

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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S.C. SUPREME COURT

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Appeal from Colleton County

Honorable Roger L. Couch, Circuit Court Judge

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JOSHUA GRAHAM,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000756

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A P P E N D I X

---

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STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS  
 )  
COUNTY OF COLLETON ) CASE NO.: 2012-GS-15-288;289

THE STATE OF SOUTH CAROLINA, )  
 )  
 )  
 v. ) TRANSCRIPT OF RECORD  
 )  
JOSHUA GRAHAM #314554, )  
 )  
 )  
 RESPONDENT. )  
 )

AUGUST 12, 2014  
COLLETON COUNTY COURTHOUSE  
WALTERBORO, SOUTH CAROLINA  
BEFORE THE HONORABLE PERRY M. BUCKNER, III.

APPEARANCES:

ASST. SOL. TAMEAKA LEGETTE, ESQUIRE  
FOURTEENTH CIRCUIT SOLICITOR'S OFFICE  
POST OFFICE BOX 1725  
WALTERBORO, SOUTH CAROLINA 29488  
Attorney for the State of South Carolina

MR. JOHN D. BRYAN, ESQUIRE  
MAIN STREET  
WALTERBORO, SOUTH CAROLINA 29488  
Attorney for the Defendant

Rebecca H. Hill  
Official Court Reporter

1 ASST. SOL. LEGETTE: Your Honor, standing before the  
2 Court is Mr. Joshua Graham, charged in indictment numbers  
3 2012-GS-15-288 for armed robbery; the indictment has been  
4 true billed. Also, indictment 2012-GS-15-289 for possession  
5 of a weapon for a violent crime. I think the Court may have  
6 the actual indictments themselves. I have the sentencing  
7 sheets prepared. They've been signed by the defendant and  
8 his counsel. May I approach?

9 THE COURT: You may.

10 ASST. SOL. LEGETTE: Your Honor, the defendant is  
11 pleading straight up without recommendation or negotiation  
12 in this matter. His attorney is John D. Bryan from the the  
13 Colleton County Bar.

14 THE COURT: And Mr. Bryan, have you explained to Mr.  
15 Graham the charges contained in these indictments, the  
16 possible punishment, and explained to him his constitutional  
17 rights?

18 MR. BRYAN: I have, Your Honor.

19 THE COURT: Do you believe that your client has  
20 understood your conversations that you've had with him?

21 MR. BRYAN: Yes, Your Honor.

22 THE COURT: Do you agree with his decision to plead  
23 guilty to these two charges?

24 MR. BRYAN: I do, Your Honor.

25 THE COURT: Based on your investigation and the facts

1 and circumstances of these cases, do you believe it likely  
2 that the State could convince a jury of his guilt on both  
3 charges beyond a reasonable doubt?

4 MR. BRYAN: Yes, Your Honor.

5 THE COURT: Mr. Graham, how old are you, sir?

6 MR. GRAHAM: Twenty-seven.

7 THE COURT: And what kind of work have you normally  
8 done?

9 MR. GRAHAM: Well, I was in college before I got  
10 arrested. Yes, sir, I was majoring in computer engineering  
11 and pharmacy.

12 THE COURT: All right, sir. The last time you were in  
13 criminal court would have been approximately how long ago?

14 MR. GRAHAM: Well, I had charges in 2003, but I had  
15 went to -- I been in the county jail for two and a half  
16 years, and then I had went to court in 2006. I had charges  
17 pending all the way from 2003 when I came to prison and pled  
18 guilty to third degree burglary.

19 THE COURT: Have you even been treated for the abuse of  
20 alcohol or the abuse of drugs or treated for any mental  
21 illness?

22 MR. GRAHAM: No, sir.

23 THE COURT: Are you aware today of any physical,  
24 nervous or emotional problem that you may have that would  
25 interfere with your ability to understand what's going on

1 here today?

2 MR. GRAHAM: No, sir.

3 THE COURT: Mr. Graham, your attorney and the solicitor  
4 both tell me that you wish to plead guilty to those two  
5 charges that were stated a moment ago by the solicitor; is  
6 that correct?

7 MR. GRAHAM: Yes, sir.

8 THE COURT: I've already heard some of the allegations  
9 in this case, but the solicitor is going to give me some of  
10 the facts in the case, so please listen.

11 ASST. SOL. LEGETTE: Thank you, Your Honor. This  
12 matter occurred in Colleton County at the Hampton Inn in  
13 Walterboro, right off of I-95. The victim in this matter is  
14 Mr. Gregory Unger. He is in the U. S. Navy. He was getting  
15 ready to deploy to Puerto Rico as a Lieutenant Commander in  
16 the United States Navy. This particular evening, he drove  
17 into Walterboro. He pulled into the Hampton Inn; that's  
18 where he had been staying while he was on leave visiting  
19 friends and family in Ohio. He was going down to Florida to  
20 see his sister.

21 As he pulled into the Hampton Inn on this Sunday night,  
22 Your Honor, around 11:00 p.m. He went inside to the Hampton  
23 Inn and spoke to the hotel clerk, checked in, went outside  
24 to his car and got his bags. While he was getting his bags  
25 out of his car, he was approached by a young black male, 18

1 to 25, wearing a dark blue or black hoodie with red  
2 lettering, brandishing a weapon, and demanded his wallet.  
3 Thereafter, Mr. Unger asked, "Well, can I keep my military  
4 I.D.? I need to deploy tomorrow. I need my military I.D."  
5 The young black male was not happy about this, but he  
6 allowed my victim, Mr. Unger, to get his military I.D. out.  
7 Thereafter, he asked if he had anymore money. He said, "No,  
8 I don't have anymore money." Inside the wallet was three  
9 credit cards, a hundred and ninety-eight dollars, a \$5 Euro  
10 bill, along with his driver's license and various receipts.  
11 Thereafter, Mr. Graham, the assailant/robber, told my victim  
12 to get into the vehicle and don't move. The victim thinks at  
13 this point that he's getting ready to be kidnapped and taken  
14 someplace else or carjacked. He gets inside the vehicle,  
15 sits behind the wheel, and Mr. Graham runs off. He runs  
16 toward the next hotel, which is down the street from the --  
17 well, right across the street from the -- or right next door  
18 to the Hampton Inn.

19       Thereafter, the victim goes back into the hotel. He  
20 reports it to 9-1-1. It was 11:24 p.m., the call goes into  
21 9-1-1 dispatch. Then, Officer Jenkins comes upon this red  
22 vehicle, which he recognized. He stopped the vehicle. The  
23 vehicle was then searched. The young black male fits the  
24 description of Mr. Graham, the robber. He is identified as  
25 being Josh Graham.

1           Thereafter, the vehicle is towed. The victim's wallet  
2 is found inside that vehicle. The credit cards were still  
3 present. The driver's license was still present. The  
4 receipts were still there, but the money was gone. The  
5 victim got his wallet back, and he actually deployed the  
6 next day.

7           Thereafter, the gun, which we actually found on the  
8 side of the road, was sent to SLED for processing, but we  
9 didn't find any fingerprints or DNA on the gun. The co-  
10 defendant who was driving the vehicle actually came to  
11 police and talked to them two days later. She admitted  
12 taking Josh Graham to the Hampton Inn. She admitted him  
13 telling her to park at the Days Inn. He came back running  
14 towards her car. She drove off. Thereafter, they were  
15 stopped by police. She said she saw a gun on his lap. He  
16 tried to open the door before she was even able to stop. He  
17 told her where to go. She heard that gun go out of the  
18 window and hit the pavement. Thereafter, she stopped. She  
19 told him to go in the glovebox and put the -- I believe it  
20 was cigar papers inside the glovebox, which gave him  
21 opportunity to go into the glovebox. He told her that she  
22 better not say anything.

23           At this point, they are stopped. He gets out with the  
24 officer. The officer asks her for her license and  
25 registration. She goes in there, feels the wallet, but she

1 has to pull it out because at this point she is afraid she  
2 is going to be going down with Mr. Graham. Thereafter, she  
3 gives consent to search the vehicle. The vehicle is  
4 searched. Subsequently, they found the wallet. She tells  
5 police what happened and she tells them what she knows.

6 Also, she went to them and told them that Mr. Graham  
7 sent her a letter. In this letter, Mr. Graham indicated  
8 that she needed to be quiet basically. She recognized his  
9 handwriting. She used to tutor him. She needed to be quiet  
10 and he would be sending her letters from either his mom or  
11 his homeboy driving a green vehicle named Jason Wilson. This  
12 letter told her that basically the person that he allegedly  
13 robbed, she shouldn't worry about it, because the guy is  
14 from out of state and there is very little chance he was  
15 going to come back and testify.

16 So based on all of that, Your Honor, we believe that  
17 Mr. Graham -- we know he is the person who committed this  
18 crime. We believe this is in his best interest. I can read  
19 his record for you now or I can wait.

20 THE COURT: We'll come back to it. Okay, Mr. Graham,  
21 you've heard the solicitor's statement of the facts about  
22 these two charges that you indicate you wish to plead guilty  
23 to. Do you agree with what she just said?

24 MR. BRYAN: Yes, Your Honor.

25 THE COURT: Mr. Graham, do you agree?

1           DEFENDANT: Partial truth, Your Honor, but not the  
2 whole truth of how she said it. But basically, yes, sir.

3           THE COURT: Is there anything you want to take away  
4 from what you said?

5           DEFENDANT: I never put no wallet in Amber Wilson's  
6 car. She was the one who put the wallet in the car, because  
7 I don't remember about getting the wallet in her dashboard,  
8 and as Det. Chapman testified at prelim, he stated that  
9 where he found the wallet, the one who operated the vehicle  
10 put it in there and then the way how she make it seemed like  
11 everything, like, really like, like, I play everything or  
12 whatever, but it wasn't like that, Your Honor. Like we been  
13 in it together or whatever, but basically, like what she  
14 said, so.

15          THE COURT: In other words, you wish to plead guilty to  
16 the part that deals with the commission of the armed robbery  
17 and the possession of a firearm?

18          DEFENDANT: Yes, sir. I'd like to plead guilty to my  
19 part.

20          THE COURT: Yes, sir.

21          DEFENDANT: Yes, sir.

22          THE COURT: You understand you have the right to have a  
23 jury trial on these charges, don't you?

24          DEFENDANT: Yes, sir.

25          THE COURT: The jury is actually outside that door

1 right now. You understand that?

2 DEFENDANT: Yes, sir.

3 THE COURT: You understand by pleading guilty to these  
4 two charges, you're giving up your right to have a jury  
5 trial on these charges?

6 DEFENDANT: Yes, sir.

7 THE COURT: Have you ever had a jury trial?

8 DEFENDANT: No, sir.

9 THE COURT: If you were to have a jury trial, and I  
10 need to tell you, even as you stand there now, you're still  
11 entitled to have one. But if you were to have one, among  
12 other things, the Court would instruct the jury that you're  
13 presumed innocent, and the burden would be upon the State to  
14 prove your guilt to the jury beyond a reasonable doubt. You  
15 or your lawyer would have the right to cross examine any  
16 witnesses that the State might call to testify against you.  
17 You could have your own witnesses testify for you. You  
18 could testify yourself or not, and if you decided not to  
19 testify, the Court would instruct the jury that they could  
20 not hold that against you, because you have a constitutional  
21 right not to testify. If you made any incriminating  
22 statements, and I haven't heard that you did, but if you  
23 had, you have the right to challenge the State's right to  
24 use that evidence. And of course, you'd have the right to  
25 challenge the State's right to use any evidence against you.

1 Do you understand you have all of these rights?

2 DEFENDANT: Yes, sir.

3 THE COURT: And you may have certain defenses to these  
4 charges, I don't know, but do you understand by pleading  
5 guilty to these two charges, you're giving up all of those  
6 rights that I've just talked about?

7 DEFENDANT: Yes, sir.

8 THE COURT: And is that what you wish to do?

9 DEFENDANT: Yes, sir.

10 THE COURT: Have you had enough time to discuss these  
11 matters with your lawyer?

12 DEFENDANT: Yes, sir.

13 THE COURT: And I believe you also discussed it with  
14 some family members?

15 DEFENDANT: Yes, sir.

16 THE COURT: Are you fully satisfied with the services  
17 of your attorney?

18 DEFENDANT: Somewhat, Your Honor.

19 THE COURT: I mean, has he done everything you've asked  
20 him to do? Everything you would expect him to do in  
21 representing you?

22 DEFENDANT: Somewhat.

23 THE COURT: Well, I mean, do you want to issue a  
24 complaint against him?

25 DEFENDANT: Well, like, I remember him, my lawyer, I

1 had asked him to file a motion one month, that was back in  
2 like June or whatever, but he said he wasn't available to  
3 file that motion, but he took another one of his clients up  
4 that same term and got his bond -- got a bond for him, but I  
5 was trying to go up and get my bond reinstated the same  
6 month. But he said that he wasn't available, but he took  
7 another client up.

8 THE COURT: Okay. Anything else?

9 DEFENDANT: So that's why like I'm -- I really can't go  
10 -- I don't believe he got my best interests. I can't go to  
11 jury trial like that, Your Honor.

12 THE COURT: Anything else?

13 DEFENDANT: No, sir.

14 THE COURT: And has anybody threatened you in any  
15 manner in order to try to get you to plead guilty to these  
16 two charges?

17 DEFENDANT: No, sir.

18 THE COURT: Has anybody promised you anything or held  
19 out any hope of reward as an inducement in order to get you  
20 to plead guilty?

21 DEFENDANT: No, sir.

22 THE COURT: Are you pleading guilty to these offenses  
23 of your own free will and your own accord?

24 DEFENDANT: Yes, sir.

25 THE COURT: Are you pleading guilty to these two

1 charges because you are guilty of both charges?

2 DEFENDANT: Yes, sir.

3 THE COURT: All right. The Court finds that there is a  
4 sufficient factual basis for the pleas, and the decision to  
5 enter these pleas has been made freely, voluntarily with the  
6 advice and counsel of a competent attorney, with whom the  
7 defendant states that he is satisfied -- qualified,  
8 satisfied. And the Court accepts the plea.

9 Did you want to go ahead and discuss at this time his  
10 record, solicitor?

11 ASST. SOL. LEGETTE: Yes, Your Honor. And if I may  
12 also address the complaint of the defendant? On Mr. Bryan's  
13 behalf, if it is proper at this time, I can tell the Court  
14 that Mr. Bryan did contact me about having a bond -- we had  
15 a bond revocation hearing to revoke Mr. Graham's bond a  
16 month prior to that. Mr. Bryan did contact my office and  
17 talked to me about having the bond hearing subsequent to  
18 that particular bond revocation. I told him flat out no,  
19 because we had just had the bond revocation, and I believe  
20 that the Order itself would not have allowed us to have  
21 another hearing the subsequent month. I just wanted to  
22 address it for the Court and for Mr. Graham's benefit.

23 But as to his record, Your Honor, Mr. Graham has a  
24 juvenile conviction for 2002. He also, in 2003, committed a  
25 string of strong arm robberies, pled down from armed

1 robbery. The first of those armed robberies occurred in  
2 Colleton County at the Hampton Inn on or about October 15th,  
3 2003. The victim was an out of state patron. The defendant  
4 and the co-defendant went in on her. They barged in and  
5 stole her purse. He pled to burglary third in that  
6 particular instance and this was after he got out of prison.  
7 Then, on October the 17th, Mr. Graham, along with some other  
8 co-defendants, went to Sumter County, and on October 17th,  
9 they robbed a gentleman at a rest area on I-95. At that  
10 particular time, Mr. Graham and his co-conspirators took  
11 from the victim his wallet, his debit card, cash, along with  
12 his pin number. And according to co-defendants' statements,  
13 Mr. Graham was the leader of that particular robbery; he is  
14 the person who had the gun.

15 On October 17th, same day, they also went to Charleston  
16 County, the same co-defendants. They went to Charleston  
17 County to a Best Western Hotel on Savannah Highway and  
18 robber two patrons, a husband and a wife at gunpoint, taking  
19 cash from them as well. Now, for those particular robberies  
20 -- oh, I'm sorry, let me get to October 18th.

21 On October 18th, which is the day after the two  
22 robberies in Sumter and Charleston, Mr. Graham and his  
23 cohorts went back to Sumter County, and at a Knights Inn  
24 Hotel on Myrtle Beach Highway, they thereafter robbed  
25 another husband and wife, taking the wife's purse, along

1 with cash, credit cards, and a checkbook; and that occurred  
2 in Sumter County.

3 So what we have here, Your Honor, is a string of  
4 robberies up and down I-95 where Mr. Graham and his friends  
5 would go and rob various patrons, out-of-state individuals  
6 who were unsuspecting of their robbery tactics. That all  
7 occurred on October 17th and October 18th, and then he went  
8 to prison for 10 years on strong arm robbery; and that was  
9 in Sumter County.

10 Thereafter, he pled guilty to a concurrent sentence  
11 with those ten years from the Charleston County robberies,  
12 for a nine year concurrent sentence. Once he got done with  
13 Charleston and Sumter Counties, he got out of SCDC, he came  
14 back to the Colleton County Detention Center where he had a  
15 hold for him and he pled guilty in 2011 to a burglary third,  
16 which actually originally was -- call it what you will,  
17 strong arm robbery or armed robbery, and he pled guilty in  
18 2011 to that, Your Honor.

19 And this is what Mr. Graham has been doing. We believe  
20 that he got out of prison and began the same tactics again  
21 with Mr. Unger, except he was caught prior to being able to  
22 continue doing what he does.

23 THE COURT: The 2011 Colleton plea resulted in?

24 ASST. SOL. LEGETTE: Time served, Your Honor.

25 THE COURT: Time served.

1 ASST. SOL. LEGETTE: He has not been on probation; he  
2 simply has gone to prison and been paroled and nothing else.

3 THE COURT: Okay. Thank you, Ms. Legette. Mr. Bryan?

4 MR. BRYAN: Your Honor, Mr. Graham was born in  
5 Charleston, but he is a native and lives with his family,  
6 and his mother is here -- she is right here, and his fiancé  
7 is here. They are White Hall, South Carolina, which is near  
8 Greenpond. She would like to have a word with you, Your  
9 Honor. His grandmother and grandfather raised him and they  
10 treat him like a son, and sometimes she says she is his  
11 grandmother and sometimes she says she is his mother,  
12 because she raised him just like her own child. And his  
13 grandmother has health problems and his father, or his  
14 grandfather, he's got cancer, and they really need him at  
15 home. Of course, we realize that it's going to be a while.  
16 But he was trying to turn his life around, Your Honor.

17 He's 27 today, but I think he was 25 or 26 when this  
18 happened. He's been in jail since April of last year,  
19 except for he got out for a little while and had problems  
20 with his monitor. But he was a student at Salkehatchie.  
21 He's got ties to the community. He was trying to turn his  
22 life around. The crime spree that the solicitor refers to  
23 happened in a very short period of 2003, I believe, and the  
24 last conviction in 2011, if I hear right, was for something  
25 that happened back then. Unfortunately, nobody got hurt. I

1 think we can all be thankful for that.

2 I know I've spoken with Mr. Graham quite a few times  
3 about his case. He's an intelligent young man. He's a  
4 personable young man. He's just not a very good judge of --  
5 he's rather optimistic sometimes, and unduly so, Your Honor.  
6 But I would request the Court show him some mercy. He's  
7 pretty much got his -- well, he's pretty much been caught  
8 this time, Your Honor, and I think he can still turn his  
9 life around. I've spoken with him. He's got some  
10 potential. I would request that the Court show him some  
11 mercy.

12 THE COURT: All right. Thank you. You indicated that  
13 his mother/grandmother wished to speak?

14 MR. BRYAN: Yes, sir.

15 GRANDMOTHER GRAHAM: I would like to ask a question.  
16 See, I'm still paying the bondsman. I pay her \$125 a month  
17 on the bond. I had bond Josh out, I think it was last year.  
18 I'm still paying the bondsman. She was to come this  
19 morning, but I don't know what happened, so I'm asking the  
20 question. I believe I have to continue to pay her until I  
21 pay her out.

22 DEFENDANT: No, you don't.

23 THE COURT: I really can't answer that question, ma'am.  
24 That's between you and the bondsman, but the bond ends  
25 today.

1 GRANDMOTHER GRAHAM: Oh, okay.

2 THE COURT: If there was a bond. I forgot whether he  
3 had a no bond or a high bond; he couldn't make it.

4 GRANDMOTHER GRAHAM: Yes, sir.

5 ASST. SOL. LEGETTE: It was revoked, Your Honor.

6 THE COURT: And he never got another one?

7 ASST. SOL. LEGETTE: No, sir, he never got another one.

8 THE COURT: Okay. Anything else, Ms. Graham?

9 Well, it's up to God and y'all, you know. Truth to  
10 tell, his father is handicapped. He don't have no leg and  
11 there's a nursemaid come on Monday to Friday, and I have  
12 arthritis, plus I'm a diabetic. And Lord, I'm doing the  
13 best I can, and I'm raising two grand's, seven and eight,  
14 and I'm really having a time. I mean, if y'all could  
15 really, you know, help me. He really need to come home and  
16 give us a helping hand with his handicapped father, because  
17 there ain't much I can do. I hardly can walk sometimes.

18 THE COURT: All right. I understand. Thank you,  
19 ma'am. Mr. Graham, anything you want to say?

20 DEFENDANT: I know my rash decision got me here today  
21 and I want to apologize to Mr. Unger over there for robbing  
22 him and taking his wallet, Your Honor, but I never took his  
23 money or nothing like that; that's another story right  
24 there, but I'm guilty for taking the wallet and I truly  
25 apologize, and all I ask that I get as less sentence as

1 possible that you can render and that's all, Your Honor.

2 THE COURT: Thank you. Solicitor, anything?

3 ASST. SOL. LEGETTE: No, Your Honor. I will leave this  
4 matter in the sound discretion of the Court.

5 THE COURT: One question I had, on the possession  
6 during the commission of a violent crime, you have a "ts"  
7 written on the sheet, does it have any significance?

8 ASST. SOL. LEGETTE: On the top? Oh, that's the  
9 sentence range, Your Honor. I was writing plus for  
10 consecutive, I apologize. It's plus or either concurrent,  
11 as I read the statute, Your Honor. Judge Buckner always  
12 asks us to put the sentence range at the top of the  
13 sentencing sheet.

14 THE COURT: I didn't read it right.

15 ASST. SOL. LEGETTE: It's "plus five," I'm sorry.

16 THE COURT: Okay. Mr. Graham, on the armed robbery  
17 charge, I sentence you to the Department of Corrections for  
18 17 years, concurrent, credit for time served. Five years on  
19 the other one. Credit for time served. Good luck to you,  
20 sir.

21

22

23

24

25



FORM 5

STATE OF SOUTH CAROLINA )  
 )  
 County of Colleton )  
 ) #314554 )  
Joshua Graham )  
 Full name and prison number (if any) of Applicant )  
 )  
 v. )  
 )  
 State of South Carolina )  
 )  
 )  
 )  
 )

IN THE COURT OF COMMON PLEAS

13-CP-15-1225

APPLICATION FOR  
POST-CONVICTION RELIEF

PATRICIA C. GRANT  
 COLLETON COUNTY  
 COMMON PLEAS  
 2013 DEC 17 AM 8:27

**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legible 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 Lieber Correctional Institution

---

2. Name and location of Court which imposed sentence Walterboro, S.C.  
Colleton County

---

3. Name(s) of co-defendant(s) (if any) Amber Wilson

---

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2012 GS 1500288 Armed Robbery
  - (b) 2012 GS 1500289 Poss. of weapon During violent Crime.

(c) \_\_\_\_\_

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

(a) August 12, 2013 - 17 yrs

(b) \_\_\_\_\_

(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. n/a

ii. n/a

iii. n/a

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

i. n/a

ii. n/a

iii. n/a

(c) the date of each such result:

i. n/a

ii. n/a

iii. n/a

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

i. n/a

ii. n/a

iii. n/a

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

(a) Plea counsel failed to timely file appeal.

(b) \_\_\_\_\_

- (c) \_\_\_\_\_
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
  - (a) Ineffective assistance of counsel
  - (b) Ineffective assistance of counsel
  - (c) \_\_\_\_\_

- 11. State concisely and in the same order the facts which support each of the grounds set out in (10):
  - (a) Failure to investigate & prepare for trial
  - (b) Coercion of plea / involuntary plea
  - (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? 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. n/a
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
    - iv. \_\_\_\_\_
  - (b) the name and location of the Court in which each was filed:
    - i. n/a
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
    - iv. \_\_\_\_\_

- See attachment -

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

(a) violation of 5<sup>TH</sup>, 6<sup>TH</sup>, 14<sup>TH</sup> amendments of the U.S. Constitution.

(b) violation of 5<sup>TH</sup>, 6<sup>TH</sup>, 14<sup>TH</sup> amendments of the U.S. Constitution.

State of South Carolina

County of Colleton

Joshua Graham #314554

v.

State of South Carolina

In The Court of Common Pleas

C/A. No: n/a

13-CP-15-1225

Motion To Amend

Applicant is incarcerated within the South Carolina Department of Corrections ("SCDC") and states he has filed this application for Post Conviction Relief ("P.C.R.") Pro Se and preserves the right to Amend his application at any time as allowed by the Rules that govern P.C.R. Any amendment will be served in a timely fashion to the Court in this matter.

Respectfully Submitted

S/ Joshua Graham

Joshua Graham

(c) the disposition thereof:

- i. n/a
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. n/a
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. n/a
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

no

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

(a) which grounds have been presented:

- i. n/a
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. n/a
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- (a) not the proper venue
- (b) not the proper venue
- (c) \_\_\_\_\_

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

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

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. John Douglas Bryan; P.O. Box 1111, Walterboro, S.C. 29488
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. plea and sentencing
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

Vacated sentence and new trial

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

no

STATE OF SOUTH CAROLINA )  
County of Colleton )

VERIFICATION

I, Joshua Graham, 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.

Joshua Graham

SWORN to and subscribed before me this 9<sup>th</sup> day of December, 2013.

Richard Bryant (L.S.)  
Notary Public

My Commission Expires: May 26, 2020

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

I, Joshua Graham, 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.

Joshua Graham  
Applicant

SWORN or affirmed to and subscribed before me this  
9<sup>th</sup> day of December, 2013.

Ludraea Bryant  
Notary Public

My Commission Expires: May 26, 2020

2009 DEC 17 AM 8:30  
PATRICIA C. GRANT  
COLLETON COUNTY  
COMMON PLEAS

STATE OF SOUTH CAROLINA )  
 COUNTY OF COLLETON )  
 )  
 )  
 )  
 )  
 Joshua Graham, #314554, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOURTEENTH JUDICIAL CIRCUIT

2013-CP-15-1225

**RETURN**

The Respondent, making its Return to the application for post conviction relief (PCR) filed December 17, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. The Applicant was indicted by the July 2012 term of the Colleton County Clerk of Court for Armed Robbery (2012-GS-15-0288) and Possession of a Weapon during the Commission of a Violent Crime (2012-GS-15-0289). John Douglas Bryan, Esquire, represented him. On August 12, 2013, the Applicant pled guilty before the Honorable Brooks P. Goldsmith and was sentenced to seventeen (17) years for Armed Robbery and five (5) years, concurrent, for the possession charge. Applicant did not appeal his conviction and sentence.

Attached herewith and incorporated herein are the records of the Colleton County Clerk of Court regarding the subject conviction(s). The guilty plea transcript will be forwarded upon

receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

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

1. "Ineffective Assistance of Counsel"
  - a. "Failure to investigate & prepare for trial"
2. "Ineffective Assistance of Counsel"
  - a. "Coercion of plea/involuntary plea"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCP(a).

## III.

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

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

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

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

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

#### IV.

The Applicant further alleges his guilty plea was not voluntarily made. The Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A

defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4<sup>th</sup> Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4<sup>th</sup> Cir. 1976).

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

V.

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

VI.

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

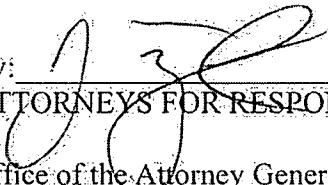
Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON  
Assistant Attorney General

By:   
\_\_\_\_\_  
ATTORNEYS FOR RESPONDENT  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

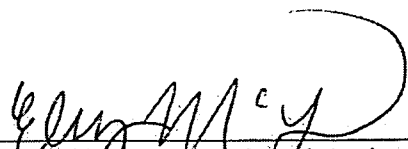
May 21, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON	)	
	)	
	)	2013-CP-15-1225
	)	
JOSHUA GRAHAM, #314554,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

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

**Joshua Graham, #314554**  
**Lieber Correctional Institution**  
**PO Box 205**  
**Ridgeville, SC 29472**

DATED this 21<sup>st</sup> day of May, 2015.

  
 \_\_\_\_\_  
 Elizabeth McLellan, Legal Assistant  
 For Respondent

1                   In the Court of Common Pleas for the  
2                   State of South Carolina, County of Colleton  
3  
4   Case No.: 2013CP1501225  
5 Joshua Graham,  
6                   Plaintiff(s),  
7 vs.   Transcript of Record  
8 State of South Carolina,  
9                   Defendant(s).

10

11

12

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14

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October 21, 2015

16

Beaufort, South Carolina

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21 BEFORE:

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The Honorable Roger L. Couch

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APPEARANCES

**PLAINTIFF'S ATTORNEY:**

James K. Falk, Esquire  
Falk Law Firm  
PO Box 1058  
Charleston, SC 29402  
843-606-6007  
jfalklaw@gmail.com

**DEFENDANT'S ATTORNEY:**

J. Rutledge Johnson, Esquire  
Office of The Attorney General  
PO Box 11549  
Columbia, SC 29211  
803-734-1867  
rjohnson@scag.gov

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## INDEX

1 PROCEEDINGS

2 MR. JOHNSON: May it please the Court, Your Honor.  
3 This is Joshua Graham versus the State of South  
4 Carolina, Case number 2013CP1501225. Mr. Graham was  
5 indicted at the July 2012 term by the Colleton County  
6 grand jury for armed robbery and possession of a weapon  
7 during the commission of a violent crime.

8 On August 12th, 2013 he plead guilty before the  
9 Honorable Brooks P. Goldsmith and was sentenced to 17  
10 years for armed robbery and five five years concurrent  
11 for a possession charge. He didn't appeal this  
12 conviction or sentence; however, he filed a timely PCR  
13 December 17, 2013. We filed our return, after  
14 receiving the application, on May 21st, 2015. He's  
15 represented here today by Mr. Jim Falk.

16 THE COURT: Mr. Falk, I will be happy to hear from  
17 you.

18 MR. FALK: Thank you, Your Honor. We are really  
19 going forward on a straight Pittman type issue on the  
20 issue of whether or not my client was adequately  
21 apprised of the rights that he was waiving when he  
22 entered his guilty plea.

23 THE COURT: I see. You may proceed.

24 MR. FALK: I would call Mr. Graham to the stand.

25 Thereupon,

## TESTIMONY OF JOSHUA GRAHAM

1

JOSHUA GRAHAM

2 was called as a witness, having been first duly sworn,  
3 was examined and testified as follows:

4

## DIRECT EXAMINATION

5 BY MR. FALK:

6 Q You plead guilty on August 12, 2014; is that  
7 correct?

8 A August 12, 2013.

9 Q That's right. This transcript is incorrect. Can  
10 you tell me what you thought when you woke up that morning  
11 on the 13th? Excuse me, on the morning of the 12th, 2013.  
12 Can you tell me what you thought was going to happen that  
13 day?

14 A I thought that I was going to proceed to go to  
15 Trial. But my lawyer, he never came to talk to me on that  
16 weekend like he told me he was going to come and talk to me.  
17 So, when I showed up to the courthouse he came and talked to  
18 me, we had some issues. He said that the State had just got  
19 another -- they had just interviewed another witness in  
20 July 2013. I asked him if he had time to investigate that  
21 witness. He was like, No, because they just had interviewed  
22 the witness.

23 So, when we went to court I was about to  
24 pick a jury trial. And then my lawyer, he told me,  
25 verbatim, he was like, They have got the gun, the

## TESTIMONY OF JOSHUA GRAHAM

1 wallet, the hoodie, and your co-Defendant testifying  
2 against you, so we have really got to pick a dumb jury  
3 to win. At that time I felt like there was no hope, so  
4 I told him that I wanted to plead guilty. Now, this is  
5 the first time I ever told him that I wanted to plead  
6 guilty. The whole time I had him I was adamant about  
7 going to trial, because I felt that I could have win at  
8 trial. So, that is when I plead guilty.

9 Q So, what conversations did you have with your  
10 lawyer about what the guilty plea was going to mean?

11 A We had no conversations about no guilty plea,  
12 because this was the first time that he ever knew I was  
13 going to plead guilty.

14 Q Did he review the rights that you were giving up  
15 when you plead guilty?

16 A No, he didn't review nothing.

17 Q Did you know that you had a right to proceed to  
18 trial, obviously?

19 A Yeah, the Judge told me that.

20 Q Yeah. And -- well, let me just skip to the point.  
21 Did he ever tell you the consequences of pleading guilty to  
22 armed robbery?

23 A No, he never told me the consequences to pleading  
24 to armed robbery. Like I told you, this was the first time  
25 that I was pleading -- that he ever knew that I was going to

## TESTIMONY OF JOSHUA GRAHAM

1 plead guilty. I was in my trial clothes prepared to go to  
2 the trial.

3 Q Okay. Did he ever tell you what the elements of  
4 armed robbery are?

5 A He didn't explain the elements. He didn't even  
6 show me my indictments. The first time that I reviewed my  
7 indictments is when I was at Lieber Correctional Institution  
8 and I told him to send me a copy of my motion to discovery  
9 and then my indictment was in there.

10 Q More importantly, did he ever tell you that if you  
11 plead guilty you were going to face a mandatory of ten  
12 years?

13 A He never told me none of that.

14 Q Did the Judge every ask -- talk to you about a  
15 sentencing range?

16 A The Judge never said none of that.

17 Q I think that there was some discussion about 30  
18 years as a maximum; was there ever a discussion about a  
19 ten-year minimum?

20 A There was never a discussion about no ten-year  
21 minimum and there was no discussion about no 30-year  
22 maximum. There was never a discussion about none of that.

23 Q So, that day when you were going to plead, you  
24 thought that it was possible that you could get -- you got  
25 17 years; is that correct?

## TESTIMONY OF JOSHUA GRAHAM

1 A Yeah, I got 17.

2 Q So you certainly thought that it was possible that  
3 you could have gotten seven; is that correct?

4 A To tell you the truth, I didn't even know what I  
5 could have gotten.

6 Q Okay. Did he show you a sentencing sheet? There  
7 is a sheet that is in the record that has your signature on  
8 it. If I may approach?

9 THE COURT: You may.

10 Q Do you recall seeing that sheet?

11 A Yes, sir.

12 Q Did he ask you to sign that sheet?

13 A Yes, sir.

14 Q All right. There was some numbers on the top of  
15 the sheet. For example, it says, A/W number and it says,  
16 186303. Did he tell you what that meant?

17 A He didn't tell me none of that.

18 Q Did he tell you what -- where it says CDR code,  
19 what that meant?

20 A He ain't told me none of that.

21 Q Did he go line by line and tell you what this  
22 sheet was?

23 A No, the only thing he told me was just to sign  
24 that sheet.

25 Q Now, when you were asked at the sentencing, the

## TESTIMONY OF JOSHUA GRAHAM

1 Judge asked you whether or not you were satisfied with the  
2 services of your attorney?

3 A And I told him -- and I told him something like  
4 that. And I also told him, I couldn't proceed to go to  
5 trial because my lawyer didn't have my best interest. All  
6 of that is in the transcript.

7 Q So, the Judge asked you, Are you satisfied with  
8 the services of your attorney. You answered, Somewhat Your  
9 Honor. And then the Judge went further, I mean, Has he done  
10 everything that you have asked him to do, everything that  
11 you would expect him to do in representing you. And you  
12 said, Somewhat. Does that sound familiar?

13 A Yes, sir.

14 Q Okay.

15 MR. FALK: Beg the Court's indulgence for a  
16 moment.

17 (Pause.)

18 BY MR. FALK:

19 Q At some point the Solicitor sort of explained what  
20 he thought the facts of the case were; do you recall that  
21 part?

22 A Yes, sir.

23 Q And the Court asked you, Okay, Mr. Graham, you  
24 have heard the Solicitor's statement of the facts about  
25 these two charges that you indicate that you wish to plead

## TESTIMONY OF JOSHUA GRAHAM

1 guilty to. Do you agree with what she just said? And the  
2 Court asked you again, Do you agree? And your answer was,  
3 Partial truth, Your Honor, but not the whole truth of how  
4 she said it. Basically, yes, sir.

5 What did you mean by that?

6 A What I meant by that, I was like somewhat like I  
7 participated but really didn't. And I didn't actually like  
8 do what they say I did. That is why I told them that.  
9 Beyond that, my lawyer, it was significant issue that I was  
10 trying to get him like, for example, like with the text  
11 messages or whatever, it was some text messages like in my  
12 co-Defendant's phone. And the police was like, her -- she  
13 told them that her and her boyfriend was texting back and  
14 forth and they were texting about a gun and bullets. And I  
15 told my lawyer, Mr. Bryan, I was like, Man, you need to  
16 subpoena those text messages. The police never gave us  
17 those text messages and he never subpoenaed text messages,  
18 so, I really couldn't like -- do you see what I'm saying?  
19 Like -- so, basically I was sort of like a scapegoat for my  
20 co-Defendant, they used me like a scapegoat so -- and then  
21 the evidence that my lawyer told me that they had it seemed  
22 like, you know, like I had to win it.

23 Q Thank you. In your application you had stated  
24 that -- question nine was, What were the reasons for not  
25 appealing and plea counsel failed to timely file an appeal.

## TESTIMONY OF JOSHUA GRAHAM

1           A     Yes.

2           Q     When was that?  When did that conversation take  
3 place?

4           A     I wrote my lawyer a letter.  I got sentenced  
5 August 12th, 2013.  I wrote my attorney a letter  
6 August 19th, 2013, because I was coming -- I was going to  
7 prison August 20th, 2013.  So, when I got to Lieber yard I  
8 called my lawyer and I asked him, I was like, Why didn't you  
9 file my appeal?  He said, Well, I got your letter late.  And  
10 that is what I put -- if I'm not mistaken, that is what I  
11 put on my application too, that he said -- that my lawyer  
12 said he got my letter too late.

13          Q     Following your plea, did you ever tell your lawyer  
14 that you wanted to appeal?

15          A     No, sir, I just wrote him a letter.  I didn't tell  
16 him verbally, but I wrote him a letter and let him know that  
17 I wanted to appeal the Judge's decision.

18          Q     Were you ever advised of what the time frame was  
19 in order to file an appeal?

20          A     No, sir.

21               MR. FALK:  I have no further questions.

22               THE COURT:  You may cross-examine.

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

24               THE COURT:  Yes, sir.

25                               CROSS EXAMINATION

## TESTIMONY OF JOSHUA GRAHAM

1 BY MR. JOHNSON:

2 Q So, Mr. Graham, your testimony here today is that  
3 nobody advised you of the maximum and minimum penalties that  
4 armed robbery carries?

5 A That's right, sir, nobody advised me of that.

6 Q Okay. This isn't your first rodeo in the criminal  
7 justice system, is it?

8 A No, sir.

9 Q As a matter of fact, you had armed robbery charges  
10 that were pled down on multiple occasions, haven't you?

11 A Yes, sir.

12 Q In 2003?

13 A I got charged in 2003, but in 2006 I had -- when  
14 was in Sumpter County, I wrote the Judge Toal a letter that  
15 I have been in jail for two and a half years and I want to  
16 know why nobody won't come see me. So, when I wrote her  
17 some lawyer showed up, I don't even remember his name, and  
18 he told me that the Solicitor was dropping my charges down  
19 to common armed robbery or strong armed robbery, something.  
20 And he was like, Look, basically he was like, if you plead  
21 guilty, being you have been locked up for two and a half  
22 years, he was like, and you ain't got no record, he was like  
23 nine times out of ten you might get probation and you will  
24 go home.

25 And then in Charleston I represented

## TESTIMONY OF JOSHUA GRAHAM

1 myself in Charleston as my own, pro se, so they said  
2 that they would run the Charleston concurrent.

3 MR. JOHNSON: Your Honor, I move to strike that  
4 testimoney as to relevance as to whether or not counsel  
5 here, Mr. Bryan, was ineffective.

6 THE COURT: It is not relevant to the case before  
7 the Court. You asked the question, I'll leave it in  
8 the record.

9 BY MR. JOHNSON:

10 Q Mr. Graham, the question I asked you was that you  
11 got charges in 2003 that you pled to, correct?

12 A Oh, yes, sir.

13 Q Okay. And you also got 2011 charges that you pled  
14 to, right?

15 A Those are the 2003, so I pled to them because they  
16 never came and took me --

17 Q You pled in 2011?

18 A Yes, sir.

19 Q But you were charged with armed robbery?

20 A No, I was charged with first degree burglary and I  
21 pled -- and I pled to third degree burglary in 2011.

22 Q Okay. You also say that counsel was ineffective  
23 for failing to interview a witness in this case; is that  
24 right?

25 A Yes, sir.

## TESTIMONY OF JOSHUA GRAHAM

1 Q Is that witness here today to testify?

2 A No, sir.

3 Q You also state that your counsel was ineffective  
4 for failing to investigate text messages between  
5 co-Defendant and girlfriend; is that correct?

6 A Yes, sir.

7 Q Do you have a copy of those text messages to show  
8 the Court?

9 A No, sir.

10 Q And you admitted your guilt in this case, correct?

11 A Yes, sir.

12 Q And you agreed with the facts as stated by the  
13 Solicitor in this case, didn't you?

14 A Yes, sir.

15 Q And as a matter of fact you did state to the  
16 Court, under oath, on Page 18, Your Honor, I know that my  
17 rash decision got me here today. I want to apologize to  
18 Mr. Unger over there for robbing him and taking his wallet.  
19 Those are your words, correct?

20 A Yes, sir.

21 Q And that is under oath?

22 A Yes, sir.

23 Q You admit your guilt, yes, sir, you admit your  
24 guilt?

25 A Yes, sir.

## TESTIMONY OF JOSHUA GRAHAM

1 MR. JOHNSON: No further questions, Your Honor.

2 THE COURT: Redirect.

3 REDIRECT EXAMINATION

4 BY MR. FALK:

5 Q On the prior armed robbery charges, did you speak  
6 to the lawyer about those charges?

7 A I spoke to the lawyer in Sumter County.

8 MR. JOHNSON: Object to relevance, Your Honor. I  
9 think that you said that was not relevant. I only  
10 asked that because he has been in the system before.

11 THE COURT: I will allow him to explore it  
12 further. I may explore it myself to see if he was, in  
13 fact, charged with armed robbery whether he ever  
14 examined or looked into what the maximum penalties may  
15 have been, so I'll let him go.

16 MR. FALK: Those are my questions, Your Honor.

17 BY MR. FALK:

18 Q Did anyone every advise you what the minimum  
19 penalty was for armed robbery at that time?

20 A Nobody. I never knew the minimum mandatory for  
21 armed robbery. Like I told you, the lawyer when he came and  
22 saw me in Sumter County, he told me that the Solicitor  
23 dropped my charges down to strong armed robbery and he told  
24 me that they would run it concurrent and nine times out of  
25 ten I might go home, or I might get some probation. But he

## TESTIMONY OF JOSHUA GRAHAM

1 never came to me with no armed robbery and explained nothing  
2 about no armed robbery.

3 Q Because you were going in there? Because actually  
4 when you were pleading that day, you were not pleading to  
5 armed robbery?

6 A I was not pleading to armed robbery.

7 Q You were pleading to strong armed robbery?

8 A Strong armed robbery.

9 Q Thank you. So have you ever pled to armed robbery  
10 before the -- what that date was, April -- before this time?

11 A I never pled to armed robbery before.

12 MR. FALK: No further redirect.

13 THE COURT: Recross?

14 MR. JOHNSON: None, Your Honor.

15 THE COURT: You may step down.

16 THE COURT: Applicant may call his next witness.

17 MR. FALK: We call Mr. Bryan to the stand.

18 THE COURT: Step forward, sir, and be sworn.

19 Thereupon,

20 JOHN DOUGLAS BRYAN

21 was called as a witness, having been first duly sworn,

22 was examined and testified as follows:

23 THE CLERK: State your full name and spell your  
24 last for the Court.

25 WITNESS: John Douglas Bryan, B-R-Y-A-N.

## TESTIMONY OF JOHN DOUGLAS BRYAN

1 DIRECT EXAMINATION

2 BY MR. FALK:

3 Q Mr. Bryan, do you recall the Judge asking you  
4 whether or not you advised the client of the -- excuse me,  
5 on Page 3 of the transcript that -- from the Court, it says,  
6 on line 14, Mr. Bryan, have you explained to Mr. Graham the  
7 charges contained in these indictments, possible punishments  
8 and explain to him his constitutional rights?

9 A Yes.

10 Q And you answered that you had?

11 A Yes.

12 Q When did you explain to him the sentencing range?

13 A I usually do that at the first visit. I mean,  
14 it's kind of when you first talk to a client usually you  
15 have got to tell them the sentence range for the crime for  
16 which they are charged and any potential, you know, lesser  
17 included offenses.

18 Q That is what you usually do?

19 A I always do that. I mean, that is kind of one of  
20 the basics.

21 Q And so, you would have done that at the first  
22 time?

23 A In all likelihood, yeah.

24 Q And when would that have been?

25 A I don't remember straight off, but I can look.

## TESTIMONY OF JOHN DOUGLAS BRYAN

1 Probably May 21st, 2012. I had a client conference then.

2 Q And so he pled approximately 15 months later?

3 A I suppose so. We had numerous conferences and  
4 jail visits.

5 Q Any contemporaneous notes that say that you  
6 explain to him the sentencing range?

7 A Possibly. It might take a moment to find it here.

8 (Pause.)

9 BY MR. FALK:

10 Q Well, maybe let me ask you a different question.  
11 You said that you probably explained to him the sentencing  
12 range?

13 A Yes, I always do that. I mean . . .

14 Q Is there a possibility in this case that you did  
15 not?

16 A I can't imagine it. Because, I mean, we spoke  
17 numerous times. I used to be a public defender and every  
18 time that I would do a first visit that is one of the things  
19 that you do, you go through the trial rights, you go through  
20 the sentencing possibilities, you go through the possibility  
21 of a lesser included sentence and what that would be and  
22 whether it is violent or non-violent. I don't see it, but I  
23 know I did it.

24 Q Did you do it on August 12th, 2013, on the day of  
25 the sentencing, on the day of the plea?

## TESTIMONY OF JOHN DOUGLAS BRYAN

1           A     I don't remember. I can't imagine us discussing a  
2 plea without bringing up, you know, potential sentencing. I  
3 mean, even if I hadn't have brought it up I'm sure that he  
4 would have asked me. I mean, you can't really make a  
5 decision without knowing that.

6           Q     I completely agree.

7           A     And he was very talkative and very inquisitive and  
8 I'm sure that he wouldn't have jumped in and plead guilty  
9 without asking if he didn't know. And I know that I would  
10 have told him already.

11          Q     But can you say with any more certainty than that  
12 that you did in fact explain it to him?

13          A     I always tell them the potential sentencing range.  
14 I mean, that is kind of the most -- you go through the  
15 elements, you go through the potential sentence, you go  
16 through the trial rights. I mean, that is just . . .

17          Q     Did you review with him issues that might have  
18 been with his codefendant's statement?

19          A     Oh, yes, and he pointed out numerous defects in  
20 all of the evidence and statements, any kind of  
21 inconsistency, like whether the victim said that it was an  
22 automatic or a revolver. I mean, he was very good at going  
23 through his information.

24          Q     Did you ever ask him if he wanted to appeal?

25          A     I don't think so.

## TESTIMONY OF JOHN DOUGLAS BRYAN

1 Q Would that not be one of those things that you  
2 would automatically ask?

3 A Not normally for a plea of guilty unless they tell  
4 me, you know, I want to appeal, or you know.

5 Q Is that not the practice in the Public Defender's  
6 Office where you were practicing?

7 A Not when I was there.

8 Q Did you ever advise him that he had ten days in  
9 which to file an appeal?

10 A I don't remember.

11 Q Would that not be something that would be part of  
12 your routine that you would usually do?

13 A Normally. Although usually the Judge brings that  
14 up during the plea itself. There aren't usually many  
15 grounds for an appeal on a plea.

16 Q But somebody still has the right to appeal; is  
17 that correct?

18 A Yeah.

19 MR. FALK: No further questions.

20 THE COURT: You may cross-examine.

21 MR. JOHNSON: Thank you, Your Honor. May it  
22 please the Court.

23 THE COURT: Yes, sir.

24 CROSS EXAMINATION

25

## TESTIMONY OF JOHN DOUGLAS BRYAN

1 BY MR. JOHNSON:

2 Q Counselor, your testimony here today is that it  
3 was your standard practice to advise your client,  
4 Mr. Graham, in particular of the sentencing ranges, of his  
5 constitutional rights to a trial, of his right to remain  
6 silent, of his rights to confront any witnesses and  
7 cross-examine those witnesses; is that correct?

8 A Yes.

9 Q How long have you been practicing law?

10 A About 20 years.

11 Q What percentage of that is criminal?

12 A Oh, it depends. There was several years that I  
13 was working with the Public Defender's Office in Allendale  
14 Jasper and Hampton Counties. And then I would get appointed  
15 and for a while, when I was starting out, I was what they  
16 call a conflict attorney for Hampton County where I would  
17 get cases where the public defender had a conflict.

18 Q Roughly, how many criminal cases have you tried or  
19 handled?

20 A Handled, several thousand I would think.

21 Q And Mr. Graham was active in his defense?

22 A Oh, yeah.

23 Q Did he ever tell you that he wanted to appeal this  
24 case?

25 A I got a letter. But I think that I was on

## TESTIMONY OF JOHN DOUGLAS BRYAN

1 vacation, and when I came back there was the letter.

2 Q And was that after ten days past the plea?

3 A I believe so.

4 Q And did you see any appellate issues in this case?

5 A No.

6 Q And was this a legal sentence in this case?

7 A Yes, it was within the range. It could have been  
8 much worse.

9 MR. JOHNSON: No further questions at this time,  
10 Your Honor.

11 THE COURT: You may redirect.

12 MR. FALK: No questions.

13 THE COURT: You may step down. Thank you very  
14 much.

15 THE COURT: You may call your next witness.

16 MR. FALK: The applicant has no further witnesses.

17 MR. JOHNSON: No witnesses, Your Honor.

18 THE COURT: All right. I will hear argument from  
19 the applicant.

20 MR. FALK: Your Honor, Pittman versus State is  
21 still good law in the State of South Carolina. And it  
22 advises that -- it states that Defendants need to be  
23 advised of the direct consequences of their plea.  
24 There's a lot of cases that have challenged the  
25 decision in Pittman, and that was more about the parole

## TESTIMONY OF JOHN DOUGLAS BRYAN

1 eligibility.

2 THE COURT: Collateral.

3 MR. FALK: Collateral. But a mandatory minimum is  
4 a direct consequence of the plea. It's certainly the  
5 best practice for trial just to review that with  
6 counsel -- I mean, to review that with the Defendant.  
7 I don't know why it wasn't done in this case. I think  
8 there's reason to believe that Mr. Bryan did not do  
9 that in this case. He has a standard practice that he  
10 says that he always does this, but then again he  
11 doesn't always advise Defendants that they have a right  
12 to -- the time period for filing an appeal. I think  
13 that if you have a standard practice that you are going  
14 to rely on on one hand, then you should also rely on it  
15 on the other hand.

16 THE COURT: Yes, but I don't believe that he  
17 indicated that the advising of appeals was the standard  
18 practice, is the way that I understood his testimony.

19 MR. FALK: Yes, sir, Your Honor, I do believe that  
20 that is certainly the best practice of advising them of  
21 their appellate rights. The plea colloquy in this  
22 case, I do not think it meets the standards in Boykin,  
23 I do not think that it meets the standards in Pittman.  
24 I would appreciate the opportunity to brief this  
25 further, but I do think that we have a case here where

## TESTIMONY OF JOHN DOUGLAS BRYAN

1 this was a plea that was not knowingly made because  
2 the waivers was -- he did not make a knowing waiver of  
3 all of his rights.

4 And although he did say that he was implicated in  
5 the crime, he still had a right to go forward and  
6 still had a right to have a jury trial beyond a  
7 reasonable doubt. And that decision whether or not to  
8 go forward may be different if you know that you may  
9 get 10 years versus you don't know what the judge is  
10 going to do on this side. I think it was an  
11 ill-advised -- improperly advised -- I'm not saying  
12 that there was anything wrong with pleading under  
13 these facts, I'm just saying that it was my client's  
14 decision whether or not to plea and before my client  
15 could make that decision fully informed he needs to be  
16 fully informed of the consequences.

17 I don't think that there's sufficient evidence  
18 that there was any direct communication that client  
19 knew that this carried a ten-year minimum sentence.  
20 Thank you.

21 THE COURT: All right. From the State?

22 MR. JOHNSON: Yes, Your Honor. We do take the  
23 position that this plea colloquy does meet Boynkin. If  
24 you look on Page 10 he was advised of his rights to a  
25 trial. That being the right to a jury of his peers,

## TESTIMONY OF JOHN DOUGLAS BRYAN

1 the right to testify, the right to cross-examine any  
2 witnesses and to call witnesses on your own behalf, or  
3 the right not to testify. He waived these, Your Honor.  
4 As he testified on the stand, he did admit his guilt in  
5 this case. And then, as to counsel's performance --

6 THE COURT: I read his admission concerning the  
7 facts, and it appears that the only fact that he  
8 disagreed with is about a wallet being put on the  
9 dashboard and something about a female.

10 MR. JOHNSON: Correct. Took the money out of the  
11 wallet. That too.

12 THE COURT: Other than that, he agreed with the  
13 facts?

14 MR. JOHNSON: Correct. Yes, sir.

15 THE COURT: All right.

16 MR. JOHNSON: He's fully admitted that he did rob  
17 this serviceman right before he was being deployed.  
18 But as far as Mr. Bryan was concerned, he's testified  
19 that he's handled several thousand cases, that it's  
20 always his standard practice to advise clients of, you  
21 know, the maximum/minimum penalties, the lesser  
22 included offenses, the constitutional rights. And at  
23 no point did he say that that didn't happen in this  
24 case. Your Honor, I think that that stands for itself,  
25 and I don't believe that the applicant met his burden

## TESTIMONY OF JOHN DOUGLAS BRYAN

1 of proof as to that allegation.

2 THE COURT: How about his right to a belated  
3 appeal when there was no evidence that he was advised  
4 of his rights? He apparently made some effort to get  
5 an appeal, but because of a vacation he did not.

6 MR. JOHNSON: Correct. Your Honor, if you look at  
7 the United States Supreme Court case, Rowe v. Flores  
8 Ortega. That would be 528 U.S. 470-2000. Counsel has  
9 a constitutional imposed duty to consult Defendant  
10 about an appeal only where there's reason to think that  
11 a rational Defendant would want to appeal or that this  
12 particular Defendant reasonably demonstrated to counsel  
13 that he had an interest in appealing. Mr. Graham's  
14 testimony was that he never verbally told counsel that.

15 I asked the specific questions on, Were there any  
16 appealable issues, was it an illegal sentence, to  
17 which Mr. Bryan responded that he did not find any  
18 appealable issues and that this letter, according to  
19 Mr. Graham, was sent from Lieber. That means usually  
20 that he would have had to go to R&E there at Kirkland  
21 for 30 days before getting to Lieber is my  
22 understanding of SCDC's practices, which would not be  
23 within 10 days.

24 Under Rowe versus Flores Ortega it says potential  
25 appealable issues, that the Court may consider whether

## TESTIMONY OF JOHN DOUGLAS BRYAN

1 the trial or a plea, if it is a plea, reduce the scope  
2 of appealable issues, it may indicate that the  
3 Defendant an end to the judicial proceedings. He got  
4 a benefit in this case by not getting the 30 years and  
5 I don't believe that he's met his duty to prove that  
6 counselor had a constituional duty to inform him on  
7 his right to appeal in this case, Your Honor.

8 THE COURT: Anything on the right to appeal issue?  
9 You didn't mention it.

10 MR. FALK: Well, he did not -- I guess we could  
11 put Mr. Bryan on the stand. He testified that he  
12 received the letter when he got back from vacation.  
13 And it would be my client's testimony -- and I can put  
14 him back on the stand -- when he recalls writing the  
15 letter, whether or not it was 30 days or not, that is  
16 an assumption.

17 THE COURT: That is a question that I would have.  
18 And I will allow you to put your client back on the  
19 stand and take testimony as to when the letter, he  
20 says, was mailed. I'll give you an opportunity to call  
21 trial counsel to respond to that question. So, sir, if  
22 you will resume the stand I'll remind you that you have  
23 been placed under oath. You are still under oath at  
24 this time. Do you acknowledge that fact?

25 THE WITNESS: Yes, sir.

## TESTIMONY OF JOHN DOUGLAS BRYAN

1 THE COURT: Thank you.

2 Thereupon,

3 JOSHUA GRAHAM

4 was called as a witness, having been previously duly sworn,  
5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. FALK:

8 Q You testified earlier that you sent a letter?

9 A Yes, I got sentenced August 12th, 2013, I wrote  
10 the letter August 19th, 2013. Right there in Walterboro,  
11 meaning that he would have got the letter August 20th, 2013.

12 MR. JOHNSON: Objection. That is speculation as  
13 to when he received the letter, Your Honor.

14 THE COURT: I will sustain that objection.

15 BY MR. FALK:

16 Q Where were you when you wrote the letter?

17 A In Colleton County jailhouse.

18 Q When did they take you to R&E?

19 A August 20th, 2013.

20 Q So you wrote it from the Colleton County jail?

21 A Yes, sir.

22 MR. FALK: No further questions.

23 THE COURT: You wish to cross-examine him on that  
24 point?

25 MR. JOHNSON: Yes, sir.

## TESTIMONY OF JOSHUA GRAHAM

1 CROSS EXAMINATION

2 BY MR. JOHNSON:

3 Q So, when you told us that you wrote it in Lieber  
4 earlier in your testimony, you were lying under oath?

5 A No, I never told you that. I got sentenced  
6 August 12th, 2013 and I sent the letter August 19th, 2013.  
7 I went to Columbia August 20th, 2013.

8 THE COURT: Do you have a copy of that letter here  
9 today?

10 MR. FALK: Mr. Bryan probably do.

11 THE COURT: Do you have a copy of that letter?

12 MR. FALK: No, I sent it to him. I only wrote  
13 one.

14 MR. JOHNSON: No questions, Your Honor.

15 THE COURT: Anything further, Mr. Falk?

16 MR. FALK: Nothing, Your Honor.

17 THE COURT: All right. You may step down. In  
18 that regard, do you wish to recall trial counsel?

19 MR. JOHNSON: Your Honor, actually I would like to  
20 make more of a directed verdict motion, kind of under  
21 41(b) that he failed to meet his burden of proof. This  
22 doesn't preclude me from calling him if you deny this  
23 motion. But it is his burden of proof in this case to  
24 prove that he sent the letter. And I believe that he  
25 has failed to do so, Your Honor.

## TESTIMONY OF JOSHUA GRAHAM

1 MR. FALK: Trial counsel admitted to receiving a  
2 letter.

3 THE COURT: I'm not going to strike it. He has a  
4 right to testify about it. So I'll deny that.

5 MR. JOHNSON: Your Honor, may I consult with  
6 Mr. Bryan for a moment?

7 THE COURT: Yes, sir.

8 MR. JOHNSON: The Court's indulgence, Your Honor.

9 THE COURT: Yes, sir.

10 MR. JOHNSON: Your Honor, counsel may speak, or  
11 would you like to call him to the stand?

12 THE COURT: Well, if you wish to present  
13 additional testimony we are going to put him on the  
14 stand. Bring him up.

15 THE COURT: Sir, I'll remind you that you remain  
16 under oath at this time. Do you acknowledge that fact?

17 WITNESS: Yes, Your Honor.

18 THE COURT: All right. Thank you. Yes, sir, you  
19 may ask questions of the witness.

20 Thereupon,

21 JOHN DOUGLAS BRYAN

22 was re-called as a witness, having been first duly sworn,  
23 was examined and testified as follows:

24 DIRECT EXAMINATION

25

## TESTIMONY OF JOHN DOUGLAS BRYAN

1 BY MR. JOHNSON:

2 Q Thank you, Mr. Bryan. Do you recall receiving a  
3 copy of Mr. Graham's letter?

4 A Yes, I'm pretty sure that I got one. I don't see  
5 it in the file. It might be in the file, I have looked  
6 through about half of it. It is a pretty thick file, but I  
7 haven't found it yet.

8 Q Do you remember around what day you would have  
9 received that letter?

10 A No, my memory is not the best. But no, I don't  
11 remember the date that I got that letter.

12 MR. JOHNSON: All right. Thank you, Your Honor.

13 THE COURT: Do you wish to ask any questions?

14 MR. FALK: Regarding the letter?

15 THE COURT: Yes.

16 MR. FALK: No, Your Honor.

17 THE COURT: All right. You may step down.

18 THE COURT: All right. Counsel for the applicant  
19 mentioned that you would like to brief the question of  
20 the adequacy of the colloquy.

21 MR. FALK: Well, I just thought maybe if we could  
22 submit proposed orders.

23 THE COURT: Any objection to doing that?

24 MR. JOHNSON: No, Your Honor.

25 THE COURT: I will direct both sides to submit a

## TESTIMONY OF JOHN DOUGLAS BRYAN

1 proposed order.

2 MR. FALK: Thank you, Your Honor.

3 THE COURT: Thank you very much. That concludes  
4 the hearing.

5 (Whereupon, the hearing concluded.)

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## TESTIMONY OF JOHN DOUGLAS BRYAN

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6 I, MONA L. MANLEY, Court Reporter, certify that I was  
7 authorized to and did stenographically report the foregoing  
8 proceedings and that the transcript is a true and complete  
9 record of my stenographic notes.

8

DATED this 17th day of July, 2016.

9

10

11

*Mona L. Manley /s/*

12

MONA L. MANLEY

13

Official South Carolina Court Reporter

14

Circuit Reporter for the 14th Circuit

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STATE OF SOUTH CAROLINA )  
 COUNTY OF COLLETON )  
 )  
 )  
 Joshua Graham, #314554, )  
 )  
 Applicant, )  
 )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOURTEENTH JUDICIAL CIRCUIT

2013-CP-15-1225

**ORDER OF DISMISSAL**

2016 APR -7 AM 11:34  
 PATRICIA C. GRANT  
 COLLETON COUNTY  
 COMMON PLEAS

This matter comes before the Court by way of an Application for Post-Conviction Relief filed December 17, 2013. Respondent made its Return on May 21, 2015. An evidentiary hearing into the matter was convened on October 21, 2015, at the Beaufort County Courthouse in Beaufort, SC. Jim Falk, Esquire represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. John Douglas (J.D.) Bryan, Esquire also testified. This Court had before it a copy of the records of the Colleton County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return and the guilty plea transcript.

**PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. The Applicant was indicted by the July 2012 term of the Colleton County Clerk of Court for Armed Robbery (2012-GS-15-0288) and Possession of a Weapon during the Commission of a Violent Crime (2012-GS-15-

A handwritten signature, possibly 'J.E.', with the number '21' written below it.

0289). John Douglas Bryan, Esquire, represented him. On August 12, 2013, the Applicant pled guilty before the Honorable Brooks P. Goldsmith and was sentenced to seventeen (17) years for Armed Robbery and five (5) years, concurrent, for the weapons charge. Applicant did not appeal his conviction and sentence.

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

1. "Ineffective Assistance of Counsel"
  - a. "Failure to investigate & prepare for trial"
2. "Ineffective Assistance of Counsel"
  - a. "Coercion of plea/involuntary plea"

At the hearing, the Applicant proceeded on his claims of ineffective assistance of plea counsel.

#### SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified he thought he was proceeding to trial. Applicant claimed the State interviewed another witness and that Counsel did not have time to interview this witness. Applicant claimed Counsel did not review his constitutional rights prior to trial with him, did not explain the charges, and did not discuss the mandatory minimum of 10 years for Armed Robbery. Applicant testified he received 17 years on the armed robbery charge. Applicant then stated Counsel did not explain the sentencing sheet and that he did not proceed to a trial because, in his opinion, Counsel did not have Applicant's best interest in mind. Applicant then stated Counsel failed to subpoena a text message and also failed to file an appeal on his behalf. Applicant admitted he did not verbally tell Counsel he wanted to appeal.

A handwritten signature in black ink, appearing to be 'PJC' with a flourish underneath.

On cross-examination, Applicant admitted he did not have this "other witness" at the PCR hearing, nor did he have this alleged text message at the PCR hearing. Applicant admitted this is not his first experience in the criminal justice system. Applicant admitted his guilt, and acknowledged the fact that he apologized for his actions during the guilty plea. Applicant also admitted he agreed to the facts as stated by the solicitor at the guilty plea. Applicant further admitted that he pled guilty because he was guilty.

On redirect examination, Applicant stated counsel did not advise him of the minimum and maximum sentence of armed robbery and that he has not pled to armed robbery before this case.

Counsel testified he explained the sentencing range to Applicant at his first meeting; and always does, as this is his normal course of practice. Counsel testified he explained the lesser included offenses of armed robbery to Applicant. Counsel stated he was appointed to this case on May 31, 2012, and Applicant pled guilty 15 months after the first meeting. Counsel then stated he had numerous jail visits and conferences with Applicant, and he could not imagine that he did not explain the minimum and maximum penalties of armed robbery. Counsel stated that while he did not see notes in his file that he did this, Counsel knows for a fact that he explained the minimum and maximum penalties to Applicant. Counsel again stated that he always explains the potential sentencing consequences, the elements of the crime, and constitutional trial rights to his clients.

Counsel testified that he received and reviewed the codefendants' statements and discussed these fully with Applicant, including any inconsistencies. Counsel also stated that Applicant was very active in his own defense. Counsel then stated he did not ask Applicant if he wanted to appeal and does not remember advising Applicant that he had 10 days to appeal his plea. Counsel also stated

Handwritten signature and date "9/3".

that the judge normally advises defendants about the right to appeal, but usually there are no grounds to appeal from a guilty plea.

On cross-examination, Counsel stated that it was his standard practice to advise his clients concerning the charges and the penalties they carry. Counsel stated he is been practicing for about 20 years, and that the majority of his practice is criminal law. Counsel stated he has handled several thousand cases in his career. Counsel also stated that Applicant was very active in his own defense.

Counsel then stated he sent a letter concerning Applicant's right to appeal, however, he did not recognize any appealable issues, as the plea judge handed down a legal sentence in this case. Upon recall of the Applicant, Applicant stated he was sentenced on August 12, 2014 and that he wrote a letter asking about his appeal on August 19, 2014. Upon recall of counsel, Counsel could not produce the letter from Applicant and did not remember the date the letter was written. On March 8, 2016, Applicant filed an Affidavit stating that he has abandoned his claim regarding the appeal of his guilty plea.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

#### **Ineffective Assistance of Counsel**

Applicant alleges 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."

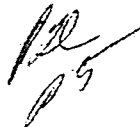
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Erasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

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

This Court finds Counsel provided effective assistance of counsel in this case. Counsel advised Applicant of all of the charges and the sentences the charges carried. Counsel also negotiated with the State in Applicant's best interest. This Court finds Applicant made the decision on his own accord with the help of learned counsel. Additionally, this Court finds Applicant made



this decision freely and voluntarily without any threats or promises from anyone else. Furthermore, this Court finds that it was ultimately the Applicant's decision to plead guilty.

This Court further finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is credible. This Court finds the Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby. Therefore, this allegation is denied.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that 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 Counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

### CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an



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

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. That Applicant be remanded to the custody of Respondent.

**AND IT IS SO ORDERED!**

4/5, 2016  
[Signature], South Carolina

[Signature]  
Roger L. Couch  
Presiding Circuit Court Judge  
Fourteenth Judicial Circuit

2013-CP-15-1225



DOCKET NO. 2012-GS-15-0288

**The State of South Carolina**  
County of Colleton

COURT OF GENERAL SESSIONS

July Term 2012

THE STATE

vs.

Joshua Graham

Indictment for

Armed Robbery

SC Code: 16-11-0330(A)  
CDR Code:0139

WITNESSES

S. Bridge (WPD)

ARREST WARRANT NUMBER

1-863303

April 26, 2012

ACTION OF GRAND JURY

Foreperson of Grand Jury  
Date:

VERDICT

**TRUE BILL**

Foreperson of Petit Jury  
Date:

INDICT

COLLETON COUNTY  
GENERAL SESSIONS COURT  
2012 JUL 19 PM 2:53

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF Colleton )

INDICTMENT

2012:CS-15-0288

At a Court of General Sessions, convened on July 19, 2012, the Grand Jurors of Colleton County present upon their oath:

Armed Robbery

That on or about April 22, 2012, in Colleton County, South Carolina, at 1835 Sniders Hwy by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a handgun, the Defendant, Joshua Graham, did take and carry away goods and/or monies from the person or immediate presence of Gregory Unger with the intent to permanently deprive him of possession thereof, in violation of Section 16-11-330(A) 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.

JUNE BIRT



Isaac M. Stone  
Solicitor

DOCKET NO. 2012-GS-15-0289

The State of South Carolina  
County of Colleton

COURT OF GENERAL SESSIONS

July Term 2012

THE STATE

vs.

Joshua Graham

Indictment for

Weapons / Poss. weapon during violent crime,

SC Code: 16-23-0490  
CDR Code:0549

WITNESSES

S. Bridge (WPD)

*[Handwritten signature]*

ARREST WARRANT NUMBER

1-863304

April 23, 2012

ACTION OF GRAND JURY

*[Handwritten signature]*

Foreperson of Grand Jury

Date:

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

INDICT

COLLETON COUNTY  
GENERAL SESSIONS COURT  
2012 JUL 19 PM 2:53

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF Colleton )

INDICTMENT

2012-QS-15-0289

At a Court of General Sessions, convened on July 19, 2012, the Grand Jurors of Colleton County present upon their oath:

Weapons / Poss. weapon during violent crime,

That in Colleton County, South Carolina, on or about April 22, 2012, the Defendant, Joshua Graham, did possess a handgun or visibly display what appeared to be a handgun during the commission, or attempted commission, of Armed Robbery, a violent crime. This is in violation of 16-23-490 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.

COPIE BIRT

Isaac M. Stone  
Solicitor