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THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
S.C. Supreme Court

The Honorable Frank R. Addy, Circuit Court Judge

Case No.: 2011-CP-42-0516

Michael Shane Johnson, S.C.D.C. #315435, Petitioner

v.

State of South Carolina, Respondent

APPENDIX

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Michael Shane Johnson, #334918,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2011-CP-42-0516

ORDER OF DISMISSAL

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 M. HIGGINS DEPARTMENT

This matter comes before the Court by way of an Application for Post-Conviction Relief February 2, 2011. The Respondent made its Return on or about December 7, 2011. An evidentiary hearing into the matter was convened on January 31, 2012, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Beattie B. Ashmore, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant and his mother, Pinckie Dardar, both testified on Applicant's behalf. Also testifying was Kenneth E. Sowell, Esquire ("Counsel"). This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the guilty plea transcript, the motion for reconsideration transcript, appellate records, and exhibits entered into evidence by the Applicant.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the ~~May~~ 2009 term of the Spartanburg County Grand Jury for three counts of burglary

November, 2007

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- 1st degree (07-GS-42-5688, -5689, -5690), three counts of grand larceny more than \$5,000 (07-GS-42-5692, -5693, 08-GS-42-1309), burglary - 2nd degree, non-violent (08-GS-42-1309), grand larceny, \$1,000-\$5,000 (07-GS-42-5691), and receiving stolen goods, less than \$1,000 - 3rd or subsequent property offense (07-GS-42-5709). Applicant was represented by Kenneth E. Sowell, Esquire. On February 28, 2008, the Applicant pled guilty as indicted to all charges. Applicant was sentenced by the Honorable Wyatt T. Saunders to confinement for fifteen years (07-5688), with a consecutive term of fifteen years (07-5689), and a consecutive term of five years (07-5691), and then two concurrent terms of fifteen years (07-5690, 08-1309), and four concurrent terms of ten years (07-5692, 07-5693, 07-5709, 08-1308), for an aggregate total of thirty-five years. A motion for reconsideration was filed and Judge Saunders modified the sentence of 07-5691 to a concurrent term of five years on April 16, 2008.

A timely notice of appeal was filed and the South Carolina Court of Appeals dismissed Applicant's appeal. State v. Johnson, Op. No. 2010-UP-126 (filed February 11, 2010). The Remittitur was returned on March 1, 2010.

ALLEGATIONS

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

1. Ineffective assistance of counsel, in that;
 - a. Counsel failed to aid in Applicant's cooperation with the government,
 - b. Counsel failed to adequately explore plea negotiations,
 - c. Counsel failed to communicate with client,
 - d. Counsel failed to disclose a conflict of interest between defense counsel and the Judge,
 - e. Counsel failed to request and file a notice requesting the Judge to recuse himself; and
2. Denial of right to fair/impartial judiciary and a neutral/detached judge, in that;

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L. H. STANLEY

- a. Judge failed to recuse himself due to a conflict with defense counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The 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." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCF). 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, 80 L.Ed.2d 674, 692 (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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 486, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Failed to Aid in Applicant's Attempts to Cooperate with Government

Applicant testified that on the day the police came to his house, he was told to cooperate by his mother and his girlfriend, Tracy, and the stolen goods were ultimately found in his house. Applicant testified that Officer Duncan told him that he would speak on Applicant's behalf at court if Applicant cooperated. Applicant testified that he had worked with Tracy to rob the homes and that he only knew one of the victims, but Tracy had picked some of the homes out. Applicant also testified that he only broke into houses unarmed and in the morning when they were unoccupied, but acknowledged that he stole guns from a couple of the homes.

Applicant's mother testified that her son informed her that he thought that if he cooperated with the government, including police, it would help his case. Ms. Dardar testified that she was at her son's house on the day that the police arrived to talk with him and he was not arrested that day, but began cooperating that day.

Counsel testified that the Applicant never informed him that one of the officers had offered to speak on his behalf in court because if he had, Counsel would have subpoenaed the officer. However, Counsel noted that he offered thirty-one letters of support from family and community members to the court. Counsel testified that he was also told by the family that they had no way of making restitution to the victims, so he never offered that in the way of

cooperating or assisting the State. However, as indicated by the plea transcript, Counsel testified that he did attempt to offer information on the company that bought many of the stolen pieces of jewelry. Counsel also testified that according to the statement of Tracy and voluntary statement of Applicant, the Applicant knew at least two to three of the victims because they were in fact the parents of friends of his.

This Court finds that the Applicant's claim that Counsel was ineffective for failing to assist in his attempted cooperation with the government lacks merit. First, this Court finds that the majority of the Applicant's cooperation came prior to Counsel's involvement in the case, when he gave voluntary statements and turned over the remaining stolen goods. Second, this Court finds that Counsel's testimony is more credible than Applicant's as to this issue and the record is clear that Counsel spent a great deal of effort in attempting to provide information on Applicant's behalf to the State in an attempt to recover some of the stolen goods. This Court believes that if Counsel was aware of an officer who was willing to testify on Applicant's behalf in court, he would have subpoenaed that officer and had him present to speak on Applicant's behalf. Therefore, this Court finds that the Applicant has failed to meet his burden of proof as to this claim and it is denied and dismissed.

Failure to Adequately Explore Plea Negotiations

Applicant testified that he met with Mr. James Cheek once while he was in the detention center, and Mr. Cheek advised him that there was a plea offer for a fifteen year violent sentence, but did not tell him how long the plea was available. Applicant testified that Counsel then was retained to represent him on the charges and the fifteen year plea offer was not ever really discussed with Counsel. Applicant testified that he wanted to do better than a fifteen year sentence.

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MICHAEL C. CONROY

Applicant's mother testified that Applicant contacted her and informed her that Mr. James Cheek had informed Applicant that he could plead guilty and receive a fifteen year sentence. However, Ms. Dardar testified that she contacted Counsel after this conversation with her son and met with him to discuss the case in regards to Counsel taking over representation. Ms. Dardar testified that Counsel informed her that a fifteen year sentence was unfair because the Applicant did not have a violent past.

Counsel testified that he was never aware of any fifteen year offer, nor was he told by the Applicant or his mother of any offer when he was retained on the case. Counsel testified that he was specifically retained by the Applicant's mother to handle a guilty plea. Counsel testified that he attempted to negotiate with the State, but the only offer he ever was able to work out was to plead straight up and choose to plead either before Judge Saunders or Judge Hayes.

This Court finds that the Applicant has failed to meet his burden of proof as to this claim. The Applicant himself testified that he did not discuss the fifteen year offer with Counsel and at the time Counsel was retained, the Applicant had already provided a voluntary statement which implicated him in all of the crimes. This Court finds Counsel's testimony credible that he tried all efforts to negotiate, but that the State was unwilling. This Court cannot find any deficient performance on behalf of Counsel as it relates to attempting plea negotiations. Therefore, this claim is denied and dismissed.

Failure to Communicate

Applicant testified that Counsel failed to communicate with him the fact that Applicant was on probation when he committed these other crimes would affect his sentence. However, Applicant testified that Counsel never promised a particular sentence. As this is the only testimony or evidence offered in support of this claim, this Court finds that the Applicant has

failed to meet his burden of proof as to this allegation. Therefore, this claim is denied and dismissed.

Failure to Disclose a Conflict of Interest with Presiding Judge

Applicant acknowledged signing on the back of a manila folder on February 22, 2008, that he understood his right to appeal his case and understood that he was pleading guilty before Judge Saunders even though Saunders had previously found Counsel guilty of contempt. A copy of that page was entered into evidence as Applicant's exhibit #1. Applicant testified that he pled guilty on February 27, 2008. However, Applicant testified that he could only remember discussing his appeal rights with Counsel, not the issue of the contempt charge. Applicant testified that he only had a tenth grade education and had suffered from trouble with cocaine.

Applicant's mother testified that Counsel told her that he recommended that they plead before Judge Saunders because Counsel had a personal relationship with Judge Saunders. However, she testified that she did not find out about the contempt charge against Counsel by Judge Saunders until after the sentencing. Ms. Dardar testified that her son never informed her that Counsel had told him about the fact that Judge Saunders had previously found him in contempt.

Counsel testified that he did discuss the fact that Judge Saunders had previously found him in contempt during a State Grand Jury case, but that he still considered Judge Saunders a friend. Counsel testified that he did not recall if he discussed that fact with the Applicant's mother, but he did recall specifically discussing it with the Applicant and explaining that since that contempt charge he had been before Judge Saunders several times and he had no problems. Additionally, Counsel testified that he had appealed the decision and the contempt charge was ultimately reversed by the South Carolina Supreme Court in August 2006, well before

Applicant's plea. Counsel testified that the Applicant was very intelligent and seemed to understand the concept of contempt.

This Court finds the testimony of Counsel to be more credible than the Applicant's testimony as to this matter. The agreed upon facts are that the Applicant signed a waiver, which indicated that he was told about Counsel's prior experience with Judge Saunders as it related to the contempt charge. This Court finds that Counsel explained his prior interactions with Judge Saunders to Applicant and offered his belief that Judge Saunders was a fair and impartial judge, who would consider all the information in Applicant's case. The Applicant chose to proceed with the plea before Judge Saunders, knowing all of the information, freely and voluntarily. This Court finds that the Applicant failed to meet his burden of proof as to this claim. Therefore, it is denied and dismissed.

Failure to Allow Applicant to Speak at Guilty Plea/Sentencing

Applicant testified that he wanted to speak at his guilty plea to apologize to the victims and had an apology already written down, but Counsel would not allow him to speak on his own behalf. Applicant argued, through PCR Counsel, that his right to address the court and victims at sentencing was violated, when Counsel refused to let Applicant speak to and apologize to the victims directly. Counsel testified that the Applicant could have spoken at his plea if he wanted to, but Applicant was shocked when the victims, who he knew, were very angry at him and turned against Applicant. Counsel acknowledged that an apology was written down originally, but testified that he looked at the Applicant and Applicant shook his head "no."

This Court notes that the transcript for the motion for reconsideration hearing indicates that Counsel read Applicant's statement into the record, which cured any possible failure to offer the apology at the initial sentencing. Furthermore, even assuming Counsel was deficient for

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failing to ensure the Applicant spoke at his plea and sentencing, the Applicant failed to demonstrate that the outcome of the sentencing proceedings would have been different had his apology been offered at the time of his initial sentencing; accordingly, a likelihood of prejudice has not been shown. Therefore, this claim is denied and dismissed.

Additionally, the Applicant raised claims that Counsel failed to file a motion to recuse Judge Saunders and the claim that he was denied the right to a fair and impartial judge because Judge Saunders should have recused himself. However, this Court notes that the Applicant did not present any evidence or testimony in support of either of these claims. Therefore, the Applicant failed to meet his burden of proof and both of these claims are denied and dismissed.

In Hill v. Lockhart, 474 U.S. 52 (1985), the United States Supreme Court held that the two-part standard adopted in Strickland v. Washington, *supra*, for evaluating claims of ineffective assistance of counsel applies, as well, to guilty plea challenges based on ineffective assistance of counsel. To meet the Court's "prejudice" requirement, a criminal defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. This Court finds that the Applicant was aware of and informed of the charges to which he was pleading guilty and clearly was aware of the situation related to the judge before which he was pleading guilty. This Court also finds that Counsel is an experienced attorney who was prepared for and effectively represented Applicant at his guilty plea. This Court finds that the Applicant has failed to meet his burden of proof as to this claim; therefore, this claim is denied and dismissed.

Summary

This Court finds in regards to the allegation of ineffective assistance of counsel, Counsel's testimony is credible. This Court further finds counsel adequately conferred with the

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Applicant, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

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. See Frasier supra. Therefore, this allegation is denied.

CONCLUSION

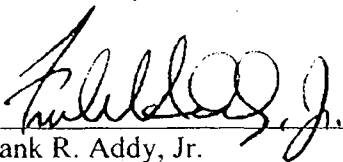
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions 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), SCRPC, 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. Your 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. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 27th day of April, 2012.



Frank R. Addy, Jr.
Presiding Judge

Newberry, South Carolina

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STATE OF SOUTH CAROLINA)
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 COUNTY OF SPARTANBURG)
)
 Michael Shane Johnson, #160708,)
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 Applicant,)
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 vs.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

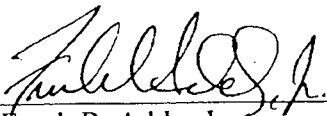
2011-CP-42-0516

ORDER

This matter comes before the Court by way of Applicant's Motion to Alter/Amend or Reconsider. The Respondent made its Return to this response on May 25, 2012.

The Order of Dismissal in this matter was signed by me on April 27, 2012. This Court finds that contains the required findings of facts and conclusions of law as required by S.C. Code Ann. §17-27-80 (1976), and Rule 52(a) SCRPC. See also, McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). Based upon careful reconsideration of all the evidence in this case and upon full consideration of Applicant's Motion, this Court is not persuaded to alter or amend the judgment. This Court further finds that oral argument would not aid in the reconsideration of the original judgment. Therefore, this Court finds that the Order of Dismissal, which was served on May 3, 2012, shall stand as it was written.

AND IT IS SO ORDERED this 31st day of May, 2012.


 Frank R. Addy, Jr.
 Presiding Judge
 Seventh Judicial Circuit

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 SPARTANBURG COUNTY
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 M. HOPE BLACKLEY



ALAN WILSON
ATTORNEY GENERAL

PCR DIVISION: 803.734.3737
PCR FACSIMILE: 803.734.4113

May 25, 2012

The Honorable Frank R. Addy, Jr.
Presiding Judge
528 Monument Street, Suite 210
Greenwood, South Carolina 29646


**RE: Michael Shane Johnson v. State of South Carolina
2011-CP-42-0516**

Dear Judge Addy:

Although not requested, I am taking the liberty of submitting the enclosed proposed Order denying the above Applicant's Motion to Alter/Amend or Reconsider. For your convenience, I have also enclosed a copy of the State's Return to the motion. By copy of this letter to the Spartanburg Clerk of Court, I am requesting that she file the State's original Return.

If this order meets with your approval, please sign it. You may then file the order with the clerk, and have him/her serve the order on all parties. An envelope, stamped and addressed to the Spartanburg Clerk of Court, is enclosed. If you have any questions, feel free to contact me.

Very truly yours,


Suzanne W. White
Assistant Attorney General

SHW/aam
Enclosures

cc: Beattie B. Ashmore, Esquire (w/Return and proposed Order)
The Honorable M. Hope Blackley, Spartanburg County Clerk of Court (w/original Return)

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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Michael Shane Johnson)

Plaintiff)

v.)

State of South Carolina)

Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.
2011-CP-42-0516

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Beattie B. Ashmore, Bar No. Address: 650 E. Washington Street Greenville, South Carolina 29601 phone: fax: e-mail: other:	Defendant's Attorney: Suzanne H. White Bar No. Address: P.O. Box 11549 Columbia, SC 29211-11549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: other:
---	---

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

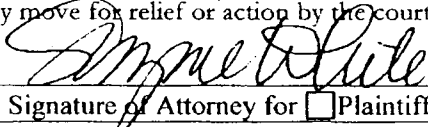
SECTION I: Hearing Information

Nature of Motion: _____
 Estimated Time Needed: _____ Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed Order.


 Signature of Attorney for Plaintiff / Defendant

May 25, 2012
 Date submitted

SECTION III: Motion Fee

PAID - AMOUNT:
 EXEMPT: Rule to Show Cause in Child or Spousal Support
 (check reason) Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRPC)
 Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter:
 Other:

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.
 Other: _____

JUDGE: _____
 CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
 MOTION FEE COLLECTED: _____
 CONTESTED - AMOUNT DUE: _____

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 SPARTANBURG COUNTY
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 M. HOPE SULLOCKLEY

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Michael Shane Johnson,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Case No. 2011-CP-42-0516

**APPLICANT'S MOTION
TO RECONSIDER**

NOW COMES the applicant, Michael Shane Johnson, by and through his attorney, Beattie B. Ashmore, and hereby moves this Honorable Court to reconsider its Order dismissing his application for post-conviction relief. The South Carolina Supreme Court has recently reiterated that “[a] defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and may be accomplished by a colloquy between court and defendant, between court and defendant’s counsel, or both.” Narciso v. State, ___ S.C. ___, 723 S.E.2d 369, 374 (2012) (citing Brannon v. State, 345 S.C. 437, 439, 548 S.E.2d 866, 867 (2001)). The applicant did not knowingly and voluntarily waive his rights to allocute on the record. Narciso 723 S.E.2d at 374 (2012); Brannon, 345 S.C. at 439; Whitehead v. State, 310 S.C. 532, 426 S.E.2d 315 (1992). Here, there was nothing on the record establishing the applicant’s alleged knowing and voluntary waiver of his right to address the Court and the victims. Despite a plea hearing and two sentencing hearings, there was no colloquy between the Court and applicant, or between the Court and Attorney Sowell. In fact, the record is void of any mention of any such waiver. Attorney Sowell testified at the PCR hearing that the applicant “changed his mind” at the plea and did not wish to speak to the Court and victims but again, there is nothing in the record to support this testimony.

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In Narciso the petitioner signed a Consent Order granting a belated direct appeal and purportedly waiving his right to raise any other PCR allegations. Narciso, 723 S.E.2d at 373. Despite the “straightforward” Consent Order, “the colloquy between the court and the defendant . . . [did] not clearly establish that [p]etitioner knowingly and voluntarily waived his right to raise any other PCR allegations.” Narciso, 723 S.E.2d at 374. The Court contrasted Spoone v. State, 379 S.C. 138, 665 S.E.2d 605 (2008), wherein the plea colloquy showed that the Court “specifically asked petitioner about the waiver both in the language of the plea agreement, and in plain language.” Narciso, 723 S.E.2d at 374 (citing Spoone, 379 S.C. at 143-44). Like in Narciso, here the record did not establish that the applicant knowingly and voluntarily waived his rights.

This Court should also grant the applicant post-conviction relief because the failure to be given the opportunity to allocute at sentencing was not cured at the subsequent hearing on his motion for reconsideration. The right to allocute is to be afforded at all stages of sentencing. See United States v. Jackson, 923 F.2d 1494, 1496 (11th Cir. 1991) (at sentencing “this right to be present and speak is constitutionally based”); United States v. Luepke, 495 F.3d 443, 451-52 (7th Cir. 2007) (“the denial of the right to allocution is the kind of error that undermines the fairness of the judicial process”) (citing United States v. Muhammad, 478 F.3d 247, 251 (4th Cir. 2007)). As the Fourth Circuit held in Muhammad, “even though Muhammad had addressed the court at the original sentencing hearing, he had a renewed right to allocute at resentencing.” Muhammad, 478 F.3d at 250; see also Schutter v. Soong, 873 F.2d 66, 87 (Sup. Ct. Hawaii 1994) (“Once a defendant is denied the opportunity to be heard, this denial of due process cannot be corrected later at a motion for reconsideration”). This makes it clear that the defendant lost the

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constitutional right to allocute at both the sentencing and subsequent motion to reconsider. This is a fatal constitutional defect if the waiver is not knowingly and voluntarily made on the record.

Although no prejudice need be shown in view of this constitutional defect, if the applicant had been given the opportunity to allocute, there is a reasonable probability that the outcome of his sentencing proceedings would have been different. As the Fourth Circuit stated:

When a defendant was unable to address the court before being sentenced and the possibility remains that an exercise of the right of allocution could have led to a sentence less than that received, we are of the firm opinion that fairness and integrity of the court proceedings would be brought into serious disrepute were we to allow the sentence to stand.


United States v. Cole, 27 F.3d 996, 999 (4th Cir. 1994). The Supreme Court has also addressed the importance of the right of allocution: “The most persuasive counsel may not be able to speak for a defendant as the defendant might, with halting eloquence, speak for himself.” Green v. United States, 365 U.S. 301, 304, 81 S.Ct. 653, 5 L.Ed.2d 670 (1961). In United States v. Rucker, an appeal from the Honorable G. Ross Anderson, Jr., the Court reiterated this importance. United States v. Rucker, 395 Fed.Appx. 970, 974, 2010 WL 3623553 (2010).

In addition to the issues raised by the applicant as outlined by the Court, the application also raised “other such issues that may be determined through the discovery process.” A review of Attorney Sowell’s file evidenced the fact that the applicant never allocuted at his sentencing. Pursuant to Rule 15(b) of the South Carolina Rules of Civil Procedure, the Court should conform the pleadings to the evidence at the hearing. Here, the evidence demonstrates that the applicant did not waive his constitutional right on the record to allocute at his sentencing and this was argued at the PCR hearing.

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M. HOPE BLACKLEY

For these reasons, the applicant respectfully requests that this Court reconsider its denial of post-conviction relief. The applicant reserves his right to file a supplemental memorandum in order to supplement this Motion to Reconsider.

This 14th day of May, 2012
Greenville, SC



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Greenville, SC 29601
(864) 467-1001 Office
(864) 672-1406 Fax
Beattie@BeattieAshmore.com

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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Michael Shane Johnson, #160708,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2011-CP-42-0516

RETURN TO APPLICANT'S
MOTION TO RECONSIDER

This matter comes before the Court by way of the Applicant's Motion pursuant to Rule 59, SCRPC, in which he asks the Court for relief from judgment of the Order dated April 27, 2012. The Respondent (the State) would submit the following:

I.

The Respondent submits that the Order signed by Judge Frank R. Addy, Jr. on April 27, 2012, contains the required findings of facts and conclusions of law as required by S.C. Code Ann. §17-27-80 (1976), and Rule 52(a) SCRPC. See also, McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991).

II.

The Respondent also submits that the Order properly addressed the Applicant's allegation that he was not allowed to speak at his plea proceedings. 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, 80 L.Ed.2d 674, 692 (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).

Additionally, in Hill v. Lockhart, 474 U.S. 52 (1985), the United States Supreme Court held that the two-part standard adopted in Strickland v. Washington, supra, for evaluating claims of ineffective assistance of counsel applies, as well, to guilty plea challenges based on ineffective assistance of counsel. To meet the Court's "prejudice" requirement, a criminal defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial.

The Applicant, although he argued that he wanted to speak to the court prior to sentencing, failed to provide any evidence which would establish that because of Counsel's failure in not allowing him to speak, he would have proceeded to trial instead of pleading guilty. Furthermore, there is no established case law supporting the granting of post-conviction relief on the basis that the Applicant was not allowed to read a statement into the record or speak following his guilty plea. In fact, in South Carolina, there exists only a statutory right to allocate following a trial for the charge of murder where the maximum penalty is death, when the defendant and his counsel are granted the right to make the last argument. S.C. Code Ann. §16-3-28 (1976).

While the Applicant cites several cases referencing allocation, Respondent notes that only the Federal Rules of Criminal Procedure require the judge to address the defendant and give him an opportunity to speak. Fed. R. Crim. P. 32 (i)(4)(A)(ii). However, even the United States Supreme Court has considered the issue of whether a district court's failure to explicitly offer a

defendant the opportunity to speak at the time of sentencing provides grounds for a successful collateral attack upon the judgment and sentence and the Court held that the district court's failure to do so is not an error that can be raised by collateral attack. Hill v. United States, 368 U.S. 424, 426, 82 S. Ct. 468, 470, 7 L. Ed. 2d 417 (1962). Additionally, Respondent submits that Applicant's reliance on Narciso v. State, is misplaced, because that case specifically addresses the voluntariness of a waiver of the right to proceed with or appeal additional PCR allegations. Narciso, 397 S.C. 24 723 S.E.2d 369 (March 24, 2012).

The record reflects that the judge went through a very thorough colloquy with the Applicant, reviewing each of the constitutional rights that he was giving up by pleading guilty, including the right to a jury trial, the right to testify or remain silent, the right to force the State to meet their burden at trial, the right to confront witnesses, and the right to contest the validity of any statement he may have made regarding the case. (ROA. p 13-16). Additionally, the judge reviewed for the Applicant the charges he faced and potential sentence he could receive for each charge. (ROA. p. 9-11). The Applicant admitted guilt and admitted that he knew he was violating the law when he committed the offenses. (ROA. p. 16-17). Respondent supports the lower court's ruling that any error was cured when the Applicant read a statement to the court at the hearing on his Motion for Reconsideration, which was an apology to the families and victims of the crimes. (ROA. p. 85-86).

Therefore, Respondent submits that the Order of Dismissal properly ruled upon the allegations raised in the application and at the hearing as they were presented to the Court and should not be amended.

III.

WHEREFORE, having made its Return to the motion, the State requests that the relief requested in the Motion be denied and that said Motion be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

BY:


ATTORNEYS FOR RESPONDENT

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

May 25, 2012.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Michael Shane Johnson,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

Case No. 2011-CP-42-0516

**APPLICANT'S REPLY
 TO STATE'S RETURN**

The State argues that failure to allocute cannot be raised by collateral attack, citing Hill v. United States, 368 U.S. 424, 426, 82 S.Ct. 468, 470, 7 L.Ed. 2d 417 (1962). However, its reliance is misplaced. In Hill, the Court held that “the failure to follow the formal requirements of Rule 32(a) is not of itself an error that can be raised by collateral attack.” Here, the applicant’s argument is constitutionally based. See, e.g., United States v. Jackson, 923 F.2d 1494, 1496 (11th Cir. 1991) (at sentencing “this right to be present and speak is constitutionally based”). The violation of this constitutional right cannot be corrected at a motion for reconsideration. Schutter v. Soong, 873 P.2d 66, 87 (Hawaii 1994) (“Once a defendant is denied the opportunity to be heard, this denial of *due process* cannot be corrected later at a motion for reconsideration”) (emphasis added). In South Carolina, an applicant can raise claims of constitutional violations in post conviction relief. S.C. Code Ann. § 17-27-20(a) (“Any person who has been convicted of, or sentenced for, a crime and who claims . . . [t]hat the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State . . . may institute . . . a proceeding under this chapter to secure relief”).

The State further argues that because Narciso v. State, 397 S.C. 24, 723 S.E.2d 369 (March 24, 2012) discussed the voluntariness of a PCR waiver, the applicant cannot rely on this case. However, the holding in Narciso is not so limited. As stated by the South Carolina Supreme Court “[a] defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and may be accomplished by a colloquy between court and defendant, between court and defendant’s counsel, or both.” Narciso v. State, 397 S.C. at 33, 723 S.E.2d at 374 (citing Brannon v. State, 345 S.C. 437, 439, 548 S.E.2d 866, 867 (2001)). The law requires that a defendant’s waiver of constitutional rights be established by a complete record. Narciso, 723 S.E.2d at 374 (2012); Brannon, 345 S.C. at 439; Whitehead v. State, 310 S.C. 532, 426 S.E.2d 315 (1992). It is a fatal constitutional defect if the waiver is not knowingly and voluntarily made on the record.

Finally, the State argues that the applicant was not prejudiced. However, prejudice need not be shown in light of this constitutional violation. See Narciso, 397 S.C. at 33-34; Brannon, 345 S.C. at 439 (not requiring prejudice). Nevertheless, if the applicant had been given the opportunity to allocute, there is a reasonable probability that the outcome of his sentencing proceedings would have been different.¹ As stated by the Fourth Circuit:

When a defendant was unable to address the court before being sentenced and the possibility remains that an exercise of the right of allocution could have led to a sentence less than that received, we are of the firm opinion that fairness and

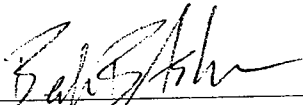
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 M. HOPE DAWKLEY

¹ The State incorrectly asserts that but for counsel’s errors at sentencing, the applicant must show that there is a reasonable probability he would have went to *trial*. (State’s Return, p. 2). However, if prejudice is required due to counsel’s errors at sentencing, the applicant must show that there is a reasonable probability the outcome of his *sentencing* would have been different. See, e.g., Rompilla v. Beard, 545 U.S. 374, 393, 125 S.Ct. 2456, 162 L.Ed.2d 360 (2005); Rosemond v. Catoe, 383 S.C. 320, 326-27, 680 S.E.2d 5 (2009); Boan v. State, 388 S.C. 272, 275-76, 695 S.E.2d 850 (2010) (holding the petitioner was prejudiced because, but for counsel’s errors at sentencing, there was a reasonable probability he would have not been sentenced to an additional ten years).

integrity of the court proceedings would be brought into serious disrepute were we to allow the sentence to stand.

United States v. Cole, 27 F.3d 996, 999 (4th Cir. 1994); *see also* Green v. United States, 365 U.S. 301, 304, 81 S.Ct. 653, 5 L.Ed.2d 670 (1961) (“The most persuasive counsel may not be able to speak for a defendant as the defendant might, with halting eloquence, speak for himself”). If the applicant were permitted to allocute, there is a reasonable probability that the outcome of his sentencing proceedings would have been different.

This 5th day of June, 2012
Greenville, SC


Beattie Ashmore, SC Bar # 10419
650 East Washington Street
Greenville, SC 29601
(864) 467-1001 Office
(864) 672-1406 Fax
Beattie@BeattieAshmore.com

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CLERK OF COURT
SPARTANBURG COUNTY
2012 JUN -8 AM 10:54
M. HOPE BLACKLEY

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Case No.: 2011-CP-42-0516

Michael Shane Johnson,

Appellant,

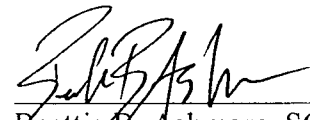
v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Michael Shane Johnson appeals the Order of Dismissal dated April 27, 2012, and the Order denying appellant's Motion to Alter/Amend or Reconsider the Judgment dated May 31, 2012 by the Honorable Frank R. Addy, Jr. Upon receipt of the written notice of the entry of the Order of Dismissal, the applicant timely filed a motion to alter or amend the judgment. The appellant received written notice of this Order on June 8, 2012.



Beattie B. Ashmore, SC Bar No. 010419
650 E. Washington Street
Greenville, South Carolina 29601
(864) 467-1001 (phone)
(864) 672-1406 (fax)
Beattie@BeattieAshmore.com

Dated this 8th day of June, 2012
Greenville, South Carolina

Other Counsel of Record:
Suzanne H. White
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Case No.: 2011-CP-42-0516

Michael Shane Johnson,

Appellant,

v.

State of South Carolina,

Respondent.

PROOF OF SERVICE

I hereby certify that I have served the Notice of Appeal on the State of South Carolina, South Carolina Attorney General's Office, by depositing a copy of it in the United States Mail, postage prepaid, on June 6th, 2012, addressed to its attorney of record, Suzanne H. White, P.O. Box 11549, Columbia, SC 29211.



Beattie B. Ashmore, SC Bar No. 010419
650 E. Washington Street
Greenville, South Carolina 29601
(864) 467-1001 (phone)
(864) 672-1406 (fax)
Beattie@BeattieAshmore.com

Dated this 6th day of June, 2012
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Case No.: 2011-CP-42-0516

Michael Shane Johnson,

Appellant,

v.

State of South Carolina,

Respondent.

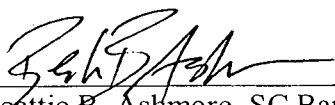
PROOF OF SERVICE

I hereby certify that I have served the Notice of Appeal, Final Orders from which the appeal is taken, and Proof of Service of the Notice of Appeal on the Respondent on the following:

The Honorable Daniel E. Shearouse
Clerk of Court
P.O. Box 11330
Columbia, SC 29211

Suzanne H. White
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

I also hereby certify that I have served a copy of the Notice of Appeal on the Honorable Hope Blackley, Clerk of Court, 2nd Floor, Suite 500, 180 Magnolia St., Spartanburg, SC 29306.


Beattie B. Ashmore, SC Bar No. 010419
650 E. Washington Street
Greenville, South Carolina 29601
(864) 467-1001 (phone)
(864) 672-1406 (fax)
Beattie@BeattieAshmore.com

Dated this 8th day of June, 2012
Greenville, South Carolina

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Michael Shane Johnson)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS
2011-CP-42-0516

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 McCormick Correctional Institution
2. Name and location of Court which imposed sentence Court of General Sessions, County of Spartanburg, State of South Carolina
3. Name(s) of co-defendant(s) (if any) Tracy Michelle Richards
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007-GS-42-05690
 - (b) 2007-GS-42-05689
 - (c) 2007-GS-42-05688
 - (d) 2008-GS-42-01309
 - (e) 2007-GS-42-05691

(f) 2007-GS-42-05692

(g) 2007-GS-42-05693

(h) 2008-GS-42-01308

(i) 2007-GS-42-05709

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

(a) On February 28, 2008 a sentence of 30 years was imposed

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty X

(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?

Yes

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

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

i. South Carolina Court of Appeals

ii. _____

iii. _____

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

i. The appeal was dismissed

ii. _____

iii. _____

(c) the date of each such result:

i. February 11, 2010

ii. _____

iii. _____

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

i. Unpublished Opinion No. 2010-UP-126

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
 - (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) Denial of right to fair/impartial judiciary and a neutral/detached judge
 - (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failure to aid in the defendant's cooperation with the government; failure to adequately explore plea negotiations; failure to communicate with client; failure to disclose a conflict of interest between defense counsel and the Judge; failure to request and/or file a motion requesting the Judge to recuse himself; and other such issues that may be determined through the discovery process
 - (b) Failure of Judge to recuse himself due to a conflict with defense counsel
 - (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. _____

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. _____

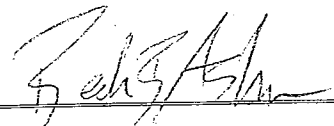
(b) the proceedings in which each ground was raised:

i. _____

ii. _____

Revised 3/2003

- 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) The grounds set forth in (10) could not be properly raised on direct appeal
 - (b) _____
 - (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
 - (b) your trial, if any? N/A
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes, for this Application
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. Kenneth Sowell, 1711 County Meadows, Anderson, SC 29626
 - ii. Wanda H. Carter, 1330 Lady Street, Ste. 401, Columbia, SC 29201
 - iii. Beattie B. Ashmore, 650 East Washington Street, Greenville, SC 29601
 - (b) the proceedings at which each such attorney represented you:
 - i. Kenneth Sowell for plea/sentencing and motion to reconsider sentence
 - ii. Wanda H. Carter for Appeal
 - iii. Beattie B. Ashmore for this Application
19. State clearly the relief you seek in filing this application:
New trial
20. Are you now under sentence from any other court that you have not challenged?
No



Beattie Ashmore, SC Bar # 10419

This 31 day of January 2011

650 East Washington Street

Greenville, SC 29601

(864) 467-1001 Office

(864) 672-1406 Fax

Beattie@BeattieAshmore.com

Revised 3/2003

STATE OF SOUTH CAROLINA

)
)
)

VERIFICATION

County of SPARTANBURG

I, Michael Shane Johnson, 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.

Michael Shane Johnson by Brent B. Ashmore
SC Bar # 10419

SWORN to and subscribed before me this 31st
day of January, 2011.

Affinity A. Healy (L.S.)
Notary Public

My Commission Expires: Dec. 22, 2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Michael Shane Johnson, #334918,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2011-CP-42-0516

RETURN

The Respondent, making its Return to the application for post conviction relief (PCR) filed February 2, 2011, 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 Spartanburg County Clerk of Court. The Applicant was indicted at the May 2009 term of the Spartanburg County Grand Jury for three counts of burglary – 1st degree (07-GS-42-5688, -5689, -5690), three counts of grand larceny more than \$5,000 (07-GS-42-5692, -5693, 08-GS-42-1309), burglary – 2nd degree, non-violent (08-GS-42-1309), grand larceny, \$1,000-\$5,000 (07-GS-42-5691), and receiving stolen goods, less than \$1,000 – 3rd or subsequent property offense (07-GS-42-5709). Applicant was represented by Kenneth E. Sowell, Esquire. On February 28, 2008, the Applicant pled guilty as indicted to all charges. Applicant was sentenced by the Honorable Wyatt T. Saunders to confinement for fifteen years (07-5688), with a consecutive term of fifteen years (07-5689), and a consecutive term of five years (07-5691), and then two concurrent terms of fifteen years (07-5690, 08-1309), and four concurrent terms of ten years (07-5692, 07-5693, 07-5709, 08-1308); for an aggregate total of

thirty-five years. A motion for reconsideration was filed and Judge Saunders modified the sentence of 07-5691 to a concurrent term of five years on April 16, 2008.

A timely notice of appeal was filed and the South Carolina Court of Appeals dismissed Applicant's appeal. State v. Johnson, Op. No. 2010-UP-126 (filed February 11, 2010). The Remittitur was returned on March 1, 2010.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, and the appellate records. 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, in that;
 - a. Counsel failed to aid in Applicant's cooperation with the government,
 - b. Counsel failed to adequately explore plea negotiations,
 - c. Counsel failed to communicate with client,
 - d. Counsel failed to disclose a conflict of interest between defense counsel and the Judge,
 - e. Counsel failed to request and file a notice requesting the Judge to recuse himself; and
2. Denial of right to fair/impartial judiciary and a neutral/detached judge, in that;
 - a. Judge failed to recuse himself due to a conflict with defense counsel.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must

prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

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

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

IV.

The Applicant has alleged that the judge in this matter was not neutral and detached, based upon a conflict with defense counsel. However, the Applicant does not explain with any specificity the grounds upon which these alleged claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985).

Respondent submits that this allegation lacks merit and should be denied. Applicant must met the requisite showing of bias or prejudice stemming from an extra-judicial source and resulting in a decision based on information other than what the judge has learned from his participation in the case as a judge to establish that a judge should recuse himself from hearing a case. State v. Jackson, 353 S.C. 625, 578 S.E.2d 744 (S.C. Ct. App. 2003).

Additionally, this allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue by objection or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the allegation of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

Dec 7, 2011.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Michael Shane Johnson,

Appellant.

Appeal From Spartanburg County
Wyatt T. Saunders, Jr., Circuit Court Judge

Unpublished Opinion No. 2010-UP-126
Submitted January 4, 2010 – Filed February 11, 2010

APPEAL DISMISSED

Deputy Chief Appellate Defender Wanda H. Carter,
of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
Office of the Attorney General, all of Columbia;
Solicitor Harold W. Gowdy, III, of Spartanburg, for
Respondent.

PER CURIAM: Michael Shane Johnson (Johnson) appeals his guilty pleas to three counts of first-degree burglary, one count of second-degree burglary, three counts of grand larceny of an amount greater than \$5,000, one count of grand larceny of an amount more than \$1,000 but less than \$5,000, and one count of receiving stolen goods less than \$1,000. After a thorough review of the record and counsel's brief pursuant to Anders v. California, 386 U.S. 738 (1967) and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss Johnson's appeal and grant counsel's motion to be relieved.¹

APPEAL DISMISSED.

WILLIAMS, PIEPER, and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
Wyatt T. Saunders, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL SHANE JOHNSON,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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TABLE OF AUTHORITIES

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STATEMENT OF ISSUE ON APPEAL

The trial judge abused his discretion in allowing excessive consideration of the victims' objections to sentencing leniency to influence the sentence given to appellant in the case.

STATEMENT OF THE CASE

Appellant Michael Shane Johnson pled guilty to receiving stolen goods, second degree burglary, three counts of first degree burglary and four counts of grand larceny during the February, 2008 term of the Spartanburg County General Sessions Court before the Honorable Wyatt T. Saunders, Judge. Appellant was sentenced to imprisonment for an aggregate period of thirty-five years. On April 16, 2008, Judge Saunders amended the sentence to reflect an aggregate prison sentence of thirty years per a sentencing reconsideration hearing. Appellant appealed his convictions and sentences.

This brief follows.

ARGUMENT

The trial judge abused his discretion in allowing excessive consideration of the victims' objections to sentencing leniency to influence the sentence given to appellant in the case.

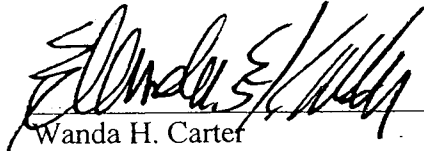
The state alleged appellant burglarized the homes of Harry Smutzer, Christopher Belton, Eric Mossbrook, and Stacy Smith, and that he took goods from those homes. At the plea proceeding, Patsy Smutzer, Tanya Belton, Eric Mossbrook, and Daniel and Donna Gibson all commented about how the burglaries and larcenies negatively impacted their lives and how they were not in agreement with lenient sentencing for appellant. R. p. 46, line 18 – p. 49, line 7; R. p. 39, line 13 – p. 51, line 15. Months later at the reconsideration hearing, Mossburg and Smutzer appeared and again strongly protested against leniency with respect to sentencing.

Clearly, the over-emphasis of the victims' position with respect to sentencing leniency was over-kill and resulted in prejudice to appellant at the time of sentencing because it was apparent that the judge gave undue consideration to the victims' feelings regarding the matter. An appellate court can review a sentence that is the result of prejudice, oppression or corrupt motive. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976). Clearly, the ambush of the victims influence over the trial judge with respect to the sentence imposed rendered appellant's sentence unreasonable and arbitrary. The trial judge abused his discretion in sentencing appellant because the sentence was based on excessive consideration of the victim's sentiments regarding the case in violation of appellant's right to due process guaranteed under the Fourteenth Amendment to the United States Constitution and article 1 § 3 of the South Carolina Constitution.

CONCLUSION

Based on the foregoing argument, appellant's conviction should be reversed and his case remanded to the Spartanburg County General Sessions Court for a new sentencing.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

April 17, 2009

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
Wyatt T. Saunders, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL SHANE JOHNSON,

APPELLANT

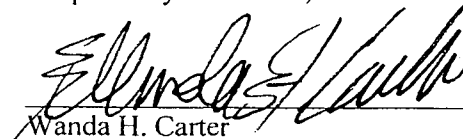
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Michael Shane Johnson states:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Wyatt T. Saunders, Jr., which was held on 2-27-08 & 4-16-08, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed the arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Michael Shane Johnson.

Respectfully submitted,



Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

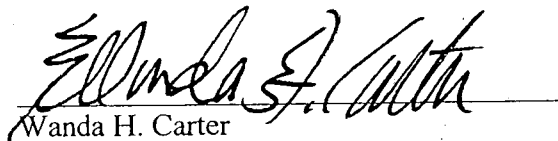
April 17, 2009

7

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

April 17, 2009



Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

Attorney for Appellant

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
Wyatt T. Saunders, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

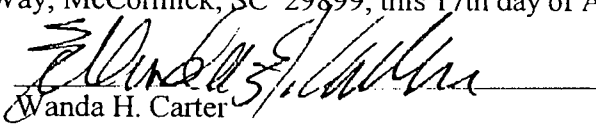
V.

MICHAEL SHANE JOHNSON,

APPELLANT

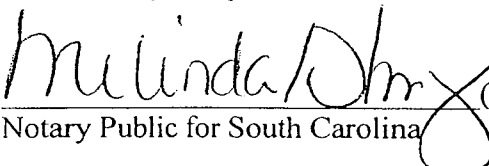
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at P.O. Box 50666, Columbia, SC; and the Final Anders Brief of Appellant and Record on Appeal has been served upon Michael Shane Johnson, #315435 at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 17th day of April, 2009.


Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 17th day of April, 2009.


Melinda Ohm (L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2018

WITNESSES

Spartanburg County Sheriff's Office

Anna Fowler

1. SENTENCE MADE

2. REPORT FILED

3. CARD PULLED

4. INDEXED ARREST WARRANT NUMBER

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND FINE CARD MADE

8. TRAFFIC VIOLATIONS COPY

261357

Computer

Computer

ACTION OF GRAND JURY

True Bill
Nakota

Foreperson of Grand Jury

Date: 11/20/07

VERDICT

SHERIFF

NOV 26 9 15 AM '07

Foreperson of Petit Jury

Date:

U/ - GS-42 - Ju
The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

NOV 26 2007

TERM

THE STATE

VS.

Michael Shane Johnson

Indictment for

BURGLARY, FIRST DEGREE
(Dwelling)

SC Code: 16-11-0311

CDR Code: 0079

Class: FEL/EXM (V)

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

NOV 20 2007

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

BURGLARY, FIRST DEGREE

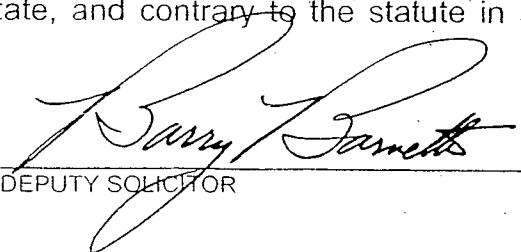
(DWELLING)

The Defendant, Michael Shane Johnson, did in Spartanburg County, on or about May 11, 2007, willfully and intentionally enter the dwelling belonging to Harry ~~Smith~~ ^{Smoot} located at Enoree, South Carolina without consent and with the intent to commit a crime therein, and either: 27

- (1) the Defendant did enter in the nighttime and/or
- (2) armed with a deadly weapon; and/or
- (3) caused physical injury to any person who is not a participant in the crime; and/or
- (4) uses or threatens the use of a dangerous instrument; and/or
- (5) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearms

In violation of Section 16-11-311 and Section 16-1-57, Code of Laws of South Carolina (1976) as amended.

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


DEPUTY SOLICITOR

K- 261357

STATE OF SOUTH CAROLINA

County/ Municipality of

SPARTANBURG COUNTY

THE STATE
against

JOHNSON, MICHAEL SHANE

Address: _____

City: SPARTANBURG, SC 29388

State: _____ DL#: _____

Race: _____ Height: 5'00 Weight: 200

Agency ORI#: _____

Arresting Agency: _____

Arresting Officer: DUNCAN, R / SO

Offense: BURGLARY / BURGLARY (AFTER

JUNE 20, 1985) - FI Offense Code: 0079

Ordinance Sec: 16-11-0311

Warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of _____

The accused _____

is to be arrested and brought before me _____

with according to law.

Signature of Judge

W. W. Kill
W. W. Kill
(L.S.)
CLERK OF COURT
SPARTANBURG COUNTY

RETURN

A copy of this arrest warrant was delivered to

officer JOHNSON, MICHAEL SHANE

[Signature]
Signature of Constable/Law Enforcement Officer

RETURN TO:

ROBERT HALL
MAGNOLIA STREET
SPARTANBURG, SC 29306

County/ Municipality of

SPARTANBURG COUNTY

Personally appeared before me the affiant DUNCAN, R / SO who being duly sworn deposes and says that defendant JOHNSON, MICHAEL SHANE did within this county and state on 05/11/07 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of SPARTANBURG) in the following particulars:

DESCRIPTION OF OFFENSE: BURGLARY / BURGLARY (AFTER JUNE 20, 1985) - FI 16-11-0311

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THE DEFENDANT DID ENTER THE DWELLING OF HARRY SMITZER AT ANDREWE, S.C. 29388 WITHOUT CONSENT AND WITH THE INTENT TO COMMIT A CRIME THEREIN AND STOLED A DEADLY WEAPON.

AFFIANT'S BELIEF BASED ON POLICE INVESTIGATION. YVK

Signature of Affiant

[Signature]

Affiant's Address SHERIFF'S OFFICE

00000

Affiant's Telephone 000-0000 000-0000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 05/11/07 defendant JOHNSON, MICHAEL SHANE did violate the criminal laws of the State of South Carolina (or ordinance of SPARTANBURG) as set forth below:

DESCRIPTION OF OFFENSE: SPARTANBURG

BURGLARY / BURGLARY (AFTER JUNE 20, 1985) - FI
16-11-0311

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me _____)

on MAY 25 2007 _____)

(L.S.) _____)

Signature of Issuing Judge _____)

Judge Code: 808 _____)

ROBERT HALL

Judge's Address 180 MAGNOLIA STREET

SPARTANBURG, SC 29306

Judge's Telephone _____

Issuing Court: 854 Magistrate Municipal Circuit

ORIGINAL

S.C. Attorney General
April 21, 2003
SCCA 618

CASE # K261357

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2007 MAY 30 AM 10:23
MARC KITCHENS

55

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG

STATE OF VS MICHAEL SHANE JOHNSON

AKA: _____

Race: W Sex: M Age: 22

DOB: _____ SS#: _____

Address: _____

City, State, Zip: _____

DL# _____ SID# _____

INDICTMENT/CASE#: 07-GS-42-5688

AW#: K261357

Date of Offense: 5-11-2007

S.C. Code §: 16-11-311

CDR Code #: 0079

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: BURGLARY FIRST (1st) DEGREE

in violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0079

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Garry Samets Solicitor Michael Johnson Defendant Kesnell Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
Total: \$146,328 plus 20% fee: \$ _____

Payment Terms: _____
 set by SCDPPPS _____

* Recipient: <u>See Orders</u>	
* Fine: _____	\$ _____
§14-1-206 (Assessments 107.5%)	\$ _____
§14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ <u>100*</u>
§14-1-211(A)(2) (DUI Surcharge)	\$100 \$ _____
§56-5-2995 (DUI Assessment)	\$12 \$ _____
§35.13 (Public Def/Prob)	\$500 \$ _____
§73.3, 1B TP (Law Enforce. Funding)	\$25 \$ <u>25⁰⁰</u>
§33.7, 1B TP (Drug Court Surcharge)	\$100 \$ _____
§50-21-114(BUI Breath Test Fee)	\$50 \$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea \$ _____
3% to County (if paid in installments)	\$ _____
TOTAL	\$ _____

PTUP _____ days/hours Public Service Employment

Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: Convert restitutions to civil judgments.
ATU at Doc

Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

J. Campbell
Clerk of Court/Deputy Clerk
Court Reporter: Henry Young

PRESIDING JUDGE W. Jamney
Judge Code: 2 1 1 1 1 5
Sentence Date: 2/27/08

WITNESSES

Spartanburg County Sheriff's Office

- 1. SENTENCE MADE *Anna Faulk*
 - 2. REPORT ENDED **Computer**
 - 3. CARD PULLED
 - 4. INDEXED
 - 5. CHECKED WARRANTS
 - 6. CHECKED SIGNATURE
 - 7. ASSESSMENT MADE **Computer**
 - 8. TRAFFIC VIOLATIONS COPY
- ARREST WARRANT NUMBER
261356

ACTION OF GRAND JURY

True Bill
[Signature]
Foreperson of Grand Jury
Date: 11/20/07

VERDICT

MARC MITCHELL
2007 NOV 26 PM 4:14
Foreperson of Petit Jury
Date:

07-63-42

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

NOV 26 2007

TERM

THE STATE
vs.

Michael Shane Johnson

Indictment for

BURGLARY, FIRST DEGREE
(Dwelling)

SC Code: 16-11-0311
CDR Code: 0079
Class: FEL/EXM (V)

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

NOV 20 2007

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

BURGLARY, FIRST DEGREE

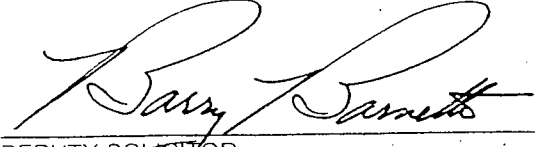
(DWELLING)

The Defendant, Michael Shane Johnson, did in Spartanburg County, on or about May 17, 2007, willfully and intentionally enter the dwelling belonging to Christopher Melton located at _____, Enoree, South Carolina without consent and with the intent to commit a crime therein, and either:

- (1) the Defendant did enter in the nighttime and/or
- (2) armed with a deadly weapon; and/or
- (3) caused physical injury to any person who is not a participant in the crime; and/or
- (4) uses or threatens the use of a dangerous instrument; and/or
- (5) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearms

In violation of Section 16-11-311 and Section 16-1-57, Code of Laws of South Carolina (1976) as amended.

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



DEPUTY SOLICITOR

ARREST WARRANT
K- 261356
 STATE OF SOUTH CAROLINA
 County/ Municipality of
SPARTANBURG COUNTY

THE STATE
 against

JOHNSON, MICHAEL SHANE
 Address: SPARTANBURG, SC 29388
 Phone: _____ SSN: _____
 Race: W Height: 6'100 Weight: 200
 State: _____ DL#: _____
 Agency ORI#: _____
 Secuting Agency: _____
 Secuting Officer: DUNCAN, R / SO
 Offense: BURGLARY / BURGLARY (AFTER
JUNE 20, 1985) - FI Offense Code: 0079
 Code/Ordinance Sec: 16-11-0311

This Warrant is **CERTIFIED FOR SERVICE** in the
 County/ Municipality of _____
 to be arrested and brought before me to be
 dealt with according to law.

Signature of Judge _____
 Date: _____

RETURN
 A copy of this arrest warrant was delivered to
 defendant JOHNSON, MICHAEL SHANE
 Signature of Constable/Law Enforcement Officer _____

RETURN WARRANT TO:
 ROBERT HALL
 30 MAGNOLIA STREET
 SPARTANBURG, SC 29306

STATE OF SOUTH CAROLINA)
 County/ Municipality of)
SPARTANBURG COUNTY)
 Personally appeared before me the affiant _____ who
 being duly sworn deposes and says that defendant JOHNSON, MICHAEL SHANE
 did within this county and state on 05/17/07 violate the criminal laws of the
 State of South Carolina (or ordinance of County/ Municipality of SPARTANBURG)
 in the following particulars:

DESCRIPTION OF OFFENSE: BURGLARY / BURGLARY (AFTER JUNE 20, 1985) - FI
 16-11-0311
 I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

THE DEFENDANT DID ENTER THE DWELLING OF CHRISTOPHER MELTON AT
 _____, ENOREE, S.C. 29388 WITHOUT CONSENT AND WITH THE INTENT TO
 COMMIT A CRIME THEREIN AND STOLED A DEADLY WEAPON.

AFFIANT'S BELIEF BASED ON POLICE INVESTIGATION. YVK

Signature of Affiant _____
 Affiant's Address SHERIFF'S OFFICE

 Affiant's Telephone 202-2000 _____

STATE OF SOUTH CAROLINA)
 County/ Municipality of)
SPARTANBURG)

ARREST WARRANT
 TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
 It appearing from the above affidavit that there are reasonable grounds to believe that
 defendant JOHNSON, MICHAEL SHANE
 did violate the criminal laws of the State of South Carolina (or ordinance of _____) as set forth below:
DESCRIPTION OF OFFENSE: BURGLARY / BURGLARY (AFTER JUNE 20, 1985) - FI
 16-11-0311

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
 defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
 the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me)
 on 05/25/07)
 _____ (L.S.))
 Signature of Issuing Judge)
 Judge Code: 808

ROBERT HALL ORIGINAL

AFFIDAVIT SCCA 618
 CASE # K261356

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2007 MAY 30 AM 10:23
 MARC KITCHENS

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
STATE VS. MICHAEL SHANE JOHNSON
AKA:
Race: W Sex: M Age: 22
DOB: SS#:
Address:
City, State, Zip:
DL# SID#

INDICTMENT/CASE#: 07-GS-42-5689
AW#: K261356
Date of Offense: 5-17-2007
S.C. Code §: 16-11-311
CDR Code #: 0079

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: BURGLARY FIRST (1st) DEGREE
in violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0079
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC) §17-25-45 w/minor 1st or Lewd Act

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
ATTEST: Barry Kamets Solicitor, Michael Defendant, Kesoult Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
CONCURRENT or CONSECUTIVE to sentence on: 2007 GS 42-5688
The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
set by SCDPPPS

PTUP 2007 GS 42-5688
days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund
Other:

Table with 2 columns: Description and Amount. Includes items like §14-1-206 (Assessments 107.5%), §14-1-211(A)(1) (Conv. Surcharge), §14-1-211(A)(2) (DUI Surcharge), §56-5-2995 (DUI Assessment), §35.13 (Public Def/Prob), §73.3, 1B TP (Law Enforce. Funding), §33.7, 1B TP (Drug Court Surcharge), §50-21-114(BUI Breath Test Fee), §56-5-2942(J) (Vehicle Assessment), 3% to County (if paid in installments), TOTAL \$128.75

Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

T. Campbell Deputy Clerk
Court Reporter: Henry Young

PRESIDING JUDGE W. J.
Judge Code: 011 1 1 15
Sentence Date: 2/27/08

WITNESSES

Spartanburg County Sheriff's Office

1. SENTENCE MADE *Southern*

2. REPORT END **Computer**

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE **Computer**

7. ASSESSMENT FINE CARD MADE

8. ARREST WARRANT NUMBER **Computer**
TRAFFIC VIOLATIONS COPY

K261355

ACTION OF GRAND JURY

True Bill
Marc Kitchens
Foreperson of Grand Jury
Date: *11/26/07*

VERDICT

MARC KITCHENS

2007 NOV 26 PM 4:14
Foreperson of Petit Jury
Date:

07-GS-42-3640
The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

NOV 26 2007

TERM

THE STATE
vs.

Michael Shane Johnson

Indictment for
BURGLARY, FIRST DEGREE
(Dwelling)

SC Code: 16-11-0311
CDR Code: 0079
Class: FEL/EXM (V)

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

NOV 20 2007

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

BURGLARY, FIRST DEGREE

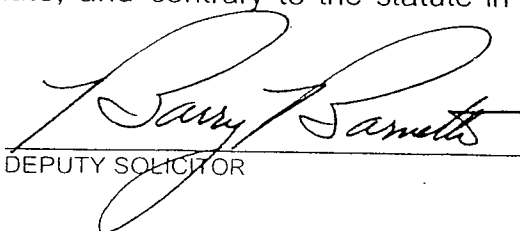
(DWELLING)

The Defendant, Michael Shane Johnson, did in Spartanburg County, on or about May 18, 2007, willfully and intentionally enter the dwelling belonging to Eric Mossbrook located at Woodruff, South Carolina without consent and with the intent to commit a crime therein, and either:

- (1) the Defendant did enter in the nighttime and/or
- (2) armed with a deadly weapon; and/or
- (3) caused physical injury to any person who is not a participant in the crime; and/or
- (4) uses or threatens the use of a dangerous instrument; and/or
- (5) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearms

In violation of Section 16-11-311 and Section 16-1-57, Code of Laws of South Carolina (1976) as amended.

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


DEPUTY SOLICITOR

ARREST WARRANT
K- 261355
 STATE OF SOUTH CAROLINA
 County/ Municipality of
SPARTANBURG COUNTY

THE STATE
 against

JOHNSON, MICHAEL SHANE
 Address: _____
WOODRUFF, SC 29388
 SSN: _____
 Race: W Height: 5-00 Weight: 200
 State: _____ DL#: _____
 Agency ORI#: _____
 Securing Agency: _____
 Securing Officer: DUNCAN, R / SO
 Offense: BURGLARY / BURGLARY (AFTER
JUNE 20, 1985) - FI Offense Code: 0079
 Title/Ordinance Sec: 16-11-0311

Warrant is **CERTIFIED FOR SERVICE** in the
 County/ Municipality of _____
 The accused _____
 to be arrested and brought before me to be
 held with according to law.

Signature of Judge _____
 BY: W.D. [Signature]
 DATE: 5-30-07

RETURN
 Copy of this arrest warrant was delivered to
 defendant JOHNSON, MICHAEL SHANE
5127107
 Signature of Constable/Law Enforcement Officer _____

RETURN WARRANT TO:
ROBERT HALL
10 MAGNOLIA STREET
SPARTANBURG, SC 29306

STATE OF SOUTH CAROLINA
 County/ Municipality of
SPARTANBURG COUNTY
 Personally appeared before me the affiant DUNCAN, R / SO who
 being duly sworn deposes and says that defendant JOHNSON, MICHAEL SHANE
 did within this county and state on 05/18/07 violate the criminal laws of the
 State of South Carolina (or ordinance of County/ Municipality of SPARTANBURG)
 in the following particulars:

DESCRIPTION OF OFFENSE: BURGLARY / BURGLARY (AFTER JUNE 20, 1985) - FI
 16-11-0311
 I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

THE DEFENDANT DID ENTER THE DWELLING OF ERIC MOSSBROOK AT
 WOODRUFF SC 29388 WITHOUT CONSENT AND WITH THE INTENT TO COMMIT A CRIME
 THEREIN AND STOLED A DEADLY WEAPON.

AFFIANT'S BELIEF BASED ON POLICE INVESTIGATION: YVK

Signature of Affiant _____

AFFIDAVIT SCCA 618
 CASE # K261355
 Affiant's Address SHERIFF'S OFFICE
00000
 Affiant's Telephone 000-0000 000-0000

ARREST WARRANT
 TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

appearing from the above affidavit that there are reasonable grounds to believe that
 defendant JOHNSON, MICHAEL SHANE
 did violate the criminal laws of the State of South Carolina (or ordinance of _____)
 County/ Municipality of _____) as set forth below:

DESCRIPTION OF OFFENSE: BURGLARY / BURGLARY (AFTER JUNE 20, 1985) - FI
 16-11-0311

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
 defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
 the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me)
 on MAY 25, 2007)
 Judge's Address: _____)

Signature of Issuing Judge _____ (L.S.))
 Judge's Telephone SPARTANBURG, SC 29306)

Judge Code: 808 Issuing Court: Magistrate Municipal Circuit

ROBERT HALL ORIGINAL

FILED
 CLERK OF COUNTY
 SPARTANBURG COUNTY
 2007 MAY 30 AM 10:23
 MARC KITCHENS

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
STATE OF SOUTH CAROLINA
MICHAEL SHANE JOHNSON
AKA: _____
Race: W Sex: M Age: 22
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL# _____ SID# _____

INDICTMENT/CASE#: 07-GS-42-5690
AW#: K261355
Date of Offense: 5-18-2007
S.C. Code §: 16-11-311
CDR Code #: 0079

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: BURGLARY FIRST (1ST) DEGREE
in violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0079
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Darryl Barnett Solicitor Michael Johnson Defendant Ken [unclear] Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which
are incorporated by reference. was
 CONCURRENT or CONSECUTIVE to sentence on: 2007 6542-5689
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 set by SCDPPPS _____

PTUP _____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____
 Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

Recipient: _____
*Fine: _____ \$
§14-1-206 (Assessments 107.5%) _____ \$
§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§14-1-211(A)(2) (DUI Surcharge) \$100 \$
§56-5-2995 (DUI Assessment) \$12 \$
§35.13 (Public Def/Prob) \$500 \$
§73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
§33.7, 1B TP (Drug Court Surcharge) \$100 \$
§50-21-114(BUI Breath Test Fee) \$50 \$
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$
3% to County (if paid in installments) \$ 375
TOTAL \$ 128.75

T. Camp / AD [unclear]
Clerk of Court / Deputy Clerk
Court Reporter: Henry Young

PRESIDING JUDGE W. [unclear]
Judge Code: 216151
Sentence Date: 2/27/08

Spartanburg County Sheriff's Office

Anna Fowler
1. SENTENCE MADE

2. REPORT ENDED
3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE
ARREST WARRANT NUMBER

7. ASSESSMENT CARD
FINE CARD MADE

61878 TRAFFIC VIOLATIONS COPY

ACTION OF GRAND JURY

Travis Bill

John A. Falk

Representative of Grand Jury
Date: 2/22/08

VERDICT

Representative of Petit Jury
Date:

The State of South Carolina
County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

FEB 25 2008

TERM

THE STATE
VS.

Michael Shane Johnson

Indictment for
BURGLARY, SECOND DEGREE
(Dwelling)

SC Code: 16-11-0312
CDR Code: 80
Class FEL-D

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT (G460031)

At a Court of General Sessions, convened on FEB 24 2008, the

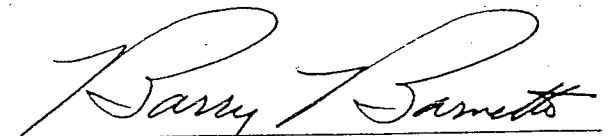
Grand Jurors of Spartanburg County present upon their oath:

BURGLARY, SECOND DEGREE
(Dwelling)

That the defendant, Michael Shane Johnson, did in Spartanburg County on or about April 21, 2007, willfully and unlawfully enter without consent and with intent to commit a crime therein, to-wit: The dwelling of Stacy Smith, located at

Woodruff, South Carolina, in violation of Section 16-11-312, Code of Laws of South Carolina, (1976), as amended.

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


Deputy Solicitor

K- 261358

STATE OF SOUTH CAROLINA

County/ Municipality of
SPARTANBURG COUNTY

THE STATE
against

SON, MICHAEL SHANE

RUFF, SC 29308
SSN: _____

Race: W Height: 5'00 Weight: 200
DL#: _____ Agency ORI#: _____

Arresting Agency: _____
Arresting Officer: DUNCAN, R / SO
Offense: BURGLARY / BURGLARY (NON VIOLENT) (AFTER JU) Offense Code: 0080
Statute Sec: 16-11-0312

Arrest Warrant is CERTIFIED FOR SERVICE in the
County/ Municipality of _____
The accused _____
be arrested and brought before me to be
held according to law.

Signature of Judge

RETURN

of this arrest warrant was delivered to

JOHNSON, MICHAEL SHANE

Signature of Constable/Law Enforcement Officer

WARRANT TO:

ROBERT HALL
180 MAGNOLIA STREET
SPARTANBURG, SC 29306

County/ Municipality of
SPARTANBURG COUNTY

Personally appeared before me the affiant DUNCAN, R / SO who
being duly sworn deposes and says that defendant JOHNSON, MICHAEL SHANE
did within this county and state on 04/21/07 violate the criminal laws of the
State of South Carolina (or ordinance of County/ Municipality of SPARTANBURG)
in the following particulars:

DESCRIPTION OF OFFENSE: BURGLARY / BURGLARY (NON - VIOLENT) (AFTER JU

16-11-0312

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

THE DEFENDANT DID ENTER THE DWELLING OF STACY SMITH AT
WOODRUFF, S.C., 29388 WITHOUT CONSENT AND WITH THE INTENT TO COMMIT
THEREIN.

AFFIANT'S BELIEF BASED ON POLICE INVESTIGATION.
YVK

Signature of Affiant

Affiant's Address SHERIFF'S DEPT

Affiant's Telephone 000-0000 000-0000 000-0000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
defendant JOHNSON, MICHAEL SHANE

did violate the criminal laws of the State of South Carolina (or ordinance of SPARTANBURG) as set forth below:

DESCRIPTION OF OFFENSE: SPARTANBURG
BURGLARY / BURGLARY (NON - VIOLENT) (AFTER JU

16-11-0312

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on MAY 25 2007

Signature of Issuing Judge (L.S.)

Signature of Issuing Judge

Judge Code: 808

ROBERT HALL ORIGINAL

Judge's Address 180 MAGNOLIA STREET

Judge's Telephone SPARTANBURG, SC 29306

Issuing Court: Magistrate Municipal Circuit

MAILED COPY
MAY 25 2007
CLERK OF COURT
SPARTANBURG COUNTY
BY: W. J. S.
DATED 5300

FILED
CLERK OF COURT
SPARTANBURG COUNTY
MAY 30 AM 10:23
MARC KITCHENS

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE OF SOUTH CAROLINA VS. MICHAEL SHANE JOHNSON

AKA: _____

Race: W Sex: M Age: 22

DOB: _____ SS#: _____

Address: _____

City, State, Zip: _____

DL# _____ SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 08-GS-42-1309

A/W#: K261358

Date of Offense: 4-21-2007

S.C. Code §: 16-11-312

CDR Code #: 0080

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was [] CONVICTED OF or [] PLEADS

TO: BURGLARY SECOND (2ND) DEGREE

in violation of § 16-11-312 of the S.C. Code of Laws, bearing CDR Code # 0080

[X] NON-VIOLENT [] VIOLENT [] SERIOUS [] MOST SERIOUS [] Mandatory GPS (CSC) [] §17-25-45 w/minor 1st or Lewd Act

The charge is: [X] As Indicted, [] Lesser Included Offense, [] Defendant Waives Presentment to Grand Jury. (Defendant initial) The plea is: [X] Without Negotiations or Recommendation, [] Negotiated Sentence, [] Recommendation by the State.

ATTEST: [Signature] Solicitor, [Signature] Defendant, [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [] County Detention Center, for a determinate term of 15 days/months/years or [] under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

[X] CONCURRENT or [] CONSECUTIVE to sentence on: 2007 GS 42-5688 [] The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. [] The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

[] RESTITUTION: [] Heard, [] Waived, [] Ordered Total: \$ _____ plus 20% fee: \$ _____ Payment Terms: [] set by SCDPPPS

PTUP _____ days/hours Public Service Employment Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning _____ Substance Abuse Counseling Random Drug/Alcohol Testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning \$ _____ paid to Public Defender Fund Other: _____

Table with 2 columns: Description and Amount. Includes items like §14-1-206 (Assessments 107.5%), §14-1-211(A)(1) (Conv. Surcharge) \$100, §14-1-211(A)(2) (DUI Surcharge) \$100, §56-5-2995 (DUI Assessment) \$12, §35.13 (Public Def/Prob) \$500, §73.3, 1B TP (Law Enforce. Funding) \$25, §33.7, 1B TP (Drug Court Surcharge) \$100, §50-21-114(BUI Breath Test Fee) \$50, §56-5-2942(J) (Vehicle Assessment) \$40/ea, 3% to County (if paid in installments) \$25, TOTAL \$128.75

[] Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

Court Reporter: [Signature] Clerk of Court Deputy Clerk [Signature]

PRESIDING JUDGE [Signature] Judge Code: 21 1 1 1 5 Sentence Date: 2-27-08

WITNESSES

Spartanburg County Sheriff's Office

Anna Taylor

SENTENCE MADE
REPORT ENTERED **Computer**

WARD PULLED

INDEXED

CHECKED WARRANTS

CHECKED SIGNATURES **Computer**

ASSESSMENT AND FINE CARD MADE

TRAFFIC VIOLATIONS COPY

ARREST WARRANT

261362

ACTION OF GRAND JURY

Tonia Bell

Jody Bell

Foreperson of Grand Jury

Date: 2/22/08

VERDICT

08-43-74
The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

FEB 24 2008

TERM

THE STATE
VS.

Michael Shane Johnson

Indictment for
GRAND LARCENY

SC Code: 16-13-30(B) (2)
CDR Code: 479
Class FEL-E

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

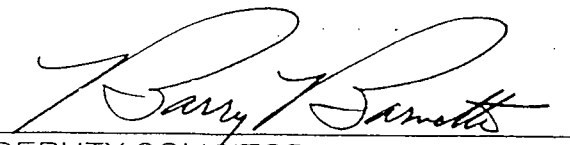
INDICTMENT

At a Court of General Sessions, convened on FEB 25 2008 the
Grand Jurors of Spartanburg County present upon their oath:

GRAND LARCENY

That the Defendant, Michael Shane Johnson, did in Spartanburg County on or about May 21, 2007, feloniously take and carry away jewelry (men and women's) and a TV of the value of more than Five Thousand Dollars, belonging to Harry Smutzer, with the intent to deprive the owner permanently of such property, in violation of §16-13-30 (B) (2), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

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


DEPUTY SOLICITOR

K- 261362

STATE OF SOUTH CAROLINA

County/ Municipality of
SPARTANBURG COUNTY

THE STATE
against

JOHNSON, MICHAEL SHANE
Address: _____
City: _____ State: SC 29388
SSN: _____
Race: _____ Height: 6-100 Weight: 200
State: _____ DL#: _____
Agency ORI#: _____

Arresting Agency: _____
Arresting Officer: DUNCAN, R / SO
Offense: LARCENY / GRAND LARCENY, VALUE
_____ OR MORE Offense Code: 0479
Code/Ordinance Sec: 16-13-0030(B)(2)

This Warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of _____ The accused
_____ to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to
defendant JOHNSON, MICHAEL SHANE

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

ROBERT HALL
80 MAGNOLIA STREET
SPARTANBURG, SC 29306

County/ Municipality of
SPARTANBURG COUNTY)
Personally appeared before me the affiant DUNCAN, R / SO who
being duly sworn deposes and says that defendant JOHNSON, MICHAEL SHANE
did within this county and state on 05/21/07 violate the criminal laws of the
State of South Carolina (or ordinance of County/ Municipality of SPARTANBURG)
in the following particulars:

DESCRIPTION OF OFFENSE: LARCENY / GRAND LARCENY, VALUE \$5,000 OR MORE
16-13-0030(B)(2)
I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

THE DEFENDANT DID TAKE, STEAL AND CARRY AWAY JEWELRY (MEN AND WOMENS) AND
TV VALUED IN EXCESS OF \$5000.00, BELONGING TO
HARRY SMUTZER, INTENDING TO PERMANENTLY DEPRIVE THE OWNER OF THE ITEMS.

AFFIANT'S BELIEF BASED ON POLICE INVESTIGATION. YVK

Signature of Affiant _____
Affiant's Address: SHERIFF'S OFFICE
_____ 29300
Affiant's Telephone: 800-0000 800-0000

STATE OF SOUTH CAROLINA)
 County/ Municipality of)
SPARTANBURG)

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on _____ defendant _____
did violate the criminal laws of the State of South Carolina (or ordinance of MICHAEL SHANE
 County/ Municipality of SPARTANBURG) as set forth below:

DESCRIPTION OF OFFENSE:
LARCENY / GRAND LARCENY, VALUE \$5,000 OR MORE
16-13-0030(B)(2)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me)
on MAY 25 2007)

Signature of Issuing Judge (L.S.))

Judge Code: 808
ROBERT HALL ORIGINAL

Judge's Address: 180 MAGNOLIA STREET
SPARTANBURG, SC 29306
Judge's Telephone: _____
Issuing Court: 864 96-2186 Municipal Circuit

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
STATE OF SOUTH CAROLINA
MICHAEL SHANE JOHNSON
AKA:
Race: W Sex: M Age: 22
DOB: SS#:
Address:
City, State, Zip:
DL# SID#

INDICTMENT/CASE#: 08 -GS- 42- 1308
AW#: K 261362
Date of Offense: 5-21-2007
S.C. Code §: 16-13-30(B)(2)
CDR Code #: 0479

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was [] CONVICTED OF or [X] PLEADS TO: GRAND LARCENY MORE THAN \$5,000
in violation of § 16-13-30(B)(2) of the S.C. Code of Laws, bearing CDR Code # 0479
[X] NON-VIOLENT [] VIOLENT [] SERIOUS [] MOST SERIOUS [] Mandatory GPS (CSC w/minor 1st or Lewd Act) [] §17-25-45

The charge is: [X] As Indicted, [] Lesser Included Offense, [] Defendant Waives Presentment to Grand Jury. (Defendant initial)
The plea is: [X] Without Negotiations or Recommendation, [] Negotiated Sentence, [] Recommendation by the State.

ATTEST: Barry Barnett Solicitor, Michael Johnson Defendant, [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [] County Detention Center, for a determinate term of 10 days/months/years or [] under the Youthful Offender Act not to exceed ___ years and/or to pay a fine of \$ ___; provided that upon the service of ___ days/months/years and/or payment of \$ ___; plus costs and assessments as applicable; the balance is suspended with probation for ___ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

[X] CONCURRENT or [] CONSECUTIVE to sentence on: 2007 GS 42-5688
[] The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
[] The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

[] RESTITUTION: [] Heard, [] Waived, [] Ordered
Total: \$ ___ plus 20% fee: \$ ___
Payment Terms:
[] set by SCDPPPS

PTUP ___ days/hours Public Service Employment

Table with 2 columns: Description and Amount. Includes items like *Fine, §14-1-206 (Assessments 107.5%), §14-1-211(A)(1) (Conv. Surcharge), §14-1-211(A)(2) (DUI Surcharge), §56-5-2995 (DUI Assessment), §35.13 (Public Def/Prob), §73.3, 1B TP (Law Enforce. Funding), §33.7, 1B TP (Drug Court Surcharge), §50-21-114(BUI Breath Test Fee), §56-5-2942(J) (Vehicle Assessment), 3% to County (if paid in installments), TOTAL \$ 1281.5

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ ___ beginning
\$ ___ paid to Public Defender Fund
Other:
[] Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

J. Camp / A. D. [Signature] Clerk of Court/ Deputy Clerk
Court Reporter: Henry Young

PRESIDING JUDGE W. [Signature]
Judge Code: 01 1 1 1 1 5
Sentence Date: 2-27-88

Spartanburg County Sheriff's Office

Anna Fowler

- 1. SENTENCE MADE
- 2. REPORT ENDED **Computer**
- 3. CARD PULLED
- 4. INDEXED
- 5. CHECKED WARRANTS
- 6. CHECKED SIGNATURE **Computer**
- 7. ASSESSMENT MADE **Computer**
- ARREST WARRANT NUMBER
- 8. TRAFFIC VIOLATIONS COPY

2002

ACTION OF GRAND JURY

True Bill
Verdict

Person of Grand Jury
11/28/07

VERDICT

MANC MICHENS

2007 NOV 26 PM 4:16

Person of Petit Jury

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

NOV 26 2007

TERM

THE STATE
vs.

Michael Shane Johnson

Indictment for
RSG/RECEIVING STOLEN GOODS
<\$1000

SC Code: 16-13-180(1), 16-1-57
CDR Code: 512
Class MIS/UNC

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

NOV 20 2007

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

RSG/RECEIVING STOLEN GOODS <\$1000

That Michael Shane Johnson, did in Spartanburg County on or about May 7, 2007, buy, receive or possess stolen goods of Donna Flowers Gibson, described as follows: a DVD player and watch, of the value of less than One Thousand Dollars, such goods having been feloniously taken and carried away with intent to deprive the owner thereof permanently of such goods, and the said defendant knew or had reason to believe such goods had been stolen, in violation of §16-13-0180 (1), CODE OF LAWS OF SOUTH CAROLINA, (1976, as amended) and that the Defendant has been convicted of two or more property crimes in violation of Section 16-1-57, THE CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended.

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


DEPUTY SOLICITOR

K- 262002

STATE OF SOUTH CAROLINA

[X] County/ [] Municipality of SPARTANBURG COUNTY

THE STATE against

JOHNSON, MICHAEL SHANE
Address: ANDREE, SC 29335
Phone: SSN:
Sex: Race: W Height: 5'00 Weight: 230
DL State: DL#:
JOB Agency ORI#:
Prosecuting Agency:
Prosecuting Officer: DUNCAN, R / SD
Offense: RSG/Receiving stolen goods \$1000 Offense Code: 0512
Code/Ordinance Sec: 16-13-0180(1)

This Warrant is CERTIFIED FOR SERVICE in the [] County/ [] Municipality of . The accused to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant JOHNSON, MICHAEL SHANE on 6-19-07

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

AMES PASLAY
80 MAGNOLIA STREET
SPARTANBURG, SC 29306

[X] County/ [] Municipality of SPARTANBURG COUNTY

Personally appeared before me the affiant DUNCAN, R / SD who being duly sworn deposes and says that defendant JOHNSON, MICHAEL SHANE did within this county and state on 05/07/07 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [] Municipality of SPARTANBURG) in the following particulars:

DESCRIPTION OF OFFENSE: RSG/Receiving stolen goods (<\$1000 16-13-0180(1))

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THE DEFENDANT DID RECIEVE A DVD PLAYER AND WATCH, VALUED AT LESS THAN \$1000.00 BELONGING TO DONNA FLOWERS GIBSON, KNOWING SAID PROPERTY TO BE STOLEN. THIS IS THE THIRD AND SUBSEQUENT OFFENSE AND SECTION 16-13-0180(1) APPLIES BECAUSE THE DEFENDANT HAS TWO OR MORE PROPERTY CRIMES BASED ON VALUE.

AFFIANT RECEIVED FROM POLICE INVESTIGATION. YVK

RECEIVED JUN 22 2007

BY: Signature of Affiant

STATE OF SOUTH CAROLINA [X] County/ [] Municipality of SPARTANBURG

Affiant's Address SCS0 00000
Affiant's Telephone 000-0000 000-0000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 05/07/07 defendant JOHNSON, MICHAEL SHANE did violate the criminal laws of the State of South Carolina (or ordinance of

[] County/ [] Municipality of SPARTANBURG) as set forth below:

DESCRIPTION OF OFFENSE: RSG/Receiving stolen goods (<\$1000 16-13-0180(1))

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on JUNE 19, 2007

Signature of Issuing Judge (L.S.)

Judge Code: 453

JAMES PASLAY

ORIGINAL

Judge's Address 100 MAGNOLIA STREET SPARTANBURG, SC
Judge's Telephone 864-935-2534

Issuing Court: [] Municipal [X] Magistrate [] Circuit D.C

BY: DATED 6/22/07

2007 JUN 22 PM 12:02

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
STATE OF SOUTH CAROLINA
MICHAEL SHANE JOHNSON
AKA: _____
Race: W Sex: M Age: 22
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL# _____ SID# _____

INDICTMENT/CASE#: 07-GS-42-5709
AW#: K262002
Date of Offense: 5-7-2007
S.C. Code §: 16-13-180(1), 16-1-57
CDR Code #: 0512

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: RECEIVING STOLEN GOODS LESS THAN \$1,000 - 3RD OR SUBSEQUENT PROPERTY OFFE.
in violation of § 16-13-180(1), 16-1-57 of the S.C. Code of Laws, bearing CDR Code # 0512
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC §17-25-45
w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser included Offense, Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
ATTEST:
Darryl Barnett Solicitor Michael Johnson Defendant Robert Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 10 days/months/Years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which
are incorporated by reference.
 CONCURRENT or CONSECUTIVE to sentence on: 2007 GS 42-5689
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 set by SCDPPPS _____

Recipient: _____	
*Fine:	\$ _____
§14-1-206 (Assessments 107.5%)	\$ _____
§14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ <u>100.00</u>
§14-1-211(A)(2) (DUI Surcharge)	\$100 \$ _____
§56-5-2995 (DUI Assessment)	\$12 \$ _____
§35.13 (Public Def/Prob)	\$500 \$ _____
§73.3, 1B TP (Law Enforce. Funding)	\$25 \$ <u>25.00</u>
§33.7, 1B TP (Drug Court Surcharge)	\$100 \$ _____
§50-21-114(BUI Breath Test Fee)	\$50 \$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea \$ _____
3% to County (if paid in installments)	\$ <u>3.75</u>
TOTAL	\$ <u>128.75</u>

PTUP _____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly
prmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____
 Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

T. Campbell
Clerk of Court/Deputy Clerk
Court Reporter: Henry Young

PRESIDING JUDGE W. J. ...
Judge Code: 07
Sentence Date: 5/27/08

WITNESSES

07-GS-42-5693

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

NOV 26 2007

TERM

Spartanburg Co. Sheriff Dept.

1. SENTENCE MADE

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND ARREST WARRANT NUMBER

8. TRAFFIC VIOLATIONS COPY

K261361

ACTION OF GRAND JURY

Troye Bill
[Signature]

Foreperson of Grand Jury

Date: 11/26/07

VERDICT

Foreperson of Petit Jury

Date:

THE STATE

VS.

Michael Shane Johnson

Indictment for

GRAND LARCENY

SC Code: 16-13-30 (B) (1)

CDR Code: 0478

Class FEL-F

A CERTIFIED COPY
Mauckitche
CLERK OF COURT
SPARTANBURG COUNTY
[Signature]
DATE: 4-30-08

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)


INDICTMENT

At a Court of General Sessions, convened on NOV 20 2007, the
Grand Jurors of Spartanburg County present upon their oath:

GRAND LARCENY

That the Defendant, Michael Shane Johnson, did in Spartanburg County, on or about May 21, 2007, feloniously take and carry away goods from Stacy Smith, valued more than One Thousand Dollars but less than Five Thousand Dollars, described as follows: jewelry, electronics and a safe, with the intent to deprive the owner permanently of such property, in violation of Section 16-13-30 (B) (1), Code of Laws of South Carolina (1976, as amended).

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


DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
STATE OF SOUTH CAROLINA
MICHAEL SHANE JOHNSON
AKA:
Race: W Sex: M Age: 22
DOB SS#:
Address:
City, State, Zip:
DL# SID#

INDICTMENT/CASE#: 07-GS-42-5693
A/W#: K261361
Date of Offense: 5-21-2007
S.C. Code §: 16-13-30(B)(2)
CDR Code #: 0479

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was [] CONVICTED OF or [X] PLEADS TO: GRAND LARCENY, MORE THAN \$5,000
in violation of § 16-13-30(B)(2) of the S.C. Code of Laws, bearing CDR Code # 0479
[X] NON-VIOLENT [] VIOLENT [] SERIOUS [] MOST SERIOUS [] Mandatory GPS (CSC w/minor 1st or Lewd Act) [] §17-25-45

The charge is: [X] As Indicted, [] Lesser Included Offense, [] Defendant Waives Presentment to Grand Jury.
The plea is: [X] Without Negotiations or Recommendation, [] Negotiated Sentence, [] Recommendation by the State.

ATTEST: Barry Barnett Solicitor, Michael Johnson Defendant, Kessel Attorney for Defendant

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [] County Detention Center, for a determinate term of 10 days/months/years or [] under the Youthful Offender Act not to exceed ___ years and/or to pay a fine of \$ ___; provided that upon the service of ___ days/months/years and/or payment of \$ ___; plus costs and assessments as applicable; the balance is suspended with probation for ___ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

[X] CONCURRENT or [] CONSECUTIVE to sentence on: 2007 GS 42-5693
[] The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
[] The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

[] RESTITUTION: [] Heard, [] Waived, [] Ordered
Total: \$ ___ plus 20% fee: \$ ___
Payment Terms:
[] set by SCDPPPS

PTUP ___ days/hours Public Service Employment
Obtain GED.
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ ___ beginning
\$ ___ paid to Public Defender Fu
Other:
[] Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

Table with columns for Recipient, *Fine, and amounts. Includes items like §14-1-206 (Assessments 107.5%), §14-1-211(A)(1) (Conv. Surcharge) \$100, §14-1-211(A)(2) (DUI Surcharge) \$100, §56-5-2995 (DUI Assessment) \$12, §35.13 (Public Def/Prob) \$500, §73.3, 1B TP (Law Enforce. Funding) \$25, §33.7, 1B TP (Drug Court Surcharge) \$100, §50-21-114(BUI Breath Test Fee) \$50, §56-5-2942(J) (Vehicle Assessment) \$40/ea, 3% to County (if paid in installments) \$37.5, TOTAL \$1287.5

T. Camp AD Intecore Clerk of Court/ Deputy Clerk
Court Reporter: Henry Young

PRESIDING JUDGE W. Johnson
Judge Code: 06 11 11 5
Sentence Date: 2-27-08

WITNESSES

07-00-42-2692

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

NOV 26 2007

TERM

THE STATE

vs.

Michael Shane Johnson

Indictment for

GRAND LARCENY

SC Code: 16-13-30 (B) (1)

CDR Code: 0478

Class FEL-F

Spartanburg Co. Sheriff Dept.

1. SENTENCE MADE

2. REPORT ENDED

3. CARD FILLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ARREST WARRANT NUMBER
FINE CARD MADE

8. TRAFFIC VIOLATIONS COPY

261360

ACTION OF GRAND JURY

True Bill

foreperson of Grand Jury

date: 11/20/07

VERDICT

foreperson of Petit Jury

date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

NOV 20 2007

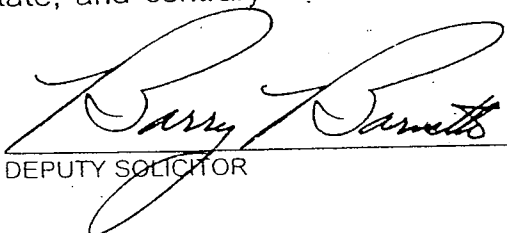
At a Court of General Sessions, convened on _____, the

Grand Jurors of Spartanburg County present upon their oath:

GRAND LARCENY

That the Defendant, Michael Shane Johnson, did in Spartanburg County, on or about May 18, 2007, feloniously take and carry away goods from Eric Mossbrook, valued more than One Thousand Dollars but less than Five Thousand Dollars, described as follows: a gun, jewelry and medication, with the intent to deprive the owner permanently of such property, in violation of Section 16-13-30 (B) (1), Code of Laws of South Carolina (1976, as amended).

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


DEPUTY SOLICITOR

K- 261360

STATE OF SOUTH CAROLINA

County/ Municipality of

SPARTANBURG COUNTY

THE STATE
against

SON, MICHAEL SHANE

RUFF, SC 29388

SSN:

Race: Height: 6-00 Weight: 200

DL#:

Agency ORI#:

Arresting Agency:

Arresting Officer: DUNCAN, R / SO

Charge: LARCENY / GRAND LARCENY, VALUE

OR MORE Offense Code: 0470

Statute: Ordinance Sec: 16-13-0030(B)(2)

This warrant is CERTIFIED FOR SERVICE in the
County/ Municipality of

The accused
be arrested and brought before me to be
according to law.

Signature of Judge

RETURN

This arrest warrant was delivered to

JOHNSON, MICHAEL SHANE

Signature of Constable/Law Enforcement Officer

WARRANT TO:

ROBERT HALL
180 MAGNOLIA STREET
SPARTANBURG, SC 29306

STATE OF SOUTH CAROLINA

County/ Municipality of

SPARTANBURG COUNTY

Personally appeared before me the affiant DUNCAN, R / SO who
being duly sworn deposes and says that defendant JOHNSON, MICHAEL SHANE
did within this county and state on 05/18/07 violate the criminal laws of the
State of South Carolina (or ordinance of County/ Municipality of SPARTANBURG)
in the following particulars:

DESCRIPTION OF OFFENSE: LARCENY / GRAND LARCENY, VALUE \$5,000 OR MORE
16-13-0030(B)(2)

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

THE DEFENDANT DID TAKE, STEAL AND CARRY AWAY A GUN, JEWELRY, AND
MEDICATION VALUED IN EXCESS OF \$5000.00, BELONGING TO
ERIC MOSSBROOK, INTENDING TO PERMANENTLY DEPRIVE THE OWNER OF THE ITEMS

AFFIANT'S BELIEF BASED ON POLICE INVESTIGATION. YVK

Signature of Affiant

Affiant's Address SHERIFF'S OFFICE

00000

Affiant's Telephone 000-0000 000-0000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 05/18/07 defendant JOHNSON, MICHAEL SHANE
did violate the criminal laws of the State of South Carolina (or ordinance of SPARTANBURG) as set forth below:

DESCRIPTION OF OFFENSE: SPARTANBURG
LARCENY / GRAND LARCENY, VALUE \$5,000 OR MORE
16-13-0030(B)(2)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on MAY 18 2007

Signature of Issuing Judge (L.S.)

Judge Code: 808

ROBERT HALL ORIGINAL

Judge's Address 180 MAGNOLIA STREET

Judge's Telephone SPARTANBURG, SC 29306

Issuing Court: 864 196-2186 Municipal Circuit

CASE # K261360

FILED
CLERK OF COUNTY
SPARTANBURG COUNTY
2007 MAY 30 AM 10:24
MARC KITCHENS

ACCEPTED
(L.S.)
CLERK OF COUNTY
SPARTANBURG COUNTY
BY: [Signature]
DATED: 5/30/07

COUNTY OF SPARTANBURG
STATE: MICHAEL SHANE JOHNSON vs.
AKA:
Race: W Sex: M Age: 22
DOB:
Address:
City, State, Zip:
DL# SID#

INDICTMENT/CASE#: 07 -GS- 42- 5692
AW#: K261360
Date of Offense: 5-18-2007
S.C. Code §: 16-13-30(B)(2)
CDR Code #: 0479

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was [] CONVICTED OF or [X] PLEADS TO: GRAND LARCENY MORE THAN \$5,000
in violation of § 16-13-30(B)(2) of the S.C. Code of Laws, bearing CDR Code # 0479

[X] NON-VIOLENT [] VIOLENT [] SERIOUS [] MOST SERIOUS [] Mandatory GPS (CSC w/minor 1st or Lewd Act) [] §17-25-45

The charge is: [X] As Indicted, [] Lesser Included Offense, [] Defendant Waives Presentment to Grand Jury. (Defendant initiates)
The plea is: [X] Without Negotiations or Recommendation, [] Negotiated Sentence, [] Recommendation by the State.

ATTEST: Barry Barnett Solicitor, Michael Johnson Defendant, Kesnell Attorney for Defendant

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [] County Detention Center, for a determinate term of 0 days/months/years or [] under the Youthful Offender Act not to exceed ___ years and/or to pay a fine of \$ ___; provided that upon the service of ___ days/months/years and/or payment of \$ ___; plus costs and assessments as applicable*; the balance is suspended with probation for ___ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

[X] CONCURRENT or [] CONSECUTIVE to sentence on: 2007 GS 42-5688
[] The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
[] The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

[] RESTITUTION: [] Heard, [] Waived, [] Ordered
Total: \$ ___ plus 20% fee: \$ ___
Payment Terms:
[] set by SCDPPPS

PTUP ___ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly
prmts. of \$ ___ beginning
\$ ___ paid to Public Defender F
Other: ___

Table with columns for Recipient, *Fine, and amounts. Includes items like §14-1-206 (Assessments 107.5%), §14-1-211(A)(1) (Conv. Surcharge) \$100, §14-1-211(A)(2) (DUI Surcharge) \$100, §56-5-2995 (DUI Assessment) \$12, §35.13 (Public Def/Prob) \$500, §73.3, 1B TP (Law Enforce. Funding) \$25, §33.7, 1B TP (Drug Court Surcharge) \$100, §50-21-114(BUI Breath Test Fee) \$50, §56-5-2942(J) (Vehicle Assessment) \$40/ea, 3% to County (if paid in installments) \$3.75, TOTAL \$128.75

[] Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

T. Campbell Clerk of Court Deputy Clerk
Court Reporter: Henry Young

PRESIDING JUDGE W. James
Judge Code: 01011115
Sentence Date: 2/27/08

WITNESSES

Spartanburg Co. Sheriff Dept.

- 1. SENTENCE MADE
- 2. REPORT ENDED
- 3. CARD PULLED
- 4. INDEXED
- 5. CHECKED WARRANTS
- 6. CHECKED SIGNATURE
- 7. ARREST WARRANT MADE
- 8. TRAFFIC VIOLATIONS COPY

Computer

ARREST WARRANT NUMBER

K261359

ACTION OF GRAND JURY

Tomie Bill
[Signature]

Foreperson of Grand Jury
 Date: 11/28/07

VERDICT

OSVW
 2007 NOV

Foreperson of Petit Jury
 Date:

DOCKET NO.

07-63-42

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

NOV 26 2007

TERM

THE STATE
vs.

Michael Shane Johnson

Indictment for

GRAND LARCENY

SC Code: 16-13-30 (B) (1)
 CDR Code: 0478
 Class FEL-F

ARREST WARRANT
K- 261359
STATE OF SOUTH CAROLINA
 County/ Municipality of
SPARTANBURG COUNTY

THE STATE
against

JOHNSON, MICHAEL SHANE
Address: **SPARTANBURG, SC 29388**
SSN: _____
Race: **W** Height: **6'00** Weight: **200**
DL#: _____
Agency ORI#: _____

Arresting Agency: _____
Arresting Officer: **DUNCAN, R / SO**
Description of Offense: **LARCENY / GRAND LARCENY, VALUE MORE THAN \$1,000**
Offense Code: **0476**
Statute Sec: **16-13-0030(B)(1)**

Warrant is **CERTIFIED FOR SERVICE** in the
County/ Municipality of _____
The accused
be arrested and brought before the Court
in accordance with law.

Signature of Judge _____
(L.S.)

BY: _____
DATED: **5/27/07**

RETURN
of this arrest warrant was delivered to
JOHNSON, MICHAEL SHANE
Signature of Constable/Law Enforcement Officer _____

RETURN WARRANT TO:
ROBERT HALL
MAGNOLIA STREET
SPARTANBURG, SC 29306

STATE OF SOUTH CAROLINA
 County/ Municipality of
SPARTANBURG COUNTY
Personally appeared before me the affiant
being duly sworn deposes and says that defendant
did within this county and state on **05/17/07**
State of South Carolina (or ordinance of County/ Municipality of **SPARTANBURG**)
in the following particulars:

DESCRIPTION OF OFFENSE: LARCENY / GRAND LARCENY, VALUE MORE THAN \$1,000
16-13-0030(B)(1)
I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

THE DEFENDANT DID TAKE, STEAL AND CARRY AWAY A GUN, JEWELRY AND ELECTRONICS,
VALUED IN EXCESS OF \$1000.00 BUT LESS THAN \$5000.00. BELONGING TO
CHRISTOPHER MELTON, INTENDING TO PERMANENTLY DEPRIVE THE OWNER OF THE ITEMS.

AFFIANT'S BELIEF BASED ON POLICE INVESTIGATION. YVK

Signature of Affiant

Affiant's Address **SHERIFF'S OFFICE**
02000
Affiant's Telephone **0202-0000**

ARREST WARRANT
TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
affidavit that there are reasonable grounds to believe that
defendant **JOHNSON, MICHAEL SHANE**

did violate the criminal laws of the State of South Carolina (or ordinance of _____) as set forth below:
DESCRIPTION OF OFFENSE: LARCENY / GRAND LARCENY, VALUE MORE THAN \$1,000
16-13-0030(B)(1)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me
on **MAY 25 2007**
Signature of Issuing Judge _____ (L.S.)
Judge Code: **808**
ROBERT HALL

Judge's Address **180 MAGNOLIA STREET**
SPARTANBURG, SC 29306
Judge's Telephone **864-595-2186**
Issuing Court: Magistrate Municipal Circuit

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2007 MAY 30 AM 10:24
MARC KITCHENS

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

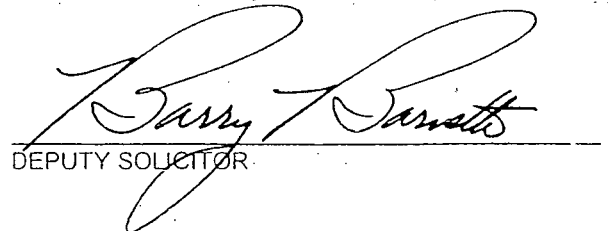
At a Court of General Sessions, convened on NOV. 20 2007, the

Grand Jurors of Spartanburg County present upon their oath:

GRAND LARCENY

That the Defendant, Michael Shane Johnson, did in Spartanburg County, on or about May 17, 2007, feloniously take and carry away goods from Christopher Melton, valued more than One Thousand Dollars but less than Five Thousand Dollars, described as follows: a gun, jewelry and electronics, with the intent to deprive the owner permanently of such property, in violation of Section 16-13-30 (B) (1), Code of Laws of South Carolina (1976, as amended).

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


DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE

V.

Michael Johnson

DEFENDANT.

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

W. Johnson

ORDER OF RESTITUTION

Upon the Motion of the Solicitor of the Seventh Judicial Circuit, it appears South Carolina Code of Laws Section 17-25-322 requires the Court to hold a hearing to determine the amount of restitution due the victim(s) of the defendant's criminal acts which have resulted in pecuniary damage or loss. Further, South Carolina Code of Laws Section 16-3-1530(D)(3) provides that the Court "shall order restitution at every sentencing for a crime against person or property" unless the Court finds a substantial and compelling reason not to order restitution.

The Court upon conducting a Restitution Hearing, or upon waiver and consent of the defendant, hereby finds:

() Restitution should not be ordered for the following substantial and compelling reasons: _____

() Restitution should be paid by the defendant as a condition of his/her sentence to the designated victim(s) in the following court-ordered amount(s):

<p>1. Indictment # <u>07-5688, 08-1308</u> Warrant # <u>K261357; 362</u> VICTIM: <u>Harru Smutzer</u> Address: _____ <u>Enoree SC 29335</u> Phone: _____ RESTITUTION: \$ <u>41,500.00</u></p>	<p>2. Indictment # <u>07-5689, 07-5691</u> Warrant # <u>K261356; 359</u> VICTIM: <u>Christopher Melton</u> Address: _____ <u>Enoree SC 29335</u> Phone: _____ RESTITUTION: \$ <u>7328.00</u></p>
<p>3. Indictment # <u>07-5709</u> Warrant # <u>K262002</u> VICTIM: <u>Donna Gibson</u> Address: _____ <u>Woodruff SC 29388</u> Phone: _____ RESTITUTION: \$ <u>40,000.00</u></p>	<p>4. Indictment # <u>07-5690; 07-5692</u> Warrant # <u>K261355, K261360</u> VICTIM: <u>Eric Mossbrook</u> Address: _____ <u>Woodruff SC 29388</u> Phone: _____ RESTITUTION: \$ <u>52,000.00</u></p>

AND IT IS SO ORDERED THIS 27th DAY OF February, 2008 Spartanburg, South Carolina.

I SO MOVE:
Trey Gowdy
Solicitor, Seventh Judicial Circuit

BY: *Barry Barnett*

W. Johnson
PRESIDING JUDGE
SEVENTH JUDICIAL CIRCUIT

I WAIVE MY RIGHT TO A RESTITUTION HEARING AND CONSENT TO THE ABOVE:

192 *AD*

Michael Johnson DEFENDANT

Amended Sentence

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
 STATE OF SOUTH CAROLINA
 DEFENDANT: MICHAEL SHANE JOHNSON
 AKA: _____
 Race: W Sex: M Age: 22
 DOE: _____ SS#: _____
 Address: _____
 City, State, Zip: _____
 DL# _____ SID# _____

INDICTMENT/CASE#: 07-GS-42-5691
 AAW#: K261359
 Date of Offense: 5-17-2007
 S.C. Code §: 16-13-30(B)(1)
 CDR Code #: 0478

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: GRAND LARCENY MORE THAN \$1,000

in violation of § 16-13-30(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0478

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Barry Samuels Solicitor Michael Johnson Defendant W. Jamison Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 05 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference. 140

CONCURRENT or ~~CONCURRENT~~ to sentence on: 2007 GS 42-5689
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 set by SCDPPPS _____

Recipient:		
*Fine:		\$ _____
§14-1-206 (Assessments 107.5%)		\$ _____
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ _____
§35.13 (Public Def/Prob)	\$500	\$ _____
§73.3, 1B TP (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§33.7, 1B TP (Drug Court Surcharge)	\$100	\$ _____
§50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
3% to County (if paid in installments)		\$ <u>3.75</u>
TOTAL		\$ <u>128.75</u>

PTUP _____ days/hours Public Service Employment
 Obtain GED _____
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling _____
 Random Drug/Alcohol Testing _____
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____
 Appointed PD or appointed other counsel, §35.13 TP
 Requires \$500 be paid to Clerk during probation.

T. Camp Clerk of Court Deputy Clerk
 Court Reporter: Henry Young

PRESIDING JUDGE: W. Jamison
 Judge Code: 101 / 1 1 1 3
 Sentence Date: 2/27/08

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

COUNTY OF SPARTANBURG

STATE

v.

ORDER OF RESTITUTION

MICHAEL SHANE JOHNSON

DEFENDANT.

Upon the Motion of the Solicitor of the Seventh Judicial Circuit, it appears South Carolina Code of Laws Section 17-25-322 requires the Court to hold a hearing to determine the amount of restitution due the victim(s) of the defendant's criminal acts which have resulted in pecuniary damage or loss. Further, South Carolina Code of Laws Section 16-3-1530(D)(3) provides that the Court "shall order restitution at every sentencing for a crime against person or property" unless the Court finds a substantial and compelling reason not to order restitution.

The Court upon conducting a Restitution Hearing, or upon waiver and consent of the defendant, hereby finds:

() Restitution should not be ordered for the following substantial and compelling reasons: _____

() Restitution should be paid by the defendant as a condition of his/her sentence to the designated victim(s) in the following court-ordered amount(s):

<p>05 Indictment # <u>08-1309, 07-5693</u> Warrant # <u>K261358, K261361</u> VICTIM: <u>STACY SMITH</u> Address: _____ <u>WOODRUFF, SC 29388</u> Phone: _____ RESTITUTION: \$ <u>6,000.00</u></p>	<p>2. Indictment # _____ Warrant # _____ VICTIM: _____ Address: _____ Phone: _____ RESTITUTION: \$ _____</p>
<p>3. Indictment # _____ Warrant # _____ VICTIM: _____ Address: _____ Phone: _____ RESTITUTION: \$ _____</p>	<p>4. Indictment # _____ Warrant # _____ VICTIM: _____ Address: _____ Phone: _____ RESTITUTION: \$ _____</p>

AND IT IS SO ORDERED THIS 27th DAY OF February, 2008, Spartanburg, South Carolina.

Total Restitution: \$146,328
I SO MOVE:
Trey Gowdy
Solicitor, Seventh Judicial Circuit

W. J. Jamieson
PRESIDING JUDGE
SEVENTH JUDICIAL CIRCUIT.

BY: Benny Bennett

I WAIVE MY RIGHT TO A RESTITUTION HEARING AND CONSENT TO THE ABOVE:

2062 ~~WA~~

Michael Shane Johnson DEFENDANT

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

COURT OF GENERAL SESSIONS
2011-CP-42-01315

MICHAEL SHANE JOHNSON,
-vs-
THE STATE of SOUTH CAROLINA,
Defendant.

TRANSCRIPT OF RECORD

January 31, 2012
Spartanburg, South Carolina

Ordered: June 9, 2012
Delivered: August 10, 2012

B E F O R E:

THE HONORABLE FRANK R. ADDY, Presiding Judge.

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

MS. SUZANNE H. WHITE, Esquire
Assistant Attorney General Appearing for the State

MR. BEATTIE B. ASHMORE, Esquire
Attorney Appearing for the Applicant

Pamela Faucette
Circuit Court Reporter

PAMELA FAUCETTE, CVR - (864) 574-9534 or (336) 260-2864

I N D E X

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E X H I B I T S

Petitioner's Exhibits:	Marked:	Received:
1 - (Statements)	24	24

Respondent's Exhibits:	Marked:	Received:
(None)		

Court's Exhibits:	Marked:	Received:
(None)		

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Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker.

1 January 31, 2012

2:17 P.M.

2 (Brief pause while Mr. Johnson is brought into the
3 courtroom.)

4 (Off-the-Record Comments)

5 THE COURT: What is the next case, Ms. White?

6 MS. WHITE: Your Honor, this is *Michael Shane*
7 *Johnson vs. the State*. It's case number 2011-CP-42-0516.
8 He's represented today by Beattie Ashmore.

9 He was represented at his guilty plea by Mr. Ken
10 Sowell and was indicted in May of '09; three (3) counts of
11 burglary first, three (3) counts of grand larceny over
12 five thousand (\$5,000), burglary second degree, grand
13 larceny one (\$1,000) to five thousand (\$5,000), and a
14 count of receiving stolen goods.

15 He pled guilty and received an aggregate sentence of
16 thirty-five (35) years. There's two (2) fifteen (15)
17 years consecutive sentences and a five (5) year
18 consecutive sentence. And, then, the rest were run
19 concurrent.

20 Attorney Sowell did file a motion for
21 reconsideration. And, at that point, the judge did
22 convert the five (5) year consecutive to a concurrent.

23 So, he ended up with a thirty (30) year total
24 sentence.

25 Appeal was filed and dismissed. And, then, the

1 application was filed February 2, two thousand, eleven
2 (2011) alleging various ineffective assistance of counsel
3 and denial of the right to a fair and impartial judge.

4 And, at this point, I can turn it over to Mr.
5 Ashmore.

6 THE COURT: All right. Mr. Ashmore, you're ready
7 to proceed, sir?

8 MR. ASHMORE: Yes, sir, Your Honor.

9 THE COURT: Very good. Call your first witness,
10 then, sir.

11 MR. ASHMORE: Your Honor, we'd call Pinkie Dardar
12 to the stand. It's P-i-n-k-i-e, Dardar, D-a-r-d-a-r.

13 THE COURT: Come on around and have a seat and
14 raise your right hand.

15 (The witness complied with the Court's request.)

16 (Whereupon,

17 PINKIE DARDAR

18 having been duly sworn, testified as follows:)

19 THE COURT: Mr. Ashmore?

20 MR. ASHMORE: Thank you, Your Honor. May it please
21 the Court?

22 DIRECT EXAMINATION by MR. ASHMORE: 2:20 P.M.

23 Q. Ms. Dardar -- well, first state your name for the
24 record, please.

25 A. It's Pinckie Dardar, P-i-n, actually with a c-k-i-e.

1 Q. Thank you. And how are you related to the
2 Petitioner, Michael Shane Johnson?

3 A. I'm his mother.

4 Q. Okay. You're familiar with the facts and
5 circumstances around his case in general; is that correct?

6 A. Yes, I am.

7 Q. Okay. How -- how did Mr. Sowell, who ultimately
8 represented your son, how did he become involved in the case?

9 A. I called him after my son was -- after my son was in
10 the -- a ---

11 Q. Speak up. Speak up.

12 A. I'm sorry. My son called me and explained to me on
13 the phone that he had been offered a fifteen (15) year
14 sentence, an offer from James Cheeks [sic].

15 Q. Now, who is Mr. Cheeks?

16 A. He is the public defender.

17 Q. All right. And -- and based on -- on that
18 information of Mr. Cheeks relaying a fifteen (15) year offer,
19 what did you do?

20 A. I called my brother and asked him what I should do
21 because that seemed like a -- a strong sentence to me. I
22 didn't know.

23 Q. Right.

24 A. He advised me to call Mr. Sowell. And he actually
25 called him first and then called me back and said that he had

1 talked to Mr. Sowell and told me to call him and talk to him
2 about the case.

3 Q. And did you do that?

4 A. Yes, I did.

5 Q. Tell us about that.

6 A. I called Mr. Sowell. He met my husband and I at the
7 Waffle House on 221, met with us there at a table. That's at
8 the -- that's where he offered to meet us.

9 Q. Let -- let -- let me stop you. Let me back you up a
10 little bit.

11 A. Yes, sir.

12 Q. Is there any sense of timing involved in this
13 fifteen (15) year offer to the best of your recollection?

14 A. Yes, sir. They offered him that on Thursday. And,
15 to the best of my recollection, I called my brother on
16 Thursday.

17 I spoke with Mr. Sowell on Friday. And, if I'm not
18 mistaken, I meet with him actually on a Saturday morning at
19 the Waffle -- my husband and I did -- at the Waffle house.

20 Q. All right. And, then, tell me about your
21 conversation with Mr. Sowell.

22 A. I explained to him what the charges were for my son.
23 He asked me what his -- he asked me on the phone to bring his
24 prior record with me, which I did. I wrote it down and
25 brought it.

1 And, he sat there at the table with us and -- and --
2 I'm sorry; ask me the question again.

3 Q. Well, just -- just tell me about your conversations
4 with Mr. Sowell. Did you talk about a -- a fifteen (15) year
5 plea offer?

6 A. Yes, sir. I -- I had told him that, that they had
7 offered him that. And he told me that he couldn't give me a
8 definite answer until he actually talked to my son and
9 investigated his history himself;

10 That he couldn't tell me if that was a fair sentence
11 that my son should take or not.

12 Q. And, then, what happened next?

13 A. He told me that he would go there and talk to my son
14 that day, which he did on Saturday. He left straight from
15 there and talked to him.

16 He called me back on Saturday and told me that, as
17 far as he could tell with the prior convictions that Shane had
18 or the prior record that Shane had, there was nothing violent
19 and that -- that he saw absolutely no way that a fifteen (15)
20 year sentence was fair; but that he would investigate more and
21 get back with me on Monday.

22 Q. And, then, did he do that?

23 A. Yes, he did.

24 Q. And -- and tell me about that. What was his
25 conclusion of the fifteen (15) year offer?

1 A. That it was -- that it was ridiculous. That they
2 were railroading him for a reason; that he was unaware that he
3 was not able to pinpoint at this time, but that it was not a
4 violent crime and that he was going to investigate further and
5 find out the actual reason that they were offering him the
6 fifteen (15) years because it was -- it was -- it didn't fit
7 the crime.

8 Q. Did you hire Mr. Sowell?

9 A. Yes, I did, based on that conversation right there.

10 Q. Okay. And what was your fee arrangement with him?

11 A. (No Response)

12 Q. How much did you pay him?

13 A. My mother actually gave me the money to pay him.
14 I'm not sure if it was twenty five hundred (\$2,500.00) or two
15 thousand (\$2,000.00).

16 Q. Okay. And your -- you said that your mother had the
17 financial resources to retain him at the time?

18 A. Oh, yes, sir, my mother did.

19 Q. And -- and what was her fin -- financial strength or
20 weakness at the time?

21 A. My mother passed away in two thousand, eight (2008).
22 Her net worth, is that what you want to know?

23 Q. Yes.

24 A. Was approximately six hundred and thirty thousand
25 dollars (\$630,000.00).

1 Q. And was she will -- willing to help Shane throughout
2 this ordeal?

3 A. Yes, sir, she was. She was at every hearing. And,
4 yes, sir, she was more than willing.

5 Q. Did Mr. Sowell ever approach you about making
6 restitution to the victims?

7 A. No, sir. He never mentioned that to me.

8 Q. Would your mother have helped with that issue?

9 A. Absolutely. That's her only grandson.

10 Q. How much time transpired after you hired Mr. Sowell,
11 before the plea was actually entered?

12 A. I'm sorry, prior to hire? I'm sorry.

13 Q. Well, let me -- let me -- let me get to the heart of
14 the matter. You were there for Shane's plea and sentencing,
15 correct?

16 A. Yes, sir.

17 Q. And that was before which judge?

18 A. Wyatt Saunders.

19 Q. And now deceased, correct?

20 A. Yes, he is.

21 Q. And did you talk to Mr. Sowell about Judge Saunders?

22 A. Yes, sir. He had given us an approximate time frame
23 that we would be in court; if I'm not mistaken, approximately
24 in May.

25 I received a phone call in March from Mr. Sowell

1 stating that there was a op -- a window of opportunity to get
2 the -- the case heard in March.

3 Q. And what was his assessment about moving the case at
4 that time and -- and -- and which Judge, if any, to go before?

5 A. I asked him if he would -- I asked him -- the very
6 first question that I asked him was what attorney -- I mean,
7 what judge would we be going before. And he told me Wyatt
8 Saunders.

9 I told him that I'd never heard of him. I only knew
10 Cole Derham [sic] and Mark Hayes. And he said that he didn't
11 know either one of those, but that if he wasn't mistaken, the
12 first -- the plea bargain that was offered to Shane of the
13 fifteen years was offered by Mark Hayes.

14 And that, since he didn't take it with Mark Hayes,
15 we shouldn't go before him again. And that he had a personal
16 relationship with Wyatt Saunders. And that, that's what you
17 needed between an attorney and a judge. And that he
18 recommended that we go before that attorney -- before that
19 judge. I apologize.

20 Q. Before Judge Saunders?

21 A. Yes, sir.

22 Q. All right. Did -- did he describe his personal
23 relationship with Judge Saunders?

24 A. No, sir. But he did tell me that, that's what you
25 needed.

1 Q. Subsequent to your son's plea and sentencing, did
2 you investigate the relationship between Judge Saunders ---

3 A. No, sir, I never questioned that. I trusted Mr.
4 Sowell.

5 Q. Now after all this happened?

6 A. Yes, sir, I did.

7 Q. And what did you discovery?

8 A. Actually in Googling it, I found where Wyatt
9 Saunders had found Kenneth Sowell in contempt of court for --
10 in contempt of court prior to him taking my son:

11 I printed the whole court transcript out. It was on
12 -- it was on the internet.

13 Q. Did he disclose that to you on ---

14 A. No, sir, never.

15 Q. Let me finish my question.

16 A. I'm sorry.

17 Q. Did he disclose that you on -- at -- at any time
18 prior to your son's plea and sentencing?

19 A. No, sir. I found that out on my own approximately
20 two weeks after he was sentenced.

21 Q. And -- and -- and Mr. Sowell was held in contempt by
22 Judge Saunders. And -- and do you know what happened at the
23 Court of Appeals on that issue?

24 A. No, sir. Actually, the court case that I -- that I
25 was able to pull up found that Mr. Sowell took -- Mr. Sowell

1 took it to a higher Court.

2 And it was also the -- the transcript that I had was
3 he was still found guilty.

4 Q. Well, let me help you here. You -- you would agree
5 with me, would you not, that it was -- that it was affirmed by
6 the Court of Appeals yet reversed by the South Carolina
7 Supreme Court?

8 A. Absolutely.

9 Q. Okay. And that was never disclosed to you?

10 A. Never.

11 Q. By Mr. Sowell?

12 A. No, sir.

13 Q. Let's back up. Were you present at the time when
14 law enforcement first approached your son?

15 A. Yes, sir. I was at his house when they pulled up.

16 Q. All right. What happened?

17 A. The police -- we -- I was actually there to take him
18 to lunch, he and Tracy to lunch. And ---

19 Q. Who is Tracy?

20 A. Tracy is -- was -- at the time was his girlfriend.

21 Q. What's her last name?

22 A. Richards.

23 Q. Okay. All right. Tell me what happened?

24 A. I went there on my lunch hour to -- to take them to
25 lunch. And, then, the police officers pulled up.

1 One came inside. One came to the door and asked
2 Tracy to go to the car with them. One came inside.

3 We didn't know what it was about. Shane didn't know
4 what -- what he was doing there. And I stayed the whole time.

5 They took Tracy out to the car to talk to her. And,
6 then, they were taking Shane out to the car to talk to him.

7 And, as I passed her, she said they said that
8 they'll -- I told them everything and they said that, that
9 they'll go light on us if we cooperate with them ---

10 **MS. WHITE:** Your Honor, I'm going to object to
11 hearsay. I don't believe Ms. Richards is here to testify to
12 anything.

13 **THE COURT:** You want to speak to that, Mr. Ashmore?

14 **MR. ASHMORE:** Well, Your Honor, I mean, apparently
15 that was her understanding. That was her impression of what
16 -- of what happened that day.

17 They -- they were not arrested that day. They were
18 obviously cooperating with law enforcement that day. And she
19 is simply collaborating what happens in -- in cases of this
20 nature.

21 **THE COURT:** I'll -- I'll allow it, Ms. White.

22 **MS. WHITE:** Thank you, Your Honor.

23 **MR. ASHMORE:** And -- and we'll finish up, Your
24 Honor.

25 **THE COURT:** Thank you very much.

1 Q. (By Mr. Ashmore) Just -- just ---

2 A. I actually went to the ---

3 Q. Well, let me ask you this: Was -- was Shane
4 arrested that day?

5 A. No, sir.

6 Q. He was not taken into custody?

7 A. No, sir.

8 Q. But we now know he had stolen goods in the home?

9 A. Yes, sir.

10 Q. And we now know that for that -- that -- for that
11 day and the days to follow, he was cooperating by pointing out
12 houses that had been broken into?

13 A. Yes, sir.

14 Q. And he gave a confession?

15 A. Yes, he did.

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

18 THE COURT: Okay. Ms. White?

19 MS. WHITE: Just briefly, Your Honor.

20 THE COURT: Yes, ma'am.

21 CROSS EXAMINATION by MS. WHITE: 2:20 P.M.

22 Q. Ms. Dardar, you said that Mr. Sowell didn't share
23 with you the contempt charge. Did your son ever share with
24 you the fact that he had shared it with him ---

25 A. No.

1 Q. ---- prior to the plea?

2 A. No, ma'am.

3 Q. Okay.

4 (Brief Pause)

5 Q. And did you have anything about a fifteen (15) year
6 plea deal ❖- was there anything in writing that you had?

7 A. I personally never saw it.

8 Q. Okay. So the only thing that you had was knowledge
9 of that through your son telling you that?

10 A. Yes, ma'am. He called me as soon as he came out of
11 room. They let him -- he ❖- he explained to Judge Cheeks --
12 I'm sorry -- attorney Cheeks, and I believe it was Mr.
13 Barnette, that he -- that he wanted to converse with me about
14 it.

15 And he called me. He came and told me he had just
16 got out of the room with them and that's what they offered
17 him. And they agreed to give him until Monday, after talking
18 with me, to decide if he was going to take it or not.

19 Q. And, he didn't want to take that plea deal because
20 it was -- he thought it was going to be too much?

21 A. No, ma'am. My son didn't know. He was looking to
22 me. And I was looking to Mr. Sowell. And that's exactly what
23 my husband and I told Mr. Sowell.

24 ❖If this is the ❖- the public defender's office, we
25 don't have the money to hire an attorney. And the public

1 defender's office is ❖- is offering him fifteen (15) years.
2 If that is a fair sentence would you please tell us and we'll
3 let -- we'll let him -- we'll advise him to sign that plea.❖
4 That is what we had intended to do.

5 Q. But you said he was cooperating at the time too.
6 And you'd hope that, that was going to reduce the sentence?

7 A. I'm sorry; I don't know what you mean.

8 Q. You said that he was cooperating with the police.

9 A. He was already in the jail at that time.

10 Q. But he had cooperated with the police prior and
11 given a confession?

12 A. Oh, yes, ma'am.

13 Q. Did he believe that, that was going to help with his
14 sentence?

15 A. He had no idea. He ❖- my son -- my son did. My
16 son ---

17 Q. Right.

18 A. --- believed that.

19 Q. Okay.

20 A. Yes, ma'am.

21 MS. WHITE: Okay. That's all I have, Your Honor.

22 MR. ASHMORE: No, further questions, Your Honor.

23 THE COURT: Thank you, Ms. Dardar. You can step
24 down.

25 (The witness complied with the request.)

1 MR. ASHMORE: Your Honor, we call Michael Shane
2 Johnson to the stand.

3 THE COURT: Mr. Johnson, if you'll come up, please,
4 sir.

5 (The witness complied with the Court's request.)

6 (Off-the-Record Comments)

7 (Whereupon,

8 MICHAEL SHANE JOHNSON

9 having been duly sworn, testified as follows:)

10 THE COURT: All right. Mr. Ashmore?

11 DIRECT EXAMINATION by MR. ASHMORE:

2:33 P.M..

12 Q. State your name for the record.

13 A. Michael Shane Johnson.

14 Q. And -- and where are you incarcerated, Mr. Johnson?

15 A. McCormick Institution.

16 Q. How long have you been at McCormick?

17 A. About four (4) years.

18 Q. Four (4) years. And -- and -- and any major
19 violations while you've been incarcerated?

20 A. No, sir.

21 Q. I want you to speak up for me. Who represented you
22 originally on the charges that have landed you here today?

23 A. Mr. Kenny Sowell.

24 Q. Well, who represented you originally?

25 A. James Cheeks.

1 Q. James Cheeks? And -- and he was a court-appointed
2 attorney, correct?

3 A. Yes, sir.

4 Q. Okay. And -- and how long did he have your case,
5 Mr. Cheeks?

6 A. I spoke to him probably one time. And after that I
7 never spoke to him again.

8 Q. Okay. And you heard your mother's testimony -- was
9 -- tell me what was your understanding of a plea offer if --
10 if any, offered through Mr. Cheeks to you?

11 A. Fifteen (15) years.

12 Q. Fifteen (15) years violent?

13 A. Yes, sir.

14 Q. Okay. And -- and, again, referring to your mother's
15 testimony, was that on a particular day of the week; do you
16 recall?

17 A. Yeah, I think she's right. On Thursday, I went to
18 court and they offered me that. And I come straight back to
19 the County and I called my mother.

20 Q. All right. Did -- did they say anything to you
21 about how long that fifteen (15) year offer would be on the
22 table?

23 A. No, sir.

24 Q. Okay. So, based on that, did you -- did you contact
25 your mother?

1 A. Yes, sir.

2 Q. And -- and, were you eventually -- did you
3 eventually meet with Mr. Sowell?

4 A. Yes, sir.

5 Q. Okay. And -- and, he became your lawyer, correct?

6 A. Yes, sir.

7 Q. Okay. And that was with your willingness and
8 consent?

9 A. Yes, sir.

10 Q. Okay. And he was hired by your family, correct?

11 A. Yes, sir.

12 Q. Okay. What did Mr. Sowell tell you about a fifteen
13 (15) year plea offer?

14 A. It really wasn't ever discussed with me, the fifteen
15 (15) year. I mean, I really put my heart into my mother, you
16 know ----

17 Q. Okay.

18 A. --- to get things done.

19 Q. All right. How many times did you meet with Mr.
20 Sowell?

21 A. I'd say about four (4) or five (5) times.

22 Q. Okay. And -- and, he came and visited you while you
23 were in jail some?

24 A. Yes, sir.

25 Q. Were you in jail this entire time?

1 A. The entire time.

2 Q. Excuse me?

3 A. Yes, the entire time.

4 Q. Okay. All right. The day of your arrest what
5 happened?

6 A. (No Response)

7 Q. Let me -- let me back that up. The day you were
8 first confronted by law enforcement, what happened?

9 A. I was told -- I had walked outside and I was told by
10 my mother that Tracy had said, you know, cooperate with the
11 police and, you know, they'll -- they'll help us out a little
12 bit.

13 So, I signed statements on myself and told them
14 where everything was and -- and tried to help to the fullest.

15 Q. All right. Where -- were there -- you were living
16 with Tracy at the time?

17 A. She was living with me.

18 Q. All right. She was living with you?

19 A. Yes, sir.

20 Q. And -- and -- and, by the way, while we are speaking
21 of Tracy, she was your co-defendant in the case?

22 A. Yes, sir.

23 Q. And what was her ultimate sentence?

24 A. Eighteen (18) months.

25 Q. Eighteen (18) months?

1 A. Yes, sir.

2 Q. And -- and -- you're serving thirty (30) years?

3 A. Thirty (30) years, uh-huh (affirmative).

4 Q. Okay. The -- the -- there were some stolen goods.

5 Where were those stolen goods located?

6 A. They were in my house.

7 Q. In your house?

8 A. Yes, sir.

9 Q. Did you identify those to law enforcement?

10 A. Every single one of them.

11 Q. Okay. And Tracy knew the stolen goods were there?

12 A. Yeah.

13 Q. Did you assist you in these burglaries?

14 A. Yeah.

15 Q. In -- in what manner?

16 A. Well, a couple of the houses, she was the one that
17 picked them out.

18 Q. That did what?

19 A. That -- that picked the houses out to be vandalized,
20 broken into.

21 Q. Did -- did -- did she enter into any of the houses?

22 A. Yeah, I -- I think about two (2) of them.

23 Q. Okay. The houses were broken into during the day or
24 night?

25 A. In the morning time.

1 Q. In the morning time? And that's -- that's as to all
2 the houses?

3 A. Yes, sir.

4 Q. Were any of the houses ever occupied?

5 A. No, sir.

6 Q. Were you ever armed as you entered any of the
7 houses?

8 A. No, sir.

9 Q. Did -- did law enforcement arrest you the first day
10 that they confronted you?

11 A. No, sir.

12 Q. How many days transpired -- how many days passed
13 before they actually arrested you?

14 A. I want to say about four (4) or five (5).

15 Q. Okay. And -- and during that time, were you
16 cooperating with law enforcement?

17 A. Yes, sir.

18 Q. Did they make any representations to you what would
19 happen good or bad if you cooperated?

20 A. I mean, officer Duncan told me that he would stand
21 up in court and -- and say how much that I helped because -- I
22 mean -- really I made the case, you know.

23 I mean, I showed them everything. I gave them all
24 the statements. They didn't need any more. I mean ...

25 Q. And he told you he would speak in court on your

1 behalf?

2 A. Yes, sir.

3 Q. Did he do that?

4 A. No, sir, he didn't.

5 Q. Was he offered that ap -- opportunity at your plea
6 and sentencing?

7 A. Yes, he was, yes, sir.

8 MR. ASHMORE: Your Honor, I handed up a memorandum
9 to your law clerk earlier.

10 THE COURT: I have it, yes ---

11 MR. ASHMORE: Do you have any objection to that?

12 THE COURT: --- sir. Thank you.

13 MR. ASHMORE: On the -- on the -- on the last page
14 I'm going to refer to this particular document. And I
15 suppose it would be best to go ahead and offer this. Let
16 me get him to identify this first, please.

17 THE COURT: Please.

18 Q. (By Mr. Ashmore) Let me show you this and ask you
19 if you can identify that?

20 (Documents handed to the witness.)

21 A. Yes, sir.

22 Q. What is that?

23 A. It's like a piece of paper with stuff from two
24 thousand -- two thousand and three (2003). I don't know what
25 all of it is.

1 Q. Is that your signature on this document?

2 A. Yes, sir.

3 Q. Okay.

4 MR. ASHMORE: Your Honor ---

5 Q. (By Mr. Ashmore) And, so, you recognize this as
6 being a document that you signed?

7 A. Yes, sir.

8 MR. ASHMORE: Your Honor, I offer this as
9 Petitioner's Number 1.

10 THE COURT: Without objection?

11 MS. WHITE: If I can look at it?

12 THE COURT: Sure.

13 MR. ASHMORE: I'm sorry.

14 MS. WHITE: That's fine.

15 (Brief pause while Ms. White examines documents.)

16 MS. WHITE: Without objection, Your Honor.

17 THE COURT: Thank you.

18 (Off-the-Record Comments)

19 (Whereupon, Petitioner's Exhibit Number 1 was marked
20 for identification and admitted into evidence without
21 objection.)

22 Q. (By Mr. Ashmore) Let me show you what we have
23 marked as Petitioner's Number 1, Mr. Johnson. And I want to
24 talk to you a little bit about that, okay?

25 A. All right.

1 Q. Now, that's hard to read, is it not?

2 A. Yes, sir.

3 Q. All right. You and I have -- we discussed this last
4 week down at McCormick, did we not?

5 A. Yes, sir.

6 Q. We went over this -- this exhibit last week, did we
7 not?

8 A. Yes, sir.

9 Q. All right. And you remember it, correct?

10 A. Yes, sir.

11 Q. All right. And -- and I stand to be corrected, but
12 let me try and read starting about halfway down. And -- and
13 -- and I'll -- I'll point to you where I'm reading, starting
14 here (indicating).

15 I believe it says you will have only ten (10) days
16 to retain appeal attorney and file a notice to appeal from any
17 adverse ruling, dated 2/22/08. Do you agree with me in
18 general that, that's what that says?

19 A. Yes, sir.

20 Q. Okay. Did you sign that?

21 A. Yes, sir.

22 Q. Okay. That's your signature?

23 A. That's my signature.

24 Q. All right. Now was the day of your plea?

25 A. No. I think I was sentenced on the 26th or the

1 27th.

2 Q. I believe the record reflects you were sentenced on
3 the 27th, so, this would be about five (5) days before your
4 plea?

5 A. Yes, sir.

6 Q. Okay. And, then, underneath it, again, reading best
7 I can from my -- my copy, "I agree to plead before Judge
8 Saunders understanding his contempt ruling against my
9 attorney." Is that your signature underneath that?

10 A. Yes, sir.

11 Q. Okay. Did you sign that?

12 A. Yes, sir.

13 Q. Is that dated 2/21 or 2/22/08?

14 A. Yes, sir, one of them.

15 Q. Okay. Now, what -- what -- what was -- what was a
16 contempt ruling? What -- what-- what did that mean to you on
17 2/21/08?

18 A. I really didn't know what a contempt meant period.

19 Q. Do you know what it means now?

20 A. I know what it means now.

21 Q. Well, what's your understanding now of what it
22 means?

23 A. I can't really give the -- the definition but, it...
24 means that somehow there was a difference in -- in the Court
25 between -- I mean, really I -- I don't know to be honest.

1 Q. Okay. How far did you go into school?

2 A. Tenth (10th) grade.

3 Q. Okay. And -- and -- and what landed you in all this
4 trouble in the first place?

5 A. Drugs.

6 Q. Cocaine?

7 A. Yes, sir.

8 Q. Now, did Mr. Sowell talk to you at anytime about a
9 Court of Appeals opinion or a Supreme Court opinion dealing
10 with the contempt issued against him by Judge Saunders?

11 A. No, sir. I don't even understand what any of that
12 meant. I mean ...

13 Q. And you would agree with me that at your -- at your
14 plea and at your sentencing and at your motion to reconsider
15 -- motion for reconsideration, none of that was ever
16 discussed?

17 A. No, sir.

18 Q. There's no where in the record that anybody talks
19 about contempt or a conflict of interest or anything like
20 that, correct?

21 A. Nowhere.

22 Q. Okay. And how long did you talk with Mr. Sowell
23 about this word "contempt"?

24 A. Never. I just signed the paper.

25 Q. I mean, did you have a discussion with him about it

1 or did ---

2 A. No, sir.

3 Q. I mean, tell me what happened to the best of your
4 recollection?

5 A. I signed the paper. And I knew that -- Judge
6 Saunders [sic] come to me and said that I could go in front of
7 Judge Hayes; that ---

8 Q. Let -- let me start you over again. I think you
9 might have used the wrong -- let's just start all over again.
10 Now -- now -- now, who came to you?

11 A. Mr. Saunders [sic].

12 Q. Mr. Sowell?

13 A. Mr. Sowell.

14 Q. And he came to you and said what?

15 A. He said that there's two (2) Judges that I can go in
16 front of. Judge Hayes that had just recently took me off of
17 probation and -- or Judge Saunders.

18 I didn't know anything about Judge Saunders, but, I
19 mean, common sense says that you want to go in front of
20 somebody that the attorney knows, you know. So ---

21 Q. Well, you -- you knew that Judge Hayes was going to
22 give you a fifteen (15) year sentence?

23 A. A fifteen (15) year sentence. He had already
24 offered me fifteen (15) years.

25 Q. And you wanted to do better than that, didn't you?

1 A. Yeah, I wanted to do better than that.

2 Q. Okay. And -- and -- and so, what was Mr. Sowell's
3 characterization of his relationship with Judge Saunders?

4 A. Honestly, he didn't -- he didn't explain it to me to
5 the -- the fullest extent. He just -- as a matter of fact, I
6 think this was wrote on a -- a manilla envelope.

7 Q. Written on -- on the back of his file?

8 A. Yeah, on a manilla envelope file or the front of it.
9 So, I mean, I really didn't know. I just put all my trust in
10 him to get me less than fifteen (15) years.

11 Q. When you were at your plea and your sentencing, were
12 you given the opportunity to address Judge Saunders or the
13 victims?

14 A. No, sir.

15 Q. Did anyone ever ask you if you had anything to say
16 in your own defense?

17 A. No, sir.

18 Q. Did Mr. Sowell indicate to the Court that you wanted
19 to address the Court and the victims?

20 A. No, sir.

21 Q Did Mr. Sowell object when law enforcement did not
22 say anything on your behalf?

23 A. No, sir.

24 **(Brief Pause)**

25 Q. Were you prepared to address the Court at your plea

1 and sentencing?

2 A. Yes, sir.

3 Q. In what way?

4 A. I had a -- an apologetic statement I would've liked
5 to say to the victims and to my family for what I done to them
6 also.

7 Q. Was that an oral statement or a written statement?

8 A. A written statement.

9 Q. Where was it located?

10 A. It was in my pocket that day.

11 Q. You had a written statement in your pocket and you
12 were never given the chance to read that to the victims or to
13 the Court?

14 A. Never.

15 MR. ASHMORE: Your Honor, I believe that's all I
16 have.

17 THE COURT: Cross, please, Ms. White?

18 MS. WHITE: Thank you, Your Honor.

19 CROSS EXAMINATION by MS. WHITE: 2:46 P.M.

20 Q. Mr. Johnson, you don't deny that you did sign a
21 waiver form for your rights and gave a voluntary statement to
22 police, right?

23 A. Yes, ma'am.

24 Q. Okay. And you also agree that Ms. Richards signed a
25 voluntary -- a wavier and -- and gave a voluntary statement to

1 police; is that right?

2 A. Yes, ma'am.

3 Q. You also gave them permission to search your house?

4 A. Yes, ma'am.

5 Q. Okay. So, when the police came, they had ❖- or when
6 they actually arrested you, I guess, these five (5) days after
7 the initial visit, they had -- the evidence that they had
8 found based on the ❖- the search, as well as the statement
9 that you had given and Ms. Richards had given, right?

10 A. Yes, ma'am.

11 Q. Okay. Now, to clarify a couple of things, when you
12 said Judge Hayes had offered you a fifteen (15) year deal, Mr.
13 Cheek conveyed a fifteen (15) year deal to you to plead in
14 front of Judge Hayes; is that right?

15 Judge Hayes never spoke to you and said he was going
16 to give you fifteen (15) years?

17 A. The what's his - Mr. Barnette and Mr. Cheeks
18 came into the room back there and told me.

19 Q. Right. But Judge Hayes never spoke to you
20 personally and guaranteed fifteen (15) years? Mr. Barnette
21 and Mr. Cheek told you they would offer you a fifteen (15)
22 year deal?

23 A. Yes, ma'am.

24 Q. Do you recall if they ever said it was negotiated or
25 recommended?

1 A. No, ma'am.

2 Q. Okay.

3 A. I don't remember.

4 Q. Now, you were on probation at the time when this
5 arrest happened, right?

6 A. Yes, ma'am.

7 Q. And it was probation for some previous charges that
8 amounted to also -- and I'm going to try to get this correct.

9 I believe it was another previous burglary charge or ---

10 A. It was grand larceny.

11 Q. Grand larceny? Okay. And the houses that -- that
12 you robbed were all -- you said that Tracy picked them out,
13 but weren't they all parents of friends of yours?

14 A. No, ma'am.

15 Q. They weren't?

16 A. No, ma'am.

17 Q. Okay. You didn't know each of the people that you
18 robbed?

19 A. No, ma'am. I knew Ms. Munson (phonetic). That was
20 it.

21 Q. You only knew one of the -- the victims?

22 A. Yes, ma'am.

23 Q. Okay.

24 (Brief Pause)

25 Q. And you testified that you broke in, in the morning.

1 They were not at home (phonetic). You stole some guns from
2 some of the houses, didn't you?

3 A. Yes, ma'am.

4 Q. Okay.

5 (Brief Pause)

6 Q. Now you testified that Mr. Sowell did not explain to
7 you anything about the contempt charge. He just asked you to
8 sign the document and you signed it?

9 A. Pretty much, yes, ma'am.

10 Q. Okay. Did he talk with you about your right to
11 appeal?

12 A. Really I -- I -- that's been five (5) years ago. I
13 -- I -- I really don't remember that.

14 Q. So, you don't remember if he talked with you about
15 your right to appeal, but you do remember he didn't talk with
16 you about the contempt charges?

17 A. I remember certain things that he told me like I
18 have ten (10) -- I think ten (10) days after. And, so, yeah,
19 I remember that. But, I mean, not the whole process.

20 Q. Okay. Now that signature is right underneath the
21 signature about the appeal, so, you don't remember that he
22 maybe talked to you about those at the same time?

23 A. No.

24 Q. And the dates are the same. You signed them on the
25 same day. You don't think he talked to you at the same time

1 about your appeal?

2 A. I mean, he -- he -- he might have.

3 Q. But you don't remember the contempt part?

4 A. Nah, not the contempt part either.

5 Q. Okay.

6 (Brief Pause)

7 Q. Now, when you went before the Court, you didn't
8 disagree with the facts, right? You agreed with the facts at
9 the guilty plea?

10 A. Yes, ma'am.

11 Q. Okay. And the judge asked you, if you were pleading
12 freely and voluntarily; isn't that right?

13 A. Yes, ma'am.

14 Q. And you agreed that you had and that nobody had
15 promised you anything to plead guilty?

16 A. Yes, ma'am.

17 Q. And nobody threatened you to plead guilty?

18 A. Yes, ma'am.

19 Q. So, you weren't pleading guilty on the promise that
20 you were going to get less than fifteen (15) years?

21 A. Ah....

22 Q. You were hoping you were going to get fifteen (15),
23 but you -- Mr. Sowell hadn't promised you you were going to
24 get anything in particular, had he?

25 A. No, he didn't promise me anything.

1 Q. Okay. You were hoping that you would get less?

2 A. Mr. Sowell came in and told me, during the recess,
3 that he seen somewhere between seven (7) and ten (10) years.
4 And that the only reason the judge was mad is because the
5 kids' things had gotten taken, that was -- was taken.

6 Q. Now, tell me -- you said he said he seen something
7 that said seven (7) to ten (10)?

8 A. No. He come in there during recess and told me
9 that.

10 Q. Right. And you said, during the recess, he said he
11 had seen seven (7) to ten (10)?

12 A. No. He said that he don't see me getting more
13 than ---

14 Q. Oh, he didn't see ---

15 A. --- seven (7) to ten (10) years.

16 Q. --- you getting more then seven (7) to ten (10)?
17 But that was after the plea had already started?

18 A. Yeah, that was in the middle of recess.

19 Q. And before the plea he had told you that he couldn't
20 promise you what the judge would give you, right?

21 A. Before the plea, he had told me that fifteen (15)
22 years was just -- it was bogus.

23 Q. And -- but you just testified that he didn't promise
24 you ---

25 A. No, he didn't promise me ---

1 Q. --- any sentence?

2 A. --- but that's what he told me.

3 Q. That he felt fifteen (15) years was too much?

4 A. Yes, ma'am.

5 Q. Now did he talk with you about the fact that you
6 were on probation and committed other crimes that were going
7 to create an issue?

8 A. No, because before I had even hired him, I had
9 already been taken off of probation by Judge Hayes. I had a
10 public defender to get that taken off. They terminated it.

11 Q. But my question was, did he talk with you about the
12 fact that you committed all these burglaries while you were on
13 probation?

14 A. Nah.

15 Q. He didn't tell you anything about the fact that,
16 that might give you a heavier sentence?

17 A. I mean, no. Why would it? I wasn't on probation
18 anymore.

19 Q. You were on probation when you committed the
20 crimes, weren't you?

21 A. Yes, ma'am.

22 Q. Okay. Now the judge asked you if you were satisfied
23 with counsel at the time, right?

24 A. Yes, ma'am.

25 Q. And -- and, at the time, you said you were. And

1 that you had discussed all your defenses with him and the
2 charges and that you felt like that the jury would find you
3 guilty and that you wanted to plead guilty today.

4 He also asked you, again, you know, was there any
5 suggestion, offer, or promise of any particular sentence. And
6 you said, "No, sir."

7 And he said, "Is there any recommendation by the
8 State that's going to expect you -- any leniency in this
9 sentence," and you said, "No, sir."

10 So, is that not the truth or ...?

11 A. I did say that.

12 Q. Okay. Now your attorney did speak on your behalf.
13 And he did ask for a suspended sentence or additional
14 probation, didn't he?

15 A. Yes, ma'am.

16 Q. Okay. And -- and, in fact, once that didn't happen,
17 he filed a mfor reconsideration and -- and argued that before
18 the judge, didn't he?

19 A. Yes, ma'am.

20 MS. WHITE: Okay. If I could have just one moment,
21 Your Honor?

22 THE COURT: Certainly.

23 (Brief Pause)

24 MS. WHITE: I think that's all the questions I have
25 at this time, Your Honor.

1 MR. ASHMORE: Nothing further, Your Honor.

2 THE COURT: All right. Mr. Johnson, step down,
3 please, sir.

4 (The witness complied with the Court's request.)

5 MR. ASHMORE: Your Honor, our last witness will be
6 Mr. Sowell.

7 THE COURT: All right, Mr. Sowell.

8 (Off-the-Record Comments)

9 (Whereupon,

10 KENNETH SOWELL, ESQUIRE

11 having previously been duly sworn, testified as
12 follows:)

13 THE COURT: Mr. Ashmore?

14 MR. ASHMORE: Thank you, Your Honor.

15 THE COURT: Yes, sir.

16 DIRECT EXAMINATION by MR. ASHMORE: 2:54 P.M.

17 Q. Mr. Sowell, how did you become involved to represent
18 Michael Shane Johnson?

19 A. Well, his uncle initially called me and discussed
20 the matter with me.

21 Q. And he's present today. Did you meet with my
22 client's mother at some point?

23 A. I don't remember exactly when or where we met, but
24 she said something about a Hardee's or something. But it
25 might have been Taco Bell. I'm not sure.

1 Q. I'm sorry?

2 A. It might have been Taco Bell. I'm not sure where I
3 first met her.

4 Q. I think she mentioned a ❖- a Waffle House. Would
5 that have been correct?

6 A. Possibly. I ❖- I know I met at her home several
7 times.

8 Q. Okay. Did you have ❖- did you have a physical
9 office at the time?

10 A. Yes.

11 Q. Where was that?

12 A. Well, one is here in Spartanburg and one is in
13 Greenville.

14 Q. Where exactly?

15 A. 225 College Drive (phonetic) in Spartanburg and 700
16 Pettigru Street (phonetic) in Greenville..

17 Q. And, then, there's an ❖- an Anderson office. Is
18 that your home or...?

19 A. That's my home. I do a lot work in Anderson and
20 work out of my home sometime.

21 Q. But you never met with anyone at ❖- at any of your
22 offices?

23 (Brief Pause)

24 A. I don't remember.

25 Q. Are they staffed offices?

1 A. Yes.

2 Q. You have a secretary?

3 A. Yes.

4 Q. Okay. At -- at both locations?

5 A. The Spartanburg always has the -- when I started
6 working out of so many different locations I didn't need a
7 secretary in Greenville, so, I dismissed her.

8 Q. Okay. There has been testimony that -- that you
9 were called as a result of an offer of fifteen (15) years that
10 was made through Mr. Cheeks [sic] to Mr. Johnson. Do you
11 recall that offer?

12 (Brief Pause)

13 A. Repeat the question.

14 Q. Was there a fifteen (15) year offer made through the
15 public defender's office to Mr. Johnson?

16 A. I don't know. I wasn't involved in that
17 conversation.

18 Q. Did you ever talk to Mr. Cheeks?

19 A. I would assume I did. I don't remember. It's been
20 five (5) years.

21 Q. So, as we sit here today, you don't know whether or
22 not Mr. Cheeks has secured a -- a plea offer of fifteen (15)
23 years?

24 A. I remember he -- Mr. Johnson had told me he received
25 a plea offer.

1 Q. And Ms. Dardar hired you to evaluate whether that
2 was a good deal or a bad deal, did she not?

3 A. I think she hired me to handle his plea.

4 (Brief Pause)

5 Q. How many times did you -- did you meet with Mr.
6 Johnson to discuss his case?

7 A. You have my file. I don't know, but I -- I assume
8 it as about -- he said five (5) times I'd seen him. I assume
9 that's about right.

10 MR. ASHMORE: Just, if you need it for reference, I
11 -- I do have your file. Let the record reflect that I'm
12 returning your original file to you.

13 (Documents handed to the witness.)

14 A. But he just testified that -- that I met him five
15 (5) times at the LSC (phonetic). I wouldn't contest that.

16 Q. Okay.

17 (Brief Pause)

18 Q. Eventually a plea was conducted in front of the
19 Honorable Wyatt Saunders; is that correct?

20 A. That's correct.

21 Q. Okay. And -- and obviously you, again, were aware
22 of the issues. Did you discuss with my client, or make any
23 representations to my client, about any type of a relationship
24 you might have had with Judge Saunders?

25 A. Well, near the end of the negotiations, we were

1 given an -- an option to plead in front of Judge Hayes or
2 Saunders.

3 And I selected -- I didn't select but I agreed that
4 we would be better off with Saunders than Hayes. And I had
5 discussion with your client concerning my prior relationship
6 with Judge Saunders.

7 And he said, "Well, if you think he's your buddy -- you
8 know, your friend, that's fine. I'll go in front of him."

9 I said, "You understand that I can't give you any
10 promises. And the last time I went in front of him he found
11 me in contempt of court."

12 "He said, "Well, if you're -- if you're -- if you
13 are -- feel comfortable going in front of him, that's fine
14 with me."

15 Q. Did you explore whether or not Judge Hayes was
16 willing to hand down a sentence of fifteen (15) years?

17 A. I think that would have been highly improper for me
18 to go in front of a judge and ask him what he's going to do.
19 I'm not that unethical; I -- I would have never done that.

20 Q. So, you thought Mr. Cheeks and Mr. Barnette were
21 talking to Judge Hayes?

22 A. You just asked me -- what did you just ask me? Did
23 I go to Judge Hayes?

24 You asked me did I go to Judge Hayes. No, sir, I
25 would never have done that. I don't like being held in

1 contempt of court even though I was innocent.

2 Q. Again -- right.

3 A. Don't you want to know what happened on the contempt
4 of court case?

5 Q. We'll get to that.

6 A. Okay.

7 Q. Now -- I must have asked a bad question. I should
8 have asked: Did you and the prosecutor go talk to Judge Hayes
9 about a fifteen (15) year sentence?

10 A. No, sir.

11 Q. And ---

12 A. I don't think that would have been proper either.

13 Q. You think that would be improper?

14 A. Yes, sir.

15 (Brief Pause)

16 Q. How long have you been practicing?

17 A. Nearly forty (40) years.

18 Q. Okay.

19 (Brief Pause)

20 Q. Let's talk about your contempt finding by Judge
21 Saunders. What -- what -- what happened?

22 A. Well; it was a statewide grand jury case. One of
23 the first ones. They were trying to convict the State of all
24 drugs (phonetic).

25 They refused to give me the discovery unless I

1 signed a statement I wouldn't reveal it to the -- the public
2 or any one.

3 I had a private detective working for me. He was --
4 yes, he did -- does undercover work in Greenville. But he's a
5 friend of mine and he knew one of the participants in the drug
6 ring.

7 I retained him to assist me in getting additional
8 information. As such I had to give him information concerning
9 what was in the file that had been presented to me by the
10 grand jury.

11 And I swore him to secrecy. And he maintained that
12 secrecy.

13 Judge Saunders -- the assistant attorney general did
14 not give me proper discovery. For the first trial, the vote
15 was eleven (11) to one (1) to acquit.

16 If she had given me the information that was in her
17 file, I could have surely convinced that one additional juror.

18 So, when the retrial started, I made a motion for
19 *res judicata* to dismiss because of the fact they didn't give
20 me the information and discovery properly.

21 Judge Saunders ruled that -- that no, he was not
22 convicted; therefore, you have no loss. Okay?

23 Then he -- then the -- the assistant attorney
24 general revealed to him that I had given my information to the
25 my assistant who's helping me. And Judge Saunders told me

1 that he thought that, as giving him the information, I was in
2 contempt of court.

3 And I -- my response was to the judge, "If -- once I
4 get the -- the information, if I type up a motion, I do my own
5 typing. I can't even tell my secretary what to type in it?"

6 He said, "No, Kenny, I believe this is -- I believe
7 it's an open and shut case. I don't think I have any
8 discretion about it; don't have any option.

9 "I don't want to do this, but I'm going to hold you
10 in contempt of court." And, then, after that ---

11 Q. What was his sentence?

12 A. I don't know.

13 Q. Ninety (90) days suspended on a five thousand
14 (\$5,000.00) dollar fine?

15 A. That sounds about right.

16 Q. And, then, you filed a motion to reconsider?

17 A. No, at the -- at the motion -- after that decision,
18 he called me back in his office and said, Ken, you know, we've
19 been friends for a long, long time. I wouldn't have done this
20 if I thought I have any option. I don't think I..."

21 Q. He called you back in -- in his office?

22 A. Yes, sir.

23 Q. By yourself?

24 A. Yes, sir.

25 Q. You had a conversation with him all by yourself?

1 A. When a judge call ---

2 Q. You had ex parte contact?

3 A. When a judge calls me, I go.

4 Q. You didn't get the assistant attorney general to
5 discuss your case?

6 A. No, sir. So, anyway, he said, "I certainly hope
7 you're going to appeal this case." I said, "Yes, sir."

8 He said, "I hope you're going to make a motion for
9 reconsideration." I said, "Yes, sir. Let's do that."

10 And, then, after the Supreme Court ruled in my favor
11 and ruled that I was not in contempt of court ---

12 Q. Well, let's talk first about the Court of Appeals

13 A. No, no, no, I'm answering your question.

14 Q. I'm asking the questions.

15 A. I have the right to answer your question.

16 MS. WHITE: Your Honor ---

17 A. You can't cut me off ---

18 THE COURT: All right.

19 A. --- when I'm halfway through my answer.

20 MS. WHITE: Your Honor ---

21 THE COURT: All right. Everybody hold on one
22 second.

23 MS. WHITE: --- I'm going to object just because I
24 think we're here primarily on the grounds of ineffective
25 assistance of counsel, not on Counsel's contempt charge.

1 **THE COURT:** I understand your position, but I think
2 it's the position of the Applicant that the attorney
3 represented -- Mr. Sowell represented he had a special
4 relationship, that he had a position relationship with
5 this judge. And I think they are allowed to explore that
6 especially in light of the -- the sentence that was
7 handed down.

8 So, I'm going to allow them to explore this line of
9 questioning. I think it's gotten to be open ended, but
10 I'm going to allow Mr. Ashmore to ask the questions he
11 wants.

12 Mr. Sowell, obviously, you can explain any question
13 you want to -- or any answer you want to give. At the
14 same time, as you know, we can't be talking over each
15 other because she has to take down everything that's
16 said.

17 So, if you would, just repeat that last question and
18 we will proceed.

19 **THE WITNESS:** Your Honor, my I finish my answer to
20 the question first?

21 **MR. ASHMORE:** There wasn't a question, Your Honor.

22 **THE COURT:** Let him repeat the question because
23 quite honestly I'm the trier of fact and I forgot what
24 the last question was with all the hullabaloo going on.

25 So, go head, Mr. Ashmore.

1 Q. (By Mr. Ashmore) What happened at the Court of
2 Appeals?

3 A. That was not the completion of the question you
4 first asked me. I have the right to answer that question
5 before you force me to change topics.

6 I want to finish my answer. I want to finish my
7 explanation of my answer.

8 MR. ASHMORE: Judge, my question to him was what
9 happened at the Court of Appeals?

10 THE COURT: All right. Mr. Sowell, I'll give you
11 some latitude here if we could. But the very last
12 question -- I guarantee the very last question that Mr.
13 Ashmore is going to ask you is -- or that she's going to
14 ask you on -- on cross will be, "Do you have anything
15 else to say to the Court about anything that you've
16 testified to?"

17 So, if you would, let's follow the questions. And,
18 then, you'll get an opportunity to fill in any blanks
19 you're short.

20 THE WITNESS: Okay. Thank you, sir.

21 THE COURT: Go ahead.

22 MR. ASHMORE: Thank you.

23 Q. (By Mr. Ashmore) What happened at the Court of
24 Appeals?

25 A. You mean what opinion they wrote -- what did they

1 find?

2 Q. Yes.

3 A. They found I was in contempt of court.

4 Q. They -- they affirmed his --

5 A. They affirmed.

6 Q. And, then, what happened at the Supreme Court?

7 A. They reversed.

8 Q. Okay. Now did you disclose any of that to my
9 client's mother, Pinckie Dardar?

10 A. I don't remember discussing it with her. She was
11 not my client. I discussed it with my client.

12 Q. Okay. Tell us about when you discussed it with Mr.
13 Johnson.

14 A. Once they gave us a choice of the judges, then, I
15 went down to LSC and met with him and I explained my situation
16 with Judge Saunders, my relationship with him.

17 I said, "It's your choice. What do you want to do?"
18 He had heard some horror stories about Judge Hayes, how strict
19 he was and how -- the type of sentences he gives. And he
20 asked me about those, his reputation.

21 I said, "Well, he's a -- he's a fair judge. He's
22 somewhat strict, but he's -- he's fair. He said, "Well, if
23 you had a choice, which one would you pick?" I said,
24 "Saunders."

25 I -- I explained to him why. I explained to him my

1 prior relationship with him and -- and the court proceedings.

2 Q. What -- what -- what did you explain to him about
3 the contempt proceedings?

4 A. Exactly what I just told you.

5 Q. Which is not much.

6 A. Well, I was going to before you cut me off.

7 Q. I didn't mean to cut you off. What did you explain
8 to him about the contempt proceedings?

9 A. I explained to him that the judge held me in
10 contempt saying I did something I should not have done. That
11 it had an effect on the court system.

12 And I told him that -- that the Supreme Court had
13 reversed him and reversed the finding; and told him that I met
14 with Judge Saunders several times since that time. And he's
15 always been nice and polite and told me that -- that I
16 certainly -- he certainly understood -- he hoped that I
17 understood that he had -- thought he had no discretion.

18 And that he hoped that our friendship and our long-
19 term relationship would not be injured by the findings. And
20 he -- he was the one who told me, "To make sure you appeal
21 this," and I did.

22 And, when the Court of Appeals found -- affirmed, he
23 called me up and said, "I hope you're going to appeal that."
24 And I said, "Yes, sir, I am."

25 And, after the Supreme Court reversed, I talked to

1 him again. He offered me -- he invited me to lunch. He told
2 me how happy he was things worked out.

3 Q. And you got Mr. Johnson to sign what we've entered
4 as Petitioner's Number 1, these two particular handwritten
5 notes, is that correct?

6 A. That's correct.

7 Q. And where -- where -- where are those in your file?

8 A. Where are they? They're on the ---

9 Q. Look at the back cover of your file.

10 A. It's -- you have a copy of it, the back cover of the
11 file?

12 Q. Right. It's on the back of your file for Michael
13 Shane Johnson is where Plaintiff's -- Petitioner's Exhibit
14 Number 1 exists, correct?

15 A. That's correct.

16 Q. That's where I got this from, correct?

17 A. Correct.

18 Q. And, in your conversations with my client about the
19 contempt proceedings, did he seem to -- to understand the
20 issues?

21 A. Yes.

22 Q. Did -- did you talk to him about what a conflict of
23 interest was?

24 A. A conflict of interest? I don't -- I don't know the
25 conflict we had. I don't understand how the situation or how

1 the question comes up.

2 Q. Well, apparently you thought it was important enough
3 to -- to -- to get Mr. Johnson to sign something related to
4 some issue about contempt proceedings, didn't you?

5 A. That's correct.

6 Q All right. So, obviously, it was an issue on your
7 mind?

8 A. Not on the issue of conflict of interest because the
9 only issue was to -- to be truthful with my client and let him
10 make the decision. There's no conflict.

11 Q. Did you -- did you ever raise this issue at -- at
12 the plea or the sentencing or the motion to reconsider --

13 A. No, sir.

14 Q. --- out of an abundance of caution? It's -- it's
15 nowhere in the record, is it?

16 A. I don't have the record in front of me. I don't
17 know.

18 Q. Did you talk to Judge Saunders about it?

19 A. About what?

20 Q. About whether or not you should do a plea in front
21 of him?

22 A. Of course I did.

23 Q. And -- and what was his response?

24 A. His response was, "Kenny, just because we had a
25 disagreement doesn't mean we can't be friends and we can't

1 have a continued relationship. And you can -- you can come in
2 front of me and I'll be fair to you. I won't bend over
3 backwards to pay you back, but I promise I'll be fair to you."

4 Q. And when did you have this conversation with him?

5 A. After the Court of Appeals -- the Supreme Court
6 decision.

7 Q. Was there anybody else with you during that
8 conversation?

9 A. He called me back in this office. I met him back
10 there. No, sir.

11 Q. And you went back there because he called you back
12 there?

13 A. Yes, sir.

14 Q. Did you talk to him beforehand about Mr. Johnson's
15 plea?

16 A. No.

17 Q. Did you and the assistant solicitor see Judge
18 Saunders before you entered this plea?

19 A. I don't remember. I would assume not. I don't know
20 though.

21 Q. Did my client tell you that law enforcement promised
22 that they would speak on his behalf at the sentencing?

23 A. No, sir.

24 Q. You knew that -- that he obviously had cooperated
25 with law enforcement?

1 A. I knew he had cooperated. And I also know that,
2 when law enforcement found out that all these houses were his
3 friends' houses they went ballistic. And they weren't --
4 weren't going to cooperate anymore.

5 Q. They weren't going to cooperate anymore?

6 A. They weren't going to assist him.

7 Q. But -- but he had rendered clearly early in the
8 case?

9 A. I have no idea.

10 Q. Before you were involved?

11 A. I don't have any idea.

12 Q. But you knew, from a review of the discovery in this
13 case, that he had given a confession?

14 A. Yes, sir.

15 Q. That he had pointed out where the houses were that
16 were broken into to?

17 A. Yes, sir.

18 Q. That he assisted in -- in the recovery of stolen
19 items?

20 A. He gave them back what he had. And -- and he also
21 told them the pawn shop where he pawned them.

22 Q. Right.

23 A. And I tried to get those victims to sue the pawn
24 shop but they wouldn't do it.

25 (Brief Pause)

1 A. You know, I -

2 Q. Can you reconcile for us how a co-defendant got a
3 sentence of eighteen (18) months?

4 A. I don't know. I know nothing at all about her
5 sentence.

6 Q. I'm sorry?

7 A. I know nothing at all about her case.

8 Q. Did you ever talk to the solicitor's office about
9 what their proposed disposition was as to the co-defendant?

10 A. I have nothing -- no idea about the co-defendant.

11 Q. Was she not similarly situated?

12 A. She could have been, yes, sir. He was trying his
13 best to protect her.

14 Q. What efforts, if any, did you make towards getting
15 restitution made to the victims in the case?

16 A. He told me he and his family had no money.

17 Q. Did you talk to Mrs. Dardar about that?

18 A. Yes.

19 Q. Did she tell you that her mother had a net worth of
20 six hundred and thirty thousand dollars (\$630,000.00)?

21 A. She told me she and her family had no assets to pay
22 the restitution.

23 Q. Did you explain to her and to Mr. Johnson how
24 important it is in a case such as this to make attempts at
25 restitution?

1 A. I did. And I was told they had no assets of which
2 to pay restitution. Although the mother does live in a nice
3 house.

4 THE COURT: I'm sorry; I missed that last part.

5 Would you repeat that?

6 A. The mother does live in a nice home.

7 THE COURT: Okay. Thank you.

8 Q. (By Mr. Ashmore) Were you aware of that at the time
9 of the plea?

10 A. The mother's home?

11 Q. Uh-huh (affirmative).

12 A. I met her several times at her -- well, I won't say
13 several. I think I met her twice, maybe three (3) times, at
14 her home.

15 Q. Before the plea?

16 A. Yes.

17 Q. So, you knew that she was a woman of some wealth?

18 A. I knew she lived in a nice house. I knew that they
19 had public defenders initially. And I knew that she told me
20 they had no assets in which to pay the restitution.

21 Q. What -- what was your fee in this case?

22 A. I don't even remember. I don't know.

23 Q. If -- if your file reflects a retainer agreement of
24 two thousand dollars (\$2,000.00), would you disagree with
25 that?

1 A. That's what you said. I don't know.

2 Q. Well, it's in your file. I mean, I'm -- I'm
3 offering you the chance to correct me.

4 A. If that's what you say, that's fine.

5 Q. At the sentencing hearing, what -- what
6 opportunities did my client have to address the Court and the
7 victims?

8 A. He could have if he wanted to. I gave him that
9 choice, but I didn't force him to. He did have a written note
10 there, but he declined.

11 He was shocked when all his friends' family turned
12 away -- turned on him. He thought they were going to say,
13 "Well, this is our friend, my son's friend, we'll be nice to
14 him."

15 And, when he found out that didn't happen, he
16 wouldn't -- he just threw his hands up.

17 Q. Are you saying he declined to address the Court and
18 the --

19 A. He never ---

20 Q. Wait a minute. Let me finish my question. Did he
21 decline to address the Court and the victims?

22 A. He told me he didn't want to.

23 Q. And is that anywhere in the record?

24 A. No, sir.

25 Q. At what stage did he tell you this?

1 A. When it was his time to talk.

2 Q. Excuse me?

3 A. When it was his time to talk.

4 Q. Well, show me in the record when it was his time to
5 talk?

6 A. I don't know if the record is going to reflect that.
7 All I know is that after -- after the solicitor talked and I
8 talked, I turned to him. He shook his head and that's it.

9 Q. And you would not disagree with me would you, Mr.
10 Sowell, nowhere in the record does Judge Saunders invite
11 comments from Michael -- from my client?

12 A. I don't have any memory.

13 Q. And you nowhere in the record said, "Your Honor, my
14 client would like to speak to the victims and the Court," or
15 "Does not want to speak to the victims and the Court"?

16 A. Repeat the question.

17 Q. Let me break it down for you: Is there anywhere in
18 the record that reflects that my client did not want to
19 address the victims or the Court?

20 A. You have the record. I don't know. You've had my
21 record for -- for over a year.

22 Q. And -- but you were welcome to -- to ---

23 A. I could have, yes, sir.

24 Q. You could have gotten your file back and actually
25 indicated you were going to do so in August of last year,

1 correct?

2 A. That's correct.

3 Q. And there's nowhere in the record where Judge
4 Saunders asks my client if there's anything he would like to
5 say?

6 A. Is that a question?

7 Q. Yes, sir.

8 A. You'd have to review the record. I don't know.

9 Q. Okay. Well, if I tell you it's in here, you
10 wouldn't -- it's not in here, you wouldn't disagree, would
11 you?

12 A. No, sir.

13 Q. And in your forty (40) years you've done hundreds
14 and hundreds of pleas, have you not?

15 A. A bunch.

16 Q. And what's the last thing that a Judge asks in every
17 plea?

18 A. Mr. Johnson, I'm pretty sure he told me he didn't
19 want to talk. I offered him the chance. When it was time for
20 him to talk, I turned to him, and he shook his hand -- shook
21 his head.

22 Q. Well, my point is Judge Saunders never gave my
23 client an opportunity to address the victims or the Court,
24 never to make a -- a statement, correct?

25 A. I don't have the record. I don't know.

1 Q. And -- and you did nothing to -- to object; to say,
2 "Your Honor, at this -- at this time, my client indicates he
3 would like to address the victims and the Court"?

4 A. He'd already told me he didn't want to. He was
5 going to but, when they all started saying bad things about
6 him because he had stolen from all of his friends, he just
7 gave up; said he didn't want to talk to them.

8 Q. And, in the -- but you filed a motion to reconsider,
9 did you not?

10 A. Yes, sir.

11 Q. Okay. And, in looking at the transcript from that,
12 some of the victims, of course, were obviously outraged at the
13 -- at this case and -- and were very vocal at the plea and the
14 sentencing, were they not?

15 A. That's correct.

16 Q. And they were there for the motion to reconsider,
17 were they not?

18 A. That's correct.

19 Q. And they, again, complained that Mr. Johnson had
20 never even said I'm sorry, did they not?

21 A. Yes, sir.

22 Q. And you stated, "You asked why he hasn't apologized,
23 I guess that was my fault. He had previously written out an
24 apology to you and the crowd. If any of you wants to look at
25 that a few minutes."

1 And that's from the transcript. Do you remember
2 saying that?

3 A. I assume I did, yes, sir.

4 Q. Okay. And you did file a motion to reconsider and
5 that resulted in, at the end of the day, a reduction from
6 thirty-five (35) years to thirty (30) years, correct?

7 A. If that's what the record reflects, yes, sir.

8 Q. And, so, now my client is serving a thirty (30) year
9 violent sentence, correct?

10 A. You have the record.

11 Q. And -- and what substantive arguments did you make
12 at the motion to reconsider?

13 A. You have the record; I don't know.

14 Q. You haven't reviewed the record for today's hearing?

15 A. No, sir.

16 Q. Do you recall if you made any meaningful arguments
17 at the motion to reconsider?

18 A. No, sir. It's all -- it's in the record.

19 Q. Yes, it is.

20 MR. ASHMORE: Your Honor, that's all I have.

21 THE COURT: Ms. White?

22 MS. WHITE: Thank you, Your Honor.

23 CROSS EXAMINATION by MS. WHITE: 3:21 P.M.

24 Q. Mr. Sowell, I want to start off with a couple of
25 things. In regards to the co-defendant in the case, Tracy

1 Richards, to your knowledge did she ever enter any of the
2 homes to break in?

3 A. I don't think so. He was not willing to testify
4 about anything about her. So, I ❖- I really don't -- I don't
5 think she did, but I don't -- I can't promise you that.

6 Q. Okay. And I'm going to ---

7 A. I know she didn't have nothing to do with the guns
8 that he stole.

9 Q. Okay. I'm just going to ...

10 (Off-the-Record Discussion)

11 Q. ... approach. I'm just going reference -- I'm just
12 going to read this. This is the incident report, is it not,
13 from the -- the incident? Does this look like the incident
14 report from the case?

15 A. It's looks like from one of the cases.

16 Q. Okay. And does this say "Investigative Report" at
17 the top?

18 A. Yes, ma'am.

19 Q. Okay. And, if you'll just read it along with me,
20 I'm going to read it out loud. It mentions a suspect in the
21 case being a Tracy Richards, vehicle matching a description of
22 a car and that Richards lived with Michael Shane Johnson.

23 A. Yeah.

24 Q. It indicates that on May 24th they go to a -- a
25 location and speak with Richards and Johnson. She agrees to

1 speak voluntarily and admits to driving her car to the
2 burglaries and waiting while Johnson broke into the houses.

3 And, then, it references three (3) different break-
4 ins. The Smutzer (phonetic) home, the Mossbrook (phonetic)
5 home. And it looks like the Smith home; is that correct?

6 A. It looks like it, yes.

7 Q. And those were all within it looks like about a ten-
8 (10) day time period. And is it correct that it say,
9 "Richards states she would drive Johnson to the residence and
10 wait in the car. He broke into the house"?

11 Here, "Richards drove Johnson to the residence,
12 waited in the car. Johnson broke into the house."

13 "Third burglary she drove Johnson and unknown black
14 male to the residence. She stayed in the car while Johnson
15 and the male went around to the back of the house"; is that
16 correct?

17 A. That's what it says.

18 Q. From the incident report? And, then, from the first
19 home, small gun. Second one, safe and a rifle? So, those
20 were stolen from a couple of those houses, weren't they?

21 A. It looks like it, yes, ma'am.

22 Q. Okay. So, you indicated you didn't know why or
23 obviously you're not aware of -- of why she would have gotten
24 a reduced sentence ---

25 A. No, I didn't say that. I said I'm not familiar with

1 her ---

2 Q. --- with her -- with her case?

3 A. With what happened to her.

4 Q. But, in this situation she wrote voluntary
5 statements, but she never entered the home according to the
6 voluntary statement she gave? And -- according to the
7 investigative report; is that right?

8 A. Okay. That's what it appears.

9 Q. Okay. And, in fact, Mr. Johnson it appears was the
10 only one that actually -- along with the unknown male,
11 actually entered the homes?

12 A. It's my understanding ---

13 Q. From that report?

14 A. From that report. I -- I don't -- there -- I don't
15 remember how many houses there were. There was more than
16 three (3) houses though.

17 Q. Okay. Now, Mr. Johnson testified earlier that --
18 that he didn't know the folks and that Tracy picked out some
19 of the houses. I'm going to approach with his voluntary
20 statements.

21 He gave several. I believe this is four (4)
22 statements. Do those look familiar?

23 (Brief pause while witness examines documents.)

24 A. Apparently, in all these four (4) statements, it
25 looks like he -- he said she stayed in the car and he broke

1 in.

2 Q. Okay. And does it also indicate -- and one time he
3 indicates, "Broke into a house owned by Chris Melton"
4 (phonetic)?

5 A. Yes, ma'am.

6 Q. So, he identified the person that owned the house.
7 This -- this one he says that he went to the Lynch Road.

8 "I picked that house because the Lassiters
9 (phonetic), a friend I went to school with, lived there." Is
10 that what that voluntary statement refers to?

11 A. I remember the witnesses -- the victims. And they
12 all testified that they had -- thought this guy was a friend.
13 They knew him and he was a friend.

14 He'd come -- in fact, the reason he knew about --
15 about all that was in the house is because he'd been in all
16 those houses with his friends.

17 I -- I think every house was the house of a friend
18 of his because they all stood up and -- during the sentencing
19 and the plea and testified that they were so mad because he --
20 he -- what they thought was a friend had done this to them.

21 Q. Now, you testified ou were originally retained by
22 his family to just kind of investigate the case and plea.

23 A. No, ma'am. I -- I was -- I was retained to -- to
24 represent him at a plea.

25 Q. Right.

1 A. And that would require some advance work, yes,
2 ma'am.

3 Q. Okay. And, in regards to a plea offer, you never
4 received anything in writing from anyone, in regards to the
5 solicitor's office, of an actual plea offer, did you?

6 A. I had -- I had -- I had the option to plead straight
7 up or not plead at all.

8 Q. So, you did attempt to negotiate a plea ---

9 A. Yes, ma'am.

10 Q. --- from the State?

11 A. But the State was -- Barry was adamant. Barry is a
12 nice guy, but he's -- he's -- he's a strict person. He
13 thinks, if you've done wrong, he's going to make you pay the
14 consequences.

15 And -- and he -- he was nice as he can be about it.
16 He always is. But he said, you know, "I won't give you
17 anything but a straight-up plea."

18 THE COURT: Forgive me. Who said that?

19 THE WITNESS: Barry. He's the current solicitor.

20 THE COURT: The solicitor?

21 THE WITNESS: He was the assistant at that time,
22 Your Honor.

23 THE COURT: All right. Thank you.

24 Q. (By Ms. White) Now, did you talk with Mr. Johnson
25 about the potential that he was facing, on each of the

1 charges, as well as the possibility of these charges running
2 concurrent or consecutive?

3 A. Yes, ma'am.

4 Q. In regards to the issue of Judge Saunders, just to
5 briefly touch on that, was this the only plea you ever did in
6 front of him after ~~the~~ or the only time you ever had any
7 dealings with him after the contempt hearing?

8 A. No, ma'am.

9 Q. And did you have any issue with him, in any other
10 situation, where you felt that he was being unfair to you as a
11 result of that?

12 A. Judge Saunders would never be unfair. He was -- he
13 was a nice guy. And the answer to your question is no, ma'am.

14 I pled in front of him and tried in front of him
15 after the contempt hearing. And he treated me like a friend.

16 Q. And do you recall the date -- can you give us a
17 little bit of a time line of the date of the -- the -- the
18 final resolution by the Supreme Court of your contempt
19 proceeding?

20 A. I don't even know what year. I'm sorry.

21 Q. Was that before or after this plea?

22 A. You can Google it. It's still in Google.

23 Q. Do you recall if it was before or after the plea?

24 A. It was -- the final resolution from the Supreme
25 Court was before this plea of Mr. Johnson.

1 Q. This was before Mr. Johnson's plea?

2 A. Yes, ma'am. It was a long time ---

3 THE COURT: How about I take judicial notice that
4 the opinion from the Supreme Court was decided August the
5 14th, two thousand and six (2006), rehearing denied
6 October 4th, two thousand, six (2006).

7 MS. WHITE: Thank you, Your Honor.

8 (Brief Pause)

9 Q. (By Ms. White) Now, in this situation, you said
10 obviously you felt that -- that Mr. Johnson understood the
11 conversations you had with him. You said you met with him
12 and, then, sometimes you met with his family.

13 He's testified that he had a tenth (10th) grade
14 education. Do you feel like he had any trouble understanding
15 any of the conversations you had about the charges, potential
16 sentences?

17 A. He may have gone to the tenth (10th) grade, but he's
18 got a college intelligence. He -- he should have gone to
19 college.

20 He's a smart guy -- as is his family. The whole
21 family is nice. He didn't have to be college educated to be
22 nice; they're all nice people.

23 They're all intelligent people. They're all smart
24 people, the kind of people you want as a friend.

25 Q. So, you didn't feel like there was any difficulty in

1 understanding your discussions?

2 A. No, not at all.

3 (Brief Pause)

4 Q. In regards to the client talking with you about
5 Officer Duncan in particular speaking on his behalf, if he had
6 spoken with you about the fact that one of the officers wanted
7 to assist him, what would you have done with that information?

8 A. I would have subpoenaed the officer.

9 Q. And you brought forth several family members of his
10 to speak on his behalf, didn't you, at the plea?

11 A. I don't...

12 Q. If the record reflect his mother, stepfather, then,
13 I believe maybe some family friends spoke on his behalf?

14 A. I -- I remember that but I -- not -- not well. I
15 would have to defer to the record.

16 Q. And I think even a pastor ---

17 A. I do remember a pastor.

18 Q. And, then, just to note, I believe on the plea you
19 actually noted that you handed up thirty-one (31) letters to
20 the judge of support from ministers, friends, and
21 relatives -

22 A. Yes, ma'am.

23 Q. --- on page twenty-eight (28) ---

24 A. I remember those.

25 Q. --- when you spoke and began mitigation purposes?

1 A. The judge didn't want thirty-one (31) witnesses to
2 say the same thing. But I gave him some actual live testimony
3 and, then, the other notes to -- to verify and to expand.

4 Q. And, obviously, the victims spoke as well and were
5 very passionate about what they felt.

6 Did the judge rule immediately or did he take some
7 time to consider the letters you presented and the evidence
8 before he made a judgement on sentencing?

9 A. After forty (40) years, you get cases mixed up. And
10 -- but I think the judge took all the file and all of those
11 letters and went back to his office and read them; at least he
12 said he read them.

13 About -- I don't remember the details, but I -- I
14 seem to remember that he took all the information that was
15 given to him and went back in his office and came back. I
16 assume he read them all. He said he did.

17 Q. And I was going to say the record will reflect that
18 it was about a forty (40) minute recess where the judge said
19 he was going to take a little bit of time to -- to review
20 that.

21 Okay. In regards to this, was there anything else
22 that -- that you felt that you could have done on his behalf
23 to try to lessen the sentence? Or -- or I guess assist with
24 the plea?

25 A. No, ma'am.

1 Q. And is there anything else you would like to share
2 with us about the situation?

3 A. I slipped it all in.

4 MS. WHITE: Okay. Thank you very much. That's all
5 the questions I have, Your Honor.

6 THE COURT: Redirect?

7 MR. ASHMORE: Just very briefly, Your Honor.

8 REDIRECT EXAMINATION by MR. ASHMORE: 3:31 P.M.

9 Q. Officer Duncan that we've mentioned, he was the
10 initially officer that -- that had dealt with Mr. Johnson. He
11 was actually at -- at the plea and sentencing, was he not?

12 A. I don't remember.

13 Q. And -- and was given the opportunity to address the
14 Court and refused to do so?

15 A. You know, I'd have to refer to -- I don't -- I can't
16 tell you yes or no.

17 MR. ASHMORE: That's all I have, Your Honor.

18 THE COURT: All right.

19 MR. ASHMORE: That concludes our case, Your Honor.

20 MS. WHITE: The State has no other witnesses, Your
21 Honor.

22 THE COURT: All right. No witnesses from the
23 State?

24 MS. WHITE: Not since Mr. Sowell was presented.

25 No, sir.

1 THE COURT: All right. Mr. Ashmore, I've read --
2 you can step down if you want.

3 (The witness complied with the request.)

4 THE COURT: I haven't had the chance to review the
5 memorandum that you -- that you've provide to me. I just
6 haven't had -- this is the first chance I've had to look
7 at it.

8 One of the questions that I have is that, obviously
9 -- I think you cited the Forth Circuit Court of Appeal
10 decision -- I'm sorry, Forth Circuit Federal decision
11 concerning the right to allocute to the Court.

12 And I realize at the initial plea your client, in
13 the light most favorable to -- to your position, in this
14 case, Mr. Ashmore, your client was not afforded that
15 right.

16 Obviously, when the motion for reconsideration was
17 filed and the matter was heard again some months later, I
18 believe Mr. Sowell did, in fact, read into the record the
19 apology that your client had prepared for recitation at
20 the plea; is that correct?

21 MR. ASHMORE: Well, to -- to -- to an extremely
22 large extent, yes, Your Honor. Obviously, my response is
23 the damage had been done prior, you know ---

24 THE COURT: That by then Judge Saunders probably
25 felt like he was stuck and the likelihood of him going

1 back on the thirty-five (35) year sentence was fairly
2 minimal as a practical matter ---

3 MR. ASHMORE: That's correct, Your Honor.

4 THE COURT: --- is that what you're telling me?

5 MR. ASHMORE: And -- and -- and I've done hundreds
6 of pleas and you've done hundreds of pleas. And the last
7 sentence is, "Is there anything you would like to say at
8 this time?"

9 And -- and -- and, for whatever reason -- and I
10 think we got a little sidetracked with -- with the
11 victims understandably very upset, and -- and -- and in
12 the chaos and confusion of the moment, my client was not
13 afforded that most basic of fundamental rights.

14 It's a frailty fact (phonetic), Your Honor.

15 (Brief Pause)

16 THE COURT: Do you know if there's any case law
17 that would support the proposition or refute the
18 proposition that, once the reconsideration is had and
19 he's been afforded that opportunity to allocute and
20 apologize, that's -- that, that would cure?

21 Because I'm -- I'm with you. I agree, Mr. Ashmore,
22 that, that's something that's not just a function of
23 courtesy or -- or tradition, but it is pretty important,
24 I think, to give someone, who is facing going to prison,
25 the opportunity to speak up for themselves and say what

1 they want to say.

2 So, I agree with you on that. Anything that the
3 motion for reconsideration helps or ---

4 MR. ASHMORE: Well, Your Honor, you know, the --
5 the basic problem -- and I researched it and that's --
6 that's why I'm using the Forth Circuit case, Judge, and
7 also the United States Supreme Court.

8 I think it speaks perfectly about how, you know, the
9 most eloquent speech that can be given many times is the
10 haunting (phonetic) speech of the defendant himself.

11 He was not given that opportunity. The -- and --
12 and the reason I can't find that -- a case on point,
13 Judge, is it never happens. It never happens in South
14 Carolina.

15 Any -- any -- anywhere that -- that I can think of
16 where the -- the client isn't afforded that opportunity.
17 And, so, I'm not going to find -- I've looked.

18 I'm not going to find a case saying, "Okay. You
19 didn't get the chance at the plea; but on
20 reconsideration; that -- that cures the -- the basic
21 evil."

22 It's not going to exist because it doesn't happen.
23 And there's a reason it doesn't happen. It's just an
24 absolute un-waiveable fatal defect in -- in -- in this
25 case.

1 (Brief Pause)

2 THE COURT: All right. Ms. White, do you want to
3 speak to that? To my knowledge, I have never heard of an
4 issue like this coming up.

5 And, in all candor, I have not had a chance to
6 review the Forth Circuit decision that Mr. Ashmore cites.
7 But do you have a position on this? Or what is the
8 State's position?

9 MS. WHITE: No. And, Your Honor, you know, to be
10 honest, I haven't had a chance to really review that
11 either because that was not initially raised.

12 So, the first time I've really seen that as being an
13 issue is in this memorandum.

14 In regards to PCR, there's -- as far as I know,
15 there's no ineffective assistance counsel for plea
16 counsel based on the fact that Counsel -- that the -- the
17 Defendant did not allocute or the judge did not allow him
18 the opportunity to plead guilty.

19 And the standard for ineffective of -- of plea
20 counsel is going to be showing that, but for counsel's
21 deficient performance or but for something he did wrong,
22 he would have proceeded to trial instead.

23 I don't think he's -- I mean, that's -- that's the
24 burden he that has to prove generally. That's what our
25 Supreme Court tells us that, that he has to show

1 generally that -- that he would have proceeded to trial
2 on these issues instead of pleading guilty generally.

3 And I don't -- I don't think there's anything near
4 that -- that, that he's shown. I think that obviously
5 it's -- it's a situation somewhat of buyer's remorse. I
6 think you also have a credibility finding -

7 **THE COURT:** I don't doubt it's a situation of
8 buyer's remorse.

9 **MS. WHITE:** Well, and I also think it is a -- a
10 situation of credibility. Mr. Sowell asserts and is
11 adamant that his client shook his head and did not want
12 to speak.

13 I don't think that -- I think that, you know, the
14 Applicant in this situation -- or that Mr. Sowell could
15 have said, you know, "Your Honor, my client wishes to
16 make a statement," if he wanted to.

17 I'm not sure why Judge Saunders did it, but I think
18 the fact that he had thirty-one (31) letters of support
19 and numerous other people speaking, I'm assuming that --
20 that he knew that, you know, Mr. Sowell would put forth
21 the Defendant if he wanted him to speak in this
22 situation.

23 I think the fact that he had, you know, several
24 issues maybe with his past record and committed these.
25 I'm not really sure, but that's speculation, I think.

1 And I -- I just think he's not going to be able to
2 meet his burden of proof in that and that showing that
3 any -- any defect or anything, you know, I think he also
4 would have had a chance to try to withdraw his plea.

5 But, you know, he hasn't met a burden of showing
6 that, but for that deficient performance that he's
7 alleging -- that I don't even believe has actually been
8 met -- that there would have been any change in the
9 outcome.

10 THE COURT: The Forth Circuit case that you cite,
11 Mr. Ashmore, was that handled in the context of a PCR or
12 was it a direct appeal issue?

13 MR. ASHMORE: Your Honor, I believe it was direct
14 appeal issue -

15 THE COURT: Okay.

16 MR. ASHMORE: --- and not a PCR. It's been a while
17 since I pulled that case.

18 THE COURT: That's fine.

19 MR. ASHMORE: And -- and -- and, if I may, Your
20 Honor -

21 THE COURT: Please.

22 MR. ASHMORE: --- again -- I'm sorry, but I just
23 wanted to direct you to the -- the issue of whether or
24 not my client decided not to address anyone.

25 It -- it -- the answer to that is found on Page

1 twenty-two (22) of the motion to reconsider, where Mr.
2 Sowell in his own words says, "You ask why he hasn't
3 apologized; I guess that was my fault.

4 " He had previously written out an apology to you and
5 to the crowd if you want to look at that for a few
6 minutes."

7 He doesn't say, "He didn't want say anything; he
8 decided against talking." He said, "That was my fault.
9 I should have brought that out at the plea:"

10 He admits it, Your Honor.

11 **MS. WHITE:** Well, Your Honor, I think obviously that
12 would've been a second layered ineffective assistance of
13 counsel had Mr. Sowell stood up and said, "He didn't want
14 to apologize the first time, but I'm going to let him say
15 it this time."

16 So, clearly I don't think he would've -- would have
17 stood up and said that. Obviously he's going to accept
18 the blame for -- for him not apologizing initially.

19 But...

20 **THE COURT:** All right. Well, in the for what it's
21 worth category, Mr. Ashmore and Ms. White, I'm going to
22 take this under advisement.

23 In all candor, Mr. Ashmore, I think this rises or
24 falls on the -- the allocution question because I -- I
25 don't see granting relief -- and I know this is not how

1 you characterized this -- this case, but -- but certainly
2 I can't grant relief for an attorney's failure to
3 properly judge shop.

4 And, so, I'm not going to grant relief on that
5 basis. And I -- I do know -- I have had the opportunity
6 to work with Judge Saunders both while he was on the
7 Family Court and while he was on the Circuit Court bench.

8 And my father actually even knew him when he was a
9 cop over in Laurens County. So, I -- I knew the man.
10 And I've never known him to have a mean bone in his body.

11 And I would be extremely surprised if he ever held
12 anything against anybody on a professional level; that
13 just wasn't his character. But I'll be happy to hear
14 from you on that.

15 **MR. ASHMORE:** Your -- Your Honor, I -- I agree with
16 you totally. He was a personal friend of mine. I -- I
17 think the world of his -- of his widow and his daughters.
18 And he is held in the highest regard by me and -- and
19 everyone; members of the South Carolina Bar and the
20 public.

21 My -- my argument clearly was -- was not as to -- as
22 to -- as to him. But the issue is did my client
23 knowingly waive any potential conflict? And -- and --
24 and he didn't. He couldn't have and there's nothing in
25 the record to reflect it.

1 I think that, if Judge Saunders was here standing --
2 and I wish he was standing right here -- he may say, you
3 know, "We should've gone into that issue and made sure he
4 understood and waive it."

5 And we wouldn't be here today. I wouldn't have to
6 make this -- this argument. But that's -- that's not
7 what -- it's that my -- my client didn't have that chance
8 to -- to knowingly and intelligently address it and waive
9 it.

10 **THE COURT:** The case I heard this morning I said I
11 was going to try and rule by tomorrow. In all candor,
12 this is going to take a little longer.

13 This is a novel issue and I want to try to find out
14 what I can find out from the cite of the Forth-Circuit.
15 And you probably cited me everything that's out there,
16 but he's going to check and double check.

17 We'll be at ease on this. Thank you very much.

18 **MR. ASHMORE:** Thank you, Your Honor.

19 **MS. WHITE:** Thank you, Your Honor.

20 (Whereupon, the proceeding concluded at 3:41 p.m.)

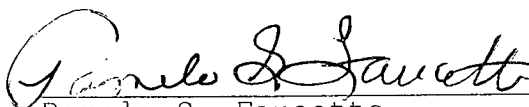
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REPORTER'S CERTIFICATE

I, the undersigned **PAMELA FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the Court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 80, were transcribed by me or at my direction and represent a complete and accurate transcription of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

August 9, 2012



Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
Michael Shane Johnson,)
)
Petitioner,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS

Case No. 2011-CP-42-00516

MEMORANDUM

The petitioner was offered a sentence of 15 years (violent) for numerous charges through his court-appointed attorney, James Cheeks. His mother then retained Kenny Sowell, Esq. upon Mr. Sowell's representation that he could secure a much more favorable resolution. On February 27, 2008, then 21-year-old petitioner Michael Shane Johnson pled guilty to three counts of Burglary 1st, one count of Burglary 2nd, three counts of Grand Larceny more than \$5,000, one count of Grand Larceny more than \$1,000, and one count of receiving stolen goods less than \$1,000. He was sentenced to thirty-five years imprisonment by the Honorable Wyatt Saunders. Attorney Sowell filed a motion to reconsider, not making any substantive arguments before the Court, and the petitioner's sentence was amended to thirty years imprisonment (violent). The petitioner had no meaningful prior criminal record. All the burglaries occurred in unoccupied homes during the day. Moreover, the petitioner cooperated with the police, pointed out the homes he and a co-defendant had burglarized, gave a confession, and helped recover some of the stolen property. The investigating officer promised the petitioner at the outset that if he cooperated, the officer would speak favorably about him to the sentencing judge, telling him that the petitioner fully cooperated. However, at the petitioner's sentencing the officer was asked if

he had anything to say and he declined. The petitioner's co-defendant received only 18 months imprisonment.

I. 15-Year Imprisonment Offer

The petitioner was not immediately arrested for his crimes. Instead, he was permitted to stay out of jail to work with police to identify the burglarized houses and stolen property, and help recover the property. Months after the petitioner was arrested, Attorney Cheeks, then Assistant Solicitor Barry Barnette, and the petitioner met. The Assistant Solicitor offered the petitioner a 15-year sentence if he were to plead guilty that day before the Honorable Mark Hayes. The petitioner asked if he could have more time to consider the offer and discuss it with his mother, Pinckie Dardar. The Assistant Solicitor agreed, and told the petitioner that the offer would remain open until the following Monday.

Ms. Dardar contacted Attorney Sowell and met with him at a Waffle House to discuss the petitioner's case. Sowell told Ms. Dardar that 15 years imprisonment was too much time, and that the petitioner did not do anything that was considered violent. He convinced the petitioner to reject the 15-year offer and hire him instead of proceeding with Attorney Cheeks. The petitioner retained Sowell and rejected the 15-year offer. The petitioner was ultimately sentenced to 30 years imprisonment.

II. Attorney Sowell's Contempt Before Judge Saunders And The Petitioner's Lack Of Waiver Of Conflict

In 2002, Sowell represented defendant Bobby Lewis in a drug case before Judge Saunders. Sowell hired a used car salesman, Gene Gore, to be a private investigator on the case. He gave Gore the Grand Jury file information that was forwarded to him from the Attorney General's office. The State brought a criminal contempt proceeding against Sowell for releasing this information. Judge Saunders had ruled Sowell was in criminal contempt and Ordered him to

serve 90 days in jail, suspended upon payment of a \$5,000 fine. Sowell filed a Motion to Reconsider, and Judge Saunders issued an Amended Order leaving all the terms of the original Order, but reducing the fine to \$2,500. This sentence was affirmed by the Court of Appeals but reversed by the South Carolina Supreme Court.

On the day of the guilty plea, Sowell indicated to the petitioner that he could enter a guilty plea before Judge Hayes or Judge Saunders, but Sowell convinced the petitioner to plead before Judge Saunders based upon his representation of a very favorable relationship that he claimed to have with Judge Saunders. On the back of a manila folder, Sowell had the petitioner sign the following statement: "I agree to plead before Judge Saunders understanding his contempt ruling against my attorney." The record of the guilty plea and motion to reconsider has no mention of this issue.

For a waiver of a conflict of interest to be valid, "it must not only be voluntary, it must be done knowingly and intelligently." Thomas v. State, 346 S.C. 140, 144 (2001). Sowell did not meaningfully discuss what the petitioner was signing. Nor did Sowell put on the record the conflict, either at the plea/sentencing hearing or at the hearing on the motion to reconsider. The petitioner did not voluntarily, knowingly, and intelligently waive any potential conflict of interest. He was sentenced ultimately to 30 years imprisonment after turning down a 15 year plea. His co-defendant, who appeared before Judge Culbertson, received 18 months imprisonment.

III. Prosecutorial Misconduct

The State promised the petitioner that if he cooperated, the officer would testify at the petitioner's sentencing hearing about his cooperation. The petitioner fully cooperated by pointing out houses that he broke into, giving a statement, and helping recover property.

However, when the officer was asked if he had anything to say at the sentencing hearing, he remained silent. Sowell failed to object to the officer's silence and the State's misconduct of not adhering to the terms of its agreement with the petitioner. "Even if the agreement has not been finalized by the court, a defendant's detrimental reliance on a prosecutorial promise in plea bargaining may make a plea agreement binding. . . . For example, a defendant who provides beneficial information to law enforcement can be said to have relied to his detriment." Custodio v. State, 373 S.C. 4, 11, 644 S.E.2d 36 (2007) (citing Reed v. Becka, 333 S.C. 676, 689, 511 S.E.2d 369 (Ct. App. 1999)). This is exactly what happened here. The State promised the petitioner if he would cooperate, the officer would testify favorably to the judge about the petitioner's cooperation. The petitioner relied on this promise by providing extensive beneficial information to law enforcement to his detriment. "Certainly, helping law enforcement solve several burglary crimes and assisting in the return of stolen property is beneficial information." Custodio, 373 S.C. at 12. Like in Custodio, "[b]ecause petitioner could have enforced the plea agreement under the detrimental reliance exception and counsel failed to take this action, counsel failed to render reasonably effective assistance." Custodio, 373 S.C. at 12-13. Moreover, the petitioner was prejudiced by Sowell's defective performance. If the officer testified regarding the petitioner's substantial cooperation, the petitioner would not have received a sentence of 30 years imprisonment.

IV. Disparate Sentences

The petitioner's co-defendant, Tracey Richards, also plead guilty to three counts of First-Degree Burglary. The petitioner received thirty years imprisonment while Richards received only 15 years suspended upon service of 18 months imprisonment and five years of probation (*see* Case Nos. 2007-GS-42-03541; 2007-GS-42-03542, 2007-GS-42-03543). The record is void

of why there was such a vastly disparate sentence imposed on the petitioner and his co-defendant. Sowell's errors greatly prejudiced the petitioner who received a twenty-times greater sentence than did his co-defendant.

V. Sowell Did Not Make An Attempt To Pacify The Victims

The victims in the petitioner's case were vocal about restitution. Yet, Sowell failed to make an attempt to pacify the victims by having the petitioner pay restitution. The petitioner had access to money to compensate the victims for their losses. The petitioner's grandmother had a \$250,000 lien-free house and another \$250,000 cash in the bank, which she was willing to lend the petitioner to pay the victims. The grandmother actually paid Sowell's attorneys fees. Yet, Sowell did nothing with this information. This also greatly prejudiced the petitioner. Had he paid restitution, he likely would have received a lesser sentence.

VI. The Petitioner Was Never Given The Opportunity To Allocute At His Sentencing Hearing

At the sentencing hearing, the petitioner was prepared to address the Court and victims. He even had a statement written and tucked away in the pocket of his shirt. Yet, he never was given the opportunity to allocute, and Sowell did not object to the denial of allocution. As the Fourth Circuit has stated:

When a defendant was unable to address the court before being sentenced and the possibility remains that an exercise of the right of allocution could have led to a sentence less than that received, we are of the firm opinion that fairness and integrity of the court proceedings would be brought into serious disrepute were we to allow the sentence to stand.

United States v. Cole, 27 F.3d 996, 999 (4th Cir. 1994). The Supreme Court has also addressed the importance of the right of allocution: "The most persuasive counsel may not be able to speak for a defendant as the defendant might, with halting eloquence, speak for himself." Green v. United States, 365 U.S. 301, 304, 81 S.Ct. 653, 5 L.Ed.2d 670 (1961). Sowell even admitted that

it was his fault that the petitioner was not given the opportunity to allocute: “You asked why he hadn’t apologized. I guess that was my fault. He had previously written out an apology to you and to the crowd if any of you want to look at that a few minutes . . .” (Motion for Reconsideration, p. 22). The petitioner was denied this most fundamental of rights at a guilty plea hearing and his attorney never requested that the petitioner be given the chance to address the Court and apologize to the victims.

VII. Sowell Did Not Make Any Substantive Arguments In The Petitioner’s Motion to Reconsider

Sowell’s Motion to Reconsider was basically a “please” argument to reduce the petitioner’s sentence. He made no substantive arguments as to why the petitioner should receive a reduced sentence. If he pointed out, for example, the petitioner’s ability to pay restitution and worked with the State to achieve this goal the petitioner would have likely received a lesser sentence. Further, if Sowell pointed out that the officer had failed to testify regarding the petitioner’s substantial cooperation, he would have likely received a lesser sentence. However, instead, Sowell merely asked the Court to reconsider the original sentence without offering any further evidence or substantive arguments.

Sowell made a number of fatal errors, each prejudicing the defendant.¹ The petitioner thereby respectfully requests that this Honorable Court grant his application for post conviction relief:

This ___ day of January, 2012
Greenville, SC

Beattie Ashmore, SC Bar # 10419
650 East Washington Street

¹ Even if the separate errors were not prejudicial, the cumulative effect of these errors warrant relief. See Lorenzen v. State, 376 S.C. 521, 535, fn.3, 657 S.E.2d 771 (2008).

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STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG

2008-GS-42-1308
2007-GS-42-5709
2007-GS-42-5693
2007-GS-42-5692
2007-GS-42-5691
2007-GS-42-5688
2007-GS-42-5689
2007-GS-42-5690
2008-GS-42-1309

STATE OF SOUTH CAROLINA,

-vs-

MICHAEL SHANE JOHNSON,

Defendant.

February 27, 2008

B E F O R E:

HONORABLE WHATT T. SAUNDERS

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

BARRY J. BARNETTE, Esquire
Attorney for the State

KENNETH E. SOWELL, Esquire
Attorney for the Defendant

Henry P. Young
Court Reporter

P-R-O-C-E-E-D-I-N-G-S

1 THE COURT: Good afternoon, Mr. Sowell.

2 MR. SOWELL: Thank you, sir.

3 MR. BARNETTE: Your Honor, we have nine
4 charges, nine indictments to present to the Court
5 today. Our first one is 2008-GS-42-1308, Your
6 Honor, grand larceny of more than \$5,000.
7

8 07-GS-42-5609, which is receiving stolen
9 goods less than a thousand, however it's a third or
10 subsequent property offense, Your Honor, under the
11 enhancement statute, ten years.

12 07-GS-42-5693, Your Honor, which is grand
13 larceny more than five thousand.

14 07-GS-42-5692, a grand larceny more than five
15 thousand.

16 07-GS-42-5691, grand larceny more than one
17 thousand.

18 07-GS-42-5688, which is burglary in the first
19 degree.

20 07-GS-42-5689, which is another burglary
21 first in the first degree.

22 2007-GS-42-5690, which is also another
23 burglary first in the first degree, Your Honor.

24 And 2008-GS-42-1309, which is burglary
25 second degree, Your Honor, nonviolent.

1 All these have been true billed by the grand
2 jury, Your Honor. It is a straight up plea, Your
3 Honor, no recommendations in this case. I do have
4 four of the victims would like to address the Court
5 at the appropriate time.

6 Also what I have done, I have shared this
7 with Mr. Sowell, I went ahead and marked nine
8 exhibits for the State, trying to give you as much
9 information as possible in a short amount of time.

10 State Exhibit Number 1 is the incident report
11 by Investigator Duncan in the case. He is also
12 present in the courtroom if the Court has any
13 questions for him. But we have a summary of what
14 the cases are about.

15 State's Exhibit Number 2 is consent to search
16 that was signed by the defendant in the case of
17 Michael Shane Johnson. Several of the items that
18 were obtained from these residences, Your Honor,
19 were found at a location where him and a Tracy
20 Richards were staying.

21 And she also signed a consent to search.
22 That is State's Exhibit Number 3, where they found
23 these items.

24 State Exhibit Number 4, Your Honor, is where
25 he requested that officers, Investigator Duncan

1 come talk to him at the jail at some point.

2 State Exhibit 5, Your Honor, is pictures.

3 The first set of pictures is

4 This is the location where he and Miss Richards
5 was, had several of the items, where he had them in
6 his residence, that was stolen from these other
7 residences, Your Honor. As well as the other
8 pictures behind them are from the break-ins, where
9 they occurred and what was taken, what damage was
10 done to those residences.

11 State's Exhibit Number 6, Your Honor, six
12 pages, waiver form, two waiver forms signed by
13 Michael Shane Johnson, and he has four pages where
14 he gave statements on the four break-ins or
15 burglaries he is charged with in this case.

16 State Exhibit 7 is Tracy Michelle Richards,
17 she was the person staying with him at his
18 residence, at the location there. And
19 that's her waiver and her statement concerning this
20 incident.

21 Your Honor, I also have State Exhibit Number
22 8, which is a statement made by one of the people
23 he was selling these items to and she gave
24 information concerning the items he had stolen and
25 was selling to this person.

1 And State Exhibit Number 9, Your Honor, is
2 his rap sheet which has also been shown Mr. Sowell,
3 and I will go into that in more detail shortly,
4 Your Honor.

5 I would like to pass those up along with the
6 restitution order signed by the defendant in this
7 case, Your Honor, and the amount for Harry Smutzer
8 was \$41,500, Christian Melton was \$7,328, Donna
9 Gibson which is \$40,000, Eric Mossbrook \$52,000,
10 and Stacey Metts which is \$6,000, Your Honor. We
11 would like to hand that up to the Court, too, with
12 the indictment.

13 THE COURT: Mr. Sowell, have you examined
14 each of these exhibits?

15 MR. SOWELL: Yes, sir, Your Honor. Most of
16 them, in fact if not all of them, I had in advance
17 pursuant to discovery.

18 THE COURT: Do you have any objection to
19 them?

20 MR. SOWELL: I would rather not comment but I
21 do have a legal objection, Your Honor.

22 THE COURT: Do you object to, at such time as
23 Counsel may want to hand them up, to the Court's
24 looking at them?

25 MR. BARNETTE: No, sir. State Exhibit Number

1 8, Lisa Childress is the witness' name that gave
2 information concerning that, these items and so
3 forth. I would like to pass these up along with
4 the restitution order.

5 And also, Your Honor, I do have a Court
6 Exhibit 1, which is the restitution, entered as
7 Court Exhibit Number 1.

8 THE COURT: Let Mr. Sowell take a look at
9 these real quick.

10 MR. BARNETTE: These are the items, where
11 they list the items that were taken, that they are
12 requesting restitution from the Court, and the
13 basis for that.

14 May I pass that up, Your Honor? Mr. Sowell
15 has had a chance to examine that.

16 THE COURT: Was there a plea inquiry sheet
17 given to you, Mr. Sowell? Did you give him one of
18 those two-page --

19 MR. SOWELL: No, sir.

20 MR. BARNETTE: No, sir, I didn't. I will be
21 honest with you, I knew this was a serious charge,
22 I figured the Court would want to go through a full
23 questioning of the defendant in this case.

24 THE COURT: Very well. Mr. Sowell, do you
25 represent Mr. Johnson?

1 MR. SOWELL: Yes, Your Honor, I do.

2 THE COURT: Have you had sufficient time to
3 talk with him about each one of these charges?

4 MR. SOWELL: Yes, Your Honor.

5 THE COURT: Does he understand the nature of
6 the charges to which he indicates he wishes to
7 plead guilty, the elements of the crimes and
8 potential punishment he faces in each?

9 MR. SOWELL: Yes, Your Honor.

10 THE COURT: If he were to have a jury trial
11 on any one or all of these charges, in your
12 considered and professional opinion would a jury
13 more likely than not convict him on each of these
14 charges?

15 MR. SOWELL: I believe so, Your Honor.

16 THE COURT: And how does he indicate to you
17 he wishes to plead?

18 MR. SOWELL: He tells me he wishes to plead
19 guilty.

20 THE COURT: Thank you, counsel.

21 Mr. Johnson, raise your right hand, please.

22 MICHAEL SHANE JOHNSON,
23 after being first duly sworn, stated as follows:

24 THE COURT: Thank you. State your full name
25 as it appears on your birth record.

1 THE DEFENDANT: Michael Shane Johnson.
2 THE COURT: How do you spell your middle
3 name?
4 THE DEFENDANT: S-h-a-n-e.
5 THE COURT: Now, Mr. Johnson, do you go by
6 any other name, do you have a nickname or anything?
7 THE DEFENDANT: No, sir.
8 MR. SOWELL: He uses his middle name as his
9 common --
10 THE COURT: Sir?
11 MR. SOWELL: He uses his middle name as his
12 common name.
13 THE COURT: As his first name?
14 MR. SOWELL: As his common name.
15 THE COURT: So, people call you Shane?
16 THE DEFENDANT: Yes, sir.
17 THE COURT: All right. How far did you go in
18 school?
19 THE DEFENDANT: Tenth grade, sir.
20 THE COURT: Have you ever worked?
21 THE DEFENDANT: Yes, sir.
22 THE COURT: And what kind of work have you
23 done?
24 THE DEFENDANT: I operated heavy machinery
25 for Morgan Corporation.

1 THE COURT: How long did you do that?

2 THE DEFENDANT: About a year.

3 THE COURT: Has Mr. Sowell gone over each of
4 these charges with you to which you indicate you
5 want to plead guilty?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand each of the
8 charges and the potential penalty that you could
9 receive on each of them?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Mr. Sowell, in your opinion is it
12 necessary to go over the potential sentence? We'll
13 just do that for the record. Mr. Solicitor, what
14 is the potential sentence, just tell Mr. Johnson
15 potentially what he could get on the burglary in
16 the first degree.

17 MR. BARNETTE: Yes, sir. That carries a
18 fifteen years to life sentence, Your Honor.

19 THE COURT: Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And there are two charges of
22 burglary in the first degree.

23 MR. BARNETTE: There is actually three.

24 THE COURT: I mistook that. There is three
25 charges. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And on the grand larceny of less
3 than \$10,000, that statute has recently been
4 changed, that is up to ten years now, is it not?
5 Excuse me, more than \$10,000 is what now?

6 MR. BARNETTE: Your Honor, above five
7 thousand is going to be zero to ten, Your Honor.

8 THE COURT: Say that again.

9 MR. BARNETTE: That would be zero to ten
10 years, ten years maximum with no minimum on that.

11 THE COURT: What about more than five?

12 MR. BARNETTE: More than five, okay, more
13 than a thousand, zero to five, Your Honor, zero to
14 five. More than five thousand zero to ten years.

15 THE COURT: Say that again, sir.

16 MR. BARNETTE: I apologize, Your Honor. If
17 it is more than a thousand, Your Honor, it carries
18 zero to five years and if it is more than five
19 thousand it carries zero to ten years.

20 THE COURT: Thank you, Solicitor.

21 Did you understand what he said, Mr. Johnson?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And burglary in the second
24 degree, Solicitor?

25 MR. BARNETTE: That carries zero to fifteen

1 years, Your Honor.

2 THE COURT: So, we have gone over the
3 potential penalty that you could receive in all of
4 this together. You could receive three life
5 sentences and in addition to that you could receive
6 a substantial amount of years. We won't go through
7 and count it up but you have heard what he said?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Have you gone over that with him,
10 Mr. Sowell?

11 MR. SOWELL: Yes, Your Honor.

12 THE COURT: So, you understand the potential
13 penalty that you face as you stand before the Court
14 and enter your plea of guilty?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: How do you plead to each of these
17 charges?

18 THE DEFENDANT: Guilty.

19 THE COURT: Has anyone forced you, made you,
20 threatened you or coerced you in any way to get you
21 to plead guilty to any one or all of these charges?

22 THE DEFENDANT: No, sir.

23 THE COURT: Are you pleading guilty to each
24 and every one of these charges freely and
25 voluntarily?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand that when you
3 enter a plea of guilty that you are giving up your
4 right to a jury trial?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you know what a jury trial is,
7 Mr. Johnson?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you want a jury trial?

10 THE DEFENDANT: No, sir.

11 THE COURT: When you give up your right to a
12 jury trial you give up other serious substantial
13 and fundamental rights. We will review them
14 briefly.

15 You give up your right to testify in your
16 own behalf or your right to remain silent if you
17 wish to remain silent. And if you chose to remain
18 silent the Court would tell the jurors that they
19 could not hold your silence against you in any way
20 at anytime, not even when they were deliberating
21 and deciding whether you were guilty or innocent on
22 any one or all of these charges.

23 Do you understand that you are giving up your
24 right to testify in your own defense?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And you understand you are giving
2 up your right to remain silent as the Court has
3 just explained to you?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Have you gone over that with him,
6 Mr. Sowell?

7 MR. SOWELL: Yes, sir, Your Honor.

8 THE COURT: If you wanted a jury trial the
9 burden would be upon the State, no burden would be
10 upon you to prove anything, no one is required to
11 prove his or her innocence. The State is always
12 required to bear the burden of proof to show a
13 person is guilty of commission of a crime to the
14 satisfaction of the jury beyond a reasonable doubt.
15 When you give up your right to a jury trial you
16 give up your right to have the State prove to a
17 jury that you committed one or all of these crimes
18 and to prove that to the jury beyond a reasonable
19 doubt in each of these cases.

20 Do you understand you are giving up that
21 right?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You are giving up the right to
24 confront the witnesses who may testify for the
25 State against you. The government or the State, if

1 you will, will call witnesses were you to want a
2 jury trial, as you probably have seen on television
3 or whatever, and those witnesses would testify from
4 that witness stand and you would be sitting at that
5 counsel table with Mr. Sowell and you would hear
6 the Solicitor or the attorney for the government
7 examine those witnesses who would testify against
8 you, ask them questions and you would hear their
9 answers and see them, you would see them and hear
10 them answer the questions that the prosecuting
11 attorney asked them. Then if your attorney cared
12 to cross-examine them, sometimes there is a
13 requirement for cross-examination and sometimes
14 attorneys choose not to cross-examine witnesses,
15 but if Mr. Sowell wanted to cross-examine any
16 witness called by the State he would have that
17 right for you and you would see and hear any
18 witness respond to his questions as well. That's
19 known as confronting the witnesses against you.

20 Do you understand what to confront the
21 witness means?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand you are giving
24 up that right?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And you have a right if you, as
2 you give up your right to a jury trial you are also
3 giving up the right to compel the attendance of
4 witnesses to come to court to testify for you, to
5 subpoena them to come here to testify for you.

6 Do you understand that right?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand you are giving
9 it up?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: If you have made any statement in
12 this case, whether to any person or to a law
13 enforcement officer, voluntarily or to a law
14 enforcement officer after you have been given your
15 rights under Miranda versus Arizona, you would be
16 giving up any right to contest any statement that
17 you may have made or given at anytime before now.

18 Do you understand you are giving up that
19 right?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Are there any of those rights
22 that you don't understand or you have any question
23 about?

24 THE DEFENDANT: No, sir.

25 THE COURT: And do you absolutely understand

1 you are giving up all of your rights when you plead
2 guilty, all of your rights, even those we haven't
3 discussed?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: When you committed these offenses
6 to which you now indicate you want to plead guilty
7 did you know at that time that you were violating
8 the law?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: And if you were to ask for and
11 have a jury trial do you believe after discussion
12 of each of these charges with your attorney,
13 revealing to your attorney as you should have,
14 hopefully have, what you actually did and hearing
15 your attorney tell you what the law is as it
16 applies to what you did, do you feel that the State
17 could carry the burden of proof and convince a jury
18 beyond a reasonable doubt that you did in fact
19 commit these crimes and that that jury would
20 convict you on each of them?

21 THE DEFENDANT: I do, Your Honor.

22 THE COURT: Have you discussed that with your
23 attorney?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you need any more time to

1 think about the step you're taking?

2 THE DEFENDANT: No, sir.

3 THE COURT: Has anyone at anytime suggested
4 to you or made any offer or promise or guarantee to
5 you of any sort, whether suggestion by way of
6 possibility that if you plead guilty that any
7 particular sentence would be handed down by the
8 Court?

9 THE DEFENDANT: No, sir.

10 THE COURT: Are you pleading guilty because
11 you are guilty?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And has there been any
14 recommendation by the State that would cause you to
15 expect any leniency?

16 THE DEFENDANT: No, sir.

17 THE COURT: Are you satisfied with Mr.
18 Sowell's representation?

19 THE DEFENDANT: Yes, sir, I am.

20 THE COURT: Has he answered all your
21 questions?

22 THE DEFENDANT: Yes, sir, he has.

23 THE COURT: Has he done everything that you
24 have expected him to do in representing you?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you need any more time to talk
2 with Mr. Sowell?

3 THE DEFENDANT: No, sir.

4 THE COURT: Have you understood what Mr.
5 Sowell has explained to you as to what the law is
6 as it applies to these various crimes?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Has your attorney Mr. Sowell done
9 everything in this case that you feel he should
10 have done or done anything he should not have done?

11 THE DEFENDANT: I agree with everything he's
12 done, sir.

13 THE COURT: Do you have any complaint
14 whatsoever about any law enforcement officer, jail
15 official or anyone on the Solicitor's staff?

16 THE DEFENDANT: No, sir.

17 THE COURT: Have you been mistreated by
18 anyone associated with the government or associated
19 with Mr. Sowell in in any way, including a jail
20 official or law enforcement officer or anyone at
21 all in any way that you could now tell the Court,
22 and if you have, please tell the Court of it?

23 THE DEFENDANT: No, sir.

24 THE COURT: Have you understood all the
25 Court's questions?

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THE DEFENDANT: Yes, I have.

THE COURT: Have you answered each question truthfully and honestly?

THE DEFENDANT: Yes, sir.

THE COURT: Has anyone suggested to you at anytime how you should answer these questions?

THE DEFENDANT: No, sir.

THE COURT: Solicitor, what are the facts in these cases?

MR. BARNETTE: Thank you, Your Honor. Going on the four burglary cases, Your Honor, the first one is May 11, 2007. Your Honor, Kerry and Patrick Smutzer's residence at here in Enoree, South Carolina, a residence in Spartanburg County, Your Honor, they left their home, came back, found someone had busted out one of the rear windows, entered the home, Your Honor, numerous items were taken, men's jewelry, women's jewelry, guns were taken, Your Honor, TV's. It amounted to a large amount of restitution, it is listed on there, Your Honor.

Also, Your Honor, I would like to make as part of the Court Exhibit Number 1, she had handed me a form here, let me show it to Mr. Sowell, they talked about the damages and everything. I would

1 like to make that part of the Court Exhibit 1,
2 which is the restitution amounts and everything.

3 THE COURT: All right. Court's 1 is the
4 victim impact statement?

5 MR. BARNETTE: It is, this is part of her
6 impact statement, Your Honor. She just handed it
7 to me just prior to the hearing.

8 THE COURT: This will be part of Court's
9 Exhibit 1 rather than State's 1.

10 MR. BARNETTE: That's correct, Your Honor.
11 But it leads to the amount, I'm not going through
12 each item taken, but these documents have these
13 items listed on them, Your Honor.

14 MR. SOWELL: Your Honor, I don't think he's
15 responsible for installing the chain link fence
16 worth \$4,200.

17 THE COURT: Sir?

18 MR. SOWELL: They are trying to charge Mr.
19 Johnson with \$4,200 because they want a new chain
20 link fence around their home. I don't believe he's
21 responsible for that.

22 THE COURT: Solicitor, was there previously a
23 fence there that was damaged in connection with the
24 alleged crime?

25 MR. BARNETTE: That's not part of the

1 original restitution, that is just things she has
2 had to do since this happened.

3 THE COURT: Therefore it is in the victim's
4 impact statement?

5 MR. BARNETTE: Yes, sir.

6 THE COURT: I understand. So, for
7 clarification purposes, there is no seeking of
8 restitution arising out of that statement, that is
9 just a statement of what the alleged victim did as
10 a result of the alleged crime?

11 MR. BARNETTE: They also have the stolen
12 items listed on page two, Your Honor. That is the
13 reason I really wanted to hand it up to the Court
14 to be able to see that and be part of the record
15 also.

16 THE COURT: To that extent it may be
17 associated with and part of the restitution, order
18 of restitution which both you and Mr. Johnson --
19 Mr. Johnson, is this your signature down at the
20 bottom?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: It says Michael Johnson. Do you
23 go by Shane?

24 THE DEFENDANT: Yes, sir.

25 MR. BARNETTE: Your Honor, just for the

1 record, too, the fence that's being talked about,
2 that is not included in the restitution, that is
3 just something they did afterward for additional
4 security for their home.

5 THE COURT: That's understood. Let's put
6 that, then, if there is no objection with the
7 victim impact statement, there is a good deal of
8 information here that the Court needs to review and
9 we'll probably take a short recess, warning
10 everybody ahead of time the Court can't speed read,
11 don't claim to be able to, particularly when there
12 are forms involved, and for the benefit of the
13 alleged victims and this defendant the Court
14 intends to read this information. This will be
15 added. What is being added is, the top is, this is
16 like a three page document and at the top it says
17 burglary of home on May 11th, 2007, Eric and Patsy
18 Smutzer, , Enoree, South Carolina
19 . So, that will be annexed, if there is no
20 objection to the victim impact statement.

21 Any objection, Mr. Sowell?

22 MR. SOWELL: No, sir.

23 THE COURT: Solicitor?

24 MR. BARNETTE: No, sir. We would like to add
25 that to the Court Exhibit 1.

1 THE COURT: It is being annexed to Court
2 Exhibit Number 1.

3 MR. BARNETTE: Thank you, Your Honor.

4 The next event occurred on May 17th, 2007 --

5 THE COURT: Pay attention, listen to
6 everything he says.

7 THE DEFENDANT: Yes, sir.

8 MR. BARNETTE: Thank you, Your Honor. This
9 occurred on, the next incident occurred May 17th,
10 2007, Your Honor. Christopher and Tonya Belton's
11 home at , Enoree, South Carolina,
12 which is also in Spartanburg County, Your Honor,
13 was broken into. They went through a door, into
14 the home, through the attached garage, firearms was
15 taken in this case, jewelry, electronics, the door
16 was busted, they requested restitution, and those
17 items are listed in the victim impact statement
18 also, Your Honor.

19 The next one occurred on May 18th, 2007,
20 this was Eric Mossbrook's residence, Your Honor, at
21 in Woodruff, South Carolina, which
22 is in Spartanburg County, Your Honor. Basically he
23 came back and they were gone, it appeared somebody
24 entered the house through the basement door, came
25 upstairs, Your Honor, they lost \$27,000 in jewelry,

1 prior record at this time or just the facts?

2 THE COURT: Well, first, before consideration
3 of that, or you putting that information on the
4 record, we will directly ask you, Mr. Johnson, did
5 you hear what the Solicitor just said you did in
6 connection with each one of these charges?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Solicitor, had you completed your
9 recitation of the facts?

10 MR. BARNETTE: I had, plus State's Exhibit
11 Number 1, which is investigators' notes which goes
12 into more detail of these items, I provided that to
13 the defense also, Your Honor, I would like to make
14 that part of the facts also.

15 THE COURT: Did you read that statement also
16 or are you aware Mr. Sowell read that statement --

17 THE DEFENDANT: Yes, sir.

18 THE COURT: -- of the investigating
19 officials?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. You are familiar with
22 it, Mr. Sowell?

23 MR. SOWELL: Yes, sir.

24 THE COURT: Do you have any objection to the
25 Court reading it?

1 MR. SOWELL: No, sir.

2 THE COURT: In due time?

3 MR. SOWELL: No, sir.

4 THE COURT: All right. Then returning to
5 you, Mr. Johnson, did you hear what the Solicitor
6 said you did in each one of these charges?

7 THE DEFENDANT: Yes, sir, I did.

8 THE COURT: Did he speak the truth as to your
9 participation in the commission of these crimes?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: That is and constitutes a
12 substantial factual basis to support your entry of
13 pleas of guilty to each of these crimes. The Court
14 finds that you enter such pleas freely,
15 voluntarily, knowingly, intelligently and
16 willingly.

17 The Court will return and ask you, sir, are
18 you now under the influence of any drug or alcohol?

19 THE DEFENDANT: No, sir.

20 THE COURT: The Court remarks that Mr.
21 Johnson appears in an orange jail uniform, he is
22 restrained at his wrists and his ankles and he
23 appears in every way to be clear minded, sober,
24 alert and aware and he is certainly articulate.
25 Based upon those things and observations the Court

1 finds that he enters his plea in a clear state of
2 mind, together with an attorney -- are you
3 satisfied with Mr. Sowell's representation of you?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Turning again, has he done
6 everything you asked him to?

7 THE DEFENDANT: Yes, sir, he has.

8 THE COURT: Do you have any complaint
9 whatsoever about him?

10 THE DEFENDANT: No, sir, I don't.

11 THE COURT: Then the Court finds you enter
12 that plea to each, enter a plea of guilty to each
13 of these charges with the advice and assistance of
14 an attorney with whom you state your satisfaction.
15 Therefore the Court will accept your pleas of
16 guilty in each of these charges, adjudicate you
17 guilty of each and marks your convictions upon the
18 court's records.

19 Mr. Sowell?

20 MR. SOWELL: Your Honor, you as all judges
21 knows the evils of drugs. He is 21 years old, he
22 got involved in drugs because his girlfriend got
23 drugs from where she worked, started using them,
24 selling them. He ruined, destroyed his life. He
25 is 21 years old. I hope the rest of his life is

1 not completely ruined. I hope Your Honor will give
2 him an opportunity to get out in due time and to
3 make a man of himself. He has a two year old
4 daughter he has never been alone with, he didn't
5 even know he had the daughter until he was in jail
6 and he hasn't been with her since then. He wants
7 to raise that child. I will hand up 31 letters
8 from ministers, friends, relatives.

9 MR. BARNETTE: I have looked at them, Your
10 Honor, glanced over them.

11 MR. SOWELL: Mr. Johnson comes from a good
12 family, Your Honor, his uncle is county coroner,
13 his uncle used to be in the House of
14 Representatives, his other uncle is a well known
15 and well respected real estate broker, his parents
16 are well known in all the churches in town,
17 everybody loves them. We have 31 people sent
18 letters on his behalf begging Your Honor to give
19 him an opportunity to make something of his life
20 and don't sentence him to the degree he won't have
21 anything left when he gets out.

22 All these people sitting here are, I
23 individually spoke with each one of them and they
24 all asked me to beg Your Honor to let him take
25 advantage of some rehabilitation and make his life

1 saveable.

2 THE COURT: You are referring to the people
3 on the left side?

4 MR. SOWELL: This side, Your Honor.

5 THE COURT: This side of the courtroom?

6 MR. SOWELL: Yes.

7 THE COURT: All right.

8 MR. SOWELL: We have ministers of two
9 churches here, one of them is going to speak, the
10 other one is here and I will paraphrase what he
11 would say if he were to testify. I would like for
12 Your Honor to, his uncle the broker couldn't come
13 today, his wife has had a stroke, he's trying to
14 get her in rehabilitation services. His mother's
15 boss is here to speak on his behalf. I would like
16 Your Honor to personally talk to some of these
17 people to tell you what they know about him and
18 what their hopes are for his future.

19 THE COURT: Anyone who wishes to speak may do
20 so if they will identify themselves by saying their
21 names before they speak.

22 MR. SOWELL: This is his mother.

23 THE COURT: Just come forward, come forward
24 one at a time, it will be easier for us to hear you
25 and for the court reporter to record your remarks.

1 State your name.

2 PEGGY GARNER: My name is Peggy Garner and
3 I'm the mother of Michael Shane Johnson. Just a
4 minute.

5 THE COURT: Take your time. Take your time.

6 MR. SOWELL: Your Honor, may her husband step
7 up with her?

8 THE COURT: Of course.

9 PEGGY GARNER: First of all I would like to
10 express my apologies to the families involved, I
11 truly am sorry. I too have been victim of a
12 break-in where irreplaceable items were taken from
13 my house and I know what that feels like, I really
14 am sorry. If I could turn back the hands of time I
15 surely would for all of you, but please accept
16 apologies from me.

17 With that said, I stand before you today as
18 a mother of the accused. My son is part of a
19 loving family. He is a good person with a good
20 heart. Shane has made some bad decisions with his
21 life, with drugs being at the root of those bad
22 decisions. South Carolina has many facilities
23 available for young people like my son, young
24 people that need help and a fresh start. Shane is
25 of no threat to society, he is only a threat to

1 himself.

2 I ask you, Your Honor, to please allow my son
3 to be assigned to a rehabilitation facility or a
4 facility that offers rehabilitation so that he can
5 get the help that he needs. If you would please
6 look around at the people who are here to support
7 Shane, most have known him since childhood and
8 agree that he is worth investing in. They will
9 encourage Shane also during this difficult time.

10 I firmly believe that his drug addiction is
11 the reason we're here today. I'm certainly not
12 offering that as a excuse, not to you either, I'm
13 not offering that as an excuse, I'm simply stating
14 that as a reason. People that know us, have known
15 my son, can testify to the fact the real Shane is a
16 kind, loving, very compassionate person who goes
17 out of the their way to help others. Shane is
18 remorseful for what he has done and he desires to
19 change his life and I pray that the Court will
20 allow him that opportunity.

21 MR. SOWELL: This is his stepfather.

22 THE COURT: Say your name.

23 BARRY DARDAR: Barry Dardar, I'm his
24 stepfather.

25 THE COURT: Spell your last name.

1 THE WITNESS: D-a-r-d-a-r.

2 THE COURT: Yes, sir.

3 BARRY DARDER: Shane is a good kid, he has
4 just got tangled up with the wrong crowd in life,
5 this is the result, I guess. He's really a good
6 kid, good heart, real good heart.

7 THE COURT: Thank you, Mr. Dardar.

8 MR. SOWELL: This is Mr. Curtis Perry,
9 associate pastor of Woodruff Church of God and he
10 is the pastor of the family.

11 THE COURT: Yes, sir, Pastor, if you will
12 state your name you will be heard.

13 CURTIS PERRY: Curtis Perry.

14 THE COURT: Yes, sir.

15 CURTIS PERRY: I appreciate the opportunity
16 to speak today. I have known this family for five
17 or six years as part of our congregation at the
18 church. I know their family to be people of high
19 character, integrity, have done everything they can
20 to teach, train, model, mentor their family.

21 I sort of relate my vocation, my calling to a
22 lot of life situations. We do our best to teach
23 our congregations the right things to do but they
24 have a choice to make and too many times people
25 make the wrong choice, but the great part of what

1 we believe in is mercy and grace and help, and I
2 think Shane understands his dilemma, that is why
3 he's doing what he's doing today. All we're after
4 is an understanding that there are helps for people
5 and there are second chances. I'm thankful to the
6 Lord he gave me a second chance. And again I join
7 with Shane's mother, I don't make excuses for
8 what's done, people have to pay the price for when
9 you do things, but we believe in second chances and
10 all we're asking is that if it is a possibility to
11 provide a place and a means to provide
12 rehabilitation and opportunity and another chance
13 at life, that is what I want to speak to today.
14 So, I just wanted to address that. Thank you for
15 that opportunity.

16 THE COURT: Thank you, sir.

17 If you will speak your name, please.

18 MYRA LAMBERT: My name is Myra Lambert.

19 THE COURT: How do you spell your last name?

20 THE WITNESS: L-a-m-b-e-r-t.

21 THE COURT: Yes, ma'am.

22 MYRA LAMBERT: I have known Shane Johnson and
23 his family since Shane was a small boy. His mother
24 is like a sister to me. Shane comes from a very
25 good family. He has two parents that love him,

1 that care about him and they have tried their best
2 to teach him right from wrong. They are God
3 fearing people and they love their children.

4 Shane is a good person, Your Honor. I have
5 visited with Shane during his incarceration, I have
6 corresponded with Shane through cards and letters,
7 and he is very sorry and knows that he's made
8 mistakes and Shane knows that drugs are the root of
9 his problem. Shane desperately wants another
10 chance to be a good person, to be a good son, and
11 more importantly to be a daddy to the little girl
12 that he loves with all his heart, and I truly
13 believe, Your Honor, that if you give Shane a
14 chance and the help that he needs to overcome his
15 drug problem with the support of his family Shane
16 will not disappoint you or anybody in this
17 courtroom. He is a good man, he just needs help.

18 THE COURT: Thank you.

19 MR. SOWELL: This is his sister.

20 THE COURT: State your name. Take your time,
21 gather your emotions.

22 SAMANTHA DARDAR: I'm Samantha Dardar, I'm
23 Shane's sister.

24 THE COURT: Just take a moment and compose
25 yourself, there is no hurry.

1 SAMANTHA DARDAR: I'm Samantha, I'm Shane's
2 sister.

3 THE COURT: Speak up so you can be heard.

4 SAMANTHA DARDAR: I'm Samantha Dardar, I'm
5 Shane's little sister, and he's always been a good
6 brother, always I could confide in him, he could
7 confied in me, he has always told me everything,
8 and coming to visit him back and forth to jail, I
9 know that he has a good heart and I know that he
10 wants to change, that he's got so many people
11 behind him and so many people supporting him, that
12 he can be the person that he used to be and the
13 person he was brought up to be. With all the
14 people that are supporting him and with the will he
15 has I know he can change if you give him a chance
16 and with a little rehabilitation.

17 THE COURT: Thank you.

18 MR. SOWELL: Your Honor, I believe everyone
19 out there wants to come tell you exactly the same
20 thing. We don't want to be redundant. Everyone
21 out there will tell you the same thing. The mother
22 of his child is out there, too. She supports him.
23 He loves his daughter. I believe if the Court were
24 to see fit the Court could suspend a large portion
25 if not all of these sentences. I'm not asking you

1 to give him a suspended sentence or probation but
2 Your Honor could suspend any portion of it, the
3 statutes all provide that the sentences can be
4 suspended. We're asking Your Honor to give him,
5 this 21 year old boy the chance to have a life.

6 THE COURT: Thank you, Mr. Sowell.

7 MR. SOWELL: He's sorry for what he did, and
8 I can't make the victims happy and no one can. We
9 just ask for forgiveness.

10 THE COURT: Thank you, Mr. Sowell.

11 We will now, Solicitor, turn to any prior
12 criminal history that may apply and then any one of
13 the victims who wishes to address the Court will be
14 welcome to do so.

15 MR. BARNETTE: Yes, sir. I have marked as
16 State's Exhibit Number 9 his prior record. He had
17 a DUS in 2003, obtaining goods by false pretenses
18 in 2004, he had a grand larceny in 2005, Your
19 Honor, he does have another grand larceny in 2006,
20 I don't know if that is from a probation revocation
21 or part of the sentence, he got a year for a grand
22 larceny, I don't know which way that is.

23 THE COURT: Ask him. What is the question?

24 MR. BARNETTE: In 2005 the defendant
25 definitely had a grand larceny. It looks like he

1 got a year on another grand larceny in 2006, I
2 don't know if that was a probation revocation.

3 THE COURT: Was it two grand larcenies or
4 just one?

5 THE DEFENDANT: Just one, Your Honor.

6 THE COURT: Was your probation revoked or
7 not?

8 THE DEFENDANT: I had caught a charge, that
9 is what I was on probation for, so they gave me a
10 year for violation of probation.

11 THE COURT: What was the charge?

12 THE DEFENDANT: Unlawful possession of a
13 pistol under 21.

14 MR. BARNETTE: That's correct. He was
15 convicted of that in 2006, unlawful possession of a
16 pistol, and he received a year for that also.

17 THE COURT: Are you reporting, you are under
18 oath, are you reporting that that arrest gave rise
19 to the probation revocation of one year?

20 THE DEFENDANT: They ran it concurrent, give
21 me a year for my gun and a year for violation of
22 probation.

23 THE COURT: All right. A year for the
24 pistol, a year for violation of the probation?

25 PROBATION OFFICER: That's correct, Your

1 Honor.

2 MR. BARNETTE: Your Honor --

3 THE COURT: State your name, Madam Probation
4 Officer.

5 PROBATION OFFICER: Andrea Manigam, probation
6 officer.

7 THE COURT: Thank you.

8 MR. BARNETTE: I want to make sure I was
9 correct, I don't want to mislead the Court when I
10 hand these documents up.

11 THE COURT: I'm certain the record is
12 correct.

13 MR. BARNETTE: Your Honor, he had two prior
14 property offense, obtaining goods by false
15 pretenses in 2004 and grand larceny in 2005. That
16 is the basis for the third or subsequent offense
17 also on the receiving stolen goods charge.

18 THE COURT: What was the sentence on the
19 prior grand larceny for which his probation was
20 revoked?

21 MR. BARNETTE: Three years suspended, three
22 years probation, and he had a year revoked when he
23 received the pistol charge, given one year
24 concurrent on both charges.

25 THE COURT: The other property offense?

1 MR. BARNETTE: Obtaining goods by false
2 pretense in 2004, Your Honor, he received a 30 day
3 sentence on \$465, less than a thousand dollars.

4 THE COURT: I understand. Thank you.

5 MR. BARNETTE: Thank you, Your Honor. I do
6 have some victims that would like to address the
7 Court, Your Honor.

8 THE COURT: Call them up, please.

9 MR. BARNETTE: I would like to call Eric
10 Mossbrook first.

11 ERIC MOSSBROOK: Eric David Mossbrook.

12 THE COURT: Yes, sir.

13 ERIC MOSSBROOK: Your Honor, I had three
14 pages of stuff written down that I would like to
15 say and I think I'm going to ab lib a little bit
16 because I'm shocked, I'm shocked at the speech by
17 the family members and friends saying what a good
18 person he is, and we just reviewed his record from
19 2003, forward, and he's been in trouble every time
20 he's been out of jail. He was on probation or
21 parole for, forgive me, I don't know the correct
22 term, when he robbed all of our houses. Every
23 chance he gets he messes up. He doesn't deserve
24 any more chances, Your Honor.

25 Because of these charges my life is scarred,

1 my wife is scarred, I have two small children who
2 were five and seven at the time of the incident,
3 they're scarred forever. Every time they come home
4 if they can't find a toy they think we've been
5 robbed again.

6 When we came home and we found the burglary
7 they were the first ones in the house. God forbid,
8 what would have happened if he was still there?
9 I came in and found them and I rushed them out of
10 the house and took them across the street to my
11 neighbor where they would be safe and then I called
12 the police. I didn't know if he was still in
13 there. He has disrupted my life from the roots,
14 up, and it is not fair to me. And I'm a good
15 person, I don't rob houses, I don't do drugs, I
16 don't have kids out of wedlock. He wants to be a
17 good parent, he had the opportunity before he
18 robbed all of our houses, he didn't take it.

19 He made a choice to use drugs. He didn't
20 have to take drugs. He had an opportunity to get
21 jobs, he hasn't had but one job since he dropped
22 out of high school, is what I heard earlier. What
23 is he trying to do with his life if he is such a
24 good person, such a loving person, such a role
25 model? I don't see it.

1 I understand emotions run deep. If it was my
2 son I would say the same thing, because I love him,
3 but with an objective point of view. I don't see
4 it, Your Honor. He hasn't done one thing positive
5 for this community. He has ruined our lives. He
6 stole, I had a fire document safe, I had everything
7 in there that you want to protect if your house
8 burned down. It had passports, birth certificates,
9 Social Security cards, bank records, my will, my
10 house deed, my car titles, everything that is
11 important, and he took it and I got the safe back
12 but everything in it was gone. So, I'm just
13 waiting for the day when somebody is going to steal
14 my identity.

15 I had to re-invent all my financial and
16 personal records, I had to recreate every one of
17 them and to this day I can't even go into the store
18 and get a store credit card because of all the
19 blocks and security checks I have had to put on my
20 personal information because of him.

21 He came into my house, I had, had, key word,
22 I had things, buttons from a Civil War uniform, my
23 great grandfather's, passed down through
24 generations, gone. I had a Rolex wristwatch, part
25 of the reason my jewelry is so expensive, passed

1 down from my great grandfather. I had cufflinks
2 from my great grandfather. I had a watch
3 collection dating back to 1800, gone because of
4 him, him and his desire to break the law.

5 Nothing I did, my house was locked, he broke
6 into it, he stole my things, I did everything I
7 could to protect myself and he comes and takes it
8 away because he wants to do drugs. Drug use is a
9 choice, it is not an excuse, and I swear I don't
10 believe anybody who says it's an excuse.

11 And I'm also discouraged because I feel he's
12 trying to use the system to his advantage. He
13 knows very well that if he was tried individually
14 for all nine of these charges he would be found
15 guilty and he would spend the rest of his life in
16 jail due to the three strike rule. He knows that.
17 He's trying to use the system to his advantage. He
18 thinks he can come in here and plead guilty, have
19 people beg for forgiveness and get another chance.
20 He's had chances, he has had many chances and he
21 hasn't used them. It's time that he pays the price
22 for his decisions.

23 I have two small children, he now has two
24 small children. Set an example for the children as
25 to what happens when you break the law.

1 Spartanburg County has a tremendous, tremendous
2 property crime problem. When I went to the
3 detective after my house was broken in he explained
4 to me, he said most likely the person who did this
5 is already in the system.

6 THE COURT: The person who did what?

7 ERIC MOSSBROOK: He said, "Most likely the
8 person who broke into your home is already in the
9 system as a prior felon."

10 THE COURT: I'm sorry, I misunderstood you.

11 ERIC MOSSBROOK: Right. And me not being
12 familiar with law and police and stuff, I said how
13 do you know that, how are you ever going to catch
14 these people? He said if it is not a youth, he
15 says most adults don't make the decision, hey, I'm
16 going to start being a criminal today, he says he's
17 probably already in the system, and by gosh, when
18 he finished the investigation and found it, he was
19 exactly right. I was amazed. And I really want to
20 praise him, Bobby Duncan was the detective, amen,
21 thank God for him, he did a great job.

22 And I'm asking you, I'm begging you, I want
23 you to give him the maximum sentence on every
24 charge. He's had his chance, he didn't live up to
25 the chance. I want you to give me a sense of

1 freedom, I want you to give my wife, my two kids a
2 sense of security. He's a threat to society. What
3 happens if he gets out and next time he brings a
4 gun or, God forbid, I come home or whoever's house
5 it is comes home and he's there? Please, Your
6 Honor, give him the maximum sentence.

7 That's all I have to say.

8 THE COURT: Thank you, sir.

9 MR. BARNETTE: Tonya Belton.

10 THE COURT: State your name.

11 TONYA MELTON: Tonya Belton.

12 THE COURT: Yes, ma'am.

13 TONYA MELTON: I'm one of the victims of
14 Michael Shane Johnson and I come to you today
15 because not just my life was ruined on that day in
16 May, my two children's lives were uprooted. A nine
17 year old and a six year old walked in to find their
18 things missing because Mr. Johnson felt like that
19 day he was going to break into my home. I lock my
20 doors, and my security system wasn't up yet, but
21 Mr. Johnson came in and walked by the wall where my
22 kids' pictures are and went in their rooms and took
23 their things.

24 I don't care about my things, I don't care
25 about the material things, but what I have had to

1 deal with in the past year, my kids slept in my bed
2 with me for six months because they were terrified
3 because, as they call him, the bad guys were going
4 to come back. I finally got my kids out of my bed.
5 They still sleep together today because they are
6 terrified. In conversations after the break-in my
7 kids would say, "I don't have that game because the
8 bad guy came and got it."

9 As a parent I try to tell my kids, you know,
10 he's going to get what he deserves. There are
11 people in this world that are actually good but I
12 would love to have him serve the maximum sentence,
13 so it's not just for me, it's for my family, it's
14 for my kids because he's not safe out there. He's
15 had opportunity after opportunity, he should not be
16 given another opportunity because I would hate for
17 another family to go through what I went through,
18 what I'm going through, because he has uprooted my
19 life, my husband's life and my two children's
20 lives. My kids are scared to go to the other end
21 of their home at night because they are scared the
22 bad guy may have come in. Mr. Johnson doesn't know
23 how it feels before I pull in my driveway every day
24 after work to know the sick feeling in my stomach
25 because I'm thinking like my kids, maybe they did

1 come back today.

2 And you can use drugs as an excuse but it's
3 no excuse. There is no excuse for coming in after
4 somebody, I have worked so hard for what I have, I
5 pay my taxes, I'm a good citizen, for someone just
6 to come in in a matter of minutes or hours and take
7 things because they don't care because they are on
8 drugs, there is no excuse, no excuse at all and,
9 Judge, when you make your decision I hope that you
10 think of my ten year old now and my seven year old,
11 terrified, they have to sleep together because
12 they're scared that someone is going to come and
13 take their things again. It's a horrible feeling
14 as a mother to look your kids in the eye and tell
15 them it's going to be okay.

16 THE COURT: Thank you.

17 MR. BARNETTE: Patsy Smutzer.

18 PATSY MUTZER: Okay, my name is Patsy Smutzer
19 and I'm the one that you were discussing the
20 burglary, so I first want to say the
21 upgrades of my home are not part of this. I just
22 wanted it for security and peace of mind. Unlike
23 the other two victims, I'm lucky that my son is
24 grown, I have a 23 year old son that I am very
25 proud of and I guess I'm the lucky parent because

1 he didn't get into drugs and everything, but I feel
2 like kind of ditto with both of these other two
3 people because your home is your sanctuary and your
4 security, and it's like when I met with the sheriff
5 I had a right to be angry because while my husband
6 and I were at work my home was broken into and I
7 think I honestly in a way owe him a thank you
8 because my neighbors were out on the porch, he
9 didn't ransack my house and he was in and out very,
10 very quick, but I can replace the television, I can
11 replace the pistol, but I can't replace the
12 memories of the trips to Europe where the jewelry,
13 a lot of jewelry was purchased, I can't replace
14 that.

15 And I think he should get the maximum.
16 I am a resident, born here in Spartanburg County,
17 and he doesn't like to work, he told the deputy, he
18 does have a name, they call him Cocaine Shane at
19 Woodruff, so drugs, you know, is a choice and he
20 had a choice and he made it. He could have been
21 visiting his two year old when he was down at my
22 house on May the 11th, the Friday before Mother's
23 Day, so I had a real good Mother's Day because I
24 was terrified.

25 Now when my husband mentions, "I got to go

1 out of town overnight," I kind of get in a panic
2 like, oh, my God. I've got \$5,000 in upgrades to
3 my home to feel more secure but you don't feel more
4 secure because it's like, well, they got in one
5 time, they can get in again, and will the police be
6 quick enough. I was so scared that when we
7 upgraded our security system we tested to see how
8 long it would take the police to get to us and they
9 were wonderful with us to come and say, okay, I
10 have timed it, and they would tell me where they
11 came from.

12 And, yes, I'm an adult, but we all get scared
13 in our lives and I'm trying to be the best
14 Christian and I know we're supposed to forgive but
15 I think being a Christian is an everyday job, we're
16 working at being good people, I'm a good person, I
17 pay my taxes and I just, it makes me sick to know,
18 and the sad part is, because we bought this house
19 two years this past August, he was there, he knew
20 the previous owners' daughter and was real good
21 friends with her and he was actually at the house a
22 couple times when we went and viewed the house
23 before we purchased it. That is how he knew where
24 my home was, because I'm not on the main road, I'm
25 on a dead-end, and I have five, I have three

1 witnesses that can put him on my road, I have two
2 other witnesses where he was selling my memories at
3 a gas station for nothing, that would be willing to
4 come in and testify in court. So, he doesn't want
5 to go to trial because he will be found guilty of
6 mine, and to blame her and the drugs, he was in
7 trouble long before he met his accomplice.

8 Thank you.

9 THE COURT: Thank you.

10 MR. BARNETTE: Donna and Dan Gibson.

11 DONNA GIBSON: I'm Donna Gibson.

12 DANIEL GIBSON: Daniel Gibson.

13 DONNA GIBSON: You know, I have heard
14 everybody, what they have stood up here and said
15 today, and he does have all his support out here
16 and everybody has known him, we have known him, we
17 have known Shane, he knew our house, he knew the
18 inside of our house. The last time I know of he
19 was in our house eight years ago, we used to live
20 one house over from them, he does have good
21 parents, but he's evil, he's evil.

22 I came home one night by myself from work, we
23 live way off the road, I opened my back door, my
24 back door was jammed. I got in there, started
25 walking through, cutting on lights, and you see

1 your drawers pulled out, you go in your bedroom,
2 things are just scattered. He stole my babys'
3 rings. I've got two sons, one is in his thirties
4 and then I have another son, my two baby rings from
5 them when they were at birth, you know. He stole
6 all of our jewelry, he stole my husband's coin
7 collection that has been collected for over ten
8 years to put our youngest son in college. He took
9 that, so we're scrambling trying to figure out how
10 to pay for him to go to college this year. This is
11 his first year of college.

12 He stole among other things my baby bracelet
13 when I was born. He stole my freedom, he stole my
14 peace of mind. I am still afraid to come home at
15 night if the lights are out. If he's out I'm
16 afraid of him, he knows us, he knows where I live,
17 I'm afraid of him. I'm afraid of what else he
18 would do. I hope and pray, he has had many
19 chances, kids do things wrong as they are growing
20 up, kids change. Shane has not changed. Shane has
21 got worse. I want him,, Your Honor, I want you, I
22 beg you to teach him a lesson and if it's to go to
23 prison for fifteen, twenty, thirty, fifty years, if
24 that is what it takes, you can't take other
25 people's things, they are not yours.

1 Thank you.

2 THE COURT: Thank you.

3 DANIEL GIBSON: The only thing I would like
4 to add is our youngest son and Shane grew up
5 together. As Donna said, we were two houses away
6 from each other. And all the support we have heard
7 here today has been real nice for Shane but Shane
8 has had issues a long time, a long time before this
9 crime spree started. I don't know where the
10 support was then. This all could have been avoided
11 if it had been there at that point in time but
12 apparently it wasn't. I have heard from the
13 family, and he does have a good family, but I have
14 heard no remorse from Shane, no remorse for what he
15 has done to all these families.

16 That's all I need to add to that.

17 THE COURT: Thank you, sir.

18 MR. BARNETTE: Your Honor, that would be the
19 State's presentation, plus the victim impact
20 statements we handed up to the Court to read.

21 THE COURT: All right. The Court will take a
22 recess for several minutes because the information
23 handed up is somewhat voluminous. The Court wishes
24 to take an opportunity to review it in fairness to
25 the victims and to the defendant, so it wouldn't be

1 fair to anyone for the Court just to begin
2 pronouncing a sentence or sentences without having
3 considered the information that has been handed up
4 and considered the remarks that have been made by
5 the persons speaking in favor of Mr. Johnson and
6 these victims of these acts that he has
7 perpetrated, so we will take a few moments.

8 Now, please stay within call of the bailiff's
9 voice. If you wish to go outside you may. Mr.
10 Bailiff, when we come back into session, if you
11 will call outside State v. Johnson is reconvening
12 in the event anyone wants to go outside, it is
13 rather cool, you may not stay long, but we will
14 come back into session momentarily. In the
15 meantime, for about ten minutes or twelve minutes
16 or so we will be in recess.

17 (Recessed at 3:42 p.m.).

18 (Reconvened at 4:22 p.m.).

19 THE COURT: Are there any remarks or comments
20 before the Court pronounces sentence in these
21 cases? From the state, Mr. Barnette?

22 MR. BARNETTE: No more statements, Your
23 Honor.

24 THE COURT: Anything further?

25 MR. BARNETTE: I forgot if the officer had

1 anything to say, Your Honor, I don't know if he had
2 anything to add or not. I'm sorry, I wanted to
3 make sure.

4 THE COURT: Anything additional from the
5 defense before sentences are pronounced?

6 MR. SOWELL: Just two little minor things,
7 Your Honor. He didn't see his child, he didn't
8 know the child was in existence. He would have
9 seen his child earlier but he didn't know he had a
10 child. We don't know about Cocaine Shane, his
11 sister is a high school student, she never heard
12 that used, where it came from. He said his sister,
13 high school student, never heard that.

14 THE COURT: The Court heard that remark but
15 he was under oath when the Court asked him if he
16 went by any aliases. I don't know if that term was
17 used, I mean, I don't think he was asked if he were
18 known by an alias, but he was asked if he went by
19 any other name and he denied that, so the remark
20 was not taken into consideration.

21 Anything further?

22 MR. SOWELL: None, Your Honor.

23 THE COURT: All right. In 5007-5688 Michael
24 Shane Johnson has been convicted of burglary in the
25 first degree.

1 consideration. The restitution has been all placed
2 on this sentence sheet. The total of the
3 restitution as agreed to by Mr. Johnson is
4 \$146,328. It is on this sentence sheet. And there
5 is an asterisk here to see orders, and there is two
6 pages of orders and I don't know that those have
7 been executed yet. We shall accomplish that, but
8 those indictment numbers, they have been executed,
9 those indictment numbers as apply to the
10 restitution have been written all on the one
11 sentence sheet, so you won't see them on the other
12 sentence sheets, they are all on one.

13 Now, special conditions of this case are to
14 convert the restitution to a civil judgment, civil
15 judgments in all of the cases, and you are to
16 receive the addictions treatment unit while you're
17 in the Department of Corrections.

18 In 2007-5689 Mr. Johnson has been convicted
19 of another crime of burglary in the first degree
20 involving the home of Christopher Belton. For that
21 he is confined to the State Department of
22 Corrections for a term of fifteen years consecutive
23 to 5688.

24 In 2007-5690 Mr. Johnson has been convicted
25 of burglary in the first degree involving the

1 dwelling of Eric Mossbrook. For that he is
2 confined to the State Department of Corrections for
3 a term of fifteen years. That is concurrent to
4 2007-5689.

5 You understand that each of these sentences
6 that are active sentences you must serve 85 percent
7 of them? Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Is there any question in the
10 audience about that? The law requires service of
11 85 percent of each of these sentences. Each
12 fifteen year consecutive sentence, he has to serve
13 85 percent of the first one before he commences the
14 second one. Do you understand that, Mr. Johnson?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: In 2007-5681 Mr. Johnson has been
17 convicted -- strike that -- 5691, Mr. Johnson has
18 been convicted of grand larceny of an amount more
19 than one but less than \$5,000, for which he's
20 confined to the State Department of Corrections for
21 a term of five years consecutive to 2007-5689.

22 2007-5692, Mr. Johnson has been convicted of
23 grand larceny of an amount greater than \$5,000, for
24 which he is confined to the State Department of
25 Corrections for a term of ten years, concurrent to

1 2007-5688.

2 In 2007-5693 Mr. Johnson has been convicted
3 of grand larceny of an amount greater than \$5,000,
4 for which he is confined to the State Department of
5 Corrections for a term of ten years concurrent to
6 5007-5688.

7 In 2007-5709 Mr. Johnson has been convicted
8 of receiving stolen goods of an amount less than
9 \$10,000 -- strike that -- less than \$1,000, it
10 being his third or subsequent property offense, for
11 which he's confined to the State Department of
12 Corrections for a term of ten years concurrent with
13 2007-5688.

14 In 2008-1308 Mr. Johnson has been convicted
15 of grand larceny in an amount greater than \$5,000,
16 for which he's confined to the State Department of
17 Corrections for a term of ten years concurrent with
18 5007-5688.

19 In 2008-1309 Mr. Johnson has been convicted
20 of burglary in the second degree, for which he's
21 confined to the State Department of Corrections for
22 a term of fifteen years concurrent with 5007-5688.

23 The Court has pronounced sentences applicable
24 as follows, which are not concurrent but
25 consecutive. Fifteen years, consecutive fifteen

1 years and consecutive five years. All other
2 sentences are concurrent, you serve them at the
3 same time as the first sentence.

4 Do you understand, Mr. Sowell?

5 MR. SOWELL: Yes, sir.

6 THE COURT: Are there any questions?

7 MR. SOWELL: Any possibility Your Honor would
8 consider suspending any of those sentences?

9 THE COURT: Any what?

10 MR. SOWELL: Any possibility Your Honor would
11 consider suspending any of those sentences?

12 THE COURT: No, sir. The concurrent, the
13 concurrent sentences are essentially a suspension.
14 The Court has considered this matter and given
15 every benefit possible to Mr. Johnson.

16 Are there any further questions?

17 MR. SOWELL: No, Your Honor.

18 MR. BARNETTE: Nothing from the State, Your
19 Honor.

20 THE COURT: These matters are adjudicated.
21 Now, Mr. Sowell, I will return these statements to
22 you that have not been made evidence.

23 (Concluded at 4:42 p.m.).

24

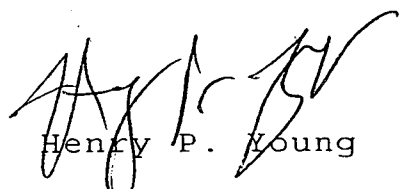
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I, the undersigned Henry P. Young, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case in the Circuit Court for Spartanburg County, South Carolina, on the 27th day of January, 2008.

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

June 29, 2008


Henry P. Young
Court Reporter

I N D E X

State's Witnesses:

(None)

Defendant's Witnesses:

(None)

State's Exhibits:

Marked:

Received:

(None)

Defendant's Exhibits:

Marked:

Received:

(None)

Court's Exhibits:

Marked:

Received:

(None)

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1 April 16, 2008 P R O C E E D I N G 3:17 P.M.

2 (Mr. Johnson and his attorney step forward for the plea.)

3 THE COURT: Watch your step, Mr. Johnson.

4 (Off-the-Record Comments)

5 THE COURT: Solicitor Barnette?

6 MR. BARNETTE: Yes, sir.

7 THE COURT: Mr. Barnette, at the call of these cases,
8 the Court does not have the indictment numbers.

9 MR. BARNETTE: Yes, sir. I've got those here, Your
10 Honor, and we'll pass these up. We received them from the
11 clerk's office.

12 Mr. Shane Johnson, Your Honor, pled guilty, in front of
13 Your Honor, back on February 27th, two thousand, eight (2008),
14 Your Honor. On those sentences, Your Honor, I have those
15 indictments; 03-GS-42-1309, Your Honor, which was for burglary
16 second degree, Your Honor.

17 It was non-violent. He was sentenced to fifteen (15)
18 years, ran concurrent with the other sentences. At 08-GS-42-
19 1380, Your Honor, he was charged with grand larceny, more than
20 five thousand dollars (\$5,000). He received ten (10) years
21 concurrent on that sentence, Your Honor.

22 At 07-GS-42-5688, he was -- he pled guilty to burglary
23 first (1st), Your Honor, degree. He received a fifteen (15)
24 year sentence on that case. I believe that was consecutive, I
25 thought, consecutive to the other charges, Your Honor.

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1 Then, 07-GS-42-5689, Your Honor, which is burglary in the
2 first degree, Your Honor, he was sentenced to fifteen (15)
3 years consecutive -- it was consecutive on that charge, Your
4 Honor.

5 And 07-GS-42-5690, Your Honor, that's also a burglary
6 first degree. He was sentenced to fifteen (15) years on that
7 also, Your Honor.

8 And 07-GS-42-5691, he was sentenced to five (5) years
9 consecutive. It was grand larceny, more than five thousand --
10 or more than one thousand dollars (\$1,000). He received five
11 (5) years consecutive on that, Your Honor.

12 And 07-GS-42-5692, he received a ten (10) year sentence
13 for grand larceny more than five thousand dollars (\$5,000).
14 And that's to run concurrent.

15 And 07-GS-42-5693, Your Honor, which was grand larceny
16 over five thousand dollars (\$5,000), he received a ten (10)
17 year sentence concurrent, Your Honor.

18 I believe what you did, Your Honor, you ran two of the
19 burglary first consecutive of each other. It's two fifteen
20 (15) year sentences and then, one grand larceny five (5) years
21 consecutively for a thirty-five (35) year sentence, Your
22 Honor, on those cases.

23 May I approach the bench, Your Honor, and hand these up
24 to you?

25 **THE COURT:** Yes, sir.

1 (Documents handed up to the Court.)

2 THE COURT: Thank you.

3 MR. BARNETTE: Thank you, Your Honor. This is Mr.
4 Sowell's motion, Your Honor. I do have three of the four
5 victims that was present at the plea when it happened on
6 February 27, or three representatives of those victims. They
7 would like to address the Court at the appropriate time, Your
8 Honor.

9 And, also, if you need me to go through the facts of the
10 case briefly, I can also do that also, Your Honor.

11 THE COURT: Do you yield, Mr. Sowell, to Solicitor
12 Barnette, for him to familiarize the Court again with the
13 facts of these matters?

14 MR. SOWELL: Of course, Your Honor.

15 THE COURT: The record is with you, Solicitor.

16 MR. BARNETTE: Okay. Thank you, Your Honor. These
17 incidents, Your Honor -- all this happened in basically the
18 same neighborhood, Your Honor, down in the Enoree/Woodruff
19 area, Your Honor, down in the southern part of the county.

20 Eric Mossbrook (phonetic), in his residence, at
21 in Woodruff, South Carolina, was broke
22 into, Your Honor. Numerous things was taken. These items --
23 I do have a list if I need to hand back up to refresh the
24 Court.

25 I do have the victims' impact statements, Your Honor, I

1 could pass up to the Court. Mr. Sowell has seen these, and I
2 believe they were part of the record at the -- at the plea
3 also, Your Honor.

4 (Documents handed up to the Court.)

5 MR. BARNETTE: Mr. Mossburg, he -- do you want me to mark
6 these as Court's exhibits, Your Honor, or just hand them up to
7 the Court?

8 THE COURT: Say again?

9 MR. BARNETTE: These are victim impact statements that
10 were admitted earlier. I can hand those up showing the
11 damages and so forth in this case.

12 THE COURT: If the Court remembers a substantial amount
13 of that information.

14 MR. BARNETTE: Yes, sir.

15 THE COURT: And, for the purposes of these proceedings,
16 would you, please, just put up a statement of the facts on the
17 record, so, that it will be understandable by anyone who may
18 read the record of the prior proceeding and this one.

19 MR. BARNETTE: Yes, sir. Mr. Mossburg (phonetic), Your
20 Honor, that residence, it happened on May 18th, two thousand,
21 seven (2007). He had property damage in the amount of fifty-
22 six thousand dollars (\$56,000.00), Your Honor. In that case,
23 he has documented all those items and we've documented them at
24 the plea.

25 Donna Gibson (phonetic) was another victim in that case,

1 Your Honor, receiving stolen goods involving Mr. Shane
2 Johnson. She had over forty thousand dollars (\$40,000) items
3 and possibly up to fifty thousand dollars (\$50,000), Your
4 Honor. She listed those and those items -- some of those
5 items was later proven recovered. But she had that much took
6 away from her.

7 Then, we had Christopher Melton (phonetic) at
8 in Enoree, South Carolina, Your Honor. That happened on
9 May 17th, two thousand, seven (2007).

10 A similar situation on all these, Your Honor. He would
11 break in and steal items and so forth from them. And Harry
12 Smutzer (phonetic), Your Honor, lived at
13 (phonetic), in Enoree, South Carolina. That occurred on May
14 11th, two thousand, seven (2007), the same situation, a break
15 in and larceny in these cases.

16 And, then, Stacy Smith (phonetic), Your Honor, happened
17 on April 27th, two thousand, seven (2007), Your Honor. Her
18 residence is (phonetic), Woodruff,
19 South Carolina, Your Honor.

20 And I believe she's the one that has small children if I
21 remember right. And she is the only one that is not present.
22 This victim I think spoke to you before, Your Honor, in this
23 situation.

24 Your Honor, a lot of these are burglary firsts because
25 guns were also stolen, in these situations, that made them

1 burglary firsts, Your Honor. Do you need me to go into more
2 detail about those, Your Honor?

3 THE COURT: No, sir. They were not -- I don't believe
4 they were recovered, were they?

5 MR. BARNETTE: I don't think they were.

6 UNIDENTIFIED FEMALE: Not yet.

7 THE COURT: It seems that they weren't at the time of
8 the previous proceeding.

9 MR. BARNETTE: And, Your Honor, I believe in -- let me
10 make sure I go over his prior record. He was on probation at
11 the time this happened.

12 I can go over his record or I can wait until Mr. Sowell
13 talks, Your Honor, because I know we're supposed to go into
14 the facts.

15 THE COURT: Thank you, Solicitor. Mr. Sowell, the
16 record is with you, sir.

17 MR. SOWELL: Thank you, Your Honor. Your Honor, we've
18 all been victims of crimes and we all know the anger it causes
19 and the heartache it causes.

20 Shane is from a good, well respected family here in
21 Spartanburg County and he's done something extremely stupid.
22 He got into drugs and he listened to what he thought was an
23 older girlfriend's wisdom and he was trying to please her. He
24 just did something dumb.

25 He's at the age where I think he can accept and learn

1 from a prison sentence. He's also at the age where a thirty-
2 five year prison sentence is going to destroy anything he's
3 got left of his life. He will never -- when he gets out of
4 prison in thirty (30) years from now, he will have nothing
5 left.

6 He -- he -- he'll be rehabilitated because of his age.
7 But a young man spending thirty years in an adult prison, not
8 only an adult prison but a maximum sentence prison, it will
9 destroy any possibility he has of having any life when he gets
10 out.

11 When he was confronted by law enforcement, he voluntarily
12 gave statements and admitted everything he did. He didn't try
13 to hide anything. He realized then how stupid he had been.

14 He wasn't arrested for nine (9) or ten (10) days later.
15 He didn't try to run. He realized what he done and he was
16 going to fess up and take what he had coming to him.

17 It's not like he had been convicted and come back and
18 done another crime and another crime. This was all, within a
19 short period of time, no intermediate circumstances, no --
20 these were a warning, but he -- he did all these stupid things
21 in a spree.

22 He didn't do it -- get convicted and come back do again,
23 get convicted and do it again. It was all in one stupid
24 spree.

25 **THE COURT:** Please, excuse the Court for interrupting

1 you, Counsel. However, it may be that some of the victims,
2 who are here, wish to speak and you would wish to respond to
3 their remarks.

4 Now, it -- it may be the better part of the procedure for
5 us to hear what they have to say. And please excuse my
6 failing to call on them before recognizing you.

7 But, if they wish to speak, it may give you the
8 opportunity to respond to their remarks.

9 MR. SOWELL: Thank you, Your Honor.

10 THE COURT: Would that be ---

11 MR. SOWELL: Certainly.

12 THE COURT: If you wish to continue ---

13 MR. SOWELL: No.

14 THE COURT: --- then, I certainly won't foreclose that.

15 MR. SOWELL: I'll defer to what Your Honor has
16 suggested.

17 THE COURT: Thank you. Mr. Barnette, if any wish to
18 speak, then, please, speak their name for the record and
19 they'll be heard.

20 MR. BARNETTE: Yes, sir. And just to go over the prior
21 record for Your Honor to let you know, he had a previous DUS
22 in two thousand, three (2003); obtaining by false pretense in
23 two thousand, four (2004) he was convicted of.

24 He also had a grand larceny, more than five thousand
25 dollars (\$5,000). He pled to that February 9th, two thousand,

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1 six (2006). He was on probation for this when that happened.

2 He also received an unlawful carrying of a gun charge in
3 two thousand, six (2006) also, Your Honor. And he was
4 convicted of that and received one year on that.

5 I know that Mr. Mossburg and several of the other victims
6 would like to address the Court also, Your Honor, at this
7 time. I'll let Mr. Mossburg go first, Your Honor, if that's
8 okay.

9 **THE COURT:** And say your name, please, for the record.

10 **MR. MOSSBURG:** It's Eric Mossburg (phonetic). And, you
11 know, we've heard a lot of talk today about recidivism, repeat
12 offenders, and I think it's obscure, in the presentations I've
13 heard, by the Defense saying that, you know, he's going to
14 change his mind.

15 He's got a repeat offender record. He dropped out of
16 high school in the tenth grade. He's been in trouble ever
17 since. Every time he gets let out of jail, on bond or parole,
18 he gets arrested.

19 He's been arrested twice while he was on parole. When he
20 was on parole, he committed the crimes against all of us.

21 The U.S. Department of Justice and the Bureau of Justice
22 statistics did a study, a fifteen state study, and two-thirds
23 of released prisoners will re-incarcerate within three (3).
24 years.

25 The highest rate for recidivism is among robbers.

1 Seventy (70) percent of those re-arrested within three (3)
2 years. Burglars seventy-four (74) percent, and those
3 possessing or selling stolen property, seventy-seven (77)
4 percent.

5 And then, those possessing, selling, or using illegal
6 weapons, seventy (70) percent. He falls into every single
7 category I just read.

8 South Carolina crime rates from 1960 to two thousand,
9 seven (2007), burglaries increased seventy-six (76) percent.
10 Larceny and theft has increased eighty-four (84) percent.

11 Your Honor, I believe you're well aware of all these
12 statistics. I wanted to read them, so, we can enter them in
13 the record.

14 Given the prior record of Shane, the fact that he's been
15 arrested twice while on parole, he's demonstrated, through
16 his behavior -- not his words; he's demonstrated through his
17 behavior that he's not able to be rehabilitated.

18 No amount of time is going to change that. I've talked
19 to attorney friends of mine about the case, after he was
20 sentenced, and told them he got thirty-five (35) years. And
21 they shook their head and I said, "What's wrong?"

22 And they said, "That's not enough time. He'll be in his
23 early 50's. He's still going to be a menace to society when
24 he gets out."

25 This is what happened to me last night when I came home

1 from work. My children now are six (6) and eight (8). They
2 were five (5) and seven (7) at the time of the burglary.

3 I came home and changed my clothes and went out in the
4 back yard. My six year old was tying ropes and putting boards
5 around the back door where Shane broke into my house.

6 I said, "What are you doing, son?" He says, "I'm
7 building a trap." He said, "The next time that bad man tries
8 to break into my house, I'm going to catch him."

9 This is a six year old son. And I hate every bone in
10 your body. I hope you serve the rest of your life in jail.
11 And God help you if they let you out.

12 Your Honor, he has shown no sign of remorse. He's
13 staring a hole through me right now. He's had three (3)
14 opportunities to apologize to us; never once has he.

15 He hasn't helped any of us recover our property. He
16 stole all my private documents; passport, birth certificate,
17 Social Security cards. Where is it? What did you do with it?

18 You want mercy, give us something. You haven't done a
19 darn thing for anybody. You just want us to fall over and
20 give you a free ride.

21 That's the problem with you. You think everybody owes
22 you something. We don't. You screwed up. You do the time.

23 He says there's a third person involved. What's their
24 name? Where are they? Tell us about them. He's an admitted
25 drug user. Who is your dealer? Where do you buy it from?

1 Give us something. You're scared to because you don't
2 care about anything else other than yourself. You're a
3 selfish, pitiful, sorry excuse for a human being.

4 Your Honor, you showed a lot of mercy, in my opinion, by
5 only sentencing him to thirty-five (35) years the first time
6 we were here.

7 If you took the minimum sentence, as I understood them,
8 and served them all consecutive, he would serve seventy-five
9 (75) years. That's just the minimum consecutively. You gave
10 him less than half of that by running them concurrently.

11 I think you've been more than generous, and since they
12 brought it up in front of you, I ask you, I beg you, for my
13 family, for their families (indicating), for the rest of the
14 community, to give him more time.

15 He hasn't learned his lesson. Look at the smug look on
16 his face. He doesn't even care. There is not one ounce of
17 remorse in this guy.

18 Now, they're going to come up -- I'm not a betting man,
19 but he'll probably apologize when it's their turn to speak
20 again because I brought it up. But it's too late now.

21 It doesn't count. It doesn't count. If he did it on his
22 own accord, it'd make a difference. Now, that we've pointed
23 it out, he's just trying to fall in.

24 You know, he pled guilty to all of this to avoid getting
25 struck out and spending the rest of his life in jail. If we

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1 had tried him, for each one of these counts individually,
2 there's no doubt, in three of them, he would have been found
3 guilty of.

4 I think it was a total of nine (9) separate charges. All
5 we had to do was find him guilty of thirty (30) percent and he
6 would spend the rest of his life in jail.

7 He pled guilty trying to get a deal. He got a deal. He
8 only got thirty-five (35) years. Now, he wants a better deal?
9 It infuriates me.

10 Your Honor, I appreciate you listening to my words. And
11 I thank you.

12 **THE COURT:** Thank you, sir.

13 **MR. BARNETTE:** Your Honor, this is Smutzer, but I don't
14 know who -

15 **MS. SMUTZER:** Patsy Smutzer (phonetic).

16 **THE COURT:** Yes, ma'am?

17 **MS. SMUTZER:** And I actually brought another copy of the
18 burglary that I submitted the last time in case it was not a
19 part of your paperwork.

20 **MR. BARNETTE:** May I approach the bench. I think Mr.
21 Sowell has seen this last time ---

22 **MS. SMUTZER:** Yes, it's the same thing.

23 **THE COURT:** Are you familiar with it?

24 **MR. SOWELL:** Yes, sir.

25 **MR. BARNETTE:** May I approach, Your Honor? Thank you.

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(Document handed up to the Court.)

THE COURT: Thank you. Yes, Ms. Smutzer?

MS. SMUTZER: I just want to -- exactly what Mr. Mossburg said I agree with, too. The -- the best thing for us is that we did not have small children at the time. My children are grown.

And the one -- the one thing -- a couple of things I want to make a point about is it is ironic that we are standing in this courtroom today, on April the 16th, which is actually the day of prayer for victims' rights.

This is a national celebrated week this week. And I know there was a service today. And everybody's a victim, to some degree, who has had something done to them like what we've had done.

And maybe it's meant to be that we be here. But it's my understanding, when this happened to us on May the 11th, which was the weekend of Mother's Day, which ruined my weekend, and when my husband got home and discovered it, that it changed our lives.

I have taken time off from work to be in every single court that the solicitor has called us about. One of us has represented and taken time. And it's my understanding, from the Woodruff Police Department, that Shane has been in trouble since he was sixteen (16) years old.

He'll be twenty-three (23) on July the 24th. He doesn't

1 even have a clue. I know he has two children now, or he had a
2 two year old and the girl that is being blamed, for a lot of
3 this, she was pregnant with his child and -- at the time.

4 So, he now has two children as far as I know. They don't
5 need to be around him. And Pinky got up and apologized to all
6 of us, his mother. I don't blame you.

7 We raise our children and we pray and we hope they do the
8 right thing. But it's not our fault if they choose a
9 different path. And I'm sorry for your family.

10 Now, I know this family is upstanding in Woodruff. But
11 it's amazing that the very area he grew up in are the homes
12 he's breaking into. He doesn't leave the area; he's
13 humiliated his family.

14 His grandmother, I hear she is a wonderful person. And
15 she's had to be subjected to this just like his mother has.
16 So, no, I don't want him to get a lessor sentence.

17 We had forty-five thousand dollars (\$45,000) stolen from
18 us in items. Out of that forty-five thousand (\$45,000), we've
19 got five thousand dollars (\$5,000) from insurance. And that's
20 it.

21 So, we are losing all that money. He can't make
22 restitution. He can't bring back the memories from trips to
23 Europe where jewelry and things were bought for me.

24 And, as I said, he did not ransack our house, thank God.
25 But there is a third person involved. It is a black man

1 missing fingers. But he hasn't come forward about that.

2 I have witnesses at a gas station, when he was selling my
3 jewelry for twenty-five cents (.25), and nobody could find
4 this black gentleman.

5 And, at the time of the break-in, he was too big to get
6 through the window. So, he did have help inside my house.
7 They say he didn't, but I know he did.

8 The other thing is that I don't want him to get sentenced
9 to any less. And I'm sorry for his family, but he deserves to
10 serve every bit of this time because I spent a lot of money --
11 we did -- trying to secure our house even more.

12 And he knew exactly what he was up to when he came down
13 to the house. So, he doesn't deserve to get out any less.
14 You need to serve the time. Thank you.

15 **THE COURT:** Thank you.

16 (Off-the-Record Comments)

17 **MR. BARNETTE:** Is there anything you would like to say?

18 **MR. SMUTZER:** Yes. I'm -

19 **MR. BARNETTE:** Give him your full if you would.

20 **MR. SMUTZER:** Okay. I'm Harry Smutzer, a victim's
21 spouse. The thing that upsets me is the fact that I'm a
22 person that hunts and fishes and -- and we go on trips. And
23 sometimes we go with other people. Or I go with other people.

24 Well, now, every little knock on the door, every little
25 noise, every time the dog barks, she's upset. Then, I can

1 assure you, if you're married, when your wife is upset, you're
2 upset because you hate to see them hurt and you hate to see
3 them scared.

4 And we -- like she said, we've had to go through all this
5 putting new security systems in, electronic gates, all because
6 of this man right here (indicating), all because of him.

7 And most of this, I think, was premeditated. He knew
8 where our house was. He had actually been in our house before
9 this happened. So, he knew exactly where to come to.

10 So, it was planned out. It wasn't, "Well, I'll just go
11 do this at random." This is -- that's not true. None of this
12 was done at random. He knew exactly what he was doing.

13 And, you know, dope or using any kind of substance,
14 that's no excuse. That's just -- that's just whining about
15 stuff that, you know, he knew he shouldn't be doing.

16 And I don't feel sorry for him or anyone that was with
17 him. And, yes, I'm a retired state constable and he got off
18 very light I can tell you, too light.

19 He needs to have a higher sentence. And it would be my
20 pleasure, Your Honor, if you would do that here today. A
21 stack of papers that -- that thick (demonstrates) came up
22 there to you just a while ago of what he's done.

23 That's not -- you can't rehabilitate those kind of
24 things. One or two incidents, yeah, I can understand if he
25 got in trouble with some kids and all that.

1 This is not a kid getting in trouble with kids. This is
2 someone doing it by himself or with an accomplice, one; not a
3 group of kids. Not out drinking on a Saturday night or a
4 Friday night and have some wild ideas and they go do them.

5 This was all premeditated. He knows it. And his family
6 knows it too. They know the kind of problems he's had all of
7 his life.

8 And, yes, I'm not saying they're not a good family, but
9 I'll tell you, what help did they get? Maybe he couldn't even
10 get help; I don't know. But I do know this, it's too late
11 now.

12 And I lost a couple of rings that were stolen that will
13 never be replaced. The people are dead that give me these
14 rings. And they meant so much to me. And I promise you I
15 could walk over there and strangle him right now and it
16 wouldn't bother me a bit.

17 It just upsets me terribly to think that we've lost
18 things that we will never see again and no one -- we're going
19 to go on about our business and no one is really going to
20 care.

21 The only victims here are standing right here. That is
22 not a victim (indicating). That's a perpetrator right there.
23 And all he's good for is to go do it again if he gets an
24 opportunity. Thank you.

25 **THE COURT:** Thank you, sir.

1 (Off-the-Record Comments)

2 MR. BARNETTE: Mr. Gibson, give him your full name.

3 This is Danny --

4 MR. GIBSON: I'm Daniel Gibson.

5 THE COURT: Yes, sir, Mr. Gibson?

6 MR. GIBSON: And Shane victimized us before. This is
7 what's on record, and I don't think that I can add to the --
8 the pain you see, the -- the anguish you hear in the voices of
9 those victims. I think they speak for all of us; we all feel
10 the same thing.

11 We've all lost family heirlooms. In our case, there was
12 no insurance recovery. Everything that we lost, we lost;
13 sentimental value and monetary value is all gone.

14 The last time we were in court, we walked out with some
15 sense of retribution for the damage he's done to our lives and
16 our children's lives. And we ask that you won't take that
17 away from us today. That's all I have to say.

18 THE COURT: Thank you, Mr. Gibson.

19 MR. BARNETTE: Thank you, Your Honor. There's nothing I
20 can add. You've heard from them, so, obviously, we oppose
21 their motion in this situation.

22 THE COURT: Thank you, Solicitor Barnette. Mr. Sowell,
23 please, excuse your being interrupted, but it was felt that
24 you may want to respond to some of these remarks.

25 MR. SOWELL: Thank you, Your Honor. Your Honor, in

1 response to Mister -- I apologize, this gentleman
2 (indicating). I'm sorry.

3 MR. MOSSBURG: Mossburg.

4 MR. BARNETTE: Mossburg.

5 MR. SOWELL: Thanks. You asked why he hadn't
6 apologized. I guess that was my fault. He has previously
7 written out an apology to you and to the crowd if any of you
8 want to look at that a few minutes -

9 MR. MOSSBURG: Unless it's got where my stuff is, I
10 really don't care. You tell me where my stuff is, and I'll
11 listen to you.

12 MR. SOWELL: Well, I guess I'll go to the next topic.
13 There is a certain jeweler here in town, you all have seen
14 their advertisements on television, he would take jewelry to
15 her. Ten (10) different times he took her jewelry and she
16 bought it every time.

17 And no jewelry is going to believe that a twenty-two year
18 old man had that amount of jewelry. I personally went to the
19 sheriff's department and offered that.

20 I know that he's done wrong. At least let him do this
21 for you, let him testify against the jeweler who bought all
22 this -- your properties. There's no way possible that a
23 jeweler, on ten different times, buy jewelry from a twenty-two
24 year old man without knowing it was stolen.

25 She made no effort at all to find out where it came from.

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1 All she wanted was the jewelry. All she did was make sure it
2 was solid gold or solid diamonds and she gave him money, a
3 little bit of money. Most of your money is in that jewelry.

4 MR. MOSSBURG: Where's that money?

5 MR. SOWELL: I need to know. I went to the sheriff's
6 department and I said, "Can Shane testify? Can Shane help you
7 prosecute this jeweler or that jeweler," and I can tell you
8 who is when we get off the record, who that jeweler is, and
9 she's got all your property.

10 And she only paid a piddling for it. And she knew it was
11 stolen. And fifty thousand dollars (\$50,000) a piece of lost
12 jewelry, I'm not sure what the total amount of it, but you all
13 lost substantial amounts of jewelry, every bit of your jewelry
14 went to that one jeweler store.

15 MR. MOSSBURG: We didn't lose it; it was taken.

16 MR. SOWELL: 'm not trying to minimize your loss. I'm
17 just trying to tell you that he did try -- he try to get the
18 sheriff's department to prosecute and go down there with a
19 warrant you go through the inventory and find out what is
20 there.

21 If you had just been advised, by the sheriff's
22 department, "Let's go down here, I've got a warrant. I want
23 you to look through the jewelry and see what is yours," you
24 would have your jewelry back.

25 He should have never stole it. I understand that. I'm

1 not minimizing what he did. I'm just telling you that -- that
2 he did try to help you return -- get your property back. And
3 -- and he can still do it.

4 If you all want to bring a civil action against that
5 jeweler, he can testify for you and there's no way possible
6 she can deny knowing it was stolen. I'm not trying, you know,
7 to ---

8 MR. GIBSON: Then, why were they selling it at a service
9 station, then, if they were taking it to a jeweler?

10 MS. SMUTZER: We have witnesses.

11 MR. GIBSON: How do you explain that? We have witnesses.

12 MS. SMUTZER: We have witnesses.

13 MR. BARNETTE: Your Honor, at this point, I think --

14 THE COURT: I'm going to stop it. Mr. Sowell, address
15 the Court.

16 MR. SOWELL: Yes, sir. Your Honor, his sentence is
17 stiffer than most harden criminals get for burglary.

18 I understand why he got it. And I understand why Your
19 Honor felt you needed to do that. We're here asking you to --
20 to reconsider your thoughts that day and just think of what he
21 will have left.

22 If he gets a strong sentence, you know, he can live with
23 that. But in thirty-five (35) years, there will be nothing
24 left. He will be fifty-seven (57) years old and he'll be
25 leaving prison a hardened criminal for thirty years (30) or

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1 thirty-two (32) years. And he'll -- he'll have nothing left.

2 This thirty-five (35) year sentence, it will destroy any
3 chance of rehabilitation he would have had because he's going
4 to be in a situation where has nothing left, nothing to live
5 for.

6 I'm not saying in thirty-five (35) years he's going to go
7 out on a crime spree. I'm saying in thirty-five (35) years
8 what could have been a rehabilitated young man is going to be
9 old hardened prisoner.

10 And I would like for him to read to you, not to them but
11 to you, his statement he prepared to give to them.

12 **THE DEFENDANT:** I am Michael Johnson and I'd like to
13 read this to Your Honor. "Your Honor, I'd like to take this
14 opportunity to thank the Court for allowing me to speak this
15 morning.

16 "After a year of time spent considering the severity of
17 my action, I'd like to make a statement to the families. Mr.
18 Mossburg, Mr. Smutzer, and Ms. Miller and Mr. Gibson, I am
19 truly sorry for the pain and agony that I have caused while
20 under the influence of drugs to your individual families.

21 "And I personally deeply ask for your forgiveness for
22 this tremendous mistake that I have made. Please, forgive me.

23 "Your Honor, in the interest of justice, I look to you to
24 see me as a truly repentant man that is truly sorry for my
25 actions. And I would like to ask the families and the Court

1 for a change in the sentencing in my case. And, again, I
2 would like to thank the Court for allowing me to appear."

3 THE COURT: Thank you, sir.

4 MR. SOWELL: And his mother would like to address the
5 Court and she is here.

6 THE COURT: Say your name, please.

7 MS. DARNEL: Your Honor, my name is Pinky DARNEL
8 (phonetic) and I am the mother of Shane, Michael Shane
9 Johnson. And, if it's okay with you, could I address him as
10 Shane rather than Michael because that's -

11 THE COURT: Certainly. I believe he's known as Shane,
12 is he not?

13 MS. DARNEL: Yes, sir, he is. But his first name is
14 Michael. I just want to say that I had a visit on the last
15 hearing, what was it, Wednesday, on Wednesday, and the very
16 first -- and he only had us down for a visit that night to
17 discuss what happened in Court.

18 And the very first words out of his mouth to me is,
19 "Momma, they never let me talk to the victims." And, if
20 you'll go back and look, he was never asked, during that court
21 session, if he had anything to say because, at that time, he
22 did have something to say, but he wasn't asked if he had
23 anything.

24 But I want to go on and please, apologize. I apologize
25 for having this written. You get up here and you've got a lot

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1 of things going on.

2 I want to just -- I'll -- I'll do it as brief as I can.
3 My husband and I are Christians. And I know my husband and I
4 aren't on trial, but I -- I just want to say a couple of
5 things.

6 My husband and I are Christians. We've worked hard all
7 of our lives. We've raised both of our children, Shane and
8 Samantha, in a good stable home in a loving environment.

9 In the process, and somewhere along the way, Shane has
10 become strongly misguided to say the absolute least. Shane is
11 one of a trio that carries the burden of all.

12 Approximately ten (10) to fourteen (14) years ago, while
13 I was in the midst of football, basketball, baseball practices
14 -- I attended every practice, every game.

15 I was team mom most of the time. I took care of the
16 trophies. I took care of the tee shirts. I carried snacks,
17 summer church camp trips, family vacations.

18 If anyone had told me back then, that I would be standing
19 before you today, begging for mercy on my son's life and, in
20 front of these people, begging them to also have mercy for my
21 son's life, I would have called them a liar.

22 "Not my son, huh-uh, not my family. We don't do things
23 like that. No, we taught our kids better." Possibly and
24 probably all of you feel like that today.

25 These families who have had their homes broken into, they

1 are truly, truly the victims here today. And to think that my
2 son, my son, my child, had something to do with their
3 victimizing is nauseating to me. It really is.

4 I lie awake at night. I get up and I pray for these
5 people. I do. I really do. I pray for all of them. I pray
6 for him. It's -- it's terrible. I've been broken in two.

7 Your Honor, we can't reverse what happened. I can only
8 ask forgiveness. As Jesus stated in John 8:7, "He who is
9 without sin cast the first stone."

10 Shane's sin was not just sinful, it was -- also broke
11 civil law, laws that were created that we all must live by.
12 Shane broke -- Shane sinned and he broke civil laws. That's
13 wrong. That's wrong. That is fearful.

14 I understand their fear; I do. But, with that being
15 said, he took things from these people's home. He carelessly
16 took them. They were taken, whoever took them, and without
17 doubt, he most certainly should be punished; absolutely should
18 be.

19 These people deserve restitution. He should be -- I'll
20 -- I'll get to that. My only plea to this family, all of them
21 today, my only plea -- and to you -- and I say this with the
22 utmost respect is that there were things taken. There were
23 memories taken. There was no one's life.

24 My eternal request, from a mother's heart, and my very
25 sincerest desire, is that things also be taken from my son,

1 but not his very life.

2 Your Honor, not his life or his reason to live. I
3 honestly feel that incarcerating him, in a maximum security
4 prison with murderers, rapists, and other hardened criminals,
5 is unfair only for the fact he's never been a violent person.

6 That's not righting the wrong. That's not wiping the
7 slate clean. I'm not trying to minimize any of it. I'm --
8 I'm not.

9 But that will only guarantee he'll have no opportunity to
10 repay the victims for the items that were not recovered. If
11 he is sentenced, to a time in prison, and then, sus -- the --
12 the ankle monitoring systems where you can -- you can tell 24-
13 hours a day where he is, where he can work and pay, if it
14 takes him twenty (20) years to pay these people restitution
15 for the material things.

16 I realize that memories can't be -- can't be taken away,
17 but you could be paid for the material things. You just said,
18 Ms. Smutzer, that you had only gotten five thousand dollars
19 (\$5,000) from your insurance company.

20 Shane is responsible for the rest of it. I know that.
21 He's taken that himself that he could pay you back that if
22 he's allowed to do that.

23 He -- he could do that. If he's ordered by the Court to
24 do that, he would have to do that.

25 That, Your Honor, would give him a chance to decide if he

1 is truly a person capable of being rehabilitated or not. He
2 has no way to prove, at twenty-one (21) years old -- he was
3 actually put in jail prior to twenty-one (21).

4 How can anyone sit here and say that he's incapable of
5 being rehabilitated. He is right, Shane has been in trouble
6 ever since he was seventeen (17), and the law said I had
7 nothing to do, couldn't do anything about it.

8 Where was I? I was talking with the police department.
9 I was trying to help. He had this girl come along and sweep
10 him off his feet and tell him that she's going to -- got it
11 all under control. She had two children and was divorced.

12 Shane doesn't have but one child. She doesn't have, as
13 Ms. Smutzer, was a little off on that. Shane has one child.
14 He has one child.

15 If he broke the law, if you gave him that chance, to
16 decide if he was incarcerated -- if he was -- I'm sorry. I
17 apologize. If he is rehabilitable, if that's the right word,
18 or not, and he got four inches out of his boundary, which is
19 work and home -- I will let him live in my home.

20 My husband and I and my family will let him live back
21 with us. He wasn't living with us at the time. They had --
22 he had moved out with the girl.

23 We'll let him move back with us. We'll pay for the ankle
24 monitor and to get it set up. We'll make sure -- I'll make
25 sure he gets back and forth to work. I'll make sure the

1 restitution is paid.

2 If he gets out of line, I'll be the first one to say,
3 "You're going back to jail," because I don't put up with that.
4 He'll -- he'll go back to jail.

5 At that time, you can say, "Yeah, you're really not a
6 rehabilitable person," but to just -- let -- let me just
7 address the one at one time.

8 I am sorry for what - I am sorry for what my son has
9 done. I'm a mother that loves her son. I believe in justice
10 for the families. I believe in him and I believe in him on
11 the inside.

12 And, Judge Saunders, I ask that you give my son a chance.
13 And, please, do not throw away the key on his life until he
14 proves that he is truly not rehabilitable person. Thank you.

15 **THE COURT:** Thank you. Mr. Sowell?

16 **MR. SOWELL:** That's all, Your Honor.

17 (Brief pause while Court fills out paperwork.)

18 **THE COURT:** The Court will amend indictment 2007-GS-42-
19 5691, grand larceny in an amount greater than one thousand
20 dollars (\$1,000). In that case, Mr. Johnson is confined to
21 the State Department of Corrections for a term of five years
22 concurrent with 2007-5689.

23 Now, that leaves you, Mr. Johnson, with two fifteen (15)
24 year consecutive sentences, both of which are violent and most
25 serious. If you come back home, after thirty (30) years, and

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you commit a serious or violent crime, of which you are
convicted, you will go back to prison and you will stay there
for the rest of your life. Is that clear?

THE DEFENDANT: Yes, Your Honor.

THE COURT: These proceedings are closed.


(Whereupon, the proceeding concluded at 3:58 p.m.)

REPORTER'S CERTIFICATE

I, the undersigned **PAMELA FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 33, were transcribed by me and represent a complete and accurate transcription of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

July 15, 2008


Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit