

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Oconee County
Clifton Newman, Circuit Court Judge

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S.C. Supreme Court

RICKY DEAN DUNCAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-213472

APPENDIX

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INDEX

INDEX	i
GUILTY PLEA TRANSCRIPT DATED JULY 25, 2011	1
APPLICATION FOR POST-CONVICTION RELIEF	64
RETURN	72
MOTION TO AMEND POST-CONVICTION RELIEF APPLICATION	79
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED OCTOBER 1, 2012	82
COURT'S EXHIBIT #1 (DEPARTMENT OF MENTAL HEALTH EVALUATION OF DEFENDANT)	126
ORDER OF DISMISSAL	138
INDICTMENTS AND SENTENCING SHEETS	147

1 State of South Carolina In the Court of General Session

2 County of Oconee

Indictments Nos:

2010-GS-37-1016

3

2010-GS-37-1017

4

5 State of South
6 Carolina

)

)

) Transcript of Record

6 Plaintiff,

)

) Trial/Guilty Plea/

7 -vs-

)

) Sentence

8 Ricky Dean Duncan,

)

9 Defendant.

)

)

10

July 25, 2011

11

Walhalla, South Carolina

12

13 B E F O R E:

14 The Honorable Alexander S. Macaulay, Judge; and a
15 Jury.

16

17

18

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

19

David Wagner, Esq.

20

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Circuit Court Reporter

25

INDEX

1			
2			
3	WITNESSES		PAGE
4			
5	No witnesses were called.		
6			
7			
8	Jury Voir Dire/Selection		13
9	Preliminary Instructions to the Jury by Court		34
10	Guilty Plea		37
11	Statement of Facts by Mr. Wagner		49
12	Sentence of the Court		61
13	Certificate of Court Reporter		62
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

		EXHIBITS	
NO.	DESCRIPTION		ID. / EV.
	State's Exhibit 1, CD of 9-1-1 call		8
	State's Exhibit 2-A, photograph		8
	State's Exhibit 2-B, photograph		8
	State's Exhibit 2-C, photograph		9
	State's Exhibit 2-D, photograph		9
	State's Exhibit 2-E, photograph		9
	State's Exhibit 2-F, photograph		9
	State's Exhibit 2-G, photograph		9
	State's Exhibit 2-H, photograph		9
	State's Exhibit 2-I, photograph		9
	State's Exhibit 2-J, photograph		9
	State's Exhibit 2-K, photograph		9
	State's Exhibit 2-L, photograph		9
	State's Exhibit 2-M, photograph		9
	State's Exhibit 2-N, photograph		9
	State's Exhibit 2-O, photograph		10
	Court's Exhibit 1, Department of Mental Health evaluation of Defendant		55

1 ** Start of Requested Certified Transcript of Record **

2 (Whereupon, the trial of the State of South
3 Carolina v. Ricky Dean Duncan commenced, with all
4 parties being present except the Defendant, at
5 approximately 11:23 a.m., without the presence of
6 the jury panel.)

7 MR. DAY: We're ready, I think. He wants, he
8 wishes to address the Court, Your Honor.

9 THE COURT: Have you checked on the...

10 MR. WAGNER: Have we got a battery for the belt,
11 or...

12 THE SHERIFF'S DEPUTY: They sent it off. I called
13 the jail. It's their belt. They sent it off.

14 MR. WAGNER: So, we don't have a belt?
15 We don't have a belt, Judge, I'm sorry.

16 THE SHERIFF'S DEPUTY: For some reason or other it
17 had a short in it and it would go off, so they sent it
18 back off to be repaired and didn't get it back.

19 THE COURT: Let's see. All right. Yes, sir.

20 MR. DAY: For the Court's edification, before he
21 gets in here -- this is why I have Mr. Denny with me --
22 he's making threats against me now.

23 (Defendant enters courtroom at approximately 11:25
24 a.m.)

25 THE COURT: All right. The first case we will be

1 dealing with today is state versus Ricky Dean Duncan.

2 Are you Ricky Dean Duncan?

3 THE DEFENDANT: Yes, I am, Your Honor.

4 THE COURT: And the State is represented by

5 Mr. Wagner and the Defendant is represented by Mr. Day

6 and Mr. Denny.

7 Mr. Duncan, you are, under Indictment

8 2010-GS-37-1016, charged with attempted burglary in the

9 first degree; and in Indictment Number 2010-GS-37-1017,

10 threatening the life or person of a public employee or

11 their family.

12 Do you understand these indictments?

13 THE DEFENDANT: As in one felony and one

14 misdemeanor?

15 THE COURT: So, you do understand what --

16 THE DEFENDANT: Yes, I do, Your Honor.

17 THE COURT: You do understand the seriousness of

18 these charges?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Now, I understand that you want --

21 Well, let me ask Mr. Day: Have you discussed with

22 Mr. Duncan these charges?

23 MR. DAY: Yes, Your Honor.

24 THE COURT: Are you ready to go forward with the

25 trial?

1 MR. DAY: I am. Except that, Your Honor, one thin
2 has changed this morning. I was talking to Mr. Duncan.
3 He has begun to threaten me now, personally, and I take
4 that pretty seriously.

5 THE COURT: All right, Mr. Duncan. What do you
6 have to say about that?

7 THE DEFENDANT: I haven't been threatening him. H
8 come over there about half-shot last night at the jail.
9 I had to knock on the wood to get him up. He's only
10 been down there two times in the whole 13 months. I've
11 been trying to get him in front of you for 13 solid
12 months to get, get me another attorney. Because he tol
13 me lie after lie after lie. I said, Where is my
14 discovery, Where is my discovery?

15 I got a right to my discovery. I've been in
16 trials, Your Honor, I know what they're about. And I
17 have rights just like anybody else.

18 THE COURT: Well, one of those rights, of course,
19 is that you, to cooperate with your attorney in order
20 for him to represent you.

21 THE DEFENDANT: He hasn't cooperated with me. I
22 cooperated with him. I've given him every opportunity
23 to -- I'm the one that's --

24 THE COURT: What do you say about that?

25 And, by the way, on the discovery, has the State

1 provided the Defendant with discovery?

2 MR. WAGNER: Yes, sir, Your Honor, we have.

3 THE COURT: All right. Is that correct, Mr. Day?

4 MR. DAY: That's correct, Your Honor. And I've
5 given copies of that to Mr. Duncan.

6 THE DEFENDANT: Your Honor?

7 THE COURT: Yes, sir.

8 THE DEFENDANT: I have not received nothing but my
9 police reports and the written police report statements
10 That's it. I got no fingerprints. I got no videos --
11 the car, we was right in front of the car when all this
12 happened. I got no video, no audio. He had audio on
13 him; I don't have that. I don't have pictures of the
14 house they say they got. I don't have nothing. I
15 haven't seen nothing.

16 THE COURT: Just a moment, if you don't mind. The
17 lady has to take down what we are saying, so only one
18 person speaks at a time.

19 All right, Mr. Wagner. Are there any other
20 exculpatory or even inculpatory documents or videos, or
21 anything material that you intend to rely on?

22 MR. WAGNER: No, sir, Your Honor. Officer McMahan
23 it was his car, he is here in court today, too. It was
24 his car. His car is not equipped with any video, and h
25 was not making any audio recording of what transpired.

1 So what he is talking about here doesn't exist and never
2 has existed. There is a 9-1-1 call and a few pictures
3 of a house, but that's all.

4 THE COURT: Have they been furnished to the
5 Defendant?

6 MR. WAGNER: Yes, sir.

7 THE COURT: Is that correct, Mr. Day?

8 MR. DAY: That's correct, Your Honor; and I've
9 shown him copies of pictures that I have.

10 THE COURT: How about the 9-1-1 call?

11 MR. DAY: I have it on a CD, and I'm not allowed to
12 give that to him, needless to say, at the jail. We can
13 listen to it at --

14 THE COURT: Can you play it for him here in the
15 courthouse?

16 MR. DAY: I think I could, Your Honor, yes.

17 THE COURT: Do you have it here in the courtroom?

18 MR. DAY: Not right here, Your Honor. If you would
19 like for me to hand it to the court reporter, we'll go
20 ahead and mark it.

21 THE COURT: Let's do that.

22 Mark it as a Court's exhibit.

23 Well, I'll tell you what. No, excuse me. Madam
24 Court Reporter, mark it as State's Exhibit 1 for
25 identification.

1 (Marked for identification was State's Exhibit 1,
2 CD of 9-1-1 call.)

3 THE COURT: You had something to say, Mr. Duncan?

4 THE DEFENDANT: Your Honor, how can an attorney
5 stand up here and lie to you like that? Saying that
6 he's already been through this with me, when it's a
7 black-faced lie?

8 THE COURT: Sir, sir, one of the things I have to
9 do is establish credibility. And he just admitted that
10 no, you have not seen nor heard the 9-1-1 tape because
11 he couldn't play it in the Detention Center.

12 THE DEFENDANT: I'm talking about the pictures,
13 Your Honor.

14 THE COURT: Well, we'll get those out, too. If
15 you've got to see them again, that will be fine, too.

16 THE DEFENDANT: I would like to see them. I ain't
17 never seen them at all.

18 THE COURT: Well, that's just fine. We'll get you
19 to see them this time.

20 Have you got the photographs?

21 MR. WAGNER: Yes, Your Honor.

22 THE COURT: Have those marked, too.

23 (Marked for identification was State's Exhibit 2-A
24 photograph.)

25 (Marked for identification was State's Exhibit 2-B

1 photograph.)
2 (Marked for identification was State's Exhibit 2-C
3 photograph.)
4 (Marked for identification was State's Exhibit 2-D
5 photograph.)
6 (Marked for identification was State's Exhibit 2-E
7 photograph.)
8 (Marked for identification was State's Exhibit 2-F
9 photograph.)
10 (Marked for identification was State's Exhibit 2-G
11 photograph.)
12 (Marked for identification was State's Exhibit 2-H
13 photograph.)
14 (Marked for identification was State's Exhibit 2-I
15 photograph.)
16 (Marked for identification was State's Exhibit 2-J
17 photograph.)
18 (Marked for identification was State's Exhibit 2-K
19 photograph.)
20 (Marked for identification was State's Exhibit 2-L
21 photograph.)
22 (Marked for identification was State's Exhibit 2-M
23 photograph.)
24 (Marked for identification was State's Exhibit 2-N
25 photograph.)

1 (Marked for identification was State's Exhibit 2-0
2 photograph.)

3 (Whereupon, the 9-1-1 call was played for the
4 Defendant.)

5 THE COURT: All right, Mr. Wagner, is that the
6 video, or the tape of the -- or the recording, I guess,
7 of the 9-1-1 call?

8 MR. WAGNER: Yes, Your Honor, it is.

9 THE COURT: And, as far as you know, Mr. Day, is
10 that the one that you received?

11 MR. DAY: Yes, sir.

12 THE COURT: Very good. All right. Anything else?
13 How about the photographs? Have they been marked?

14 MR. WAGNER: Yes, sir, Your Honor, they are right
15 here. They have been marked State's Exhibit 2-A through
16 -0.

17 THE COURT: Very good. These are all for
18 identification. All right. Let Mr. Duncan look at
19 them.

20 (Whereupon, Defendant looks at State's Exhibits for
21 identification 2-A through 2-0.)

22 THE DEFENDANT: Now that's not broken in, that's
23 just the ---

24 THE COURT: We'll go off the record until you are
25 ready to proceed, Mr. Day.

1 (Discussion off the record.)

2 THE COURT: If y'all are gonna be that vocal, have
3 you got an interview room or something in the holding?

4 THE SHERIFF'S DEPUTY: Yeah. We can put them in
5 there.

6 THE COURT: Let's do that.

7 MR. DAY: We'll step right back there.

8 THE COURT: Yeah. Let's do that. I don't...

9 Mr. Day, let me ask you, have you got copies of
10 those photographs?

11 MR. DAY: Yes, sir.

12 THE COURT: Do you mind leaving the ones that have
13 been marked in court? In other words, I don't want all
14 of them -- you just have the --

15 MR. DAY: All I have is -- this is the only thing
16 I've got.

17 THE COURT: All right. You are responsible for
18 them.

19 MR. DAY: I will take charge of them, Your Honor.

20 THE COURT: Very good. You are right about that.

21 (Mr. Day and Defendant go to holding cell to talk.

22 THE COURT: We're going to break for lunch and com
23 back at 2:00, 2:30?

24 MR. WAGNER: 2:15 would be good, Your Honor.

25 (A luncheon recess occurred.)

1 AFTERNOON PROCEEDINGS

2 (approximately 2:28 p.m.)

3 (Whereupon, the following occurred in the presence
4 of the jury panel:)

5 Jury Voir Dire and Selection:

6 THE COURT: Just keep your seats, please.

7 Is the State ready to proceed?

8 MR. WAGNER: Yes, sir.

9 THE COURT: Is the Defense ready to proceed?

10 MR. DAY: Yes, sir, Your Honor.

11 THE COURT: Ladies and gentlemen of the jury, this
12 is a term of General Sessions Court; as I said earlier,
13 it's sometimes called criminal court. Its purpose is to
14 resolve questions of an alleged criminal conduct between
15 the State and the Defendant in a fashion which will
16 ensure that justice under the law is accomplished.17 The trial of a case begins with the selection of a
18 jury. Both the State and the Defendant are entitled to
19 jurors who approach a case with an open mind. A trial
20 jury must be free as humanly possible from, bias,
21 prejudice, or sympathy for either side and free from any
22 preconceived ideas of the facts of the case or on the
23 law of the case.24 Therefore, certain questions will be asked of you,
25 the petit jury panel. The questions which will be asked

1 are designed to assure each side a fair and impartial
2 jury. I might note further that if any person should
3 talk to you or attempt to talk to you about any case
4 that might be pending in this term of court, you should
5 report them immediately to the bailiff or the Clerk of
6 Court so I might take immediate action. It will be your
7 solemn duty to do this in order that no one should
8 interfere with your service as jurors in the General
9 Sessions for Oconee County this week.

10 Can everybody hear me? If you cannot hear me,
11 raise your hand. That's an interesting question in
12 itself. If you couldn't hear me, but does anybody see
13 my lips moving and don't understand what I'm saying? If
14 you can't, raise your hand and I'll try to repeat it or
15 speak more distinctly.

16 Mr. Solicitor, you may call your first case.

17 MR. WAGNER: Your Honor, the State would call the
18 State versus Ricky Dean Duncan, 2010-1016, the charge is
19 attempted burglary, first degree; and 2010-1017 for
20 threatening the life of a public official or public
21 employee.

22 THE COURT: Thank you.

23 Now, ladies and gentlemen of the jury panel, please
24 give me your attention. We are about to begin the trial
25 in the case of the State of South Carolina versus Ricky

1 Dean Duncan, who is charged in Indictments
2 2010-GS-37-1016, attempted burglary in the first degree
3 and 2010-GS-37-1017, threatening the life, person, or
4 family of a public employee.

5 Now, the State will be represented by Mr. Wagner.

6 Mr. Wagner, if you would please stand and introduc
7 yourself and anyone who will be assisting you in the
8 trial of this case.

9 MR. WAGNER: I'm David Wagner. I'm one of the
10 prosecutors in the Tenth Circuit Solicitor's Office her
11 in Oconee County. Seated here with me is David McMahan
12 he is one of the officers on this case.

13 THE COURT: Very good, thank you.

14 The Defendant, Mr. Ricky Dean Duncan, is
15 represented by Mr. Day and Mr. Denny.

16 Mr. Day and Mr. Denny, if you would please stand
17 and introduce yourselves, as well as your client.

18 MR. DAY: I'm Danny Day with the Public Defender's
19 Office in here in Oconee County, representing Mr. Ricky
20 Dean Duncan here.

21 (The Defendant Stands and faces the jury panel.)

22 MR. DENNY: My name is Keith Denny. I'm a private
23 attorney here in Walhalla with the firm of Norton,
24 Ballenger, and Denny.

25 THE COURT: Very good, thank you, sir.

1 Now, is any member of the jury panel related by
2 blood or marriage, now or formerly, or close personal
3 friend or business associate of the Defendant,
4 Mr. Richard Dean Duncan? If so, please stand. Any
5 member of the jury panel related by blood or marriage,
6 now or formerly, or close personal friend or business
7 associate of the Defendant, Ricky Dean Duncan, if you
8 would please stand at this time.

9 (There was no response.)

10 THE COURT: Was any member of the jury panel a
11 member of the grand jury that found and returned the
12 indictment in this case -- indictments in this case? I
13 so, please stand.

14 (There was no response.)

15 THE COURT: Now I'm going to be naming some
16 potential witnesses in this case. Now, when I say
17 potential witness --

18 I'm sorry? Do you have some voir dire?

19 Oh, you have some witnesses?

20 MR. DAY: I'm sorry, I just have a witness
21 (handing).

22 THE COURT: As I said, I'm going to be calling out
23 the names of certain -- of some potential witnesses. A
24 potential witness is a witness who may be called but
25 does not have to be called in the trial of the case.

1 If the witnesses are in the courtroom as their
2 names are called, if they would please stand and face
3 the jury.

4 I do that because in these days and times we might
5 not know somebody by their name, but we will recognize
6 them if we see them. So, if they are in the courtroom,
7 any of the potential witnesses, if they would please
8 stand and look upon the jury.

9 Now, the potential witnesses are as follows: Davi
10 McMahan, Oconee County Sheriff's Office.

11 (Potential witness David McMahan stood and faced
12 the jury panel.)

13 THE COURT: Thank you, sir.

14 Brandon Meadows, Oconee County Sheriff's Office.

15 Theresa Fortson. Jeffrey Fortson. Rickey Fortson
16 James Duncan. Shirley Moss. And Beverly Whitfield,
17 Oconee County Clerk of Court.

18 (Ms. Whitfield stood.)

19 THE COURT: Very good. Thank you, ma'am.

20 I'm going through those names one more time, and b
21 sure to listen carefully because I'll ask you to stand
22 if you know any of the named individuals.

23 David McMahan, Brandon Meadows, Theresa Fortson,
24 Jeffrey Fortson, Rickey Fortson, James Duncan, Shirley
25 Moss; Beverly Whitfield, Oconee County Clerk of Court.

1 Now, is any member of the jury panel related by
2 blood or marriage, now or formerly, or close personal
3 friend or business associate, if you would please stand

4 Yes, ma'am. Your name, please?

5 PROSPECTIVE JUROR HUGHES: Ann Hughes. I know the
6 Deputy and Beverly.

7 THE COURT: All right. Would that in any way
8 interfere with your ability --

9 PROSPECTIVE JUROR HUGHES: No, it would not.

10 THE COURT: -- to give both the State and the
11 Defendant a fair and impartial trial in this case?

12 Thank you, ma'am.

13 PROSPECTIVE JUROR HUGHES: It would not.

14 THE COURT: Thank you, ma'am.

15 Anyone else?

16 (There was no response.)

17 THE COURT: Has any member of the jury panel forme
18 or expressed an opinion about this case or either of
19 these cases? If so, please stand.

20 (There was no response.)

21 THE COURT: Is any member of the panel aware of an
22 interest, bias, or prejudice towards either the
23 Defendant or the State of South Carolina? If so, pleas
24 stand.

25 (There was no response.)

1 THE COURT: Does any member of the panel know of
2 any reason why he or she could not give both the
3 Defendant and the State of South Carolina a fair and
4 impartial trial? If so, please stand.

5 (There was no response.)

6 THE COURT: Any further questions from the -- or
7 additional questions from the State?

8 MR. WAGNER: No, sir.

9 THE COURT: From the Defense?

10 MR. DAY: No, Your Honor.

11 THE COURT: All right. Ladies and gentlemen of the
12 jury panel, the way we select a jury in General Session
13 is a little bit different from that in civil court. In
14 General Sessions Court the Clerk has prepared a list of
15 jurors. These will be your names that have been
16 randomly selected by a computer. In the old days we
17 used to use a drum and that drum would have capsules,
18 and each capsule would contain one of the jurors' names.
19 We would have to have either a person who was legally
20 blind or a child who could not read or write reach into
21 the drum and pull out a capsule and that's how we
22 selected a jury.

23 Now we have a computer and the computer does a
24 random list of names. And from that list, each of the
25 sides will strike certain jurors in the process. And i

1 this case the State has five strikes, I believe; and the
2 Defense --

3 Is that correct, Mr. Day?

4 -- has ten.

5 MR. DAY: That's correct, Your Honor.

6 THE COURT: All right. And then the process is
7 that you will come, as your name is called, if you will
8 bring whatever you have with you by way of personal
9 effects to the front of the courtroom where the bailiff
10 will be standing, and turn back and face towards the
11 back of the courtroom.

12 The State will go first. The State will say either
13 "present the juror" or "excuse the juror". Then, if the
14 State has said "present the juror", then the Defense
15 will go, and the Defense will either say "swear the
16 juror" or "excuse the juror".

17 So, with that I'm gonna ask the Clerk of Court to
18 give us a jury.

19 (Whereupon, due to technical difficulties, the
20 clerk of court called the following jury names from
21 the computer. There was no strike sheet.)

22 (Discussion off the record by the clerk of court to
23 jury panel, after which the following occurred:)

24 THE CLERK: As I call your name and your number, if
25 you would please come forward. I need for you to come

1 stand right here, turn around and face the jury panel,
2 and stay here until we tell you what to do.

3 The first one is number 3, Megan Addis.

4 (Whereupon, a White female approaches.)

5 THE CLERK: What say the State?

6 MR. WAGNER: Present the juror.

7 THE CLERK: What say the Defense?

8 MR. DAY: Excuse Ms. Addis in this case, please.

9 THE CLERK: Okay. You are excused for this case.
10 Please go back up there and have a seat.

11 The next one is Jimmie Boy.

12 THE COURT: She's number what?

13 THE CLERK: Oh, I'm sorry. She's number 18.

14 (Whereupon, a White female approaches.)

15 THE COURT: Thank you.

16 THE CLERK: What say the State?

17 MR. WAGNER: Present the juror.

18 THE CLERK: What say the Defense?

19 MR. DAY: Excuse Ms. Boy in this case, please.

20 THE CLERK: You are excused from this case. Pleas
21 have a seat in the jury -- out front.

22 The next one is Jacob Brown, Number 21.

23 (Whereupon, a White male approaches.)

24 THE CLERK: What say the State?

25 MR. WAGNER: Please excuse the juror on this case.

1 THE CLERK: You are excused from this case, sir.
2 Number 24, Lindsey Bryant.
3 (Whereupon, a White male approaches.)
4 THE CLERK: What say the State?
5 MR. WAGNER: Please excuse the juror on this case.
6 THE CLERK: You are excused from this case, sir.
7 Number 27, Renee Campbell.
8 (Whereupon, a White female approaches.)
9 What sayeth the State?
10 MR. WAGNER: Present the juror.
11 THE CLERK: What say the Defense?
12 MR. DAY: Please seat Ms. Campbell.
13 THE CLERK: Please have a seat in the jury-box. I
14 you would just go right up here.
15 Number 29, Gaylene Carson.
16 (Whereupon, a White female approaches.)
17 THE CLERK: What say the State?
18 MR. WAGNER: Present the juror.
19 THE CLERK: What say the Defense?
20 MR. DAY: Excuse Ms. Carson in this case, please.
21 THE CLERK: You're excused from this case, ma'am.
22 Number 32, Robert Clayton.
23 (Whereupon, a White male approaches.)
24 THE CLERK: What say the State?
25 MR. WAGNER: Present the juror.

1 THE CLERK: What say the Defense?

2 MR. DAY: Excuse Dr. Clayton in this case, please.

3 THE CLERK: You're excused from this case, sir.

4 Number 33, Samuel Cleveland.

5 (Whereupon, a Hispanic male approaches.)

6 THE CLERK: What say the State?

7 MR. WAGNER: Present the juror.

8 THE CLERK: What say the Defense?

9 MR. DAY: Excuse Mr. Cleveland in this case.

10 THE CLERK: You are excused from this case, sir.

11 Number 34, Margaret Collins.

12 (Whereupon, a White female approaches.)

13 THE CLERK: What say the State?

14 MR. WAGNER: Present the juror.

15 THE CLERK: What say the Defense?

16 MR. DAY: Please seat Ms. Collins.

17 THE CLERK: Please have a seat in the jury-box.

18 Number 38, Lisa Curry.

19 (Whereupon, a White female approaches.)

20 THE CLERK: What say the State?

21 MR. WAGNER: Present the juror.

22 THE CLERK: What say the Defense?

23 MR. DAY: Excuse Ms. Curry in this case, please.

24 THE CLERK: You're excused from this case, ma'am.

25 Number 42, Daniel Duncan.

1 (Whereupon, a White male approaches.)

2 THE CLERK: What say the State?

3 MR. WAGNER: Present the juror.

4 THE CLERK: What say the Defense?

5 MR. DAY: Please seat Mr. Duncan.

6 THE CLERK: If you would, please, have a seat in
7 the jury-box.

8 The next one is number 49, Cherie Estridge.

9 (Whereupon, a White female approaches.)

10 THE CLERK: What say the State?

11 MR. WAGNER: Present the juror.

12 THE CLERK: What say the Defense?

13 MR. DAY: Excuse Ms. Estridge in this case, please

14 THE CLERK: You have been excused from this case,
15 ma'am.

16 Number 57, Robert Gibson -- I'm sorry. Howard
17 Gibson. I'm looking at it wrong. Howard Gibson.

18 (Whereupon, a White male approaches.)

19 THE CLERK: What say the State?

20 MR. WAGNER: Present the juror.

21 THE CLERK: What say the Defense?

22 MR. DAY: Please seat Mr. Gibson.

23 THE CLERK: Please have a seat in the jury-box.

24 Number 65, Linda Harris.

25 (Whereupon, a Hispanic female approaches.)

1 THE CLERK: What say the State?

2 MR. WAGNER: Please excuse the juror on this case.

3 THE CLERK: You are excused from this case, ma'am.

4 Number 66, Stephen Haslup.

5 (Whereupon, a White male approaches.)

6 THE CLERK: What say the State?

7 MR. WAGNER: Present the juror.

8 THE CLERK: What say the Defense?

9 MR. DAY: Please seat Mr. Haslup.

10 THE CLERK: Please have a seat in the jury-box.

11 Number 78, Daniel Jernigan.

12 (Whereupon, a White male approaches.)

13 THE CLERK: What say the State?

14 MR. WAGNER: Present the juror.

15 THE CLERK: What say the Defense?

16 MR. DAY: Please seat Mr. Jernigan.

17 THE CLERK: Please have a seat in the jury-box.

18 Number 82, Tanesha Jones.

19 (Whereupon, a Black female approaches.)

20 THE CLERK: What say the State?

21 MR. WAGNER: Present the juror.

22 THE CLERK: What say the Defense?

23 MR. DAY: Excuse Ms. Jones in this case, please.

24 THE CLERK: You're excused from this case, ma'am.

25 Number 85, Heather Knickerbocker.

1 (Whereupon, a White female approaches.)

2 THE CLERK: What says the State?

3 MR. WAGNER: Present the juror.

4 THE CLERK: What say the Defense?

5 MR. DAY: Please seat Ms. Knickerbocker.

6 THE CLERK: Please have a seat in the jury-box.

7 Number 90, Ryan Lee.

8 (Whereupon, a White male approaches.)

9 THE CLERK: What say the State?

10 MR. WAGNER: Present the juror.

11 THE CLERK: What say the Defense?

12 MR. DAY: Please seat Mr. Lee.

13 THE CLERK: Please have a seat in the jury-box.

14 Number 91, Sheila Lee.

15 (Whereupon, a White female approaches.)

16 THE CLERK: What say the State?

17 MR. WAGNER: Present the juror.

18 THE CLERK: What say the Defense?

19 MR. DAY: Please seat Ms. Lee.

20 THE CLERK: Please have a seat in the jury-box.

21 Number 102, James Moore.

22 (Whereupon, a White male approaches.)

23 THE CLERK: What say the State?

24 MR. WAGNER: Present the juror.

25 THE CLERK: What say the Defense?

1 MR. DAY: Excuse Mr. Moore in this case, please.

2 THE CLERK: You're excused from this case, sir.

3 Number 108, Steven Poston.

4 (Whereupon, a White male approaches.)

5 THE CLERK: What say the State?

6 MR. WAGNER: Present the juror.

7 THE CLERK: What say the Defense?

8 MR. DAY: Please seat Mr. Poston.

9 THE CLERK: Please have a seat in the jury-box.

10 Number 111, April Reid.

11 (Whereupon, a White female approaches.)

12 THE CLERK: What say the State?

13 MR. WAGNER: Present the juror.

14 THE CLERK: What say the Defense?

15 MR. DAY: Please seat Ms. Reid.

16 THE CLERK: Please have a seat in the jury-box.

17 Number 113, Margaret Roach.

18 (Whereupon, a White female approaches.)

19 THE CLERK: What say the State?

20 MR. WAGNER: Present the juror.

21 THE CLERK: What say the Defense?

22 MR. DAY: Excuse Ms. Roach in this case.

23 THE CLERK: You're excused from this case, ma'am.

24 Number 115, Beverly Robinson.

25 (Whereupon, a Black female approaches.)

1 THE CLERK: What say the State?

2 MR. WAGNER: Present the juror.

3 THE CLERK: What say the Defense for cause?

4 MR. DAY: No challenge.

5 THE CLERK: Okay.

6 Please have a seat in the jury-box.

7 Okay. Our alternate.

8 THE COURT: All right. Two and one on the
9 alternate.

10 THE CLERK: 116, Sandra Rowland.

11 (Whereupon, a White female approaches.)

12 THE CLERK: What say the State?

13 MR. WAGNER: Please excuse the juror on this case.

14 THE CLERK: You are excused from this case.

15 Number 121, Teresa Sims.

16 (Whereupon, a White female approaches.)

17 THE CLERK: What say the State?

18 MR. DENNY: What number was that, again?

19 THE CLERK: It's number 121.

20 MR. WAGNER: Present the juror.

21 THE CLERK: What say the Defense?

22 MR. DAY: Excuse Ms. Sims in this case, please.

23 THE CLERK: You are excused from this case.

24 Number 122, Russell Sloan.

25 (Whereupon, a White male approaches.)

1 THE CLERK: What say the State?

2 MR. WAGNER: Present the juror.

3 THE CLERK: What say the Defense?

4 MR. DAY: Please seat Mr. Sloan.

5 THE CLERK: Please have a seat in the jury-box.

6 THE COURT: Let's do another one, another
7 alternate, please. Two and one.

8 THE CLERK: Sure. Number 127, Linda Smith.

9 (Whereupon, a White female approaches.)

10 THE CLERK: What say the State?

11 MR. WAGNER: Present the juror.

12 THE CLERK: What say the Defense?

13 MR. DAY: Excuse Ms. Smith in this case, please.

14 THE CLERK: You are excused in this case, ma'am.
15 Number 136, Jerrad Ward.

16 (Whereupon, a White male approaches.)

17 THE CLERK: What say the State?

18 MR. WAGNER: Please present the juror.

19 THE CLERK: What say the Defense?

20 MR. DAY: Please seat Mr. Ward.

21 THE CLERK: Please have a seat in the jury-box.

22 THE COURT: Any reason this jury cannot be sworn
23 for the trial of this case from the State?

24 MR. WAGNER: No, sir.

25 THE COURT: From the Defense?

1 MR. DAY: No, Your Honor.

2 THE COURT: Ms. Robinson, I'm gonna ask you to
3 serve as the foreperson of this jury. So, when we come
4 back from the jury room, you will sit in the first seat
5 on the front row. Yes, ma'am.

6 And, Mr. Sloan and Mr. Ward, you will always sit i
7 those two seats. You can swap the seats if you would
8 like, but you will always sit on the last two seats in
9 the back row.

10 All the other seats in the jury-box you can sit
11 anywhere, there are no reserved seats, so you can sit
12 anywhere you want to. But those three, the foreperson
13 and the two alternates, will always sit in the three
14 seats I've just designated.

15 I have got some matters that I need to take up with
16 the attorneys for a few minutes, and so I'm gonna ask
17 you to retire to the jury room. My instructions
18 throughout the trial of this case and any other case
19 that we draw and try this week are gonna be the same.
20 Those instructions are that you are not to undertake th
21 discussion of the case, even among yourselves.

22 The reason for that is you never know what's gonna
23 be the most important part of the case. It might be th
24 opening statements, the first witness, the last witness
25 the closing arguments, or the charge on the law. Until

1 you had the entire case you need to keep an open mind.
2 So, do not discuss the case or even personalities. Talk
3 about anything else you want to, but not anything that
4 might be involved in this case.

5 So, with that I'm gonna ask you to retire to the
6 jury room and I'll call you back in just a few minutes.

7 Everyone else remain seated while the jury retires
8 from the courtroom.

9 (Whereupon, the Jury left the courtroom at
10 approximately 3:19 p.m.)

11 THE COURT: Ladies and gentlemen of the jury panel
12 who were not drawn on the trial of this case, I'm going
13 to excuse you for the balance of the day. In fact, I'm
14 gonna ask that you call back after 6:00 this evening.
15 It's on the letter that you received, there should be a
16 telephone number on that letter. Does everybody have
17 the letter and the telephone number? They used to have
18 it. What is it?

19 THE CLERK: It's 718-1058.

20 THE COURT: All right. Does everybody have the
21 telephone number? 718-1058.

22 Now, that is an answering machine and there will be
23 a message put on the answering machine after 6:00 this
24 evening. The reason that is done is so that it would
25 not be necessary for you to be here every day unless it

1 is necessary, and, of course, that is if there's a case
2 that needs to have a jury drawn, and then, of course,
3 it's absolutely essential that you do come in. But the
4 Clerk of Court has provided this method of you staying
5 in touch without having to be here. So, if you would
6 please call that telephone number, 718-1058, after 6:00
7 and there will be a message on it. It will either tell
8 you to come in tomorrow morning or it will tell you to
9 call back tomorrow afternoon or evening. But whatever
10 the message is, please do it. It's an answering machine
11 and it will be on all night, so if you don't get through
12 the first time, please continue to call until you
13 finally do get through. Unfortunately, if you do not
14 get the message from the answering machine, you will
15 have to be here at 8:30 in the morning to get the
16 message from me, but I think that you would rather get
17 the message from the machine.

18 Is there any question now? Does everybody have the
19 telephone number? If you do not have the telephone
20 number, raise your hand.

21 (There was no response.)

22 THE COURT: All right. And does everybody
23 understand what to do? Call the answering machine at
24 that telephone number after 6:00 and do what the message
25 requests of you to do. Does everybody understand what

1 they are to do? If not, raise your hand.

2 (There was no response.)

3 THE COURT: Very good. With that I'll excuse you
4 for the balance of the day, but I do want to thank you
5 for your patience with the Court, and I look forward to
6 working with you this week.

7 Everyone else remain seated while the jury retires
8 from the courtroom.

9 (Whereupon, the jury panel was excused at
10 approximately 3:23 p.m.)

11 THE COURT: Could I see the attorneys, please?

12 (Discussion at sidebar.)

13 THE COURT: All right. Is there anything from the
14 State before I ask the jury to join us?

15 MR. WAGNER: No, sir.

16 THE COURT: From the Defense?

17 MR. DAY: I'm sorry, Your Honor?

18 THE COURT: Anything from the State -- Defense?

19 MR. DAY: No, sir.

20 THE COURT: Very good. As I mentioned to the
21 attorneys, I'm going to excuse this jury until 10:00 in
22 the morning. At that time we'll commence the trial or
23 do whatever is appropriate under the circumstances.

24 But I am going to excuse them until tomorrow
25 morning, and then we'll take care of whatever business

1 we have.

2 All right. Anything from the State?

3 MR. WAGNER: No, Your Honor.

4 THE COURT: From the Defense?

5 MR. DAY: None, Your Honor.

6 THE COURT: All right. Ask the jury to join us,
7 please.

8 (The Jury entered the courtroom at approximately
9 3:26 p.m.)

10 Preliminary Instructions to the Jury by the Court:

11 THE COURT: Madam Forelady, ladies and gentlemen o
12 the jury, before we begin the trial in this case, there
13 are some matters I need to take up with the attorneys.
14 And rather than keep you staying in that jury room whil
15 we do that, I'm going to excuse you until tomorrow
16 morning at 10:00.

17 Well, let me ask you. Is 10:00 all right with you
18 All right. You all know what you've got to do and wher
19 you've got to come from in order to get here. But if 1
20 is all right with you, then I'll ask you to report to
21 the jury room that you've just been in, and then we'll
22 take up the business at that time.

23 Now, I tell jurors that this is the most difficult
24 time of the trial for you because you're going home and
25 somebody is gonna say, Well, what are you doing?

1 And you'll say, Well, I've been drawn on a jury.

2 They'll ask you, What's it about?

3 You'll say, Well, I can't tell you.

4 And then they'll say, Well, why is that?

5 And you'll say, Well, because the Judge said I
6 couldn't talk to you about it.

7 I think that you understand that this is an
8 important case for the State of South Carolina as well
9 as to the Defendant, and it needs to be resolved in a
10 proper fashion. And the thing is, you must make your
11 decisions based on the testimony from this witness
12 stand, from the sworn witnesses as well as any other
13 exhibits and evidence that's introduced in this
14 courtroom. And no one who is not sitting where you're
15 sitting now or will be in that jury room when you retire
16 to deliberate your verdict in this case can help you.
17 They can only interfere with the proper resolution
18 because they haven't heard the first bit of testimony or
19 seen the first bit of evidence. And with that they
20 can't in any way assist you at all.

21 So, therefore, I'm going to suggest -- now, of
22 course if they say, not being able to talk about it,
23 "Well, that's ridiculous", then you tell them that I'll
24 be here at 8:30 in the morning and I'll be glad to
25 explain it to them.

1 But I hope that you have a very good evening and
2 I'll see you in the morning. Thank you very much. I
3 look forward to working with you.

4 Everyone else remain seated while the jury retires
5 from the courtroom.

6 (Whereupon, the Jury left the courtroom at
7 approximately 3:29 p.m.)

8 THE COURT: All right. Is the courtroom clear of
9 all jurors?

10 Very well. Is there anything you would like to
11 take up now, or do you need a few minutes?

12 MR. DAY: No, Your Honor, I think we're ready.

13 THE COURT: Very well.

14 Gentlemen, in looking at the Indictment,
15 2010-GS-37-1017, the indictment is for threatening the
16 life, person, or family of a public employee, Section
17 16-3-1040 (B) and (D).

18 MR. WAGNER: Yes, sir. Your Honor, it was my
19 impression that that would have been covered under the
20 employee and we discussed back in chambers --

21 THE COURT: Well, the unfortunate thing is the --
22 unfortunate just for the state of affairs is Section --
23 there's a separate offense of Section 1040 (A) and (C).
24 Section 16-3-1040 (A) and (C). I didn't realize this.

25 Do you all want to take a few minutes?

1 MR. WAGNER: Yes, sir.

2 THE COURT: Because I want to be sure that the
3 Court and the Defendant understand what the possible
4 sentence could be. All right. So we'll take about five
5 minutes.

6 And again, that's my understanding that they
7 indicted under (B) and (D), not (A) and (C).

8 MR. WAGNER: Yes, sir.

9 THE COURT: All right. We'll stand at ease.

10 (A recess was taken from approximately 3:41 p.m.
11 until approximately 4:25 p.m.)

12 Guilty Plea:

13 THE COURT: All right. Thank you very much. Are
14 we ready to proceed from the State?

15 MR. WAGNER: Yes, sir.

16 THE COURT: All right. Are you Ricky Dean Duncan?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: If you would please, sir, raise your
19 right hand.

20 (Whereupon, the Defendant was duly sworn by the
21 Court.)

22 THE COURT: Solicitor, what are the maximum
23 sentences for attempted burglary, first degree?

24 MR. WAGNER: Your Honor, it's up to life in prison

25 THE COURT: 15 years to life?

1 MR. WAGNER: Yes, sir.

2 THE COURT: And for threatening the life and perso
3 of a public employee or family?

4 MR. WAGNER: 30 days or \$500.

5 THE COURT: Mr. Day, do you represent the
6 Defendant?

7 MR. DAY: I do, Your Honor.

8 THE COURT: Mr. Denny, you are assisting Mr. Day i
9 the representation of the Defendant?

10 MR. DENNY: Yes, Your Honor, I am.

11 THE COURT: All right. Have you explained to the
12 Defendant the charges contained in the Indictment, the
13 possible punishments, and his Constitutional rights to
14 include a trial by jury, Mr. Day?

15 MR. DAY: Yes, sir.

16 THE COURT: In your opinion does the Defendant
17 understand the charges, the punishments, and his rights

18 MR. DAY: Yes, sir.

19 THE COURT: From your investigation of the
20 circumstances and facts in these cases do you feel the
21 State could produce sufficient evidence to convince a
22 jury of the Defendant's guilt beyond a reasonable doubt
23 and if the Defendant was to stand trial, that he would
24 most probably be found guilty?

25 MR. DAY: Yes, sir.

1 THE COURT: Are you aware of any physical,
2 emotional, or mental condition that might affect the
3 Defendant understanding what he's doing today?

4 MR. DAY: Your Honor, he tells me he does take
5 medication, but I've gone over that with him. I believe
6 he understands what's going on. We had discussed it in
7 great detail here today.

8 THE COURT: Has he been ordered to a mental
9 examination to determine his competency to stand trial?

10 MR. DAY: He has, Your Honor.

11 THE COURT: And what was the result, or the
12 finding?

13 MR. DAY: The determination was that he understood
14 the charges against him and could participate in his own
15 defense.

16 THE COURT: All right. Based on the representation
17 of counsel and my personal observation of the Defendant
18 I find the Defendant to be knowledgeable, perceptive,
19 and well in control of his faculties and, therefore,
20 competent to stand trial and enter this plea.

21 Now, Mr. Duncan --

22 Let me ask you something: Have I put him under
23 oath?

24 MR. DAY: Yes, sir.

25 THE COURT: You'll have to excuse me. I've done i

1 so many times, I forget.

2 Before I can accept a guilty plea, Mr. Duncan, I
3 must make certain that your guilty plea is made freely,
4 voluntarily, knowingly and intelligently with the full
5 understanding of the nature of the offenses to which you
6 are pleading guilty and the consequences of your plea.
7 Therefore, I'll be asking you some questions. If you d
8 not understand the questions or the words I use, please
9 advise me and I'll explain them to you.

10 Also, if any time during questioning you need to
11 consult with your attorneys, you may do that, as well.
12 Do you understand this?

13 THE DEFENDANT: Yes.

14 THE COURT: How old are you, sir?

15 THE DEFENDANT: I'm fifty-three.

16 THE COURT: How far have you gone in school?

17 THE DEFENDANT: I think it was -- I got married in
18 the ninth grade.

19 THE COURT: All right. What kind of work do you
20 do?

21 THE DEFENDANT: I used to be a logger with my dad
22 years ago, that's a third-generation logger. But when
23 he died and everything, I left Alaska, quit that, and
24 got hurt and messed up, so I'm not able to do that
25 anymore.

1 THE COURT: But you have logged and other --

2 THE DEFENDANT: Logged, hanged, done carpentry
3 work.

4 THE COURT: All right. Are you married?

5 THE DEFENDANT: Divorced.

6 THE COURT: Do you have any children under
7 eighteen? Eighteen years of age.

8 THE DEFENDANT: No, not anymore.

9 THE COURT: All right. Have you ever been treated
10 for drug or alcohol abuse or mental illness?

11 THE DEFENDANT: Mental illness.

12 THE COURT: All right. And when was that?

13 THE DEFENDANT: That was back in 1978, '79,
14 somewhere around in there.

15 THE COURT: Did you successfully complete the
16 program or the --

17 THE DEFENDANT: Yes, I did.

18 THE COURT: All right. And your attorney tells me
19 that you are taking some medication now. What is that
20 medication?

21 THE DEFENDANT: Cymbalta, blood pressure
22 medication, a mild pain medication -- and what else was
23 it? I think that's it.

24 But, but I'm not supposed to run out of my
25 medication, and I had ran out -- well, I'll tell you

1 that later. But I'd ran out of my medication the day
2 this happened -- I mean, a few days before the incident
3 You're not supposed to go cold turkey on this stuff.
4 It's got a lot of side effects to it, you know, and I,
5 nearly just blacked out if you want to know the truth
6 about it.

7 THE COURT: Well, let me ask you. You are on your
8 medication now?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Now, does that medication in any way
11 affect your ability to understand and appreciate what
12 you are doing today?

13 THE DEFENDANT: No, sir.

14 THE COURT: Are you aware of any physical, mental,
15 or emotional problem that might keep you from
16 understanding what you are doing today?

17 THE DEFENDANT: No, sir.

18 THE COURT: You have heard your attorney tell me
19 that he's explained to you the charges against you, the
20 possible punishments, and your Constitutional rights an
21 that you understand these things. Is that correct?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You do understand that on Indictment
24 2010-GS-37-1016, attempted burglary in the first degree
25 that the maximum sentence would be between 15 and life?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: And on Indictment 2010-GS-37-1017 the
3 actual sentence would be 30 days and \$500?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: If I should sentence you consecutively
6 you could be sentenced to life and 30 days and a fine c
7 \$500. Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Also, burglary in the first degree, an
10 that would be the same as the principal charge, and
11 attempt would be the same as the principal charge,
12 they're also considered serious and violent, most
13 serious and violent. Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: In other words, that would affect your
16 parole eligibility if you are ever convicted of the sam
17 or similar crime in the future. Do you understand that

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And if you are on probation or parole
20 now, do you understand that your probation or parole
21 could be revoked and you could be sentenced to
22 additional time?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now, do you fully understand the natur
25 of the charges against you and the range of possible

1 punishments?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Now, when you plead guilty, Mr. Duncan
4 you give up certain important Constitutional rights.
5 First, you give up your right to remain silent, that is
6 the right to say nothing at all. It's called the right
7 against self-incrimination. You cannot be compelled to
8 offer evidence against yourself or testify against
9 yourself. Do you understand this?

10 THE DEFENDANT: Yes.

11 THE COURT: Second, you give up your right to a
12 jury trial where you would be presumed innocent and all
13 12 members of the jury would have to be convinced of
14 your guilt beyond a reasonable doubt. In fact, in this
15 case we have already drawn a jury. The jury hasn't bee
16 sworn, but we have drawn a jury. So, you would be
17 giving up the right to have that jury determine whether
18 or not you are not guilty or guilty. Do you understand
19 that?

20 THE DEFENDANT: Yes.

21 THE COURT: Of course, any guilty verdict would
22 have to be, as I say, unanimous or with all 12 members
23 of the jury agreeing that you were guilty beyond a
24 reasonable doubt. Do you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Third, you give up your right to
2 confront. That is the right to see, hear, and
3 cross-examine any witnesses that might appear against
4 you, as well as your right to call and present witnesses
5 on your own behalf in your own defense. Do you
6 understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: Also, I would tell the jury in your
9 trial that not only do you not have to make any
10 statement, that the fact that you don't make any
11 statement at all cannot be held against you in any way
12 and cannot even be considered by them in their
13 deliberations if you exercise your right to remain
14 silent. Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Also, if you have given an
17 incriminating statement in this case, do you understand
18 when you plead guilty you waive or give up your right to
19 challenge whether or not that statement was given in
20 accordance with your Constitutional rights, freely and
21 voluntarily?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Also, you give up any defenses you may
24 have to these charges. Do you understand that?

25 THE DEFENDANT: Yes, I do.

1 THE COURT: Now, do you understand all of these
2 rights?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you understand you will not get a
5 jury trial?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand you will give up you
8 defenses?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you understand you will give up any
11 right to challenge whether or not any incriminating
12 statement you have given was given in accordance with
13 your Constitutional rights? Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand when you plead guilt
16 you admit the truth of the charges made against you?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Now, Mr. Solicitor, questions have com
19 up and I want to be sure that it's clear on the record
20 here. The Defendant has been allowed -- or has the
21 Defendant been allowed access to all Brady and other
22 discovery material that will be used in the trial
23 against him?

24 MR. WAGNER: Yes, sir, he has.

25 THE COURT: Is that correct, Mr. Day?

1 MR. DAY: Yes, sir, Your Honor.

2 THE COURT: Now, Mr. Duncan, I know you have not
3 seen certain things and heard certain things. But have
4 you now had an opportunity to look at the exhibits that
5 have been marked in this case?

6 THE DEFENDANT: Yes, I have, Your Honor.

7 THE COURT: Understanding, then, the nature of the
8 offenses and the consequences of a guilty plea, how do
9 you wish to plead to each of these charges?

10 THE DEFENDANT: I'm guilty.

11 THE COURT: And you are, in fact, guilty?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you want to tell me what you did?

14 THE DEFENDANT: I, I went to the house and knocked
15 on the door and told her something. She shut the door.
16 I kicked on the door and told her to come out, to bring
17 what I wanted out, that we, the sons of the confederate
18 nation and holy spirits of all told me that you will do
19 certain things, and I wanted something and they wanted
20 something in there, something to be done and something
21 to be stopped, and that's exactly what I said.

22 And then I went there and threatened to kill the
23 Deputy over here.

24 THE COURT: Did you know what you did was wrong on
25 both of these occasions?

1 THE DEFENDANT: Absolutely.

2 THE COURT: Do you believe you would be convicted
3 if you stood trial?

4 THE DEFENDANT: I do, yes.

5 THE COURT: All right. Have there been any plea
6 negotiations?

7 MR. WAGNER: None, sir.

8 THE COURT: Is that correct, Mr. Day?

9 MR. DAY: Correct, Your Honor.

10 THE COURT: I understand, though -- and there's no
11 recommendation by the State?

12 MR. WAGNER: Right, yes, sir.

13 THE COURT: And the defense, of course, is gonna be
14 asking for complete leniency?

15 MR. DAY: Yes, sir. I'm going to be asking for a
16 lot less than what the statute calls for.

17 THE COURT: All right. Do you understand that if
18 any discussion has been made about any particular
19 sentence, that it's ultimately up to me to make that
20 decision? Now, I think, if I'm not mistaken, that some
21 sentences have been suggested of no more than five
22 years. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And I'll say this. If I hear anything
25 in this plea or something from your record that shows

1 that there is aggravation as far as the incidents, in
2 your appearance here today, I'll permit you to withdraw
3 your plea and you will proceed to trial. Do you
4 understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. Have you fully discussed
7 all aspects of your case with your lawyers?

8 THE DEFENDANT: Yes, I have.

9 THE COURT: Do you need any more time to talk to
10 them?

11 THE DEFENDANT: No, I don't, Your Honor.

12 THE COURT: Are you completely satisfied with
13 Mr. Day's and Mr. Denny's services as your attorneys?

14 THE DEFENDANT: Yes, I am, Your Honor.

15 THE COURT: Has anyone promised you anything or
16 held out any hope of reward to get you to plead guilty?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: Has anyone threatened you or used force
19 to get you to plead guilty?

20 THE DEFENDANT: No, sir.

21 THE COURT: Has anyone mistreated you in any way?

22 THE DEFENDANT: No, sir.

23 THE COURT: Have you understood my questions?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Is there anything you would like to as

1 me about what we have been over so far?

2 THE DEFENDANT: No, sir.

3 THE COURT: Has anyone suggested to you how to
4 answer my questions?

5 THE DEFENDANT: No, sir.

6 THE COURT: All right. Now, You may have discusse
7 parole or parole eligibility with other people or with
8 your attorney. No one can tell you when, if ever, you
9 will be eligible for parole or under what circumstances
10 You should assume that you will serve the entire time i
11 jail that I sentence you to.

12 Do you understand this?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand that you have the
15 right to appeal your guilty plea and the sentence of th
16 Court, but you must do so within ten days?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Solicitor, what are the facts of the
19 case as you have them?

20 Statement of Facts by Mr. Wagner:

21 MR. WAGNER: Your Honor, this occurred on July 12t
22 of 2010 here in Oconee County up in the Salem area. Th
23 victims were home in their residence. The Defendant
24 showed up at the front porch, coming up on the front
25 porch. The girl making the 9-1-1 call was there

1 visiting the family. She was actually engaged to the
2 people who lived there, their son. The mother was
3 there, also. They apparently responded to the door.
4 This Defendant made some sort of comment that Jesu
5 had sent him over there to get \$25,000 and it had
6 something to do with what he just said, something about
7 the confederate something or other, he was there to get
8 his \$25,000 and was coming in the house to get it,
9 basically.

10 She basically slammed the door in his face and
11 locked it. She stated he had a wild look in his eyes,
12 he was there with a red bandana on his head and had no
13 shirt and pants and some sort of shoes.

14 They live at the end of a dead end road, that's
15 gravel. You would really not even know there's a house
16 down there, but it's a very nice house, kind of on a
17 creek there. And he came walking through the woods
18 where nobody really should be coming through the woods
19 there out in the middle of nowhere.

20 So, they were obviously extremely scared as to what
21 was happening, and I think it was evident on the 9-1-1.
22 The girl sounded as scared as she had ever been in her
23 life. They actually had a .22 rifle -- the son had a
24 .22 rifle that they had gotten out and loaded. If he
25 came in the house, I think they were gonna have to shoot

1 him.

2 When he saw the rifle, he ended up leaving off the
3 porch and went out and started looking around inside the
4 cars. And it wasn't much longer after that they called
5 9-1-1 and Deputy McMahan got there. He got out, did not
6 know if the subject was armed.

7 He had his taser and he ended up having to tase
8 him. But in the process the Defendant looked at him and
9 said, "Are you ready to die? I'm gonna kill you." And
10 then he tried to put some sort of karate hand movements
11 towards him. You hear it on the 9-1-1 call when he was
12 pointing at the officer he was actually doing with his
13 hand like a karate thing pointing in the direction of
14 the officer. So he did threaten him, too, and he was a
15 officer performing his duties.

16 The Defendant has two prior convictions, he
17 actually has several more than that, but basically on
18 two separate occasions he's been convicted of burglary
19 or housebreaking. So, the combination of both and the
20 fact that he was trying to get in, he'd gone around the
21 house at several points kicking at the door, trying to
22 kick in the doors, rattling the windows. He actually
23 pried one of the screens off and there was pictures that
24 the screen was bent and pulled off before he saw the
25 rifle in the hands of the homeowner. And at that point

1 in time he backed away and quit trying to get in the
2 house and went out to where the cars and the driveway
3 was, and that's where he encountered the Deputy.

4 THE COURT: All right. As I understand -- I
5 listened to the tape of the 9-1-1 call. There was one
6 statement I think by Ms. Moss to the effect that, quote
7 he is back on the porch. In other words, so you had
8 come on to the porch of the house?

9 THE DEFENDANT: I came on the porch and knocked on
10 the door and she answered. And I told her what I was
11 there for. And she said "thank you for the information
12 and shut the door.

13 THE COURT: All right. Well, let me ask you: Do
14 you agree with the facts as related by the Solicitor?

15 THE DEFENDANT: In order for me to plead guilty an
16 I feel that I have to agree with --

17 THE COURT: No, sir. I'm not gonna accept an
18 innocent person's plea. But what he's alleged, and thi
19 is what I'm operating on, is the fact that you went to
20 somebody else's house uninvited and that you went upon
21 the porch, knocked on the door, apparently you were tol
22 not to come in or at least not invited in, and you
23 remained there. Is that correct?

24 THE DEFENDANT: No, sir, Your Honor. After she
25 said that, I walked around the side of the house and

1 looked at, and I went out there. I guess they were
2 scared to death. I don't know. Because I told her, yo
3 know, that this, that's what the Holy Spirits wants,
4 they want their \$25,000, and you quit doing something -

5 THE COURT: But you agree with what you just said?

6 THE DEFENDANT: Yes.

7 THE COURT: All right. You understand. You were
8 within some 200 yards of the house?

9 THE DEFENDANT: I guess so.

10 THE COURT: 200 feet, maybe?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And you were there when Officer McMaha
13 came?

14 THE DEFENDANT: Yes. I was waiting out on the end
15 of the driveway.

16 THE COURT: But on their property?

17 THE DEFENDANT: I'm not sure if it was their
18 property or not. It was out of the yard. They had a
19 fence. It was out of their yard and down towards on th
20 side of the woods right there. But his car pulled up
21 right in front of us.

22 THE COURT: But you had been to their house?

23 THE DEFENDANT: Oh, yeah, definitely.

24 THE COURT: That's all I want to know.

25 All right. Has each and every answer you have

1 given the Court been absolutely truthful?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. I find there is a
4 substantial factual basis for this plea and -- each of
5 these pleas, and that the Defendant's decision to plead
6 guilty to each indictment is freely, voluntarily,
7 knowingly and intelligently made with the advice and
8 counsel of an attorney with whom the Defendant says he
9 satisfied. The Defendant's pleas of guilty to each
10 indictment is accepted.

11 Now comes the Defendant, Ricky Dean Duncan, who in
12 open court and in his own proper person, pleads guilty
13 to Indictments Numbers 2010-GS-37-1016 and
14 2010-GS-37-1017 and submits to sentence of the Court.

15 Anything from the State?

16 MR. WAGNER: Yes, sir, Your Honor. The, back on
17 October 28th he was seen at the Department of Mental
18 Health. Mr. Day and I both looked at the facts and fee
19 he probably should be sent down for evaluation. They
20 found him competent to stand trial and at the time foun
21 him criminally responsible, he knew right from wrong.
22 And I just wanted to make sure we had that on the recor
23 that he was cleared as far as his faculties and
24 criminal, as far as he knew what he was doing when he
25 did do it, he passed his evaluation down there.

1 THE COURT: All right. Do you have a report there

2 MR. WAGNER: Yes, sir.

3 THE COURT: Would you like to make it a part of the
4 record?

5 MR. WAGNER: Yes, sir. Your Honor, this is, for
6 the record it's from the Department of Mental Health.
7 I'm looking here for their number.

8 THE COURT: We're gonna make it a --

9 MR. WAGNER: Yes, sir.

10 THE COURT: Is there a date on it as to when it
11 was?

12 MR. WAGNER: The date of the evaluation is October
13 the 28th, 2010, and it's Jesse Raily, the M.D. who
14 evaluated him.

15 THE COURT: That will be a Court's exhibit.

16 We'll go off the record while the court reporter
17 marks the exhibit.

18 (Marked for identification was Court's Exhibit 1,
19 Department of Mental Health evaluation of
20 Defendant.)

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

23 MR. WAGNER: No, sir.

24 THE COURT: Mr. Day, anything you would like to say
25 on behalf of Mr. Duncan?

1 MR. DAY: Your Honor, I think as Mr. Duncan
2 explained to you, he was there on that day. He's
3 acknowledged that he went up on the porch, went to the
4 house. He had not been invited.

5 In talking to him about it on that day he realizes
6 that the medication he was taking he should not have
7 stopped taking, and I think that played the greatest
8 role in this entire incident, Your Honor. Had it not
9 been for that, I don't think it would have occurred.

10 He had been camping on the river not far from here
11 That's why he was there. He had not by any means
12 traveled to that area. He didn't drive there. He had
13 been camping by the river, and the creek is not that fa
14 from where this occurred at all. He came up there that
15 time.

16 I'd also point out, Your Honor, as to the
17 threatening, he acknowledges he shouldn't have said wha
18 he said to the officer and he should not have made the
19 threats. He ended up being tased. At the time he was
20 tased he was walking away. He had turned away from the
21 officer, was walking towards the woods and, as the
22 officer states in his report, that he was walking
23 towards the woods, he was given commands to stop but he
24 didn't stop, and that's when he was tased and taken int
25 custody, Your Honor.

1 After he was tased, taken into custody, there's no
2 indication from the reports or anything that he made an
3 other threats or that he had any physical confrontation
4 with the officer or any others. Once he went down and
5 he was tased and they had him in handcuffs and they took
6 him into custody, Your Honor.

7 I'd ask the Court to consider -- I realize this is
8 very serious. Mr. Duncan realizes this is very serious
9 Your Honor. He wants to get this behind him.

10 He has spent 377 days in jail, Your Honor. We
11 would ask the Court to consider the possibility in
12 discussing the type of sentence he would receive that he
13 could possibly receive less than five years on the
14 active sentence so that he can get back out. He needs
15 to put his life back together.

16 Because of his injuries that he had received
17 working years ago, Your Honor, he has not been able to
18 maintain employment. He needs to get this behind him so
19 that he can get back and do what he can do. Whether he
20 draws disability or SSI, Judge, based upon his income in
21 the past, we'd ask the Court to consider that.

22 Mr. Duncan understands his rights, Your Honor, he
23 was ready to fight for his rights. He understands that
24 Your Honor, he has gone over that with me. As you have
25 heard, while Ricky and I have had some differences on

1 this, it's because he realizes how important this is,
2 Your Honor, and I certainly do not hold that against
3 him. I would ask the Court, though, to consider a
4 sentence that would be certainly reasonable.

5 It was not his intention, I don't believe, to scar
6 these people. It's just something that occurred. And
7 after it was over, he realizes that shouldn't have
8 happened. That's why we're here today. I'd ask the
9 Court to give serious consideration to a sentence of
10 less than the five-year active sentence so he can get
11 back out here, get back with his family.

12 Your Honor, his mother and his brother have stood
13 with him. His brother is working today, Your Honor, he
14 had planned on being here tomorrow, and his mother
15 planned on being there tomorrow, but they have hung in
16 there with Ricky. They love him and they want what's
17 best for him just like he doesn't want to hurt them or
18 cause them any problems, any more problems than he
19 realizes he has.

20 Your Honor, we would ask the Court to consider
21 that. And based upon this, as I said, walking away from
22 the officer at the time this occurred and going up,
23 having never actually entered, even though he knows he
24 went up on the porch, he was there at the house. But h
25 did not I think in looking at the pictures, et cetera,

1 if he wanted to get in, I don't think that would have
2 been difficult for him, because I think --

3 THE COURT: It's as well that he didn't.

4 MR. DAY: It is.

5 THE COURT: Because then the other gentleman would
6 have maybe something to be sorry for himself.

7 MR. DAY: Maybe not, either.

8 THE COURT: Well, I don't know how close he was,
9 but with a .22 rifle it's kind of hard to miss.

10 MR. DAY: Right, sir. And Ricky, when we talked
11 about the fact that the man in there had a gun, it's
12 fortunate, thank God that it didn't come to that.

13 THE COURT: Well, that's what I'm saying. And
14 again, I'm sure you have explained to Mr. Duncan that a
15 we have discussed before with the attorneys that
16 burglary is not a -- and when we talk about burglary,
17 burglary has to do with violating someone's dwelling,
18 and the dwelling includes those things that are
19 pertinent to that dwelling, and used in connection
20 therewith.

21 But the thing is, the reason it's so serious is
22 because the person who occupies the dwelling has the
23 right to react in a lethal way. So, it's not only to
24 protect the individual that lives or dwells there, but
25 also the person who invades it or threatens it. So,

1 that's why it's such a serious crime.

2 And then also, when you invade a dwelling, that
3 means that you can expect somebody might respond. So,
4 you don't want people taking the law in their own hands
5 but they don't want unlawful activities that threaten
6 people, either. So, I think Mr. Duncan understands
7 that.

8 All right. Anything else? Mr. Denny, anything you
9 would like to say on behalf of Mr. Duncan?

10 MR. DENNY: No, Your Honor. I concur with
11 everything Mr. Day has said.

12 THE COURT: Thank you, sir.

13 Now, Mr. Duncan, is there anything you would like
14 to tell us?

15 THE DEFENDANT: Have you seen the pictures of me
16 that day?

17 THE COURT: No, sir.

18 THE DEFENDANT: Would you care to look?

19 THE COURT: I'll be glad to, yes, sir. Have you
20 got them somewhere?

21 Do you want to bring them around, P.D.?

22 THE DEFENDANT: That was not a man that's --

23 MR. DAY: Wait. Okay.

24 THE COURT: What are these pictures of?

25 MR. DAY: That was the taser in his back, Your

1 Honor.

2 THE COURT: Oh.

3 THE SHERIFF'S DEPUTY: That's the taser prong.

4 THE COURT: Prong.

5 THE SHERIFF'S DEPUTY: Yes, sir.

6 THE COURT: I will say you look better today.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Anything else?

9 THE DEFENDANT: No, sir. Oh, yes. I'm very sorry
10 for everything, Your Honor, I caused. Only the good
11 Lord knows, but I definitely wasn't at myself that day,
12 that's for sure.

13 THE COURT: All right. Anything else from the
14 State?

15 MR. WAGNER: No, sir.

16 THE COURT: Mr. Day, anything?

17 MR. DAY: Nothing further, Your Honor. Thank you.

18 THE COURT: Mr. Duncan?

19 THE DEFENDANT: No, sir.

20 Sentence of the Court:

21 THE COURT: Indictment number 2010-GS-37-1017, the
22 sentence of the Court is that the Defendant, Ricky Dean
23 Duncan, be committed to the County Detention Center for
24 a period of 30 days plus pay the costs and assessments
25 as applicable.

1 Indictment number 2010-GS-37-1016, the sentence of
2 the Court is that the Defendant, Ricky Dean Duncan, be
3 committed to the State Department of Corrections for a
4 term of 15 years provided upon the service of 54 months
5 plus payment of costs and assessments as applicable, th
6 balance is suspended, probation for five years.

7 Both sentences to run concurrent. The Defendant b
8 given credit for 377 days' time served, undergo drug an
9 alcohol testing and treatment, substance abuse
10 counseling, and to pay \$500 to the Clerk of Court durin
11 probation. Good luck to you, sir:

12 THE DEFENDANT: Thank you, Your Honor.

13 (Whereupon, the trial/plea/sentence in the State o
14 South Carolina v. Ricky Dean Duncan was concluded
15 at approximately 5:00 p.m.)

16 ** End of Requested Certified Transcript of Record **

17

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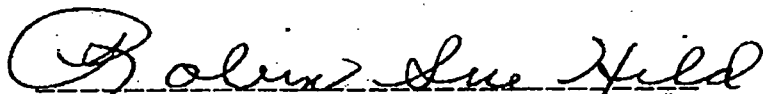
25

Certificate of Court Reporter

I, the undersigned, Robin Sue Hild, FCRR, RPR,
Official Court Reporter for the Tenth Judicial Circuit
of the State of South Carolina, do hereby certify that
the foregoing is a true, accurate and complete
Transcript of Record of the proceedings had and the
evidence introduced in the trial/plea/sentence of the
captioned case, relative to appeal, in the Court of
General Sessions for Oconee County, South Carolina, on
the 25th day of July, 2011.

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

March 4, 2012

A handwritten signature in cursive script, reading "Robin Sue Hild", written over a horizontal line.

Robin Sue Hild, FCRR, RPR
Circuit Court Reporter

64 STATE OF SOUTH CAROLINA

COUNTY OF Oconee

Ricky Dean Duncan

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

Plaintiff(s)

2011 -CP-37-1234

vs.

state of south carolina
county of oconee

Defendant(s)

(Please Print)

Submitted By: Ricky Dean Duncan

Address: 448 486 Goldmine Hwy
Kershaw south carolina
296067

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|---|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -CP-
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☒ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☒ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Commission (990)
☐ Employment Security Comm (991) |
| Special/Complex/Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☒ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | Copies to:
Attv ☒ (D) ☐ Other (999)
Doo ☒
Mailed ☒ Boxed ☐ handed ☐ | |

Submitting Party Signature:

Ricky Dean Duncan

Date:

 FILED OCONEE, SC
 BEVERLY H. WHITEFIELD
 CLERK OF COURT
 2011 SEP 19 PM 1:19

FORM 5

STATE OF SOUTH CAROLINA)

County of Oconee)Ricky Dean Duncan #110304)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS)

APPLICATION FOR)

POST-CONVICTION RELIEF)

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2011 DEC 19 P 3:20Oconee Case # 2011.CP.37.1234INSTRUCTIONS - 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 Oconee County Detention Center 415 Pin St. Walhalla, SC 29691
2. Name and location of Court which imposed sentence Oconee County Court House 415 South Pine Street Walhalla SC 29691
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010GS3701016
 - (b) Burglary/Attempted Burglary First Degree

ENTERED
2011 DEC 19
BHV

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 7/25/11
- (b) 15 years upon the service of 54 months
- (c) the balance is suspended with 5 years probation concurrently
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. NO
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. NO
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. NO
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NONE KNOWN
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) My Attorney told me I could not appeal
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) I was under Duress and medications
- (c) illegal sentence & excessive sentence

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

- (a) it is on record of my Attorney & I arguing I filed a Bar comp
- (b) I have medical documentation of the pills I was taking
- (c) I was sent under another SC code and C.D.R code

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. NO
- ii. _____
- iii. _____
- iv. _____

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

- i. NO
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. NO
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. NO
- ii. _____
- iii. _____
- iv. _____

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

- i. NO
- 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. NO
- ii. _____
- iii. _____

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

- i. NO
- ii. _____
- iii. _____

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

(a) my Attorney lied to me and told me I could not Appeal
 (b) _____
 (c) _____

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

(a) your arraignment and plea? NO
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NONE
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NO

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

(a) the name and address of each attorney who represented you:
 i. R. Daniel Day 415 Pine Street Walhalla
SC 29691
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. The Beginning of Trial
 ii. the Blee Agreement
 iii. The sentence

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

I want to be re-sentenced under my arriginate
SC code 17-25-0030 C.R. code #0019
section 16-13-170 None violent, if Karees was more than 10y

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

NO

STATE OF SOUTH CAROLINA)

County of Oconee)

2011-CP-37-1234
 VERIFICATION

I, Ricky Dean Duncan, 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.

Ricky Dean Duncan

SWORN to and subscribed before me this 15th
 day of December, 2011.

Michele Michel (L.S.)
 Notary Public

My Commission Expires: 9-3-2014

FILED OCONEE, SC
 BEVERLY H. WHITFIELD
 CLERK OF COURT
 2011 DEC 19 P 3:20

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

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

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

Ricky Dean Duncan
Applicant

SWORN or affirmed to and subscribed before me this
15th day of December, 2011.

Michael Michel
Notary Public

My Commission Expires: 9-3-2014

FILED JOONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2011 DEC 19 P 3:20

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)
Ricky Dean Duncan,)
S.C.D.C. No. 110304,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2011-CP-37-1234

RETURN

In response to the post-conviction relief application filed December 19, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Oconee County Clerk of Court's orders of commitment. The Oconee County Grand Jury indicted the Applicant at the November 2010 term of General Sessions for attempted first degree burglary (2010-GS-37-1016) and threatening the life, person, or family of a public employee (2010-GS-37-1017). R. Daniel Day, Esquire and Keith Denny, Esquire represented the Applicant.

On July 25, 2011, the Applicant pled guilty. The Honorable Alexander S. Macauley sentenced the Applicant to fifteen years (15) years imprisonment, suspended upon the service of fifty-four (54) months imprisonment, for attempted first degree burglary and thirty (30) days imprisonment for threatening the life of a public employee, sentences to run concurrently. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Oconee

County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the plea transcript.

II.

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

1. Ineffective assistance of counsel.
 - a. "Its on record of my attorney and I argueing I filled a Barco."
2. "I was under duress and medications."
 - a. "I have medicale documentation of the pills I was taking."
3. "Ellegall sentence and exsecive sentence."
 - a. "I was senst under another SC code and C.D.R. code."

III.

Respondent interprets the first and third allegations as allegations of ineffective assistance of counsel.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel

“rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

Respondent interprets the Applicant’s second ground for PCR as an involuntary guilty plea.

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

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A

criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Respondent submits the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248 (1983).

V.

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

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

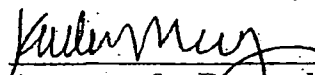
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Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAELOM MAY
Assistant Attorney General

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

By:


Attorneys for Respondent

May 16, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF OCONEE)

IN THE COURT OF COMMON PLEAS

2011-CP-37-1234

RICKY DEAN DUNCAN, #110304)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

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

Suzanne Earle, Esquire
 504 Freedom Drive
 Walhalla, SC 29691

DATED this 17th Day of May, 2012.

Lena Pelishenko

Lena Pelishenko, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE	)	
	)	
RICKY D. DUNCAN	)	CASE NO. 2011-CP-37-1234
	)	
	)	
V.	)	MOTION TO AMEND POST
	)	CONVICTION RELIEF (PCR)
	)	APPLICATION
	)	
STATE OF SOUTH CAROLINA	)	
-----	)	

COMES NOW THE ABOVE NAMED PETITIONER BY AND THROUGH COUNSEL ON MOTION TO AMEND PCR APPLICATION. IN SUPPORT OF THIS MOTION THE PETITIONER WILL SHOW THE COURT THE FOLLOWING:

ON JULY 25, 2011, PETITIONER PLEADED GUILTY TO AN OFFENSE OR INDICTMENT CHARGING ATTEMPTED BURGLARY IN THE FIRST DEGREE IN VIOLATION OF S.C. CODE 16-11-311 AND WAS SENTENCED TO FIFTEEN (15) YEARS SUSPENDED UPON THE SERVICE OF FIFTY FOUR (54) MONTHS WITH 377 DAYS TIMED SERVED AND FIVE YEARS PROBATION.

PETITIONER SUBMITS THAT DEFENSE COUNSEL WAS WHOLLY INEFFECTIVE FOR ADVISING HIM TO PLEAD TO AN INDICTMENT THAT FAILS TO CONFER SUBJECT MATTER JURISDICTION TO THE CIRCUIT COURT.

S.C. CODE §16-11-311, BURGLARY FIRST DEGREE PROVIDES THE FOLLOWING: A PERSON IS GUILTY OF FIRST DEGREE BURGLARY IF THE PERSON ENTERS A DWELLING, WITHOUT CONSENT WITH THE INTENT TO COMMIT A CRIME THEREIN.

IT IS THE PETITIONERS POSITION THAT THE ELEMENT OF ENTERING A DWELLING IS AN ESSENTIAL ELEMENT OF THE OFFENSE AND THEREFORE THERE MUST BE EVIDENCE PROVING THAT THE PETITIONER ENTERED THE DWELLING.

HOWEVER, A READING OF THE PETITIONERS INDICTMENT NAGATES THIS ELEMENT. PETITIONER WAS INDICTED BY THE GRAND JURORS OF OCONEE COUNTY ON NOVEMBER 1, 2010 FOR "ATTEMPTED" BURGLARY 1st DEGREE. PETITIONER'S INDICTMENT READS AS FOLLOWS:

THE DEFENDANT, RICKY DEAN NUNCAN, DID IN OCONEE COUNTY, SOUTH CAROLINA, ON OR ABOUT JULY 12, 2010, WILLFULLY AND UNLAWFULLY ATTEMPT TO ENTER A DWELLING BELONGING TO TERESA FORTSON, LOCATED AT [REDACTED] SALEM, SOUTH CAROLINA, WITHOUT CONSENT AND WITH THE INTENT TO COMMIT A CRIME THEIRIN AND AGGRAVATING CIRCUMSTANCES WERE PRESENT TO WIT: DEFENDANT HAS TWO OR MORE PRIOR CONVICTIONS FOR BURGLARY AND/OR HOUSEBREAKING OR A COMBINATION THEREOF.

ALL IN VIOLATION OF SECTION(S) 16-11-311 AND COMMON LAW 1601-80.

PETITIONER SUBMITS THAT THE CIRCUIT COURT FOR OCONEE COUNTY WAS WITHOUT SUBJECT MATTER JURISDICTION OR AUTHORITY OF LAW TO ACCEPT A PLEA UNDER THE FIRST DEGREE BURGLARY STATUTE 16-11-311, BUT THEN CONVICT HIM OF AN "ATTEMPTED" FIRST DEGREE BURGLARY CHARGE. THE COURT WAS DIVESTED OF JURISDICTION AS A RESULT AND PETITIONER'S CONVICTION, THEREFORE CAN NOT STAND. "ATTEMPTED" FIRST DEGREE BURGLARY #1) IS NOT AN INDICTIBLE OFFENSE AS THERE IS NOT A STATUTE CODE THAT CRIMINALIZES THAT OFFENSE AND #2) EVEN

IF THERE WERE A STATUTE MAKING "ATTEMPTED" FIRST DEGREE BURGLARY A CRIME IT WOULD NOT BE A LEGAL LESSER-INCLUDED OFFENSE OF BURGLARY FIRST DEGREE.

IT IS THE PETITIONER'S POSITION THAT THE WORDS "ATTEMPT TO ENTER" IS NOT SYNONYMOUS WITH "ENTERING." THEREFORE THE LANGUAGE CONTAINED IN THE INDICTMENT IS A FARSE.

FURTHERMORE, ONE CAN NOT BE CONVICTED OF BURGLARY FIRST DEGREE IF THEY DO NOT "ENTER THE DWELLING." ENTERING MUST BE PROVEN BEYOND A REASONABLE DOUBT. IF PETITIONER ATTEMPTED TO ENTER THE DWELLING, BUT NEVER ENTERS AS PETITIONER'S INDICTMENT SO CLAIMS, THEN PETITIONER CAN NOT BE GUILTY OF BURGLARY 1st DEGREE. THE LANGUAGE CONTAINED WITHIN THE INDICTMENT WHICH READS "ATTEMPT TO ENTER" RENDERS THE INDICTMENT UNCONSTITUTIONAL AND POWERLESS TO CONFER JURISDICTION TO THE COURT TO ACCEPT A PLEA OF GUILT TO BURGLARY FIRST. COUNSEL WAS INEFFECTIVE STRICKLAND AND THE CIRCUIT COURT WAS WITHOUT SUBJECT MATTER JURISDICTION GENTRY. PETITIONER'S CONVICTION THEREFORE MUST BE VACATED.

State of South Carolina

County of Oconee

In the Court of Common Pleas

Ricky Duncan,

Applicant,

-vs-

State of South Carolina,

Respondent.

2011-CP-37-1234

October 1, 2012

Transcript of Record

BEFORE:

The Honorable Clifton Newman, Judge

APPEARANCES:

Suzanne Earle, Esquire
Attorney for the Applicant

Karen C. Ratigan, Esquire
Attorney the State

Renee H. Tollison
Circuit Court Reporter

INDEX

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
R. Daniel Day				
Earle	9			
Ratigan		22		
Ricky Duncan				
Earle	26			

<< -- >>

	PAGE
Opening Statements	
Ratigan	3
Earle	4
Closing Arguments	
Earle	33
Ratigan	40
Certificate of Reporter	44

EXHIBITS

No	DESCRIPTION	ID	EV
	<i>No exhibits were presented during the trial</i>		

1 (WHEREUPON, court convened with all parties present
2 and the following proceedings were had commencing at
3 approximately 11:22 a.m.)

4 (WHEREUPON, the Applicant was duly sworn.)

5 THE COURT: All right. This is the matter of
6 Ricky Duncan?

7 MS. RATIGAN: Yes, Your Honor.

8 THE COURT: Ms. Ratigan?

9 OPENING STATEMENT

10 BY MS. RATIGAN:

11 May it please the Court. This is the case of Ricky
12 Duncan versus the State of South Carolina. The docket
13 number is 2011-CP-37-1234. Mr. Duncan was indicted for
14 attempted first-degree burglary and threatening the life
15 of a public employee. He was represented on these
16 charges by Mr. Day. He pled guilty July 25th of 2011
17 before Judge Macaulay.

18 I would note that he actually pled once the trial
19 had actually started, so approximately page 37 of the
20 transcript is when the plea does commence.

21 Judge Macaulay levied concurrent sentences of thirty
22 days for threatening the life of a public official and
23 fifteen years suspended on the service of fifty-four
24 months for attempted first-degree burglary. He did not
25 file an appeal.

Ricky Duncan v. State of South Carolina 2010-CP-37-1234
Opening Statement by Ms. Ratigan
Opening Statement by Ms. Earle

4

1 And the State is ready to proceed.

2 THE COURT: All right. Counsel?

3 OPENING STATEMENT

4 BY MS. EARLE:

5 Thank you, Your Honor. May it please the Court. My
6 name is Suzanne Earle. I have been appointed to
7 represent Mr. Duncan on this.

8 Your Honor, I have a few things to do prior to
9 starting our case. One is my client has asked leave to
10 file a motion to amend his P.C.R. application. And I
11 would like to hand up a copy of his motion to amend, if I
12 may.

13 (WHEREUPON, a document handed up to the Court.)

14 THE COURT: All right.

15 And what's the State's position regarding this
16 motion to amend?

17 MS. RATIGAN: Judge, I've had a little while to
18 look it over. And since it was a guilty plea, we're not
19 going to be prejudiced by the amendment. So we have no
20 objection.

21 THE COURT: Okay. It's amended.

22 MS. EARLE: Thank you, Your Honor.

23 In addition, Your Honor, my client was sentenced
24 prior to the Supreme Court's decision in the *State v.*
25 *Jacobs* in which the Supreme Court ruled that the sentence

1 for burglary first could -- the minimum fifteen-year
2 sentence could not be suspended. My client has a
3 suspended sentence at this time. I have explained to him
4 that should he be successful on the P.C.R. application
5 that because of the ruling of the Supreme Court, he is
6 facing some substantial increase in his sentence should
7 he be convicted at another trial or plea. And I would
8 just ask Your Honor to make sure, to the satisfaction of
9 the Court, that my client understands that that is one of
10 the consequences of being successful on his application,
11 that a suspended sentence would no longer be available to
12 him.

13 THE COURT: He was indicted for first-degree
14 burglary?

15 MS. EARLE: Attempted first-degree burglary.

16 THE COURT: Attempted first-degree burglary?

17 MS. EARLE: Yes, Your Honor.

18 THE COURT: And pled guilty to?

19 MS. EARLE: Attempted first-degree burglary.

20 THE COURT: And sentenced to?

21 MS. RATIGAN: Fifteen suspended on fifty-four
22 months, Your Honor.

23 THE COURT: All right. So the question is if
24 he is successful in the P.C.R. and he gets a new trial
25 and if he is convicted of attempted first-degree

Ricky Duncan v. State of South Carolina 2010-CP-37-1234
Opening Statement by Ms. Earle

6

1 burglary. Your interpretation of *State v. Jacobs* is that
2 he would face a mandatory minimum of fifteen years and a
3 maximum of life?

4 MS. EARLE: Yes, Your Honor.

5 THE COURT: Because attempted burglary is
6 punished the same as if the offense had been completed?

7 MS. EARLE: That's correct, Your Honor.

8 THE COURT: All right. And you've discussed
9 that with Mr. ---

10 MS. EARLE: Duncan.

11 THE COURT: --- Ricky D. Duncan?

12 MS. EARLE: Yes, Your Honor, I have.

13 THE COURT: All right.

14 Mr. Duncan, if you will stand.

15 (WHEREUPON, the Applicant stood.)

16 THE COURT: You've heard what your counselor,
17 Ms. Earle, has just talked with me about. You've heard
18 that discussion?

19 THE APPLICANT: Yes, sir.

20 THE COURT: And do you wish to proceed with
21 this P.C.R., understanding that it may be possible that
22 you might be facing a minimum of fifteen years
23 imprisonment and a mandatory sentence -- I'm sorry --
24 minimum of fifteen years up to life imprisonment?

25 THE APPLICANT: Yes.

1 THE COURT: And have you had a good discussion
2 of that with your lawyer?

3 THE APPLICANT: Yes, I have, Your Honor.

4 THE COURT: And what have you determined?

5 THE APPLICANT: I've determined to go ahead
6 with the P.C.R. because of the issues of the motion. If
7 you -- when you look at the motion, you will see my
8 argument in the amended motion. I'm having a problem
9 with attempted burglary being first-degree burglary.
10 With attempt there's no element of entering and
11 attempting to enter. And the fact that I was indicted on
12 attempted first-degree burglary and then I was sentenced
13 under -- found guilty under the same offense as attempt.
14 So how can I be -- if there's no element of first-degree
15 burglary or attempt in first-degree burglary, then how
16 can I be sentenced under the same? If I'm sentenced
17 under the same offense and there's no element of
18 attempted first-degree burglary in the indictment, then
19 how can I be sentenced with -- charged with -- sentenced
20 with first-degree burglary?

21 THE COURT: Well, I assume that's a question
22 that you have in your own mind and it's not a question
23 for me.

24 THE APPLICANT: Yes. I have ---

25 THE COURT: All right. Well, you ---

Ricky Duncan v. State of South Carolina 2010-CP-37-1234
Opening Statement by Ms. Earle

8

1 THE APPLICANT: I wrote down my issues in that
2 motion to amend.

3 THE COURT: And you were represented by counsel
4 when you pled guilty?

5 THE APPLICANT: Yes, I was, Your Honor.

6 THE COURT: And the transcript will reflect
7 everything that the judge discussed with you?

8 THE APPLICANT: Yes, sir.

9 THE COURT: And you're ready -- you want to
10 proceed with this P.C.R. knowing the possible
11 consequences if you prevail in your P.C.R., consequences
12 which may be good and consequences which may be bad?

13 THE APPLICANT: Yes, sir.

14 THE COURT: All right.

15 Anything else then, Ms. Earle?

16 MS. EARLE: No, Your Honor. We're ready to
17 proceed.

18 THE COURT: All right. Yes, ma'am?

19 MS. EARLE: Your Honor, I would call R. Daniel
20 Day to the stand.

21 (WHEREUPON, the witness was duly sworn.)

22 THE COURT: Mr. Day, we didn't see you earlier
23 this morning, did we?

24 THE WITNESS: I did. Thanks to you, I got here
25 on time.

1 THE COURT: Okay. You were in Anderson too?

2 THE WITNESS: Yes, sir.

3 THE COURT: Okay.

4 THE WITNESS: I followed you all the way back.

5 THE COURT: Oh, okay. Good.

6 **R. DANIEL DAY, ESQUIRE**

7 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION

9 BY MS. EARLE:

10 Q. Good morning, Mr. Day.

11 A. Good morning.

12 Q. Did you represent Mr. Duncan on the charge that
13 we're here on today which was an attempted burglary under
14 warrant number N136913, indictment number 2010-CP-37-
15 1234?

16 A. I did.

17 Q. And were you retained counsel or appointed counsel?

18 A. I was appointed.

19 Q. And you work in the public defender's office?

20 A. I do.

21 Q. All right. Now, it's my understanding that in
22 representing Mr. Duncan you had picked a jury that
23 morning; is that correct?

24 A. That's correct.

25 Q. And then at some point a decision was made to enter

Ricky Duncan v. State of South Carolina 2010-CP-37-1234
R. Daniel Day, Esquire - Direct Examination by Ms. Earle

10

1 a plea?

2 A. Yes.

3 Q. When was that decision made?

4 A. We had discussed it that morning. We looked at
5 whether or not we believed whether or not the judge was
6 going to accept any legal arguments that we may have.
7 Mr. Duncan indicated that he wanted to proceed with the
8 plea. But because the solicitor was somewhat concerned
9 about whether Mr. Duncan would plead, it was determined
10 to go ahead and select a jury just in case if he decided
11 to proceed with the trial we'd be prepared to go forward.

12 Q. And what sort of legal issues had you discussed with
13 your client that could be presented to the court?

14 A. Well, one which you just brought up was whether or
15 not one could suspend a burglary -- an attempted burglary
16 first plea to something below because that was what we
17 were going to argue for. We were going to ask for -- and
18 I think I told the judge that we were going to be asking
19 for less than what the minimum sentence would be and ask
20 the court to consider that. And so we discussed that
21 about the possibility of it as to whether or not the
22 judge would do it, and we were in hopes that he would.
23 But because it was Judge Macaulay -- when you ask the
24 judge to consider a sentence, Judge Macaulay has always
25 allowed you to withdraw if he says he will not consider

1 it. And I discussed that with Mr. Duncan there's a
2 possibility if he says no that we go to trial with
3 nothing to lose.

4 Q. All right. Now, in your trial preparation, did you
5 -- how many times did you visit with Mr. Duncan?

6 A. Lord, I really don't know. We met quite often. And
7 my assistant, Martha Pruitt, also met with him. We went
8 over it a couple of times. He was in jail for a good
9 many months.

10 Q. He was actually incarcerated for three hundred and
11 seventy-seven days.

12 A. I know it was -- that's probably correct, yes. It
13 was quite a while.

14 Q. Now, you had a mental evaluation performed on him?

15 A. We requested that based upon some of the facts in
16 the case just to be sure.

17 Q. All right. And who did that evaluation?

18 A. That was done in Columbia by the State.

19 Q. All right. Did you have any sort of private
20 attorney -- or I'm sorry -- private physician or
21 psychiatrist do an evaluation?

22 A. We did not.

23 Q. Now, the evaluation that was returned to you showed
24 some disturbing things about Mr. Duncan, did it not?

25 A. It did.

Ricky Duncan v. State of South Carolina 2010-CP-37-1234
R. Daniel Day, Esquire - Direct Examination by Ms. Earle

12

1 Q. At any point did you discuss with your client the
2 possibility of a temporary insanity or a guilty but
3 mentally ill approach to your case?

4 A. I explained to Mr. Duncan the possibility of those
5 sentences. He was not receptive to those. He did not
6 feel that he had any kind of mental illness. He did have
7 some problems. We spent some time -- he didn't want to
8 discuss possible witnesses with me, not being cooperative
9 in that regard. But other than that, he stuck with his
10 story all the way through, that it was correct, it was
11 true and what he was telling me was right.

12 Q. Now, in looking at the transcript of the plea and
13 leading up to the plea with the jury selection, it
14 appears that Mr. Duncan made some complaints against you
15 in court that morning including that he had not been
16 provided access to his discovery materials?

17 A. I think I remember going through that and him
18 advising the court of that, yes.

19 Q. All right. And then -- so you reviewed discovery
20 materials with him that day?

21 A. At least that day. And I know we had gone over it
22 before as to what we had, yes.

23 Q. Okay. Now, in the time that he was incarcerated,
24 did you file for a bond reduction hearing?

25 A. Let's see. We had a bond hearing on May the 23rd of

1 2011 in which the Court set a bond. We ended up with a
2 plea on July 25th, if I remember correctly, but we did
3 have a hearing on May 23rd, 2011.

4 Q. So he would have been incarcerated for close to a
5 year at that time?

6 A. I think that's correct. And I don't know that we
7 had one prior to that. I'm looking to see in my notes.

8 I don't know that we had one prior to that. I just -- I
9 don't remember that we did.

10 Q. Now, Mr. Duncan also filed a complaint with the Bar
11 against you during this time frame prior to the trial
12 date, did he not?

13 A. I'm trying to remember. I apologize. It seems that
14 we've gotten quite a few since someone apparently put on
15 the wall at the jail to file those -- to file a complaint
16 if you were upset with your lawyer. I must have put it
17 into another file. I do not see it here. But if he says
18 he did it -- if there was one, I would have responded.
19 Let's see. Yes, he did. I'm sorry. I've got it in
20 here. Yes.

21 Q. So he had filed a complaint with the Bar. He told
22 the judge the day of the trial that y'all weren't getting
23 along, that he felt like he wasn't being communicated
24 with and that he had not been provided with information
25 prior to coming to court that day, correct?

Ricky Duncan v. State of South Carolina 2010-CP-37-1234
R. Daniel Day, Esquire - Direct Examination by Ms. Earle

14

1 A. Yes. And I'm looking at my response to the
2 complaint. And I noted in there that I had provided a
3 copy of discovery responses in October of 2010, and he
4 signed a response. He signed a receipt of that.

5 Q. But there were videos or 9-1-1 tapes that you
6 weren't able to provide to him; is that correct?

7 A. That's correct. We didn't get those till late, and
8 we argued about that with the court. And I believe the
9 court actually reviewed those to determine if they would
10 be admissible because I would be objecting to them.

11 Q. In looking at the warrant and the indictment, the
12 reason that this attempted burglary was elevated to a
13 first degree has to do with Mr. Duncan's prior offenses;
14 is that correct?

15 A. I think that is correct.

16 Q. That the aggravating circumstances were two prior
17 convictions for burglary and/or housebreaking?

18 A. Yes.

19 Q. Now, some of these prior convictions were -- were
20 both -- all the prior convictions were from 1982 and
21 1985; is that correct?

22 A. I believe that's correct.

23 Q. Now, did you make any motions to have those
24 convictions suppressed and not used as enhancement
25 because of their age?

1 A. I did not that I remember, no.

2 Q. And did you make any arguments at all regarding
3 whether or not those were appropriate use -- appropriate
4 charges for enhancement purposes?

5 A. I don't remember specifically doing that ahead of
6 time, but it was something that would have been brought

7 out during the trial based upon evidence when it came
8 time for them to make their presentation as to whether or
9 not they could prove all the elements that we would have
10 fought with those at that time, certainly.

11 Q. But when he -- when Mr. Duncan pled guilty, you
12 didn't raise that issue at the plea with the judge?

13 A. I don't believe I did, no.

14 Q. All right. Now ---

15 THE COURT: What issue is that?

16 MS. EARLE: The issue of whether or not the
17 prior convictions could be used as enhancement.

18 THE COURT: Okay.

19 MS. EARLE: The convictions being from 1982 and
20 1985.

21 Q. Now, Mr. Duncan claims in his application that he
22 was under duress and on medication at the time. You were
23 aware that he had mental disabilities of some sort
24 because of the evaluation he had had, correct?

25 A. Yes.

Ricky Duncan v. State of South Carolina 2010-CP-37-1234
R. Daniel Day, Esquire - Direct Examination by Ms. Earle

16

1 Q. And he was on some sort of medication at the time of
2 his plea; is that correct?

3 A. I believe that's correct.

4 Q. And did you discuss with him prior to his plea
5 whether or not he was able to make adequate decisions
6 with the medication he was taking?

7 A. I believe so. I went over to make sure that he
8 understood what we were going to do if we were going to
9 do a plea to make sure that he understood that and that
10 that's what he wanted to do and to personally make sure
11 that he understood that by pleading guilty he would not
12 get a trial and that it would be up to the judge to make
13 a decision, yes.

14 Q. Now, when you were discussing with him the
15 consequences of pleading guilty, did you explain to him
16 that if he did not get a straight sentence -- a straight
17 prison term, that if there was probation or any sort of
18 suspended sentence that there would be community
19 supervision and ankle monitoring and that this was a
20 violent and most serious offense that meant he would have
21 to spend at least eighty-five percent of his sentence,
22 that there was no possibility of parole? Did you explain
23 all that to him?

24 A. I think I explained to him that when he got out that
25 based on the sentence, as the judge did it at a fifty-

1 four months, that there would still be some sort of
2 supervision. I don't think I discussed ankle monitoring
3 with him. I don't believe I did electronic monitor. I
4 don't believe I explained that to him at all though.
5 Q. Did you explain all of this to him prior to his plea
6 or after he was sentenced?

7 A. It would have been prior. I think, as part of the
8 plea, I explained to him that we would be asking for less
9 than the minimum and would be asking if at all possible
10 to get a sentence less than the fifteen years. And that
11 regardless, because it was an eighty-five percent or
12 whatever he served, there would be something -- some
13 community service after supervision -- excuse me --
14 afterwards. I didn't discuss electronic monitoring. I
15 know I didn't do that.

16 Q. Now, I understand that the morning of the trial when
17 the jury was there to be selected that Mr. Duncan didn't
18 -- refused to come to court initially and that he was
19 then told that the judge wanted him in court, and he came
20 to court in his jail clothing, not dressed out in street
21 clothes for jury selection. Do you remember that?

22 A. I remember he had reluctance to come in to court. I
23 don't remember us selecting a jury with him in orange
24 though. I don't remember him being before the jury in
25 orange.

Ricky Duncan v. State of South Carolina . 2010-CP-37-1234
R. Daniel Day, Esquire - Direct Examination by Ms. Earle

18

1 Q. And when he was that reluctant to appear in court
2 that morning, did that trigger anything, any alarms in
3 you, that maybe there was a problem with his mental
4 status that needed to be addressed prior to the trial or
5 a plea?

6 A. No. Quite honestly, no. Ricky would -- he would
7 tend to, as I would say, get on his high horse and decide
8 he didn't want to talk to anybody. He would do that
9 sometimes. He was agitated and upset about being in jail
10 which I could understand.

11 Q. Now, that day you also had another attorney sit with
12 you as you explained to the court because Mr. Duncan had
13 made threats to you?

14 A. Some of the things he had said I wanted someone to
15 be with me. And I had asked Mr. Dendy to sit in with me,
16 yeah.

17 Q. All right. Now, to your knowledge, had Mr. Dendy --
18 did Mr. Dendy have any prior information regarding this
19 case?

20 A. Not that I'm aware of, no. I just asked him if he
21 would be present during the time in case anything came up
22 about what was said and that sort of thing.

23 Q. All right. So he did not discuss with Mr. Duncan
24 the possibilities of a plea, possible defenses that were
25 available to him? He didn't know enough about the case

1 to discuss any of that with him?

2 A. Not that I remember, no. I told him what the case
3 was about. If we had gone to trial, Mr. Dendy said he
4 would continue to remain to assist me in whatever way he
5 could.

6 Q. And you did not file an appeal of the plea on behalf
7 of Mr. Duncan?

8 A. I did not.

9 Q. Did you explain to Mr. Duncan why you did not file
10 an appeal?

11 A. No. I just asked him if he wished to have an
12 appeal, I would certainly do so. He did not ask for one.

13 MS. EARLE: Your Honor, may I approach the
14 witness?

15 THE COURT: Yes.

16 Q. This is a copy I have of the sentence sheet. Does
17 that look familiar to you?

18 A. It seems to be correct, yes.

19 Q. Now, on this sentence sheet, there have been quite a
20 few changes made as to the code section and the C.D.R.
21 code and some other things added in. Were those -- to
22 your knowledge, were those corrections made before or
23 after Mr. Duncan signed the plea sheet?

24 A. I would hope before. I'm not sure of anything being
25 done afterwards, no.

Ricky Duncan v. State of South Carolina 2010-CP-37-1234.
R. Daniel Day, Esquire - Direct Examination by Ms. Earle

20

1 Q. Now, the changes that were made, did you explain

2 what those changes meant to Mr. Duncan?

3 A. I really don't remember making any changes unless it

4 happens sometimes in court where the wrong C.D.R. code is

5 on the sheet and has to be changed. I just really do not

6 remember.

7 Q. And in this case, the C.D.R. code of 0019 is marked

8 and a C.D.R. code of 1151 is added, but the indictment

9 shows a C.D.R. code of 0019; is that correct?

10 A. I think that's what's on there, yeah.

11 Q. All right. And so you did not explain to Mr. Duncan

12 what those changes indicated?

13 A. I don't remember explaining that, no, I don't.

14 Q. Okay. Now, in talking with Mr. Duncan about the

15 elements of this offense, did you explain to him what

16 attempt meant in regard to a burglary charge?

17 A. Yes. I went over -- I know I went over the charge

18 against him and why it was considered a burglary first

19 and why it was considered a burglary. I did. I went

20 over those with him. The aggravating circumstances were

21 his prior convictions and the fact that he attempted to

22 enter into a dwelling in this case in which there were

23 people actually in the house. And the testimony, as I

24 understood it based on my investigation and speaking with

25 the solicitor, et cetera, was that he attempted to enter

1 the house, made efforts to enter through a door while he
2 was on the porch and that -- would not leave. And that
3 that would be enough under the law in South Carolina that
4 that could be considered an attempted burglary.

5 Q. Did you discuss with your client what crimes the
6 State alleged he planned to commit once he was inside the
7 building?

8 A. The allegation was that he was there to get money
9 that was inside the house that he said did not belong to
10 the people inside the house. That the money belonged to
11 someone else or some other entity and that he did not
12 want them using that because he said the people inside
13 the house were drug dealers, et cetera, and that they
14 shouldn't have that money and that he was going in there
15 to get it.

16 Q. So he was attempting to enter to take possession of
17 money that did not belong to the people inside the home?

18 A. That's correct. And unfortunately it didn't belong
19 to Mr. Duncan either. He never told me that he had money
20 in there. That would have been a great defense if they
21 had his money. That would have made a wonderful defense.

22 Q. So the State's position was that he intended to
23 commit a larceny from someone who didn't own the
24 property?

25 A. Pretty much, yes. Taking something that's inside

Ricky Duncan v. State of South Carolina 2010-CP-37-1234
R. Daniel Day, Esquire - Cross-examination by Ms. Ratigan

22.

1 the house. That's correct.

2 MS. EARLE: If I may have just a moment, Your
3 Honor.

4 THE COURT: All right.

5 MS. EARLE: Thank you, Your Honor. I don't
6 believe I have any further questions at this time.

7 THE COURT: All right.

8 Ms. Ratigan?

9 CROSS EXAMINATION

10 BY MS. RATIGAN:

11 Q. Mr. Day, so you would have filed the usual Brady and
12 Rule 5 discovery motions?

13 A. I did.

14 Q. And you received those materials from the State?

15 A. I did.

16 Q. And what did those materials include?

17 A. Oh, good, Lord.

18 Q. Just in general terms. Incident, supplementals,
19 things of that nature?

20 A. Incident reports, statements from the alleged
21 victims, the police reports. I also received the prior
22 convictions that he had. Use of force forms because they
23 had to tase him is what they said. That was one of the
24 issues is I didn't feel they -- it was necessary to tase
25 him. But that was what the officers did and that's what

1 we got from them. The -- we received everything, I
2 think, except the 9-1-1 calls. And those were finally
3 given to us at a later date and provided by the State,
4 yes.

5 Q. And I believe you testified earlier that you
6 provided on at least one occasion copies of these
7 discovery materials to your client?

8 A. I did in October of 2010 everything that we had at
9 that point. And nothing really changed except for the 9-
10 1-1 and his Department of Mental Health evaluation which
11 was received as well.

12 Q. At some point did you sit down with Mr. Duncan and
13 review these documents with him?

14 A. Yeah, we went over it because he challenged -- you
15 know, he went over them himself. He read them --
16 everything I gave him he read and he discussed with me.
17 He asked me questions about them.

18 Q. And did he ever get a chance to listen to the 9-1-1
19 tape, or did you listen to it and just kind of convey
20 what you heard?

21 A. I listened to it and I had a transcript that I had
22 them provide for me. And I went over that with him to
23 explain to him because one of the things we were looking
24 at is we wanted to look at why he was tased. I still
25 don't believe that there was a -- it was a necessity to

Ricky Duncan v. State of South Carolina 2010-CP-37-1234
R. Daniel Day, Esquire - Cross-examination by Ms. Ratigan

24

1 tase him.. And that's what we were looking at.

2 Q. And did you review with him kind of his version of
3 what he believed happened that day, his story?

4 A. Yes.

5 Q. Okay. Did you discuss with him the elements of the
6 crimes that the State would have to prove to find him
7 guilty?

8 A. Yes.

9 Q. Did you come up with any possible defenses after
10 you'd received discovery and talked to him about the
11 case?

12 A. Not really. It wasn't his property. He said he was
13 there for something that didn't belong to him. Would not
14 leave when the people inside were telling him to. He was
15 denying that he attempted to get in the house, but the
16 testimony was going to be that he kicked the door and was
17 attempting to break through. And that that type of
18 testimony and evidence would be devastating to his
19 version of the facts, saying he just came on the porch.

20 Q. And you explained all that to him, the impact that
21 that would have on his story?

22 A. Yes.

23 Q. And so at some point you asked for and he received a
24 psychological evaluation?

25 A. Yes.

1 Q. Once that report came back, did you review that ---

2 A. I did.

3 Q. --- with him? But I believe you testified on direct

4 you did not think an independent evaluation would be

5 necessary?

6 A. Not at the day of the plea, no.

7 Q. Was Mr. Duncan able to discuss his case with you?

8 A. Yes.

9 Q. And I believe you testified on direct that it was

10 his intention to plead guilty but y'all went ahead and

11 picked a jury just in case? Does that sound accurate?

12 A. We did, yes.

13 Q. Okay. At what point -- well, let me strike that.

14 And it was Mr. Duncan's choice to plead guilty upon your

15 recommendation. Would that be fair to say?

16 A. Yes. We determined to present it to the judge and

17 argue for a less-than-fifteen-year sentence certainly.

18 Q. During the plea itself, did Mr. Duncan ever indicate

19 to you through words or actions that he was either

20 confused or that he had decided that he did not want to

21 plead guilty?

22 A. No.

23 Q. If Mr. Duncan had asked you to file an appeal in

24 this case, would you have done so?

25 A. Yes. I have -- the rule had changed very close to

Ricky Duncan v. State of South Carolina 2010-CP-37-1234
Ricky Duncan - Direct Examination by Ms. Earle

26

1 this time period on the method. And the new rule on
2 filing an appeal on a guilty plea required an affidavit
3 and an additional form, et cetera. And I had done one of
4 those, so I was prepared to do that. And I remember the
5 judge instructed him or advised him that he could appeal
6 if he wished to.

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

8 THE COURT: Redirect?

9 MS. EARLE: I don't have any, Your Honor.

10 Thank you.

11 THE COURT: Thank you, sir.

12 THE WITNESS: Thank you.

13 THE COURT: Next witness?

14 MS. EARLE: Just a moment, Your Honor. I'm
15 discussing with my client.

16 (WHEREUPON, Ms. Earle conferred with Mr. Duncan off
17 the record.)

18 MS. EARLE: Your Honor, at this time, Mr.
19 Duncan would like to take the stand.

20 THE COURT: All right.

21 You're under oath already. You can come and
22 testify.

23 RICKY DUNCAN,

24 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

1 BY MS. EARLE:

2 Q. Mr. Duncan, you were charged with attempted burglary
3 first degree and entered a guilty plea to that; is that
4 correct?

5 A. Yes, ma'am.

6 Q. Now, prior to that, you were -- you did go to
7 Columbia for a mental evaluation?

8 A. Yes, ma'am, I did.

9 Q. Could you -- you'll need to speak up just a little
10 bit.

11 A. Yes, ma'am, I did.

12 Q. Now, while you were incarcerated, were you on any
13 sort of medication?

14 A. Yes, I was.

15 Q. Were you on medication the day you came to court for
16 your plea?

17 A. Yes, ma'am.

18 Q. What was your physical condition on that day?

19 A. Well, I didn't know it at the time. But I had major
20 blockages in my stomach, and my whole system -- my lower
21 bowels were infected. They were just -- they -- my whole
22 lower belly was infected. I weighed two hundred and
23 thirty-five pounds. I had red lines running down both
24 legs. I was -- I mean, puss was just -- my belly was
25 just blowed up like. And it makes you kind of -- and you

Ricky Duncan v. State of South Carolina 2010-CP-37-1234
Ricky Duncan - Direct Examination by Ms. Earle

28

1 really don't know -- when you get like that, it's not --
2 you're not mentally stable.

3 And when I got to Kirkland, I had to be rushed for
4 emergency surgery. And they cut me open and removed the
5 blockages and cut some of my lower bowels out and removed
6 my appendix. And I had been having some problems since
7 then with it, you know.

8 And I've got hip C-2, and I'm at the last stages of
9 that, you know, beginning to get real problems with that.
10 And that was -- all this was causing that to act up. And
11 it all went together. And I was like -- you know, I
12 really wasn't at myself at all, you know. You're like
13 that. When you get poisons in your system, your mind
14 doesn't think right, you know.

15 Q. Mr. Duncan, were you on pain medication and
16 medication for your mental issues that day?

17 A. Yes, ma'am.

18 Q. And do you -- the judge asked you did you feel like
19 it was affecting your ability to understand things. Did
20 you feel ---

21 A. I said no. I said it wasn't affecting me.

22 Q. All right. But was it?

23 A. Yes, it was.

24 Q. Now, during your plea, the judge had the solicitor
25 give the facts of the case as to what he alleged happened

1 that day and then asked you if you agreed with the facts.

2 And you told the judge that in order to plead guilty you

3 felt like you had to agree?

4 A. Yes, ma'am.

5 Q. But you tried to explain to him that you didn't feel

6 that you had actually done anything that constituted an

7 attempted burglary?

8 A. Yes, ma'am.

9 Q. But the judge took your plea in spite of that?

10 A. Yes, ma'am.

11 Q. Now, in talking with your attorney prior to the

12 trial, the picking of the jury and prior to changing your

13 mind and entering a guilty plea, did he discuss with you

14 what the consequences of a guilty plea would be?

15 A. Yes, ma'am.

16 Q. Did you fully understand what would happen once you

17 were sentenced and went to prison?

18 A. I did not fully understand about the ankle monitor

19 and the two years community supervision and the -- and

20 then going on to the five years probation. And plus I've

21 got to do a -- go to a maximum security prison that's

22 been having all kind of problems, hostage situations, to

23 take an A.T.U. program. And I'm a level one inmate that

24 doesn't have any writeups the whole time I've been in the

25 prison system. And you know, it's ...

Ricky Duncan v. State of South Carolina 2010-CP-37-1234
Ricky Duncan - Direct Examination by Ms. Earle

30

1 Q. Now, prior to your plea, did you discuss with your
2 attorney whether or not you should try to enter a defense
3 of insanity or guilty but mentally ill? Did you have any
4 of those discussions with your attorney?

5 A. I -- we -- I asked him questions about what the
6 outcome was of those -- the findings of the psychiatrist
7 about where I was -- they found me competent that day to
8 know that I knew what I was doing that day and was I
9 competent to stand trial. And he said that I was. And
10 they said that I was just fine. But other than that,
11 that's about it.

12 Q. All right. Now, did you discuss with your attorney
13 whether or not the alleged prior offenses that were used
14 to enhance your burglary to a first degree were
15 appropriate offenses to be used for enhancement? Did you
16 ask him about those?

17 A. No, ma'am. I -- we didn't discuss that at all.

18 Q. And when you did plead guilty, you signed a sentence
19 sheet.

20 MS. EARLE: May I approach, Your Honor?

21 THE COURT: Yes.

22 Q. You signed a sentence sheet ---

23 A. Yes.

24 Q. --- that you were going to plead guilty. Did your
25 attorney explain to you any of the changes that had been

1 made on that sentence sheet?

2 A. No, ma'am. I didn't know this until I had got down
3 to even -- I was -- right after I got out of the
4 hospital, I got a copy of this from the Clerk of Court.

5 And that's when I seen he had it crossed out and started
6 looking into it. And that's when I knew that things had

7 been changed from my indictment, what I was indicted of.

8 Q. Did you file a complaint against your attorney, Mr.
9 Day, with the State Bar?

10 A. Yes, ma'am.

11 Q. And did you do that prior to your guilty plea?

12 A. Yes, ma'am.

13 Q. Did you ask the judge to give you a different
14 attorney because you were having problems with this
15 attorney?

16 A. I didn't come out right straight and ask the judge
17 for another attorney, but I made it clear that I wasn't
18 -- didn't want to go to trial with Mr. Day, that we
19 didn't get along. And I discussed the issues that I felt
20 was, you know -- I was having with Mr. Day which is all
21 on record on the sentencing sheet, some of it. And --
22 but that's about it.

23 Q. Did you discuss with Mr. Day whether or not you felt
24 that the court had subject matter jurisdiction to hear
25 your plea on an attempted burglary charge?

Ricky Duncan v. State of South Carolina 2010-CP-37-1234
Ricky Duncan - Direct Examination by Ms. Earle

32

1 A. No, I can't remember doing that. No, I sure don't.

2 Q. Did -- at the time that you pled guilty to this
3 charge, did you feel like you were doing that
4 voluntarily, or were you doing that because you felt
5 forced into it?

6 A. I felt like if I hadn't of done that, if I had of
7 went to trial that day after having to review my trans --
8 my 9-1-1 calls and looking at the pictures for the first
9 time and the jury members being in their presence when
10 all this was going on and everything was rolling pretty
11 fast, and I didn't feel like I would be -- have proper
12 representation by Mr. Day if I went to trial. And I sure
13 didn't want to get a life sentence and knocking on
14 somebody's door. Thank you.

15 Q. All right. Thank you. That's all I have. If
16 you'll answer ---

17 THE WITNESS: Thank you, Your Honor.

18 MS. RATIGAN: I don't have any cross, Your
19 Honor.

20 THE COURT: Thank you.

21 MS. EARLE: Thank you.

22 That's all we have, Your Honor.

23 THE COURT: Any witnesses by the State?

24 MS. RATIGAN: No. Ms. Earle called the
25 appropriate witnesses. So we would rest on the plea

1 transcript and Mr. Day's testimony.

2 THE COURT: All right.

3 Any argument by the Applicant?

4 CLOSING ARGUMENT

5 BY MS. EARLE:

6 Your Honor, you heard the testimony today that the
7 consequences of the plea, the full consequences of the
8 plea, were not explained to Mr. Duncan prior to his plea.
9 That there was no private mental evaluation pursued, no
10 possibility of insanity or guilty but mentally ill ---

11 THE COURT: But he talked with the judge. And
12 the judge was satisfied that he fully understood the
13 communication -- he told the judge that he understood
14 everything that was going on. He said that he was taking
15 blood pressure medication, but there didn't seem to be
16 any problem at all with his mental ability to comprehend
17 what was going on on that day as it doesn't appear to be
18 any problems with him understanding what's going on
19 today.

20 MS. EARLE: And Your Honor, I would submit that
21 one of the problems with someone who has a mental illness
22 is that they can appear to be normal when in fact their
23 thought processes and their mental abilities are not and
24 that he truly did not understand ---

25 THE COURT: But where's any -- where's the

1 evidence that he has any mental disability that prevents
2 him from understanding these proceedings or those
3 proceedings other than him -- his testimony about
4 something wrong with his stomach and intestines and all
5 of that?

6 MS. EARLE: Well, Your Honor, it would be our
7 position that his attorney should have pursued having a
8 private evaluation done based on the disturbing
9 information that was contained in the evaluation.

10 THE COURT: Such as what?

11 MS. EARLE: Well, there were allegations
12 throughout the report that he has had hallucinations
13 since he was a child, that he does suffer from severe
14 mental problems. And that was not pursued appropriately
15 to -- and that the lack of pursuing those issues
16 constitutes ineffective assistance of counsel.

17 THE COURT: I disagree with you on that point.
18 I think that was sufficiently pursued by counsel and the
19 court, and the judge reviewed it all and he was satisfied
20 that Mr. Duncan was competent to stand trial and knew the
21 consequences of his acts in pleading guilty.

22 Now, as it relates to every possible collateral
23 consequence of someone pleading guilty, including the
24 things that he's now complaining about, the type of
25 prison that he is in, the monitoring requirements that he

1 might have to face and all those type things, I'll hear
2 you further on that as it relates to any possible
3 authority that you might have that that would constitute
4 ineffective assistance. If a lawyer doesn't tell you
5 what kind of prison you're going to go to, if the lawyer
6 doesn't review with you something about monitoring. Now,
7 what did he say about that?

8 MS. EARLE: Your Honor, it's my understanding
9 that because of this being considered a violent and most
10 serious offense and that there is a split sentence, that
11 once he is released it will be on community supervision
12 with ankle monitoring prior to the probation term
13 commencing.

14 THE COURT: Because community supervision
15 entails ankle monitoring?

16 MS. EARLE: Yes, Your Honor.

17 THE COURT: All right.

18 MS. EARLE: And none of that was appropriately
19 explained to him prior to him deciding to plead guilty.

20 THE COURT: Well, do you have any cases that
21 supports your argument that that would constitute
22 inefficient -- ineffective assistance of counsel?

23 MS. EARLE: Your Honor, I do not have any case
24 law to that effect, no.

25 In addition, there were changes made on the

Ricky Duncan v. State of South Carolina 2010-CP-37-1234
Closing Argument by Ms. Earle

36

1 sentencing sheet that struck through and changed the code
2 section and the C.D.R. code for these charges. There
3 were additional things written on there, none of which
4 was adequately explained to Mr. Duncan prior to his plea.

5 THE COURT: Well, why would he be concerned
6 with the C.D.R. codes? That's more administrative, isn't
7 it?

8 MS. EARLE: Your Honor, I have explained that
9 to him, but it is of great concern to Mr. Duncan.

10 THE COURT: Okay.

11 MS. EARLE: In addition, Mr. Duncan had filed a
12 complaint against his attorney. He alleged in court the
13 day of his plea that his attorney had not done everything
14 he should have done and that he was not happy with his
15 services, and yet he was forced to continue with that
16 attorney.

17 THE COURT: Yeah, but he -- when the judge --
18 after going through the problems initially about him not
19 having discovery and ... The judge made sure that all of
20 that was taken care of and that they recessed the hearing
21 and reviewed the discovery. And the judge thoroughly
22 reviewed all of that with Mr. Duncan before proceeding.
23 And then he -- let's see. I don't know whether he asked
24 him again whether he was satisfied with the services of
25 his counsel.

1 Is that addressed in the -- what page would that be?

2 MS. RATIGAN: That would be page 48, Your
3 Honor.

4 THE COURT: Page 48? I'll tell you, I don't
5 even know that this is numbered, the numbers are on mine.

6 MS. RATIGAN: I can hand up my copy if that
7 would be helpful, Your Honor.

8 THE COURT: Okay. And this copy -- I guess the
9 way it's copied, the page numbers may be ...

10 MS. RATIGAN: Yes, the page numbers are cut
11 off. But page 48 ---

12 THE COURT: What does it say?

13 MS. RATIGAN: --- line 12, are you completely
14 satisfied with Mr. Day's and Mr. Denny's services as your
15 attorneys? The Defendant, yes, I am, Your Honor.

16 THE COURT: All right. I thought I recalled
17 reading that. I just couldn't find it because the pages
18 are not numbered. But you know, you started out
19 complaining the lawyer hadn't been there to see him
20 enough and he's been trying to get the lawyer there,
21 wasn't satisfied with the conversation or communication
22 with the lawyer once the lawyer came. And the judge
23 addressed that and spoke with him concerning that it
24 being not only the responsibility of the lawyer to
25 communicate but the responsibility of Mr. Duncan to

1 communicate with the lawyer. And all of that was
2 addressed by the court. And then subsequent to that,
3 they seemed to get on the right page or at least the same
4 page, and then he told the judge he was satisfied.

5 The fact that he filed a grievance, you know, and
6 Mr. Day said he had been threatening toward him, and that
7 certainly could have the effect of chilling the
8 communications between the lawyer and the client. It
9 obviously was a concern to Mr. Day if he decided to bring
10 someone else in to witness these conversations. But the
11 Supreme Court addressed the issue years ago about
12 defendants trying to get a lawyer fired or kicked off the
13 case by filing a grievance and concluded that that wasn't
14 a sufficient basis to relieve counsel.

15 Go ahead.

16 MS. EARLE: Your Honor, our last issue would be
17 that it was ineffective assistance of counsel by Mr. Day
18 not making an effort to suppress the prior offenses that
19 were used to enhance this to a burglary first degree.
20 That had he pursued that, then Mr. Duncan would not have
21 been facing a life sentence on this charge, that it would
22 have been a lower burglary second offense rather than
23 burglary first because the only aggravating circumstances
24 alleged in the indictment were prior offenses that had
25 occurred in 1982 and 1985.

1 THE COURT: All right. And I know the
2 solicitor said that he had a -- quite a long criminal
3 history, but that the only two relevant to this
4 indictment would have been the two prior house breakings?

5 MS. EARLE: That's correct, Your Honor.

6 THE COURT: And is it your contention that they
7 cannot be used for enhancement?

8 MS. EARLE: That because of the age of the
9 prior offenses having been ---

10 THE COURT: I mean, is there a statute or a
11 case that says you can't go back but a certain number of
12 years? A twenty- or thirty- or forty-year cutoff?

13 MS. EARLE: Your Honor, I am -- I do not have
14 the statute to that effect. I feel that the attorney
15 should have made an effort to have those suppressed on
16 prejudicial matters and that they could not have been
17 used for impeachment purposes. And to let them in for
18 enhancement when they can't be used for impeachment
19 purposes puts his client at a severe disability in order
20 to defend against them.

21 THE COURT: Well, they may not be used for
22 impeachment. But if it's an element of the offense, the
23 courts have addressed that. If two prior burglaries make
24 a third burglary a first-degree burglary, then absent a
25 stipulation during a trial, it's incumbent upon the State

Ricky Duncan v. State of South Carolina 2010-CP-37-1234
Closing Argument by Ms. Ratigan

40

1 to prove the offense. And the two prior house breakings
2 would be elements of the offense that counsel could not
3 -- he can't quash the indictment or prevent that evidence
4 other than stipulating during the trial that as to the
5 jurisdiction of the court to hear this as a first-degree
6 burglary, assuming the State accepts that. And quite
7 often the State wants to have the clerk testify based on
8 their -- the records of the prior convictions. But
9 that's not a basis to grant a P.C.R.

10 I'm just responding to a few things. Ms. Ratigan,
11 do you still -- you still get your shot as well.

12 MS. EARLE: Thank you, Your Honor.

13 THE COURT: All right. Ms. Ratigan?

14 CLOSING ARGUMENT

15 BY MS. RATIGAN:

16 Your Honor, may it please the Court. You have
17 already touched on several of these points, so I'll be
18 brief.

19 The State would argue Mr. Duncan hasn't met either
20 prong of Strickland. He hasn't proven either error by
21 his attorney or resulting prejudice.

22 The plea transcript is very clear. It was a free,
23 intelligent voluntary plea. He admitted his guilt. He
24 stated he had not been coerced or pressured in any way to
25 enter that plea. He stated that he was satisfied with

1 counsel. He told Judge Macaulay that he was providing
2 truthful answers that day. It's very clear, at least to
3 me, that Mr. Duncan is not shy about expressing his
4 opinions about things. There's nothing in the record
5 once the plea starts that indicates he wishes to
6 withdraw, that he was balking in any way other than --
7 there's nothing to indicate anything other than he wanted
8 to plead guilty.

9 As Your Honor noted, C.S.P. monitoring, eighty-five
10 percent, those are all collateral consequences which
11 counsel is not obligated to explain those to a client
12 prior to the plea.

13 Regarding an independent psychiatric evaluation, as
14 there's been nothing presented to the Court today, it
15 would be speculative to determine whether or not such an
16 evaluation would have changed the outcome of the case.
17 And furthermore, Mr. Day stated that he had no problems
18 communicating with his client, so there really hasn't
19 been any kind of testimony that there were any kind of
20 red flags or warnings that would have necessitated a
21 second evaluation of the client.

22 Again, we'd state that he hasn't met either prong of
23 *Strickland* and that his application should be denied.

24 THE COURT: All right. Well, it appears that
25 on that day Mr. Duncan convinced the judge of his guilt.

1 The judge, Judge Macaulay, who is one of the most
2 thorough jurists on the bench, went to great pains in his
3 colloquy with Mr. Duncan regarding what occurred and
4 regarding his mental status and the facts of the case as
5 well as his disagreements with Mr. Day -- is it Days or
6 Day -- Mr. Day. Mr. Duncan told the judge he's guilty
7 and explained to the judge the manner in which he was
8 guilty. It did seem sort of a strange scenario where he
9 is out fishing or camping at a creek somewhere and he
10 merges through the woods to these folks' door or house.
11 And then according to what was presented to the judge, he
12 attempted to get in through the window and pried a screen
13 off, and they called 9-1-1 and had armed themselves with
14 a rifle. And they were ready to take -- to protect their
15 own property as they would have had a right to do under
16 the Castle Doctrine and others if Mr. Duncan didn't --
17 continued to try to get in their home. And it appeared
18 from the transcript that he saw them armed inside and
19 that that likely caused him to not continue to try to
20 break in.

21 You know, I'm satisfied that the defense is correct,
22 that there's some loose screws somewhere in Mr. Duncan to
23 cause him to do what he did on that day or night.

24 Was it day or night?

25 MS. RATIGAN: Daytime, Your Honor.

1 THE COURT: ... on that day. But as is the
2 case with most people who are incarcerated, there's
3 something wrong with them. But it doesn't rise to the
4 level of -- that necessitates wasting State's resources
5 by getting independent psychiatric examinations and doing
6 the other things the defense would have us do here today.

7 I see no basis whatsoever to grant this P.C.R., and
8 the P.C.R. is denied.

9 And I wish you the best, Mr. Duncan. I think -- it
10 seems as if you got a pretty good sentence, all things
11 considered and what the judge could have done given your
12 criminal history and all of that. I mean, I think he --
13 he apparently took into consideration that you were not
14 thinking as rationally as you should have been thinking
15 on this day that caused you to get in this trouble. But
16 the sentence wasn't a bad sentence at all. And I think
17 you need to just finish this sentence and let that be. I
18 wish you the best.

19 THE APPLICANT: Thank you, Your Honor.

20 MS. RATIGAN: Thank you, Your Honor.

21 MS. EARLE: Thank you, Your Honor.

22 (WHEREUPON, the hearing ended at approximately 12:23
23 p.m.)

24 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

1 CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official Court
3 Reporter for the Tenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all
6 the proceedings had and evidence introduced in the trial
7 of the captioned case, relative to appeal, in the Circuit
8 Court for Oconee County, South Carolina, on the 1st day of
9 October 2012.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

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

14 January 26, 2013

15

16

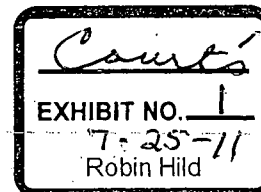
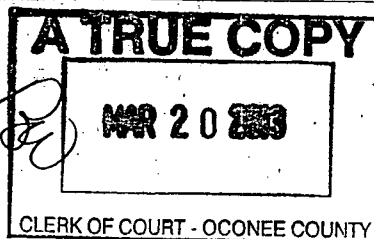
17

Renee H. Tollison

Circuit Court Reporter

SCDMH South Carolina Department of Mental Health

 South Carolina Department of Mental Health		<u>DMH Mailing Address -</u> CBSH/Forensic Evaluation Center 7901 Farrow Road Building, #6 Columbia, SC 29203 (803) 935-5600	
HIPAA (PHI) FAX COVERSHEET			
To: David Wagner, Esq.	TELEPHONE	FAX	
From: Tamika Lee		(864) 638-4295	
Date: 12/21/0	NO. PAGES INCLUDING THIS PAGE	TIME See Date Stamp	
☐ Urgent ☒ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle			
SUBJECT: CST and CR/CTC Report: R. Duncan			
MESSAGE: Please see attached. Thank you. cc: R. Daniel Day, Esq., Fax: (864) 638-3120			
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South Carolina
Department of
Mental Health

Division of Inpatient Services
Forensic Evaluation and Treatment Services
Building #6
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Columbia, South Carolina 29203
Information: (803) 935-5600
Fax: (803) 935-5544

December 2, 2010

David Wagner
Assistant Solicitor
415 S. Pine Street
Walhalla, SC 29691

Re: The State of South Carolina vs. Duncan, Ricky D.
DMH Case #: 898-5019
Oconee County, Court of General Sessions

Dear Assistant Solicitor Wagner:

In accordance with the court order issued by the Honorable Alexander S. Macaulay, a competency to stand trial evaluation was conducted by the South Carolina Department of Mental Health, pursuant to S.C. Code Ann. § 44-23-410 (1976).

Please see the attached report for the results of this evaluation.

This 11 page document is certified to be the original court-ordered evaluation report issued pursuant to S.C. Code Ann. § 44-23-410 (1976).

12/3/10
Date

Jeffrey S. Musick, Ph.D., ABPP
Jeffrey Musick, Ph.D., ABPP
Chief Psychologist
Forensic Evaluation Services
Department of Mental Health

cc: R. Daniel Ray, Attorney at Law, 415 S. Pine Street, Walhalla, SC
29691

JM/tl

COMPETENCY TO STAND TRIAL EVALUATION

SCDMH FORENSIC EVALUATION SERVICE

DATE OF EVALUATION: October 28, 2010

PRESIDING: Jesse A. Raley, M. D., Forensic Psychiatry Fellow,
University of South Carolina School of Medicine

SECOND EXAMINER: D. Tia Taylor, LMSW-CP,
South Carolina Department of Mental Health

OTHERS PRESENT: Kendra Randerson, Social Work Intern,
University of South Carolina

DIAGNOSES: AXIS I: Malingering of Psychotic Symptoms (current).
 Amphetamine Induced Psychosis, resolved.
 Amphetamine Abuse
 Cocaine Dependence, in Full Sustained Remission, By History
 Opioid Dependence, in Full Sustained Remission, By History
 Alcohol Dependence, in Full Sustained Remission, By History
 Panic Disorder without Agoraphobia
 AXIS II: Antisocial Personality Disorder
 AXIS III: Hypertension
 Hepatitis C

OPINION REGARDING COMPETENCY TO STAND TRIAL: Competent.

DISPOSITION: Mr. Duncan was released to the custody of the Oconee County Sheriff's Department for return to the Oconee County Detention Center.

PERTINENT STATEMENTS: Mr. Duncan is a 51-year-old Caucasian male seen at the Forensic Evaluation Center pursuant to a court order from the Oconee County Court of General Sessions for competency to stand trial pursuant to State v. Blair, 275 S.C. 529, 273 S.E. 2d 536 (1981) and S.C. Code Ann. § 44-23-410 (1976). He is currently charged with Attempted Burglary and Threatening the Life of Person or Family of a Public Employee. This order is issued for the following reasons: "Defendant may be delusional."

STATEMENT OF NONCONFIDENTIALITY: Prior to participating in the evaluation, Mr. Duncan was informed of the limitations of confidentiality. He was informed that the examination was

DUNCAN, RICKY
898-5019

OUTPATIENT EVALUATION

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICES 1 40303

court ordered, that the examiners worked for the Department of Mental Health, and that a copy of the evaluation report would be provided to his attorney, the solicitor, and the judge. He was informed that the examiners could be called to testify at the hearing about his competency. He verbalized understanding of this information and was able to answer questions pertaining to this information accurately. He agreed to participate in the evaluation.

SOURCES OF INFORMATION:

1. Oconee County Court of General Sessions Order for Competency to Stand Trial.
2. Oconee County Court of General Sessions Order for Criminal Responsibility and Capacity to Conform to events occurring on or about July 12, 2010.
3. Arrest warrant #N-136913 for Attempted Burglary dated July 12, 2010.
4. Arrest warrant #N-136914 for Threatening the Life of Person or Family of Public Employee dated July 12, 2010.
5. Oconee County Sheriff's Office Case Report Number 2010-00018870.
6. Witness statement of Shirley Moss dated July 12, 2010.
7. Witness statement of Ricky Fortson dated July 12, 2010.
8. Witness statement of Jessie Scott Fortson dated July 12, 2010.
9. Witness statement of Teresa Fortson dated July 12, 2010.
10. Use of Force Review Form for case number 10-18870 dated July 12, 2010.
11. The National Crime Information Center (NCIC) Report for the defendant.
12. Social history obtained from the defendant's mother, Martha Duncan, completed by D. Tia Taylor, LMSW on October 4, 2010.
13. Medical records from the Oconee Detention Center for the defendant dated July 13, 2010 to August 30, 2010.
14. Medical records from the Rosa Clark Medical Clinic Association dated September 2, 2009 to July 6, 2010.
15. Medical records from G. Weber Bryan Psychiatric Hospital for the defendant dated January 25, 1989 to February 9, 1989.
16. Harris Psychiatric Hospital medical records for the defendant dated April 16, 1989 to May 5, 1989 and January 9, 1989 to January 24, 1989.
17. Phone interview with Martha Duncan, the defendant's mother, for approximately twenty minutes on October 29, 2010.
18. Phone interview with the defendant's brother, James Duncan, for approximately fifteen minutes dated October 29, 2010.
19. Clinical forensic interview with the defendant on October 28, 2010 for approximately three hours and fifteen minutes.
20. Psychological assessment of the defendant completed on November 17, 2010 by Sandra Stader, PhD.

CLINICAL INFORMATION: Mr. Duncan is a 51-year-old Caucasian male who, according to available records, has been diagnosed with Cocaine Dependence, Alcohol Dependence, Anxiety, and Psychosis in the past. Mr. Duncan stated that he has difficulty "seeing spirits, hearing voices, having

Rm
DUNCAN, RICKY
898-5019

OUTPATIENT EVALUATION

panic attacks, severe depression, attention problems and memory loss." He stated that he frequently hears voices commanding him "to do things." He reported that the voices could be male or female, and that they might talk to him like a "normal" person or may curse at him. Mr. Duncan also reported frequently seeing things that other people cannot see and reported most commonly seeing faces that may be "ooey-gooney-looking but some are beautiful." (Note: This description is atypical for genuine psychosis.) He reported he first heard voices and saw things when he was 13-years-old. He stated that he believed that it was a religious experience at that time as he was raised in a charismatic Christian church. Mr. Duncan denied knowing ways to stop the hallucinations; however, he stated that reading his Bible will often distract him although it does not stop the hallucinations. He stated that he hallucinates daily. He also reported that he was hallucinating throughout the evaluation, although he did not appear internally distracted.

Mr. Duncan also acknowledged having had difficulties with anxiety. He stated that he has panic attacks, which occur three to five times a month and last five to fifteen minutes. He stated that during a panic attack he sweats, trembles, is short of breath, experiences chest pain, and has blurred vision. He stated that he frequently worries about having more panic attacks. He could not remember how long he has been having panic attacks although he believed it was at least for "the past twenty years." He denied excessive anxiety relating to other areas of his life.

Mr. Duncan reported experiencing depression. He stated that he has experienced episodes of depression lasting days or weeks "all of [his] life." He described that during periods of feeling depressed, his appetite, sleep, and energy level decrease. He reported that when depressed, he does not feel like engaging in pleasurable activities. He denied suicidal thoughts with the exception of one attempt to kill himself by cutting his wrists while incarcerated when he was 19 years old.

He denied significant paranoia; however, this contradicted multiple available records. He reported believing that he had special powers in the past including being able to see the future. He also reported having believed that he has received special messages from God which only he is able to receive. He described having had someone poison him, taser him and shoot a bullet through his head. He attempted to show the evaluators the scar on top of his head where the bullet had "exited," but there was no visible scar.

Mr. Duncan reported having experienced attention and memory loss problems. He described these problems as being inconsistent; he reported that these usually relating to either hallucinating or feeling very depressed. He reported having gone without sleep for several days multiple times during his life. He reported that although he has used multiple substances during his life (see Substance Use Section), he has discontinued consistent substance use for the past two and a half years and during periods of incarceration. He stated during those periods, he has continued to hear voices and feel depressed; however, there are no records available to confirm these reports.

Mr. Duncan reported that he was taking Cymbalta[®] (duloxetine), an antidepressant medication used to treat depression and anxiety, and Vistaril[®] (hydroxyzine), an antihistamine medication often prescribed for the treatment of insomnia or anxiety. He has never taken antipsychotic medication.

JCM
DUNCAN, RICKY

898-5019

OUTPATIENT EVALUATION

Mr. Duncan reported that his anxiety and mood symptoms are much better when he is taking these medications. He reported that he continues to hallucinate despite taking these medications.

PSYCHIATRIC HISTORY: Mr. Duncan has been hospitalized three times, according to reports and available records. All three hospitalizations occurred in 1989. He was hospitalized twice at Harris Psychiatric Hospital and once at G. Weber Bryan Psychiatric Hospital. During the first of these hospitalizations he reported using cocaine and "seeing a man in his living room pointing a gun at him." He was stabilized after being hospitalized for 15 days. Within 24 hours of his release he was rehospitalized after being found paranoid "holding a frying pan over head to stop 'bullets.'" He tested positive for cocaine and cannabis. He was again stabilized and discharged after 15 days. He was rehospitalized approximately two months later after being "drunk" and "threatening the lives of his parents." He again tested positive for cocaine.

SUBSTANCE USE HISTORY: Mr. Duncan reported a long substance use history, which was consistent with available medical records. He reported drinking alcohol on a regular basis until 2004. He stated that he has significantly "cutback his alcohol use in the past two and a half years." He reported that his drink of choice was "Jack Daniels." He has experienced multiple medical and social difficulties secondary to alcohol consumption. He also reported having attempted and failed to cutback multiple times, having drunk larger amounts than intended, having experienced the need for increasing amounts of alcohol to receive the same high (tolerance), and having experienced multiple physical symptoms when stopping alcohol consumption (withdrawal).

Mr. Duncan acknowledged having used cocaine and crack. He reported having used these regularly using up to \$150 a day. He stated that he would frequently steal to obtain money to pay for his cocaine and crack addiction. He reported his last consistent use of crack-cocaine was in 1995. He stated that he has used powder cocaine since that time, but denied using on a regular basis. He also acknowledged having had social and legal difficulties because of cocaine and crack use, spent significant amounts of time obtaining and using, had multiple failed attempts to cut back, used larger amounts than intended, developed tolerance, and developed withdrawal.

Mr. Duncan reported having used heroin for approximately "a year" in the late 90's. He reported that during that time, he had used daily, stealing to obtain money to pay for his heroin addiction. He reported that he has had multiple medical and legal complications secondary to heroin use. He stated that he contracted hepatitis C while using intravenous heroin. He reported also having had failed attempts to cutback his use, used larger amounts than intended, experienced tolerance and experienced withdrawal.

Mr. Duncan acknowledged that he has experimented with multiple other substances during his life. He stated that he has used cannabis multiple times in his life, experimented with PCP, LSD, hallucinogenic mushrooms, amphetamines, and inhalants. He reported that as a child, he had used inhalants regularly for approximately a year. Mr. Duncan reported having used methamphetamine approximately fifteen times over the past fifteen to twenty years. He acknowledged having used "one hit" of methamphetamine two weeks prior to the incident involving his current legal charges. He

DUNCAN, RICKY

898-5019

OUTPATIENT EVALUATION

denied having used methamphetamine on a regular basis but reported that he had used methamphetamine two weeks before the legal charges.

FAMILY HISTORY: Mr. Duncan reported that his biological father had anxiety and depression. He reported having aunts and uncles on both sides of his family who also had anxiety and depression. He reported a maternal uncle who had committed suicide. He stated that multiple paternal uncles and his biological father had had alcohol and drug problems.

He reported that the maternal side of the family has been diagnosed with Hyperlipidemia, Hypertension and "kidney cancer." He stated that the paternal side of his family may have had cancer, but he is unsure about details of their medical history.

Mr. Duncan acknowledged that his biological father had had legal problems related to stealing, but he did not know the details.

MEDICAL HISTORY: Mr. Duncan has been diagnosed with Hepatitis C and Hypertension. He reported that he has glaucoma; however, medical records do not confirm this. Mr. Duncan reported having back pain and arthritis. He said that he takes medications for high blood pressure. He acknowledged having had multiple surgeries relating to broken bones. He stated that he is allergic to Tylenol® (acetaminophen) which makes him "itch" when he takes it. He acknowledged having experienced head injuries during his life, but stated that he had not lost consciousness.

SOCIAL HISTORY: Mr. Duncan reported that he was from Oconee, South Carolina. He stated that his mother was Martha Duncan and his father was John Duncan. His father died of lung cancer according to Mr. Duncan's reports. He said that his mother and maternal grandmother were his primary care givers while growing up. He reported a strained relationship with his biological mother secondary to her having had multiple boyfriends during his childhood. He reported having been physically abused by one of her boyfriends when he was approximately 8-years-old. He described having witnessed domestic violence in his home between his mother and many of her boyfriends and described "all of her boyfriends [having] had alcohol problems." Mr. Duncan was the oldest of four siblings, all boys.

Mr. Duncan stated that he went to school until the 9th grade, at which point he had gotten his girlfriend pregnant and quit school. He stated that he made "D's and F's," and that he went to special glasses for extra educational help during school. He denied having attempted a GED. He acknowledged having been suspended three times for kissing girls and bringing alcohol to a basketball game. He reported that he played basketball in high school. He denied having been involved in gangs.

Mr. Duncan reported having worked multiple jobs during his life, never longer than a few months. He said that he had been fired and had quit jobs multiple times, "too many to count." He denied having other sources of income.

JEM

DUNCAN, RICKY
898-5019

OUTPATIENT EVALUATION

Mr. Duncan has been married and divorced twice. He reported that his first marriage occurred when he was 16-years-old lasting six months. He stated that his second marriage lasted approximately a year when he was 23-years-old. He reported that he has seven children ranging from 18 to 35 years old, and that he is close to "many" of them. Two of his children live in Alaska.

Mr. Duncan reported having been in the National Guard for approximately a year. He stated that he was removed from National Guard because of "mental problems." He denied having had benefits from the Department of Veteran's Affairs.

Mr. Duncan has a long legal history with multiple charges in South Carolina and Alaska. He reported having been in prison three times in South Carolina and multiple times for short periods in Alaska. He has been charged with Burglary, Robbery, Assault, Resisting Arrest, Disorderly Conduct, Grand Larceny, Theft, Trespassing, Shoplifting, and multiple other charges. His first charges occurred in 1981.

MENTAL STATUS EXAM: Mr. Duncan appeared older than his stated age. He was of average weight and height. He displayed adequate grooming and hygiene. His eye contact was normal. His speech was normal in both volume and rate. He was cooperative throughout the evaluation.

Cognitively, he was oriented to person, place, time, and situation. He reported that his mood was "alright." He appeared calm and happy, however; at times he displayed inappropriate laughter. He was able to repeat three words, but was unable to remember them after five minutes. When asked to remember them, he was able to remember one word with a hint; however, he could not recall the other words even with multiple choices. Mr. Duncan was able to spell the word *world* forwards; however, he transposed letters when spelling it backwards. He was able to abstract that an apple and an orange were both fruit and was able to abstract a common saying. However, when given other similarities and proverbs, he reported that he had "no idea" and would not attempt them. He was able to name the past three presidents, five cities in the United States, and identify a famous celebrity. He was able to complete several simple addition questions, but he could not complete subtraction questions. His judgment was intact to a hypothetical situation. Mr. Duncan was shown fifteen numbers, letters, and symbols for ten seconds. This was a test of his memory to assess for memory deficits versus feigning memory problems. Because the items appear in a sequential pattern, individuals with impaired memory are still able to recall several symbols. Mr. Duncan performed worse than would be expected even compared to those with memory problems.

Mr. Duncan reported experiencing auditory and visual hallucinations throughout the interview, yet he never appeared to respond to internal stimuli. He did not appear distracted by hallucinations, and he did not appear disturbed by his alleged hallucinations. He denied suicidal or homicidal ideations.

PSYCHOLOGICAL TESTING: Mr. Duncan was given psychological tests for malingering. The results from one test were "equivocal for feigning memory impairment." The results from another test showed "elevated scores on seven Primary scales, each of which measures a different way in which

JEM
DUNCAN, RICKY
898-5019

OUTPATIENT EVALUATION

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC-EVALUATION SERVICES -6- 40303

respondents may feign psychiatric symptoms... is characteristic of respondents who are malingering or exaggerating symptoms and is rarely found in patients responding candidly."

DIAGNOSTIC IMPRESSION: Based on the available data, it appears that Mr. Duncan's symptoms are best characterized by the diagnoses of Malingering of Psychosis; Amphetamine Induced Psychosis; Amphetamine Abuse; Cocaine Dependence, in Full Sustained Remission, By History; Opioid Dependence, in Full Sustained Remission, By History; Alcohol Dependence, in Full Sustained Remission, By History; Panic Disorder without Agoraphobia; and Antisocial Personality Disorder.

Mr. Duncan appeared to greatly exaggerate his psychotic symptoms during the current evaluation, and this was further supported by psychological testing. Likewise, available records from the Oconee Detention Center indicate that he was able to write and communicate coherently with no evidence of psychotic thought processes. Given this available information, Mr. Duncan currently meets diagnostic criteria for Malingering of Psychosis.

A diagnosis of current Malingering does not exclude the possibility of past genuine psychosis, and Mr. Duncan has had a long history of talking to himself and engaging in very bizarre behaviors. He has been witnessed having conversations with people who are not there. According to his brother's report, Mr. Duncan has reported that he is in the Confederate Army and has attacked trees saying that they are soldiers. Available medical records confirmed unusual beliefs and bizarre behaviors in the past as well. Mr. Duncan's diagnosis is greatly complicated by substance use as this could cause or exaggerate his psychotic symptoms in the past. Available information was unclear as to whether he has experienced psychosis during times with sustained abstinence from substances and whether he has had extended periods of sustained abstinence from all substances. Also complicating Mr. Duncan's diagnosis, according to reports from his family, Mr. Duncan tends to isolate himself during periods when he is having difficulties with his thinking. Because of this isolation, it is unclear whether he is using substances during these periods. Detention center records reflected linear thought processes free of psychosis shortly after his arrest. If he was experiencing psychosis just prior to his incarceration, then his recovery occurred rapidly. Rapid recovery is most consistent with a substance-induced psychosis, which can be diagnosed when a person has used a substance, and psychotic symptoms occur within thirty days of the substance use. Symptoms of psychosis typically improve within a month when they are substance-induced. In his case, Mr. Duncan used methamphetamine two weeks prior to his arrest. His symptoms resolved without psychiatric intervention shortly after his arrest. This would be unlikely to have occurred if his symptoms were the result of underlying mental illness rather than an unintended consequence of his substance use. Finally, he has never been hospitalized for psychotic symptoms other than at times he was using substances. Based on the available data, it is more likely than not that Mr. Duncan has experienced substance induced psychosis. For these reasons, his diagnosis best meets criteria for Amphetamine Induced Psychosis.

As described in the Substance Use History, Mr. Duncan has had a long history of cocaine, heroin, and alcohol use as well as experimentation and inconsistent use with multiple other substances. His repeated use of methamphetamine has led to social impairment and would therefore meet criteria for

JEM
DUNCAN, RICKY
898-5019

OUTPATIENT EVALUATION

Amphetamine Abuse. Mr. Duncan's history of cocaine, alcohol, and opiod use involving social and legal difficulties, spending significant amounts of time obtaining and using, having multiple failed attempts to cut back use, using larger amounts than intended, developing physiological tolerance, and developing withdrawal meet criteria for Cocaine, Alcohol, and Opiod Dependence. These diagnoses would all be qualified as in Full Sustained Remission, By History given his reports that he has sustained abstinence from these substances for greater than a year.

According to medical records and Mr. Duncan's reports, he has experienced anxiety in the form of panic attacks for many years. Like his diagnosis of Psychosis, his anxiety has likely been exacerbated by substance use; however, his panic attacks have continued during times of abstinence from substances. Also, available medical records clearly documented ongoing anxiety. His symptoms are most consistent with a diagnosis of Panic Disorder without Agoraphobia.

A Personality Disorder is an enduring pattern of thoughts, emotions, interpersonal functioning, or impulse control that has been present since a person's childhood and adolescence. The patterns of personality lead to distress or significant impairment of functioning. Antisocial Personality Disorder is a specific personality disorder with a pattern of disregard for others and a violation of the rights of others; Mr. Duncan's social and legal histories fit this pattern. He meets criteria for Antisocial Personality Disorder.

INFORMATION RELEVANT TO COMPETENCY TO STAND TRIAL: Pursuant to the S.C. Code Ann. § 44-23-410 (1976), the legal criteria for determining competency to stand trial is as follows: "A person... is not fit to stand trial because the person lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of the lack of mental capacity."

CONCLUSION REGARDING COMPETENCY TO STAND TRIAL: Mr. Duncan knew his current legal charges of Attempted Burglary and Threatening a Police Officer. He was able to adequately describe the nature of his alleged crimes and was further able to describe the severity of these crimes. He stated that a *felony* is more serious than a *misdemeanor* and that his charges are *felonies*.

Mr. Duncan was able to adequately name and describe the pleas of *guilty*, *not guilty*, *not guilty by reason of insanity*, and *no contest*. He stated that if he had questions about the nature of any or all the pleas that he would contact his attorney to get more information.

Mr. Duncan was able to adequately explain the concept of *probation*. He reported having had experienced probation multiple times and was able to provide adequate details displaying that he understood this concept.

Mr. Duncan was able to describe the role of personnel in the courtroom. He acknowledged that the judge was in charge of the courtroom and described the judge's specific roles during a court proceeding. Mr. Duncan was also able to adequately describe the role of the jury and knew that there were twelve people on the jury. Although he stated that he "wasn't sure" if the majority or all had to

JEM
DUNCAN, RICKY

898-5019

OUTPATIENT EVALUATION

agree upon a decision; he was able to acknowledge that their decision must be unanimous, and he retained this information throughout the remainder of the evaluation. Mr. Duncan also acknowledged the role of a defense attorney stating that the attorney speaks for the defendant in court and provides legal advice. He was able to name is currently assigned attorney as Mr. Day. Mr. Duncan was also able to describe the role of the solicitor.

Mr. Duncan described the role of a witness and identified that a witness caught lying on the stand, could be convicted of perjury and receive possible jail time for this conviction. He stated if a person were lying about him in court, he would whisper to his attorney to make sure that his attorney was aware of this. He was also able to describe multiple examples of evidence and stated that the primary evidence in his case were eyewitness reports.

Mr. Duncan described the concept of *plea bargaining*. He adequately described the nature of the solicitor offering a reduced sentence in exchange for a guilty plea.

Mr. Duncan also acknowledged appropriate courtroom decorum. He stated that the person is supposed to act "accordingly and mannerly." He reported that a person who yelled out or disrupted court proceedings could get "contempt of court." He stated that a person is allowed to speak in the courtroom when the judge tells him to do so.

Mr. Duncan described concerns about getting a fair trial due to his long legal history as he was afraid this may bias a judge or jury. This opinion did not appear to be based in delusional thinking, rather was the result of having had multiple charges and convictions throughout his life. He was able to adequately and rationally explain strategies he and his attorney should use to approach his defense in his current court case, and he acknowledged that he hopes to be found not guilty.

Although Mr. Duncan reported that he knew how to get in touch with his current attorney, he reported that he did not have confidence in him because he believed that his attorney may be a "fall guy." He reported that this opinion was based on advice from other people currently incarcerated in the jail and according to his own interaction. As with the discussion of receiving a fair trial, Mr. Duncan's distrust in the legal system and his attorney is based on his previous experiences with multiple charges and convictions and does not appear to be based on delusional thinking. He was able to adequately explain ways in which he could request a new attorney should he wish to do so.

In summary, it is opined that Mr. Duncan is not currently experiencing symptoms of mental illness or deficits to such an extent that they would significantly compromise his present capacity to understand the proceedings against him or to assist in his own defense. He displayed adequate factual and rational understanding of his current charges and the legal system. Although he had negative opinions of the legal system and attorneys in general, these opinions were not based in mental illness, rather a jaded view of the legal system. Therefore, it is opined that Mr. Duncan is currently competent to stand trial.

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DUNCAN, RICKY
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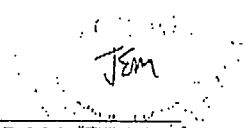
OUTPATIENT EVALUATION



Jesse A. Raley, M.D.
Forensic Psychiatry Fellow
University of South Carolina School of Medicine

JAR/cj

D: 10/30/10
RT/EM: 11/02/10
F/EM:



DUNCAN, RICKY
898-5019

OUTPATIENT EVALUATION

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC-EVALUATION SERVICES 10 40303

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF OCONEE)

C.A. No. 2011-CP-37-1234

Ricky Dean Duncan,
S.C.D.C. No. 110304,

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2012 OCT 24 PM 4 46

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 19, 2011. The Respondent made its return on May 16, 2012. An evidentiary hearing into the matter was convened on October 1, 2012 at the Oconee County Courthouse. The Applicant was present at the hearing and represented by Suzanne Earle, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant and the Applicant's plea counsel, R. Daniel Day, Esquire, testified at the PCR hearing. The Court had before it the transcript of the guilty plea hearing, the records of the Oconee County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the Respondent's return.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Oconee County Clerk of Court. The Applicant was indicted at the November 2010 term of the Oconee County Grand Jury for attempted first-degree burglary (2010-GS-37-1016) and threatening the life of a public employee (2010-GS-37-1017). He was

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177

represented by R. Daniel Day, Esquire.

On July 25, 2011, the Applicant pled guilty to the charges as indicted. He was sentenced by the Honorable Alexander S. Macaulay to concurrent terms of fifteen years suspended on the service of fifty-four months for attempted first-degree burglary and thirty days for threatening the life of a public employee. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
2. "I was under duress and medications."
3. "illegal sentence & excessive sentence."

On the day of the hearing, counsel for the Applicant provided a "Motion to Amend Post Conviction Relief (PCR) Application" (which was prepared by the Applicant) to the Court. In this document, the Applicant alleged:

1. Ineffective assistance of counsel:
 - a. Advised the Applicant to plead guilty to an indictment that "fails to convey jurisdiction to the circuit court."

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,

279

"[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 385, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The Applicant stated he was taking psychiatric medications at the time he pled guilty but that he was also suffering from stomach blockages and was in pain. The Applicant stated that, while he told the plea judge it did not affect his ability to understand the proceedings, that was untrue. The Applicant stated plea counsel did not discuss either that his prior offenses were used to enhance the charge to attempted first-degree burglary or that he would be subject to the Community Supervision Program upon his release. The Applicant stated he had filed a grievance against plea counsel and did not want to go to trial with him as his attorney.

Plea counsel testified he was appointed in this case and filed discovery motions. Plea counsel testified he received the discovery materials (which included incident and supplemental reports, witness statements, the Applicant's rap sheet, and a "use of force" form) and reviewed those items with the Applicant. Plea counsel testified he was not able to have the Applicant listen to the 911 tape, but that he listened to the tape and reviewed its contents (and transcript)

397

with the Applicant. Plea counsel testified he and the Applicant also discussed the Applicant's version of events and the elements of the charges he was facing. Plea counsel testified the Applicant received a psychiatric evaluation, but that he did not request an independent evaluation. Plea counsel testified he did not have any problems communicating with the Applicant and that the Applicant knew what he was doing when he pled guilty. Plea counsel testified they selected a jury in this case but that the Applicant chose to plead guilty. Plea counsel testified the Applicant never indicated he was confused about the plea proceedings or that he did not want to plead guilty. Plea counsel testified he explained some aspects of Community Supervision to the Applicant. Plea counsel testified he reviewed the right to appeal with the Applicant, but that the Applicant never asked him to file a notice of appeal.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

The Applicant admitted to the plea judge that he was guilty and then recited the facts that led to his charges. (Plea transcript; p.46). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.43-45; p.48). The Applicant told the plea judge he was providing truthful answers to the judge's questions. (Plea transcript, p.54).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly review the case and discuss it with him. Plea counsel testified they had several meetings during the course of his representation. Plea counsel testified he filed discovery

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499

motions, received those materials, and reviewed them with the Applicant. Plea counsel testified they reviewed the Applicant's prior criminal record and that he told the Applicant his prior offenses enhanced the charge to attempted first-degree burglary. Plea counsel testified they reviewed the elements of the charges. This Court finds plea counsel's testimony is credible. This Court further finds the Applicant failed to demonstrate either that plea counsel did not properly prepare his case or what more counsel should have done in his preparation. See, e.g., Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

This Court finds the Applicant failed to meet his burden of proving plea counsel was ineffective because he did not obtain an independent psychiatric evaluation. Plea counsel testified he was able to discuss the Applicant's case with him and that the Applicant never indicated he was confused about the plea proceeding. This Court finds plea counsel's testimony is credible and notes the pre-trial evaluation indicated the Applicant was competent to stand trial. (Plea transcript, p.38; p.54). Regardless, this Court cannot speculate as to whether an independent evaluation would have had any effect on this case, as such evidence was not presented at the PCR hearing. See, e.g., Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (finding that, as the applicant failed to have an expert testify at the evidentiary hearing, "any finding of prejudice is merely speculative").

This Court finds the Applicant failed to meet his burden of proving plea counsel was ineffective because he did not advise him about the Community Supervision Program (CSP). CSP serves essentially the same function for persons convicted of "no parole offenses" as parole does for other inmates. See Jackson v. State, 349 S.C. 62, 64, 562 S.E.2d 475, 475 (2002). It is

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599

well settled that parole eligibility is a collateral consequence of sentencing, and that trial counsel need not advise a client of his parole eligibility or ineligibility in order to render effective assistance. See Knox v. State, 340 S.C. 81, 530 S.E.2d 887 (2000); Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983). Therefore, a defendant's counsel is not required to inform him that, as a collateral consequence of his sentencing, he would be required to participate in CSP. See Jackson, 349 S.C. at 64, 562 S.E.2d at 476.

This Court finds the Applicant failed to meet his burden of proving plea counsel did not review his appellate rights with him. Plea counsel testified he reviewed these rights with the Applicant, but was never asked to file a notice of appeal. Plea counsel testified he would have filed an appeal if asked to do so. This Court finds counsel's testimony is credible. This Court further finds the Applicant was advised he could file a notice of appeal after his plea hearing and simply chose not to ask plea counsel to do so.

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

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

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to

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present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

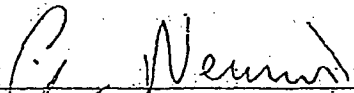
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation.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

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

IT IS THEREFORE ORDERED:

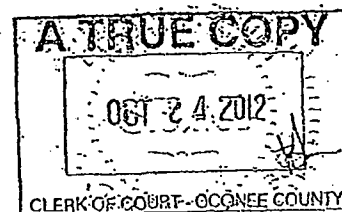
1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 12th day of October, 2012.


Clifton Newman
Presiding Judge

Columbia, South Carolina.

FILED OCOFEE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2012 OCT 24 PM 4 46



Eagle

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-37-01234

Ricky Dean Duncan

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT: This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT: This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Post Conviction Relief DENIED

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment In Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

s/Clifton Newton
Circuit Court Judge

2127
Judge Code

10/12/2012
Date

For Clerk of Court Office Use Only

This judgment was entered on the 24th day of October, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 24th day of October, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Suzanne Earle - Boxed

Karen Ratigan - Mailed

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
Beverly H. Whitfield
CLERK OF COURT

Court Reporter: Renee H Tollison

DOCKET NO. 2010GS37 01016

WITNESSES

MCMAHAN, Oconee Co Sheriff's Dept.

[Signature]

The State of South Carolina

County of Oconee

FILED OCOKEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

2010 NOV -1 P 3:15

COURT OF GENERAL SESSIONS

NOV 01 2010

Term

ARREST WARRANT NUMBER

N136913

THE STATE

VS.

Ricky Dean Duncan

ACTION OF GRAND JURY

True Bill

DRW

Indictment for

Attempted Burglary 1st Degree

Common Law, SC Code: 16-01-0080

CDR Code: 0019

Foreperson of Grand Jury NOV -1 2010

Date: JAN 2 4 2012

VERDICT

Foreperson of Petit Jury

Date:

ENTERED
147

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF Oconee)

At a Court of General Sessions, convened on NOV 01 2010, the Grand Jurors of Oconee County present upon their oath:

Attempted Burglary 1st Degree

The Defendant, **Ricky Dean Duncan**, did in Oconee County, South Carolina, on or about **July 12 2010**, willfully and unlawfully attempt to enter dwelling belonging to **Teresa Fortson**, located at _____, Salem, South Carolina, without consent and with the intent to commit a crime therein and aggravating circumstances were present to wit: defendant has two (2) prior convictions for Burglary and/or Housebreaking or a combination thereof. All in violation of Sections 16-11-311 C/L, 16-01-0080, 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.


ASSISTANT SOLICITOR

COUNTY OF Oconee
STATE VS.
Ricky Dean Duncan

AKA:

Race: Sex: M Age: 52DOB: 06-12-1959 SS#:

Address:

City, State, Zip: Tamasee, SC 29686-2724DL#: SID#: SC00331877*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Burglary / Attempted burglaryin violation of § 17-25-0030 of the S.C. Code of Laws, bearing CDR Code # 0019☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-4The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand JuryThe plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State

ATTEST:

Wagner, David RhysSC Bar# 04066Ricky Duncan

Attorney for Defendant

SC Bar

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 54 yearsand/or to pay a fine of \$ 54; provided that upon the service of 54 days/months/years and/or paymentof \$ 5, plus costs and assessments as applicable*; the balance is suspended with probation for 5

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. 317 Days TIS☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waiver Hearing ☐ Ordered PTUPTotal: \$ 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	\$ <u></u>
§ 56-5-2995 (DUI Assessment)	\$12	\$ <u></u>
§ 56-1-286 (DUI Breath Test)	\$25	\$ <u></u>
Proviso 47.9 (Public Def/Prob)	\$500	\$ <u>500.00</u>
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u></u>
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$ <u></u>
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ <u></u>
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>17.90</u>
TOTAL	\$	\$ <u>648.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter: Robin Whiteford

SCCA/217 (03/2011)

INDICTMENT/CASE#: 2010GS3701016A/W#: N136913Date of Offense: 7/12/2010S.C. Code § : 17-25-0030CDR Code #: 0019

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

Presiding Judge

Judge Code: 03Sentence Date: 7/25/11

WITNESSES

MCMAHAN, Oconee Co Sheriff's Dept

[Signature]

ARREST WARRANT NUMBER

N136914

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

Chris Hall
NOV - 1 2010

VERDICT

Foreperson of Petit Jury

Date:

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

NOV 01 2010

Term

THE STATE

vs.

Ricky Dean Duncan

DRW

Indictment for

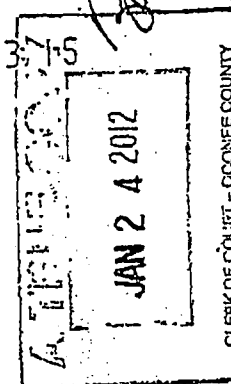
Threatening Life, Person Or Family Of Public
Employee

SC Code: 16-03-1040(B),(D)

CDR Code: 2605

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

2010 NOV - 1 P 3:15



ENTERED
3088
PUTER

STATE OF SOUTH CAROLINA)

INDICTMENT

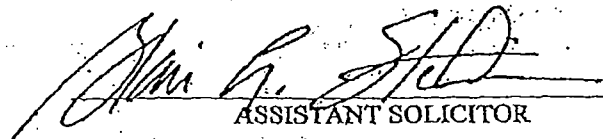
COUNTY OF Oconee)

At a Court of General Sessions, convened on NOV 01 2010, the Grand Jurors of Oconee County present upon their oath:

Threatening Life, Person Or Family Of Public Employee

That Ricky Dean Dunean did in Oconee County, on or about July 12, 2010, knowingly and willfully deliver or convey to Deputy David McMahan a threat to inflict bodily harm upon or take the life of Deputy David McMahan or members of immediate family and threat as directly related to Deputy McMahan's professional responsibilities. This is in violation of 16-3-1040(B) of the South Carolina Code of Laws (1976) as amended.

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


ASSISTANT SOLICITOR

COUNTY OF Oconee
STATE VS.

Ricky Dean Duncan

AKA:

Race: Sex: M Age: 52

DOB: 06-12-1959 SS#:

Address:

City, State, Zip: Tamasee, SC 29686-2724

DL#: SID#: SC00331877

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Threat / Threatening life, person or family of public ~~employee~~

in violation of § 16-03-1040 of the S.C. Code of Laws, bearing CDR Code #

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-4 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (defendant's init)

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

ATTEST: Wagner, David Rhys SC Bar# ADG Defendant Ricky Duncan Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☒ County Detention Center,

for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed year

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. 30 days

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

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
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ 133.90

Clerk of Court/ Deputy Clerk Rohi Sudd

Court Reporter:

SCCA/217 (03/2011)

INDICTMENT/CASE#: 2010GS3701017

A/W#: N136914

Date of Offense: 7/12/2010

S.C. Code §: 16-03-1040(B),(D)

CDR Code #: 2605

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

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,
§ 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code

Sentence Date: 7/25/10