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SC SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Orangeburg County
Frank R. Addy, Circuit Court Judge

LATROY BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000263

APPENDIX

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Appellate Defender

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Attorney General

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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 2 COUNTY OF ORANGEBURG) No. 2011 GS 38 1846; 1847; 1848
) 2012 GS 38 0584
 3) 2011 GS 38 1926

4 STATE OF SOUTH CAROLINA)
)
 5)
)
 6 versus) TRANSCRIPT OF RECORD
)
 7)
)
 8 LATROY BROWN)
)
 9 Defendant)

10 Orangeburg, South Carolina
 11 May 16, 2012

12
 13 B E F O R E :

14 HONORABLE EDGAR W. DICKSON, Presiding Judge

15
 16 A P P E A R A N C E S :

17 For the Defendant: Name not shown on record
 Assistant Solicitor

18 For the State: B. STROUD, Esq.
 Public Defender

19
 20 Reporter Present: HARRY A. WALKER
 21

22
 23 HARRIET P. BENNETT
 Reporter, S. C. Court Administration
 24 46 Regency Oaks Drive
 Summerville, S.C. 29485
 25

1 (The within matter came before the Court for hear-
2 ing on May 16, 2012)

3 THE COURT: What do we have?

4 SOLICITOR: Latroy Brown.

5 Your Honor, Mr. Latroy Brown is pleading guilty to
6 five separate indictments.

7 THE COURT: Okay.

8 SOLICITOR: The first is kidnapping, 2011 GS 38 1847;
9 the second, carjacking, 2011 GS 38 1848; another carjack-
10 ing, 2011 GS 38 1846; purse snatching, 0584; common law
11 strong arm robbery, 1926, Your Honor.

12 The State is making no recommendations in this case.

13 (Whereupon, the Defendant was sworn by the Clerk for
14 purposes of this hearing)

15 THE COURT: All right, Mr. Brown. You are thirty-four
16 years old?

17 DEFENDANT: Yes, sir.

18 THE COURT: Okay. What do you do for a living?

19 DEFENDANT: I work at North American.

20 THE COURT: How long have you been working at North
21 American?

22 DEFENDANT: Six months.

23 THE COURT: Six months? Okay.

24 And when were you put in jail?

25 DEFENDANT: February 14th.

1 THE COURT: February 14th. Okay.

2 You were working at North American when you were put
3 in jail?

4 DEFENDANT: No, I was in rehab.

5 THE COURT: How long had you been in rehab?

6 DEFENDANT: (Inaudible on tape) Had just gone in.

7 THE COURT: Okay. How far did you go in school, Mr.
8 Brown?

9 DEFENDANT: Ninth grade.

10 THE COURT: Where were you going to school?

11 DEFENDANT: (Inaudible)

12 THE COURT: Why did you stop?

13 DEFENDANT: I got expelled.

14 THE COURT: You got stabbed?

15 DEFENDANT: No, expelled.

16 THE COURT: Excuse me. Expelled, okay.

17 And have you gotten your GED?

18 DEFENDANT: No, sir.

19 THE COURT: Do you have any kind of job skills, job
20 training?

21 DEFENDANT: I can't call the name of it.

22 REPORTER: I need him to speak up.

23 DEFENDANT: One that I achieved that I can't call the
24 name of it.

25 THE COURT: Okay. All right, Mr. Brown, have you

1 ever been treated for any mental health issues?

2 DEFENDANT: Yes, sir.

3 THE COURT: And are you taking any medication for that?

4 DEFENDANT: Yes, sir.

5 THE COURT: What kind of medication? What's the con-
6 dition you're taking medication for?

7 DEFENDANT: Bipolar schizophrenic.

8 THE COURT: Bipolar schizophrenia, okay. All right,
9 sir. Are you on that medicine today?

10 DEFENDANT: No, sir.

11 THE COURT: When's the last time you took it?

12 DEFENDANT: Last night.

13 THE COURT: Oh, last night? Okay.

14 Do you take it every day? Or every night?

15 DEFENDANT: Yes, sir.

16 THE COURT: Now, are you under the influence of any
17 illegal drugs or alcohol here today?

18 DEFENDANT: No, sir.

19 THE COURT: The medicine you're on, the medicine you
20 are taking, does that affect your ability to understand
21 what you're doing?

22 DEFENDANT: No, sir.

23 THE COURT: You are thinking clearly here today?

24 DEFENDANT: Yes.

25 THE COURT: Do you know exactly what you're doing?

1 DEFENDANT: Yes, sir.

2 THE COURT: All right, sir. I'm told you are here
3 to plead guilty to five charges here today?

4 SOLICITOR: Yes, sir.

5 THE COURT: Is that correct?

6 DEFENDANT: Yes, sir.

7 THE COURT: Is that right, Mr. Stroud?

8 MR. STROUD: Yes, sir.

9 THE COURT: Among them the kidnapping charge?

10 DEFENDANT: Yes, sir.

11 THE COURT: And, let's see -- you've got a common law
12 strong arm robbery, purse-snatching, then kidnapping, and
13 attempting to take a vehicle from a person by force -- I
14 have two of those -- without great bodily harm, and they
15 ~~and the kidnapping are all violent and most serious of~~
16 fenses. Are you aware of that?

17 DEFENDANT: Yes, sir.

18 THE COURT: And are you aware that each one of those
19 count as a strike against you? Do you understand that?

20 DEFENDANT: Yes, sir.

21 THE COURT: All right, sir. The Solicitor's Office
22 has told me you are here to plead guilty but you don't
23 have -- nobody has promised you anything. Is that right?

24 DEFENDANT: Yes, sir.

25 THE COURT: Has anybody threatened you to get you to

1 plead guilty?

2 DEFENDANT: No, sir.

3 THE COURT: Has anybody forced you to plead guilty
4 here today?

5 DEFENDANT: No, sir.

6 THE COURT: You are doing it voluntarily and freely?

7 DEFENDANT: Yes, sir.

8 THE COURT: Your attorney has reviewed the evidence
9 in each one of these cases with you?

10 DEFENDANT: Yes, sir.

11 THE COURT: Advised you of the law and the possible
12 sentences, as well as your constitutional rights?

13 DEFENDANT: Yes, sir.

14 THE COURT: What's the maximum sentence in kidnapping?

15 SOLICITOR: Thirty years.

16 THE COURT: And for the vehicle?

17 SOLICITOR: Twenty years.

18 THE COURT: Okay. All right, you understand you're
19 facing a whole lot of time?

20 DEFENDANT: Yes, sir.

21 THE COURT: Okay, and your attorney has reviewed
22 your constitutional rights with you, is that correct?

23 DEFENDANT: Yes, sir.

24 THE COURT: Do you understand you can have a jury
25 trial?

1 DEFENDANT: Yes, sir.

2 THE COURT: Do you want a jury trial on any of these
3 charges?

4 DEFENDANT: No.

5 THE COURT: Okay. Have you understood everything
6 your attorney has told you?

7 DEFENDANT: Yes, sir.

8 THE COURT: Are you satisfied with his services as
9 your attorney?

10 DEFENDANT: Yes, sir.

11 THE COURT: You need any more time to talk with him?

12 DEFENDANT: No.

13 THE COURT: Okay, I'm going to go through each of
14 these.

15 ~~2011 GS 38-1847 is a kidnapping charge -- have these~~
16 ~~been true billed?~~

17 SOLICITOR: No, sir, Your Honor.

18 THE COURT: None of these Indictments have been true
19 billed, but I see on the back of each Indictment you are
20 waiving presentment to the Grand Jury. Is that correct?

21 DEFENDANT: Yes, sir.

22 THE COURT: Okay. This Indictment alleges that you
23 did in Orangeburg County on or about August 28, 2011 -- that
24 you did unlawfully seize, confine, kidnap or abduct Tamika
25 Shuler without authority of law.

1 Those are the allegations contained in this Indict-
2 ment. Do you agree with the allegations?

3 DEFENDANT: Yes, sir.

4 THE COURT: How do you plead to a charge of kidnap-
5 ping?

6 DEFENDANT: Guilty.

7 THE COURT: Thank you, sir. Next Indictment deals
8 with -- the first one for taking or attempting to take a
9 vehicle from a person by force without great bodily harm,
10 Indictment 2011 GS 38 1848, and the allegations are that
11 you did in Orangeburg County on or about August 28, 2011,
12 wilfully and unlawfully attempt to take a motor vehicle
13 from Ms. Shuler by using force, threats or intimidation,
14 while she was operating the vehicle.

15 ~~Do you understand the allegations contained in this~~
16 Indictment?

17 DEFENDANT: Yes, sir.

18 THE COURT: Do you agree with these allegations?

19 DEFENDANT: Yes, sir.

20 THE COURT: How do you plead to this Indictment, guilty
21 or not guilty?

22 DEFENDANT: Guilty.

23 THE COURT: The next Indictment is for the same of-
24 fense, 2011 GS 38 1846. It again has essentially the
25 same allegations except on August 28th in Orangeburg

1 County you did attempt to take a motor vehicle wilfully and
2 unlawfully from Patrice Parker by using force, threats or
3 intimidation while she was operating the motor vehicle.

4 Do you understand the allegations contained in this
5 Indictment?

6 DEFENDANT: Yes, sir.

7 THE COURT: Do you agree with these allegations?

8 DEFENDANT: Yes.

9 THE COURT: How do you plead to these allegations?

10 DEFENDANT: Guilty.

11 THE COURT: Thank you, sir. The next Indictment I
12 have is for purse-snatching, 2012 GS 38 584.

13 This occurred in Orangeburg County on or about January
14 24, 2012, and the allegations are that you did wilfully
15 and unlawfully snatch a purse and take it away from Crystal
16 Maker, with the intent to deprive her of her purse.

17 Do you understand the allegations contained in this
18 Indictment?

19 DEFENDANT: Yes, sir.

20 THE COURT: Do you agree with these allegations?

21 DEFENDANT: Yes, sir.

22 THE COURT: All right, sir. How do you plead to the
23 charge of purse-snatching?

24 DEFENDANT: Guilty.

25 THE COURT: The last Indictment I have is 2011 38 1926,

1 strong arm robbery, and the allegations are that you did in
2 Orangeburg County on or about August 30, 2011, feloniously
3 take from Nadia Hamlin by means of force or intimidation
4 -- that you took her purse.

5 Do you understand the allegations of this Indictment?

6 DEFENDANT: Yes, sir.

7 THE COURT: How do you plead to this charge of strong
8 arm robbery?

9 DEFENDANT: Guilty.

10 THE COURT: Thank you. Solicitor.

11 SOLICITOR: Thank you, Your Honor. The first of these
12 incidents occurred on August 13, 2011, when the Defendant
13 was following the victim, Nadia Hamlin, out of a community
14 store on Old Edisto Drive here in Orangeburg County.

15 He asked her for a ride at that point and she refused.

16 The Defendant pushed her to the ground and ran off with her
17 purse containing her money and a number of other personal
18 items.

19 The next several incidents took place on August 28,
20 2011, at the Pitt Stop which is also located on Old Edisto
21 Drive here in Orangeburg County.

22 The Defendant approached the victim, Tamika Shuler,
23 asking her for a ride. The victim agreed and began driving
24 this Defendant to a location that he advised her to drive
25 to. Mr. Brown claimed he needed to put something in the

1 trunk. As she stopped, the Defendant forced the victim
2 out of the car and into the trunk, and then Mr. Brown got
3 into the vehicle and drove away while the victim was in
4 the trunk.

5 She was able to release the trunk latch and to escape
6 and call law enforcement.

7 The next incident took place about two hours later on
8 that same day with similar circumstances.

9 The Defendant approached Patrice Parker also at the
10 Pitt Stop in Orangeburg County, Your Honor, asking for a
11 ride. She complied and began driving to a location on Old
12 Edisto Drive when he said he needed to put something in
13 the trunk. She refused and he tried to push her out of
14 the vehicle, eventually dragging her out of the car and
15 taking off with her vehicle.

16 The last incident, the purse-snatching, took place on
17 January 24, 2012, when this Defendant approached the vic-
18 tim, Crystal Maker, at the laundromat on Old Edisto Drive.
19 He started talking to her and she told him to move on. At
20 that point, he grabbed her purse and ran out of the establish-
21 ment, Your Honor.

22 In all of these cases, Your Honor, all the victims
23 were shown photo line-ups, and all of the victims then
24 identified this Defendant, in each of those.

25 Your Honor, that was the factual basis for each of

1 the charges the State is pursuing against the Defendant.

2 THE COURT: Okay. Purse-snatching carries a maximum
3 of what?

4 SOLICITOR: Three years, Your Honor.

5 THE COURT: Strong arm robbery is what?

6 SOLICITOR: Fifteen.

7 THE COURT: And the prior record, if any?

8 SOLICITOR: Your Honor, his prior record is from 1995,
9 possession of cocaine and solicitation for prostitution in
10 1996; a burglary third degree from 2001; burglary second and
11 ABHAN from 2003; grand larceny from 2007; a purse-snatching
12 and possession of cocaine conviction from 2011.

13 THE COURT: All right, Mr. Brown. You've heard what
14 the Solicitor has told me about the circumstances that led
15 to your arrest for all of these charges?

16 DEFENDANT: Yes.

17 THE COURT: And you've heard what she's told me about
18 your prior record. You have a pretty extensive prior re-
19 cord. Do you agree with that?

20 DEFENDANT: Yes, sir.

21 THE COURT: All right, sir. Do you understand if I ac-
22 cept your guilty pleas you will have all five of these
23 convictions on your record, and three of them have
24 strikes or will count as strikes? Do you understand that?

25 DEFENDANT: Yes, sir.

1 THE COURT: Do you understand you've got ten days to
2 appeal my decision?

3 DEFENDANT: Yes, sir.

4 THE COURT: Okay. Do you want me to accept your guilty
5 pleas on all these charges?

6 DEFENDANT: Yes, sir.

7 THE COURT: Mr. Brown, I find your decision to plead
8 guilty is freely, voluntarily and intelligently made. I
9 find you have had the advice and counsel of a competent
10 attorney, and I find you are satisfied with the services
11 of your attorney.

12 I find there is a factual basis for you to plead guilty
13 to all five of these offenses, so I am going to accept your
14 guilty plea to all of them.

15 THE COURT: Okay, Mr. Stroud.

16 MR. STROUD: Your Honor, I will try to be brief.

17 THE COURT: I'll be glad to hear from you, sir.

18 Your Honor, Mr. Brown struggled in school. He has
19 scored in the forty-fifth percentile in achievement. When
20 he was twelve years old, Your Honor, he witnessed his mom
21 being murdered by her boyfriend right in front of him.

22 Since then he has had many behavioral problems; had
23 and a lot of diagnoses. He was diagnosed with ADHD and
24 because of fights at school the Mental Health Department
25 did note an anti-social personality disorder traits.

1 He has been diagnosed with bipolar disorder and schizo-
2 phrenia.

3 He has also been diagnosed with alcohol and cocaine
4 addiction.

5 Substance abuse and mental illness runs rampant in
6 his family. His father was hospitalized approximately four
7 times for mental health issues. His father abused alcohol
8 and abused ^{him and} his mother right in front of Mr. Brown, and the
9 reason I'm bringing this up, Your Honor, is that we are
10 well aware that these events as a child has led Mr. Brown
11 to use drugs, and his cocaine dependency is what fueled
12 these events.

13 In the kidnapping case, he took the car and asked for
14 her pin number. He didn't get any money, but that's what
15 his motivation was, for money.

16 We would ask for mercy of the Court, seeing these un-
17 fortunate events in his life that Mr. Brown has suffered
18 which have contributed greatly to his problem, Your Honor.

19 THE COURT: Let me ask you a couple of questions,
20 Mr. Stroud. You've been meeting with him regularly?

21 MR. STROUD: I have, yes, sir.

22 THE COURT: And he's got -- you have witnessed his
23 mental condition, and you know he is on medication right
24 now?

25 MR. STROUD: Yes, sir.

1 THE COURT: You've listed his mental conditions.

2 MR. STROUD: Yes, sir.

3 THE COURT: In your talks with him, does he understand
4 what he's doing here today?

5 MR. STROUD: Yes, sir, I believe so.

6 THE COURT: And he has understood you when you've
7 talked to him about his case and the law and that kind of
8 stuff?

9 MR. STROUD: Yes, sir.

10 THE COURT: Do you have any questions about his abil-
11 ity to understand what he's doing here today?

12 MR. STROUD: Not at all.

13 THE COURT: Okay.

14 MR. STROUD: Your Honor, if I may go into one other
15 thing, another mitigating factor? It's very important.

16 THE COURT: Yes, sir.

17 MR. STROUD: On September 28th of 2010, did receive
18 a gunshot wound to the back of the head. It was found at
19 the time that his cognitive skills were within normal lim-
20 its, but ever since then he has suffered from post-traumatic
21 stress syndrome. Flashbacks to his shooting.

22 He reports waking up, sweating, nightmares and such
23 since the shooting occurred, and paranoia.

24 THE COURT: And did all of these events occur after
25 that?

1 MR. STROUD: All of these events occurred after the
2 shooting.

3 THE COURT: Well, I've got four separate events.

4 MR. STROUD: Yes, sir, and two of them came out of
5 the same event.

6 THE COURT: Right. Do you think it is -- having re-
7 viewed everything with him, has he told you he wished to
8 plead guilty?

9 MR. STROUD: Yes.

10 THE COURT: Okay. Having reviewed everything with
11 him, do you think it's in his best interests to plead guilty?

12 MR. STROUD: I do, Your Honor.

13 THE COURT: Okay. Anything further?

14 MR. STROUD: If you would hear from his family?

15 THE COURT: Yes, I'd be happy to.

16 If you would come up, please, maam? What's your name,
17 please? Come as near as you can.

18 MS. BROWN: Can I stand right here?

19 THE COURT: Yes, maam. What's your name, please?

20 MS. BROWN: (Inaudible) Brown.

21 THE COURT: And what do you want to tell me?

22 MS. BROWN: (Inaudible statement)

23 THE COURT: Thank you, Ms. Brown.

24 All right. Anything further, Mr. Stroud?

25 MR. STROUD: I would point out there are other family

1 members here in Court. He does have strong family back-
2 ing, Your Honor..

3 THE COURT: Okay. Can I see you all just a second?

4 SOLICITOR: Yes, sir.

5 (Conference at the bench between counsel and the
6 Court off the record)

7 THE COURT: All right, thank you all. I appreciate
8 it.

9 On the purse-snatching charge, the sentence of the
10 Court is that you are committed to the State Department
11 of Corrections for a period of three years.

12 On the strong arm robbery, you are committed to the
13 State Department of Corrections for a term of fifteen
14 years.

15 ~~On the taking of vehicle charge and the kidnapping,~~
16 the sentence of the Court is that you are committed to
17 the State Department of Corrections for a period of eighteen
18 years.

19 These sentences are to run concurrent, and I'm giving
20 you credit for time served.

21 Good luck to you.

22 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

23

24

25

CERTIFICATE

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I, HARRIET P. BENNETT, Official Court Reporter for South Carolina Court Administration, hereby certify that the foregoing Transcript was prepared from the records of Harry A. Walker to the best of my ability, having been heard in the Court of General Sessions for Orangeburg County on May 16, 2012.

FURTHER, I certify that I am neither of kin nor counsel to any party to this action, nor do I have any interest in the same.

September 16, 2013

Harriet P. Bennett

FORM 5

STATE OF SOUTH CAROLINA)
)
 County of Orangeburg)
)
Latroy Brown #265525)
 Full name and prison number (if any) of Applicant)
)
 v.)
)
 State of South Carolina)
)
)
)
)
)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Broad River Corr. Inst. 4460 Broad River Rd., Columbia, SC. 29210
2. Name and location of Court which imposed sentence
Orangeburg County, General Sessions
3. Name(s) of co-defendant(s) (if any)
no
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-38-1846 (16-3-1075(B))
 - (b) 2011-GS-38-1848 (16-3-1075(B))
2011-GS-38-1847 (16-3-910)

FILED FOR RECORD
 CLERK OF COURT
 ORANGEBURG COUNTY, SC
 2012 OCT 30 AM 11:58

ATTEST: TRUE COPY
Wynaja B. Clark
 CLERK OF COURT
 ORANGEBURG COUNTY, SC

~~XXXXXX~~

(c) 2012-GS-38-584 (16-3-150)

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

(a) May 16, 2012 (18-years aggregate)

(b) all sentences ordered concurrent

(c)

6. Check whether a finding of guilty was made:

(a) after a plea of guilty plea of guilty

(b) after a plea of not guilty

(c) after a plea of nolo contendere

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

no

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

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

i. n/a

ii.

iii.

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

i. n/a

ii.

iii.

(c) the date of each such result:

i. n/a

ii.

iii.

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

i. n/a

ii.

iii.

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

(a) counsel did not file an appeal

(b)

(c) _____

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

(a) ineffective assistance of counsel

(b) involuntary guilty plea

(c) erroneous advice of counsel

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

(a) counsel failed conduct perfunctory investigation

(b) counsel failed to file a motion for reconsideration

(c) counsel failed to file appeal

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. n/a

ii. _____

iii. _____

iv. _____

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

i. n/a

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

- i. n/a
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. n/a
- ii. _____
- iii. _____
- iv. _____

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

- i. n/a
- ii. _____
- iii. _____
- iv. _____

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

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

(a) which grounds have been presented:

- i. n/a
- ii. _____
- iii. _____

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

- i. n/a
- ii. _____
- iii. _____

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

- (a) first filing of PCR
- (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? n/a
- (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. Stroud
John Stroud, Esquire
Public Defender
 - ii. _____
 - iii. XXXXXXXXXXXXXXXXXXXX
- (b) the proceedings at which each such attorney represented you:
 - i. plea and sentencing
 - ii. _____
 - iii. _____

Revised 1/03/03

- (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.

John Stroud
Applicant

SWORN or affirmed to and subscribed before me this
29th day of October, 2012.

Susan H. Frye
Notary Public

My Commission Expires

My Commission Expires: March 5, 2015

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

vacate sentence and remand for new trial

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

no

STATE OF SOUTH CAROLINA)
County of Richland)

VERIFICATION

I, Latroy Brown, 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.

Latroy Brown

SWORN to and subscribed before me this 29th day of October, 2012.
Susan H. Frye (L.S.)
Notary Public

My Commission Expires: _____ My Commission Expires March 5, 2018

STATE OF SOUTH CAROLINA)
 COUNTY OF ORANGEBURG)
)
)
)
 Latroy Brown, #265525,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT

2012-CP-38-01508

RETURN

The Respondent, making its Return to the application for post-conviction relief filed October 30, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. The Applicant waived presentment to the Orangeburg County Grand Jury for two counts of Take or Attempt a Vehicle From Person by Force Without Great Bodily Harm (2011-GS-38-1846, -1847), Kidnapping (2011-GS-38-1847) and Purse Snatching, Not Grand Larceny, Robbery or Privily Stealing (2012-GS-38-0584). Applicant was represented by John Stroud, Esquire. On May 16, 2012, the Applicant pled guilty before the Honorable Edgar W. Dickson. Judge Dickson sentenced Applicant, without negotiations or recommendations, to confinement for a period of eighteen years for each count of Attempt a Vehicle From Person by Force Without Great Bodily Harm, eighteen years confinement for Kidnapping, and three years confinement for Purse Snatching, Not Grand Larceny, Robbery or Privily Stealing; with the sentences to be served concurrently. No direct appeal was filed.

Attached herewith and incorporated herein are the records of the Orangeburg County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. The guilty plea hearing transcript has been ordered and will be forwarded upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel;
 - a. "Counsel failed to conduct perfunctory investigation."
 - b. "Counsel failed to file a motion for reconsideration."
 - c. "Counsel failed to file appeal."
2. Involuntary guilty plea; and
3. Erroneous advice of counsel.

Any claims not specifically enumerated in the post-conviction relief application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCF.

III.

For the purposes of this Return, the Respondent also interprets the third allegation to be ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result."

Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

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

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

V.

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

VI.

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

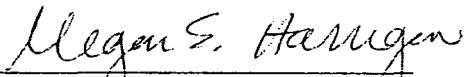
Respectfully submitted,

ALAN WILSON
Attorney General

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By: 
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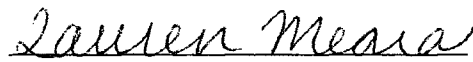
March 13, 2013.

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG)	
)	
)	2012-CP-38-1508
)	
LATROY BROWN, 265525,)	
)	
Applicant,)	
)	
vs)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	

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

Gerald J. Davis, Esquire
The Davis Law Firm, PC
149 Centre St.
Orangeburg, SC 29116-0844

DATED this 13th day of March, 2013.


 Lauren Meara, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG) FIRST JUDICIAL CIRCUIT

LATROY BROWN,) TRANSCRIPT OF RECORD

APPLICANT,) 2012-CP-38-1508

V.)

STATE OF SOUTH CAROLINA,)

RESPONDENT.)

OCTOBER 27, 2015

ST. GEORGE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE FRANK R. ADDY, JR., PRESIDING JUDGE

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

GRANT SMALDONE, ESQUIRE

ATTORNEY FOR THE APPLICANT

J. CLAYTON MITCHELL, ASSISTANT ATTORNEY GENERAL

ATTORNEY FOR THE STATE

SHARON L. VIZER

CIRCUIT COURT REPORTER

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*** NO EXHIBITS WERE MARKED ***

1 Tuesday, October 27, 2015

2 THE COURT: All right. Next case?

3 MR. MITCHELL: Mr. Brown. Your Honor, may it
4 please the Court?

5 THE COURT: Yes, sir.

6 MR. MITCHELL: This is Latroy Brown vs. The State
7 of South Carolina 2012-CP-38-1508. He was represented on
8 these charges by Mr. John Stroud. He pled guilty on May
9 16th, 2012 before Judge Dickson where he waived
10 presentment and pled to two counts of purse snatching,
11 strong armed robbery, kidnapping and carjacking. That's
12 four separate incidents.

13 He was sentenced to 18 years for carjacking, 18
14 years for kidnappings, 15 years for strong armed robbery,
15 and three years each on the purse snatching. He did not
16 file notice of appeal in that case.

17 He filed this application for post-conviction
18 relief October 30, 2012 where he's alleged that he's pled
19 guilty involuntarily. He is present here today and
20 represented by Mr. Grant Smaldone.

21 THE COURT: Are you ready to proceed?

22 MR. SMALDONE: Yes, Your Honor. We are ready to
23 proceed.

24 THE COURT: Very good. Call your first witness
25 then, please.

1 MR. SMALDONE: All right. We call Mr. Latroy
2 Brown.

3 THE COURT: Sir, if you'd come forward, please.

4 LATROY BROWN, after having been duly sworn,
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. SMALDONE:

8 Q. Good afternoon, Mr. Brown.

9 A. Good afternoon.

10 Q. You doing all right today?

11 A. Yes, sir.

12 Q. All right. Where are you currently serving time?

13 A. Broad River Institution.

14 Q. All right. What was your sentence? What was your
15 total sentence?

16 A. Eighteen, 18 years.

17 Q. All right. And do you remember your attorney? Do
18 you remember meeting with your attorney, your public
19 defender?

20 A. Not at all, sir.

21 Q. Do you know how many times you met with him?

22 A. None, not at Broad River.

23 Q. Okay. No. Before you pled on that case, all
24 right?

25 A. Before I pled?

- 1 Q. Before you pled guilty and received the sentence do
2 you remember meeting with your attorney?
- 3 A. Maybe once or twice.
- 4 Q. Okay. And what did you discuss with him?
- 5 A. Possibly what's the lowest time I can get for my
6 charges.
- 7 Q. Okay. And did he tell you a number on that?
- 8 A. At first they wanted me to plead one to 30, and
9 then they came back and said something about one to 22,
10 and then they came back and said that they couldn't get
11 it no lower than that and that's what I went with because
12 they told me that's all they could do for me.
- 13 Q. Okay. Do you remember that being a part of the
14 plea in court?
- 15 A. No, sir.
- 16 Q. Okay. All right. So did your attorney tell you
17 about your right to a trial?
- 18 A. No, sir.
- 19 Q. Did he tell you about any rights that you'd give
20 up?
- 21 A. No, sir.
- 22 Q. Okay.
- 23 A. I mean, right to remain silent.
- 24 Q. Right. And did he explain that right to you as it
25 goes through trial?

- 1 A. No, sir.
- 2 Q. Okay. What did he tell you about the right to
3 remain silent?
- 4 A. Once I give up my right then I get the Judge to
5 accept my plea.
- 6 Q. Okay. Were you out on bond during the -- before
7 the plea or were you in the county jail?
- 8 A. I had got out on bond and then I had turned myself
9 in.
- 10 Q. And was this for a bench warrant or new charges; do
11 you know?
- 12 A. No.
- 13 Q. Okay.
- 14 A. Just that I just wanted to get it over with and I
15 felt like I needed help.
- 16 Q. So you voluntarily turned yourself into the jail?
- 17 A. Yes, sir.
- 18 Q. Okay. And did you get the help you wanted?
- 19 A. Yes, sir.
- 20 Q. Okay. And what kind of help are you talking about?
- 21 A. Mental help.
- 22 Q. Okay. Do you suffer from any mental illness?
- 23 A. They had me diagnosed with bipolar, schizophrenic.
- 24 Q. And normally did you take medication for this?
- 25 Before you went to the county jail were you on

- 1 medication?
- 2 A. They had me on hound dog [sic].
- 3 Q. Was this before the jail or during jail?
- 4 A. I went one time when I was on the street, so I
- 5 would say before the jail.
- 6 Q. Okay.
- 7 A. And then I went one time when I was in the county
- 8 but they didn't give me the shot because I was already --
- 9 it was still in my system from the time.
- 10 Q. Say that again. I'm sorry.
- 11 A. The shot lasts two months so before I got in the
- 12 county I went and got the shot, then they tried to take
- 13 me back in the county again but it was already in my
- 14 system so I didn't get it that time.
- 15 Q. All right.
- 16 A. So actually, it still was in my system when I went
- 17 through the plea process and everything.
- 18 Q. Do you remember how much -- how long before your
- 19 plea when you pled guilty did you get the shot?
- 20 A. I'm thinking it was within a month frame.
- 21 Q. Okay. Did that shot make you feel any different
- 22 for the whole month?
- 23 A. Yeah, it make you feel real strange. You know,
- 24 like you don't know what's going on, you know. They said
- 25 it's supposed to help me but it had me kind of spooked.

- 1 Q. And what was the shot called again?
- 2 A. They said hound dog.
- 3 Q. Hound dog?
- 4 A. Hound dog or dog, or something like that.
- 5 THE COURT: Could it be Haldol?
- 6 A. Haldol. It was close.
- 7 Q. That was close. Okay. So your contention is that
- 8 it lasts two months, right?
- 9 A. Uh-huh.
- 10 Q. And did you normally take it when you were out on
- 11 the street?
- 12 A. No. That was just something that they was trying
- 13 because I had turned myself in one time to Columbia
- 14 trying to get some help through the drug and alcohol
- 15 program.
- 16 Q. Okay.
- 17 A. And they shot me up with it saying that they was --
- 18 I told them when I went there I told them that I felt
- 19 fine at the time, you know, I just needed help and they
- 20 said they was doing that to keep me from flipping out or
- 21 stuff like that, you know. I guess it was a process when
- 22 you're first coming in that you had to go through.
- 23 Q. Okay. And this was in Columbia? Was this when
- 24 your charges were pending?
- 25 A. Yes. This was when my charges were pending.

1 Q. All right. But were you out on bond at this point
2 when you went to Columbia?

3 A. Yes.

4 Q. All right. I just want to make sure I have it. So
5 did you feel under the influence of -- Haldol, Judge, was
6 it?

7 THE COURT: (Nodded).

8 BY MR. SMALDONE:

9 Q. Okay. Haldol when you pled guilty?

10 A. I think so. I felt like I was under the influence.

11 Q. And did you know what was going on when you pled
12 guilty?

13 A. Not really. I just really wanted it to be over
14 with. You know, and I was trying to get help and I
15 thought that they was helping me but as I got, you know,
16 incarcerated and started seeing counselors and stuff, you
17 know, start talking to some of the men that help people
18 and people that was back there and, you know, after I
19 cleaned myself up a little bit, you know, I realized that
20 could have been better.

21 Q. All right. Were you ever promised a certain number
22 of years that you'd spend in prison or did you kind of
23 have an open plea situation?

24 A. What you mean?

25 Q. When you pled -- did you plead guilty in this

1 courtroom? Or this was in Orangeburg, right?

2 A. Yes.

3 Q. Okay. So you went to the Orangeburg County
4 Courthouse. Did you know how much time you were going to
5 get on the day of the plea?

6 A. No. Uh-uh, because they said it was from one to
7 22. That was the final offer that they was trying to
8 offer me. So I know it was in that range, you know. I
9 didn't know what the number was going to be.

10 Q. Did your attorney tell you the maximum amount of
11 time that you could face?

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

13 Q. Okay. All right. Were you aware of the time of
14 the plea of your right -- we talked about a little bit
15 earlier but I want to talk about just the day of the
16 plea. Were you aware of your right to remain silent and
17 not incriminate yourself?

18 A. I really didn't understand it. I just wanted it to
19 be over with.

20 Q. Okay. Were you aware that you could confront
21 witnesses? You know what that means now?

22 A. Uh-uh.

23 Q. All right. Did you know that you could
24 cross-examine witnesses if your case was to go to trial?

25 A. No, I didn't know.

- 1 Q. You didn't know that?
- 2 A. No, sir.
- 3 Q. Did your attorney tell you about it?
- 4 A. No, sir.
- 5 Q. Did the judge tell you about it?
- 6 A. No, sir.
- 7 Q. Okay. If you had known about that and those rights
8 would you have done anything different?
- 9 A. Yeah. I probably would have took it to trial.
- 10 Q. Okay. All right. Did you talk with your attorney
11 at all about the sex offender registry?
- 12 A. No, sir. That's new to me. That was a shock
13 today.
- 14 Q. And when did you find out about the sex offender
15 registry?
- 16 A. Today when I had a talk with you before I came up
17 here.
- 18 Q. So you are aware that the kidnapping charge you'd
19 be required to register -- and tell the Court what you
20 told me. What I told you. I'm sorry.
- 21 A. That where I could get it fixed.
- 22 Q. Well, the part about registering.
- 23 A. Oh. I would have to register as a sex offender,
24 and I didn't understand that, you know.
- 25 Q. All right. And you just found out about that

1 today?

2 A. Yes.

3 Q. All right. Did your attorney talk about the
4 elements of each offense; the kidnapping, the purse
5 snatching, the strong armed robbery, talk about what
6 those offenses really mean and what the State would have
7 to prove at trial?

8 A. No, sir.

9 Q. So you didn't know what you were pleading to,
10 really?

11 A. No, sir.

12 Q. Okay. All right. Mr. Brown, is there anything
13 else that you'd like to tell the Court?

14 A. For me, talking to, you know, my mental health
15 counselor and other people that was more experienced I
16 realized that I could have took it to trial and -- I'm
17 not admitting to the kidnapping and the robbery, which I
18 know I did plead because I wanted it to be over with and
19 I was looking for help, you know, and the carjackings I
20 kind of, like, remember those, but I think that I would
21 did it different if I had known, you know, my case, if I
22 had known more about my case and witness and victims,
23 and, you know, saw pictures and stuff like that, you
24 know. And they was -- you know, like I said, was a shock
25 to me and I just wanted it to be over with.

- 1 Q. And did your attorney go over the evidence, the
2 discovery that was provided to them?
- 3 A. No, sir. I didn't see no evidence or nothing. I
4 just -- it was like I was just looking for help and just
5 trying to get it over with.
- 6 Q. So you didn't see the -- some people -- we call it
7 a Rule 5 or discovery. In jail I think they a lot of
8 times will call it your motion.
- 9 A. Yeah.
- 10 Q. You didn't see any of that?
- 11 A. No, sir.
- 12 Q. Okay. Were you ever provided a copy of that by
13 mail?
- 14 A. No, sir. The only thing I had got was like the
15 warrants.
- 16 Q. Okay. All right.
- 17 A. But I did receive a motion -- no, a transcript when
18 I wrote you.
- 19 Q. Right, but this is -- right, but I'm just talking
20 about before the plea, your initial guilty plea.
- 21 A. I didn't receive anything that I could go off, you
22 know, that I could read up on and see where I went wrong
23 or they went wrong or you know.
- 24 Q. All right. But you never saw, like, pictures of
25 the scene?

1 A. No.

2 Q. Incident reports?

3 A. None of that.

4 Q. All right. Did you feel forced to plead guilty or
5 did you feel kind of bamboozled into pleading guilty?

6 A. I would say probably bamboozed [sic] because I
7 didn't want to end up spending the rest of my life in
8 prison so I just was following the lead of someone who I
9 thought was experienced and was helping me, you know, get
10 the best time as possible.

11 Q. Is there anything else you'd like to add?

12 A. No, sir.

13 Q. Okay. And please answer any questions that
14 Attorney General has.

15 THE COURT: Mr. Mitchell?

16 CROSS-EXAMINATION

17 BY MR. MITCHELL:

18 Q. All right. Afternoon, Mr. Brown.

19 A. Good afternoon.

20 Q. So you pled to these five charges before Judge
21 Dickson, right?

22 A. Yes, sir.

23 Q. All right. Now, he asked you a bunch of questions
24 during your plea; is that right?

25 A. Yes, sir.

- 1 Q. A lot of those answers you gave to Judge Dickson
2 are much different than what you are testifying to now;
3 is that right?
- 4 A. I really don't know, sir.
- 5 Q. Well, you know, Judge Dickson asked you if
6 Mr. Stroud had reviewed the evidence with you and you
7 said yes, but it's your testimony today that he had not
8 reviewed the evidence?
- 9 A. I was only doing what Mr. Stroud told me in order
10 to get the Judge to accept my plea.
- 11 Q. So you were just telling the Judge what you thought
12 he wanted to hear to get it over with?
- 13 A. I guess so.
- 14 Q. So your focus of this was to get the lowest amount
15 of time possible on the charges?
- 16 A. Yes, sir.
- 17 Q. Because you knew you were likely to be convicted if
18 you went to trial?
- 19 A. I didn't know I had a chance to go to trial.
- 20 Q. You didn't know you had a choice to go to trial?
- 21 A. No, sir.
- 22 Q. So you thought your only option was to plead
23 guilty?
- 24 A. Yes, sir. At this time I did.
- 25 Q. And that's because Mr. Stroud advised you that he

1 thought you would be convicted or he didn't even advise
2 you you could go to trial?

3 A. He didn't advise me that I could go to trial.

4 Q. So you thought your only option was to plead
5 guilty?

6 A. Yes, sir.

7 Q. Judge Dickson asked you if you wanted a jury trial
8 and you said no; is that right?

9 A. I don't remember him asking me that.

10 Q. Okay.

11 A. Could I state something?

12 Q. No, no. Let me just keep asking the questions
13 here.

14 A. Okay.

15 Q. I mean, you pled guilty because you wanted to avoid
16 a life sentence, right?

17 A. Yes.

18 Q. That's part of the reason?

19 A. Yes.

20 Q. And that was a threat -- or not threat but it was
21 something that the solicitor could have sought, right?

22 A. I guess so.

23 Q. I mean, you were facing a potential life sentence
24 because of, well, I guess the five charges you had, but
25 you could have been LWOP'd. Did you have those

- 1 discussions with Mr. Stroud?
- 2 A. What is that?
- 3 Q. Life without parole. Did you have those
- 4 discussions with Mr. Stroud?
- 5 A. I don't remember.
- 6 Q. What about any discussions about strikes, you know,
- 7 three strikes, two strikes?
- 8 A. I think I did remember hearing something about
- 9 strikes but I didn't really understand at the time.
- 10 Q. Well, you knew you were facing a lot of time so you
- 11 pled guilty to take advantage of the offer made to you?
- 12 A. Yes, sir, to get -- in order to get the plea.
- 13 Q. Okay. And all the charges were taken care of at
- 14 once, too; isn't that right?
- 15 A. Yes, sir.
- 16 Q. No further questions. Thank you.
- 17 THE COURT: Anything on redirect?
- 18 MR. SMALDONE: Sure.
- 19 REDIRECT EXAMINATION
- 20 BY MR. SMALDONE
- 21 Q. You mentioned you wanted to say something a minute
- 22 ago. What did you want to add?
- 23 A. I was trying to get mental evaluation and I don't
- 24 think that I was rendered that.
- 25 Q. Did you come to the Court for that or did you just

1 ask your attorney for that?

2 A. I asked my attorney and I never heard anything
3 back.

4 Q. Okay. Do you recall when you asked your attorney?

5 A. During the time that I was pleading. Not when I
6 was on the stand. When I heard about, you know, the one
7 to 22 or one to 30.

8 Q. Okay. So you asked. Did you write him or did you
9 talk to him in person?

10 A. No. I asked him while we was conversating.

11 Q. I understand.

12 A. While we were visiting.

13 MR. SMALDONE: Okay. Judge, I just briefly want to
14 beg the Court's indulgence. I want to just check his
15 prior record that's part of the transcript. I want to
16 see if this would possibly have been eligible.

17 (PAUSE.)

18 BY MR. SMALDONE:

19 Q. Is there anything else?

20 A. No, sir.

21 Q. Okay, and I don't have any further questions.

22 THE COURT: All right. Thank you, sir. You can
23 step down.

24 Call your next witness, please.

25 MR. SMALDONE: I don't have any further witnesses,

1 Judge.

2 THE COURT: Attorney General?

3 MR. MITCHELL: Your Honor, the State calls Mr. John
4 Stroud.

5 JOHN STROUD, after having been duly sworn,
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. MITCHELL:

9 Q. Good afternoon, Mr. Stroud.

10 A. Good afternoon.

11 Q. Thanks for being here today.

12 A. Absolutely.

13 Q. How did you become involved in Mr. Brown's case?

14 A. I started with the Orangeburg Public Defender's
15 Office in -- I believe it was January 2012. This file
16 was handed to me from Ash Chisolm, who I replaced.

17 Q. How long have you been practicing law?

18 A. Since 2000 and -- I passed North Carolina Bar in
19 2009. Tough time getting jobs at that time but I believe
20 I started actually practicing in 2010.

21 Q. Got you. So you were with the Orangeburg Public
22 Defender's Office at that point?

23 A. At the time I got this file, yes.

24 Q. When you first met with Mr. Brown what kind of
25 discussions did you have?

1 A. Mr. Brown was out of jail when I initially got the
2 file. Unfortunately, I have -- when I requested the file
3 from the office, I have since left, I can't find my notes
4 or my plea sheet. But he was out when I first got there.
5 At that time we were trying to schedule him for a mental
6 evaluation and we would send him letters instructing him
7 to go to the flag pole to be picked up to be transported
8 to Columbia and we were having a lot of trouble getting
9 him to show up. And then he got additional charges for
10 the purse snatching, at which point I was able to get in
11 touch with him at the jail -- or have him transported to
12 the courthouse from the jail.

13 Q. So in your initial meetings did you review the
14 charges that he was facing at that point?

15 A. Yes, and we had a bond hearing as well, I believe.

16 Q. Okay. So when you reviewed this you reviewed the
17 elements of the charge, penalties?

18 A. Absolutely.

19 Q. You reviewed the rights that he would have to a
20 trial?

21 A. Absolutely.

22 Q. He testified that he didn't believe he had any
23 choice but to go plead guilty, but you advised him that
24 he could take the case to trial if he wished to?

25 A. I advised him that he had the right to trial.

- 1 Q. Did you file a Rule 5 Brady motion in this case?
- 2 A. You'll have to forgive me. I'm not practicing
3 criminal law anymore. That's the -- yes. Yes, I did.
- 4 Q. Just discovery motion.
- 5 A. Discovery motion. Absolutely.
- 6 Q. Right. And was there response made into that?
- 7 A. There was. Actually -- I'm sorry. I did not
8 request it for the carjacking and the kidnapping charges.
9 Ash Chisolm did. I have in the file that he did send it
10 to him on September 30, 2011.
- 11 Q. So the evidence was then -- or the statements,
12 whatever was in the discovery response, was mailed to
13 Mr. Brown?
- 14 A. Yes.
- 15 Q. Okay. Did you review the evidence that the State
16 planned to present if the case did go the trial with him?
- 17 A. Absolutely.
- 18 Q. What was some of that evidence?
- 19 A. We have victims' statements. He knew personally,
20 according to them, two of the victims. There's two -- I
21 think three photo lineups for the carjacking. That's
22 just for the carjackings and the kidnapping. The
23 shoplifting charge -- I'm sorry. The purse snatching
24 charge there was also written statements, I believe a
25 photographic lineup, as well as some video surveillance.

1 Q. So after reviewing this with him and receiving this
2 evidence did you -- how did the plea negotiations go?

3 A. Sara Ford notified me that if we did not plead
4 guilty that she would pursue life pursuant to the two
5 strikes of the most serious or three strikes of the
6 serious. I believe the carjackings alone are two most
7 serious. I think kidnapping is most serious, too. So I
8 apologize again. It's been a while. I'm sorry.

9 Q. So it was a very real threat that the State would
10 seek to serve him with a notice of intent to seek life
11 without parole?

12 A. Yes. To my knowledge it was.

13 Q. Did you have any discussions with Judge Dickson
14 before Mr. Brown pled guilty?

15 A. Yes. With Sara, the prosecutor in the case, would
16 not recommend a sentence so we would always in that
17 situation go speak with Judge Dickson in chambers. I
18 don't remember what the range was but the 22 years does
19 sound very likely.

20 I remember when we got 18 years I was very happy
21 about that and we found that out during the -- in the
22 transcript you'll see the Judge wanted to speak to us in
23 chambers and notified us it was going to be 18 years, and
24 I was very happy about that.

25 Q. So you thought that was a good plea deal?

1 A. Absolutely.

2 Q. Considering that he was facing these numerous
3 charges; is that right?

4 A. Yes.

5 Q. So these were all, like, separate events, too. It
6 wasn't just, like, all one event where you could try to
7 bifurcate them?

8 A. They were separate. Two charges happened within --
9 they were separate but they happened on the same day, I
10 believe within four or five hours of each other, two
11 different victims. But, yeah, I mean, they are separate
12 and distinct, absolutely.

13 Q. You talked about a mental evaluation. Was that
14 scheduled to take place at some point?

15 A. Many times. Once when we got -- once when he was
16 in jail it becomes a lot easier for us to schedule these
17 things and to ensure that he will attend. I have many
18 orders of transport from judges that -- I mean, it's
19 pretty much ever since I got the file to the month prior
20 to the plea. I don't have in my notes the results but
21 there's absolutely no way I would ever plead him guilty
22 if he was found incompetent.

23 Q. So the mental evaluation did take place prior to
24 the plea?

25 A. To the best of my knowledge, yes. There's no way I

1 would have -- or Sara would have pled him guilty without
2 that. I remember that was a very long process trying to
3 get that done.

4 Q. So you advised him that it was your opinion that he
5 should plead guilty and take advantage of the plea deal?

6 A. Given the evidence against him, yes, I did.

7 Q. And you agree with his decision that was to plead
8 guilty?

9 A. Yes.

10 Q. Did you have any issues communicating with him in
11 your representation?

12 A. I never really did. It was a concern of mine and I
13 really did want to make sure that he was found competent
14 but in our person-to-person interactions he seemed very
15 reasonable and of rational mind.

16 Q. Did you feel like he understood what you were
17 saying to him?

18 A. Yes, I do.

19 Q. And was he able to actively participate in the
20 conversations with you?

21 A. Yes.

22 Q. Specifically the day of the plea did he seem to be
23 himself and to realize what was going on?

24 A. Yes.

25 Q. No further questions. Please answer anything

1 Mr. Smaldone has for you.

2 A. Thank you.

3 THE COURT: Cross?

4 CROSS-EXAMINATION

5 BY MR. SMALDONE:

6 Q. Good afternoon.

7 A. Good afternoon.

8 Q. All right. You said that you mailed -- that you
9 mailed Mr. Brown his discovery?

10 A. Actually, it was Ash Chisolm.

11 Q. Ashley Chisolm?

12 A. Yes.

13 Q. And do you have a record of the mailing?

14 A. I just have a letter from Ash here. I'll be happy
15 to show it to you. It just says, I, Ash D. Chisolm, have
16 sent discovery materials provided by the solicitor to the
17 client, Latroy Brown, signed by Ash and dated September
18 30th, 2011.

19 Q. Okay. Is there a return receipt as part of that?

20 A. Not to my knowledge. I don't see it.

21 Q. Did you ever meet with Mr. Brown where he clearly
22 had received -- I mean, a lot of times you go to the jail
23 and they have the big stack of paper under their arm,
24 it's their discovery. Did you know that Mr. Brown had
25 his discovery?

1 A. I know that I went over the carjacking and the
2 kidnapping and all of his charges with him.

3 Q. Right.

4 A. With all the discovery.

5 Q. With the discovery you met with him?

6 A. Right. Yeah. I don't know that he had a copy for
7 himself but I know that we went over everything together.

8 Q. Okay. Just one moment. I'm sorry. I lost my
9 train of thought.

10 Okay. I remember. Did you advise him about the
11 life without parole aspect of the plea agreement?

12 A. Yes.

13 Q. Okay.

14 A. Yes.

15 Q. And you think that was a pretty big factor in
16 influencing the plea agreement, influencing Mr. Brown to
17 plea?

18 A. I don't know how to answer that because that would
19 be his decision but, I mean, he was facing a max of 50
20 years, if it wasn't life, or even more, I think, if it
21 was two charges. I'm not sure. I mean, if I were him I
22 would consider it quite a bit.

23 Q. Right. The life without parole. Calling your
24 attention to -- do you have a copy of the transcript in
25 front of you?

- 1 A. I do. Hold on a second.
- 2 Yes.
- 3 Q. Okay. Turn to page 12 for me, if you would.
- 4 You there?
- 5 A. Yep.
- 6 Q. Okay. Would you agree when it says line eight,
7 solicitor reads the prior record, to your recollection is
8 that the extent of his prior record?
- 9 A. To my recollection, yes.
- 10 Q. Okay. And are you aware that in -- I could be
11 wrong. I don't have the red Strickler book in front of
12 me. I haven't got the new one, but you are aware there's
13 only one strike in there, right?
- 14 A. I believe so. Again, I'm sorry. It's been a
15 while.
- 16 Q. And I'll read it just so the Judge -- I don't know
17 if the Judge is on --
- 18 THE COURT: (Nodded).
- 19 BY MR. SMALDONE:
- 20 Q. Okay. So that's only one strike in there, so they
21 couldn't have sought life without parole, right? I know
22 you don't do criminal anymore but...
- 23 A. I believe I researched that topic at the time and I
24 found that because he had these two separate incidents
25 even though he pled guilty to them on the same day that

1 the carjack -- both carjackings are most serious, and the
2 kidnapping I believe is most serious as well. So I
3 believe I remember researching that. I mean, I did think
4 about that. I looked into it and I believe that he would
5 have been eligible for life without parole.

6 Q. Okay. And I don't have an answer for you either so
7 I don't even know. I'd have to research that one. It
8 just came to my attention today so...

9 A. No, it's okay.

10 Q. Did Mr. Brown -- did you recall specifically
11 talking with Mr. Brown about his right to confront
12 witnesses?

13 A. Yes.

14 Q. Do you recall specifically that moment from 2012?

15 A. I do. I remember specifically going over our
16 standard issued plea sheet with him in the jail, in the
17 holding cells at Orangeburg County.

18 Q. Okay. Do you have the plea sheet with you now?

19 A. I don't. It's lost.

20 Q. Okay.

21 A. Unfortunately. But I always read it word for word
22 then I'd explain it to them, and it was very tedious but
23 I always did it.

24 Q. And did you make -- is that part of the record on
25 the plea by any chance?

- 1 A. No, it's not.
- 2 Q. Okay. All right.
- 3 A. He did ask if I went over his constitutional
4 rights, and I did say yes.
- 5 Q. Right.
- 6 A. I believe it's in the transcript.
- 7 Q. Right. And did you tell Mr. Brown that he would
8 have to register as a sex offender?
- 9 A. I do not recall that conversation. I will tell you
10 that -- and I'm sorry I don't have my notes. I will tell
11 you this. I was very careful with this case. I sought
12 advice from everyone at the Orangeburg County Public
13 Defender's Office.
- 14 Q. Because you knew this day was coming?
- 15 A. Because I knew this day was coming I handled it
16 very carefully, and I think that's why I lost the plea
17 sheets because I put it somewhere extra special so I
18 wouldn't lose it because I'm not very bright. So I do
19 not remember that.
- 20 Q. Okay.
- 21 A. But I am sure that I would have done that, but I
22 don't remember that.
- 23 Q. But you didn't petition the Court to find that
24 there was no sexual element of the offense for the
25 kidnapping?

1 A. I guess I didn't. It might have been in
2 negotiations with Sara Ford. I don't know.

3 Q. But you don't know whether or not it was part of
4 the negotiations?

5 A. I don't. No.

6 MR. SMALDONE: And I'll just beg the Court's
7 indulgence while I check with my client.

8 (WHEREUPON, Mr. Smaldone speaks with the Applicant
9 privately.)

10 BY MR. SMALDONE:

11 Q. And at this time, I don't have any further
12 questions for you.

13 THE COURT: Anything on redirect?

14 MR. MITCHELL: Very briefly.

15 REDIRECT EXAMINATION

16 BY MR. MITCHELL:

17 Q. Mr. Stroud, on the standard plea sheet you said you
18 read through that line by line?

19 A. Yes.

20 Q. That's your normal practice?

21 A. Yes, sir.

22 Q. What's included on that sheet? You don't have to
23 give us every detail but just generally.

24 A. Your right to a trial, your right to confront
25 witnesses, your right to not testify, and the fact that

1 you don't testify cannot be used as an inference of guilt
2 against you. You have the right to remain silent, you
3 have the right to waive that, plead guilty. That's kind
4 of all I can remember right now but...

5 Q. Okay. Would Mr. Brown have initialled or signed
6 portions of that sheet?

7 A. He would have.

8 Q. Do you know if he did in this case?

9 A. Yeah. I wouldn't do it until he -- until my client
10 signed it.

11 Q. No further questions. Thank you.

12 THE COURT: All right. Thank you, sir. You can
13 step down.

14 Anything else from anybody on this particular case?
15 Any additional witnesses?

16 MR. MITCHELL: No further witnesses, Your Honor.

17 THE COURT: Anything? No?

18 MR. SMALDONE: I'll just --

19 THE COURT: Please.

20 MR. SMALDONE: I don't know if it's my turn for the
21 argument or if the State wanted to go first but I guess,
22 Judge, I'd just ask that you grant the post-conviction
23 relief. Mr. Brown was on medication at this time, didn't
24 know what was going on.

25 On the record, Judge, there's no finding that he

1 waived his right to confront witnesses or waived his
2 right to self incrimination. My client has testified
3 that but not for that -- or but for that if he had known
4 about those rights, those valuable rights that he was
5 giving up he would have chose to go to trial so he could
6 confront those witnesses against him and either remain
7 silent or not remain silent and make a valid choice
8 whether or not to do so.

9 And, you know, he was hazy mentally at the time and
10 still managed to, you know, answer the questions the
11 Judge and his attorney wanted him to answer.

12 He didn't know that he would have to register as a
13 sex offender. If you read the transcript there's
14 certainly good argument to be made and probably much more
15 lucky than not that had the attorney petitioned that
16 there be a finding of no sexual element to the offense,
17 because I don't believe there was if you read the
18 transcript, there were females but they weren't assaulted
19 in a sexual manner, but now he has the register because
20 that finding wasn't made on the record.

21 He says he wasn't advised of the maximum, the
22 minimum level of penalties. So we just ask that, you
23 know, that -- I believe the plea was involuntarily made
24 and counsel was ineffective for not -- for coercing my
25 client to plead guilty and for not making the finding of

1 the no registry for the kidnapping.

2 THE COURT: All right. Attorney General?

3 MR. MITCHELL: And, Your Honor, that's what I was
4 saying. I don't think Mr. Brown's testimony was
5 credible. I think a lot of things he said were a direct
6 contradiction of what he told Judge Dickson. I mean, he
7 was asked if any of these meds affected his ability to
8 understand. He said no.

9 Are you thinking clearly?

10 Yes.

11 You know exactly what you are doing?

12 Yes.

13 I think that handles that part of that. I think
14 take that in conjunction with the testimony of Mr. Stroud
15 that he believed he was thinking clearly at the time and
16 that he was able to grasp what was going on.

17 I think as far as the sex offender registry goes,
18 that's a collateral consequence not ripe for PCR. I
19 think that's more appropriately handled through a
20 declaratory judgment action rather than this. I don't
21 think we've been able to flush out the facts to where you
22 could making a proper finding of whether any of the
23 incidents were sexual in nature.

24 And I think, you know, all the allegations that he
25 did not know that he could go the trial, I just don't

1 think any of that is credible. So I'd ask that you deny
2 the application. Thank you.

3 THE COURT: All right. I'll take it under
4 advisement and have y'all an order sometime in the next
5 day or two.

6 MR. SMALDONE: Thank you, Judge.

7 MR. MITCHELL: Thank you, Judge.

8 THE COURT: Thank you both very much.

9 (WHEREUPON, the hearing was concluded.)

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C E R T I F I C A T E

I, Sharon L. Vizer, Official Court Reporter for the First Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 27th day of October 2015.

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

May 24, 2016

s/Sharon L. Vizer

SHARON L. VIZER

CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Latroy Brown, #265525,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2012-CP-38-01508

ORDER OF DISMISSAL

FILED FOR RECORD
WINIFRED B. CLARK
2016 JAN 13 P 12:01
CLERK OF COURT
ORANGEBURG, S.C.

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed October 30, 2012. Respondent made its Return on March 15, 2013, requesting an evidentiary hearing be convened. Kelvin D. Wright, Esquire, was initially appointed by the Orangeburg County Clerk's Office to represent Applicant. Gerald J. Davis, Esquire, was then substituted as counsel in February 2013. Thereafter, Tristan M. Shaffer, Esquire, was substituted as counsel in March 2013. In March 2015, Grant B. Smaldone, Esquire, was substituted as counsel. An evidentiary hearing was held on October 27, 2015, at the Dorchester County Courthouse. Applicant was present and represented by Counsel Smaldone. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, John D. Stroud, Esquire. This Court had before it the Orangeburg County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the guilty plea transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Applicant waived

Grant B. Smaldone
CLERK OF COURT
ORANGEBURG, S.C.

presentment to two counts of Carjacking (2011-GS-38-1846; -1848), Kidnapping (2011-GS-38-1847), Common Law Robbery (2011-GS-38-1926), and Purse Snatching (2012-GS-38-0584). Applicant was represented by Counsel Stroud. On May 16, 2012, Applicant pleaded guilty before the Honorable Edgar W. Dickson who sentenced Applicant to confinement for a period of eighteen (18) years on each count of Carjacking, eighteen (18) years for Kidnapping, fifteen (15) years on the Common Law Robbery, and three (3) years for Purse Snatching with the sentences to be run concurrently. Applicant did not appeal his sentence or conviction.

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

1. Involuntary and unintelligent guilty plea in that:
 - a. Counsel failed to review the nature of the charges, penalties, and constitutional rights with Applicant; and
 - b. Applicant was under the influence of Haldol at the time of his plea.
2. Ineffective assistance of counsel in:
 - a. Failing to file a notice of appeal or motion for reconsideration; and
 - b. Failing to request a finding from the plea judge that the kidnapping was non-sexual in nature.

III. APPLICABLE LAW

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable



professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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. 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).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the guilty plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds counsel's testimony to be credible and persuasive



on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Involuntary and Unintelligent Guilty Plea

Applicant alleges he did not plead guilty knowingly and voluntarily. Specifically, Applicant argues that Counsel failed to review the charges, penalties, and his constitutional rights with him. He also alleges that he was under the influence of the drug Haldol when he pled. This Court finds Applicant's guilty plea was freely and voluntarily entered. To find a guilty plea is voluntarily and knowingly entered, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

Applicant claims he did not plead guilty voluntarily because he was not advised by Counsel of the charges, potential penalties, and of his constitutional rights. He further claims he



was under the influence of medications when pleading guilty. This Court finds these contentions meritless. This Court finds the record reflects Applicant was fully advised that he was pleading guilty and waived all challenges to the evidence against him. The plea court's very thorough colloquy with Applicant demonstrates that he understood the charges, penalties, and his rights. This Court finds Applicant's testimony not credible. Applicant presented no credible evidence as to why he should be able to depart from his statements at the plea hearing. This Court finds very credible Counsel's testimony regarding his preparation and advice concerning the case. Counsel's testimony that he did not have any difficulty communicating with Applicant at his plea is also persuasive. The record further reflects Applicant fully admitted his guilt to the plea court. Applicant also told Judge Dickson that he was not taking any medications and was not under the influence of any medications during the plea. (Plea Tr. p. 4, line 3 – p. 5, line 1). Counsel also adequately investigated any competency issues and proceeded appropriately in light of his investigation into this potential issue. Therefore, this Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made.

Ineffective Assistance of Counsel

Applicant also alleges Counsel was ineffective in failing to file a notice of appeal and in failing to petition Judge Dickson to make a finding that the kidnapping was not sexual in nature. The Court will address each allegation in turn.

Failing to File a Notice of Appeal or Motion for Reconsideration

This Court further finds Applicant has failed to carry his burden to prove Counsel was ineffective in failing to file a notice of appeal or motion for reconsideration. Applicant did not argue these grounds during his testimony and did not indicate that he requested Counsel to file either. Accordingly, no evidence was submitted to support these allegations, so they are



abandoned. Furthermore, upon a full review of the record, the Court finds that no grounds existed for an appeal, so any appeal would have been futile.

Sex Offender Registry is a Collateral Consequence

Finally, Applicant raises the issue of his requirement to register as a sex offender. Under S.C. Code Ann. § 23-3-430(C)(15), a person who pleads guilty to the kidnapping of a person eighteen years of age or older is placed on the South Carolina Sex Offender Registry unless the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense.

This Court finds that registration on the sexual offender registry is a collateral consequence of a sentence and therefore Counsel cannot be ineffective in failing to advise Applicant of the requirement that he register on the sex offender registry. Williams v. State, 378 S.C. 511, 516, 662 S.E.2d 615, 618 (Ct. App. 2008). “The distinction between ‘direct’ and ‘collateral’ consequences of a plea, while sometimes shaded in the relevant decisions, turns on whether the result represents a definite, immediate and largely automatic effect on the range of the defendant’s punishment.” Cuthrell v. Director, Patuxent Institution, 475 F.2d 1364, 1366 (4th Cir.), cert. denied, 414 U.S. 1005 (1973). The purpose of the sexual registry is that of community and police supervision. Registration on the sexual offender registry has no direct bearing on the range of the defendant’s punishment as delineated in Cuthrell. Id. A defendant must petition for a declaratory judgment in the Court of Common Pleas in order for that court to make a finding of whether the kidnapping included a criminal sexual offense. Hazel v. State, 377 S.C. 60, 62, 659 S.E.2d 137, 138 (2008). Applicant can seek a determination by a court that the kidnapping offense was not sexual in nature and request to be removed from any registry. This Court is

without proper jurisdiction to amend the Applicant's previous General Session sentence through post-conviction relief and therefore dismisses this allegation.

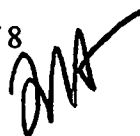
All Other Allegations

As to any and all allegations that were raised in the application 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.

V. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

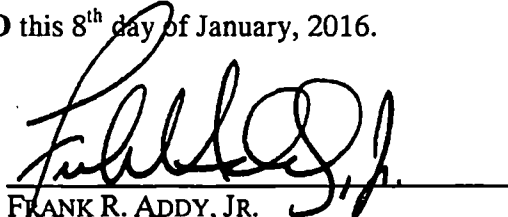
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a 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 shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

IT IS SO ORDERED this 8th day of January, 2016.


FRANK R. ADDY, JR.
Presiding Judge

Greenwood, South Carolina

WITNESSES

M Huggins

DOCKET NO. 2011GSS38-1846

The State of South Carolina
County of ORANGEBURG

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

M Huggins
Defendant

Orangeburg County Sheriff

COURT OF GENERAL SESSIONS

October 10, 2011 TERM

I hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

M805872

Arrested: August 31, 2011

THE STATE

vs.

Latroy Demont Brown

Defendant

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: October 12, 2011

VERDICT

Indictment for

TAKE OR ATTEMPT A VEHICLE FROM
PERSON BY FORCE WITHOUT GREAT
BODILY HARM

ATTEST: TRUE COPY
Wimble B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

SC Code: 16-3-1075(B)

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2011GS38-1846

At a Court of General Sessions, convened on October 10, 2011 the Grand Jurors of Orangeburg County present upon their oath:

**TAKE OR ATTEMPT A VEHICLE FROM PERSON BY FORCE WITHOUT
GREAT BODILY HARM**

That in Orangeburg County, South Carolina, on or about August 28, 2011, the Defendant, Latroy Demont Brown did willfully and unlawfully did take or attempt to take, a motor vehicle from Patrice Parker by using force, violence or intimidation while Patrice Parker was operating the vehicle or inside of the vehicle. This offense in violation of Section 16-3-1075 of the South Carolina Code of Laws, as amended

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

ORANGEBURG COUNTY
CLERK OF COURT
M. [unclear]
S. [unclear]
SARAH A. FORD
SARAH A. FORD, SOLICITOR

WITNESSES

M Huggins

DOCKET NO. 2011GS38-1847

The State of South Carolina
County of ORANGEBURG

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

X Huggins
Defendant

Orangenburg County Sheriff

COURT OF GENERAL SESSIONS

October 10, 2011 Terms

ARREST WARRANT NUMBER
1847

Arrested: August 24, 2011

THE STATE

ACTION OF GRAND JURY

Leroy Barrett Brown

Defendant

Witness:

C.O.C. P.L.S. AND G.S.

Witness

Witness
Clerk of Court
ORANGEBURG COUNTY, SC

SC Code: 16-3-910

Foreperson of Petit Jury
Date: 76

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)

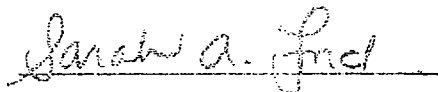
INDICTMENT
 2011GS38-1847

At a Court of General Sessions, convened on October 10, 2011 the Grand Jurors of Orangeburg County, present upon their oath:

KIDNAPPING

That in Orangeburg County, South Carolina, on or about August 28, 2011, the Defendant, Lestey Vincent Brown, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct, or carry away the victim, Tameka Shuler, without authority of law. This offense is in violation of Section 16-03-510, of the South Carolina Code of Laws, as amended:

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



Sarah A. Ford, Solicitor

WITNESSES

M Huggins

DOCKET NO. 2011GS38-1848

The State of South Carolina
County of ORANGEBURG

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

[Signature]
Defendant

Orangeburg County Sheriff

COURT OF GENERAL SESSIONS

October 10, 2014 10:29AM

ARREST WARRANT NUMBER
M805876

Arrested: August 21, 2011

THE STATE

vs.

ACTION OF GRAND JURY

Leroy Demont Brown

Defendant

Witness:

C.C.C. PLS. AND G.S.

Department of County Jail
DORIS DALLMAN, JAILER
ORANGEBURG COUNTY, SOUTH CAROLINA
VERMONT

MAILED ON MY BEHALF AS A SHERIFF'S CLERK
PERSONAL BY SHERIFF'S CLERK VERMONT
BODILY HARM

[Signature]
CLERK OF COURT
ORANGEBURG COUNTY, SC

SC Code: 16-3-1075(B)

For person of Petit Jury
Date: 7

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)

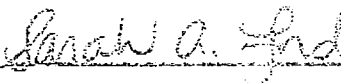
INDICTMENT
 2011GS38-1648

At a Court of Sessions, convened on October 10, 2011 the Grand Jurors of Orangeburg County present upon their oath:

**TAKE OR ATTEMPT A VEHICLE FROM PERSON BY FORCE WITHOUT
 GREAT BODILY HARM**

That in Orangeburg County, South Carolina, on or about August 26, 2011, the Defendant, Lanny Lee Earl Brown did willfully and unlawfully did take or attempt to take, a motor vehicle from Tameika Shuler by using force, violence or intimidation while Tameika Shuler was operating the vehicle or inside of the vehicle. This offense is in violation of Section 16-3-1075 of the South Carolina Code of Laws as amended.

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



Sarah A. Ford, Solicitor

WITNESSES

Dennis Romastine

DOCKET NO. 2011GS38-1926

The State of South Carolina
County of ORANGEBURG

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

X Kelly Mae
Defendant

Orangenburg Police Department

COURT OF GENERAL SESSIONS

October 10, 2011 10:50AM

ARREST WARRANT NUMBER
J697968

Arrested: August 21, 2011

ACTION OF GRAND JURY

Lathoy Demont Brown

THE STATE

vs.

Foreperson of Grand Jury

Date: October 12, 2011

VENUE: VINECKOT

Defendant

CHRISTOPHER LAMBERT, III
ALVIN ROSSBERY

ARREST TRAIL COPY
Christoph Lambert
CLERK OF COURT
ORANGEBURG COUNTY, SC

SC Code: 16-11-325

Foreperson of Petit Jury
 Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)

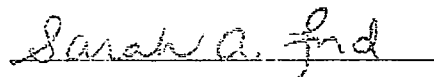
INDICTMENT
 2011GS38-1926

At a Court of General Sessions, convened on October 10, 2011 the Grand Jurors of Orangeburg County, present upon their oath:

COMMON LAW ROBBERY, STRONG ARM ROBBERY

That on or about August 13, 2011, in the county of Orangeburg, the defendant Latroy Demont Brown did feloniously take from the person or presence of the victim, Nadia Hammond, by means of force or intimidation goods or monies of the said victim. Such goods or monies being described as a purse. This offense being a violation of the Common Law and of Section 16-11-325 of the South Carolina Code of Laws, as amended

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



Sarah A. Ford, Solicitor

WITNESSES

T. Smith

DOCKET NO. 2012GSS38-0584

The State of South Carolina
County of ORANGEBURG

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

T. Smith
Defendant

Orangeburg County Sheriff

COURT OF GENERAL SESSIONS

April 9, 2012 TERM

ARREST WARRANT NUMBER
M806613

THE STATE

Defendant

Arrested: February 14, 2012

ACTION OF GRAND JURY

Lathoy Demont Brown

Witness

C.C.C. PLS. AND G.S.

Department of General Services

Date: April 11, 2012

Indictment by
Lathoy Demont Brown
Orangeburg County, SC

Arrested by: T. Smith
M806613
COURT OF GENERAL SESSIONS
ORANGEBURG COUNTY, SC

SC Code: 16-13-150

Foreperson of Petit Jury
Date: 02/08

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)

INDICTMENT
 2012GS38-0584

At a Court of Sessions, convened on April 9, 2012 the Grand Jurors of
 Orangeburg County present upon their oath:

**PURSE SNATCHING, NOT GRAND LARCENY, ROBBERY OR PRIVATE
 STEALING**

That in Orangeburg County, South Carolina, on or about January 24, 2012, the
 Defendant Lanny Demont Brown, did willfully and unlawfully snatch and carry
 away from the person of Crystal Manger, a purse or other thing of value with
 intent to deprive the owner thereof. This offense being a violation of Section 16-
 13-150 of the South Carolina Code of Laws, as amended.

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

Sarah A. Ford

Sarah A. Ford, Solicitor