

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Greenville County

Perry H. Gravely, Circuit Court Judge

---

**RECEIVED**

JUL 22 2016

PATRICK CHASE MASSEY,

**SC SUPREME COURT**

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000052

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A P P E N D I X

---

ROBERT M. PACHAK  
Appellate Defender

ALAN WILSON  
Attorney General

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

KAREN RATIGAN  
Senior Assistant Deputy Attorney General

P. O. Box 11549  
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA )  
 ) COURT OF GENERAL SESSIONS  
 COUNTY OF GREENVILLE ) 2012-GS-23-7409; 7410;  
 ) 7415; 7417; 7418; 7420  
 )  
 )  
 ) **ORIGINAL**  
 )  
 STATE OF SOUTH CAROLINA )  
 ) PLAINTIFF)  
 vs. ) TRANSCRIPT OF RECORD  
 )  
 PATRICK CHASE MASSEY )  
 ) DEFENDANT)

January 6, 2014  
 Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge.

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

LISA BENTLEY, ESQ.  
 Attorney for the State

SARAH HENRY, ESQ.  
 Attorney for the Defendant

APRIL HERRON  
 Official Court Reporter

PATRICK MASSEY-EXAMINATION BY THE COURT

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PATRICK MASSEY

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» > o < «

There were no exhibits.

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PATRICK MASSEY-EXAMINATION BY THE COURT

1 THE CLERK: Your Honor, this is 2012-GS-23-7409,  
 2 2012-GS-23-7417 and 2012-GS-23-7418, Patrick Chase  
 3 Massey, indicted for burglary first degree, pleading  
 4 to the same and all three are true billed. And  
 5 there's an Order of Restitution. 2012-GS-23-7415,  
 6 2012-GS-23-7410, both are indicted for breaking and  
 7 entering a motor vehicle, pleading to the same on  
 8 both. Both are true billed. 2012-GS-23-7420,  
 9 indicted for malicious injury to animal, pleading to  
 10 the same and it is a true bill.

11 Raise your right hand.

12 PATRICK MASSEY, after being duly  
 13 sworn, testified as follows:

14 THE COURT: All right, Ms. Henry, you had the  
 15 opportunity to discuss with Mr. Massey his  
 16 constitutional rights the ramifications of his plea?

17 MS. HENRY: Yes, sir, Your Honor.

18 THE COURT: And do you agree with his decision  
 19 to waive those rights and plead guilty today?

20 MS. HENRY: I do.

21 EXAMINATION

22 BY THE COURT:

23 Q Mr. Massey, you have a right to a jury trial on  
 24 all these charges. If you were to have a jury trial The  
 25 State would have the burden of proving you guilty beyond a

## PATRICK MASSEY-EXAMINATION BY THE COURT

1 reasonable doubt to a jury of your peers. In that  
2 proceeding you would not have the burden of proving  
3 yourself innocent. Because under the Constitution you  
4 have the right to remain silent. Which means you wouldn't  
5 be compelled to do, say or prove anything to the jury.  
6 The State has the burden of proving each and every element  
7 beyond a reasonable doubt to a jury of 12 of your peers  
8 However, know that in that jury trial, you could waive  
9 your right to remain silent and you could take the stand  
10 and you can testify to the jury and you can tell them your  
11 side of the story. And present witnesses and evidence in  
12 your defense. You can also make motions before the Court  
13 to protect your legal rights and interests. You could  
14 cross-examine any of the State's witnesses including those  
15 persons who are accusing you of these crimes. You also  
16 have the right to have all these indictments presented to  
17 the Grand Jury for a true bill if that has not already  
18 been done. Now, Mr. Massey, do you understand all of  
19 these rights, sir?

20 A Yes, sir.

21 Q Do want to waive these rights to plead guilty  
22 today, sir?

23 A Yes, sir.

24 Q Okay. In Indictment 7420, you're pleading  
25 guilty to malicious injury to animals, personal property.

## PATRICK MASSEY-EXAMINATION BY THE COURT

1 You understand that you could receive up to five years in  
2 prison for that offense, sir?

3 A Yes.

4 Q Okay. How do you wish to plead to that?

5 A Guilty.

6 Q All right. And Indictment 7410 you're charged  
7 with and pleading to breaking into a motor vehicle. As a  
8 matter of fact, you got two of those. You understand that  
9 on each of those offenses and that the Indictment 7410 and  
10 7415, you could receive an additional and consecutive five  
11 years for that, sir?

12 A Yes, sir.

13 Q Okay. How do you wish to plead to those two  
14 offenses, sir?

15 A Guilty.

16 Q In indictment 7418 you're charged with and  
17 pleading guilty to burglary, first degree. You're also  
18 pleading guilty to burglary, first degree in 7417 and  
19 7409, three indictments for burglary first. Do you  
20 understand that on each of those you could receive between  
21 15 years to life, sir?

22 A Yes, sir.

23 Q Okay. And you understand that any sentence that  
24 you are given could be consecutive to the next and  
25 anything to the other one, sir?

## PATRICK MASSEY-EXAMINATION BY THE COURT

1           A     Yes, sir.

2           Q     You understand that burglary first is classified  
3 as both a violent and most serious offense, sir?

4           A     Yes, sir.

5           Q     And you understand that because it's classified  
6 as violent, it would effect the manner and method whereby  
7 you do any period of incarceration. And it would also  
8 effect the calculation of your max out date, do you  
9 understand that?

10          A     No.

11          Q     Okay. What it means is it effects how you may  
12 be housed, what institution you may be housed in and it  
13 can have a bearing on how they calculate your max out  
14 date. Because it's classified as violent you may end up  
15 doing a higher percent of time on the charges, do you  
16 understand that?

17          A     Yes.

18          Q     Okay. You also understand that it's classified  
19 as most serious. And under the law in the State of South  
20 Carolina, there's the two strikes, three strikes law. You  
21 have a strike in this instance. In each and everyone of  
22 these burglary first indictments is a strike against you;  
23 do you understand, sir?

24          A     Yes.

25          Q     Okay. So by pleading guilty to these, if you

## PATRICK MASSEY-EXAMINATION BY THE COURT

1 are convicted at a later date and time of a serious or  
2 most serious offense, then you could be subject to a  
3 sentence of life without the possibility of parole at a  
4 later time, do you understand that?

5 A Yes.

6 Q Okay. Knowing that, sir, how do you wish to  
7 plead to the burglary charges?

8 A Pleading guilty.

9 Q Has anyone forced or threatened or made you  
10 plead guilty, sir?

11 A No, only myself.

12 Q Okay. Are you pleading guilty of your own  
13 freewill because you're guilty?

14 A Yes, sir.

15 Q Has anybody promised you anything in exchange  
16 for these pleas?

17 A No.

18 Q Okay. And are you under the influence of any  
19 drugs or alcohol today, sir?

20 A Not today.

21 Q No. Okay. You do you understand what I'm  
22 saying and the questions I'm asking you clearly?

23 A (The witness nods.)

24 Q You were able to communicate with Ms. Henry in  
25 this case and you've been able to communicate with her

## PATRICK MASSEY-EXAMINATION BY THE COURT

1 today?

2 A (The witness nods.)

3 Q Okay. You understand all your conversations  
4 with her?

5 A Yes, sir.

6 Q Do you suffer from any mental sickness that  
7 would effect what we're doing here today?

8 A No, sir.

9 Q Okay. Are you satisfied with Ms. Henry's  
10 services?

11 A Yes, sir.

12 Q And you understood all of my questions to you,  
13 all of my explanations?

14 A Yes, sir.

15 Q Do you have any questions at this point that  
16 you'd like to ask me or Ms. Henry regarding your rights,  
17 the charges or this process?

18 A No, I trust y'all more than anybody now.

19 Q All right. You got ten days to appeal the  
20 sentence that I hand down. I'm going to listen to the  
21 facts from Ms. Bentley and I'm going to ask you if you  
22 agree with it, any exception to it.

23 Be happy to hear the facts.

24 MS. BENTLEY: May it please the Court, Your  
25 Honor. At 4:00 a.m. on August 7th, 2012 an alarm

1 went off 140 Shore Vista Lane in Greenville County.  
2 The police did not attempt to enter the premises due  
3 to guard dog warning signs. At 7:00 a.m. the  
4 property caretakers called police to report the guard  
5 dogs had been viciously stabbed, vehicles entered and  
6 blood was on the doorknob and window near the garage.

7 At 4:50 a.m. the residence at 14 Meadow Trace  
8 Court were awakened by the sound of someone in their  
9 home. They barricade the bedroom door and called  
10 police. When the police arrived they saw a large  
11 amount of blood leading from inside their garage  
12 through the interior of their home. Both vehicles  
13 had been entered and rummaged through. This call was  
14 followed by a call at 6:50 a.m. when the resident at  
15 3620 Pennington Road reported a young man in a bloody  
16 Clemson sweatshirt was trying to enter his home. A  
17 basement door was open and there was blood on that  
18 door and the front door.

19 Police were patrolling the area and located this  
20 Defendant covered in a bloody Clemson sweatshirt at  
21 7:15 a.m. He had in his possession a hunting knife  
22 covered in blood and what appeared to be fur. He had  
23 a large laceration on his finger that required  
24 medical attention. Over the next hour and a half  
25 over six other residents called to report blood on

1 their doors, windows or cars and signs of tampering  
2 such as cut window screens and blood inside the cars.  
3 DNA analysis was performed at various crime scenes  
4 and all blood located matched that of this Defendant.

5 Your Honor, the State's requesting restitution.  
6 I believe Ms. Henry is going to speak to you about  
7 leaving it up to the Court. The guard dogs that were  
8 stabbed were purebred German Sheppards and had been  
9 trained at a cost of over \$30,000 and both required  
10 extensive surgery to survive their wounds. And there  
11 is a recommendation.

12 THE COURT: Okay. Good enough.

13 Mr. Massey, you heard those allegations, is that  
14 what happened?

15 MR. MASSEY: I don't remember everything that  
16 happened. I do remember going into the back where  
17 the dogs were at. I remember going up and I went  
18 around the house first and I found another bottle of  
19 liquor on their back doorstep, back patio, and I  
20 walked around until I got to where the little dog pen  
21 was at. There was a little pen, I figured it had to  
22 be for dogs. And then I walked up to the door and I  
23 looked inside and I saw two dogs standing there, the  
24 dogs looked like -- looked sad. And I guess to go in  
25 that way. But I tried to let them out, let them run

1 on, they attacked me. And I felt angry towards them.  
2 With the way alcohol had made me feel at the time. I  
3 wasn't really a heavy drinker out there but when I  
4 did I binged this one night. And I was influenced by  
5 rap music and I just let it get the best of me at the  
6 time.

7 I went in there and I got \$20. And I might went  
8 through the doggy door, I don't know, I can't really  
9 remember going -- leaving the property after that. I  
10 remember attacking the dogs but that's not a side of  
11 me I want to really talk about. Not a side of me I  
12 want to live with. That side of me I want to make up  
13 for.

14 THE COURT: Okay. Thank you, Mr. Massey.

15 Okay, I accept the plea, there's a substantial,  
16 factual basis for the same. And his recitation and  
17 account was in substantial compliance and agreement  
18 with the State's recitation. I'll accept it.

19 What's the prior record? And you said there is  
20 a recommendation?

21 MS. BENTLEY: Yes, sir, Your Honor. His prior  
22 record 2007, malicious injury to personal property.  
23 2011, two counts of possession of marijuana and  
24 unlawful entry. At the time or this there were  
25 charges pending in Oconee County. I don't know if

1 they're still pending or if they have been resolved.  
2 But I think should he show anything [indiscernible]  
3 to those now, this would not be considered prior.  
4 So, it would not effect anything else.

5 THE COURT: I understand.

6 MS. BENTLEY: Then he's been arrested while out  
7 on bond, nonviolent offenses, that are being  
8 dismissed as a part of this plea. And the  
9 recommendation is 15 years.

10 PROBATION AGENT: He's currently on probation.  
11 I guess he pled to the Oconee charges.

12 MR. MASSEY: Yes, I pled. It was 10 years  
13 suspended to five years probation. And I should have  
14 been checked up on more frequently than probation --  
15 my probation officer, I felt that he kind of fell  
16 back off my case a little bit being that I was being  
17 offered 15 years. And that I -- since I'm pleading  
18 because I'm guilty of it.

19 THE COURT: Okay. All right.

20 Is this a violation?

21 PROBATION AGENT: He was sentenced to probation  
22 January 15th, 2012. So when did this happen?

23 MS. BENTLEY: January 7th, 2012.

24 PROBATION AGENT: He was convicted of receiving  
25 stolen goods and attempted burglary, second degree?

1 MS. BENTLEY: Yes.

2 THE COURT: So this is a violation?

3 PROBATION AGENT: Correct. The Greenville  
4 County -- it was Oconee County and they transferred  
5 it to Greenville.

6 THE COURT: You understand that by pleading  
7 guilty to these offenses that it is a violation of  
8 your previously imposed probation, do you understand?

9 MR. MASSEY: (Mr. Massey nods.)

10 THE COURT: What you got is a ten year sentence  
11 suspended to five years probation. Do you understand  
12 that you're subject to having that ten years  
13 reinstated, do you understand?

14 MR. MASSEY: Yes, sir, I understand.

15 THE COURT: All right. Good enough.

16 All right, Ms. Henry, I'll be happy to hear from  
17 you.

18 MS. HENRY: Thank you, Your Honor. To begin  
19 with we are asking you to go along with the State's  
20 recommendation of 15 years. His mother is also here.  
21 That's her standing over there, she'd like to speak  
22 at the appropriate time. Patrick has got a long  
23 history of mental health issues. He also -- talked  
24 to his mom, talked to Patrick, he's a little on the  
25 slow side. And it's taken a little while for him to

1 comprehend things. Right before this had happened he  
2 attempted suicide and they changed his mental health  
3 medication. He's on Trazodone, Seroquel. And  
4 Trazodone had been a [indiscernible] change.  
5 Directly after he was put on this medication he went  
6 through a pretty serious episode. I believe because,  
7 if I recall, he had been self medicating for a while.  
8 I think Patrick was pretty devastated, at least as to  
9 what his mother and Patrick told me. And while on  
10 the medication he got, obviously, very inebriated.  
11 The combination of two and his intoxication is not a  
12 defense in this case, you know, that he knew better  
13 than to get drunk on this medication. But that's  
14 kind of the root of what happened in this case.

15 The knife -- the knife that was involved in this  
16 case is something that he carried at all times,  
17 nothing that strapped on--

18 MR. MASSEY: Not that knife. That knife -- that  
19 knife I did find in somebody's truck.

20 MS. HENRY: So you had the knife?

21 MR. MASSEY: On average. But I then I had  
22 others that--

23 THE COURT: I get it.

24 MS. HENRY: Okay, he didn't have any other  
25 knives on him, apparently, according to his property

1 report. Okay. He wanted me -- he asked me to ask  
2 you if you'd consider ATU as part of any jail time  
3 sentence that you gave him. He has asked presently  
4 for substance abuse counseling. Think he recognizes  
5 that is a huge problem for him. And that it's not  
6 getting any better without help. Like I said, I  
7 think you can see now he's pretty scared. This is by  
8 far the most serious trouble he's ever been in. The  
9 previous record was very light. He's obviously very  
10 sorry as well. His mom is with me -- is with  
11 Patrick. She's a very, very nice woman. And I think  
12 she would like to talk as well. And I just ask you  
13 to go with the recommendation that the State is going  
14 to make in this case.

15 THE COURT: Okay.

16 All right, ma'am, Ms. Massey, is that correct?

17 MS. MASSEY: Yes, sir.

18 THE COURT: Welcome, Ms. Massey, I'll be happy  
19 to hear from you.

20 MS. MASSEY: Well, as you can tell, he's 23.  
21 His maturity level is not of a 23 year old. I'm very  
22 sorry for what happened and what he did. Because  
23 that's not him. He is probably one of the most  
24 humble, kind hearted people in the world when he's  
25 not -- doesn't have substance in his blood system.

1 But he does need substance abuse counseling. And  
2 mental health counseling if he can get it.

3 THE COURT: Okay. Thank you, Ms. Massey. I  
4 appreciate your being here. I know it's hard for you  
5 as well.

6 All right, Mr. Massey, is there anything you'd  
7 like to tell me sir?

8 Ms. Henry, refresh my memory while he's  
9 gathering himself, how long has he been in jail?

10 MS. BENTLEY: Your Honor, he was in jail 358  
11 days then we revoked his bond and we have 135 days.

12 THE COURT: 135, does that sound right?

13 MS. HENRY: Yes, Your Honor.

14 THE COURT: Now, let me ask a question,  
15 Ms. Bentley, you -- with respect to restitution.

16 MS. BENTLEY: The gentleman is requesting  
17 approximately \$45,000 to recoup for their training  
18 and the cost of their surgery. It's an awful lot of  
19 money. He's being sentenced to approximately 15  
20 years. We leave it up to the Court whether or not to  
21 order that or whether or not to convert it to a civil  
22 judgment.

23 MR. MASSEY: Neither will be necessary, I'll pay  
24 it in time.

25 THE COURT: This is my position on it.

1           Although, I want every defendant to pay restitution,  
2           often times it -- really to talk about \$45,000, if I  
3           convert it to a civil judgment today, the life of the  
4           judgment is 10 years. He won't be out, it will have  
5           already expired. And I mean, I might as well  
6           sentence him to five million dollars in restitution.  
7           He's either going to make a decision to pay it or  
8           not. But I don't know that, you know, 15, 13 years  
9           down the road, it's not going to be a civil judgment.  
10          It's going to be something incident to the criminal  
11          sentence. And, you know, it's sad but I don't see  
12          any dissolution with respect to restitution. So what  
13          do y'all want me to do with it?

14                 MS. BENTLEY: Your Honor, I believe that I'm  
15                 required to ask on behalf of the victim.

16                 THE COURT: I know you are. And I'm going to  
17                 order it, there's no question that I'm going to order  
18                 it. Just don't have false expectations.

19                 MS. HENRY: Well, Your Honor, if that's the  
20                 situation, because it is so much money, I'd ask for a  
21                 hearing on it just so that we can get -- I can get  
22                 the victim's information and everything else as far  
23                 as exactly the bills that bar the \$45,000 in  
24                 restitution. If you're ordering restitution in this  
25                 case.

1 MS. BENTLEY: And I do have to represent as far  
2 as \$200 amount for the Honda that was entered.

3 MS. HENRY: Yes, \$200 --

4 THE COURT: Got it. All right, here's what I'll  
5 do. I'll -- on the restitution sheet for the Honda,  
6 I'll order 229 to Ms. White. Hearing to be held  
7 regarding remaining claim for restitution. Sentence  
8 is protected in that regard. You can seek it. Y'all  
9 can put what type of effort that you think is  
10 appropriate under the circumstances.

11 MS. HENRY: Thank you, Your Honor.

12 THE COURT: Good luck to you. Good luck to you,  
13 Mr. Massey.

14 MS. BENTLEY: Your Honor.

15 THE COURT: Yes, ma'am.

16 MS. BENTLEY: You did not impose a sentence.

17 SENTENCING

18 THE COURT: I'm sorry. I'm going along with the  
19 recommendation. With regard to the burglary, 15  
20 years. Credit for time served, 135 days. Same on  
21 each of the burglaries. Concurrent, credit for time  
22 served. Restitution is ordered in the burglaries  
23 that we just discussed, that's the 229. For the  
24 remaining portion the State is entitled to a  
25 restitution hearing. On the auto breaking and both

1 counts of auto breakings, the malicious injury, it's  
2 five years on each, concurrent, credit for time  
3 served.

4 All right, good luck to you, sir.

5 (WHEREUPON, the proceedings were concluded.)

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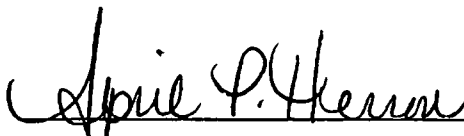
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the sixth day of January, 2014.

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

May 11, 2015



APRIL P. HERRON, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA )  
 )  
County of GREENVILLE )  
 )  
Patrick Massey # 358341 )  
Full name and prison number (if any) of Applicant )

IN THE COURT OF COMMON PLEAS

Case Number:  
**2014-CP-23-01304**

FILED - CLERK OF COURT  
GREENVILLE CO. S.C.  
P. B. WICKENS, CLERK  
2014 AUG 4 PM 2:23  
15 (A)

v.

APPLICATION FOR

State of South Carolina )

POST-CONVICTION RELIEF

S.C. Code Ann. § 17-27-20  
S.C. Code Ann. § 17-27-23

**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention MCI / 386 Redemption Way, McCormick, S.C. 29899
2. Name and location of Court which imposed sentence Greenville County General session 305 East North Street, Greenville, South Carolina 29601
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 12-GS-23-0194 - Poss. of Amphetamine
  - (b) 12-GS-23-07410 - Breaking/Entering Motor Vehicle, 12-GS-23-07409

(c) 12-GS-23-07417-12-GS-23-07418 - Burglary 1st; 12-GS-23-07420  
malicious injury to animals;  
5. The date upon which sentence was imposed and the terms of the sentence:

(a) May 21, 2017 - Two (2) years

(b) January 6, 2014 - (07410) 5 years; (07409-07417-07418)

(c) 15 years; (07420) 5 years

6. Check whether a finding of guilty was made:

(a) after a plea of guilty Yes

(b) after a plea of not guilty N/A

(c) after a plea of nolo contendere N/A

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

NO

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

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

- i. \_\_\_\_\_
- ii. N/A
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. N/A
- iii. \_\_\_\_\_

(c) the date of each such result:

- i. \_\_\_\_\_
- ii. N/A
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. N/A
- iii. \_\_\_\_\_

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

(a) \_\_\_\_\_

(b) N/A

- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Involuntary plea due to mental illness and misunderstanding of counsel advice.
- (b) Ineffective Assistance of Counsel.
- (c) For the purpose of this application and lack of plea transcript is reference, the Applicant reserves the right to amend upon receipt of any relevant materials.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attached page.
- (b) See Attached page.
- (c) See Attached page.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. N/A
- iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. N/A
- iv. \_\_\_\_\_

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

a. Involuntary plea due to mental illness and misunderstanding of counsel advice.

b. Ineffective assistance of counsel.

c. For the purpose of this application and lack of plea transcript in reference, the Applicant reserves the right to amend upon receipt of any relevant materials.

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

a. 1. Trial counsel stated pretrial that: "You would received sixteen (16) months rehabilitation treatment on this plea deal."

2. That Public defender was not aware that Applicant was finally prescribe his mental health medication two (2) days before his plea.

To illustrate: Applicant was diagnosed, among other things, as anti-social personality. Although it is hard to detect, but, once detected, prescribed medication can save society or a individual from the destructive consequences attendant e.g., alcohol or drugs and without Applicant on his prescribe medication during any course of events, could never appreciate the consequence of any act.

To illustrate a psychiatric examination: In a

initial assessment, Applicant presents characteristic of a partially neglected child being brought up in a unstable family environment. Indications of an attention deficit disorder will be noted, particularly in terms of poor concentration, distractibility, low frustration tolerance, impulsive behavior, and mild learning problems,

Applicant's continued behavioral problems which have warranted several hospitalizations in the past, including a serious suicidal attempts.

He has good eye contact. Applicant's mood reveals feelings of helplessness and a sense of futility toward life. Applicant contends that what upset him the most is that the father, who is an alcoholic, had constantly physically abuse the mother. It is on these occasions when he chooses to run away from home, as he is unable to cope with such emotional stress, specially their separation.

Thus, Applicant allege that a reasonable probability exist that this unpresented evidence would have resulted in a different sentencing decision or that Applicant's counsel's failure to investigate further into Applicant's antisocial personality disorders constitutes ineffective assistance of counsel. See Satcher v. Prouett, 126 F.3d 561, 573-73 (4th Cir. 1997). Public defender did not introduce any other type of mitigating evidence or further investigate into mental health issue. Evidentiary hearing is required.

b). Public defender delay investigating Applicant mental efficacy, when there was a clear indication of mental health problem. She failed to conduct an adequate investigation. She was unreasonable for not obtaining:

1. Family history;
2. Mental health records;
3. Request for a mental health evaluation;
4. Inquire about the effect on medication prescribed and
5. Request for school records,

Applicant's criminal acts are attributable to his disadvantage background, emotional and mental problems. Public defender's failure to examine these files on Applicant fell below the level of reasonable performance, when Public defender did not introduce any type of mitigating evidence. Such failure to present before sentencing phase was prejudicial to Applicant, warranting [post-conviction] relief on grounds of ineffective assistance of counsel. See also Williams v. Taylor, 120 S.Ct 1495 (2000); Council v. State, 670 S.E.2d 356 (S.C. 2008). Evidentiary hearing is required.

c. Denying a PCR applicant a trial/plea transcript to aid him in his searching for, and to analyze counsel's

errors and omissions, effectively denies him the tools and ability to properly answer question on the Form 5 PCR application. Moreover, expect him to specifically and accurately formulate or express grounds from which his complaints are based, regarding counsel's performance during the criminal proceedings, and any resulting prejudice, certainly deprives the PCR applicant the most important, fundamental tool to effectively mount collateral attack upon a faulty conviction. See Hawkins v. Mullins, 291 F.3d 658 (10th Cir. 2002).

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_ *N/A*
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_ *N/A*
- iv. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_ *N/A*
- iv. \_\_\_\_\_

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

\_\_\_\_\_ *N/A*

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

(a) which grounds have been presented:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_ *N/A*
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_ *N/A*
- iii. \_\_\_\_\_

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

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_ w/A \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) your arraignment and plea? Yes \_\_\_\_\_
- (b) your trial, if any? no \_\_\_\_\_
- (c) your sentencing? Yes \_\_\_\_\_
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? no \_\_\_\_\_
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?  
no \_\_\_\_\_

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
  - i. Sarah Henry, Esquire, 305 E. North St., Rm. 123  
Greenville, South Carolina 29601
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Plea \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

That the Court enter judgment granting applicant's application  
for post-conviction relief, and remanding the criminal  
case for mental evaluation and a new trial.

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

no

STATE OF SOUTH CAROLINA )  
County of GREENVILLE )

VERIFICATION

I, Patrick Massey # 358341, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

P.C. Massey

SWORN to and subscribed before me this 07  
day of July, 2014.

J. Franklin (L.S.)  
Notary Public

My Commission Expires: 12.16.2019

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

I, Patrick Massey #358341, 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.

P.C. Massey  
Applicant

SWORN or affirmed to and subscribed before me this  
07 day of July, 2014.

[Signature]  
Notary Public

My Commission Expires: 12-16-2019

STATE OF SOUTH CAROLINA  
County of Greenville

IN THE COURT OF COMMON PLEAS  
Thirteenth Judicial Circuit

Patrick Massey #358341  
Applicant,

Case No: **2014-CP-23**

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMER  
2014 AUG 23 PM 2  
04

v.

CERTIFICATE

State of South Carolina  
Defendant.

\_\_\_\_\_ X

The undersigned, Applicant hereby certifies he has served true and correct copy of the enclosed Application for Post-Conviction Relief on Paul B. Wickensimer, Greenville County Clerk of Court, 305 East North Street, Greenville, South Carolina 29601 by placing foresaid copy in a properly addressed, first-class postage affixed envelope and placed in the U.S. Mail, this 7th day of JULY, 2014.

cc: John W. Whitmire, Esq.  
Attorney General Office  
1000 Assembly Str. Rm. 519  
P.O. Box 11549  
Columbia, S.C. 29211

File

Patrick Massey  
Patrick Massey #358341  
M' Cormick Correctional Ins.  
386 Redemption Way  
M' Cormick, South Carolina

29899

Patrick Massey 358341  
MCI / 4-B-152  
386 Redemption Way  
McCormick, S.C. 29899

June 9, 2014

Paul B. Wickensimer  
Clerk of Court  
305 East North Street  
Circleville, S.C. 29601

Re: Post-Conviction Relief

Dear Wickensimer, Clerk of Court:

Enclosed please find a <sup>summon and</sup> application for post-conviction relief to be filed in this Court. If any question, feel free to contact me at above address. Please return a clock / stamped copy.

Best regards



Patrick Massey

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2014-CP-23-4304
COUNTY OF GREENVILLE	)	
	)	
Patrick Chase Massey,	)	
S.C.D.C. No. 358341,	)	
	)	
Applicant,	)	<b>RETURN AND PARTIAL MOTION TO DISMISS</b>
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed August 4, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment.

A.

The Greenville County Grand Jury indicted the Applicant at the April 2012 term of General Sessions for possession of amphetamine (2012-GS-23-0194). Caroline Horlbeck, Esquire represented the Applicant.

On May 21, 2012, the Applicant pled guilty. The Honorable Letitia H. Verdin sentenced the Applicant to two years suspended to one year probation. The Applicant did not appeal.

B.

The Greenville County Grand Jury indicted the Applicant at the May 2013 term of General Sessions for attempted first-degree burglary (2012-GS-23-7409), two counts of breaking and entering a motor vehicle (2012-GS-23-7410, -7415), two counts of first-degree burglary

(2012-GS-23-7417, -7418), and malicious damage to personal property (2012-GS-23-7420. Sarah Henry, Esquire represented the Applicant.

On January 6, 2014, the Applicant pled guilty. The Honorable Robin B. Stilwell sentenced the Applicant to concurrent terms of 15 years for attempted first-degree burglary, 5 year for each count of breaking and entering a motor vehicle, 15 years for each count of first-degree burglary, and 5 years for malicious damage to personal property. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. The January 2014 guilty plea transcript will be forwarded upon receipt.

## II.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
  - a. "[D]elay investigating Applicant mental efficacy, when there was a clear indication of mental health problem. She failed to conduct an adequate investigation."
2. Involuntary guilty plea "due to mental illness and misunderstanding of counsel advice."

## III.

Respondent submits all issues related to the Applicant's May 21, 2012 guilty plea hearing should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). South Carolina Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The Applicant pled guilty to the offense on May 21, 2012. The Applicant was therefore required to file his application before May 21, 2013. This application was filed on August 4, 2014, which was more than 1 year and 2 months after the statutory filing period expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, the Respondent requests that this Court summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

#### IV.

As to issues related to the Applicant’s January 6, 2014 guilty plea hearing, the Respondent asserts the Applicant’s allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant’s attorney rendered effective assistance well within the standard of “reasonableness within professional norms” for a defense attorney.

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 on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441,

442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983).

## V.

As to issues related to the Applicant's January 6, 2014 guilty plea hearing, the Respondent submits the Applicant's assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the

maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant’s knowing and voluntary waiver of statutory or constitutional rights in a guilty plea “must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant’s counsel, or both.” Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

The Respondent submits the record fully supports the knowing and voluntary nature of the Applicant’s plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248.

VI.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VII.

WHEREFORE, having made its Return and Partial Motion to Dismiss, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.


Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. MCINTOSH  
Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

P.O. Box 11549  
Columbia, S.C. 29211

By:   
Attorneys for Respondent

November 22, 2014

STATE OF SOUTH CAROLINA )  
 ) COURT OF COMMON PLEAS  
 COUNTY OF GREENVILLE )  
 Patrick Chase Massey, )  
 )  
 Applicant, )  
 v. ) Case No. 14-CP-23-4304  
 )  
 State of South Carolina, )  
 )  
 Defendant. )

TRANSCRIPT OF HEARING

The within Post-Conviction Relief Hearing in the above-captioned matter was held on October 21, 2015, before The Honorable Perry H. Gravely in Courtroom 6 of the Greenville County Courthouse, 305 East North Street, Greenville, South Carolina; attended by counsel as follows:

APPEARANCES:

R. Mills Arial, Esq.  
... appearing for Applicant

Karen Ratigan, Esq.  
Assistant Attorney General  
... appearing for State of South Carolina

Deborah Garrison  
Circuit Court Reporter – 13th Judicial Circuit  
P O Box 27145  
Greenville, South Carolina 29616-7145  
[dgarrison@sccourts.org](mailto:dgarrison@sccourts.org)

## Patrick C. Massey v. State of South Carolina

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Case No. 14-CP-23-4304

Hearing of October 21, 2015

Before The Honorable Perry H. Gravely

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\*No Exhibits Entered

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## Patrick C. Massey v. State of South Carolina

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Case No. 14-CP-23-4304

Hearing of October 21, 2015

Before The Honorable Perry H. Gravely

1 THE COURT: All right. You may  
2 proceed. This is Massey?

3 MS. RATIGAN: Thank you, Your Honor.  
4 May it please the Court? This is the case of  
5 Patrick Massey versus the State of South  
6 Carolina. The docket number is 2014-CP-23-  
7 4304.

8 Mr. Massey actually in his PCR  
9 application attacks two separate sets of  
10 convictions. The first of which I will  
11 recite to the Court and note that I have  
12 moved to dismiss that because it is untimely.

13 He was indicted in 2012 for  
14 possession of amphetamine. He was  
15 represented on that charge by Caroline  
16 Horlbeck. He pled guilty May 21<sup>st</sup> of 2012  
17 before Judge Verdin and he received two years  
18 suspended to one-year probation. He did not  
19 file an appeal. The State filed a partial  
20 motion to dismiss in this case. That partial  
21 motion has to do with this particular charge.  
22 The application filed in this matter was  
23 untimely by a year and two months.

24 However, he has a separate and  
25 second set of charges from 2013: attempted

## Patrick C. Massey v. State of South Carolina

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Case No. 14-CP-23-4304

Hearing of October 21, 2015

Before The Honorable Perry H. Gravely

1 first degree burglary; two counts of breaking  
2 and entering a motor vehicle; two counts of  
3 burglary first; and malicious injury to  
4 personal property.

5 He was represented on these charges  
6 by Ms. Henry. On January 6, 2014 he pled  
7 guilty before Judge Stilwell. He received  
8 concurrent sentences of fifteen years for  
9 attempted first degree burglary; five years  
10 for each count of breaking and entering a  
11 motor vehicle; fifteen years for each count  
12 of first degree burglary and five years for  
13 the malicious damage charge. He did not file  
14 an appeal.

15 The State's position is that the  
16 application regarding these second set of  
17 charges is timely. So at this time we ask  
18 for the first set to be dismissed as untimely  
19 but proceed with an evidentiary hearing on  
20 the second set of charges.

21 THE COURT: All right. Mr. Arial?

22 MR. ARIAL: Yes, Your Honor?

23 THE COURT: What is your position  
24 on the first one, on the motion to dismiss?

25 MR. ARIAL: Well, I have talked

## Patrick C. Massey v. State of South Carolina

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Case No. 14-CP-23-4304

Hearing of October 21, 2015

Before The Honorable Perry H. Gravely

1 with my client. He agrees the first one is  
2 not timely. We're not proceeding on those.

3 THE COURT: Okay.

4 MR. ARIAL: We're proceeding on  
5 the charges with Ms. Henry. And those ones,  
6 the second set that he pled guilty to I think  
7 on January 6, 2014.

8 THE COURT: All right. Then the  
9 Court will grant the motion to dismiss as to  
10 the possession of meth charge and proceed  
11 with the hearing on the burglary, breaking  
12 and entering, and etcetera.

13 MR. ARIAL: Yes, Your Honor. I  
14 call Mr. Massey to the stand.

15 THE COURT: Mr. Massey.

16 MR. ARIAL: Actually, excuse me,  
17 Your Honor. One thing I forgot to tell you.  
18 We had discussed and I need to make a motion.  
19 He wanted to continue this matter based upon  
20 his mental health records that he believes  
21 are necessary for this. I've discussed with  
22 him, talked with him in regards to them and  
23 told him I think we can get this testimony  
24 through Ms. Henry and the information she  
25 had. She has this information and had this

## Patrick C. Massey v. State of South Carolina

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Case No. 14-CP-23-4304

Hearing of October 21, 2015

Direct Examination of Patrick C. Massey

1 before the plea. He wanted me to make a  
2 motion for continuance in regards to it.  
3 I've told him I would do that. But I'm ready  
4 to proceed if you determine that we need to  
5 go forward.

6 THE COURT: And can you address  
7 that Ms. Ratigan?

8 MS. RATIGAN: Your Honor, the  
9 State's position is we're ready to proceed  
10 today. As Mr. Arial noted, Ms. Henry has the  
11 medical records in her file. And we believe  
12 that we can adequately go through those while  
13 she's on the witness stand.

14 THE COURT: Okay. I think that  
15 would be appropriate and that's what he's  
16 looking for anyway. So I'm going to deny the  
17 motion for a continuance.

18 APPLICANT MASSEY: Permission to  
19 address the Court, Your Honor?

20 THE COURT: You need to go through  
21 your attorney. Talk with him.

22 APPLICANT MASSEY: (Sidebar  
23 discussion with Mr. Arial)

24 MR. ARIAL: Your Honor, we're  
25 ready to proceed. I'm going to call Mr.

## Patrick C. Massey v. State of South Carolina

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Case No. 14-CP-23-4304

Hearing of October 21, 2015

Direct Examination of Patrick C. Massey

1 Massey.

2 THE COURT: All right. Mr.

3 Massey.

4 (WITNESS TAKES STAND)

5 PATRICK MASSEY, having been duly sworn to  
6 tell the truth, and nothing but the truth,  
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MR. ARIAL:

10 Q. Mr. Massey, how are you doing today?

11 A. I'd be doing a lot better if I had a  
12 continuance, to be honest.

13 Q. I understand that. Now that we're  
14 here and we need to proceed, I want to put up  
15 as much -- I mean, I want to put up the  
16 information that you've got to let the Court  
17 know what the grounds for your PCR are.

18 Now, we've discussed and gone through it,  
19 Ms. Henry has represented you on these  
20 matters we're currently here on; is that  
21 correct?

22 A. Yes.

23 Q. Okay. How long did she represent  
24 you?

25 A. How long?

## Patrick C. Massey v. State of South Carolina

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Case No. 14-CP-23-4304

Hearing of October 21, 2015

Direct Examination of Patrick C. Massey

1 Q. Yeah. I mean, the year or ---

2 A. She represented me 2012 all the way  
3 up until I was convicted until I signed the  
4 guilty plea in 2014, at the beginning of  
5 2014.

6 Q. So she represented you somewhere  
7 close to a year and a half, two years; is  
8 that right?

9 A. Yes, sir.

10 Q. Now, during that period of time,  
11 were you out on bond or were you incarcerat-  
12 ed?

13 A. I got out on bond and I ended up  
14 coming back to jail multiple times during  
15 that time period.

16 Q. Okay. And then during that period  
17 of time, how many discussions do you think  
18 you had with Ms. Henry in regard to your  
19 cases?

20 A. When she -- just whenever she came  
21 with the plea offer from the Solicitor.  
22 That's when I had discussions with her  
23 regarding my case.

24 Q. Okay. Did you discuss the evidence  
25 in the case?

## Patrick C. Massey v. State of South Carolina

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Case No. 14-CP-23-4304

Hearing of October 21, 2015

Direct Examination of Patrick C. Massey

1           A. Yes, we did discuss it. She  
2 mentioned that she obtained the records. She  
3 looked at the records but she didn't -- she  
4 specified that she didn't see the need for a  
5 psychiatric evaluation, that she didn't see  
6 how it would help me even though my  
7 testimony; and my statement says that I was  
8 blacked out during the commission of the  
9 crimes, when I had no knowledge of what I was  
10 doing.

11           Q. Okay. So let's go back a little  
12 bit, because there's two different things I  
13 want to get into. So you discussed the  
14 evidence that was in the case. And that's  
15 witnesses who were going to testify against  
16 you, you know, evidence that was there. Did  
17 you talk with her about that?

18           A. No.

19           Q. I mean, she didn't tell you this is  
20 what the State's going to come in and try to  
21 say about what you did?

22           A. No. She said that the State was  
23 going to sentence me to life if I took my  
24 case to trial. No matter what, they were  
25 going to sentence me to life.

1 Q. And I know -- and I want to get --  
2 to make sure, did you have any discussion  
3 with her about the facts, circumstances,  
4 evidence, in the case?

5 A. Yes.

6 Q. Okay. Did you understand that when  
7 you discussed it with her?

8 A. No.

9 Q. Okay. That gets into one of the  
10 main issues you've got. Do you believe --  
11 I mean, did you ever tell her 'I'm not  
12 understanding what you're talking about. I  
13 don't understand what went on' -- or any of  
14 that information?

15 A. Yeah. I did. I did tell her that.  
16 I don't understand how they're going to  
17 sentence me to life when I had no knowledge  
18 of what I was doing.

19 Q. Okay. Did you tell her anything  
20 about your previous medical, you know,  
21 condition?

22 A. Yes, I did.

23 Q. What did you tell her?

24 A. She obtained my records from the  
25 Carolina Center for Behavioral Health, with

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1 the medications that I was on, the six  
2 different mental health medications that she  
3 seen that I was on.

4 Q. Okay.

5 A. And she had knowledge that I was  
6 just placed on this medication only a month  
7 before the alleged crime(s) occurred. But  
8 she didn't feel the need to have me evaluated  
9 to test for criminal responsibility during  
10 the commission of the incidents.

11 Q. Why? Did she tell you why she  
12 didn't feel that was necessary?

13 A. She said insanity wouldn't be a  
14 defense because in order for insanity to be a  
15 defense, I would have to be insane before the  
16 commission of the crime, during and after.

17 Q. Okay. Did you tell her anything  
18 about what you remember about the incident or  
19 anything of that nature?

20 A. Yes. I told her everything I  
21 remembered, which was what was in my  
22 statement and when I came to. And when I  
23 came to, I don't remember specifically what I  
24 said when I did come to. But it was when I  
25 was on my knees putting my hands behind my

1 back and I'm turned around and seeing blue  
2 lights behind me. At that point, I came to.  
3 I don't know how it was.

4 Q. So that's the only thing you  
5 remember about it?

6 A. Yes. That's the only thing I  
7 remember about it.

8 Q. Okay. And let's go back ---

9 A. My arrest.

10 Q. What's that?

11 A. Was my arrest. That's all I  
12 remember that night.

13 Q. Now, going back to your medical  
14 history, tell me a little bit about any type  
15 of medical or mental issues that you've had  
16 in the past?

17 A. I don't remember what I was  
18 diagnosed with at the Carolina Center for  
19 Behavioral Health. I don't have records to  
20 substantiate what I was diagnosed with now.  
21 And I haven't had the records to go over and  
22 review.

23 But what I do remember is the medications  
24 that I was prescribed for this.

25 And I'm going to back up. Before that, a

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1 month before that, when I was placed in the  
2 psychiatric ward after being admitted to the  
3 emergency room of Spartanburg Regional  
4 Hospital, which I don't have records to  
5 substantiate this evidence either, which is  
6 why I was requesting a continuance. But I  
7 was placed in there for an attempted suicide.  
8 So that proves, those records will prove the  
9 lack of mental stability.

10 Also going into the Carolina Center for  
11 Behavioral Health, the diagnosis that I did  
12 receive and the medications prescribed for  
13 these diagnosis were the six different mental  
14 health medications: one of which being,  
15 Celexa, which just a mild anti-depressant.  
16 The next one being an anti-anxiety which, you  
17 know, is Buspar, another mild mental health  
18 medication. The next one being Hydroxyzine,  
19 that's to further lower my anxiety level.  
20 They get up whenever they increase whenever  
21 I'm on my original anxiety medication, this  
22 will bring -- this medication will bring  
23 those levels down whenever I'm already on  
24 this medication. And let's see that's three  
25 of them. Let's see: Celexa, Buspar,

1 Hydroxyzine.

2 Trazadone, a hundred and fifty milligrams  
3 of that, which was given to help me -- it was  
4 also for anxiety and to help me sleep.

5 Seroquel, which was to help me knock me  
6 out without having dreams.

7 The Prazosin was to help control the  
8 dreams. And when I started taking Prazosin,  
9 the first time that I took it, I slept  
10 walked. I walked from the living room into  
11 the kitchen. I got up off the couch, walked  
12 from the living room into the kitchen. And,  
13 see, I remember this. I walked from the  
14 living room into the kitchen and walked back  
15 into the living room. After seeing flames  
16 come from the kitchen floor, I walked through  
17 the flame back from the kitchen into the  
18 living room and I laid back down on the couch  
19 and went to sleep like nothing ever happened.

20 Now, during the commission of these  
21 incidents, I was not sleepwalking but my  
22 mother can testify that when I took all these  
23 medications that I was in a child-like state  
24 of mind. I was very loopy. My receptors  
25 wasn't firing right. And I just -- I wasn't

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1 myself at all. She testified that on the --  
2 during the plea proceeding, the court  
3 proceeding, when I took the plea.

4 Q. Okay. So there's two different  
5 parts I want to concentrate on. First of all  
6 you're saying you didn't remember what  
7 happened when you committed -- when you had  
8 these incidents, I guess, going on. Then the  
9 second step is you came in for a guilty plea;  
10 correct?

11 A. Yes.

12 Q. So do you remember or have any  
13 discussion with Ms. Henry about 'I'm not  
14 understanding what's going on' or anything  
15 about your guilty plea?

16 A. Well, no I didn't say that I didn't  
17 understand. In fact, I didn't know what I  
18 was doing. She said, here's the plea for  
19 fifteen, I want you to sign right here. When  
20 she said fifteen, I thought she was talking  
21 about fifteen months. And the reason being  
22 is because she told me and my mother -- she  
23 lied to me and my mother, which I don't have  
24 records to substantiate this, but she lied to  
25 me and my mother and told me that I would be

1 sentenced to intensive rehab and that I would  
2 not be placed with murderers, rapists, child  
3 molesters and such. And saying this, I still  
4 didn't want to plead guilty.

5 But my mother felt that 'well, he's not  
6 going to prison.' I guess that's what she  
7 felt like. But she said "sign the plea,  
8 son." Sign the plea. I still didn't want to  
9 plead guilty because I know that I wasn't  
10 criminally responsible for the allegations  
11 brought -- for the charges brought against  
12 me.

13 Q. So you're saying that you were  
14 promised by Ms. Henry supervised or intensive  
15 treatment?

16 A. Yes. That's what she said.

17 Q. And no jail time?

18 A. She also said that I would be  
19 evaluated by the State Mental Health  
20 Department.

21 Q. Okay. But at no time were you aware  
22 or thought you were going to get fifteen  
23 years?

24 A. Yeah. At that time -- but I wasn't  
25 ready to go forward with it. I wasn't ready

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1 to go -- I just signed it at that time for my  
2 mom because she -- basically, to make her  
3 feel better about the situation, because this  
4 is a lot of time. I've never been facing  
5 this kind of time before. And I didn't --  
6 you know, I wanted everything to be okay  
7 between me and my mom and the family  
8 situation that I'm living with, you know.  
9 And I didn't want -- really, I wanted an  
10 attorney who had my best interests at heart.

11 Q. Well, here's what I'm trying to  
12 figure out. I mean, you went in front of the  
13 judge. You're pleading guilty. And at some  
14 point during this whole discussion there's a  
15 discussion about your medication, about being  
16 of your right mind, all that.

17 A. (Affirmative nod).

18 Q. You continue with the plea. It's  
19 allowed to go forward because you say okay.  
20 Why at that point in time didn't you say  
21 something and say 'I don't understand what's  
22 going on or I don't want to do this.' Do you  
23 remember any of that?

24 A. Your Honor, I'm going to be honest.  
25 I thought that if I just got up here and just

1           made something up and said that I remembered  
2           doing everything, that maybe they'd be  
3           lenient on me. And two, when I signed the  
4           plea for fifteen, like I said, I believed I  
5           was signing for fifteen months. I didn't  
6           know what I was doing. I'd just been  
7           prescribed the same medication that I was  
8           taken -- well, pardon my -- but I had just  
9           been prescribed the same medication that I  
10          was taking during the commission of the  
11          incidents two nights before I came up here  
12          and took the plea. Two nights before I came  
13          up here and took the plea. So I was not in  
14          my right state of mind when I took the plea.  
15          I just thought I was.

16                 Q. Did you tell Ms. Henry that you  
17                 weren't in the right state of mind when you  
18                 came and did your plea?

19                 A. Your Honor, I didn't even -- what's  
20                 understood didn't have to be explained, Your  
21                 Honor. But what I mean by that is, when I  
22                 had a nervous breakdown in front of her when  
23                 I was signing the plea for fifteen, which I  
24                 thought was -- which I was just hoping was  
25                 fifteen months. So that's what I thought.

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1           When I had this nervous breakdown, I mean,  
2           that can pretty much tell you I'm not in my  
3           right state of mind and I'm not ready to go  
4           forward.

5           Q.    Okay.

6           A.    And then having a nervous breakdown  
7           on the stand too.

8           Q.    Did she go over with you any of your  
9           medical records or any of your previous  
10          mental diagnoses, anything of that nature?

11          A.    During the plea -- during the ---

12          Q.    Before? Before that?

13          A.    Before that?

14          Q.    Yeah.

15          A.    What, to the courts?

16          Q.    No, to you. Did y'all discuss it?  
17          Did she ask you, you know, anything about  
18          that?

19          A.    Yes. But like I said she ---

20          Q.    Did you request a mental evaluation  
21          from her?

22          A.    She said that she didn't believe it  
23          would do any good. See, I didn't know the  
24          law concerning Title XIV and with a mental  
25          health evaluation. I didn't know that it

1           could actually benefit me, that they did a  
2           test for criminal responsibility to see if I  
3           would have been responsible during the  
4           commission of the crimes. So, therefore,  
5           that's prejudice, denying me that right.

6           Q. Are there any other grounds you want  
7           the Court to be aware of that you want to  
8           have him consider in your PCR?

9           A. Yes. Also, my indictments are  
10          defective. But I'm not going to argue the  
11          defectiveness of the indictments. I'm --  
12          arguing the fact that they were indicted  
13          illegally when they were signed by the  
14          foreman of the Grand Jury on the true bill,  
15          which I have here, to substantiate this.  
16          They were not dated when they were signed.  
17          And on the body they were clock-stamped  
18          according to -- according to -- pardon my --  
19          I'm not used to being on the stand. They  
20          were clock-stamped on May the 21<sup>st</sup>. And in  
21          General Sessions, the Court of General  
22          Sessions when the Grand Jury convenes, that  
23          it's supposed to be on the first two Mondays  
24          in May. So if they clock-stamped them in  
25          May, it was supposed to be on the first two

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1 Mondays and not on the 21<sup>st</sup>. If it would have  
2 been -- the latest that it could have been  
3 would have been on the 14<sup>th</sup>. So the 21<sup>st</sup> is  
4 not a legal date to -- for the Grand Jury to  
5 convene and clock stamp my indictments.

6 Q. So you're not saying they didn't  
7 convene and indict you for it, you're just  
8 saying they did it on the wrong date?

9 A. If it was even the Grand Jury that  
10 did sign and convene on it. I mean, because  
11 during the 21<sup>st</sup>, that's the Court of Common  
12 Pleas, the 21<sup>st</sup> of May. And, also, you know,  
13 that's a due process violation. That's  
14 against my 5<sup>th</sup> and 14<sup>th</sup> Amendments, Your Honor.  
15 That's for a plain error 052D.

16 MR. ARIAL: Your Honor, I have no  
17 further questions.

18 THE COURT: All right. Ms.  
19 Ratigan.

20 MS. RATIGAN: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MS. RATIGAN:

23 Q. So when Ms. Henry came to see you,  
24 y'all discussed the charges against you?

25 A. Yes ma'am.

1 Q. And you stated you didn't discuss  
2 the evidence with her at all?

3 A. The evidence?

4 Q. The State's evidence against you,  
5 like the incident reports and photographs?

6 A. Yeah. We discussed -- she discussed  
7 the evidence against me.

8 Q. Okay.

9 A. She mentioned that.

10 Q. And you basically told her you have  
11 no memory of anything before the arrest?

12 A. Yes.

13 Q. You were on these various  
14 medications at the time; right?

15 A. Yes.

16 Q. And you were also drinking that  
17 night?

18 A. Yes. I did have a drink of alcohol.

19 Q. And did Ms. Henry explain to you the  
20 idea of voluntary intoxication not being a  
21 defense to a criminal action. Did y'all talk  
22 about that? Does that sound familiar?

23 A. Yes. Yes, she did mention that.

24 Q. Okay. Did she tell you that since  
25 you were on these drugs and you drank on top

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1 of that, that you wouldn't be able to argue  
2 that you didn't remember anything? Did she  
3 kind of discuss that with you?

4 A. Yes.

5 Q. Okay. And you can remember the  
6 drugs you were prescribed. You just can't  
7 remember what you were diagnosed with?

8 A. Yes.

9 Q. But at least -- you mentioned  
10 anxiety a couple of times. At a minimum, you  
11 were diagnosed with anxiety?

12 A. At a minimum?

13 Q. Right. If you can't remember  
14 anything else, you were definitely at least  
15 diagnosed for anxiety because you were taking  
16 anxiety medicine?

17 A. I was diagnosed with depression,  
18 anxiety disorder, anti-social personality  
19 disorder, post-traumatic stress disorder and  
20 I'm not sure of the others.

21 Q. Okay. You have a prior conviction  
22 in 2007 and also in 2011; is that correct?

23 A. (No verbal response).

24 Q. According to the State after guilty  
25 plea hearing, your prior record was a 2007

1 malicious injury to personal property. And  
2 then in 2011 two counts of possession of  
3 marijuana and unlawful entry. Does that  
4 sound familiar?

5 A. In 2011 two counts of possession of  
6 marijuana and an unlawful entry.

7 Q. You had some prior convictions  
8 before this; correct?

9 A. Yes. Yes, ma'am.

10 Q. Okay.

11 A. Where stuff was stolen.

12 Q. Okay.

13 A. Yeah.

14 Q. But do when you had these prior  
15 convictions did you have a competency  
16 evaluation at that time?

17 A. Oh, no, Your Honor. Your Honor, I  
18 didn't have a competency evaluation.

19 Q. And about a month after this guilty  
20 plea, you had a probation revocation on some  
21 Oconee County charges; correct?

22 A. Probation revocation?

23 Q. Uh-huh. You had some Oconee County  
24 charges and you went to court in 2014 and had  
25 a revocation; is that correct?

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1           A. Let me back up. That's correct.  
2           But the wrongful entry, I don't remember --  
3           in 2011 -- in 2010 I remember second degree  
4           burglaries that I received probation for in  
5           Oconee County where stuff -- where properties  
6           was stolen from peoples' houses.

7           Q. Okay.

8           A. But I wasn't on mental health  
9           medication at the time where I wasn't -- I  
10          was sane back then. I was in my right state  
11          of mind.

12          But I went to the Carolina Behavioral  
13          Health Center from -- resulting from a  
14          breakup that I just went completely  
15          emotionally discombobulated on. And they  
16          gave me all these disorders and diagnosed me  
17          with all these disorders and put me on these  
18          six different mental health medications. And  
19          I was not in my right state of mind when I  
20          took the mental health medication. So how  
21          would that ---

22          Q. Okay. Well, let's circle back to my  
23          original question.

24          A. Okay.

25          Q. The month after you pled guilty in

1 this case, you had your probation revoked on  
2 those prior Oconee charges. Did you have a  
3 competency evaluation at that probation  
4 revocation?

5 A. I didn't need one.

6 Q. You didn't need one.

7 A. (Negative gesture).

8 Q. Okay. And would it be fair to say  
9 that you were unhappy with Ms. Henry when you  
10 went and pled guilty that day because she  
11 hadn't done what you'd asked her to do?

12 A. Yes.

13 Q. Why didn't you tell the Judge then,  
14 you know, 'I'm unhappy with Ms. Henry. She  
15 didn't get me evaluated like I asked. She's  
16 not doing what I ask.' Why didn't you tell  
17 the judge that?

18 A. I didn't understand the law. I just  
19 said that I understood because I didn't want  
20 to look stupid in front of the courts. Now I  
21 realize how big of a mistake that was.

22 Q. But when the Judge asked if you were  
23 satisfied with your attorney, you just didn't  
24 think you could say you were unsatisfied?

25 A. I knew I could but I didn't really

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1 know how I could say I was unsatisfied with  
2 her.

3 Q. But you'd been to court before. You  
4 knew how court worked; didn't you?

5 A. Not really. I just -- I was in and  
6 out before. I took pleas before too and I  
7 didn't do much of the work. I didn't know  
8 anything about it.

9 Q. Okay. So why did you decide to go  
10 ahead and plead guilty?

11 A. Because, like I mentioned earlier,  
12 she stated that I was signing a plea for  
13 fifteen. I was not in my right state of mind  
14 when I signed this plea. I thought I was  
15 signing a plea for fifteen months. When I  
16 left the courtroom, I hear the judge say  
17 something about parole and probation and I  
18 thought I could get parole. I thought that  
19 I -- actually, I thought I was going out on  
20 probation.

21 Q. So who told you fifteen months? Ms.  
22 Henry?

23 A. She said "fifteen."

24 Q. And you just assumed it was fifteen  
25 months?

1           A.    Yes ma'am.

2           Q.    So at the plea hearing when the  
3           State said the recommendation was fifteen  
4           years, did you just not pay attention to that  
5           part of the plea?

6           A.    I don't remember too much. That's  
7           why I was requesting the plea transcripts, my  
8           case file and everything else before I came  
9           here.

10          Q.    Okay.

11          A.    I have the documentation of my  
12          request.

13          Q.    All right. But that's not what I'm  
14          asking you. What I'm asking you is do you  
15          remember the solicitor saying at the plea  
16          hearing the recommendation was fifteen years?

17          A.    No, I don't remember that.

18          Q.    And did Ms. Henry ever show you  
19          anything in writing that said it would be  
20          fifteen months or fifteen years?

21          A.    She showed me some papers. I didn't  
22          really have much time to read. I was having  
23          a nervous breakdown at the time when I was  
24          signing the papers, and she still allowed me  
25          to sign them. I feel her performance was

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1           deficient in that area too.

2                   MS. RATIGAN: That's all I have,  
3           Your Honor.

4                   THE COURT: Anything further, Mr.  
5           Arial?

6                   MR. ARIAL: No, Your Honor.

7                   THE COURT: All right. You may  
8           step down.

9                                   (WITNESS STEPS DOWN)

10                   THE COURT: All right. Mr. Arial?

11                   MR. ARIAL: Your Honor, I'd call  
12           Kim Massey to the stand.

13                                   (WITNESS TAKES STAND)

14                   KIM MASSEY, having been duly sworn to  
15           tell the truth, and nothing but the truth,  
16           testified as follows:

17                                   DIRECT EXAMINATION

18                   BY MR. ARIAL:

19                   Q. Ms. Massey, how you doing today?

20                   A. Fine.

21                   Q. You are the mother of Patrick; is  
22           that correct?

23                   A. Yes.

24                   Q. Okay. I want to go back through a  
25           little bit about his mental diagnosis and

1 things of that nature so you can give the  
2 Court a little background. Can you tell us  
3 what type of mental issues he was having  
4 prior to these incidents that he's been --  
5 he's convicted of?

6 A. He has been in some kind of mental  
7 health counseling since he was fourteen. And  
8 to my knowledge, the Carolina Behavioral  
9 Center diagnosed him with anti-social  
10 personality disorder. I know that a  
11 psychotherapist diagnosed him with some type  
12 of authority disorder. And when this  
13 happened, he had just started taking  
14 antipsychotic medication. It was anti-  
15 anxiety but it was antipsychotic drugs. He  
16 had been through a bad breakup with his  
17 girlfriend. That's when he started drinking,  
18 that evening. He had tried to commit suicide  
19 a few months before. The same girl. And ---

20 Q. What type of medicine was he on  
21 before the incident?

22 A. I know he was on Buspar and  
23 Trazodone, but I don't remember the other  
24 medications.

25 Q. Okay. Did you see him prior to, I

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1 guess, the incidents that occurred and see  
2 any type of mental state from him that could  
3 give the court some understanding of what he  
4 was going through at that time?

5 A. Did I see?

6 Q. Well, I'm trying to basically  
7 determine what his state was prior to the  
8 incidents?

9 A. He was a mess.

10 Q. Okay. But before do you -- did you  
11 see him after the incidents? When was the  
12 first time you saw him?

13 A. After he was arrested?

14 Q. Right.

15 A. I didn't see him until he got out on  
16 bond.

17 Q. Okay. What was his condition when  
18 he got out?

19 A. He was just acting crazy.

20 Q. Okay.

21 A. He wasn't given any medication when  
22 he was in jail.

23 Q. Uh-huh. Did he have any discussions  
24 with you about what he remembered about the  
25 incident?

1 A. He said he didn't remember anything.

2 Q. Were you a part of any conversations  
3 after Ms. Henry began to represent him? Did  
4 you have any conversations with her or talk  
5 with her at any time?

6 A. Oh, we had lots of conversations.

7 Q. Okay. Did y'all discuss his mental  
8 status?

9 A. Yeah. She just said that, you know,  
10 it wasn't a defense. That, you know, if he  
11 was drinking and taking his medication, then  
12 it wasn't a defense.

13 Q. Was there any discussion about  
14 getting him evaluated?

15 A. No, not to my knowledge.

16 Q. Did you never raise that?

17 A. No.

18 Q. Okay. What about this -- were you a  
19 part of any of the discussions in regards to  
20 the plea of fifteen months? Do you remember  
21 ---

22 A. No. I knew it was fifteen years.

23 Q. Okay.

24 A. But that was the recommendation from  
25 her because she said that if we went to trial

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1           on this, that he would be prosecuted on  
2           all twenty-four charges and that he could get  
3           a minimum of fifteen to life.

4           Q.    Okay.

5           A.    And I strongly encouraged him to  
6           take the plea, because I wasn't willing to  
7           risk that.

8           Q.    Okay.

9           A.    Fifteen years is bad enough.

10          Q.    On the date of the plea, did you  
11          have any discussions with him?

12          A.    Yes.

13          Q.    Do you think he was in his right  
14          mind to enter into the plea and understood  
15          it?

16          A.    No.   The day of the plea, he was in  
17          jail.  And he had been beaten up the night  
18          before.  He came into the courtroom with two  
19          black eyes, stitches in his face and he was  
20          acting crazy as all-get-out that day.

21          Q.    Okay.

22          A.    That's just it.

23                MR. ARIAL:    Your Honor, I have no  
24          further questions.

25                MS. RATIGAN:  I don't have any

1 questions, Your Honor.

2 THE COURT: All right. Thank you,  
3 Ms. Massey.

4 WITNESS: Thank you.

5 (WITNESS STEPS DOWN)

6 MR. ARIAL: Your Honor, I call Ms.  
7 Henry to the stand.

8 THE COURT: All right. Ms. Henry,  
9 please come forward.

10 (WITNESS TAKES STAND)

11 SARAH HENRY, having been duly sworn to  
12 tell the truth, and nothing but the truth,  
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MR. ARIAL:

16 Q. Ms. Henry, how are you doing today?

17 A. Doing good. How are you doing?

18 Q. Good. Doing fine. You represented  
19 Mr. Massey on the charges that we're here  
20 today. And I just want to go through some of  
21 your representation. How long did you  
22 represent him for?

23 A. It looks like I first saw Patrick in  
24 August of 2012.

25 Q. Okay.

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1 A. Uh-huh.

2 Q. And he was out on bond at some point  
3 in time; is that correct?

4 A. He was. He was out for some time at  
5 that time.

6 Q. Okay. And do you remember how many  
7 discussions you had with him about the  
8 evidence in the case?

9 A. Let's check. At least twelve just  
10 from the files I have in the case. I  
11 sometimes don't write down all of them. But  
12 that would include conferences, jail visits,  
13 conversations that I had with him in my  
14 office and conferences with him and his mom  
15 together.

16 Q. Now, during these conversations and  
17 I know that some mental health issues had  
18 come up. Did y'all discuss those issues or  
19 did you have ---

20 A. Yeah. Patrick brought them up  
21 almost when I first started talking to him.  
22 And I got -- it looks like the day after I  
23 saw him is when I started getting medical  
24 records ---

25 Q. Uh-huh?

1           A.    What he and I talked about was  
2           somebody named Dr. Stratton at the mental  
3           health center, who told me would be the  
4           psychiatrist that was treating him right  
5           before he was put in jail. I got the  
6           Greenville County Detention medical records  
7           and then Greenville Mental Health -- mental  
8           records.

9           Q.    Okay. In your review of those  
10          records what did they -- I guess what did  
11          they lead you to believe or confirm about his  
12          mental issues?

13          A.    Patrick definitely had some mental  
14          health issues. So just to kind of go through  
15          them, because they've got, they've got  
16          several different diagnoses. Everybody's  
17          kind of got a different opinion.

18          In something I got from the Mental Health  
19          Center, which his assessment there was August  
20          2<sup>nd</sup>, 2012, which was the most recent one, as  
21          far as I'm aware, before his arrest for the  
22          majority of the burglaries, was that he was  
23          depressed and anxious and that he had self-  
24          diagnosed as having PTSD. But they said that  
25          today that he was not meeting the criteria

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1 and that they could not confirm that  
2 diagnosis. They talked a lot about his  
3 childhood and something that was going on  
4 with his dad. And that he was also had some  
5 kind of ADD, hyperactive disorder when he was  
6 a child. Had started taking Adderall when he  
7 was pretty young. And that was about it for  
8 the report from the Brownell.

9 Q. Right?

10 A. And that's what I went over with  
11 both Patrick and his mom.

12 Q. Uh-huh.

13 A. The other one was the Greenville  
14 County Detention Center, which are the people  
15 that had him directly after his arrest.

16 Q. Yeah?

17 A. And they said -- sorry. Most of the  
18 stuff that they said seemed to be that they  
19 were going to be putting him back on his  
20 medication that he was already, like,  
21 prescribed. They put him back on the  
22 Seroquel, the Celexa and the Buspar. They  
23 had restarted all three of those. And the  
24 rest of it is information that they took from  
25 him.

1 Q. Okay.

2 A. Like saying, 'Is suicide a concern?'  
3 They said yes because he had told them that  
4 he tried to commit suicide once before. And  
5 that was confirmed by his mom and him in our  
6 conversations.

7 Q. Okay.

8 A. And then the last one is the medical  
9 records, medical health records, from the day  
10 that he was arrested.

11 Q. Uh-huh.

12 A. He stayed in the hospital because he  
13 did have injuries from some of the  
14 burglaries. And, again, this is all -- says,  
15 self-diagnosed. He reports that he's got  
16 bipolar and that he has anxiety and  
17 depression issues. None of the medical  
18 professional stuff that I got said that he  
19 had bipolar or was self-diagnosed then. But  
20 that is included in this report.

21 Q. Okay.

22 A. I will also point out that what I  
23 found -- I feel that Patrick had a really  
24 hard time dealing with this. And one of the  
25 reasons that we went in the direction that we

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1 did, as far as memory issue is concerned, is  
2 that when Patrick was interviewed by the  
3 nurses when he was arrested he acknowledged  
4 that the injuries were dog bites. He later  
5 tried to claim that they -- it was from  
6 tension barbed wire or that he'd cut himself  
7 with his knife. But directly afterwards he  
8 did remember that he had been bitten. I  
9 mean, does that -- do you understand what I'm  
10 saying?

11 Q. So you're saying he had some  
12 recollection of the events?

13 A. Yes. I think that Patrick did not  
14 -- he did not like that vision of himself and  
15 he was very ashamed of what had happened.  
16 That's my opinion, though.

17 Q. And I guess my -- looking at all of  
18 this, clearly mental issues came up. Did you  
19 believe that it was necessary to have him  
20 evaluated? You made a decision on that?

21 A. I did. After I had been talking to  
22 Patrick and I think I discussed this in the  
23 transcript when I talked to the judge. Is  
24 that the level of mental health issue is  
25 there. It certainly was. But I felt that it

1 was mitigating as opposed to something that  
2 could be used as a defense or that would move  
3 him out of the stream of prosecution  
4 entirely. I discussed that with both Patrick  
5 and his mom, that I didn't think that his  
6 mental health issue, from what I saw talking  
7 to Patrick and what I saw in his medical  
8 history rose to the level where a mental  
9 health evaluation would be helpful.

10 Q. Okay. Did he ever request a mental  
11 health evaluation?

12 A. No. We discussed his mental health  
13 issues but, no.

14 Q. Okay. And the question -- did you  
15 have a discussion with him -- and I know  
16 there's some medication involved with alcohol  
17 the night of. Did you ever discuss with him  
18 about voluntary intoxication?

19 A. We did.

20 Q. Okay. And did he understand that or  
21 have any questions coming off of that?

22 A. He didn't like my answer.

23 Q. Okay. Did you tell him at any time  
24 -- and I guess it was a recommendation for  
25 fifteen years; is that correct?

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1           A.    Yes.

2           Q.    Was he aware it was fifteen years or  
3           fifteen months?

4           A.    So one of the practices that I  
5           instituted working for the public defender's  
6           office is that I have my clients read and  
7           sign the plea offers and date them so that I  
8           know that they've seen them and what they  
9           are.  So Patrick -- this is the plea offer  
10          that we received.  And Patrick signed, dated  
11          it literally two inches under the "fifteen  
12          years, still awaiting DNA results."

13          Q.    All right.

14          A.    So I would say that Patrick was  
15          fully aware that it was a fifteen-year  
16          recommendation.  And it was something that we  
17          discussed.  He's always aware that it's the  
18          mandatory minimum when pleading guilty to a  
19          burglary first, any burglary first.

20          Q.    Okay.  So based on the charges he  
21          had that was the mandatory minimum he was  
22          going to get?

23          A.    Yes.  He could not get less than  
24          that if he was found guilty or pled guilty to  
25          the burglary first.

1 Q. Okay. Now, we just heard his mother  
2 testify that on the date of the plea,  
3 apparently he had been either assaulted the  
4 night before, was not in good shape. Do you  
5 remember any of that?

6 A. I don't have anything in my notes  
7 about it. And it's been -- we're approaching  
8 like a year and three quarters. It's  
9 certainly possible. And his mom would  
10 certainly remember that better than I would  
11 as far as whether he was in an altercation or  
12 not.

13 Q. If you had felt there was an issue,  
14 and I mean any mental health issue or any  
15 type of thing that he didn't understand the  
16 plea, would you have gone forward with the  
17 plea?

18 A. No.

19 Q. No. Did he at any time tell you,  
20 'Let's stop the plea. I don't understand  
21 what's going on. I don't have any  
22 understanding of this.'

23 A. Not that I remember. A lot of  
24 people -- again, I don't. A lot of people  
25 are pretty stressed out when they're pleading

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1 guilty to anything. And I don't remember --  
2 I just don't -- I don't remember Patrick  
3 saying that he didn't want to go forward with  
4 it or anything else. But I know it's been a  
5 long time. And I mean, I would not do -- you  
6 know, I have just met with him, you know,  
7 called his mom, you know, talked to her. And  
8 then we did the plea. I don't have any  
9 particular notes about any distress from  
10 Patrick or any resistance.

11 Q. Okay. Do you believe you had enough  
12 information available to you to make a  
13 decision as to whether or not he had some  
14 mental incapacity that would prevent him from  
15 understanding right from wrong?

16 A. I think I had enough information.  
17 I'd been working on this two years at that  
18 point.

19 Q. All right.

20 A. Yes.

21 Q. And you don't think the mental  
22 evaluation was necessary to determine that  
23 either?

24 A. Given the circumstances and the  
25 facts in this situation and Patrick's mental

1 health records and my observations of his  
2 behavior, no.

3 Q. Okay.

4 MR. ARIAL: No further questions,  
5 Your Honor.

6 THE COURT: Let me ask you  
7 something else. There was an evaluation  
8 after the arrest?

9 WITNESS: No.

10 THE COURT: Or some treatment or  
11 something? I thought you referred to  
12 something after the incident?

13 WITNESS: I did. The three  
14 pieces of mental health information that I  
15 have are an assessment right before.

16 THE COURT: August the 2<sup>nd</sup>, I  
17 believe.

18 WITNESS: Yes.

19 THE COURT: All right.

20 WITNESS: And then while -- during  
21 his arrest. But that was not related to his  
22 mental health assessment. It was really done  
23 by people who were in the hospital for the  
24 dog bites. But they had someone talking  
25 about his mental health issues.

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Cross Examination of Sarah Henry

1 THE COURT: Okay.

2 WITNESS: And then Greenville  
3 County Detention Center had him for a  
4 significant amount of time directly after the  
5 arrest and he was seen by a mental health  
6 professional and they did restart his same  
7 medications that he was on prior to his  
8 arrest.

9 THE COURT: All right.

10 WITNESS: Or some of the same  
11 medications.

12 THE COURT: Right.

13 WITNESS: It was just three.

14 THE COURT: All right. Thank you.  
15 Ms. Ratigan?

16 MS. RATIGAN: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. RATIGAN:

19 Q. How many charges did Mr. Massey have  
20 at the end of the day?

21 A. Twenty-four.

22 Q. And did you represent him on all of  
23 those?

24 A. Yes, all of those twenty-four.

25 Q. And the charges he didn't plead

1 guilty to, was the balance of those *nolle*  
2 *prossed*?

3 A. Yes.

4 Q. Okay. And when you met with Mr.  
5 Massey did you review the evidence, the  
6 photographs, crime scene reports, all of  
7 that?

8 A. I did.

9 Q. And did you review with him the  
10 charges, like the elements, what the State  
11 would have to prove at trial?

12 A. We talked about all of that.

13 Q. And also the sentencing ranges for  
14 all these charges?

15 A. Yes.

16 Q. And my understanding is Mr. Massey  
17 basically said he blacked out and didn't  
18 recall for the most part?

19 A. Yes.

20 Q. And you testified you discussed with  
21 him that voluntary intoxication was not a  
22 defense. But in your opinion, were there any  
23 viable offenses in this case?

24 A. No. Patrick was in kind of a tough  
25 spot.

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1 Q. And once he was at the jail, it was  
2 your understanding that he was back on at  
3 least some of his medication?

4 A. Yes.

5 Q. Did he ever tell you that the jail  
6 wasn't giving him his meds or giving the  
7 improper meds or anything like that?

8 A. A lot of there's a lag time in the  
9 jail. So I believe that I contacted mental  
10 health or the jail mental health to help get  
11 the ball going because he had been on those  
12 drugs for, some version of them for a while.

13 Q. Did you have any difficulty  
14 communicating with Mr. Massey?

15 A. No.

16 Q. Did he ever tell you he didn't  
17 understand or ask you to explain something  
18 again to him?

19 A. Sometimes yes.

20 Q. And would you explain it to him as  
21 many times as he would need in order to  
22 understand the concept you're talking about?

23 A. Yes. In quite a few meetings. I  
24 also made sure that I met with his mom so  
25 that, you know, we may discuss together

1 everything that was going on.

2 Q. Did he ever tell you why it was he  
3 decided to go ahead and enter a guilty plea?

4 A. My understanding from both of them  
5 is they thought it was the better option.  
6 And that Patrick -- Patrick didn't want to  
7 make a decision. Patrick didn't -- and I --  
8 you see this a lot when the train is coming.  
9 You know, he didn't -- he wanted there to be  
10 like a mystical third option where I made all  
11 of this go away. And we had to go back and  
12 forth about, you know, 'you don't have to  
13 take it.' 'I don't know.' 'Yes.'

14 So, no, I don't think -- Patrick didn't  
15 want a trial and he was really clear about  
16 that. He did wish the plea offer was not  
17 this plea offer. But it was what it was and  
18 he made his choice.

19 Q. Was it close to getting put on the  
20 trial docket or had you not reached that  
21 point yet?

22 A. We were pretty close to it. The  
23 offer actually expired, I believe, in 2013.  
24 And I had to get it revived in order for  
25 Patrick to accept it.

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1 Q. Obviously, it was a while ago so  
2 it's a plea hearing, but do you have any  
3 recollection of him not really engaging in  
4 the plea, not understanding what was going  
5 on, asking you what was going on, anything  
6 that would have been a red flag that he  
7 didn't understand the proceedings.

8 A. No. And when I looked through the  
9 throughout the transcript he's pretty  
10 engaged. He responded to all the questions.

11 MS. RATIGAN: That's all I have,  
12 Your Honor.

13 THE COURT: Anything else, Mr.  
14 Arial?

15 MR. ARIAL: Nothing further, Your  
16 Honor.

17 THE COURT: All right. Thank you.

18 (WITNESS STEPS DOWN)

19 MR. ARIAL: Your Honor, I have no  
20 further witnesses.

21 THE COURT: All right. Anything  
22 from the State?

23 MS. RATIGAN: We would rest on  
24 record and Ms. Henry's testimony, Your Honor.

25 THE COURT: All right. Just one

1 minute.

2 All right. I think I need to review  
3 the transcript more carefully, but I would  
4 point out, Mr. Massey, that just on the  
5 matters that are before me, and I understand  
6 there were some previous, there's some  
7 additional charges that are not actually  
8 before us now, but that if this went back  
9 you're looking at a minimum of possibly sixty  
10 years to several life sentences. So I want  
11 to point that out that your request is it  
12 goes back. And a minimum of sixty years just  
13 on the charges that we're talking about here.  
14 So anyway, I think I need to review the  
15 transcript here. I haven't had a chance to  
16 really to review that as carefully as I'd  
17 like to. So I'm going to take this under  
18 advisement and look at the information here.  
19 Thank you, very much.

20

(TRANSCRIPT CONCLUDED)

21

22

23

24



STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Patrick Chase Massey, )  
 S.C.D.C. No. 358341, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

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IN THE COURT OF COMMON PLEAS  
 C.A. No. 2014-CP-23-4304

**ORDER OF DISMISSAL**

FILED-CLERK OF COURT  
 GREENVILLE CO. S.C.  
 PAUL B. WICKENSIMMER  
 2015 DEC 9 AM 11 38

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 4, 2014. The Respondent made its return and partial motion to dismiss on November 22, 2014. An evidentiary hearing was held on October 21, 2015 at the Greenville County Courthouse. The Applicant was present and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

At the start of the hearing, the Respondent moved to dismiss all claims the Applicant wished to raise related to his May 21, 2012 guilty plea to possession of amphetamine (2012-GS-23-0194). This Court granted the motion, as the Applicant filed his PCR application more than one year after his guilty plea hearing. See S.C. Code Ann. § 17-27-45(a) (2003).

As described supra, the Applicant proceeded solely upon claims related to his January 6, 2014 guilty plea. The Applicant testified on his own behalf. Also testifying were Kimberly Massey and the Applicant's plea counsel, Sarah M. Henry, Esquire. The Court had before it the guilty plea transcript, the Greenville County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, and the return.

### PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the May 2013 term of the Greenville County Grand Jury for attempted first-degree burglary (2012-GS-23-7409), two counts of breaking and entering a motor vehicle (2012-GS-23-7410, -7415), two counts of first-degree burglary (2012-GS-23-7417, -7418), and malicious damage to personal property (2012-GS-23-7420). He was represented by Sarah M. Henry, Esquire.

On January 6, 2014, the Applicant pled guilty. The Honorable Robin B. Stilwell sentenced the Applicant to concurrent terms of 15 years for attempted first-degree burglary, 5 years for each count of breaking and entering a motor vehicle, 15 years for each count of first-degree burglary, and 5 years for malicious damage to personal property. The Applicant did not appeal.

### ALLEGATIONS

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

1. Ineffective assistance of counsel:
  - a. “[D]elay investigating Applicant mental efficacy, when there was a clear indication of mental health problem. She failed to conduct an adequate investigation.”
2. Involuntary guilty plea “due to mental illness and misunderstanding of counsel advice.”

### 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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their



credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

**Ineffective Assistance of Counsel/Involuntary Guilty Plea**

The Applicant alleges his guilty plea was involuntary and that he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985).

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, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Applicant stated he discussed his charges, evidence, and medical records with plea counsel. The Applicant stated he "was blacked out" during these crimes and wanted a psychiatric evaluation. The Applicant stated plea counsel said an evaluation was unnecessary. The Applicant admitted he and plea counsel discussed that he drank alcohol while taking his medication (he stated he was taking a variety of psychiatric medication at the time) and that plea counsel told him neither voluntary intoxication nor insanity were defenses in his case. The Applicant stated he told plea counsel he did not understand their conversations. The Applicant stated he was unhappy with plea counsel but did not tell the plea judge because he did not understand the law. The Applicant stated he believed he was pleading guilty to a 15-month sentence because plea counsel told him he was pleading to 15 and he assumed that meant months. The Applicant admitted he had two prior convictions and a subsequent probation revocation and did not have competency evaluations before any of these court appearances.

Kimberly Massey, the Applicant's mother, stated the Applicant had mental health counseling since he was 14 years old. Mrs. Massey stated she had several conversations with plea counsel and they discussed the Applicant's mental status. Mrs. Massey stated plea counsel said there was no defense because the Applicant was drinking alcohol while taking his medications. Mrs. Massey stated plea counsel told them the recommendation was for 15 years and that counsel had said the Applicant was facing a sentence of 15 years to life imprisonment if he went to trial.

Plea counsel testified she was appointed in August 2012 and represented the Applicant on 24 charges (and that those he did not plead guilty to were nol prossed). Plea counsel testified her notes reflected she had a least a dozen conversations with the Applicant – in jail, in person, or through video conference. Plea counsel testified they discussed the State's evidence, the



charges, and the sentencing ranges. Plea counsel confirmed the Applicant said he blacked out during the crimes. Plea counsel testified there were no viable defenses in this case and that, while she explained to the Applicant that voluntary intoxication was not a defense, he did not like this. Plea counsel testified she obtained his medical records. Plea counsel testified his most recent records indicated the Applicant was depressed and anxious and that he self-diagnosed as having post-traumatic stress disorder). Plea counsel testified she also noted the hospital records from the day of the Applicant's arrest indicated the Applicant self-diagnosed as having bipolar depression. Plea counsel testified the Applicant did not need an evaluation. Plea counsel testified she has her clients read, sign, and date their plea offer and that the Applicant signed and dated his offer two inches below the recommendation for 15 years. Plea counsel testified the Applicant knew the recommendation was for 15 years and that he was facing a mandatory minimum sentence of 15 years. Plea counsel testified she had no difficulty communicating with the Applicant and that he appeared to understand their discussions and the plea proceedings. Plea counsel testified the Applicant was engaged during the guilty plea hearing and she saw no "red flags."

A.

Initially, this Court notes the Applicant admitted to the plea judge that he was guilty. (Plea transcript, p.7). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.3-4; pp.7-8). This Court finds there is no evidence in the guilty plea transcript to support the Applicant's assertion that he did not understand the guilty plea hearing. Rather, the Applicant told the plea judge he understood the questions that had been asked and answered. (Plea transcript, p.7). This Court finds the plea transcript has refuted this

allegation. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007); see also Rayford v. State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him). This Court further finds the Applicant entered a knowing and voluntary guilty plea. See Boykin v. Alabama, 395 U.S. at 243-44, 89 S. Ct. at 1712.

**B.**

This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly review and discuss his case. Plea counsel testified they reviewed the State's evidence, the charges, the sentencing ranges, and the Applicant's medical records. Plea counsel testified there was no viable defense in this case. Plea counsel testified she explained to the Applicant that voluntary intoxication was not a defense to these charges. This Court finds plea counsel's testimony is credible. This Court finds plea counsel thoroughly reviewed the case with the Applicant and explained the facts of his case did not lend themselves to a defense. This Court finds the Applicant has failed to demonstrate what else plea counsel should have done to review and prepare his case. See Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing he would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

**C.**

This Court finds the Applicant failed to meet his burden of proving plea counsel should have had him undergo a competency evaluation. Plea counsel testified she received and

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reviewed the Applicant's medical records. Plea counsel testified she did not believe an evaluation was necessary. Plea counsel testified she saw no red flags in her interactions with the Applicant and that he appeared to understand both their discussions and the plea hearing. This Court finds plea counsel's testimony is credible. This Court notes the Applicant admitted he did not receive evaluations before his 2007 and 2011 convictions or before the probation revocation hearing held one month after he pled guilty in this case. This Court notes that, while the Applicant argues he should have been evaluated because he "blacked out" and could not recall committing the crimes, it is clear this was the result of his own conduct. A review of both the plea transcript and plea counsel's testimony indicates the Applicant was taking certain prescription medication, had been advised not to drink alcohol while taking this medication, and proceeded to become intoxicated and commit these crimes. (Plea transcript, p.11; p.14). A competency evaluation would likely have been of little use in this scenario. Regardless, as the Applicant failed to present either a competency evaluation or expert testimony at the PCR hearing, this Court cannot speculate on the outcome that such may have had upon his case. See, e.g., Lorenzen v. State, 376 S.C. 521, 530, 657 S.E.2d 771, 777 (2008) (finding that, as the applicant failed to present any expert testimony at the PCR hearing, "it is merely speculative that these allegedly favorable expert witnesses would have aided in his defense"); Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (finding that, as the applicant failed to have an expert testify at the evidentiary hearing, "any finding of prejudice is merely speculative").

**D.**

This Court finds the Applicant failed to meet his burden of proving plea counsel misadvised him about the plea recommendation. While the Applicant stated he believed he was pleading guilty in exchange for a recommendation of 15 months imprisonment, this Court does

not find his testimony is credible. Mrs. Massey testified there was a 15-year recommendation. Plea counsel testified it was a 15-year recommendation, the Applicant knew this, and the Applicant signed the plea offer conveying this recommendation. This Court also notes the Applicant did not object at the plea hearing either when the judge advised the minimum sentence for first-degree burglary was 15 years or when the State noted the recommendation was 15 years. (Plea transcript, p.5; p.12). This Court finds the Applicant clearly knew he was pleading guilty in exchange for a 15-year recommendation. This Court finds that, even assuming arguendo that plea counsel misadvised the Applicant about the recommendation, any error was cured by the plea colloquy. See Holden v. State, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011); Burnett v. State, 352 S.C. 589, 593-94, 576 S.E.2d 144, 246 (2003).

**E.**

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel’s performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

**Defective Indictments**

This Court finds the Applicant’s argument that the Grand Jury was not scheduled to

*FHL*

convene when his indictments were signed is without merit. While terms of court are technically prescribed by statute, this Court notes general sessions matters may be transacted during common pleas terms of court and vice versa. See S.C. Code Ann. §§ 14-5-410, -420 (Supp. 2003). In addition, a grand jury may meet at any time ordered by a circuit judge. See S.C. Code Ann. §§ 14-5-910 to -940 (allowing for terms of court not provided for by law); see also Order No. 2011-02-04-01 (S.C. Sup. Ct. Order dated Feb. 4, 2011) (authorizing chief judge for administrative purposes to “determine the dates for the convening of the grand jury in the various counties within the judicial circuit”). Accordingly, a grand jury is not unlawfully impaneled simply because it does not meet during a term of court as provided for in sections 14-5-620 to -820. See State v. Jeffcoat, 26 S.C. 114, 1 S.E. 440, 441 (1887) (“[M]erely changing the time for holding the court did not make the grand jury illegal.”).

Furthermore, a presumption of regularity attaches to proceedings in the Court of General Sessions. Pringle v. State, 287 S.C. 409, 411, 339 S.E.2d 127, 128 (1986) (citing State v. Britt, 235 S.C. 395, 111 S.E.2d 669 (1959); State v. Jones, 211 S.C. 319, 45 S.E.2d 29 (1947); State v. Waring, 109 S.C. 52, 95 S.E. 143 (1918)). Absent evidence to the contrary, the court must presume that a properly returned indictment is valid. State v. James, 321 S.C. 75, 472 S.E.2d 38, 40 (Ct. App. 1996) (citations omitted). The Applicant’s indictments are valid on their face because they state all the necessary elements of the crimes, the date of the offenses, and the name of the accused. Id. at 75, 472 S.E.2d at 40. Likewise, the indictments are stamped “True Billed” and signed by the foreman. Pringle, 287 S.C. at 410, 339 S.E.2d at 128. Thus, the Applicant has failed to meet his burden of proving his indictments were defective or unlawfully obtained.

#### All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this

matter and not specifically addressed in this Order, 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.

**CONCLUSION**

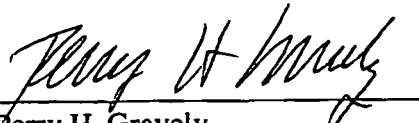
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Furthermore, the Applicant's guilty plea was entered knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**IT IS THEREFORE ORDERED:**

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

**AND IT IS SO ORDERED** this 24<sup>th</sup> day of November, 2015.

  
 \_\_\_\_\_  
 Perry H. Gravely  
 Presiding Judge  
 Thirteenth Judicial Circuit

  
 \_\_\_\_\_, South Carolina.

2402

007809

DOCKET NO. 2012-GS-23-  
LAB

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

TERM <sup>2013</sup> 2012

THE STATE

vs.

PATRICK CHASE MASSEY

IER

IV

0019  
0879

Indictment for

BURGLARY FIRST DEGREE  
(ATTEMPTED)

VIOLATION § 16-11-0311

RECEIVED

SEP 20 2012

Clerk of Court  
Greenville County

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
BURGLARY FIRST DEGREE  
(ATTEMPTED)

MAY 21 2013

At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That PATRICK CHASE MASSEY did in Greenville County, on or about the 7th day of August 2012, willfully and unlawfully attempt to enter the dwelling of TONY FORD located at [REDACTED] Drive, Greer, SC, without consent and with the intent to commit a crime therein, and the attempted burglary was accompanied by circumstances of aggravation, to wit: armed with a deadly weapon. This is in violation of §16-11-0311 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.

  
SOLICITOR

**WITNESSES**

Gary Gilstrap

Greenville County Sheriffs Office

8/9/2012

**ARREST WARRANT NUMBER**  
2012A2330201153

**ACTION OF GRAND JURY**

**TRUE BILL**

**FOREMAN GRAND JURY**

*Foreperson of Grand Jury*

**VERDICT**

*Foreperson of Petit Jury*

*Date:*

**DOCKET NO. 2012-GS-23-**  
LAB  
**The State of South Carolina**  
**County of Greenville**

007410

**COURT OF GENERAL SESSIONS**

**May**

**TERM 2012**

2013

**THE STATE**

**vs.**

**PATRICK CHASE MASSEY**

**Indictment for**

**0258**

**BREAKING AND ENTERING A MOTOR VEHICLE**

**VIOLATION § 16-13-0160**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

**INDICTMENT FOR  
BREAKING AND ENTERING A MOTOR VEHICLE**

At a Court of General Sessions, convened on **MAY 21 2013** the Grand Jurors of Greenville  
County present upon their oath:

That PATRICK CHASE MASSEY did in Greenville County, on or about the 7th day of August 2012, unlawfully  
break or attempt to break into a motor vehicle belonging to TONY FORD, to wit: a 2003 Nissan Pathfinder, with  
the intent to steal the same or anything of value therefrom. This is in violation of §16-13-160 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.

*Lisa Bentley*  
\_\_\_\_\_  
SOLICITOR

**WITNESSES**

Gary W Gilstrap

Greenville County Sheriffs Office

8/7/2012

**ARREST WARRANT NUMBER**

2012A2330201094

**ACTION OF GRAND JURY**

**TRUE BILL**

**FOREMAN GRAND JURY**

*Foreperson of Grand Jury*

**VERDICT**

*Foreperson of Petit Jury*

*Date:*

DOCKET NO. 2012-GS-23-

LAB

007415

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

TERM 2012

2013

THE STATE

vs.

PATRICK CHASE MASSEY

Indictment for

0258

BREAKING AND ENTERING A MOTOR VEHICLE

VIOLATION § 16-13-0160

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
BREAKING AND ENTERING A MOTOR VEHICLE

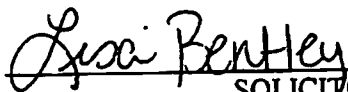
At a Court of General Sessions, convened on  
County present upon their oath:

**MAY 21 2013**

the Grand Jurors of Greenville

That PATRICK CHASE MASSEY did in Greenville County, on or about the 7th day of August 2012, unlawfully break or attempt to break into a motor vehicle belonging to PAULA WHITE, to wit: a 1998 Honda CRV, with the intent to steal the same or anything of value therefrom. This is in violation of §16-13-160 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.

  
SOLICITOR

~~4108~~

007417

DOCKET NO. 2012-GS-23-  
LAB

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May TERM 2012 <sup>2013</sup>

THE STATE

vs.

PATRICK CHASE MASSEY

3ER

RY

Indictment for

0079

BURGLARY FIRST DEGREE

VIOLATION § 16-11-0311

RECEIVED

SEP 20 2012

Clerk of Court  
Greenville County

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
BURGLARY FIRST DEGREE

At a Court of General Sessions, convened on **MAY 21 2013** the Grand Jurors of Greenville

County present upon their oath:

That PATRICK CHASE MASSEY did in Greenville County, on or about the 7th day of August 2012, willfully and unlawfully enter the dwelling of STEPHEN SCHMIDT located at [REDACTED] Court, Greer, SC, without consent and with the intent to commit a crime therein, and the burglary was accompanied by circumstances of aggravation, to wit: armed with a deadly weapon. This is in violation of §16-11-0311 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.

*Lisa Bentley*  
\_\_\_\_\_  
SOLICITOR

110

*RM*

**WITNESSES**

Gary Gilstrap

Greenville County Sheriffs Office

8/7/2012

**ARREST WARRANT NUMBER**  
2012A2330201089

**ACTION OF GRAND JURY**

**TRUE BILL**

*[Handwritten Signature]*

**FOREMAN GRAND JURY**

*Foreperson of Grand Jury*

**VERDICT**

*Foreperson of Petit Jury*

*Date:*

**DOCKET NO. 2012-GS-23-**  
LAB

007018

**The State of South Carolina**

**County of Greenville**

**COURT OF GENERAL SESSIONS**

**May**

**TERM 2012** <sup>2013</sup>

**THE STATE**

**vs.**

**PATRICK CHASE MASSEY**

✓  
0079

**Indictment for**

**BURGLARY FIRST DEGREE**

**VIOLATION § 16-11-0311**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
BURGLARY FIRST DEGREE

At a Court of General Sessions, convened on  
County present upon their oath:

the Grand Jurors of Greenville

**MAY 21 2013**

That PATRICK CHASE MASSEY did in Greenville County, on or about the 7th day of August 2012, willfully and unlawfully enter the dwelling of WILLIAM MORROW located at [REDACTED] Road, Greer, SC, without consent and with the intent to commit a crime therein, and the burglary was accompanied by circumstances of aggravation, to wit: armed with a deadly weapon. This is in violation of §16-11-0311 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.

*Asa Bentley*  
\_\_\_\_\_  
SOLICITOR

112

*RL*

**WITNESSES**

Gary Gilstrap

Greenville County Sheriffs Office

8/7/2012

**ARREST WARRANT NUMBER**  
2012A2330201100

**ACTION OF GRAND JURY**  
**TRUE BILL**

*[Signature]*  
FOREMAN GRAND JURY

*Foreperson of Grand Jury*

**VERDICT**

*Foreperson of Petit Jury*  
Date:

DOCKET NO. 2012-GS-23-  
LAB 007420

**The State of South Carolina**

**County of Greenville**

**COURT OF GENERAL SESSIONS**

**May**

**TERM 2012** *2013*

**THE STATE**

**vs.**

**PATRICK CHASE MASSEY**

✓  
3416

**Indictment for**

**MALICIOUS INJURY TO ANAMILS**

**VIOLATION § 16-11-0510**

**ENTERED  
ACCT**


STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
MALICIOUS DAMAGE TO PERSONAL PROPERTY

At a Court of General Sessions, convened on **MAY 21 2013** the Grand Jurors of Greenville  
County present upon their oath:

That PATRICK CHASE MASSEY did in Greenville County on or about the 7th day of August, 2012,  
willfully and maliciously cut, shoot, maim, wound or otherwise injure or destroy the personal property  
of Jim Mastronardi, to wit; defendant did severely cut and stab the victim's two German Sheppard dogs.  
The dogs did die from their injuries and the value of the dogs was more than Two Thousand Dollars.  
This is in violation of §16-11-0510 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.

  
SOLICITOR

114

WITNESSES

Jeff Hemric

Greer Police Department

8/3/2011

ARREST WARRANT NUMBER  
1583472

ACTION OF GRAND JURY

**TRUE BILL**

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury  
Date:

DOCKET NO. 2012-GS-23-  
BHT

000194

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April

TERM 2012

THE STATE

vs.

PATRICK CHASE MASSEY

Indictment for

3009

POSSESSION OF AMPHETAMINE

VIOLATION § 44-53-0375

STATE OF SOUTH CAROLINA    )  
  )  
COUNTY OF GREENVILLE    )

INDICTMENT FOR  
POSSESSION OF AMPHETAMINE

At a Court of General Sessions, convened on  
County present upon their oath:

APR 24 2012

the Grand Jurors of Greenville

That PATRICK CHASE MASSEY did in Greenville County, on or about the 3rd day of August 2011, willfully and unlawfully have in his possession a quantity of amphetamine, a schedule II controlled substance. This is in violation of §44-53-0375 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.

  
SOLICITOR