

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Spartanburg County

Honorable J. Mark Hayes, Circuit Court Judge

JAMES BOGAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000323

A P P E N D I X

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I N D E X

(There were no exhibits marked during this hearing.)

P R O C E E D I N G S

1
2
3 THE COURT: Mr. Hunter is gonna call the roll of those
4 who are here to offer guilty pleas today, and if you are in
5 the box and your name is called, stand up and remain
6 standing.

7 If you're in the gallery and your name is called, come
8 forward to the jury box to my right and remain standing
9 there. The bailiff will tell you where to, where to stand.

10 You may proceed.

11 SOLICITOR HUNTER: All right. Your Honor, first, in
12 the box, we have Mr. Bogan, James Bogan.

13 (Defendant stands.)

14 SOLICITOR HUNTER: David Bradshaw.

15 (Defendant stands.)

16 SOLICITOR HUNTER: Randy Cogdill.

17 THE COURT: Don't see Mr. Cogdill.

18 SOLICITOR HUNTER: Jeremy Foster.

19 (Defendant stands.)

20 SOLICITOR HUNTER: Darren Millwood.

21 THE COURT: Don't see Mr. Millwood.

22 SOLICITOR HUNTER: Kim Moore.

23 (Defendant stands.)

24 SOLICITOR HUNTER: Kathy Phillips.

25 (Defendant stands.)

1 SOLICITOR HUNTER: Jonathan Velazquez.
2 (Defendant stands.)
3 SOLICITOR HUNTER: Alice Young.
4 (Defendant stands.)
5 SOLICITOR HUNTER: I believe that's Mr. Mitchell Dogan
6 on the end. I'm not sure if he's pleading guilty today or
7 not, Your Honor.
8 THE COURT: Sir, do you intend to offer a guilty plea?
9 DEFENDANT: Yes, sir, I would like to.
10 THE COURT: Who's your lawyer, sir?
11 DEFENDANT: I---
12 SOLICITOR HUNTER: It's Ms. Terry and Mr. Cheek; Your
13 Honor.
14 THE COURT: Ms. Terry.
15 MS. TERRY: Mr. Cheek has been working with him. So,
16 I'm gonna leave that plea to Mr. Cheek, Your Honor.
17 THE COURT: All right. Well, then I probably need to
18 talk to Mr. Cheek to be sure he's intending to offer a
19 guilty plea.
20 This gentleman's name is?
21 SOLICITOR HUNTER: Mr. Randy Cogdill.
22 THE COURT: Mr. Cogdill's here.
23 Mr. Cheek?
24 MR. CHEEK: Yes, sir, Your Honor.
25 THE COURT: The gentleman on the end here, is he

1 offering a guilty plea today?

2 MR. CHEEK: He says he is, Your Honor.

3 THE COURT: All right, sir. Then I'm gonna proceed
4 with qualifying him.

5 Your name again is?

6 DEFENDANT: Mitchell Dogan, sir.

7 THE COURT: Thank you.

8 SOLICITOR HUNTER: All right. Out of the gallery we
9 have Billy Buff.

10 THE COURT: Come forward, sir, up to the box.

11 (Defendant complies.)

12 SOLICITOR HUNTER: Christopher Bishop.

13 (Defendant comes forward.)

14 SOLICITOR HUNTER: Lisa Burnett.

15 (Defendant comes forward.)

16 SOLICITOR HUNTER: William Jewell.

17 (Defendant comes forward.)

18 SOLICITOR HUNTER: Tommy Mills.

19 (Defendant comes forward.)

20 SOLICITOR HUNTER: Christopher Martin.

21 (Defendant comes forward.)

22 SOLICITOR HUNTER: And Charles Anderson.

23 (Defendant comes forward.)

24 THE COURT: All right. Got them in order.

25 Madam Clerk, please swear the defendants whose names

1 have been called.

2 (WHEREUPON, all defendants were placed under oath at
3 this time.)

4 THE COURT: Have a seat please.

5 (Defendants comply.)

6 THE COURT: Now, if any of you either failed or refused
7 to take the oath that was just administered by the clerk,
8 please stand.

9 (No response.)

10 THE COURT: All right. The record then will reflect
11 that all defendants whose names were called have been sworn
12 for purposes of my discussion with you at this time.

13 I'm going to go over some matters that would be common
14 to all of your cases should you decide to plead guilty.
15 I've been informed that you here, you're here for that
16 purpose.

17 Now, I will tell you that your attorney is present
18 throughout this proceeding if you're represented. You have
19 every right to consult with your attorney at every stage of
20 a criminal proceeding before you respond to any question
21 that I ask. So, if you have any problems with anything that
22 I go over with you, and you'd like to talk with your lawyer
23 about it, let me know. I'll be glad to stop and allow you
24 to consult with your lawyer. Again, you have every right to
25 do that at every stage of a criminal proceeding.

1 Now, I'm going to tell you that, at this point in time,
2 I have not yet seen the paperwork involved in your cases. I
3 will tell you that, under the Constitution, you have a right
4 to have your cases presented to the Grand Jury before it
5 comes to this Court for either a trial or a plea. The Grand
6 Jury decides whether or not the State has sufficient
7 evidence to justify the case being sent here to be disposed
8 of.

9 Now, if they decide there is enough evidence in the
10 possession of the State to justify a trial being held, they
11 issue what is called a true bill. That's stamped on the
12 indictment. They sign it, send it here for our, for our
13 disposal. Now, you have the right to go forward with a
14 guilty plea without Grand Jury presentment if you are
15 willing to waive or give up that right.

16 Now, again, the Grand Jury doesn't determine your guilt
17 or innocence, and neither you or your, your lawyer is
18 allowed to be present at Grand Jury proceedings. Those are
19 held in secret.

20 Now, what I'll do is, when you come in front of me, and
21 they hand me your indictments, I will go over with you the
22 status of your indictment as to whether or not it's gone to
23 the Grand Jury or not. If it has not yet gone to the Grand
24 Jury, again, I can not proceed in the case unless you are
25 willing to waive or give up that right. So, we'll talk

1 about that specifically when I see the paperwork cause
2 everybody's case may be a little different. so, we'll take
3 a look at that when it comes before me.

4 Now, also, when you come in front of me, I'll be
5 inquiring about your relationship with your attorney, and to
6 determine whether or not you're satisfied with the legal
7 advice that you've received so far.

8 Now, I'm going to ask a series of questions that would,
9 again, would apply to all of your cases if you decide to
10 offer a guilty plea. I'll be asking that you stand to
11 respond to the questions, and I will be getting your name on
12 the record if we have a discussion concerning those matters.

13 Now, the first thing I'm going to ask you is do any of
14 you currently suffer from any mental, physical, nervous
15 conditions, or any other conditions that would, in any way,
16 affect your ability to handle your plea today or make good
17 decisions today, if that's true, please stand.

18 (No response.)

19 THE COURT: Now, have any of you taken or used any
20 drugs, medications, or any other substances that would
21 affect, in other words, affect your ability to reason, make
22 good decisions, or to handle your plea today, if that's
23 true, please stand.

24 (No response.)

25 THE COURT: Now, if anyone has threatened you, coerced

1 you, put pressure on you, tried to intimidate you, in other
2 words, done anything to you to try to get you to offer a
3 guilty plea or to force you to offer a guilty plea, please
4 stand.

5 (No response.)

6 THE COURT: Your plea must be done freely and
7 voluntarily by you. That means that you have thought about
8 your case. You've made a conscious decision that that's the
9 best way to proceed in your case. In other words, it's a
10 free and voluntary decision to plead guilty in the matter.

11 Now, if any of you were to be brought in front of me
12 this morning to offer a plea, if it would be your feeling or
13 belief that somehow that would be against your wishes or
14 something that you didn't want to do, please stand.

15 (No response.)

16 THE COURT: If any of you feel that you've not had
17 enough time in which to think about your case or prepare a
18 defense to the charges that are before the Court, please
19 stand.

20 (No response.)

21 THE COURT: If anyone has made any promises,
22 guarantees, assurances to you about any matters whatsoever
23 in connection with your plea, please stand.

24 (No response.)

25 THE COURT: Now, specifically I want to be sure that no

1 one has made any guarantees or assurances about such matters
2 as pardon, parole, probation, early release, or length of
3 sentence in an effort to try to get you to offer a plea, if
4 someone's done that, please stand.

5 (No response.)

6 THE COURT: Now, if you decide to plead guilty, and
7 then I later decide to accept your plea, you will be waiving
8 or giving up most of your Constitutional rights as they
9 relate to the charges that are before the Court. I have to
10 make a determination and assure myself that you're doing
11 that knowingly and intelligently. In other words, you know
12 your rights, you know what you're giving up, and you've made
13 a conscious decision to go forward in spite of that fact.

14 For that reason, it's important that you understand
15 your rights. I'm going to go over those with you. If you
16 have any questions concerning them when I finish, please let
17 me know. I'll be glad to give you additional explanation or
18 to answer your questions.

19 (No response.)

20 THE COURT: Now, first of all, I've told you you have
21 the right to have your case presented to a Grand Jury, and
22 we'll talk about that again when you come in front of me for
23 your plea specifically and I see your paperwork.

24 You have a right to a lawyer. I've explained, your
25 lawyer's available to you at all stages throughout your plea

1 to, until its conclusion.

2 You also have the right to request or demand a trial by
3 a jury, and, at that trial, you'd be presumed to be innocent
4 until the state proved your guilt beyond a reasonable doubt.
5 The state has the only burden of proof in criminal trials.
6 A defendant has nothing or is not required to prove anything
7 because you are presumed to be innocent.

8 Now, at the trial and under the Constitution, they're
9 several things that you have the right under the
10 Constitution to do. First of all, you can have subpoenas
11 issued to witnesses to require that they attend the trial
12 and the, and the hearing in, in court. You have the right
13 to confront or question anyone who might testify during your
14 trial. You would have the right, at the trial, to present
15 all the defenses that you have to the charges that are
16 before the court, and you'd be given the opportunity to try
17 to suppress any and all evidence that the state may have
18 against you and that includes any statements that you might
19 have made prior to the time of the trial. You always have
20 the right to remain silent, and if you choose to remain
21 silent at a trial, the judge is required to instruct the
22 jury that your silence could not be used against you in any
23 manner or fashion whatsoever.

24 Now, those are your rights under the Constitution. If
25 you don't understand any of them and want additional

1 explanation, please stand.

2 (No response.)

3 THE COURT: If you have any questions about those
4 rights, and you'd like for me to answer those questions,
5 please stand.

6 (No response.)

7 THE COURT: It appears that you all understand those
8 rights, and I will advise you, again, that if you plead
9 guilty, you will be giving up all or waiving all of those
10 Constitutional rights that I just went over with you as they
11 relate to the charges that are before the Court. Of course,
12 with the exception of the right of having your lawyer
13 represent you to your plea's finished.

14 Now, if there's any of those rights that you would be
15 giving up in connection with a plea today that you do not
16 wish to give up in connection with a plea today, please
17 stand.

18 (No response.)

19 THE COURT: I'll advise each of you that you have ten
20 days from the date that you enter a guilty plea and receive
21 a sentence in which to file an appeal of that plea if you
22 choose to do that.

23 I'll declare then that these defendants are qualified
24 to proceed with a plea should they decide to do that.

25 Those of you who are in custody can have a seat back in

1 the gallery.

2 Those that are in custody, remain seated.

3 (Pause.)

4 THE COURT: All right. You may proceed.

5 SOLICITOR MORIN: Please the Court, Your Honor.

6 Before you is James Bogan. He's pleading guilty to two
7 indictments. 2011-GS-42-4267 is petty larceny less than
8 \$2,000. He is waiving presentment to the Grand Jury on
9 that, and he is also pleading guilty to 2011-GS-42-4268,
10 burglary second degree violent. He's waiving presentment to
11 the Grand Jury on that as well. I'm handing up an order of
12 restitution that he has signed. He is represented by James
13 Cheek.

14 THE COURT: All right, sir. Your name is James Nelson
15 Bogan, Junior, right?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Mr. Bogan, I'm going to remind you that you
18 took an oath just a few minutes ago to tell the truth.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you remember that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And that oath still applies to this
23 discussion that we're having right now.

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Mr. Bogan, you're in front of me on two
3 charges. I'm gonna go over those charges with you.

4 The first one I'll discuss with you is Case Number
5 2011-GS-42-4268. That is for burglary second degree
6 violent. Burglary in the second degree carries a potential
7 sentence of up to 15 years in prison.

8 THE DEFENDANT: Yeah.

9 THE COURT: I will tell you that, in the future, if you
10 have future burglary charges, your plea in this case could
11 be used in those cases to make sentences more severe.

12 Do understand that, sir?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right, sir. I will also tell you that
15 this case is classified as a violent offense. That means
16 that, in the future, if you were to plead guilty to or be
17 found guilty of other crimes that are similarly classified,
18 that your plea in this case could be used in connection with
19 those convictions to make the sentences in those future
20 cases much more severe. I will tell you that it could
21 possibly result in a sentence of life imprisonment without
22 the possibility of ever receiving a parole.

23 Do you understand that this---

24 THE DEFENDANT: Yes, sir.

25 THE COURT: ---these charge carries enhancements in the

1 future?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay, sir. Now, the case has not yet been
4 presented to the Grand Jury. It appears that you have
5 initialed this document waiving that right---

6 THE DEFENDANT: Yes.

7 THE COURT: ---and asking the Court to go forward
8 today.

9 Is that true?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Also, sir, it appears that there are no
12 recommendations on this charge for sentencing. That means I
13 would have the authority, as I normally do, to sentence you
14 up to the full extent allowed by law, and this charge, that
15 is 15 years.

16 Do you understand that, sir?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Also, you're charged with another charge,
19 and that is simple or petty larceny less than \$2,000 or
20 less. That carries up to 30 days.

21 That is not a third or subsequent, is that right?

22 SOLICITOR MORIN: I'm -- yes, it is, Your Honor.

23 THE COURT: All right. So, this is a third or
24 subsequent?

25 MR. CHEEK: It is, Your Honor.

1 SOLICITOR MORIN: Yes, sir.

2 THE COURT: All right. So that means it carries up to
3 ten years in prison.

4 So, on these two charges you're facing up to 15 on the
5 burglary and up to ten on the larceny.

6 Do you understand that, sir?

7 THE DEFENDANT: Yeah.

8 THE COURT: Now -- and I have the authority to sentence
9 those consecutively. So, a total of up to 25 years.

10 You're here today with Mr. Cheek.

11 Are you satisfied with his services?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Is there anything else that you want to
14 talk with him about?

15 THE DEFENDANT: Yeah, really. Yeah.

16 THE COURT: Well, I'm gonna let you step back there and
17 get away from the microphone and have a consultation with
18 him. That's fine.

19 (Pause.)

20 THE COURT: Now, Mr. Bogan, have you had a chance to
21 talk to Mr. Cheek?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And did he answer your questions?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. Anything else you need to

1 discuss with him?

2 THE DEFENDANT: No, sir.

3 THE COURT: So, are you satisfied with his services at
4 this time?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. Now, Mr. Bogan, as to these two
7 charges, it appears you're also waiving presentment on the
8 petty or simple larceny.

9 Is that true as well?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Now, as to these two charges, do you
12 understand the charges that you face?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do I need to read them to you?

15 THE DEFENDANT: No, sir.

16 THE COURT: You have the right to plead either guilty
17 or not guilty to either or both of these charges.

18 How do you plead?

19 THE DEFENDANT: I plead guilty.

20 THE COURT: To both charges?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Mr. Cheek, I assume you've discussed the
23 plea with Mr. Bogan, is that correct?

24 MR. CHEEK: That is correct, Your Honor.

25 THE COURT: I would suspect that among the many things

1 you would of discussed with Mr. Bogan, and would of
2 discussed these charges or the elements of the crime, the
3 potential penalties that could be involved, and the
4 enhancement features that we've discussed, his rights under
5 the Constitution, any defenses that he might of had to these
6 charges, and the fact that it's, in the case of the
7 burglary, there may be a limited possibility that he would
8 receive parole on any sentence.

9 MR. CHEEK: Yes, sir.

10 THE COURT: Did you discuss those things with him?

11 MR. CHEEK: All of those things were discussed, Your
12 Honor.

13 THE COURT: All right. And are you satisfied that Mr.
14 Bogan understood those, those issues?

15 MR. CHEEK: Yes, sir, I am.

16 THE COURT: He tells me that he has now made the
17 decision to offer a guilty plea in these cases.

18 Do you agree with his decision?

19 MR. CHEEK: I do, Your Honor.

20 THE COURT: And has he been able to assist you in his
21 defense?

22 MR. CHEEK: Yes, sir, he has.

23 THE COURT: Mr. Bogan, my information is that you are
24 53 years of age, is that correct?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: How far did you go in school?

2 THE DEFENDANT: I guess about the seventh, eight.

3 THE COURT: Eighth grade?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Now, sir, did you ever get a GED?

6 THE DEFENDANT: No, sir.

7 THE COURT: Are you married?

8 THE DEFENDANT: No, sir.

9 THE COURT: Do you have children?

10 THE DEFENDANT: I have one. I have one. My oldest
11 daughter, she died when she was 20, 25---

12 THE COURT: Yes, sir.

13 THE DEFENDANT: ---on dialysis. I got a daughter now
14 29.

15 THE COURT: All right. I assume she doesn't depend
16 upon you for her support?

17 THE DEFENDANT: No, sir, she---

18 THE COURT: Okay. Now, Mr. Bogan, are you employed or
19 were you employed before you got arrested?

20 THE DEFENDANT: No, I'm not. I was drawing disability,
21 disability.

22 THE COURT: All right, sir. Tell me the facts, Mr.
23 Morin.

24 Wait a minute. I do have a question about that
25 disability.

1 Mr. Bogan, your disability does -- would not affect, I
2 would assume, your ability to handle this plea, is that
3 correct?

4 THE DEFENDANT: well, I feel like it did cause my
5 disability was -- it's -- it had on my mental, mental
6 disability. So, that's what they had me on. They had me on
7 mental, mental disability.

8 THE COURT: All right.

9 THE DEFENDANT: They had me as---

10 THE COURT: Mr. Cheek, we need to talk about that.
11 Have you looked into his mental situation?

12 MR. CHEEK: Yes, sir, we've talked about his mental
13 disability, that he's on medications, that he was off his
14 medications when this incident occurred or either he mixed
15 those medications with alcohol.

16 But, Your Honor, he's able to function very well in the
17 community. I haven't had any kind of period of
18 hospitalization or treatment. He was doing very well in the
19 community. He acknowledges that. He just lost his judgment
20 during the course of this particular incident, but he
21 recalls the facts, the circumstances surrounding the
22 incident.

23 THE COURT: Okay.

24 MR. CHEEK: We have no problem communicating. I had no
25 problem with him understanding the law or the seriousness of

1 this incident as well as Court procedure, Your Honor. I
2 have no reason to believe that he's -- that he has any kind
3 of defect or active problems right now that keeps him from
4 understanding what he's doing with the Court today.

5 THE COURT: All right. Well, Mr. Bogan, did you hear
6 what Mr. Cheek just told me?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Is that true?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: So, you have no problem functioning in the
11 community?

12 THE DEFENDANT: No.

13 THE COURT: You handle your own money and that sort of
14 thing?

15 THE DEFENDANT: No, I can't handle -- no, I can't
16 handle my own money.

17 THE COURT: You don't buy things for yourself?

18 THE DEFENDANT: I have my brother. I got my brother.
19 He holds my money.

20 THE COURT: All right. But now, do you buy things
21 yourself or does he---

22 THE DEFENDANT: Yeah, I -- yeah.

23 THE COURT: That's what I mean.

24 THE DEFENDANT: He give me money.

25 THE COURT: That's what I mean by that.

1 You go out and make purchases and things like that,
2 don't you?

3 THE DEFENDANT: Yes, sir, I go buy stuff with my money
4 when he give it to me, yes, sir.

5 THE COURT: Okay. All right. That's what I meant by
6 that.

7 THE DEFENDANT: Oh, yeah, okay.

8 THE COURT: But you know how to go to a store, pick out
9 an item, and pay for it?

10 THE DEFENDANT: Yeah.

11 THE COURT: You know what that money means?

12 THE DEFENDANT: Yeah.

13 THE COURT: Okay.

14 All right. Mr. Morin, tell me the facts the State's
15 alleging.

16 Listen, Mr. Bogan, to what he has to say cause I'm
17 gonna ask you about that.

18 Go ahead.

19 SOLICITOR MORIN: On April 27th, 2011, the defendant
20 broke into The Shoe Show located at 550 South Church Street
21 here in Spartanburg County. He broke out the window and
22 took \$90 worth of purses. They were recovered from the
23 defendant's residence. When he broke out the window he
24 actually cut himself, and that led -- assisted law
25 enforcement to tracking him. This occurred at 9:30 at

1 night.

2 THE COURT: Mr. Bogan, did you hear what the solicitor
3 told me?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Is that information true?

6 THE DEFENDANT: Yeah, I knock out the window, and stuck
7 my hand in the window and snatched a pocketbook out the
8 window. I bent down. I remember bending down and that's
9 how I got, got cut. When I stuck my hand -- I was on the
10 sidewalk and I stuck my hand in there.

11 THE COURT: I understand.

12 So, what he told me is the truth then?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now, Mr. Bogan, have you told me the truth?
15 Did you tell me the truth today?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Did anybody tell you how to answer any
18 questions you've answered for me?

19 THE DEFENDANT: Not this one, no.

20 THE COURT: So, the answers I've gotten from you, those
21 were your answers?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Now, is there any part of what we've
24 discussed that you want to go back and reconsider anything
25 you told me?

1 THE DEFENDANT: No, sir.

2 THE COURT: So, if I asked you all those same questions
3 that I asked earlier again right now, would I get the
4 same answers verbally?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Are you pleading guilty because you are
7 guilty?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And are you giving up those Constitutional
10 rights I discussed with you?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right, sir. I'm gonna find that the
13 plea is freely and voluntarily given. The defendant is
14 aware of the charges, the penalties, and had the advice of
15 counsel. He's satisfied with that advice and there's a
16 factual basis for the plea, and also will make the
17 additional finding that I found Mr. Bogan responsive to my
18 questions during the plea, and will appear to be able to
19 adequately handle the plea and understands the concepts and
20 matters that we are handling.

21 Mr. Cheek, you may proceed.

22 MR. CHEEK: Your Honor, Mr. Bogan has served 55 days
23 toward the sentencing in these matters.

24 THE COURT: Yes, sir.

25 MR. CHEEK: Your Honor, Mr. Bogan will tell you that he

1 did have some problems with his mental conditions, which
2 resulted in him being declared disabled by the Social
3 Security Administration. He will also tell you that he and
4 I had some very heated discussions about why he -- where he
5 is today because Mr. Bogan does have a supportive family.
6 He does have people in the community who love and care for
7 him. He acknowledges and knows all of that.

8 He will also tell you that he and I have known each
9 other for a period of time that, for about once a month for
10 a period of about three years. He would detail my car when
11 he worked for Everette Hunter. I know him. I know him to
12 be trustworthy. I don't think he would steal anything from,
13 from out of somebody's car he's entrusted to, but he's done
14 some taking from other people in the community, Your Honor,
15 including going into closed areas and taking things when he
16 was not on his meds or when he was not being properly
17 supervised or cared for by his family.

18 Your Honor, he does have the ability to earn monies.
19 He's also going to some residences in the past. So, he
20 stands before the Court acknowledging he's made some
21 mistakes.

22 He went down to this store across from the swim center.
23 He had been drinking, not properly medicating himself when
24 he did it, and/or mixes his meds with the alcohol. Whatever
25 happened, Your Honor, he found himself with a lapse of

1 judgment and he took this pocketbook after he broke the
2 window of the store.

3 Your Honor, as the Court is aware, that's a very busy
4 street. People up and down Church Street all day and all
5 night long. It's well lit. There's security cameras. I
6 don't know what in the world Mr. Bogan was thinking.

7 We hope he'd turned around a lot in his past and was
8 going in a better direction, but then this happened.

9 So, we're just asking the Court to be merciful with
10 him. Mr. Hunter is not available to the community now for
11 Mr. Bogan to earn extra monies. I'm thinking maybe that may
12 of contributed what happened. But at any rate, Your Honor,
13 he's a pretty independent fellow, and he's told the Court
14 his brother is his payee. He is able to function in
15 society.

16 We hope the Court will give him an opportunity to do
17 that again rather than put him away for a significant period
18 of time, Your Honor, because this is not a well thought out
19 crime whatsoever, and it happened -- may as well say even at
20 night. It happened in the light of day, Your Honor, because
21 it's like daylight going down that street all day long, all
22 night long. I don't know what Mr. Bogan was thinking about,
23 Your Honor.

24 THE COURT: All right. Mr. Bogan, this is your
25 opportunity to address the Court.

1 Is there anything that you'd like to say?

2 THE DEFENDANT: No, sir, he's right.

3 THE COURT: All right. Prior record, Mr. Morin.

4 SOLICITOR MORIN: 1976, store breaking and armed
5 robbery.

6 1981, store breaking.

7 1984, store breaking.

8 1991, CDV, MIPP, shoplifting.

9 1993, petty larceny and shoplifting.

10 1994, burglary second violent, possession of stolen
11 vehicle, burglary third.

12 1995, shoplifting two times, burglary second.

13 2000, breaking into motor vehicle.

14 2002, burglary second violent.

15 The state is choosing not to seek life in this
16 situation. This would actually be, by my count, his fourth
17 strike.

18 THE COURT: Mr. Bogan, that's quite a record you have
19 there.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: It's not a very good one. I counted some
22 17 or 18 convictions overall, and as the state pointed out,
23 this would of been your fourth strike under the law. The
24 state could of sought life without the possibility of
25 parole.

1 Actions like those that you take make it difficult for
2 people to run stores in this community, in this community,
3 be able to maintain services for people, and this is been
4 going on for a long long period of time. It didn't just
5 start up.

6 All right. The sentence for the burglary, and these
7 will run concurrently, it's 15 years.

8 Sentence for the petty larceny, ten years. Run
9 concurrently.

10 Good luck to you, sir.

11 MR. CHEEK: Thank you, Your Honor.

12

13

14 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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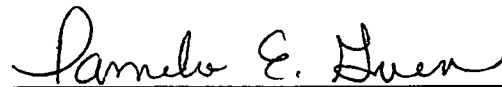
25

C E R T I F I C A T E

1
2
3 I, Pamela E. Green, Official Court Reporter for the
4 Seventh Judicial Circuit of the State of South Carolina, do
5 hereby certify that the foregoing is a true, accurate and
6 complete Transcript of Record of the proceedings had and
7 evidence introduced in the trial of the captioned case,
8 relative to appeal, in the Court of General Sessions for
9 Spartanburg County, South Carolina, on the 22nd day of June,
10 2011.

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

13
14
15
16 February 13th, 2014

17
18
19 
20

21 PAMELA E. GREEN, Court Reporter
22
23
24
25

DM

FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Spartanburg)
)
James BOGAN, #288111)
 Full name and prison number (if any) of Applicant.)
)
 v.)
)
 State of South Carolina)
)

IN THE COURT OF COMMON PLEAS
2013-CP-42-1677

APPLICATION FOR
 POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention South Carolina Dept. of Corrections (Perry C.I.); 430 Oaklawn Rd., Pelzer, S.C. 29669.
2. Name and location of Court which imposed sentence Sptbg. General Sessions; P.O. Box 4834 Spartanburg, S.C. 29304.
3. Name(s) of co-defendant(s) (if any) NONE.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) 2011-65-42-4268 / Burglary, Second degree.
 (b) 2011-65-42-4267 / Petit Larceny.
 (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) June 22, 2011 - 15 years.
 (b) June 22, 2011 - 10 years (concurrent).

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 SPARTANBURG COUNTY
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 HORTON LACKLEY

2013-CP-42-11677

- (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
no.
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) were not aware I could appeal on plead of guilty.
 - (b) _____
 - (c) _____
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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 SPARTANBURG COUNTY
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 H. JUDGE D. LACKLEY

2013-CP-42-107

(a) Ineffective Assistance of Counsel

(b) _____

(c) _____

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

(a) Counsel was ineffective for improperly advising him that he would be parole eligib

(b) _____

(c) _____

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

(a) any petition in a State Court under South Carolina Law? no.

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no.

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no.

(d) any other petitions, motions or applications in this or any other Court? no.

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

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SPARTANBURG COUNTY
2013 APR 10 AM 10:26
M. HURF BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF Spartanburg)

In The Court of Common Pleas

James Bogan, #288111 }
Applicant, }
vs. }
STATE of South Carolina }
Respondent. }

ATTACHMENT TO
P.C.R. APPLICATION

Now comes the above-referenced, APPLICANT, to set forth facts of the grounds in his application for post-conviction relief: to state concisely the grounds on which I base my allegation(s) that I am being held in custody unlawfully and state concisely and in the same order the facts which support each of the grounds.

INEFFECTIVE ASSISTANCE OF COUNSEL: Whether counsel was ineffective for improperly advising applicant that he would be parole eligible?

IN ADDITION TO

The applicant set forth relevant arguments that the Application for Post-Conviction Relief should be granted evidentiary hearing for decision of relief.

On March 27, 2013, Applicant actual discovery of the facts came about ⁱⁿ the unit classification caseworker, Mr. Norman, of South Carolina Department of Corrections that I was not eligible for parole. Immediately following this material facts of discovery not previously presented and heard that requires vacation of the conviction(s) and sentence(s) on April 5, 2013, prepared the application for P.C.R. in accordance to S.C. Code of Laws § 17-27-45(c) and Coats v. State, 352 S.C. 500, 575 S.E. 2d 557 (S.C. 2003) (Post-conviction Relief (PCR) petitioner's claim, that counsel was ineffective for improperly advising him that he would be parole eligible fell within discovery rule providing when there was evidence of material facts not presented, PCR application was to be filed within one year after date of actual discovery of facts, and did not have to be filed within one year after conviction; petitioner was allegedly informed by counsel and Department of Corrections that he was parole eligible, and when Department later informed him he was not parole eligible, petitioner filed PCR application within one year).

2013-CP-42-16m

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

no.

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) *Application for PCR are proper presentment to the Court of Common Pleas*
(b) *not find out that I was not eligible for parole until March 27, 2013 see attached.*

(c) _____

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

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SPARTANBURG, CO
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M. FOR DELAY

2013-CP-42-167

- (a) your arraignment and plea?
- (b) your trial, if any? _____
- (c) your sentencing?
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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. James A. Cheeks; 180 Magnolia St.; Spartanburg, S.C. 29303.
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. plea of guilty and sentencing.
 - ii. _____
 - iii. _____

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

Vacate or Reversed.

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

No.

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 SPARTANBURG COUNTY
 2013 APR 10 AM 10:26
 M. RUF E BLACKLEY

2013-CP-42-16M

STATE OF SOUTH CAROLINA)
)
County of Spartanburg)

VERIFICATION

I James Bogan #288111, 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.

James Bogan

SWORN to and subscribed before me this 8th
day of APRIL, 2013.

Tatiana Richman (L.S.)
Notary Public

My Commission Expires: 4-26-2020

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SPARTANBURG COUNTY
2013 APR 10 AM 10:26
M. HOPE BLACKWELL

2013-CP-42-16m

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

I, James Bogen, #288111

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

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

James Bogen
Applicant

SWORN or affirmed to and subscribed before me this
8th day of APR, 2013.

Patricia S. Buchanan
Notary Public

My Commission Expires: 4-26-2020

FILED
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SPARTANBURG COUNTY
2013 APR 10 AM 10:26
M. NURE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2013-CP-42-1677

James Nelson Bogan, #288111,
Applicant,

v.

**RETURN AND MOTION TO
DISMISS**

State of South Carolina,
Respondent.

In response to the post conviction relief application filed April 10, 2013, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. The Applicant was indicted at the June 2011 term of the Spartanburg County Grand Jury for Second Degree Burglary (2011-GS-42-4268) and for Petit Larceny (2011-GS-42-4267). He was represented on the charges by James A. Cheeks, Esquire. On June 22, 2011, the Applicant pleaded guilty to the charges as indicted. He was sentenced by the Honorable Roger L. Couch to fifteen (15) years for Second Degree Burglary and ten (10) years for Petit Larceny. The sentences were to run concurrently. The Applicant did not appeal his conviction or sentence.

II.

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

1. Ineffective assistance of trial counsel, in that

- a. "Counsel was ineffective for improperly advising him that he would be parole eligible."
- 2. Newly discovered evidence, in that
 - a. "On March 27, 2013, Applicant actual discovery of facts came about of the unit classification caseworker, Mr. Norman, of South Carolina Department of Corrections that I was not eligible for parole. Immediately following this material facts of discovery not previously presented and heard that requires vacation of the conviction and sentence(s) on April 5, 2013, prepared the application for P.C.R. in accordance to S.C. Code of Laws § 17-27-45(c) and Coats v. State, 352 S.C. 500, 575 S.E.2d 557 (S.C. 2003)."

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, the South Carolina Department of Corrections' records and the prior PCR records by reference. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent submits that this application for Post-Conviction Relief 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 to -160 (Supp. 2003). S.C. 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 South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant pleaded guilty to the offense he challenges in this application on June 22, 2011. The Applicant was therefore required to file his application before **June 22, 2012**. This application was filed on April 10, 2013 which was after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) 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."

IV.

The Applicant further contends that he should be able to file this successive and untimely application because he claims to have just discovered that he is not eligible for parole. The Applicant waived his right to a jury trial. If the Court determines that the Applicant knowingly and voluntarily pleaded guilty, the plea waives any non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence. See Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981); Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975). A defendant requesting a new trial based on after discovered evidence must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and
- (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

The Applicant has not shown that the alleged evidence meets *any* of the requirements for after-discovered evidence. The Applicant has been deemed a subsequent violent offender because of his previous violent convictions, and therefore will not become eligible for parole.¹ The Applicant's status as being ineligible for parole has not changed during his current

¹ See S.C. Code § 24-21-640 ("The [parole] board must not grant parole nor is parole authorized to any prisoner serving sentence for a second or subsequent conviction, following a separate sentencing for a prior convictions, for violent crimes as defined in Section 16-1-60.")

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

James Nelson Bogan, #288111,
Applicant,

2013-CP-42-1677

v.

**CONDITIONAL
ORDER OF DISMISSAL**

State of South Carolina,
Respondent.

This matter comes before this Court by way of an application for post conviction relief filed April 10, 2013.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. The Applicant was indicted at the June 2011 term of the Spartanburg County Grand Jury for Second Degree Burglary (2011-GS-42-4268) and for Petit Larceny (2011-GS-42-4267). He was represented by the charges by James A. Checks, Esquire. On June 22, 2011, the Applicant pleaded guilty to the charges as indicted. He was sentenced by the Honorable Roger L. Couch to fifteen (15) years for Second Degree Burglary and ten (10) years for Petit Larceny. The sentences were to run concurrently. The Applicant did not appeal his conviction or sentence.

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SPARTANBURG COUNTY
2013 APR 18 PM 2:00
M. HOPE BLANKLEY

CURRENT APPLICATION

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

- 1. Ineffective assistance of trial counsel, in that
 - a. "Counsel was ineffective for improperly advising him that he would be parole eligible."

2. Newly discovered evidence, in that

“On March 27, 2013, Applicant actual discovery of facts came about of the unit classification caseworker, Mr. Norman, of South Carolina Department of Corrections that I was not eligible for parole. Immediately following this material facts of discovery not previously presented and heard that requires vacation of the conviction and sentence(s) on April 5, 2013; prepared the application for P.C.R. in accordance to S.C. Code of Laws § 17-27-45(c) and Coats v. State, 352 S.C. 500, 575 S.E.2d 557 (S.C. 2003).”

Before this Court are the records of the Spartanburg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, Applicant's PCR application and Respondent's Return and Motion to Dismiss.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Statute of Limitations

This Court finds this Application for post conviction relief must 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. S.C. 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.

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SPARTANBURG COUNTY
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MHOPE BLACKLEY

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant pleaded guilty to the offense he challenges in this application on June 22, 2011. The Applicant was therefore required to file his application before June 22, 2012. This application was filed on April 10, 2013 which was after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638

(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, this Court dismisses the application for post conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

Newly Discovered Evidence

This Court finds the Applicant's claims of newly or after discovered evidence must be dismissed. An applicant requesting a new trial based on after discovered evidence must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and
- (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983). Applicant has failed to establish that the alleged evidence meets *any* of the requirements for after-discovered evidence. The Applicant has been deemed a subsequent violent offender, and is therefore not eligible for parole. Therefore, this Court finds that this allegation, and this application, must be dismissed.

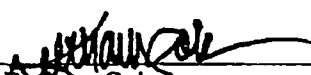
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 M. HOPE BRACKLEY

III. CONCLUSION

Pursuant to S.C. Code Ann. §17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Spartanburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
J. Clayton Mitchell, Esquire
PCR Division - 7th Circuit
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 18 day of July, 2014.



J. Derham Cole
Chief Judge for Administrative Purposes
Seventh Judicial Circuit

_____, South Carolina

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SPARTANBURG COUNTY
2014 JUL 18 PM 12:00
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)

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2014 OCT 21 PM 12:16
M. HOPE BLACKLEY

James N. Bogan #288111) C/A No.2013-CP-42-1677
Applicant,)
-vs-)
State of South Carolina) APPLICANT'S OPPOSITION TO
Respondent,) THE COURT'S CONDITIONAL ORDER

COMES NOW, above captioned Applicant, pro-se, respectfully lodging his Opposition and Reply to the Court's Conditional Order that was filed July 18, 2014, but received and served upon the Applicant, via, Institutional Legal Mail [September 29, 2014], see attached proof of service requested by Suzanne White Assistant Attorney General, at page 7 herein.

Respectfully this Court's Conditional Order grants Applicant twenty (20) days from the "date of service upon him" to show why the Order should not become Final, see page three (3) of the Court's attached Conditional Order.

In support of this Opposition, the Applicant would respectfully show unto this Court the following:

- (1). Applicant is presently confined in the South Carolina Department of Corrections pursuant to committment orders of the Spartanburg County Clerk of Court.

(2). Applicant was indicted at the June 2011 term of the Spartanburg County term of grand jury for second degree burglary (2011-GS-42-4268) and for petit larceny (2011-GS-42-4267).

Applicant was represented by James Cheeks, Esquire. Applicant upon counsel's advise entered a plea of guilty as indicted, with the understanding he would be parole eligible. The Honorable Roger L. Couch sentenced Applicant to fifteen (15) years for the Second Degree burglary and ten (10) years for the petit larceny.

Sentences were ordered concurrent. No direct appeal was filed

(3). On April 13, 2013 Petitioner filed the instant Application alleging ineffective assistance of counsel for giving Applicant erroneous parole eligibility advice. Applicant also raised this issue as that of newly discovered evidence citing Coats v. State, 352 S.C. 500, 575 S.E.2d 557 (S.C.2003), which will be discussed, infra, which is the substance of this Application, and the Applicant is pro-se, and therefore this Application should be liberally construed, (emphasis supplied).

DISCUSSION

The Conditional Order ("CO"), at page 2, the Court made its finding that the Application should be dismissed on procedural grounds, specifically the Court stated that Applicant pleaded guilty June 22, 2011, and therefore the Applicant had until June 22 2012, to file a PCR Application. The Court noted that the instant application was filed April 10, 2013, which was after the statutory filing period had expired, CO at 2.

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2013 OCT 21 PM 12:15
M. HOPE BLACKBERRY

Applicant would respectfully submit that the bases of his claim, while the application may be listed as newly discovered evidence, and this Court misinterprets the argument as a whole; therefore, Petitioner will address [both] issues together, since the underlying facts of one encompasses the other.

Applicant would submit the instant application should not be dismissed as untimely, as the *Coats v. State*, 352 S.C. 500, 575 S.E.2d 557 (S.C.2003) sits on Applicant's claim on [all] four feet. In Coats, Coats pled guilty and was sentenced to 7-years in the Department of Corrections. Coats 1-year statute of limitations to file an application for post conviction relief (PCR) had also expired. Coats during his annual review was advised by SCDC's Classification Officer that he (Coats) was ineligible for parole. Coats immediately filed his PCR application under the discovery rule S.C.Code Ann. §17-27-45(c), which states in pertinent part: "if there is evidence of material facts not previously presented or heard which would require reversal of the conviction, the applicant (has 1-year) from the actual date of the discovery to file an application, PCR for relief:"

The Coats Court held an evidentiary hearing to determine if Coats was entitled to relief and whether the 1-year statute of limitation barred Coats. Our Supreme Court determined Coats was not barred by the statute of limitations, and further found that Coats, received ineffective assistance of counsel, when counsel gave Coats erroneous parole advice. Id

In the instant case, Applicant pleaded guilty on counsel's erroneous advice that [he] "he would be parole eligible. Just as Coats.

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 2014 OCT 21 PM 12:16
 M. POPE BLACKLEY
 CLERK OF COURT
 1000 BROADWAY
 COLUMBIA, SC 29201

After entering the South Carolina Department of Corrections, on March 26, 2013, Applicant submitted an SCDC Form 19-11 INMATE-TO-STAFF request to his classification worker, Norman, inquiring about his parole eligibility, See attached Applicant's exhibit (A).

On March 27, 2013, SCDC Classification returned the Inmate-To-Staff request informing the Applicant he was not eligible for parole. Immediately, April 10, 2013, Applicant filed the instant PCR application under the discovery rule S.C.Code Ann. §17-27-45(C), and *Coats v. State*, supra, as established by Our Supreme Court

Applicant would further submit that [prior] to entering the plea, Applicant's counsel, the Plea Court and Solicitor [all] agreed the plea was for 15-years and 10-years concurrent, with parole eligibility, (emphasis supplied).

Since our Supreme Court has already addressed this precise issue, on succinctly the same set of facts, this Court should have no problem reviewing the facts in the instant matter and turning to the Coats decision, supra, for guidance in addressing this and conclude that Applicant is entitled to the benefit of appointing counsel, Rule 71.1(d), SCDC and an evidentiary hearing in accordance with *Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983), to fully resolve this issue.

Applicant would respectfully ask this Honorable Court for the aforementioned relief, and would further object to the Respondent drafting their own Final Order for Your Honor. Applicant would respectfully ask Your Honor to address this issue and be granted an evidentiary hearing and appointing PCR Counsel at the Court's earliest convenience.

FILED
 SUPREME COURT
 21 PM 12:16
 M. HOPE BLACKLEY

CONCLUSION

WHEREFORE, based on the foregoing, Applicant would respectfully ask this Honorable Court to appoint PCR Counsel in accordance with Rule 71.1(d), SCRCP and conduct an evidentiary hearing at the Court's earliest convenience in the interest of justice.

Respectfully Submitted,

/s/ James N. Bogan

James N. Bogan

Applicant, pro-se

FILED
CLERK OF COURT
STATE OF OHIO
2014 OCT 21 PM 12:16
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

C/A No.2013-CP-42-1677

James N. Bogan -- Applicant,

-Vs-

State of South Carolina -- Respondent,

APPLICANT'S EXHIBIT (A)

SCDC Form 19-11 Inmate to Staff
Request dated March 26, and 27, 2013

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 OCT 21 PM 12:16
M. HOPE BLACKLEY

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

TO: NAME: NORMAN	TITLE:	DATE: 3-26-13 3-21-13
INMATE'S NAME: JAMES Bogan	SCDC #:	288111
INSTITUTION: PERRY	LIVING QUARTERS:	Q2-A-113

I would like for you to
give me my parole eligible date
is, it soon or what.

Thank you,

James Bogan

DISPOSITION BY STAFF MEMBER:

max-out 12/12/18
rest start 4/28/11

I elig. for parole - multi. violent offenses

FILED
CLERK OF COURT
M. HOPE BLACKLEY
2014 OCT 21 PM 12:16

DATE:
3/27/13

SIGNATURE:
J. Norman

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

C/A No. 2013-CP-42-1677

James N. Bogan -- Applicant,

-Vs-

State of South Carolina -- Respondent,

CONDITIONAL ORDER RECEIVED VIA
SCDC LEGAL MAIL SEPTEMBER 29, 2014
with attached September 25, 2014
correspondence from Suzanne White
Assistant Attorney General

FILED
COURT OF COMMON PLEAS
2014 OCT 21 PM 12:16
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

C/A No.2013-CP-42-1677

James N. Bogan -- Applicant,

-Vs-

State of South Carolina -- Respondent,

CERTIFICATE OF SERVICE

The undersigned does hereby certify he has served a true and correct copy of the enclosed Opposition and Reply to the Court's Conditional Order on the persons whose names and addresses appear below this 10, day of October 2014.

This was done by placing the aforesaid documents in a properly addressed, first-class postage affixed envelope and placed in the U.S. Mail this 10th day of October, 2014.

THOS ESERVED

Spartanburg County
Clerk of Court
M.Hope Blackely
P.O. Box 3483
Spartanburg, SC. 29304-3483

The Honorable Judge
J.Derham Cole, Presiding
P.O. Box 3483
Spartanburg, SC. 29403-3483

Ms. Suzanne White, Esquire
Assistant Attoeny General
P.O. Box 11549
Columbia, SC. 29211

Respectfully Submitted,

/s/ James N. Bogan
James N. Bogan, pro-se

Sworn to and Subscribed

this 10th day of Oct, 2014

Nancy C. Merchant
NOTARY PUBLIC

MY Comm. Expires 1-23-2023

FILED
CLERK OF COURT
2014 OCT 29 PM 12:36
M.HOPE BLACKELY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 James Bogan, #288111,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2013-CP-42-1677

FINAL ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 10, 2013. Respondent made its return on April 10, 2014, requesting the application be summarily dismissed based upon the expiration of the statute of limitations.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed and filed July 18, 2014, provisionally denying and dismissing this action, while giving the Applicant 20 days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated October 6, 2014, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

Applicant made a pro se response dated April 14, 2014, and captioned "Applicant's Objection to Respondent's Conditional Order of Dismissal and Motion to Dismiss," in which he argues that his trial attorney was ineffective for informing Applicant that he was parole eligible when he was not.

Applicant subsequently filed a document captioned "Applicant's Objections to Respondent Conditional Order of Dismissal," dated July 29, 2014, in which he argued the Court should grant him an opportunity to present evidence as to why he is entitled to relief.

Specifically, he alleged he pleaded guilty based on improper advice from his attorney about his parole edibility.

Applicant filed a third document on October 21, 2014, titled "Applicant's Opposition to the Court's Conditional Order," in which he argued that his application should not be barred by the statute of limitations because he alleges a newly discovered evidence claim.

This Court has reviewed Applicant's responses to the Conditional Order of Dismissal in their entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

This Court notes the Applicant was convicted and sentenced on June 22, 2011, and he did not appeal his conviction or sentence. Because this action was filed on April 10, 2013, it was clearly filed outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-27-45(a) (Supp.2003).


Additionally, this Court finds Applicant has failed to set forth facts sufficient to establish a claim of "newly-discovered evidence." Pursuant to § 17-27-45(c) of the South Carolina Code of Laws, a newly-discovered evidence claim can be timely raised within one year of actual discovery or within one year after the date when, by the exercise of reasonable diligence, such evidence could have been ascertained. When an applicant seeks relief on the basis of newly discovered evidence following a guilty plea, relief is appropriate only when the applicant presents evidence showing (1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea, and (2) the newly discovered evidence is of such weight and quality that, under the facts of circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea be vacated. Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014). This

Court finds Applicant's situation does not fall under this category. This Court also finds that Applicant has failed to establish that he could not have discovered this alleged evidence before he entered his guilty plea or, in the exercise of reasonable diligence, within the one year statute of limitations for PCR actions. Therefore, this Court finds Applicant has failed to make a prima facie showing that he is entitled to relief.

IT IS THEREFORE ORDERED that Applicant's motion for default judgement is hereby **DENIED**, and for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE**.

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within 30 days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR., for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 26 day of Jan, 2016.


R. KEITH KELLY J. Mark Hayes, II
Chief Administrative Judge
Seventh Judicial Circuit Court

Spartanburg, South Carolina.

R. Keith Kelly

2016 JAN 26 AM 11:53

11 GS-42-4261
DOCKET NO.

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 21 2011

TERM

THE STATE
vs.

James Nelson Bogan Jr.

Indictment for

PETIT LARCENY

SC Code: 16-13-0030 (A)
CDR Code: 3419
Class MIS/JNC

WITNESSES

Spartanburg Public Safety Department

ARREST WARRANT

M753657

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

1. SENTENCE MADE

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

Foreperson's SIGNATURE

Date: TICKED SIGNATURE

7. ASSESSMENT AND
FINE CARD MADE

8. TRAFFIC VIOLATION COPY

Computer

Computer

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

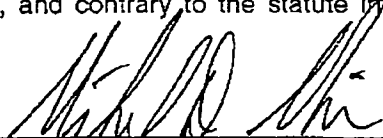
INDICTMENT

At a Court of General Sessions, convened on JUN 17 2011 the Grand Jurors of Spartanburg County present upon their oath:

PETIT LARCENY - \$2000 or less

That Defendant, James Bogan Jr., did in Spartanburg County on or about April 27, 2011, take and carry away goods and/or monies valued at less than Two Thousand Dollars, with the intent to deprive the owner permanently of such property, to wit: two ladies purses, property of Show Shoe, in violation of §16-13-0030 (A), of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amend.

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



ASSISTANT SOLICITOR