

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Berkeley County

Larry B. Hyman, Jr., Circuit Court Judge

RECEIVED

JUL 13 2016

SC SUPREME COURT

STEVEN ROGERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000105

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

GENERAL SESSIONS

State of South Carolina,)

v.)

Case No. 12-GS-08-0884

Steven Kyle Rogers,)

Defendant.)

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on November 29 2012, before The Honorable R. Markley Dennis, Jr. in Courtroom E of the Berkeley County Courthouse, 300 California Avenue, Moncks Corner, South Carolina; attended by counsel as follows:

APPEARANCES:

Ashley Cornwell, Assistant Solicitor
300 California Avenue
Moncks Corner, South Carolina 29461
Appearing for State of South Carolina

Debi Littlejohn, Public Defender
P O Box 1687
Moncks Corner, South Carolina 29461
Appearing for Defendant

Deborah Garrison
Circuit Court Reporter – 9th Judicial Circuit
P O Box 901
Johns Island, South Carolina 29457
dgarrison@sccourts.org

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Case No. 12-GS-10-0884

Hearing of November 29, 2012

Before The Honorable R. Markley Dennis

1 SOLICITOR CROMWELL: Your Honor, Mr.
2 Rogers is here to plead guilty to Indictment
3 2012-GS-08-0884 for burglary in the first
4 degree. The State has negotiated a fifteen-
5 year sentence.

6 The victims are here and will address
7 Your Honor if you like. They understand the
8 negotiations.

9 THE COURT: You are Steven Rogers?

10 DEFENDANT: Yes, sir.

11 THE COURT: Mr. Rogers, Indictment
12 2012-0884 charges you with the offense of
13 burglary in the first degree. Do you
14 understand that, sir?

15 DEFENDANT: Yes, sir.

16 THE COURT: You are standing with your
17 lawyer, Ms. Littlejohn. Is that correct?

18 DEFENDANT: Yes, sir.

19 THE COURT: She has explained to you
20 the nature of that charge?

21 DEFENDANT: She has.

22 THE COURT: And the possible
23 punishment?

24 DEFENDANT: Yes, sir.

25 THE COURT: You understand also that it

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1 is considered a violent offense and a most
2 serious offense?

3 DEFENDANT: Yes, Your Honor.

4 THE COURT: And you understand the
5 significance of those terms?

6 DEFENDANT: Yes, sir.

7 THE COURT: You also understand that it
8 is a nonparoleable offense?

9 DEFENDANT: Yes, sir.

10 THE COURT: Which means that the
11 sentence that I imposed, if I accepted, that
12 being a negotiated sentence, that it is a
13 minimum of fifteen years, that you will serve
14 eighty-five percent of that fifteen years.
15 Do you understand that?

16 DEFENDANT: Yes, sir, Your Honor.

17 THE COURT: Do you understand that my
18 options on a negotiated sentence is to accept
19 it or to reject it, that I can't modify it in
20 any fashion?

21 DEFENDANT: (No verbal response).

22 THE COURT: Is that your understanding?

23 DEFENDANT: Yes, Your Honor.

24 THE COURT: You hesitated. Did you
25 think that I could maybe help you a little

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1 bit more?

2 DEFENDANT: Your Honor, I have a couple
3 of things that I'd like to say.

4 THE COURT: I'll be happy to hear from
5 you as to why I should accept it. But the
6 best that I can give you on a Burg 1st is
7 fifteen years. That is the best. I can't
8 suspend the fifteen-year sentence. That's
9 the best sentence you could get.

10 DEFENDANT: There is no way that my
11 trial could be ---

12 THE COURT: Oh, there's all sorts of
13 things that can be done if you -- but the
14 State is not willing to do that.

15 DEFENDANT: (No verbal response).

16 THE COURT: You're coming to me saying,
17 "I am going to plead guilty to burglary
18 first."

19 DEFENDANT: Your Honor, I have been
20 told by my counsel, Your Honor, and by the
21 assistant solicitor, Ms. Cromwell, that that
22 is my only option.

23 THE COURT: No, sir. Your options are
24 to go to trial on burglary first or -- were
25 there any other indictments?

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1 SOLICITOR CROMWELL: No, Your Honor.

2 THE COURT: You can go to trial on
3 burglary first. The best -- if you're
4 convicted, the judge could impose the
5 fifteen-year sentence -- but he could also
6 impose a life sentence, or anything in
7 between. I just did one last night --
8 twenty-one years.

9 DEFENDANT: I did commit the crime.

10 THE COURT: Before you get to that
11 point -- my suggestion is that you not say
12 anything about your complicity or
13 involvement. If you're asking me about
14 anything else that I can do, you -- you may
15 be guilty, but the State still has to prove
16 your guilt.

17 You plead guilty, you come to me with a
18 negotiated, you're coming and my option is to
19 accept it or reject it. Quite honestly, if
20 there is a minimum sentence of fifteen years,
21 there may be some circumstances, and I am
22 thinking that there probably are, that would
23 say 'maybe I want to keep it as negotiated.'

24 It looks like at first it was a
25 recommendation and then it was negotiated.

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1 In fact, they both are checked. I don't know
2 which way that it is.

3 SOLICITOR CROMWELL: Negotiated. I
4 apologize, Your Honor.

5 THE COURT: A negotiated sentence, I
6 can't alter it but I can accept it or reject
7 it. If I accept it, then your sentence is
8 fifteen years. Fifteen years is the best
9 that I could give you on a burglary first.
10 Fifteen years is the best.

11 Now, what are your options? You can go
12 to trial. If you're acquitted, you have
13 nothing. If you're convicted, the best
14 sentence that you're going to get is fifteen
15 years. When you get convicted, if you're --
16 as you just stated, "I did the crime." But
17 that's what the State would have to prove.
18 But that -- you saying that tells me that you
19 know what you did, and that violates that
20 statute. That being said, then there really
21 is -- that's -- that's the best that you
22 could ever hope for, is a fifteen-year
23 sentence.

24 But it is your right to go to trial
25 because a jury may not convict you. The

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1 only downside of it is that you expose
2 yourself to something that might be more.
3 A trite example, there used to be a program
4 *Let's Make A Deal*. It came back for a little
5 while. 'Do you want to take this or do you
6 want to exchange it for what's behind door
7 number three?'

8 You don't know what's behind door number
9 three. That's what you have. What's behind
10 door number three might be life. I don't
11 know that it would be. I'm not threatening
12 you, I'm just telling you.

13 It doesn't appear to be me, with his
14 answers, that Mr. Rogers is very comfortable
15 with this. So let's stand this aside. We
16 can revisit it, if necessary.

17 (BRIEF RECESS)

18 THE COURT: All right, I under- stand
19 that Mr. Rogers wants to continue. Mr.
20 Rogers, you've been talking with your lawyer.
21 You were talking about trying -- was there
22 anything better that could be done, concerned
23 about a negotiated sentence.

24 DEFENDANT: (Affirmative nod).

25 THE COURT: What is your desire?

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1 DEFENDANT: To plead guilty, Your
2 Honor.

3 THE COURT: Do you understand that if I
4 accept the negotiated sentence that you will
5 receive a fifteen-year sentence?

6 DEFENDANT: Yes, Your Honor.

7 THE COURT: And you'll be given credit
8 for the time that you have served?

9 DEFENDANT: Yes, sir.

10 THE COURT: What is your plea?

11 DEFENDANT: Guilty.

12 THE COURT: Are you satisfied with your
13 lawyer?

14 DEFENDANT: That I am.

15 THE COURT: Solicitor, the negotiated
16 sentence is for fifteen years?

17 SOLICITOR CROMWELL: Fifteen years,
18 (affirmative nod), the mandatory minimum.

19 THE COURT: Is that your understanding,
20 Ms. Littlejohn?

21 DEBI LITTLEJOHN: It is, Your Honor.

22 THE COURT: He's -- you've discussed
23 this matter fully with your client?

24 DEBI LITTLEJOHN: At great length, Your
25 Honor.

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1 THE COURT: He's been advised of his
2 rights and the consequences of the plea?

3 DEBI LITTLEJOHN: He has, Your Honor.

4 THE COURT: And in your opinion he
5 fully understands those rights?

6 DEBI LITTLEJOHN: Yes, Your Honor.

7 THE COURT: Do you concur with his
8 decision to enter the plea?

9 DEBI LITTLEJOHN: Absolutely, Your
10 Honor.

11 THE COURT: And do you believe, based
12 on the circumstances in this case, that it is
13 in his best interests?

14 DEBI LITTLEJOHN: I do, Your Honor.

15 THE COURT: Mr. Rogers, is that true,
16 sir?

17 DEFENDANT: Yes, sir, it's true.

18 THE COURT: You understand that if I
19 accept the plea that you give up the right to
20 have a jury trial, the right to confront the
21 witnesses against you, and the right to
22 remain silent?

23 DEFENDANT: Yes, sir.

24 THE COURT: Has anybody threatened you
25 in any way or promised you anything to get

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1 you to plead guilty?

2 DEFENDANT: No, sir.

3 THE COURT: You also understand and
4 realize, Mr. Rogers, that it is -- as we
5 talked, that it is a nonparoleable offense?

6 DEFENDANT: (No verbal response).

7 THE COURT: That if you are able to be
8 released after eighty-five percent that you
9 would still be required to serve successfully
10 a community supervision period, that's two
11 years? That if you're unsuccessful, that if
12 you violate that, you could be returned for a
13 year of the -- up to the balance remaining on
14 your sentence, do you understand that?

15 DEFENDANT: Yes, I understand that.

16 THE COURT: I say for a year. Up to
17 the balance on your sentence. You understand
18 that?

19 DEFENDANT: Yes, sir.

20 THE COURT: In other words increments
21 of a year. It could be less than that. But
22 you could receive a year, go back, come back
23 and start over on your community supervision.
24 Do you understand that?

25 DEFENDANT: I understand that.

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1 THE COURT: You're not going to have a
2 trial, you're not going to confront the
3 witnesses, and you're giving up the right to
4 remain silent. That's what you chose to do?

5 DEFENDANT: I've been -- I believe
6 that's the best that I can get, Your Honor.

7 THE COURT: I understand that
8 motivation. I was a lawyer, I represented
9 persons, I know the advice that a lawyer
10 gives. But the most important thing that you
11 have to understand is that you have a right
12 to require the State to prove your guilt,
13 even though you know you're guilty. It is
14 your right to make them call their witnesses
15 and go through the process. You don't have
16 to say a word, you don't have to testify,
17 don't have to put up any evidence.

18 The two trials that we did yesterday,
19 neither side put up any evidence. None. One
20 of them was a mistrial, a hung jury. The
21 other one was a guilty verdict. But the fact
22 of the matter is that the State is required
23 to prove your guilt. So when you say 'that's
24 the best that I can do', an acquittal is the
25 best that you can do.

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1 DEFENDANT: I'd rather not take the
2 chance of having to do life in prison, not
3 come home to my family and all, Your Honor.

4 THE COURT: That's your choice?

5 DEFENDANT: Yes.

6 THE COURT: Tell me the facts.

7 SOLICITOR CROMWELL: Thank you, Your
8 Honor. On January 23, 2012 officers
9 responded to the St Stephens area of Berkeley
10 County in reference to a burglary. At the
11 victim's home, the door had been kicked in,
12 every screen on the windows had been popped
13 off. The house had been rifled through.
14 There were several guns missing, in addition
15 to several other items: some money, some
16 food, some clothing items.

17 The victims were out of town at the time.
18 A neighbor saw the house. The reason that
19 the victims were notified is because there
20 was a briefcase was found, one of the
21 briefcases that was stolen from the house.

22 The investigation discovered that the
23 defendant was trying to sell the guns that
24 were stolen from that home. A fingerprint
25 analysis came back identifying this

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1 defendant. Post-Miranda warning, the
2 defendant did give a voluntary confession.

3 The victims are here, as I told Your
4 Honor. Again, their wish is to have had the
5 maximum sentence imposed. I've explained to
6 him the fact that this defendant has no prior
7 record -- though I understand that there were
8 eleven guns stolen, that there was
9 sentimental value, and a lot of anger there,
10 I think fifteen years is an appropriate
11 sentence in this case. As I said, the
12 victims do not wish to speak to you.

13 THE COURT: That's not necessary. They
14 are welcome to be heard, but ---

15 SOLICITOR CROMWELL: I think that they
16 understand why we are where we are.

17 THE COURT: Are those facts correct,
18 Mr. Rogers?

19 DEFENDANT: Yes, sir.

20 THE COURT: I would tell you that based
21 on those facts, I don't disagree with your
22 lawyer's assessment. I can't promise it but
23 I think that probably, given no prior record,
24 that you would probably have received a
25 fifteen-year sentence if you were convicted.

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1 I'm not saying that you would, but that's the
2 minimum and I'm just saying that is possibly
3 what you could receive. What's you're doing
4 is assuring yourself with this plea that that
5 is the sentence, because there is nothing
6 else that I can do. Again, I -- but that's
7 the best that you could do in any event, and
8 you might come out worse if convicted.

9 One thing I've learned also, in trying
10 cases, when I said to the victims earlier
11 that were in here for bonds -- the victims
12 that are here will hear this too. They have
13 their day in court. As a trial judge, in
14 fact we will be dealing within something next
15 week, two weeks from now, about a case that
16 when you hear all the facts of a case it can
17 change the complexion real dramatically.
18 Trial judges who sentence, they don't hear
19 all of that in a guilty plea. That's just
20 the nature of the process. But that's your
21 call. You're the one wanting to do this, not
22 me.

23 DEFENDANT: Your Honor, I am guilty of
24 the crime with which I'm charged. But no
25 means do I want to take this to trial. I

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1 would like to say that I am guilty, that I'm
2 not a boy but a man. I've raised my
3 daughter, she is two years old. I have a
4 newborn that I've not even met yet. I've
5 been incarcerated and I haven't even -- I
6 haven't been able to post bond. I have a
7 hundred fifty thousand (\$150,000) dollar
8 bond.

9 Your Honor, this is my first offense
10 ever. It was a mistake, a big mistake. In
11 no way can I justify what I did. But I will
12 say that I was under the influence of alcohol
13 and drugs at the time. I was suffering
14 through poverty. My baby didn't have no
15 diapers. I went over the edge and I regret
16 what I did, terribly.

17 The reason that I am accepting this plea,
18 Your Honor, is because I want to come home.
19 I want to be there for my family. I want to
20 be the father that I know that I can be.

21 I don't understand how the system works.

22 THE COURT: You don't?

23 DEFENDANT: I understand the plea that
24 I am giving, I understand what I -- that I
25 have the right to a jury trial.

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1 THE COURT: You don't understand that
2 the best that you can hope for is fifteen
3 years.

4 DEFENDANT: (No verbal response).

5 THE COURT: I understand that, too.
6 When I was nineteen, I probably didn't grasp
7 that as much as I do today.

8 DEFENDANT: Your Honor, I want ---

9 THE COURT: But when you get out and
10 you come home and you establish a home, you
11 have that home violated, you are not longer
12 comfortable in your home, I can't think of
13 any greater travesty that I know of.
14 Someone works hard for what they have -- and
15 it may not be much to anybody else, but it's
16 their castle. But -- you do something to
17 destroy the sanctity of that? I think
18 fifteen years is a very, very minor sentence
19 for doing that. I really do.

20 DEFENDANT: I ---

21 THE COURT: So I appreciate the fact
22 that you said all those things, that you were
23 intoxicated, that you needed things, -- I'm
24 sorry, I am sorry for those. Honestly, for
25 me to say that I understand that be silly,

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1 because I don't. I've never had that
2 experience in my life. But I know that there
3 are tons of people, tons of agencies, that
4 will help you. You may have to go ask for
5 it, but they will help you.

6 DEFENDANT: Yes, sir.

7 THE COURT: In a perfect world, that
8 would never exist. We don't live in a
9 perfect world. One thing for sure, that
10 doesn't excuse the consequence or change it
11 in my opinion that it's proper punishment for
12 disrupting a family.

13 I appreciate your position, but you're
14 entitled to have a jury trial.

15 DEFENDANT: I would rather go ahead and
16 plead guilty.

17 THE COURT: Do you still want me to
18 accept the negotiated sentence? What is
19 going to happen once it is done is I'm going
20 to say fifteen years, giving credit for time
21 served.

22 DEFENDANT: Yeah. Yes, sir.

23 THE COURT: Ms. Littlejohn, I will be
24 happy to hear from you. Anything further?

25 DEBI LITTLEJOHN: Your Honor, standing

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Before The Honorable R. Markley Dennis

1 with Steven is his wife, Kristen. He has
2 been incarcerated two hundred eighty-six
3 (286) days.

4 As he told you, he has one child two
5 years old, and one four months that he hasn't
6 seen.

7 He -- I probably have rarely had a client
8 that is as remorseful about what he did. At
9 one point in time in his life -- his dad died
10 when he was fourteen. His mother was a
11 drunk, drug addict. He pretty well started
12 raising himself.

13 As he said, he was a taxpaying citizen,
14 working at Scout Boats. He got in an auto
15 wreck, totaled his car, there went his
16 transportation, there went his means of
17 support. Now, instead of paying taxes into
18 the system, he will be part of a system
19 receiving tax dollars.

20 Ms. White and I talked with Steven a good
21 bit. It's not a matter of him not accepting
22 what he has done. He's accepted that since
23 day one. I think what you are seeing here is
24 truly a matter of desperation from a young
25 nineteen-year-old, who'd pretty much started

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1 raising himself at age fourteen, who became
2 self-sufficient at age sixteen. From that
3 age until nineteen was doing what very few
4 people from sixteen to nineteen do,
5 supporting a family, being a taxpaying
6 citizen, with no record.

7 He has a wife and two children. I think
8 that is what you are seeing here today, is
9 that desperation. When I asked Steven about
10 it, he told me the same thing that he has
11 told you, 'We did not have anything, we
12 didn't have anything.' As a matter of fact,
13 some of the things that were taken were baby
14 wipes and baby food.

15 Your Honor, his remorse is absolutely
16 there. I don't think that this young man --
17 he's terrified, he's desperate. Now he finds
18 himself on the other side of what he's had to
19 be since the age of sixteen. He's scared.
20 He's scared for himself, he's scared for his
21 children, he's scared for his wife. But he
22 accepts his guilt.

23 He has spent somewhere around approxi-
24 mately two hundred eighty-six (286) days
25 incarcerated, Your Honor.

State of South Carolina v Steven Kyle Rogers

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1 THE COURT: Is there anything else?

2 DEFENDANT: I'd just like to apologize
3 to the victims. If I didn't steal anything
4 else, I know that I stole their security and
5 that that can't be replaced. If I could take
6 it all back, I would. I can't. I'm so
7 sorry.

8 THE COURT: I don't know what time of
9 day that it was, but you stole one other
10 thing that created a problem for you. You
11 stole firearms. If you'd stole baby wipes,
12 that would have been bad, it still would have
13 been violative of their person, but the
14 firearm is what gave them the element to make
15 it a Burg 1st. There is no way around that.

16 I understand why, and that's where it
17 even gets worse. I've got -- in fact, just
18 last week -- I've got a gun that belonged to
19 my grandfather. I cherish it. Maybe my
20 children will probably sell it, but I won't.
21 It doesn't mean much to anybody else, but it
22 means a heck of a lot to me. I'm sure they
23 felt the same way.

24 The sentence of the court, Mr. Rogers, is
25 that you be committed to the Department of

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1 Corrections for a term of fifteen (15) years.
2 According to my math, you will serve -- and
3 you're to be given credit for two hundred and
4 eighty-six (286) days. Eighty-five percent
5 is twelve-point-seven-five (12.75) years.
6 You are nineteen. You'll be almost thirty-
7 two. At least you have a chance to do, and
8 do it right. I hope that you will do that.
9 Good luck to you, sir.

10 (HEARING CONCLUDED)
11
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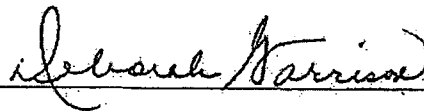
Hearing of November 29, 2012

Before The Honorable R. Markley Dennis

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF CHARLESTON)

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 9th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the hearing held in the within action heard on November 29, 2012; before The Honorable R. Markley Dennis, Jr.;

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



Deborah Garrison

Charleston, South Carolina
April 15, 2014

STATE of South CAROLINA
COUNTY of BERKELEY

STEVEN ROGERS
Applicant

V

STATE of South
CAROLINA
Respondent

2013-CP-08-2677

Application For Post-Conviction
Relief.

1. PLACE of Detention Lee Correctional Institution.
990 wisacky Hwy, Bishopville, S.C. 29010- see exhibit 1-A

2. NAME AND LOCATION of COURT which imposed Sentence
In the Court of General Sessions. Berkeley County

3. THE INDICTMENT NUMBER OR NUMBERS (if known) upon
which AND THE OFFENSE OR OFFENSES FOR which Sen-
tence WAS imposed: (A) 2012-GS-08-0884 - Burglary 1st Degree
(B) N.A.

(C) N.A.

4. THE DATE upon which Sentence WAS imposed and
THE TERMS of the Sentence:

(a) 11-29-2012 - The Defendant is committed to S.C.D.C. for a determinate term of 15 years

(b) N.A.

(c) N.A.

5. Check whether A Finding of Guilty WAS MADE

(a) After A plea of Guilty ✓ (a)

(b) After A plea of Not Guilty

(c) After A plea of Nolo Contendere

6. DID you Appeal FROM THE Judgment
CONVICTION OR THE IMPOSITION of Sentence
NO

2013 DEC -3 PM 4:48
MAK P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED

☒ If you answered "yes" to (b) List

(a) The NAME of each COURT to which you Appealed:

I NA

II NA

III NA

(b) The Result IN Each Such COURT to which you Appealed:

I NA

II NA

III NA

(c) THE DATE of Each Such Result:

I NA

II NA

III NA

(d) If KNOWN CITATIONS of ANY WRITTEN OPINION OR ORDERS ENTERED PURSUANT TO Such Results:

I NA

II NA

III NA

☒ If you answered "no" to (b), STATE YOUR REASONS FOR NOT SO APPEALING:

(a) I was advised by my counsel, I had no appeal rights.

(b) My Public Defender advised my wife, I had no right to appeal.

(c) I never spoke to counsel after sentencing.

9. STATE CONCISELY the GROUNDS ON WHICH YOU BASE YOUR ALLEGATION THAT YOU ARE BEING HELD IN CUSTODY UNLAWFULLY:

(A) Ineffective Assistance of Counsel.

(B) I did not commit a Burglary 1st degree.

(C) I did not knowingly and intelligently take the guilty plea.

10 STATE CONCISELY AND IN THE SAME ORDER THE FACTS WHICH SUPPORT EACH OF THE GROUNDS SET OUT IN (9)

(a) See exhibit 10-A - Ineffective Assistance of Counsel

(b) See exhibit 10-B - Burglary 1st degree, (Innocent)

(c) See exhibit 10-C - Guilty Plea and Sentencing

11 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 PETITIONS IN STATE OR FEDERAL COURTS FOR HABEAS CORPUS OR POST-CONVICTION RELIEF? NO

(c) ANY PETITIONS IN THE UNITED STATES SUPREME COURT FOR CERTIORARI OTHER THAN PETITIONS, IF ANY ALREADY SPECIFIED IN (7) NO

(d) ANY OTHER PETITIONS, MOTIONS, OR APPLICATIONS IN THIS OR ANY OTHER COURT? NO

12 IF YOU ANSWERED "YES" TO ANY PART OF (11) LIST WITH RESPECT TO EACH PETITION, MOTION OR APPLICATION

(a) THE SPECIFIC NATURE THEREOF:

I NA

II NA

III NA

IV NA

(b) THE NAME AND LOCATION OF THE COURT IN WHICH EACH WAS FILED: NA

I NAII NAIII NAIV NA

(C) THE DISPOSITION THEREOF:

I NAII NAIII NAIV NA

(D) THE DATE OF EACH SUCH DISPOSITION:

I NAII NAIII NAIV NA

(E) IF KNOWN, CITATIONS OF ANY WRITTEN OPINIONS OR ORDERS ENTERED PURSUANT TO EACH SUCH DISPOSITION:

I NAII NAIII NAIV NA

☒ (13) HAS ANY GROUND SET FORTH IN (9) BEEN PREVIOUSLY PRESENTED TO THIS OR ANY OTHER COURT, STATE OR FEDERAL, IN ANY PETITION, MOTION OR APPLICATION WHICH YOU HAVE FILED? NO

☒ (14) IF YOU ANSWER "YES" TO (13), IDENTIFY
(a) WHICH GROUNDS HAVE BEEN PRESENTED

I NAII NAIII NA

(b) The Proceedings in which each Ground was raised:

I NA

II NA

III NA

15. If Any Ground set forth in (9) has not previously been presented to Any Court, State or Federal, set forth the Ground AND state concisely the Reasons why such Grounds has not previously been presented (a) ... See exhibit 15-A - Ineffective Assistance of counsel?

(b) See exhibit 15-b - Burglary 1st degree (Innocence)

(c) See exhibit 15-c - Guilty Plea

16. 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 Judgement of Conviction or the Imposition of Sentence? N.A.

(e) Preparation, Presentation or Consideration of Any Petitions, Motions, or Application with Respect to this Conviction, which you filed? N.A.

17. If you answered "yes" to one or more parts of the LIST

(a) The Name AND Address of Each Attorney who Represented You

I Debbie Kay Little (Public Defender) P.O. Box 420 Goose Creek, SC 29445

II NA

III NA

(6) The Proceedings AT which each such Attorney Represented You:

I General Sessions Bond hearing (unknown date)

II Refusal of Guilty Plea (unknown date)

III Acceptance of Guilty Plea and sentencing (Nov. 29, 2012)

18 STATE Clearly the Relief you seek in Filing THIS Application See exhibit 18.

19 ARE you now under Sentence FROM Any other Court that you have NOT challenged? NO

STATE of South CAROLINA
COUNTY of Berkeley 2013-CP-08-267.

Application To Proceed without Payment
of Costs AND AFFIDAVIT IN SUPPORT
Thereof.

I, Steven Rogers, hereby Apply for
leave to Proceed in THIS ACTION without Pre-
Payment 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.

s/ Steven Rogers
Applicant

Sworn To AND Subscribed before
me this 27th day of
November 2013

s/ Luchman Bryant

My Commission Expires March 31, 2014

TSR

VERIFICATION

2013-CP-08-2075

I, Steven Rogers, 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 allegation therein set forth are true.

/s/ Steven Rogers

Sworn to and subscribed before me this 27th
Day of November, 2013,

/s/ Gudrean Bryant

My Commission Expires: May 26, 2020

134
FILE
2013 DEC -3
MARY P.
CLERK OF
BERKELEY C.

P.B.R. = Steven Rogers - Burglary 1st Degree

Exhibit 1-A - Place of Detention -

Transferred to Leiber Correctional Institution on
11-17-13. Current mailing address is: P.O. Box 205,
Ridgeville, S.C. 29472

IV. STATEMENT OF CLAIM - continued.

P.C.R. - Steven Rogers - Burglary 1st Degree
- Exhibit 10A - Ineffective Assistance of Counsel -

I had verbally explained to my Counsel that I did not believe I had committed a Burglary 1st Degree several times. Instead of going over the laws of what a Burglary 1st Degree is, she just kept advising me I had committed the Burglary and I should accept the 15 year plea or I would receive life in prison.

While incarcerated in 2012, I received a letter from my Counsel advising me I better accept the plea because the assistant Solicitor, Ashley Cornwell, was going to indict me on another Burglary 1st Degree if I did not accept the plea, because the house was "allegedly" entered twice in the same night. She also advised me if indicted on another Burglary 1st Degree I would receive no less than a 30 year sentence. I refused the plea and ask that she please relieve herself from my Counsel or advise me on how to go about relieving her. She said she was my Counsel appointed by the State so I could not fire her.

I often "begged" my Counsel to investigate several pieces of false evidence that was being used against me, such as the "Confession" that was allegedly given on 02/17/2012 (see exhibit 10B). She never did even though she told me she would.

My Counsel coerced, tricked, and manipulated me into accepting the Guilty Plea (see exhibit 10-B).

IV. STATEMENT OF CLAIM - continued.

I refused the plea to her verbally at least on ten different occasions. I also refused the plea twice in open court before finally being tricked into accepting it.

My Counsel advised me she spoke with the Assistant Solicitor several times regarding the details of my case. She also told her I would be willing to accept 15 years if she would drop my charge to a Burglary 2nd. This was a lie and also a violation of Attorney-Client Privileged Information.

I asked my Counsel several times if she could arrange some kind of hearing or file a motion to confront the detectives about the "confession" they claimed to have gotten out of me. To see if we could get that statement thrown out of evidence considering it was false. She advised me the State would never go for it and once again tried talking me into accepting the Guilty Plea. This is a violation of the VI Amendment of the United States Constitution.

I was also advised after the Guilty Plea was taken that I had no right to appeal, by my Counsel. I was unaware I could Appeal until recently. (See exhibit 15)

P.C.R. - Steven Rogers - Burglary 1st Degree -

— Exhibit 10B - Burglary 1st Degree (Innocence) —

I did not commit a Burglary 1st Degree. Until coming to prison I did not know the nature and guidelines of the crime I was accused thereof. If given a fair trial I can prove to the Court that I never entered any residence. I gave Detective's, Peters and Riley, a true statement on 02/16/2012 of what really happened on the night of the crime. The next day Detectives pulled me out of jail again and took me to B.C.S.O where they continued to hammer me for information. For hours, I told them that the statement I gave them the day before was the truth. The Detectives advised me they were going to arrest my pregnant wife and take my, 1 year old, daughter to D.S.S unless I told them exactly what they wanted to hear. After hours of being "harassed" by Detectives I told them I'll tell you whatever you want me to as long as you leave my family alone. The Detective told me he wanted me to say that I done the crime by myself and that I was the one who entered the residence and stole the said items. I was so intoxicated from serious drugs I was scared they would take my Baby away from her Mother. If I did not tell them, so I did. The statement I verbally gave them was not the truth. I was just scared for my family. This was the only "hard" Evidence being used against me. My lawyer advised me the crime I committed was a Burglary 1st Degree even though I never entered the residence.

The crime in which I did commit was nothing more than criminal trespassing. If given a fair trial, I can prove to the State I am innocent of a Burglary 1st Degree and my being held in custody unlawfully.

IV. STATEMENT OF CLAIM - continued.

P.C.R. - Steven Rogers - Burglary 1st Degree -
- Exhibit 10C - Guilty Plea -

On Nov. 29th, 2012 I refused the Guilty Plea of a Burglary 1st Degree, for the second time in open Court, explaining to the Judge that I did not think it was the right action to take. We took a recess where I was ushered into a conference room and "begged" by my Counsel and two other public Defenders (who knew nothing about my case) to please accept the Guilty Plea so I would not receive life in prison. I told them I did not want to accept the Plea. End of story. I wanted a fair trial! After exiting the room, my Counsel, retrieved (which I had not seen in 10 minutes) my wife and "begged, tricked, and manipulated" her into coming in the room with me and try talking me into accepting the Guilty Plea. After over an hour of emotional, mental, and physical coercion, I agreed to accept the plea, because they had me believing I was going to receive a life sentence. At the time of plea acceptance, I was hysterical and in a complete devastated and emotional mind state where I was incomprehensible, into making a voluntary decision. Both Debbie Littlejohn (Counsel), and Kristin Rogers (wife), coerced, and manipulated me into taking the plea. I was also on medication at the time that the County Jail had put me on that I was not even supposed to be taking. This medication is very potent and can alter ones thought process into making decisions. I was not in my right mind when I accepted the plea. Therefore, I did not knowingly or intelligently waive my rights for fair trial.

P.C.R. - Steven Rogers - Burglary 1st Degree
— Exhibit 15 —

I was informed by my counsel that I had no right to appeal from the Guilty plea. I also had my wife call and ask the day after I was sentenced, if there was any way I could Appeal. She advised my wife it was all over and done with and she no longer represented me. Until recently I was unaware I could bring up these matters. Someone recently told me I still had a "shot" at "Justice". So that's why I'm filing this application.

P.C.R. - Steven Rogers - Burglary 1st Degree.

— Exhibit 18 - Relief —

By filing this application, I am requesting immediate relief of my sentence. I was wrongly charged, convicted, and sentenced for a crime in which I did not commit. If given a evidentiary hearing, I can explain further the details of my case. I want a fair trial! I can prove to the State of South Carolina that I, Steven Rogers, did not knowingly and intelligently waive my rights to a fair trial. If given the chance to explain, I can prove to the court the above statement is true and correct.

Therefore, I am requesting a evidentiary hearing to explain myself further to the courts. I am also requesting counsel to represent me in proving to the State of South Carolina that I, Steven Kyle Rogers, did not commit a Burglary 1st Degree.

P.C.R. - Steven Rogers - Introduction Statement:- Burglary 1st Degree -

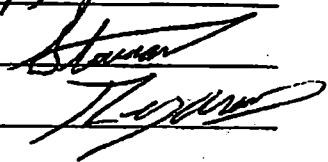
I would like to start this brief by apologizing for my illiteracy on this matter. I am a country boy from the mountains of North Carolina, and know little about any legal matters. I am a good man who was "railroaded" by the Justice System, due to my illiteracy. I have no previous charges. Therefore, I know nothing about how the system works. I do know now, that I was wrongly charged, convicted, and sentenced. The crime in which I did commit was nothing more than Criminal trespassing. In this application you will learn how I was manipulated, tricked, and coerced, into thinking I had committed a crime, in which I did not.

Most of the time I have served since coming to prison, I have done in lock up status. Not because I have ever been in any trouble, but because I was assaulted with a weapon and placed on Administrative Protective Concerns. Therefore, I have had very little access to law books, or any contact with the outside. I have also not been able to obtain some very important documents pertaining to this case. Such as, the letter I received from my attorney advising me I better accept the plea, or the transcripts from where I refused the plea in open court, on two different occasions. These are vital pieces of evidence to support my claim but I was unaware of how to retrieve these documents. Once again, I am a good man who has a wife

and two Kids waiting on me to Come Home. I need this relief! If given a fair trial, I will prove to the State I am innocent of a Burglary 1st Degree, and will be released from custody.

Every thing in this application is true and can be backed with facts to support each claim. As you read, you will learn how I was cheated out of my Constitutional Rights to a fair trial. Thank you, for bearing with me through my "horrible" handwriting describing how my life was "Stolen" by the State of South Carolina...

Sincerely,



STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS

2013-CP-08-2677

Steven Rogers, #353340,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

The Respondent, making its Return to the application for post-conviction relief (PCR) filed December 3, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. The Applicant was indicted at the May 2012 term of the Berkeley County Grand Jury for burglary- first degree (2012-GS-08-0884). The Applicant was represented by Deborah Littlejohn, Esquire.

On November 29, 2012, the Applicant pled guilty. The Honorable R. Markley Dennis, Jr. sentenced the Applicant to confinement for a period of fifteen years. The Applicant did not appeal his conviction or sentence.

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

II.

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

1. Ineffective assistance of counsel.
 - a. Counsel coerced, tricked, and manipulated me into accepting the guilty plea.
 - b. Requested an appeal and was told by attorney that she no longer represented me.
2. Involuntary guilty plea.
 - a. I did not knowingly and intelligently take the guilty plea.
 - b. I did not commit burglary- first degree.

III.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing

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

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

The Respondent submits the transcript reflects that the pleas were knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Boykin, supra; Dover, supra. Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct.

1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). The Respondent submits the Applicant should not be allowed to depart from the truth of the statements he made during his guilty plea hearing.

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given the Applicant's burden of proof and the analysis to be applied to this claim, the Respondent submits that the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it should therefore, be treated as such. Accordingly, this allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. 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).

V.

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

VI.

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

[Signature on the following page.]

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: AKP:WIL

ATTORNEYS FOR RESPONDENT

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

March 20th, 2015.

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS)

2013-CP-08-2677)

STEVEN ROGERS, #353340)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL.)

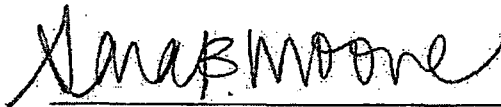
STATE OF SOUTH CAROLINA,)

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:

Lance S. Boozer, Esquire
The Boozer Law Firm, LLC
807 Gervais Street, Suite 203
Columbia, SC 29201

DATED this 26th day of March, 2015



Sara B. Moore, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA) POST-CONVICTION RELIEF
2 COUNTY OF CHARLESTON) HEARING
3) CASE NO. 2013-CP-08-1724

4 STEVEN ROGERS,)
5 Plaintiff,) Transcript of Record
6 vs.)
7 STATE OF SOUTH) Date: September 10, 2015
8 CAROLINA,)
9 Defendant..)

10 * * * * *

11 B E F O R E:

12 The Honorable LARRY B. HYMAN, JUNIOR
13
14
15

16 * * * * *

17
18 Denise J. Lauder, RPR

19 Ninth Judicial Circuit
20
21
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24
25

1 A P P E A R A N C E S

2

3 REPRESENTING THE PLAINTIFF:

4 LANCE SHEALY BOOZER, ESQUIRE
5 1331 Park St
6 Columbia, SC 29201-3111
7 (803) 608-5543

8

9 REPRESENTING THE DEFENDANT:

10

11 J. RUTLEDGE JOHNSON, ESQUIRE
12 Rembert Dennis Building
13 1000 Assembly Street, Room 519
14 Columbia, SC 29201
15 (803) 734-3970

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1	I N D E X	
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14		
15	(No exhibits were offered or marked for	
16	identification.)	
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1 (The following proceedings were held
2 September 10, 2015, Charleston County, Charleston,
3 South Carolina @10:47 a.m.)

4 MR. JOHNSON: May it please the Court.
5 This is Steven Rogers versus State of South
6 Carolina, 2013-CP-08-2677. Mr. Rogers was indicted
7 at the May 2012 term of the Berkeley County Grand
8 Jury for burglary in the first degree and was
9 represented by Debra Littlejohn.

10 On November 29th, 2012, he pled guilty
11 and Judge R. Markley Dennis, Junior confined him
12 for a period of a minimum of 15 years. He did not
13 file an appeal on his conviction of sentence.

14 He did file the PCR on December 3,
15 2013, and the State filed its return March 26,
16 2015, and he is represented here today by Mr. Lance
17 Boozer.

18 THE COURT: Okay. Mr. Boozer.

19 MR. BOOZER: Thank you.

20 THE COURT: You represent Mr. Rogers?

21 MR. BOOZER: I do, Your Honor.

22 THE COURT: Did you explain to Mr.
23 Rogers the jeopardy he may be subjecting himself to
24 if relief is granted, if he received the minimum?

25 MR. BOOZER: Your Honor, we've had that

1 discussion extensively. And if I may make a
2 request to the Court, if the Court would review
3 what this Court is able to do for him, I would
4 certainly appreciate that.

5 THE COURT: All right. Mr. Rogers
6 please understand -- let's place him under oath.

7 STEVEN ROGERS,
8 being first duly sworn, testified as follows:

9 THE COURT: Mr. Rogers, I cannot cut
10 your sentence, change your sentence, anything of
11 that nature. It's my understanding that you're
12 before me alleging, since you have not filed a
13 direct appeal, that there was some ineffective
14 assistance on the part of your trial counsel. If I
15 were to make that finding, all I can do would
16 essentially grant you a new trial.

17 In that case, you would be facing
18 exactly the same charges that were -- you initially
19 had. I don't know if any of your charges were
20 dismissed, if any of them were reduced, I don't
21 know anything about that.

22 Were they, Mr. Boozer?

23 MR. BOOZER: Judge, we'll discuss that.
24 It was a burglary first and there was some threat
25 of some other indictment, I guess, because it was

1 alleged he entered a house twice -- or a dwelling
2 twice at night. And so the Solicitor, I think, was
3 threatening through defense counsel that they would
4 indict a second time.

5 THE COURT: And, Mr. Rogers, I will
6 tell you that in South Carolina there is no statute
7 of limitations on crime. If you were granted a new
8 trial, the State would still have the authority to
9 do that. Also, if you went to trial and you were
10 convicted of a burglary first, I know that you --
11 it was an armed robbery?

12 MR. BOOZER: Yes, sir. Burg first.

13 THE COURT: -- burg first, and you got
14 the minimum, which was 15 years, you could get the
15 maximum, which would be life --

16 THE DEFENDANT: Uh-huh.

17 THE COURT: -- if you went to trial.
18 Do you understand that?

19 THE DEFENDANT: I'm aware of that.

20 THE COURT: You are running that risk.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You understand that. Okay.

23 Mr. Boozer.

24 MR. BOOZER: Thank you, Your Honor.

25 And if it pleases the Court, this is a housekeeping

STEVEN ROGERS - DIRECT EXAM BY MR. BOOZER

1 matter. Mr. Rogers' wife is on her way on 26. She
2 is going to present some brief testimony. I've
3 conferred with the State and I believe we're in
4 agreement with this, we'll go ahead and take the
5 testimony of Mr. Rogers, his former counsel, and
6 then Mrs. Rogers once she arrives. However, for
7 whatever reason she doesn't arrive, the State has
8 agreed to accept an Affidavit for the Court's
9 consideration. Her testimony will be quite short
10 and would be sufficient by Affidavit.

11 THE COURT: All right.

12 MR. BOOZER: Thank you. Judge, we
13 would call Mr. Rogers to the stand.

14 STEVEN ROGERS,
15 being first duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. BOOZER:

18 Q. Mr. Rogers, how are you doing today?

19 A. I'm doing just fine. How are you,
20 Mr. Boozer?

21 Q. I'm doing fine. Thank you.

22 You just had a discussion with the
23 Court about why you're here today and that's
24 because you filed an application for PCR; is that
25 right?

STEVEN ROGERS - DIRECT EXAM BY MR. BOOZER

1 A. That's correct.

2 Q. And just as the Judge has indicated to
3 you, the only thing that you can get today, should
4 you win, is a new trial or a belated appeal
5 possibly?

6 A. Yes, sir.

7 Q. Okay. And knowing that, you still want
8 to go forward?

9 A. That's correct.

10 Q. Okay. Now, obviously, in the PCR
11 application you've raised a few allegations; is
12 that right?

13 A. Yes, sir.

14 Q. Let's just go through those allegations
15 and you tell the Court and explain to the Court
16 what each of those means and what you're claiming.
17 But before we do that, who represented you before?

18 A. Ms. Debbie Littlejohn.

19 Q. All right. And did you have a trial or
20 a plea?

21 A. I took a plea.

22 Q. All right. What were your charges?

23 A. Burglary first degree.

24 Q. Now, your first allegation you've
25 raised is a claim of ineffective assistance of

STEVEN ROGERS - DIRECT EXAM BY MR. BOOZER

1 counsel, and you alleged that you were coerced,
2 tricked, and manipulated into pleading guilty; is
3 that right?

4 A. That's correct.

5 Q. I would like you to do this: Please
6 explain to the Court what you mean by that
7 allegation.

8 A. All right. Well, it first started when
9 I was arrested. I first met with Debbie Littlejohn
10 in the beginning part of 2012. When she first came
11 to see me, we talked briefly just over my case.
12 She -- she advised me that I was facing a life
13 sentence for the crime that I had -- that I had
14 been charged with.

15 And when we started discussing what
16 happened and my crime, I told her about -- you
17 know, about when the detectives questioned me and
18 how they questioned me with threatening me with my
19 family, with threatening to take away my daughter
20 and put her into DSS and arrest my pregnant wife.
21 If I didn't tell them exactly what they wanted to
22 hear, then that's exactly what they were going to
23 do.

24 And so I -- when I discussed this with
25 Ms. Littlejohn, she advised me, well, there's no

STEVEN ROGERS - DIRECT EXAM BY MR. BOOZER

1 law against that and that they can still use the
2 confession that I gave in the court. There was no
3 written confession, I never signed anything, there
4 was no verbal confession that was recorded, but
5 several times over several different meetings I
6 asked Ms. Littlejohn, can we please take this issue
7 to the Court and bring it up this piece of evidence
8 that's being used against me? This is what they're
9 saying they're going to convict me on at trial, is
10 my confession, but they don't understand the
11 circumstances that was given. So she advised me
12 there wasn't nothing that we could do about that.
13 So I accepted that for what she told me.

14 Another thing is, we had -- when we
15 went over the law of a burglary first degree, she
16 was telling me that the crime I committed was a
17 burglary first degree. And knowing what I know
18 now, the crime that I committed was no such thing;
19 it was not a burglary first degree.

20 I have -- in front of me I have the law
21 out of the Code of Laws, 16/11/311 of the burglary
22 first degree. And, I mean, we can go over the
23 whole thing or I can just --

24 Q. Let me ask you this: Why is it that
25 you don't believe you committed a burglary first

STEVEN ROGERS - DIRECT EXAM BY MR. BOOZER

1 degree?

2 A. Well, it didn't happen at nighttime,
3 there was a 24-hour time period in the Rule 5 that
4 states that the crime could have happened; I was
5 never armed with any deadly weapon; I had no prior
6 record whatsoever; there was no one home at the
7 time of the crime. And that's basically what a
8 burglary first degree states, that a person is
9 guilty of a burglary first degree if the person
10 enters the dwelling without consent and intent to
11 commit a crime in the dwelling, and either one of
12 the following that I just mentioned.

13 Q. Okay. And His Honor is certainly well
14 versed in the law, but did you have that discussion
15 with Ms. Littlejohn prior to the plea about the
16 elements of the offence?

17 A. We discussed it briefly, but it was
18 more on my crime and what had happened the night of
19 the burglary and -- the alleged burglary. And so
20 she -- you know, we never actually went over the
21 law.

22 Q. When did you go over the law, after you
23 were incarcerated?

24 A. Yes, sir.

25 Q. And had you gone over the law prior to

STEVEN ROGERS - DIRECT EXAM BY MR. BOOZER

- 1 the plea, would you have still pled guilty?
- 2 A. Not at all.
- 3 Q. Would you have wanted to challenge that
- 4 law and take the case to trial?
- 5 A. Most definitely.
- 6 Q. Okay. Was Ms. Littlejohn appointed to
- 7 represent you?
- 8 A. Yes, sir.
- 9 Q. When was she first appointed?
- 10 A. She was first appointed right after my
- 11 arrest in February of 2012.
- 12 Q. Okay. Shortly after your arrest and
- 13 after she was appointed, did she come to you with
- 14 an offer from the State?
- 15 A. She did.
- 16 Q. Okay. What was that offer?
- 17 A. 15 years, violent, burglary first
- 18 degree.
- 19 Q. About when do you think that was?
- 20 A. I want to say May or June of 2012.
- 21 Q. Okay. And did you accept that offer
- 22 then?
- 23 A. No, not at all.
- 24 Q. Why did you not accept it?
- 25 A. Because I told her, first of all, I

STEVEN ROGERS - DIRECT EXAM BY MR. BOOZER

1 didn't feel like I had committed a burglary first
2 degree, and that 15 years, that's -- I got two kids
3 and a wife at home waiting for me to come home now.

4 Q. All right. Now, after you declined
5 that offer, were you guys preparing to go to trial
6 or what were you doing?

7 A. No. Every visit after that was trying
8 to talk me into taking that plea.

9 Q. Well, tell the Court, how many visits
10 do you think you had with Ms. Littlejohn prior to
11 ultimately your plea that occurred in
12 November 2012?

13 A. Approximately, seven -- seven visits
14 probably. I'm just guessing. That's all together.

15 Q. Okay. During those visits, did you
16 ever discuss any sort of trial strategy or defenses
17 that you may have?

18 A. The very last one.

19 Q. And when was that?

20 A. That was the weekend before I took the
21 plea. It was on -- in November of 2012.

22 Q. All right. What were those defenses
23 that you all discussed when you took the plea?

24 A. We didn't really discuss no defenses.
25 She come in there and she was trying to talk me

STEVEN ROGERS - DIRECT EXAM BY MR. BOOZER

1 into taking the plea. And I said, Ms. Littlejohn,
2 we've already discussed this, I've already denied
3 the plea in court. You know, she wanted -- before
4 this, they wanted me to go in court and refuse the
5 plea to the Solicitor. That way if I was found
6 guilty at trial, they could say he's already
7 refused the 15 years and request more.

8 And, you know, I believed it was a
9 scare tactic no doubt, but I went in front of the
10 judge and I denied the plea, and I explained to the
11 judge why I denied the plea. And then after that
12 at that meeting we're discussing, as soon as I come
13 in there, she said, well, if you don't want to --
14 if you don't want to take this plea, what's your
15 defense?

16 Q. Let me stop you so we can get all of
17 this in a nice time line for the court. You go in
18 to plead guilty?

19 A. Yes.

20 Q. Or were you there for a trial? What
21 were you there to do?

22 A. On the date that I took the plea?

23 Q. Correct.

24 A. I was going to take a plea.

25 Q. Okay. But the plea -- did you try to

STEVEN ROGERS - DIRECT EXAM BY MR. BOOZER

1 plea and the plea stopped?

2 A. That's correct.

3 Q. All right. Why did the plea stop?

4 A. The first time I went in front of the
5 judge, I was under the impression by my attorney
6 that it was a complete open plea. That's what she
7 kept telling me, it was an open plea, that I was in
8 the power of the judge's hands, he could do
9 whatever he wanted to in my case.

10 And so when I got in front of the judge
11 and the judge started telling me the best he could
12 do for me was give me 15 years, I said, Your Honor,
13 that's not what me and my lawyer just discussed,
14 and -- and I believe you have the power to do
15 whatever you want to in my case. And he said,
16 that's not the truth. The State is who charged
17 you, and it's up to them to lower your crime to a
18 lesser included offence. The only thing I can do
19 to help you out is to give you the minimum of 15
20 years on a burglary. Do you still want to take
21 this plea? And I said, no, not at all.

22 And he told Ms. Littlejohn, apparently
23 you-all aren't on the same page. Would you like a
24 recess? So we stopped the court right there and we
25 went into a conference room. And in this

STEVEN ROGERS - DIRECT EXAM BY MR. BOOZER

1 conference room there were a couple of other public
2 defenders sitting in there that I had never spoken
3 with. And they're all asking me, along with Debbie
4 Littlejohn, to take this plea.

5 Q. What's the offer at that point?

6 A. 15 years on a burglary first degree.

7 Q. All right.

8 A. And they kept telling me that if I did
9 not take the plea, that the Solicitor was going to
10 indict me on another burglary first degree for the
11 same crime because allegedly the house was entered
12 twice on the same night. That was her words.

13 Q. Was that the first time you'd ever
14 heard that?

15 A. No. I received a letter from Ms.
16 Littlejohn a couple months before that saying the
17 exact same thing. And she had told my wife that
18 multiple times, if they indicted me on another
19 burglary first degree, I would receive a minimum of
20 30 years in prison.

21 Q. And so she told you if you were
22 indicted on the second, if you had another
23 indictment, the minimum you would get is 30 years?

24 A. That's correct.

25 Q. All right. And this is all taking

STEVEN ROGERS - DIRECT EXAM BY MR. BOOZER

1 place after your plea started and there was a
2 recess taken for you to go back and discuss that
3 with Ms. Littlejohn?

4 A. Right.

5 Q. Now, did anyone else enter that meeting
6 while you were there with Ms. Littlejohn and some
7 other folks?

8 A. Yes. After I told Ms. Littlejohn
9 multiple times I didn't want to take the plea, I
10 wasn't taking it, I was upset, I was crying -- it
11 was very stressful for me, most definitely the
12 worse thing I've ever had to go through -- but they
13 left the room and come back a few minutes later
14 with my wife.

15 Q. What's your wife's name?

16 A. Christen Rogers.

17 Q. All right. So you all were married at
18 the time?

19 A. Yes, sir.

20 Q. Are you still married?

21 A. Yes, sir.

22 Q. Do you have any children together?

23 A. Yes, sir; we've got a three-year-old
24 and a five-year-old.

25 Q. Tell the Court what happens then.

STEVEN ROGERS - DIRECT EXAM BY MR. BOOZER

1 A. They brought Christen in, and I hadn't
2 -- I hadn't had no contact -- physical contact with
3 my wife in close to a year now, I'd been in the
4 county jail. She come in and she wrapped her arms
5 around me, she was crying. And she said, they keep
6 telling me you're going to get 30 years if you
7 don't take this plea, that you can get a life
8 sentence.

9 And I looked at her and I said, look, I
10 already know it's a scare tactic, just -- I didn't
11 do this, I didn't commit a crime, I don't deserve
12 15 years. And she said, I know, I know, but Ms.
13 Littlejohn keeps telling me that you're going to
14 get a lot more than that if you don't accept this
15 and that they're going to indict you on another
16 burglary and they're going to give you a minimum of
17 30 years if you don't take this 15 years. And she
18 begged me.

19 This went on for a course of, you know
20 -- the whole -- they had her in there for probably
21 30 minutes, but the whole thing took place over an
22 hour and a half, and they were begging me to take
23 the plea. And I didn't know what to do; I'd never
24 been in a situation like that. I was 19 years old,
25 I was confused, and they were -- they kept.

STEVEN ROGERS - DIRECT EXAM BY MR. BOOZER

1 hammering into me that I was going to be in prison
2 for the next 30 years unless I signed this piece of
3 paper, unless I told the judge that, you know, what
4 he's saying is true and correct.

5 Q. So let's get to that. There's a
6 meeting while the plea is taking place. The recess
7 was taken and you have the discussion with your
8 lawyer and with your wife. Why did you end up
9 ultimately -- you're going to be confronted with
10 this. You're aware there's a transcript of you
11 pleading guilty and admitting the crimes and the
12 judge explaining everything to you. Why did you go
13 in there and enter that plea?

14 A. That's what they told me to do. Like I
15 said, this is the most detrimental thing I've had
16 to go through in my life. I've never been in
17 trouble with the law and know nothing about the
18 law. All this pressure was coming at me from every
19 different angle, I buckled finally.

20 And I told them, you know, you all want
21 me to take this plea, how do I do it? What is
22 going to happen ultimately? And that's when Ms.
23 Littlejohn said, well, this is what the judge is
24 going to ask you, and this is what you need to --
25 you need to say in order to accept this plea.

STEVEN ROGERS - DIRECT EXAM BY MR. BOOZER

1 And I said this -- you know, this --
2 this is my life we're talking about here. And they
3 all kept telling me that, you know, it's going to
4 be a lot more of my life if I didn't. And that was
5 a lie. Knowing what I know now, and I have
6 researched and looked at my case inside and out, my
7 crime was not even a burglary first degree. It was
8 nowhere close. I just feel like I was cheated. I
9 feel like I was cheated by my attorney mostly.

10 Q. All right. Mr. Rogers, you've also got
11 a claim that your lawyer failed to file an appeal
12 for you. Did you have any discussions with your
13 attorney about filing an appeal.

14 A. Well, as soon as the case was over, the
15 plea was over, I never had contact with Ms.
16 Littlejohn again; however, my wife had contact with
17 Ms. Littlejohn again and asked Ms. Littlejohn was
18 this the end of the road. And she advised my wife
19 that there was nothing else we could do, it was
20 over and done with, I would serve a minimum of
21 12 years and 9 months, and that's it. There was no
22 way we could appeal.

23 Q. So did you want an appeal?

24 A. Yes, I did.

25 Q. Okay. Now, other than your allegations

STEVEN ROGERS - DIRECT EXAM BY MR. BOOZER

1 that you've raised, which were involuntary plea,
2 ineffective assistance of counsel, and that you
3 felt coerced, tricked, and manipulated into
4 pleading, and the failure to file the appeal, are
5 there any other allegations that we have not
6 covered today that you filed with your PCR
7 application?

8 A. Yes, sir. There's quite a few to be
9 honest with you, but I will just hit the main ones.
10 I don't want to take the Court's time --

11 MR. JOHNSON: Your Honor, I'm going to
12 object; if it's not in the application, I'm going
13 to object.

14 THE COURT: You tell me what you have
15 petitioned for and you tell me every ground you've
16 got. You are limited to what you have put into
17 your petition and I want you to talk about.

18 THE DEFENDANT: Yes, sir. Well, what
19 I'm doing here is, I would like a fair trial. I
20 would like to be heard by 12 of my peers and a fair
21 judge and discuss my case and prove to the Courts
22 of South Carolina that I did not commit a burglary
23 first degree, and that I'm being held in prison
24 unlawfully on a burglary first degree when, in
25 fact, that was not the crime I admitted. That's

STEVEN ROGERS - DIRECT EXAM BY MR. BOOZER

1 the main reason I'm here.

2 I was treated ineffectively by my
3 counsel. If you look through the PCR, there were
4 many issues that were raised. She brought in a lie
5 detector test and told me I could take a lie
6 detector test, and she would go to the Solicitor
7 and get me a lower plea if I passed the lie
8 detector test. I passed the lie detector test. I
9 didn't see her again for a month.

10 When she come back, she said she tried
11 talking to Ashley Cromwell, the Solicitor, and that
12 she was not dropping my plea to anything. She was
13 not dropping my charge to anything.

14 I need this relief and not just for me;
15 I got two little girls who need me and a wife and
16 that's what I'm doing here, man. I am not trying
17 to cheat anybody or lie about anything. I just
18 want to be treated fairly, that's all.

19 BY MR. BOOZER:

20 Q. Okay. And with regard to your
21 allegations, we've captured your allegations for
22 the record, and then whatever is filed in your
23 application contains those allegations as well; is
24 that correct?

25 A. That's correct.

STEVEN ROGERS - CROSS EXAM BY MR. JOHNSON

1 Q. Okay. Is there anything else you want
2 to bring to the Court's attention about the PCR
3 application?

4 A. I believe we've covered -- I believe
5 we've covered the main parts.

6 MR. BOOZER: Thank you, Mr. Rogers. No
7 further questions at this time.

8 THE COURT: Mr. Johnson.

9 MR. JOHNSON: May it please the Court.

10 CROSS-EXAMINATION

11 BY MR. JOHNSON:

12 Q. Mr. Rogers, your testimony here today
13 is that you did not commit the crime?

14 A. That's correct.

15 Q. And you're under oath today like you
16 were under oath at the guilty plea; isn't that
17 right?

18 A. That's correct.

19 Q. And are you aware at the guilty plea
20 your exacts word were, I did commit the crime?

21 A. That's correct. Only reason I said
22 that is because that's what I was told to say by my
23 attorney.

24 Q. And when the Solicitor explained the
25 facts to you as she perceived them, you agreed to

STEVEN ROGERS - CROSS EXAM BY MR. JOHNSON

1 the facts, correct?

2 A. Yes, sir.

3 Q. Okay. And that includes breaking into
4 the house and stealing 11 guns, right?

5 A. I never admitted to stealing any guns.

6 Q. Sir, you just said you admitted to the
7 facts as they were read, and that was the facts
8 that were read at the plea. Do you agree with me
9 on that one?

10 A. Okay.

11 Q. Yes?

12 A. Yes.

13 Q. And you realized this was a negotiated
14 sentence?

15 A. I realize now.

16 Q. And nobody threatened you to plead
17 guilty? I know you had a threat of trial, that's
18 one thing, but nobody physically threatened you to
19 get you to plead guilty, did they?

20 A. Yes, I was threatened.

21 Q. Physically?

22 A. Not with physical harm, no.

23 Q. What was the threat?

24 A. That I would receive at least 30 years
25 in prison if I didn't.

STEVEN ROGERS - EXAM BY THE COURT

1 Q. And are you aware that the Solicitor
2 has every right to indict you if she believes that
3 you went in twice to take stuff from the house?

4 A. Yes, sir, I do believe she has a right.

5 Q. And then, actually, not just 30 years,
6 but -- burglary first offence is the most serious
7 offence, correct?

8 A. That's correct.

9 Q. And if you're convicted of two of
10 those, it's an automatic life sentence. Do you
11 understand that?

12 A. I understand.

13 MR. JOHNSON: Okay. No further
14 questions, Your Honor.

15 EXAMINATION

16 BY THE COURT:

17 Q. Mr. Rogers, maybe I'm misunderstanding.
18 Do I understand you to say that you did enter this
19 house, but you didn't do it under circumstances
20 that would constitute burglary in the first degree?
21 Is that what I'm hearing you say, or are you
22 saying, I didn't do it, period?

23 A. Your Honor --

24 Q. I'm confused about your testimony.
25 Which one are you telling me?

STEVEN ROGERS - EXAM BY THE COURT

1 A. I was trying to tell the Court that the
2 elements that's listed on the burglary first
3 degree, that I did not commit any of those
4 elements, any of those elements. It was not at
5 nighttime, I was never armed with any deadly
6 weapon --

7 Q. Do you understand that the allegations
8 are and the allegations stated in the transcript
9 were that there were firearms taken, and that if
10 you were armed with a firearm while entering or
11 leaving the premises, that constitutes burglary in
12 the first degree?

13 A. I understand that, sir. There was
14 never any evidence of any firearms being taken.
15 There was never any stolen items received. There
16 was never -- it was their word. They have
17 insurance on the place and --

18 Q. Okay. But there were allegations?

19 A. Yes, sir, I'm aware.

20 THE COURT: All right. Mr. Johnson,
21 anything further?

22 MR. JOHNSON: Nothing, Your Honor.
23 Thank you.

24 THE COURT: Mr. Boozer?

25 MR. BOOZER: Nothing further.

DEBRA K. LITTLEJOHN - DIRECT EXAM BY MR. BOOZER

1 THE COURT: You may step down.

2 MR. BOOZER: Your Honor, I call Debbie
3 Littlejohn.

4 DEBRA K. LITTLEJOHN,
5 being first duly sworn, testified as follows:

6 THE CLERK: State your full name and
7 spell your last.

8 THE WITNESS: Debra K. Littlejohn,
9 L-I-T-T-L-E-J-O-H-N.

10 DIRECT EXAMINATION

11 BY MR. BOOZER:

12 Q. Morning, Ms. Littlejohn. How are you?

13 A. Good morning.

14 Q. All right. Do you recall -- well,
15 first, were you appointed or retained to represent
16 Mr. Rogers?

17 A. Appointed; I'm a public defender.

18 Q. Okay. You were a public defender at
19 that time. Are you still a public defender?

20 A. I am.

21 Q. Okay. Do you recall when you were
22 appointed to represent him?

23 A. Let me look at my notes and I can give
24 you an idea. Looks somewhere around February 2012.

25 Q. 2012. All right. He had a plea in

DEBRA K. LITTLEJOHN - DIRECT EXAM BY MR. BOOZER

1 November, obviously, of 2012. Do you know or do
2 the notes reflect how many meetings you had with
3 Mr. Rogers?

4 A. I am not great at keeping notes and
5 what I tend to do is keep them just thrown in here.
6 So I think he testified about seven. I wouldn't
7 doubt that.

8 Q. Okay. So you would agree with the
9 number that he stated in his testimony?

10 A. I wouldn't think it would be far off
11 base. I think that's probably about right.

12 Q. Now, you've also heard testimony there
13 was a plea offer somewhere early on -- fairly early
14 in the case?

15 A. May 7, 2012, Ashley Cornwell, Assistant
16 Solicitor, sent me a plea on his case. And let me
17 just read it verbatim: Charges, burglary first;
18 penalty, burglary first, 15 to life; offer, plead
19 guilty with a State recommendation of 15 years.

20 Q. Let me ask you this: What was your
21 discussion with that offer with Mr. Rogers?

22 A. Well, I wasn't pleased with the whole
23 thing at all and neither was Mr. Rogers. Okay. I
24 mean, he had no record. None. At that point in
25 time, and I remember this -- he started working as

DEBRA K. LITTLEJOHN - DIRECT EXAM BY MR. BOOZER

1 a young kid. He had been a taxpaying citizen.

2 This kid had no record from what I recall.

3 And I think his car broke down which
4 caused him to lose his job, and life went downhill
5 from there because they lived way out in Saint
6 Stephens, because I went out to where all of the
7 events occurred. It's an area where -- I don't
8 want to say it was a mobile home park, but there
9 were mobile homes in the area. It wasn't something
10 with an entrance that said, welcome, to whatever
11 mobile home park. But I went out there and you had
12 them all on a plot of land, if you will.

13 And you know for -- neither he nor I
14 were happy with this offer just because it's a burg
15 first for a kid who has absolutely no record at
16 all.

17 Q. And what was the discussion?
18 Obviously, he turned this one down, that initial
19 offer, correct?

20 A. Well, I mean, he did because -- he did.
21 I don't recall the discussions honestly. I just
22 remember he and I weren't happen with the fact that
23 she would not -- she wanted to just treat this as a
24 burglary first. The first thing I have to do --
25 whether I like an offer or I don't like an offer,

DEBRA K. LITTLEJOHN - DIRECT EXAM BY MR. BOOZER

1 it doesn't matter. I still have to take the offer
2 to my client. Whether I like it, whether they like
3 it, it doesn't matter, I still must convey that
4 offer.

5 And I must convey to them what they're
6 facing and how much is facing them, that when she's
7 saying recommendation, it strictly means
8 recommendation. The judge can do anything the
9 judge wants to with a recommendation. With a
10 negotiation, we're in a different story. With a
11 recommendation, she's just recommending 15.
12 Victims may get up there and say something and it
13 may sway a different way, we may say something,
14 still there's a mandatory minimum, but it is still
15 just a recommendation and the judge makes all the
16 bottom-line decisions. It's not a matter of
17 accepting or rejecting with lack of a negotiation.

18 Q. Well, after he rejects this 15-year
19 recommendation, what was your strategy and what
20 happened next? What did you do moving forward in
21 the case?

22 A. At some point in time we were preparing
23 for trial because we were on the November 26th
24 trial docket. I had my three-hole punched
25 material. I know I went out there and talked with

DEBRA K. LITTLEJOHN - DIRECT EXAM BY MR. BOOZER

1 the people. I mean, I went out there to where it
2 was rather, because I took some photographs of the
3 area myself.

4 I don't recall who I spoke with on
5 this. We did do a polygraph. Let me see if I can
6 find a date on that. I had -- I think Ronald
7 Freeman worked on this as an investigator. Looks
8 like on May 9th -- that was on May 9th there was a
9 polygraph. Well, I mean, I can tell you right now
10 that I have even up to voir dire prepared for him.

11 Q. Okay. Well, let me ask you this: A
12 polygraph was taken?

13 A. We did our own.

14 Q. Okay. Explain that to me.

15 A. There's two guys that are -- I think
16 they're former FBI -- that do polygraphs and we
17 will often use them because, honestly, if you can
18 pass one of their polygraphs, you can pretty much
19 pass a lot of them.

20 Q. Did he pass it?

21 A. He did not.

22 Q. Did you share that with him?

23 A. I did, but I'm not going to share that
24 with the State.

25 Q. Okay. Did you say --

DEBRA K. LITTLEJOHN - DIRECT EXAM BY MR. BOOZER

1 A. Nor am I going to share with them the
2 questions, nor did I get a report because of that
3 very reason.

4 Q. You've indicated it looks like you
5 prepared some voir dire questions going up to. So
6 what else would you have done? What would your
7 trial strategy had been if you-all had gone to
8 trial?

9 A. I think there was one fingerprint that
10 was on a screen, because screens were removed, that
11 was on the -- near the air-conditioner, yet it was
12 more the lack of prints. The confession issue is
13 always a problem.

14 Q. Tell the Court about that. Obviously,
15 there was a confession and you've heard his
16 testimony today?

17 A. Right. Right.

18 Q. Did you have any discussion about --

19 A. Well, that's going to be an issue when
20 it gets to trial. What is going to happen
21 pretrial? You know, the judge has to make the
22 decision then, you know, about was this given
23 freely and voluntarily? You know, at which time
24 Mr. Rogers would have to tell the facts and
25 circumstances of how he felt pressured and we'd be

DEBRA K. LITTLEJOHN - DIRECT EXAM BY MR. BOOZER

1 talking about, you know, how his wife was -- I
2 think she was pregnant at the time.

3 And, I mean, I think she was like real
4 far along pregnant if memory serves me right, and I
5 think the little girl, I want to say, was three at
6 the time, I may be wrong, but she was a small
7 child. And he told me he felt the pressure from
8 the police officers from that. So that's what we
9 would get into so, you know, it would be a matter
10 for the judge to determine was his confession given
11 freely and voluntarily.

12 Q. Did you have that discussion with him
13 and that was something that you could challenge or
14 bring up in a pretrial setting?

15 A. I don't know how in depth I got with
16 him, or if I just said that that would be a matter
17 for the judge to decide.

18 Q. Do you know if you had that
19 conversation at all with him or you just can't
20 remember one way or the other?

21 A. I don't have any independent
22 recollection.

23 Q. Did you go through and discuss, I
24 guess, what the State would have to prove in order
25 to convict him of burglary first degree?

DEBRA K. LITTLEJOHN - DIRECT EXAM BY MR. BOOZER

1 A. I don't have an independent
2 recollection, but my normal habit is, yes.

3 Q. But for Mr. Rogers specifically and for
4 his case, you don't know whether you did that or
5 not?

6 A. You know, I have the statute in here.
7 I don't -- my normal course is to tell everybody,
8 here's the basics and here's what this carries. I
9 don't make a notation that says, I told so and so
10 they are charged with this, these are the elements
11 and this crime carries this. I normally tell
12 everybody.

13 Q. Let's move forward to the date of the
14 plea. And my review of the transcript -- and you
15 may have had an opportunity to review it as well.

16 A. I just read it out there a minute ago.

17 Q. Do you have any recollection
18 independent of the transcript or from the
19 transcript that there was a plea and then there was
20 a break taken I guess for you guys to have some
21 discussions?

22 A. Honestly, I didn't remember the break.
23 I remember the case. I remember the plea.

24 Q. Do you remember any meetings outside
25 where the judge stopped the plea and you and

DEBRA K. LITTLEJOHN - DIRECT EXAM BY MR. BOOZER

1 Mr. Rogers discussed his options at that point the
2 day of the plea?

3 A. I can't recall if that was the day that
4 -- there was one time where he was starting to
5 breakdown, to cry, and I can't remember if that was
6 the day or not. I don't remember if that was that
7 particular day.

8 Q. Okay. But I guess my question, the
9 transcript reflects that there was, for lack of a
10 better word, some hemming and hawing on the part of
11 Mr. Rogers?

12 A. I don't doubt that.

13 Q. And then a recess was taken and
14 Mr. Rogers' testimony is that a meeting occurred --

15 A. Yes.

16 Q. -- outside the presence of the Court.
17 Do you have any recollection of that meeting and
18 what took place?

19 A. I remember sitting back there in the
20 jury room with him. I just couldn't remember if
21 that was before or after going in was all. You
22 know, and going over, you know, this is what --
23 where we stand with things. And at that point in
24 time I could not get -- this particular Solicitor
25 would not -- would not for anything knock it down

DEBRA K. LITTLEJOHN - DIRECT EXAM BY MR. BOOZER

1 to a burglary second at all.

2 And, as a matter of fact, was firmly
3 convinced in their own mind that there had been two
4 entries into that house and had alluded to me that
5 they were prepared to go and seek a direct
6 indictment to another burglary first.

7 So, you know, this was a tough thing
8 for Steven because he had never been in trouble
9 before. And I know -- I remember that day sitting
10 back there, he was really upset. He was real
11 worried about his wife and he was real worried
12 about his children.

13 Q. Do you know if at that time he was not
14 wanting to accept the plea?

15 A. He didn't want to accept the plea, not
16 because of what occurred, but because of the time.
17 Because here you have somebody that has done well
18 all of their life and then you have this, 15 years.

19 Q. Well, during -- there was only one
20 indictment for burg first?

21 A. Correct.

22 Q. At any point while -- I guess you've
23 characterized him as being pretty upset at that
24 point in the jury room, correct?

25 A. He was.

DEBRA K. LITTLEJOHN - DIRECT EXAM BY MR. BOOZER

1 Q. Okay. But did you then have the
2 discussion about the possibility that the Solicitor
3 could indict another one based on the same crime or
4 the same incident?

5 A. I actually told him that she was
6 looking about doing that, that she was firmly
7 convinced of this. And, of course, I tried to
8 challenge it, but this is what she's thinking in
9 her mind she wants to do.

10 Q. Did you tell him at that point during
11 that same meeting in the jury room, that if that
12 happened he would receive 30 years if he didn't
13 plead that day?

14 A. I told him about that before then.

15 Q. Okay. That didn't happen that day, it
16 happened before?

17 A. Right. I told him about that before
18 then. Well, I told him he would -- you can -- for
19 each charge here's what you can receive. And I
20 explain to all my clients concurrent and
21 consecutive, and I actually go through and I --
22 just because those terms -- sometimes people can
23 get them confused. I'll actually do a diagram a
24 lot of times or put my fingers up and say,
25 concurrent, consecutive, back to back, and on top

DEBRA K. LITTLEJOHN - DIRECT EXAM BY MR. BOOZER

1 of each other. (Indicating)

2 Q. Did you have any discussion -- let me
3 ask you this: He's married obviously to Christen
4 Rogers.

5 A. Right.

6 Q. Did you have any contact with
7 Mrs. Rogers throughout the representation of
8 Steven?

9 A. She would call some. She was -- I do
10 know she was supposed to have an appointment -- she
11 had an appointment and didn't make it.

12 Q. Okay. Did you have phone conversations
13 with her?

14 A. We did.

15 Q. And, specifically, up toward the date
16 of the plea, did you have any discussions with
17 Mrs. Rogers? Was she at the plea; do you remember?

18 A. According to the transcript it appears
19 that she went back there and talked with him. I
20 don't have an independent recollection on that.

21 Q. That's my next question: Do you
22 remember any discussion with Ms. Rogers in the jury
23 room or anywhere that day about the plea?

24 A. I don't have an independent
25 recollection. If I can have families -- you know,

DEBRA K. LITTLEJOHN - DIRECT EXAM BY MR. BOOZER

1 families are important to the defendants. What
2 happens with the defendant is not just about the
3 defendant, it's about them, their family,
4 everybody. It's the whole -- everything that
5 surrounds them. So anybody that can impact -- if
6 they can have input and understanding, that's
7 always great, if you're that lucky to get it.

8 MR. BOOZER: Court's indulgence, Your
9 Honor.

10 BY MR. BOOZER:

11 Q. Ms. Littlejohn, do you recall ever
12 asking Mrs. Rogers to come back and speak to her
13 husband while he was in the jury room?

14 A. That's what I'm saying, I saw in the
15 transcript that -- and so we may have.

16 Q. Were you present for that discussion or
17 do you recall anything about that discussion?

18 A. Again, independent of the transcript,
19 honestly, I don't.

20 Q. Okay.

21 A. I remember Steven very well, but
22 independent of the transcript, I don't. But it
23 would not be the first -- it won't be the last
24 person where I've been able to be fortunate to have
25 spouses, family, grandparents, people like that

DEBRA K. LITTLEJOHN - DIRECT EXAM BY MR. BOOZER

1 come over and be able to talk with them. They want
2 that input a lot of times.

3 Q. Just so I'm clear and hearing
4 everything correctly, you don't have any
5 independent recollection of any discussions between
6 Steven and Christen in the jury room or any direct
7 conversations with you and Christen that day?

8 A. It's just not ringing a bell at this
9 point.

10 Q. Let's move to another topic. Following
11 the plea, did you have any discussion or
12 interaction with either Steven or Christen?

13 A. Not that I recall, no.

14 Q. Were you ever asked to file an appeal?

15 A. No.

16 Q. Okay. Do you know if you gave him any
17 advice on what to do or advised him whether to file
18 one or pursue one, or whether there were any other
19 remedies he could take after the plea?

20 A. I don't recall us ever having any
21 discussion about that. And I'm thinking it was
22 Judge Dennis; he's pretty good about covering all
23 that.

24 Q. Ms. Littlejohn, just as a follow-up,
25 going back to the lie detector test, do you recall

DEBRA K. LITTLEJOHN - DIRECT EXAM BY MR. BOOZER

1 if there was just one or there were two
2 administered by your office?

3 A. That I don't know. I saw an invoice
4 for one date, but I don't know. Because I do know
5 that sometimes the guys will come up there and
6 maybe something will happen with it, and then when
7 they're coming back to maybe do somebody else,
8 they'll redo it or something. So I don't know.

9 Q. Do you have you complete file with you?

10 A. Yeah, I do.

11 Q. Would you mind just briefly taking a
12 moment to peruse through it and see if there's any
13 reference to two lie detector tests?

14 A. All of this so far looks like Indigent
15 Defense for May 9th.

16 Q. That was the first test?

17 A. So far that looks like the only thing
18 I'm seeing. Let me keep looking. And I had a
19 conversation with him -- with Tom Williams, who
20 does them, on May 9, 2012. The other May 9th part
21 that I was referring to is where they sent in the
22 bill and it was sent up to Indigent Defense. And
23 this is something I didn't date, that was where I
24 talked with him probably that May 9th one.

25 Here's one dated November 15th, but I'm

DEBRA K. LITTLEJOHN - DIRECT EXAM BY MR. BOOZER

1 not sure. This says an ex parte order was signed
2 November 15th.

3 Q. For?

4 A. For a polygraph, but ... here's one for
5 November 19th. It does appear they did two and
6 these are different questions from the other ones I
7 had.

8 Q. Do you know what the results were on
9 the second one?

10 A. I don't have a written report and -- I
11 don't have a written report. I can usually take a
12 guess when I don't have a written report from them.
13 I don't want a written report if -- the first one
14 appears to be April. The second one appears to be
15 November.

16 Q. So you don't have any recollection of
17 what the second -- the results of the second or the
18 first one?

19 A. All I have is my notes.

20 Q. If it was favorable, would you have
21 taken that to the Solicitor or would you have
22 shared it with the Solicitor? What would you have
23 done?

24 A. If it were favorable, I would have
25 probably asked them to give me a report or I would

DEBRA K. LITTLEJOHN - CROSS EXAM BY MR. JOHNSON

1 have suggested to the Solicitor, put him on a
2 polygraph, but, honestly -- I'm going to tell you
3 something; I don't know how much this particular
4 Solicitor would have done that. Some Solicitors
5 will do it and work with you, some won't. Not at
6 all.

7 MR. BOOZER: Ms. Littlejohn, that's all
8 the question I have.

9 THE WITNESS: I'm not going to say it
10 wasn't favorable. Okay. I just don't see any
11 report in here.

12 MR. FALK: Okay. That's all the
13 questions.

14 THE COURT: Mr. Johnson.

15 MR. JOHNSON: May it please the Court,
16 Your Honor.

17 CROSS-EXAMINATION

18 BY MR. JOHNSON:

19 Q. Ms. Littlejohn, about the lie detector
20 tests and the results, is it your normal practice
21 to explain those results to your client?

22 A. Not normally, no.

23 Q. Okay. You wouldn't say if they passed
24 or failed it?

25 A. Well, the way that the folks put it to

DEBRA K. LITTLEJOHN - CROSS EXAM BY MR. JOHNSON

1 us, it's -- they test deceptive or not deceptive,
2 so...

3 Q. So you don't -- you don't have any
4 independent recollection that you let Mr. Rogers
5 know the results of those?

6 A. No, I don't. And, honestly, I'll tell
7 you, with this particular Solicitor, I don't know
8 that it would have mattered.

9 Q. But do you take that into account as
10 part of your trial strategy?

11 A. It's not admissible at trial.

12 Q. No, but as part of your own personal
13 trial strategy in a case?

14 A. Not really.

15 Q. As far as the appellate issue is
16 concerned, you've already testified that you were
17 not asked to file an appeal.

18 A. Right.

19 Q. Did you see anything that Judge Dennis
20 did incorrectly in this case?

21 A. I didn't.

22 Q. And you said it's your normal practice
23 that you would have discussed the elements of
24 burglary first degree with Mr. Rogers?

25 A. Right. I go over with everybody --

DEBRA K. LITTLEJOHN - CROSS EXAM BY MR. JOHNSON

1 and, particularly, as you're preparing for a trial
2 and all, you know, what -- I break it down.
3 There's a nice little book -- little black book, I
4 forget what it's called, that breaks it down really
5 nice so far as the elements. And I'll break down a
6 lot of these charges like that for folks and go
7 over it with them and tell them what -- I tell
8 everybody, whether they like it or not, this is
9 what this carries. I'm not saying you're going to
10 get it, I'm not saying you will, I'm not saying you
11 won't, but this is what it carries.

12 Q. Do you discuss the discovery with your
13 clients?

14 A. I do.

15 Q. And did you discuss the arrest warrant
16 in this case with Mr. Rogers, and that it says that
17 guns were stolen from the location?

18 A. Of course. And that's also in the
19 discovery.

20 Q. So he was well aware that he was being
21 charged with burglary first degree because he was
22 accused of stealing guns from the home?

23 A. Right. That's one of the elements, you
24 can go in, or become, or exit armed.

25 Q. Did you force or threaten him to plead

DEBRA K. LITTLEJOHN - EXAM BY THE COURT

1 guilty in the case?

2 A. No. I just said they couldn't be
3 reduced.

4 Q. And whose decision was it to plead
5 guilty?

6 A. It was his decision. Like I said, I
7 know that it was a hard one because he had no prior
8 record.

9 MR. JOHNSON: That's all the questions
10 I have at this time, Your Honor.

11 EXAMINATION

12 BY THE COURT:

13 Q. All right. Ms. Littlejohn, I'm looking
14 at the transcript and I see where the Solicitor
15 stated the facts in this case.

16 A. Yes, sir.

17 Q. And she relates that the investigation
18 discovered that the defendant was trying to sell
19 the guns that were stolen from the home. Do you
20 recall that?

21 A. I recall that.

22 Q. And there was a fingerprint analysis
23 that came back identifying the defendant. Do you
24 recall that?

25 A. There was a fingerprint on a screen --

DEBRA K. LITTLEJOHN - EXAM BY THE COURT

1 on an exterior screen that was outside.

2 Q. Okay. And that he had made a
3 post-Miranda voluntary confession?

4 A. That was one of the issues we were
5 talking about, we would have to see about
6 suppressing --

7 Q. But that's what the State's position
8 was.

9 A. That was the State's position.

10 Q. They had discovered him trying to sell
11 the guns, there was a fingerprint that put him at
12 the site of the offence, and that he had given a
13 voluntary confession; that's what you were faced
14 with, correct?

15 A. Correct, Your Honor.

16 Q. Tell me about the -- I looked at the
17 plea and I don't see -- it may be in there, but I
18 don't see where Judge Dennis advised him of his
19 rights to appeal in the plea. Do you remember him
20 doing that?

21 A. He seems to normally. We have him a
22 lot up there in Berkeley, I think he does.

23 Q. I know he does, but I just --

24 A. Well.

25 THE COURT: Mr. Johnson, do you see

DEBRA K. LITTLEJOHN - EXAM BY THE COURT

1 anywhere where he did that?

2 MR. JOHNSON: As an officer of the
3 court, no, Your Honor, I don't.

4 BY THE COURT:

5 Q. Okay. Now, Ms. Littlejohn, did you
6 advise him he had a right to appeal and that was
7 conditioned upon the filing of a notice of intent
8 to appeal within ten days?

9 A. Your Honor, I don't recall any
10 independent recollection of doing that.

11 THE COURT: All right. Thank you.

12 MR. BOOZER: Your Honor, at this time I
13 would call Christen Rogers, his wife, to the stand
14 to briefly testify to what we have already
15 discussed about the meeting during the plea, but
16 she is still not here. And as I discussed with the
17 Attorney General's Office, what we would ask is
18 that we be allowed to submit an Affidavit --

19 THE COURT: Can you stipulate as to
20 what she would testify to?

21 MR. JOHNSON: I have no idea. I
22 haven't been told. If you would give me just a
23 second --

24 THE COURT: Sure.

25 (Off-the-record conference.)

1 MR. JOHNSON: We can stipulate to a
2 profer if Mr. Boozer will explain that to the
3 Court.

4 MR. BOOZER: Thank you, Your Honor.
5 Judge, Mrs. Christen Rogers, her testimony would be
6 that she was present the day of the plea, and as
7 the Court is aware from the transcript and the
8 testimony today, there was a recess after
9 Mr. Rogers was kind of going back and forth on the
10 plea. There was a meeting that took place outside
11 the presence of the Court with Mr. Rogers and Ms.
12 Littlejohn.

13 Mrs. Rogers -- Mrs. Rogers' testimony
14 would be that Ms. Littlejohn asked her to come in
15 and speak to Mr. Rogers to get him to plead, and
16 that Mrs. Rogers came into the jury room, or the
17 meeting place, and as he said, put her arms around
18 him and said, you need to take this plea, you need
19 to take this plea; otherwise, you're going to get
20 30 to life.

21 We wanted her testimony just to confirm
22 what his recollection of that meeting was, and
23 that's what will be in the Affidavit, Judge.

24 THE COURT: All right.

25 MR. JOHNSON: And I would stipulate to

DEBRA K. LITTLEJOHN - DIRECT EXAM BY MR. JOHNSON

1 that, Your Honor.

2 Is that your case?

3 MR. BOOZER: That's it.

4 MR. JOHNSON: And we will recall Ms.
5 Littlejohn please.

6 THE COURT: All right. Ms. Littlejohn
7 remains under oath.

8 DIRECT EXAMINATION

9 BY MR. JOHNSON:

10 Q. Ms. Littlejohn, what is your normal
11 course of business in advising people about the
12 sentences they face?

13 A. That you can face --

14 Q. Specifically, in this case.

15 A. In this case, it would be you can face
16 15 to life and anywhere in between, and then of
17 course all the collaterals, nonparolable, serious,
18 et cetera.

19 Q. And then you've testified already that
20 the Solicitor has threatened or promised or
21 whatever you say --

22 A. She alluded to.

23 Q. -- to indict him for a second one. And
24 then the testimony is that you told either
25 Mrs. Rogers or Mr. Rogers that it was going to be

DEBRA K. LITTLEJOHN - DIRECT EXAM BY MR. JOHNSON

1 30 to life. Would that be your advice to Mr.

2 Rogers?

3 A. It wouldn't be right.

4 Q. Why is that?

5 A. Because it could still be -- it would
6 still be 15 to life, because it could be that --
7 each one of them is 15 to life. And if he were to
8 go to trial, and if she were to directly indict,
9 and if the -- whether he pleads, goes to trial and
10 is found guilty, what have you, it can still be run
11 concurrent at 15, you know, at the best case. At
12 the worst from our viewpoint, it would be two
13 lifes.

14 So you always have to look at what is
15 the best we can do if -- if convicted or if
16 pleading on those, it would be two concurrent 15s.

17 Q. Thank you.

18 A. With the collaterals of course.

19 MR. JOHNSON: No further questions.

20 MR. BOOZER: No questions.

21 MR. JOHNSON: And that would be the
22 State's case.

23 THE COURT: All right. Thank you. All
24 right. I find that in this case the defendant -- I
25 mean, the -- Ms. Littlejohn's representation

1 certainly does not fall below the professional
2 norms. She has not -- or that the petitioner in
3 this case has not proved that she has engaged in
4 any deficiencies in the representation considering
5 the facts in the case.

6 I think Ms. Littlejohn did everything
7 that she could possibly do to help the petitioner;
8 however, I do find that the petitioner has carried
9 his burden in showing that there was a deficiency
10 in that post trial -- and that Ms. Littlejohn says
11 she has no memory of advising him that he had a
12 right to appeal, and there seems to be no such
13 advice given to him.

14 I look at the record and the
15 transcript. Judge Dennis, for whatever reason, did
16 not address that in his -- his -- his plea, and I'm
17 going to allow a belated appeal.

18 MR. JOHNSON: Thank you, Your Honor.

19 MR. BOOZER: Thank you, Your Honor.

20 MR. JOHNSON: And Mr. Boozer will draw
21 that; he's the one that has to appeal it.

22 THE COURT: Yes.

23 MR. JOHNSON: Thank you, Your Honor.

24 (These proceedings were concluded at
25 11:52 a.m.)

1 CERTIFICATE OF REPORTER

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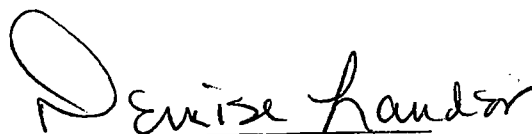
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I, Carol Denise Lauder, Registered
Professional Reporter and Notary Public for the
State of South Carolina at Large, do hereby certify
that the foregoing transcript is a true, accurate,
and complete record.

I further certify that I am neither related
to nor counsel for any party to the cause pending
or interested in the events thereof.

Witness my hand, I have hereunto affixed my
official seal this 8th day of February, 2016 at
Charleston, Charleston County, South Carolina.


Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
August 2, 2017

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Steven Rogers, #353340,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

2013-CP-08-2677

FINAL ORDER

FILED
15 DEC 21 PM 4:50
CLERK OF COURT
BERKELEY COUNTY, S.C.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on December 3, 2013. Respondent made its return on March 26, 2015. An evidentiary hearing into the matter was convened on September 10, 2015, at the Charleston County Courthouse. Applicant was present at the hearing and was represented by Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Rutledge Johnson of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. The Applicant was indicted at the May 2012 term of the Berkeley County Grand Jury for Burglary, First Degree. Deborah Littlejohn, Esquire represented Applicant. On November 29, 2012, Applicant pled guilty as indicted before the Honorable R. Markley Dennis, Jr. Judge Dennis sentenced Applicant to a fifteen year term of imprisonment. Applicant did not appeal his guilty plea or sentence.

ALLEGATIONS

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

1. Ineffective Assistance of Counsel.
 - a. Counsel coerced, tricked, and manipulated me into accepting the guilty plea.
 - b. Requested an appeal and was told by attorney that she no longer represented me.
2. Involuntary Guilty Plea.
 - a. I did not knowingly and intelligently take the guilty plea.
 - b. I did not commit burglary, first degree.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from Deborah Littlejohn, Esquire (hereinafter "plea counsel"). This Court also had before it a copy of the plea transcript, the Berkeley County Clerk of Court records, Applicant's South Carolina Department of Correction records, the PCR application, and return.

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL AND INVOLUNTARY GUILTY PLEA

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

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

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

This Court finds Applicant's allegation that he received ineffective assistance of counsel because plea counsel allegedly coerced, tricked and manipulated him into accepting the plea is meritless. Additionally, the Court finds Applicant's allegation his guilty plea was involuntary because he did not knowingly and intelligently plead guilty and that he did not commit Burglary, First Degree are also without merit. A defendant who pleads guilty on the advice of counsel may collaterally attack the voluntariness of his plea only by showing that (1) counsel was ineffective and that (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty. Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997).

In the instant case, Applicant testified that he initially rejected multiple plea offers, including an offer to plead to Burglary, First Degree, in exchange for a fifteen (15) year sentence.

Applicant further testified he felt pressured by plea counsel to accept a plea and that she indicated if he did not plead guilty, he would get thirty (30) years to life. Applicant testified that he initially attempted to enter a plea, however, the plea court would not accept the plea due to Applicant's hesitation. Applicant further testified he then met with his plea counsel during a recess and that his wife was also present. Applicant stated that he felt his plea counsel was attempting to pressure him into pleading guilty during the recess.¹ Applicant indicated he finally felt he had no other option than to plead guilty following the pressure from his plea counsel. Applicant also testified he did not feel he committed Burglary, First Degree because his crime did not occur at night. Applicant indicated plea counsel told him if he did not plead guilty, he would be facing other charges. Applicant further testified he asked plea counsel to file an appeal following his plea, however, she indicated she was no longer his attorney.

Plea counsel testified she reviewed the evidence and elements of the charge with the Applicant prior to the plea. Additionally, plea counsel testified she reviewed the possible sentences with the Applicant and felt that the fifteen (15) year plea was in his best interest. She further testified it was the Applicant's decision to plead guilty. Plea counsel indicated she did convey to the Applicant that the State told her they were considering a separate charge because they believed the Applicant entered the structure multiple times. Plea counsel testified she could not recall whether Applicant requested an appeal.

This Court finds Applicant's testimony that he was coerced, tricked and manipulated into pleading guilty not credible. This Court further finds Applicant's testimony that his plea was rendered involuntary due to an unknowing and unintelligent plea and that he did not commit

¹ During the PCR hearing, this Court accepted a proffer of the proposed testimony of Applicant's wife, Kristen Rogers, from Mr. Boozer. The proffered testimony of Ms. Rogers indicated she met with the Applicant during the recess at the plea and plea counsel indicated to her if he did not accept the plea, he would receive thirty (30) years to life.

Burglary, First Degree also not credible. This Court finds plea counsel credibly testified that she properly advised Applicant of the elements of the charge he faced and the penalties. This Court further finds credible plea counsel's testimony that it was the Applicant's decision to plead guilty credible. This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms or any prejudice. Additionally, this Court finds Applicant's plea was entered knowingly and voluntarily and the plea colloquy confirms this finding.

However, this Court finds credible Applicant's testimony that he requested an appeal and plea counsel failed to perfect the appeal. An Applicant who meets the burden of showing that the Applicant did not knowingly and voluntarily waive his right to a direct appeal of his trial conviction is entitled to a belated appeal. White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). This Court finds Applicant requested a direct appeal from his plea and counsel failed to perfect the appeal. Accordingly, Applicant is granted a belated direct appeal.

ALL OTHER ALLEGATIONS AND RIGHT TO APPEAL

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, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

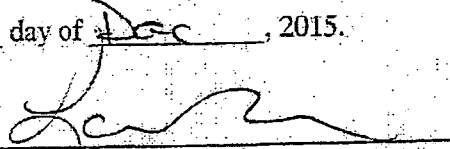
This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Ap-

plicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice regarding his claims of ineffective assistance of counsel and involuntary guilty plea;
2. That the Applicant is granted a belated direct appeal review of his guilty plea; and
3. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 7 day of Dec, 2015.


 LARRY B. HYMAN, JR.
 Presiding Judge
 Ninth Judicial Circuit

Darius, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Steven Rogers,
Plaintiff(s),
-vs-

State of South Carolina,
Defendant(s).

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2013CP0802677
APPOINTMENT OF COUNSEL OR GAL
(Select one.)

☒ ORDER
☐ AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- ☐ Post-Conviction Relief (PCR)/habeas case ☐ Adoption ☐ Juvenile
☐ SVP case ☐ Custody and/or Visitation ☐ Abuse and Neglect
☐ Minor Name Change ☒ Other: Post Convict Rel 500

It appears Steven Rogers, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- ☒ counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
☐ counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:
☐ counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
☐ court appointed counsel has obtained, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
☐ Other: .

Therefore, it is ordered that Lance Boozer hereby is appointed as (Select one.)

- ☒ counsel ☐ lead counsel (if capital PCR case) ☐ guardian ad litem
for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

☐ (If Death Penalty PCR Case) It is further ordered that, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED
February 21, 2014

Mary P. Brown
☐ Circuit Judge ☒ Clerk of Court

Plaintiff Attorney:

Lance Boozer	
1331 Park Street	
Columbia, SC 29201	

Defendant Attorney:

Ashleigh Rayanna Wilson	
PO Box 11549	
Columbia, SC 29211	

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

CP20 (08/08)
SCCA/267 (03/07)

FILED
2014 FEB 21 PM 4:48
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

WITNESSES

Berkeley County Sheriff's Office

[Signature]

AGENCY CASE NUMBER

201201003416

ARREST WARRANT NUMBER

N160032

DATE OF ARREST

February 16, 2012

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury
Date: 5/16/12

VERDICT

Foreperson of Petit Jury

Date:

INDICT

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

May Term 2012

THE STATE

Vs

STEVEN KYLE ROGERS

DOB:

W/M

Indictment for

Burglary, First Degree

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on May 16, 2012 the Grand Jurors of Berkeley County present upon their oath:

Burglary, First Degree

That Steven Kyle Rogers did in Berkeley County, South Carolina, on or about January 23, 2012 enter the dwelling of Karen McCray and Craig Putz, located at , St. Stephen, during night time hours without consent and with the intent to commit a crime therein, to wit; larceny, and while effecting entry or while in the dwelling or while in immediate flight there from Steven Kyle Rogers did arm himself with a deadly weapon, to wit; firearms. This is in violation of Section 16-11-311 of the South Carolina Code of Laws (1976) as amended

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


ASHLEY B. CORNWELL
ASSISTANT SOLICITOR