)

Respondent.)
_____)

ORDER OF DISMISSAL

HORRY COUNTY
2016 JAN -4 PM 2:29
MELBA J. CLARK
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 3, 2014. Respondent made a timely Return on or about October 16, 2014. The Court convened an evidentiary hearing into the merits of the case on November 12, 2015 at the Horry County Courthouse. Applicant was present at the hearing and represented by Steven Fowler, Esquire. Jessica E. Kinard, Esquire of the South Carolina Attorney General's Office, represented Respondent.

Applicant and Applicant's plea counsel, W. Thomas Floyd, Esquire, testified at the hearing. The Court had before it a copy of the trial transcript, the records of the Horry County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In June 2013, the Horry County Grand Jury indicted Applicant for two (2) counts of first degree burglary (2013-GS-26-2578, -2581). William Thomas Floyd, Esquire, represented Applicant. On March 11, 2014, Applicant pled guilty to the lesser included offense of second degree burglary on one (1) indictment, and pled under North

Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160 (1970), to the lesser included offense of second degree burglary on the other indictment. The Honorable Larry B. Hyman Jr. sentenced Applicant to consecutive terms of ten (10) years imprisonment on the guilty plea and seven (7) years imprisonment on the Alford plea. Applicant did not appeal his plea or sentence.

II. ALLEGATIONS

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

1. "Extremely Prejudicial Ineffective Assistance of Counsel"
 - a. "Counsel did not perform basic ministerial Functions which resulted in involuntary guilty plea"
2. "Cruel and Unusual Punishment; Excessive Sentencing"
 - a. "Consecutive Violent Sentences"

At the evidentiary hearing, Applicant proceeded with all allegations, though the allegations regarding excessive sentencing were addressed as being an effect of Mr. Floyd's alleged ineffective assistance of counsel.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80.

A. Summary of Testimony

David Lee Barnes

Applicant testified first on his own behalf. He began by stating that he was illiterate, and therefore relied heavily on Mr. Floyd and was at a disadvantage because of it. The Applicant

went on to testify that Mr. Floyd represented him for approximately a year, during which time Mr. Floyd visited three (3) or four (4) times. Applicant's PCR counsel presented several notes from Applicant to the Public Defender's Office (Mr. Floyd's office) asking about his case or for a meeting. These were admitted into evidence over the State's hearsay objection, which was based on the fact that Applicant cannot write more than his own name. The Court ruled that these were essentially produced by the Applicant and, therefore, he could authenticate them.

Applicant went on to testify that Mr. Floyd had not thoroughly investigated his case, primarily because he failed to interview several key witnesses. In particular, he stated that he was in places other than the scenes of these crimes, and that witnesses or video evidence could prove that fact, but witnesses were never interviewed. Upon cross-examination, Applicant testified that he understood at the time of his plea what was happening, the rights that he was waiving, and the functioning of an Alford plea, but that he felt threatened by the idea of potentially receiving life imprisonment if he went to trial. Applicant also briefly discussed that he had tried to fire Mr. Floyd because of his dissatisfaction. The Court interjected to ask what relief Applicant hoped to receive if he were successful with this PCR, and admonished Applicant for not being truthful either at the time of his plea or at the present moment. Applicant could not provide a valid reason, in this Court's opinion, for being untruthful.

W. Thomas Floyd

The State called Mr. Floyd, who testified that he had been practicing since 1988, and was employed by the Public Defender's Office, both currently and at the time of this plea. Mr. Floyd testified that he requested and received discovery, and reviewed it all with the Applicant, including reading it to him. He further testified that he met Applicant approximately six (6) times prior to the plea. When asked about how the case progressed, Mr. Floyd stated that the solicitor

wanted to plead out both charges from the beginning, with a ten (10) year non-violent sentence for each charge. Mr. Floyd was careful to differentiate between the two (2) burglary charges that Applicant was facing: Applicant maintained that he was at the courthouse with his sister when one of the crimes was committed, but he never wanted to discuss the other charge. When Mr. Floyd informed Applicant that the State intended to go to trial on the second charge, Applicant said *for the first time* that he could not do that, because he actually did commit that crime. It was for this latter crime that the witnesses Mr. Floyd did not interview would have allegedly been beneficial; however, because this charge could not proceed to trial, Mr. Floyd did not pursue these witnesses. Mr. Floyd testified to a great deal of difficulty in preparing the cases because Applicant only wanted to focus on the charge that he thought he would be exonerated on.

Upon cross-examination, Mr. Floyd testified that Applicant received a bond hearing as requested, but bond was denied. He also testified that Applicant received a plea offer on three (3) different occasions (orally, in writing, and at arraignment). Furthermore, Mr. Floyd did not recall being asked by Applicant for a new attorney, because he would have made efforts to transfer the case within the Public Defender's Office due to his frustration with getting information from Applicant. Mr. Floyd testified that he did not know if there was any fingerprint or DNA evidence involved in this case, but he remembered that property was found in Applicant's possession. Mr. Floyd also testified that he remembered explaining the mechanics of an Alford plea with the Applicant.

B. Ineffective Assistance of Trial Counsel

In a post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective

assistance of counsel as a ground for relief, Applicant must prove counsel's "conduct so undermined the proper functioning of the adversarial process" that the proceedings "cannot be relied upon as having produced a just result." *Id.* (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether counsel provided representation within the range of competence required in criminal cases. *Id.* (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Id.* (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The Court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. *Id.* at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. *Id.* Under this prong, the Court measures counsel's performance by its "reasonableness under prevailing professional norms." *Id.* (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 117-18, 386 S.E.2d at 625.

The Court finds Applicant failed to meet his burden to show counsel rendered ineffective assistance of counsel. Regarding the allegation upon which Applicant proceeded, the Court finds counsel's testimony credible, and Applicant's was less credible, as well as insufficient to challenge the weight of counsel's testimony. Accordingly, the Court finds counsel conducted a

proper investigation, adequately conferred with Applicant, and was thoroughly competent in his representation.

Applicant's allegations are without merit. Counsel's testimony proved that he had considered all aspects of this case with the benefit of his extensive experience. Applicant opined regarding how Mr. Floyd's interviewing of potential witnesses would have helped him, but this is not a theory upon which relief can be granted. See Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998) ("This Court has repeatedly held a PCR applicant *must produce the testimony* of a favorable witness *or otherwise offer the testimony in accordance with the rules of evidence* at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." (emphasis in original, additional citations omitted)). This was also the basis for much of Applicant's frustration with and accusations toward Mr. Floyd, as he believed that, by not pursuing these witnesses, Mr. Floyd was not assisting him. However, there is nothing in the record that causes this Court concern regarding preparation other than the Applicant's lack of cooperation, as it is very difficult to prepare for trial when a defendant wants to focus on a charge that is not going forward.

Furthermore, the testimony presented is incontrovertible as to the thoroughness of Mr. Floyd's representation. It is clear that he reviewed discovery materials with Applicant; appeared at court hearings; advised Applicant of relevant law; provided competent representation; and reasonably consulted and visited. Accordingly, Applicant fails to meet his burden in demonstrating that plea counsel was ineffective.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any

evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations, or any ineffective assistance of counsel that would require this Court to grant his application. There is no deficiency in Mr. Floyd's representation according to the standards of Strickland. In regard to the plea itself, there is no inherent deficiency because the plea judge provided explanations, such as the mechanics of Alford. In fact, the plea transcript shows that the plea judge went to great lengths to remind Applicant that he did not have to enter into that plea. There is no evidence to show that this plea was anything other than voluntarily and intelligently entered, especially when combined with the testimony at this hearing. Applicant knew what he was doing, understood the process, and then was untruthful to this Court regarding the circumstances. Regarding the allegations that Applicant wanted a new lawyer, this Court finds it unfortunate that there is a pervasive and misguided understanding that because an applicant is unhappy with their counsel, ~~they~~^{he} can fire one and get another. This is simply not so. Ultimately, the standard under Strickland has not been met: plea counsel prepared and presented this case to the best of his ability, and did not prejudice the Applicant. For all of the above reasons, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial

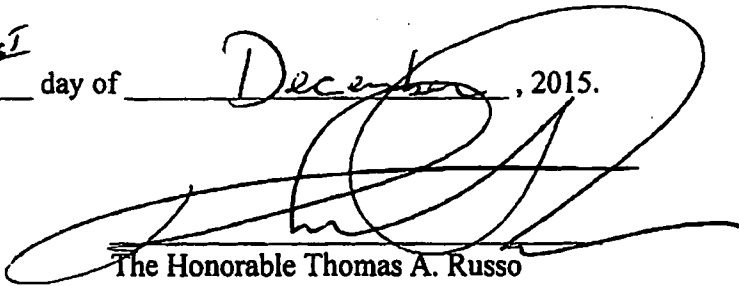
of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice;
and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 21st day of December, 2015.

Florencia, South Carolina


The Honorable Thomas A. Russo
Presiding Judge

WITNESSES

Terry Elliott Horry County Police Department.

DOCKET NO. 2013-GS-26- 02578**The State of South Carolina**

County of Horry

Lauree Richardson

13H01421

COURT OF GENERAL SESSIONS

JUNE, 2013 TERM

ARREST WARRANT NUMBER

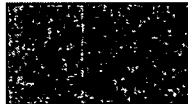
2013A2610500017

CDR: 0079 16-11-0311

DOA: 3/26/2013

THE STATE

vs.

David Lee Barnes
W/M**ACTION OF GRAND JURY**

Foreperson of Grand Jury

Date: June 27 2013**VERDICT****ATTORNEY: Floyd, W. Thomas**

Indictment for

BURGLARY FIRST DEGREE**Jimmy A. Richardson, II, Solicitor**

Foreperson of Petit Jury

Date:

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

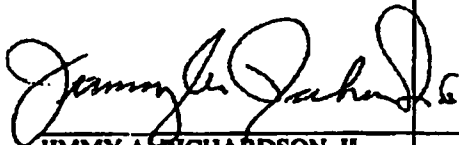
At a Court of General Sessions, convened on May 30, 2013, the Grand Jurors of Horry County present upon their oath:

BURGLARY, FIRST DEGREE

CDR: 0079 16-11-0311

That David Lee Barnes did in Horry County, on or about February 14, 2013 enter the dwelling of Michael Grainger without consent and with the intent to commit a crime therein and when in effecting entry or while in the dwelling or in immediate flight, and was in possession of a firearm, and /or has two or more prior Burglaries, in violation of Section 16-11-0311(A), S. C. Code of Laws, 1976, as amended.

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



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Jonathan Rabon Horry County Police Department

DOCKET NO. 2013-GS-26- 62581**The State of South Carolina**

County of Horry

Lauree Richardson

13HD1343

COURT OF GENERAL SESSIONS

JULY, 2013 TERM

ARREST WARRANT NUMBER

2013A2610200175

CDR: 0079 18-11-0311

DOA: 3/20/2013

THE STATE

VS.

David Lee Barnes
W/M**ACTION OF GRAND JURY**Foreperson of Grand Jury JUN 27 2013
Date: *[Signature]*

VERDICT

ATTORNEY: Floyd, W. Thomas

Indictment for

BURGLARY FIRST

Jimmy A. Richardson, II, Solicitor

Foreperson of Petit Jury
Date:

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

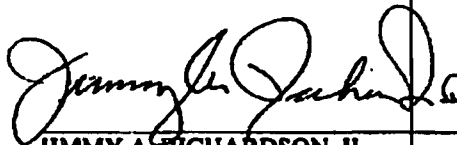
At a Court of General Sessions, convened on June 27, 2013, the Grand Jurors of Horry County present upon their oath:

BURGLARY, FIRST DEGREE

CDR: 0079 16-11-0311

That David Lee Barnes did in Horry County, on or about March 18, 2013 enter the dwelling of Nathan Windburn without consent and with the intent to commit a crime therein and when in effecting entry or while in the dwelling or in immediate flight, displayed what was or appeared to be a knife or firearm has a prior record of two or more convictions for burglary or housebreaking, in violation of Section 16-11-0311(A), S. C. Code of Laws, 1976, as amended.

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



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR