

STATE OF SOUTH CAROLINA .

IN THE SUPREME COURT

Appeal from Horry County

Honorable D. Craig Brown, Circuit Court Judge

LEARTHUR HILLS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000656

APPENDIX

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South Carolina Commission on Indigent
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ATTORNEYS FOR RESPONDENT

RECEIVED

OCT 31 2016

S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD

COUNTY OF HORRY) CASE NO: 2014-GS-26-2495,
2748

B E F O R E: The Honorable R. Markley Dennis
January 21, 2015

STATE OF SOUTH CAROLINA,

Plaintiff,

vs.

LeARTHUR HILLS

Defendant.

 ORIGINAL

APPEARANCES:

George DeBusk, Esq.
For the State.

Eric Fox, Esq.
Catherine Owens, Esq.
For the Defendant.

Court Reporter:

Natalie Dahl, RPR

1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: Are you Mr. Hills?

3 MR. HILLS: Yes, sir.

4 THE COURT: Good morning, sir. How are you?

5 MR. HILLS: Okay.

6 THE COURT: Good. Mr. Fox, you had a conference
7 with your client and you've -- he's indicated to you
8 some -- some change; is that correct?

9 MR. FOX: He has, Your Honor. He, this morning,
10 indicated he had retained Ken Massy, who is an
11 attorney here in Horry County. Cathy, with my office,
12 is right now confirming that to make sure Mr. Massy
13 knows --

14 THE COURT: When did you retain him?

15 MR. HILLS: I called him yesterday evening. I
16 haven't really had a chance to really talk to him too
17 much since I had him (indicates).

18 THE COURT: Yeah. Well, you know what the good
19 thing about -- the good thing about these cases, and
20 I'm about to tell this jury with your case the very
21 same thing, so you'll hear it twice, but you don't
22 have to prove or disprove a thing. The State has to
23 prove you guilty, and I assume because you are going
24 to trial that you are not guilty, so that is fine.
25 The State has a video, that I've never seen, about to

1 see it, that shows you committing the act, according
2 to what the State's position is, and that's fine. The
3 jury may believe it or disbelieve it, but you don't
4 have to say a word. So when you say -- I practiced
5 law for 21 years and represented citizens just like
6 you accused of criminal offenses, so I'm not
7 unfamiliar with this process. The beauty of it is
8 simply this, if you are not guilty, then there really
9 is nothing you can do to help your lawyer, so they
10 don't need to waste time talking to you about what you
11 know, because you don't know anything about it from
12 your position, because you didn't do it, right?

13 MR. HILLS: Yes, sir.

14 THE COURT: Okay. So the fact that he didn't
15 talk to you, that doesn't say a word. He has to look
16 at what the State has, and deal with that. You can't
17 help him, since you were not there, so that is fine.
18 So that doesn't concern me in the slightest that he
19 hasn't talked to you. In fact, I used to tell my
20 clients that you see maybe 1 to 2 percent of what goes
21 into preparation, the rest of it nobody sees because
22 that is what lawyers do. But, anyway, be that as it
23 may, Mr. Massy, when you hired him, you told him you
24 were going to go to trial this morning, right, so
25 Mr. Massy needs to be here. I mean, this case is the

1 number one case for trial, okay. That is -- that's
2 the way it fell, and you're up.

3 So you have talked to Mr. Massy?

4 MS. WOOTEN: I have, Your Honor, and he tells me
5 that he has not been retained.

6 THE COURT: I didn't think he was. There is an
7 important witness that hasn't appeared, and that
8 witness is called Mr. Green, and I'm not trying to be
9 fluff, but I understand that because I practiced law.
10 Have you paid Mr. Massy?

11 MR. HILLS: No, sir.

12 THE COURT: Thank you, sir. You have not
13 retained Mr. Massy. These are your options: You can
14 go forward with this team, or you can represent
15 yourself, whatever you desire. Your case is going to
16 trial today, what is your desire, sir?

17 MR. HILLS: Can I speak with him?

18 THE COURT: Absolutely. Please do. Thank you,
19 sir.

20 (A recess was taken.)

21 (LeARTHUR HILLS, having been duly sworn,
22 testified as follows:)

23 MR. DeBUSK: This is Indictment 2014-GS-26-2495,
24 shoplifting and the case on the trial roster.
25 Indictment 2014-GS-26-2748, also for shoplifting

1 third. Defendant is LeArthur Hills. There is no
2 recommendation on the sentencing, however, I told him
3 that I would dismiss another pending charge of
4 shoplifting.

5 THE COURT: There are several, I understand from
6 my conferences.

7 MR. DeBUSK: There were.

8 THE COURT: MR. Hills, good morning to you.

9 MR. HILLS: Good morning.

10 THE COURT: You had an opportunity to talk with
11 your team of lawyers, and you made the decision to
12 change the plea from not guilty to guilty; is that
13 correct, sir?

14 MR. HILLS: Yes.

15 THE COURT: We discussed -- and I understand some
16 of what you are saying, that some of the elements
17 might be a critical thing. As I used to tell my
18 clients, and I don't mean to be flippant, but I can't
19 make facts disappear; I'm a lawyer, not a magician.
20 So sometimes we have to deal with what hand was dealt
21 to us, and that is a difficult thing, and you
22 understand that?

23 MR. HILLS: Yes, sir.

24 THE COURT: You've expressed some concern about
25 not talking with him enough, and we talked about that.

1 I understand you want to be informed, and as I said,
2 probably one of the greatest assets, at least I think
3 for me personally having practiced law for 21 years
4 before I came to be a judge, it helps you understand
5 some of the things that you are doing, and I feel your
6 frustration because I sensed that in some of my
7 clients, too. They would -- they would say I wish you
8 would call more. A lot of times we just assume that
9 you understand I'm working for you as hard as I can,
10 but sometimes that doesn't come across.

11 You have the right -- there is a jury waiting for
12 us to call them upstairs to select, and as I mentioned
13 to you when we discussed -- had the discussion, you
14 obviously don't have to prove a thing in the world;
15 you understand that?

16 MR. HILLS: Yes, sir.

17 THE COURT: Because I would tell the jury from
18 start, and even at the end, you don't have a defendant
19 prove or disprove a thing, because the State of South
20 Carolina has to prove it beyond a reasonable doubt;
21 you understand that?

22 MR. HILLS: Yes, sir.

23 THE COURT: The evidence you have is what it is,
24 and you have a right to consider that and your
25 lawyers, as officers of this court and as

1 professionals, in accordance with the oath that each
2 of them took, have the duty to tell you about it and
3 to give you their best opinion from using their
4 expertise, and that is the part that you don't get out
5 of a book. That is the part that -- expertise and
6 knowledge is what you gleam from doing this day after
7 day; you understand that?

8 MR. HILLS: Yes, sir.

9 THE COURT: The ultimate decision, as I used to
10 tell my clients, the ultimate decision is your
11 decision, because you hired me to represent you and
12 you hired -- you were appointed these lawyers to
13 represent you, and you have a right to that; you
14 understand that?

15 MR. HILLS: Yes.

16 THE COURT: But it is your desire to change your
17 plea?

18 MR. HILLS: Yes.

19 THE COURT: And to waive your jury trial; is that
20 correct?

21 MR. HILLS: Yes, sir.

22 THE COURT: And you understand you are pleading
23 to two charges, 2014-2748 charging you with
24 shoplifting, but because of your record, you've been
25 explained that the State has elected to proceed under

1 the enhancement statute, you understand that, which
2 exposes you to a potential ten-year sentence; you
3 understand that?

4 MR. HILLS: Yes.

5 THE COURT: Of course, it is a non-violent
6 offense, and you understand the significance of that
7 term?

8 MR. HILLS: Yes, sir.

9 THE COURT: Understanding the nature of that
10 offense, Mr. Hills, and the possible punishment, how
11 do you plead?

12 MR. HILLS: Guilty.

13 THE COURT: Indictment 2014-2495 also charges you
14 with shoplifting and, again, the State has elected to
15 proceed under the enhancement statute; you understand
16 that?

17 MR. HILLS: Yes, sir.

18 THE COURT: Again, I could sentence you to an
19 additional 10 years; you understand that?

20 MR. HILLS: Yes, sir.

21 THE COURT: How do you plead?

22 MR. HILLS: Guilty.

23 THE COURT: Are you satisfied with your lawyer,
24 sir?

25 MR. HILLS: Yes, sir.

1 THE COURT: And I understand we can disagree with
2 some things, but basically you are satisfied?

3 MR. HILLS: Yes, sir.

4 THE COURT: Any other promises made to you by the
5 State through your lawyers about plea arrangements
6 that you know of?

7 MR. HILLS: No, sir.

8 THE COURT: You have had the opportunity to
9 discuss this case fully with your client; is that
10 correct?

11 MR. FOX: I have, yes, sir.

12 THE COURT: And you have explained to him his
13 rights and the consequences of his plea?

14 MR. FOX: I have, Your Honor.

15 THE COURT: And you, in your opinion, he fully
16 appreciates both?

17 MR. FOX: Yes.

18 THE COURT: Based upon your investigations in
19 these matters, do you concur with his decision to
20 enter a guilty plea in each case?

21 MR. FOX: I do, Your Honor.

22 THE COURT: Is that true, Mr. Hills?

23 MR. HILLS: Yes, sir.

24 THE COURT: Then you understand fully you are
25 giving up your right to have a jury trial, right to

1 confront witnesses against and you right to remain
2 silent?

3 MR. HILLS: Yes, sir.

4 THE COURT: No one threatened or promised you
5 anything to get you to plead guilty.

6 MR. HILLS: No, sir.

7 THE COURT: Solicitor, first you will tell me the
8 facts.

9 MR. DeBUSK: As to Indictment 2495, that happened
10 on February 16, 2014 at K-Mart in the City of Conway.
11 It was captured on video. He was going through the
12 store and he took a bag from the store with various
13 items from the shelves. He had a Dollar General bag,
14 which there was a box of condoms from K-Mart put in a
15 bag and zipped it and left the store without paying.
16 He was confronted in the parking lot, got out of the
17 car he was riding in and ran across the parking lot
18 and was captured by the Conway Police across the
19 street at the Walgreens. He had with him the Dollar
20 General bag, which had the condoms in it, and left the
21 remaining items in the basket.

22 As to Indictment 2748, that happened on
23 April 18th of 2014 at the Murphy Express on Church
24 Street in Conway. The clerk saw the defendant take
25 two cartons of cigarettes into the restroom. When he

1 came out, he had the carton of cigarettes on his
2 person. He saw the bulge in his clothes. The clerk
3 called the police, saw the defendant leave and gave
4 him them a description. He ran from the police
5 initially, tazed and captured. He had on him the
6 items, the two cases of cigarettes, Your Honor.

7 THE COURT: Are those facts correct, sir?

8 MR. HILLS: Yes, sir.

9 THE COURT: Have you had any alcohol or taken any
10 type of drugs in the last 24 hours?

11 MR. HILLS: No, sir.

12 THE COURT: Treated for any emotional problems,
13 mental illnesses?

14 MR. HILLS: Yes.

15 THE COURT: What kind?

16 MR. HILLS: Anxiety.

17 THE COURT: How long have you been treating for
18 anxiety?

19 MR. HILLS: About three years.

20 THE COURT: Are you taking any medication for
21 that?

22 MR. HILLS: Yes, sir.

23 THE COURT: Did you take it today?

24 MR. HILLS: Yes.

25 THE COURT: I thought you said you just didn't

1 take any drugs?

2 MR. HILLS: Oh, no, sir, I'm just....

3 THE COURT: Well, are you under the influence of
4 any medication?

5 MR. HILLS: No, sir.

6 THE COURT: Anything affecting your ability to
7 think or reason?

8 MR. HILLS: No, sir.

9 THE COURT: You had sufficient time to think
10 about this, your decision?

11 MR. HILLS: Yes, sir.

12 THE COURT: Very well. I find there is a
13 sufficient factual basis to support his plea. I find
14 Mr. Hills is represented by very competent counsel
15 with whom he has indicated he's satisfied, and I'll
16 accept the plea. I'll be happy to hear from you
17 Mr. Fox and Ms. Owens.

18 MR. FOX: Thank you, Your Honor. I represented
19 Mr. Hills previously. He does have --

20 THE COURT: Let me stop you. I apologize. What
21 is his record?

22 MR. DeBUSK: Your Honor, his record is very long.

23 THE COURT: Give me the last 10 years.

24 MR. DeBUSK: Yes, Your Honor.

25 THE COURT: Or five years, whatever. Give me the

1 basis for the enhancement, obviously.

2 MR. DeBUSK: He does have prior convictions for
3 shoplifting third or subsequent, two of them from last
4 year, 2014.

5 THE COURT: All right.

6 MR. DeBUSK: I prepared a list of his priors. He
7 has 27 prior property offenses, and 38 bad checks, a
8 number other charges including false report to law
9 enforcement, trespassing, distribution of crack
10 cocaine, indecent exposure. It is a very long
11 distinguished record.

12 THE COURT: You have seen the list?

13 MR. FOX: I have.

14 THE COURT: And you agree you discussed that list
15 with your client and the charges over your
16 representation?

17 MR. FOX: I have, Your Honor.

18 THE COURT: Very well. I'll make the list
19 Court's Exhibit 1 to be retained with all other
20 pleadings in the clerk's file, okay?

21 MR. FOX: Thank you, Your Honor. Judge, you
22 mentioned you practiced law for 21 years and a judge
23 for another 20, so it is very clear what is going on
24 with Mr. Hills.

25 THE COURT: Drug addict.

1 MR. FOX: He tells me he is a drug addict. He
2 had rods in his legs from a serious accident. He can
3 get up and around, but not for long stretches. That
4 is the anxiety he was referring to. That is what he
5 tells me. His frustration with this current situation
6 hasn't been that he denied guilt, his efforts were to
7 avoid this moment as long as he could, and there were
8 two tracks. One is his frustration, although he's
9 ultimately responsible for it, his frustration is that
10 he never in all of his contact with law ever had any
11 serious treatment for his substance abuse, and
12 ultimately that does fall back on him. Then he got in
13 a situation where because of his record, some of the
14 options we have in Horry County -- like Drug Court and
15 the Life Recovery Program -- aren't available. So
16 that was part of the frustration.

17 The other was he has a young son, five years old,
18 and he was trying his best to make sure that there
19 were good arrangements when he recognized that this
20 day was going to come. He was certainly aware he
21 would be incarcerated, so he was trying his very best
22 to make arrangements for his son. So I, frankly,
23 never was doubtful that this moment would arrive.

24 He has been in jail. Judge, I simply ask for
25 credit for time jail. He thinks it is -- we were

1 checking on the website, and if the math is correct,
2 it is 169 days, but Mr. Hills thinks it is more like
3 200.

4 THE COURT: How many days do you think?

5 MR. HILLS: Like 234, I think.

6 THE COURT: 234 days? I'll give him credit for
7 234 days.

8 MR. FOX: Thank you. He is in -- we're not going
9 to a jury trial, and we're asking for any
10 consideration you can give. I'll point out that as
11 recently as the last time Mr. Hills was in court for
12 shoplifting, he did receive, in effect, a time-served
13 sentence.

14 THE COURT: Is that the law in --

15 MR. FOX: No, sir.

16 THE COURT: Do you wish to say anything?

17 MS. OWENS: No, Your Honor.

18 THE COURT: Thank you.

19 MR. HILLS: You know, I'm trying to get my life
20 back. I've been doing drugs all my life. I just want
21 a chance, you know, to do good and prove to myself I
22 can make it, you know, without doing drugs. You've
23 heard my record and all. It is basically shop
24 lifting, and I just ask that you have mercy on me in
25 this court.

1 THE COURT: Mr. Hills, I appreciate that, and I
2 wasn't critical of you or condemning you for your
3 crimes, one of the things you learn as a lawyer, and
4 it is confirmed as a judge, when you see people that
5 don't come across as mean, vicious people, you
6 generally look and there is another reason, and when
7 you see multiple property crimes, typically it is
8 supporting a drug habit, your lawyer is right.

9 I have had the privilege of serving on the
10 Alcohol and Drug Abuse Commission for, what, almost my
11 entire career, 20 years, in Berkeley County, and I
12 think we help a lot of people, but they had to come to
13 us. We can't go to you. That is where lies the
14 problem, being willing to seek help. It doesn't mean
15 you are bad or anything, but you have an addiction,
16 and as most people that have it, you can't deal with
17 it by yourself. So I hope you'll take the opportunity
18 of the sentence I'll fashion. It is really twofold,
19 part of it is punishment, part of it is to try to help
20 you. So the second part of it is -- the first part is
21 to go ahead and deal with the punishment part.

22 Sentence of the Court on 2014-2748, you will be
23 committed to the Department of Corrections for a term
24 of six years, give you credit for 234 days, which he
25 has requested.

1 Sentence of the Court on 2014-2495, while it is a
2 double barrel proposition, it is punishment, can be,
3 but it is more trying to assist you, and that
4 sentence, 2014-2495, is 10 years. It is suspended in
5 its entirety, and I'll place you on probation for five
6 years. Conditions of your probation are these: That
7 you submit to random drug and alcohol testing,
8 substance abuse counseling, and you pay \$500 to the
9 Public Defender Fund. That sentence is consecutive to
10 2748. The probation is tolled until you satisfy that
11 sentence. Thank you.

12 MR. HILLS: Wait a minute --

13 MR. FOX: I can explain it. Thank you, Your
14 Honor.

15 THE COURT: Thank you.

16 (Whereupon, the proceedings concluded.)
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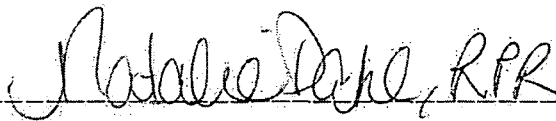
1 CERTIFICATE OF REPORTER
2

3 State of South Carolina)

4 County of Horry)
5

6 I, Natalie Dahl, Official Court Reporter for the
7 State of South Carolina, do hereby certify that the
8 foregoing is a true, accurate and complete Transcript
9 of Record of the proceedings had and evidence
10 introduced in the matter of the captioned case,
11 relative to appeal, in the Court of General Sessions
12 for Horry County, South Carolina, on the 21st day of
13 January, 2014.

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

16
17 April 11, 2015
1819
20 

21 Natalie Dahl, RPR

22 Court Reporter
23
24
25

DOCKET NO. 2014-GS-26-02748

WITNESSES

Dennis East Conway Police Department

The State of South Carolina

County of Horry

George H. DeBusk, Jr.
14101880

COURT OF GENERAL SESSIONS

JULY, 2014 TERM

THE STATE

vs.

Leathur Hills
B/M

Ayno
DOB:
SSN:

ATTORNEY: Fox, J. Eric

Indictment for

SHOPLIFTING
THIRD OR SUBSEQUENT OFFENSE
VALUE \$2000 OR LESS

Jimmy A. Richardson, II, Solicitor

ORIGINAL

ARREST WARRANT NUMBER

2014A2620400205
CDR: 2877 16-13-0110(A)
DOA: 4/18/2014

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: JUL 17 2014

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

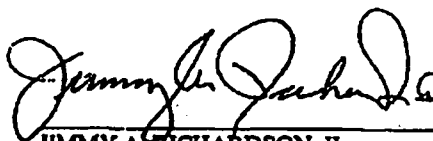
At a Court of General Sessions, convened on July 17, 2014, the Grand Jurors of Horry County present upon their oath:

SHOPLIFTING
THIRD OR SUBSEQUENT OFFENSE
VALUE \$2000 OR LESS

CDR: 2877 16-13-0110(B)(1)

That Learthur Hills did in Horry County on or about April 18, 2014, take possession of, carry away, transfer to another area of the store, or cause to be carried away or transferred, alter, transfer, or remove the price label or tag on, and/or did transfer from its container to another container, merchandise displayed, held, stored or offered for sale by Murphy Express, to wit: 2 cartons of Newport cigarettes, having a value of two thousand (\$2000) dollars or less, in violation of Section 16-13-110(B)(1), S.C. Code of Laws, 1976, as amended, such being the defendant's third or subsequent offense, in violation of Section 16-01-0057, S.C. 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.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

2015 JAN 21 PM 12:05

DOCKET NO. 2014-GS-26-02495

The State of South Carolina

County of Horry

George H. DeBuck, Jr.
14400804

COURT OF GENERAL SESSIONS

JUNE, 2014 TERM

THE STATE

vs.

Learthur Hills B/M
DOB: [REDACTED]
SSN: [REDACTED]

ATTORNEY: Fox, J. Eric

Indictment for

SHOPLIFTING
THIRD OR SUBSEQUENT OFFENSE
VALUE \$2000 OR LESS

Jimmy A. Richardson, II, Solicitor

ORIGINAL

WITNESSES

Heath Reisinger Conway Police Department

CH

ARREST WARRANT NUMBER

2014A2620400076

CDR: 2877 16-13-0110(A)

DOA: 2/17/2014

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: JUN 19 2014

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT


At a Court of General Sessions, convened on JUNE 19, 2014, the Grand Jurors of Horry County present upon their oath:

**SHOPLIFTING
THIRD OR SUBSEQUENT OFFENSE
VALUE \$2000 OR LESS**

CDR: 2877 16-13-0110(B)(1)

That Learthur Hills did in Horry County on or about February 16, 2014, take possession of, carry away, transfer to another area of the store, or cause to be carried away or transferred, after, transfer, or remove the price label or tag on, and/or did transfer from its container to another container, merchandise displayed, held, stored or offered for sale by KMART, to wit: several items of merchandise, having a value of two thousand (\$2000) dollars or less, in violation of Section 16-13-110(B)(1), S.C. Code of Laws, 1976, as amended, such being the defendant's third or subsequent offense, in violation of Section 16-01-0057, S.C. 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.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

2015 JAN 21 PM 12:05

CLERK

STATE OF SOUTH CAROLINA)
 COUNTY OF Horry)
 STATE VS.)
Learthur Hills)
 AKA: _____)
 Race: **BLACK** Sex: **M** Age: 43)
 DOB: _____)
 City, State, Zip: Aynor, SC 29511-3253)
 DL#: _____ SID#: _____)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS2602748
 A/W#: 2014A2620400205
 Date of Offense: 4/18/2014
 S.C. Code § : 16-13-0110(A)
 CDR Code #: 2877

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
 TO: Shoplifting / Value \$2000 or less (Enhancement per 16-01-0057) (Up to 10 years)

in violation of § 16-13-0110(A) of the S.C. Code of Laws, bearing CDR Code # 2877
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
 w/minor 1st or Lewd Act)

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

ATTEST: [Signature] SCB16182 [Signature] [Signature] 15123
DeBusk, Jr., George H. SC Bar# [Signature] Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 6 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections. 234 days
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 12-25-135

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
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 Set by SCDPPPS _____

PTUP _____
 _____ days/hours Public Service Employment

Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ 25.00 beginning 04/19/2014
 \$ _____ paid to Public Defender Fund
 Other: _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5%)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk Melanie Higgins Ward
 Court Reporter: Natalie Bari
 SCCA/217 (03/2011)

Presiding Judge [Signature]
 Judge Code: 2060
 Sentence Date: 01/21/2019

STATE OF SOUTH CAROLINA

COUNTY OF Horry VS. Learthur Hills

AKA: _____
Race: **BLACK** Sex: **M** Age: **46**
DOB: _____ SS#: _____
Address: _____
City, State, Zip: Aynor, SC 29511
DL#: _____ SID#: _____

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Shoplifting / Value \$2000 or less (Enhancement per 16-01-0057) (Up to 10 years)

in violation of § 16-13-0110(A) of the S.C. Code of Laws, bearing CDR Code # 2877
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45 w/minor 1st or Lowd Act

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

ATTEST: [Signature] SCB16182 [Signature] [Signature] 15 12 3
DeBusk, Jr., George H. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5

6 months years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference. [Signature]
 CONCURRENT or CONSECUTIVE to sentence on: 2014 GS 26 2748
 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. 23 days
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-13

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-64 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:
 RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly installments of \$ 25.00 beginning 08/31/2021
\$ _____ paid to Public Defender Fund
Other: probation is to last until the state fees the sentence on 2014 GS 26 2748

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§ 56-5-2995 (DUI Assessment)	\$12 \$
§ 56-1-286 (DUI Breath Test)	\$25 \$
Proviso 47.9 (Public Def/Prob)	\$500 \$ 500.00
§ 14-1-212 (Law Enforce. Funding)	\$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150 \$
§ 50-21-114(BUI Breath Test Fee)	\$50 \$
§ 56-5-2942(D) (Vehicle Assessment)	\$40/ea \$
Proviso 90.5 (SCCJA Surcharge)	\$5 \$ 5.00
3% to County (if paid in installments)	\$ 121.90
TOTAL	\$ 642.90

Clerk of Court/ Deputy Clerk: Melanie Huggins
Court Reporter: Natalie Dahi
SCCA/217 (03/20/11)
Presiding Judge: [Signature]
Judge Code: 2060
Sentence Date: 1/21/15

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS2602495
A/W#: 2014A2620400076
Date of Offense: 2/16/2014
S.C. Code § : 16-13-01 10(A)
CDR Code #: 2877

SENTENCE SHEET

2015 MAR 21 12:05

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)

LeArthur Mills # 296523
Full name and prison number (if any) of Applicant.)

15

220e

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

HORRY COUNTY
2015 MAR 27
AM 10:38
COURT

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention L. Buebenburg
2. Name and location of Court which imposed sentence Horry County
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014 GS 2602495
 - (b) 2014 GS 2602748
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) JANUARY 21, 2015 60 DBS
 - (b) 10 YRS Suspended 5 YRS Probation

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

- (a) INEFFECTIVE CANCEL
- (b) PREP PREDIGEST FROM THE JUDGE
- (c) _____

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

- (a) INEFFECTIVE CANCEL
- (b) PREDIGEST FROM THE JUDGE
- (c) _____

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

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

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

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No _____

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____

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

- (a) your arraignment and plea? _____
- (b) your trial, if any? _____
- (c) your sentencing? 10 Years
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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

- (a) the name and address of each attorney who represented you:
 - i. ERIC FOX 121301 LAUREL ST CONROYS SC 29526
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. _____
 - ii. _____
 - iii. _____

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

THAT I BE GIVEN TIME SERVE

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

NO

STATE OF SOUTH CAROLINA)

County of WAGNER)

15 VERIFICATION 2026

I, LeArthur Hills, 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.

LeArthur Hills

SWORN to and subscribed before me this _____ day of _____, 2_____.

Notary Public (L.S.)

My Commission Expires: _____

HORRY COUNTY
2015 MAR 26 AM 10:38
HELENE H. ...
CLERK OF COURT

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

I, Robert Hills, 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.

Robert Hills
Applicant

SWORN or affirmed to and subscribed before me this
_____ day of _____, 2_____.

Notary Public

My Commission Expires: _____

CLERK OF COURT
2015 MAR 24 AM 10:38
ALBERTA COUNTY

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
)	
LeArthur Hills, #296523,)	Case No. 2015-CP-26-2226
)	
Applicant,)	
)	
v.)	RETURN AND MOTION FOR A MORE
)	DEFINITE STATEMENT
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

Respondent, making its Return to the Application for Post-Conviction Relief filed March 24, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In June 2014, the Horry County Grand Jury indicted Applicant for Shoplifting, third or subsequent offense (2014-GS-26-02495). In July 2014, the Horry County Grand Jury indicted Applicant for Shoplifting, third or subsequent offense (2014-GS-26-02748). Jonathan Eric Fox, Esquire, represented Applicant on both charges. On January 21, 2015, Applicant pled guilty as indicted to both Shoplifting charges. The Honorable R. Markley Dennis, Jr., sentenced Applicant to six (6) years imprisonment for Shoplifting, third or subsequent offense (2014-GS-26-02748) and ten (10) years imprisonment for Shoplifting, third or subsequent offense (2014-GS-26-02495) suspended to 5 years probation; the latter charge was to run consecutively to the former charge. Applicant did not appeal his plea or sentence.

II.

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

1. "Ineffective Cancel (sic)"
2. "Predigest (sic) from the Judge"

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCPP.

Attached to this return and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent moves pursuant to Rule 12(e), SCRCPP, to require Applicant to provide a more definite statement of his allegations of ineffective assistance of counsel and judicial bias. The Uniform Post-Conviction Procedure Act requires applicants to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Furthermore, Rule 8(a), SCRCPP, requires all civil pleadings include "a short and plain statement of the facts showing that the pleader is entitled to relief."

Question 11 of the PCR application asks Applicant to state concisely the supporting facts for each of his grounds for relief. In response to that question, Applicant fails to set forth any

specific facts to explain his allegations. Respondent submits Applicant's allegations are so vague and ambiguous that Respondent cannot be reasonably required to frame a responsive return. Therefore, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter.

IV.

Without waiving its motion for a more definite statement in Part III, supra, Respondent submits Applicant's allegation of ineffective assistance of plea counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes plea counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove plea

counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea 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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

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

In his application, Applicant alleges that he is being held in custody unlawfully based on ineffective assistance of counsel. However, Applicant has wholly failed to set forth any legible "facts which support each ground" or to explain with any specificity whatsoever, the actual scenarios/facts upon which these supposed claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added).

The Respondent submits that it would be unfair to wait until the day of the hearing to finalize the specificity of plea counsel's supposed errors. The Respondent and plea counsel are entitled to adequately prepare for the hearing; to withhold the specific grounds and amend only on the day of the hearing prejudices the Respondent and plea counsel. The Respondent respectfully submits that it is incumbent on the Applicant to amend the application and provide

specifics so that adequate preparation is possible. The Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the Respondent. Rule 15(a), SCRPC.

V.

Without waiving its motion for a more definite statement in Part III, supra, Respondent submits Applicant's allegation regarding judicial bias is wholly without merit and should be dismissed. An allegation of judicial bias must be supported by evidence of bias. State v. Howard, 384 S.C. 212, 218, 682 S.E.2d 42, 45 (Ct. App. 2009) (quoting State v. Cheatham, 349 S.C. 101, 561 S.E.2d 618 (Ct. App. 2002)). However, the alleged bias "must be personal, as distinguished from judicial, in nature." Id. Allegations of judicial bias based on a judge's adverse ruling are wholly frivolous and are not grounds for relief. See Reading v. Ball, 291 S.C. 492, 495, 354 S.E.2d 397, 399 (Ct. App. 1987) ("The fact a judge rules against a litigant is not proof of prejudice by the judge[.] We find Reading's argument clearly frivolous[.]").

Furthermore, PCR "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction." S.C. Code Ann. § 17-27-20(b); see also Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("It is uniformly held that an application for post-conviction relief is not a substitute for an appeal."). Applicant's allegations regarding judicial bias could have been raised at trial or on appeal. His failure to do so has waived these allegations as grounds for relief. Therefore, Respondent requests these allegations be dismissed pursuant to Rule 12(b)(6), SCRPC.

VI.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VII.

WHEREFORE, having made its return, Respondent requests Applicant provide a more definite statement of his claims, and an evidentiary hearing be held on any claims so requiring one.

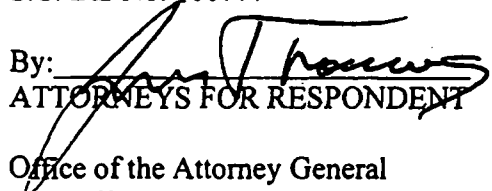
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

July 15, 2015

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Horry)
)
 LEARTHUR HILLS, #296523)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

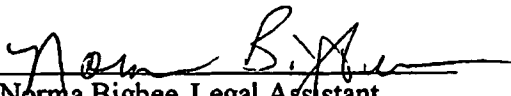
2015-CP-26-2226

AFFIDAVIT OF SERVICE BY MAIL

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 and Motion For A More Definite Statement** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James Kristian Falk, Esquire
3 Broad Street
Suite 450
Charleston, SC 29401

DATED this 15TH day of July, 2015.


 Norma Bigbee, Legal Assistant
 For Respondent

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STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**
COUNTY OF HORRY) CASE NO: 2015-CP-26-02226
PCR HEARING

B E F O R E: The Honorable D. Craig Brown
February 11, 2016

LeARTHUR HILLS,
Petitioner,
vs.

 **ORIGINAL**

STATE OF SOUTH CAROLINA,
Respondent.

APPEARANCES:

James Falk, Esq.
For the Petitioner.

Jessica Kinard, Esq.
For the Respondent.

Court Reporter:
Natalie Dahl, RPR

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I-N-D-E-X

WITNESS PAGE

JONATHAN ERIC FOX, ESQ.

Direct Examination by Mr. Falk..... 4

Cross-Examination by Ms. Kinard..... 11

LeARTHUR HILLS

Direct Examination by Mr. Falk..... 13

Cross-Examination by Ms. Kinard..... 18

E-X-H-I-B-I-T-S

PETITIONER'S EXHIBITS

MARKED & ADMITTED

NO EXHIBITS

CALL OF THE CASE
P-R-O-C-E-E-D-I-N-G-S

1
2 MS. KINARD: LeArthur Hills versus South Carolina
3 2015-CP-26-2226. This is an application for
4 post-conviction relief filed March 24, 2015. The
5 applicant is presently confined in the South Carolina
6 Department of Corrections pursuant to orders of
7 commitment of the Horry County Clerk of Court. In
8 June of 2014, the Horry County Grand Jury indicted the
9 applicant for shoplifting third or subsequent offense.
10 In July of 2014, the Horry County Grand Jury indicted
11 the applicant for shoplifting third or subsequent
12 offense. Jonathan Eric Fox, Esq., represented
13 applicant on both charges. On January 21, 2015,
14 applicant pled guilty to both shoplifting charges.
15 The Honorable R. Markley Dennis, Jr., sentenced him to
16 six years imprisonment for shoplifting third or
17 subsequent offense, and 10 years imprisonment for
18 shoplifting third or subsequent offense, suspended to
19 five years probation and to run consecutively to the
20 six-year sentence. The applicant did not appeal his
21 plea or sentence.

22 State is present and ready to proceed. Applicant
23 is present and represented by James Falk. Also for
24 the record, the return in this matter included a
25 motion for a more definite statement, this was filed

JONATHAN ERIC FOX - DIRECT EXAMINATION

1 July 15, 2015, and the first -- this roster went out
2 approximately a month ago, and the State has not
3 received an amendment until yesterday afternoon from
4 the applicant. Thank you, Your Honor.

5 THE COURT: Mr. Falk.

6 MR. FALK: I call Mr. Fox.

7 (JONATHAN ERIC FOX, having been duly sworn,
8 testified as follows:)

9 DIRECT-EXAMINATION

10 BY MR. FALK:

11 Q Mr. Fox, you represented my client on these
12 charges?

13 A I did, and I represented Mr. Hills previously. I
14 had three files on Mr. Hills starting in -- give me a
15 moment -- February of 2014 was the first one, and then
16 I believe in April and May of the same year I got
17 additional shoplifting charges, so a total of three.

18 Q How often did you review the discovery with Mr.
19 Hills?

20 A There was one visit before -- well, hang on a
21 minute. There was one visit where I didn't have
22 discovery on the latest charge, so we got him out of
23 jail, and I believe we met two, three times, and then
24 the day when he came over -- that week when his case
25 was about to go to trial, so three, four times total.

JONATHAN ERIC FOX - DIRECT EXAMINATION

1 Q Did you review the video with him?

2 A I do not believe we were able to review the video
3 with him. I was able to see it, and he was quite
4 clearly visible. It was one of the targets, I believe,
5 where they have very good equipment, clear color, very
6 focused. Mr. Hills was readily identifiable. I think
7 a jury not knowing him would have recognized it was
8 him. I reviewed it also with Kathryn Owens of our
9 office, who was co-counsel in our office.

10 Q Mr. Hills is here in a wheelchair?

11 A Yes.

12 Q Was he similarly --

13 A Yes.

14 Q So through your representation, he's suffered
15 from the same health issues?

16 A Yes, he has. I've known him three, four years
17 and he has that entire time.

18 Q What were the plea discussions that were going on
19 in this case?

20 A The offer from the State -- the offer that was
21 made -- he was facing a 10-year enhancement for the
22 property crimes. He has a very, very long list of
23 property crimes numbering a couple dozen or more, I
24 believe. So he was facing 10 years on each of these.
25 The offer from the State was for five years. That was

JONATHAN ERIC FOX - DIRECT EXAMINATION

1 relayed to Mr. Hills from our side. What Mr. Hills was
2 hoping for was some sort of treatment program, either
3 drug court or there is a program at the county jail,
4 Life Recovery, which although you stay at the jail, it
5 is a therapeutic -- involves help with addiction issues
6 as well as vocation rehab, things of that nature. That
7 is what he was hoping for.

8 The answer from the Solicitor consistently was
9 because of his very extensive record, they weren't
10 going to do that, and they are the gate keepers.
11 Without a referral from the solicitor, we can't get
12 into drug court or Life Recovery, and they were never
13 willing to do that.

14 Q Did Mr. Hills explain to you that he had a
15 personal history with the prosecutor?

16 A He did. I did not see that myself. I'm sure he
17 didn't feel real happy. He had a number of prosecutors
18 over the years. He had George DeBusk. I don't think
19 Mr. DeBusk was his friend, but I didn't see anything
20 improper or out of the ordinary in the plea offer or
21 how Mr. DeBusk dealt with this case.

22 Q But, certainly, Mr. Hills has medical issues, and
23 as opposed to serving ten years, getting into one of
24 these programs would have been a good result?

25 A Absolutely.

JONATHAN ERIC FOX - DIRECT EXAMINATION

1 Q How often are you able to get clients into these
2 programs? Were you surprised when you couldn't get him
3 in?

4 A Not with his record, I wasn't. That is something
5 that they are consistent. It is frustrating to try to
6 figure out which clients are going to be deemed
7 appropriate, and which aren't. It doesn't seem to be a
8 rhyme or reason from my end; however, one thing they
9 are fairly consistent about is that an extensive record
10 and -- his thing is property crimes. He doesn't have a
11 violent history. He doesn't break into places and hurt
12 people. It is mostly property crimes, forgeries,
13 shoplifting and things. As I say, it numbered two,
14 three dozen, so I wasn't surprised in this case.

15 Q You have been a public defender for years?

16 A 20. Couple of years.

17 Q It is not uncommon with someone who has a string
18 of crimes usually has a drug problem?

19 A It is usually the case, and I believe that to be
20 the case with Mr. Hills.

21 Q Were you able to seek any treatment outside of
22 the prosecutor?

23 A No.

24 Q Do you recall how much the total amount of the --
25 that he pled to?

JONATHAN ERIC FOX - DIRECT EXAMINATION

1 A Sorry, in terms of?

2 Q Dollar amount.

3 A I know -- I think the one from Target, which was
4 the focus, that is the one we were going to trial on
5 and I spent most of my attention on, but I believe it
6 was about \$78, cosmetics, toiletry things and a
7 hairdryer.

8 Q On the day he pled, were you able to go to trial
9 that day?

10 A We would have been, yes.

11 Q Did you have witnesses subpoenaed?

12 A There really weren't any to subpoena.

13 Q Mr. Hills, did he contact you about hiring
14 another lawyer?

15 A He brought it up. I don't recall if he mentioned
16 that before we got to trial, or when we got to court.
17 I know there was a discussion on the record with Judge
18 Dennis, and I don't recall if Mr. Hills; if it was, it
19 was that day. That was Mr. Massy, and we did make
20 efforts to verify with Mr. Massy, and it turned out not
21 to be the case.

22 Q Prior to that, were you expecting Mr. Massy to be
23 there?

24 A No.

25 Q When you got the five-year offer, did you make a

JONATHAN ERIC FOX - DIRECT EXAMINATION

1 recommendation on that for him? What was your
2 recommendation?

3 A Recommendation? I don't know that I got to a
4 recommendation. I certainly explained the situation
5 that my belief was he would be found guilty, at least
6 on the Target, the one where they had very good video.
7 I also told him -- because he wished me to discuss with
8 the solicitor -- treatment programs, Life Recovery,
9 drug court, so I told him I would do that, and I did do
10 that. We had a pretrial conference with Judge Dennis.
11 He indicated -- even at that point there was no offer
12 on the table, but he indicated that if Mr. Hills pled,
13 that he would benefit from that rather than after
14 trial, and although he didn't specifically say, Judge
15 Dennis left no doubt in my mind that he would be
16 sentenced to the full 10 years if he was convicted at
17 trial, which I had no doubt, and that was discussed.
18 So when we got to trial, at that point I was definitely
19 recommending you need to take this, and I felt there
20 was a decent chance to still get five, and we almost
21 did.

22 Q What was the circumstances of the five years?

23 A That he was at trial. At that point, the
24 practice here, and I believe probably everywhere, once
25 it is on the trial roster, offers are gone, expired.

JONATHAN ERIC FOX - DIRECT EXAMINATION

1 Q When did you communicate to him that the five
2 years was off -- it was going to be gone?

3 A I don't recall exactly. I don't know that there
4 is a specific discussion of that, quite honestly. Mr.
5 Hills, for a time, was a little bit difficult to get in
6 touch with, and he was here -- the trial itself was a
7 bit of a scramble because he wanted to hire Mr. Massy,
8 he was still wanting to ask about these programs, so I
9 honestly don't remember if it wasn't at the last minute
10 that he was informed.

11 Q But if it was at the last minute, it was already
12 off the table?

13 A Yes. I'll say this. Mr. Hills, in any
14 discussion with him, didn't deny guilt. He very much
15 wanted to try to get a program, and that was discussed,
16 you know. The answer was no over the course of several
17 months. You know, we asked many times. That was
18 relayed to him each time. What I got from Mr. Hills,
19 because he had done this before, that when he had no
20 choice, then he would enter a plea. He wanted to put
21 it off as long as possible. If he could get into a
22 program, great, he was ready to go; if not, he wanted
23 to delay his plea as long as possible. He had issues
24 with children that he wanted to make arrangements for,
25 but he made it clear to me that -- in fact, I think I

JONATHAN ERIC FOX - CROSS-EXAMINATION

1 said on the record that I expected this would always
2 happen, that once we got to the point of selecting a
3 jury, it would be a plea, and that is what happened.

4 MR. FALK: No further questions.

5 CROSS-EXAMINATION

6 BY MS. KINARD:

7 Q How would you characterize the evidence against
8 Mr. Hills?

9 A It was overwhelming, at least on the Target one,
10 which is one that was going to trial.

11 Q You stated Mr. Hills was difficult to get in
12 touch with?

13 A If you would give me a moment, I don't want to
14 confuse my representation with the prior one where he
15 was out on bond. There was a July 2014 where I went to
16 see him at the jail, and he was recently released --
17 pardon me. I have access to our computer database and
18 I have notes in here.

19 Q While looking at that, could you speak whether
20 you had difficulty preparing for trial?

21 A No. It was very straightforward. Again, Mr.
22 Hills, basically -- I mean, he didn't deny it, although
23 we weren't able to get the video for him to see. It
24 was very clear when I told him I seen it, it is clearly
25 you, you are clearly taking items off the shelf and

JONATHAN ERIC FOX - CROSS-EXAMINATION

1 concealing them in this bag. He didn't have any
2 dispute of that. There wasn't a whole lot to prepare
3 for other than making sure that everything went
4 properly.

5 Q You stated there were no witnesses to subpoena?

6 A No, he didn't have an alibi or anything.

7 Q And you felt comfortable after your discussions
8 with Mr. Hills you would have known if there were any?

9 A Yes. To -- I hadn't had a chance to look at my
10 notes. I don't recall the specific discussion with Mr.
11 Hills about the offer, when it may have expired, but we
12 always get that in written form, and it is always --
13 does have an expiration date on there, and that would
14 have been provided -- those are sent to my client, and
15 I can't say for sure he received it. I never had word,
16 he never said I didn't get to discovery. That is
17 always mailed to the client either at their residence,
18 the address they provided, or at the detention center.
19 Included in the discovery packet I have is a plea offer
20 dated June 13, 2014 listing two of his three charges.
21 The offer was to plead to two counts of shoplifting,
22 third or subsequent, five years and that was to be
23 accepted by September the 5th of 2014 or when it
24 expired.

25 Q Do you believe that Mr. Hills understood what he

LEARTHUR HILLS - DIRECT EXAMINATION

1 was doing at the time of the plea?

2 A Absolutely.

3 Q Do you believe it was in his best interest?

4 A Absolutely.

5 MS. KINARD: Nothing further, Your Honor.

6 THE COURT: Mr. Fox, you may step down, sir.

7 (LEARTHUR HILLS, having been duly sworn,
8 testified as follows:) falling

9 DIRECT-EXAMINATION

10 BY MR. FALK

11 Q You are in a wheelchair now?

12 A Yes, sir.

13 Q Is that a result of illness or accident?

14 A I have been in an accident; I'm diabetic, too.

15 Q So were you in a wheelchair at the time of the
16 events?

17 A Yes, sir.

18 Q How did you get Mr. Fox as your lawyer in this
19 case?

20 A Appointed to me.

21 Q What kind of conversation or conversations did
22 you have with him?

23 A Not too much, really. I knew I had a five-year
24 plea that I would have taken, but the day I came to
25 court, he called me in the hallway, and he like the

LeARTHUR HILLS - DIRECT EXAMINATION

1 judge say he won't give you no more than 10, and I said
2 what about five years, and he said if you go to trial
3 they'll do this and that. I was not going to go to
4 trial because I did do it, but I didn't expect to do
5 the time I got. And there was nothing about the five
6 years until I got to court. The judge said either you
7 pick the jury today or plead guilty today, and I handed
8 him a card from another lawyer that I was talking to
9 that was supposed to meet at 2:00. They talked to him,
10 but I didn't pay him yet. They tell him, well, he's'
11 going to court now, so I ain't have no choice but to
12 plea. I wasn't going to go to trial and get caught
13 with 30 years when I had no choice but to plea, because
14 the judge said I'll give you maximum on all the charges
15 against me. I would have accepted the five years with
16 no problem, but I got here that day and it was gone.

17 Q Why didn't you accept it earlier?

18 A I accepted the paperwork and I didn't know why
19 they didn't get the paperwork. I wrote the court
20 asking for paperwork, but I ain't never got response
21 back from the court.

22 Q Did you ever get the letter from -- how did you
23 find out about the five-year deal?

24 A They sent it to me in the mail.

25 Q And did you tell your lawyer you wanted the

LeARTHUR HILLS - DIRECT EXAMINATION

1 five-year deal?

2 A I sent it and sent it back in, and the day I was
3 supposed to go to court, he called me into the hallway
4 and said the judge said you don't get more than 10. I
5 said what happened with five, well, the offer is --
6 offer is off the table, so I felt like I was kind of
7 done wrong there.

8 Q You said you mailed it in where?

9 A To the Solicitor's office gave me a return
10 envelope, and I sent it back in, and never responded
11 back.

12 Q Do you recall when you sent that?

13 A No. Probably, basically, right after I got it.
14 I mean, I can't give you point in time because I was
15 incarcerated for a year.

16 Q Back up from the day you pled.

17 A Probably around about two months, probably,
18 before I went to plea. I got here that day, it was
19 like he called me in the hallway and, you know, like we
20 have to do something, we have to go to trial, pick a
21 jury today or plead today. He said today is your day
22 and the jury (sic) told me the same thing, today is
23 your day, your number is up. You're going to go to
24 trial today or you're going to plea today. I was like
25 why are you all forcing me to go to court so fast, and

LeARTHUR HILLS - DIRECT EXAMINATION

1 he called me in the hallway, you know. He said no more
2 than 10.

3 Q After you mailed the plea -- the acceptance of
4 the offer back to the solicitor, did you see your
5 lawyer?

6 A No.

7 Q So after -- first time you saw your lawyer after
8 that is when you were in court that day?

9 A Yes.

10 Q Did you ever review the video with him?

11 A No, sir, never seen it.

12 Q Did you review the discovery with him?

13 A No, sir.

14 Q What kind of discussions -- did you have some
15 kind of personal history with Mr. DeBusk?

16 A Yeah, I had a case with Mr. DeBusk where I was in
17 prison, and I had gotten 10 on me, but the charge I was
18 being accused of, I was incarcerated, and he didn't
19 want to drop the charge. So for four years I was going
20 back and forth to roll call, and he said what is going
21 on with this case right here because it is too old, and
22 he ended up throwing it out. It seemed like after that
23 he was like -- I seen him one day and he said, You
24 ain't better never get in trouble again. That is all
25 he said to me, so when I got locked up again, I was

LeARTHUR HILLS - DIRECT EXAMINATION

1 telling Mr. Fox right there, I said I don't need him on
2 my case, he won't give me a fair trial, you know, and
3 he didn't. I mean, let me get a chance to get 10 years
4 on my head by going to drug court, that is on me if I
5 mess up. He always sent me to prison, always sending
6 me to prison, and I ask for help and I don't get it, I
7 get sent to prison. I'm like it is small. I mean, it
8 is wrong to do it, but \$200, \$78. I mean, I have this
9 time, and that guy got this time. I mean, I feel like
10 by going to a drug program, it would have helped me
11 more than sending me to prison, you know. And I
12 don't -- I can't hardly get around. I have probation.
13 You could have given me all probation. I have 10 years
14 on my head if I mess up, why you don't give me the
15 whole thing on probation? I have a mental problem and
16 being in prison ain't going to give me what I need,
17 help that I need.

18 Q Did you explain all of these concerns with the
19 solicitor and Mr. Fox?

20 A Mr. Fox knows my condition and stuff, you know.
21 I also was -- I have medical problems now, I things I
22 had in the past, and prison is not going to be a good
23 spot for me right now, for me to go. I will take as
24 much probation you give me, house arrest, whatever, if
25 I mess up, I mess up, but I have health problems now.

LeARTHUR HILLS - CROSS-EXAMINATION

1 Q Anything else?

2 A No, sir.

3 MR. FALK: Nothing further.

4 CROSS-EXAMINATION

5 BY MS. KINARD:

6 Q Did you ever call Mr. Fox after you mailed in
7 your agreement?

8 A I was in jail. I tried to call down there, and
9 he not there.

10 Q You didn't ask for a meeting?

11 A I told them to get the secretary on the phone.

12 Q So you never confirmed that your plea acceptance
13 was received?

14 A I asked him about it, and he never seen it.

15 Q How did you ask him?

16 A I mean, the time when I did get a chance to talk
17 to him, I asked him about -- I asked about what is the
18 five-year plea. I did tell him I'll take three years
19 either -- or I take drug court.

20 Q When did you tell him that?

21 A I talked to him one time, only one time, but it
22 wasn't a whole lot of talking going on.

23 Q Before or after you accepted the plea?

24 A After the plea.

25 Q Before or after you mailed that document back?

LeARTHUR HILLS - CROSS-EXAMINATION

1 A I don't exactly know if it was before or after.
2 It wasn't like I came yesterday, I mean.

3 Q Do you remember the reason that you weren't given
4 drug court or treatment program?

5 A No, I wondered why I didn't get it. I should
6 have been one of the first candidates to get it.

7 Q Why is that?

8 A I mean, I had a drug problem at that time. I
9 mean, I could have stayed at the jailhouse and go
10 through the court.

11 Q Do you have lengthy record?

12 A For shoplifting, yeah, I do.

13 MS. KINARD: No further questions, Your Honor.

14 MR. FALK: No redirect.

15 THE COURT: Anything by way of argument?

16 MR. FALK: We heard testimony there was a
17 five-year offer. Defense counsel knew about the
18 five-year offer, and he testified that he didn't make
19 any recommendation whether or not my client should
20 have accepted the client. My client indicated that he
21 wanted to accept the offer, and he mailed it in. He
22 certainly wound up suffering much worse consequences
23 than the five years on the table. Defense counsel
24 said there was overwhelming evidence of guilt in this
25 case and probably should have made a stronger effort

LeARTHUR HILLS - CROSS-EXAMINATION

1 to tell Mr. Hills he had to accept the offer when it
2 was still on the table.

3 THE COURT: All right. Ms. Kinard.

4 MS. KINARD: Mr. Falk's last point, if there is
5 overwhelming evidence in a case, then that essentially
6 nullifies any question of whether counsel's assistance
7 was effective, because it is presumed that even the
8 best attorney could not have won that case.
9 Furthermore, there is no testimony contrary to the
10 fact that Mr. Hills received the plea offer. He knew
11 about it, and if he had it to sign it and send it
12 back, he had it to read and knew it had an expiration
13 date. He never asked for a meeting or phone call with
14 Mr. Fox. Mr. Fox testified that this was in Mr.
15 Hills' best interest. There is nothing in the record
16 showing that it wasn't entered into knowingly,
17 voluntarily intelligently, willingly, all of the
18 above.

19 Entering a plea because of a lesser sentence than
20 you risk facing at trial does not change the fact it
21 was entered knowingly, willingly and intelligently.
22 For all these reasons, there is no basis to believe
23 that Mr. Fox was anything but dutiful in representing
24 Mr. Hills. He was not deficient, and because he was
25 not deficient, there can be no prejudice to this

LeARTHUR HILLS - CROSS-EXAMINATION

1 applicant. For that reason, the State requests that
2 no relief be granted to Mr. Hills. Thank you.

3 THE COURT: Based upon what I've heard, I find
4 the applicant failed to carry his burden of proving,
5 first, that plea counsel was deficient. In other
6 words, he has failed to establish counsel's conduct
7 fell below reasonable effective assistance under
8 professional norms. The key issue that came up is
9 the -- certainly whether or not the plea offer had
10 been extended to the applicant. If such plea offer
11 had not been extended to the applicant, certainly
12 under the law, most recently Bell vs. State, a
13 November 2014 case, defendant certainly would be
14 entitled to the relief he is seeking had such a plea
15 offer had not been extended to him. The applicant
16 indicated that he had, in fact, received the plea
17 offer, and that he, in fact, signed and returned such.
18 To my recollection, he said he returned it to the
19 Solicitor's office, and it may be incorrect
20 recollection, but that is what I recall. Regardless,
21 the defendant failed to prove counsel's performance
22 was deficient. Furthermore, in light of the fact he
23 has failed to prove such deficient performance on
24 behalf of plea counsel, the prejudice prong is not
25 reached. Furthermore, the Court finds that the

LeARTHUR HILLS - CROSS-EXAMINATION

1 defendant freely, voluntarily, knowingly and
2 intelligently entered into his plea; therefore, such
3 relief is hereby denied. Thank you.

4 (Whereupon, the proceedings concluded.)
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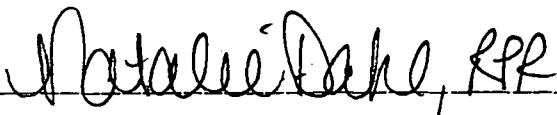
CERTIFICATE OF REPORTER

State of South Carolina)
County of Horry)

I, Natalie Dahl, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the matter of the captioned case, relative to appeal, in the Court of Common Pleas for Horry County, South Carolina, on the 11th day of February, 2016.

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

June 1, 2016



Natalie Dahl, RPR

Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 LEARTHUR HILLS, #296523)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

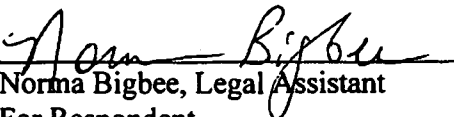
IN THE COURT OF COMMON PLEAS
 2015-CP-26-2226

AFFIDAVIT OF SERVICE BY MAIL

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 filed copy of the Order of Dismissal, in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James K. Falk, Esquire
38 Broad St., Suite 350
Charleston, SC 29401

DATED this 23rd day of March, 2016.


 Norma Bigbee, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF Horry) FOR THE FIFTEENTH JUDICIAL CIRCUIT

LeArthur Hills, #296523,) Case No. 2015-CP-26-2226

Applicant,)

v.)

ORDER OF DISMISSAL
(Ends action)

State of South Carolina,)

Respondent.)

Horry County
2016 MAR 11 PM 1:21
MELANIE HUGHES-WARD
CLERK OF COURT

This matter came before the Court by way of an Application for Post-Conviction Relief filed March 24, 2015. Respondent filed a return and motion for more definite statement on or about July 15, 2015. The Court convened an evidentiary hearing on February 11, 2016, at the Horry County Courthouse. Applicant was present and represented by James K. Falk, Esquire. Jessica E. Kinard, Esquire of the South Carolina Attorney General's Office, represented Respondent.

Applicant and Applicant's plea counsel, J. Eric Fox, Esquire, testified at the hearing. The Court had before it a copy of the plea transcript, the records of the Horry County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In June 2014, the Horry County Grand Jury indicted Applicant for Shoplifting, third or subsequent offense (2014-GS-26-02495). In July 2014, the Horry County Grand Jury indicted Applicant for Shoplifting, third or subsequent offense (2014-GS-26-02748). Jonathan Eric Fox, Esquire, represented Applicant on both charges. On January 21, 2015, Applicant pled guilty as indicted to both Shoplifting charges. The Honorable R. Markley Dennis, Jr., sentenced Applicant to six (6) years imprisonment for Shoplifting, third or subsequent offense (2014-GS-26-02748) and ten (10)

copy

years imprisonment for Shoplifting, third or subsequent offense (2014-GS-26-02495) suspended to 5 years probation; the latter charge was to run consecutively to the former charge. Applicant did not appeal his plea or sentence.

II. ALLEGATIONS

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

1. "Ineffective Cancel (sic)"
2. "Predigest (sic) from the Judge"

Applicant amended his PCR filing the day before the hearing to add the following: "Involuntary non-informed plea. His lawyer promised him a 5 year deal. He "signed" papers for a 5 year deal. He was unaware he could get 6." The hearing proceeded on all of the above grounds.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The 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.

A. Summary of Testimony

Applicant called plea counsel first, who stated that he had represented the Applicant several times, for a total of three charges. He stated that he met Applicant four times in regard to these charges. He also stated that he reviewed the surveillance videos, though he may not have watched them with the Applicant, but saw that Applicant was readily identifiable, particularly because he was in a wheelchair. Applicant raised in his application a concern about the solicitor on this case being biased. When questioned regarding this, plea counsel stated that one is bound to work with the same solicitors

repeatedly, and that there was nothing improper in this situation. Regarding plea negotiations, these were undertaken with the realization that Applicant faced a ten year enhancement for a long list of property crimes. An offer was made for five years, which was mailed to him along with information regarding its expiration, and Applicant hoped for a treatment program; however, when he could not get in, plea counsel was unsurprised because of the numerous convictions on his record. He further testified that it is usually the case that someone with so many property crimes has a history of drug use. When the plea was entered, the Court was ready to go forward with a trial that day, which is part of what led to Applicant receiving the sentence that he did. Plea counsel testified that Applicant had a habit of putting off his decision as long as possible and would plea at the last minute. Plea counsel testified that, during a pre-trial conference, the plea judge alluded to the fact that he was inclined to give Applicant the full ten years at trial. It was at this time that he recommended Applicant take the current plea offer. This Court finds plea counsel's testimony to be consistent with the underlying transcript and very credible.

Applicant testified next, and the bulk of his testimony was that he wanted to accept the five year plea he had been offered. He testified that he had mailed the correspondence from plea counsel back in to the solicitor's office, but had never heard back about it. Upon further questioning, it did not seem apparent that Applicant merely misspoke regarding who he returned the plea acceptance to; also, he testified that he never followed up with plea counsel regarding whether the plea acceptance had been received. Applicant testified that he did not want to go to trial because he did the crime, but he also wanted anything but jail time, and hoped for a treatment program. He attributed the fact that he was not accepted into drug court or a treatment program to the fact that the solicitor had an issue with him, rather than his lengthy criminal history. This Court does not find Applicant's testimony to be credible or persuasive.

B. Ineffective Assistance of Plea Counsel

In a post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, Applicant must prove plea counsel's "conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether plea counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes plea counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The Court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the Court measures plea counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. In the context of a guilty plea, Applicant must show there is a reasonable probability that, but for plea counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

The Court finds Applicant failed to meet his burden to show plea counsel rendered ineffective assistance of counsel. The plea hearing transcript shows no misunderstanding of the charge that Applicant was present for, or of the consequences that he faced. There is discussion in the transcript of whether Applicant had effectively hired a new attorney, and this was determined not to be the case. The plea judge carefully went through what that meant for Applicant and Applicant testified that he was ultimately satisfied with plea counsel's performance and representation. At the plea hearing, Applicant acknowledged that he had been given sufficient time to consider his options with counsel, and that he had done everything requested. This Court finds plea counsel adequately conferred with Applicant and was thoroughly competent in his representation. For these reasons, the request for relief on this ground is denied and dismissed.

C. Involuntary Guilty Plea

This Court also finds Applicant's allegation that his guilty plea was involuntary is without merit. A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011) (citing Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009)).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000). A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both. Holden at 573, 713 S.E.2d at 615 (citing Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d

623, 625 (1999)). The longstanding test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." Id.

In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 84, 886 (2007). Specifically, the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the guilty plea, and also from the record of the PCR hearing. Roddy, 339 S.C. at 33, 528 S.E.2d at 420. "[I]n South Carolina, a guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013) (citing Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). "A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (2007). Further, "a defendant is not entitled to withdraw his plea merely because he discovers long after the plea has been accepted that his calculus misapprehended the quality of the State's case or the likely penalties attached to alternative courses of action." Brady v. U.S., 397 U.S. 742, 757 (1970).

Based on the guilty plea transcript as well as evidence at the PCR hearing, this Court is convinced that Applicant's guilty plea was entered into freely, voluntarily, knowingly, and intelligently. There is no evidence in the transcript or presented at the PCR hearing to show otherwise. There can be no question that Applicant was fully aware of his sentence and its collateral consequences at the time of the plea hearing. As a result, Applicant has failed to meet his burden, and this allegation is denied and dismissed.

D. 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, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. The record shows no prejudice to the Applicant, nor does it show any action by plea counsel that would be deficient under the terms provided by Strickland. Plea counsel was not deficient and did not perform at a level that fell below prevailing professional norms. Even if he had, there is no evidence to show prejudice to this Applicant. Specifically, this Court finds that, because Applicant was extended the five year plea offer, there is no deficient performance on the part of plea counsel.¹ Additionally, Applicant has failed to show that his guilty plea was anything other than knowingly, intelligently, and voluntarily entered, and has not shown that, but for the defects he alleges in his plea, he would have proceeded to trial. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCPP, provides that if Applicant wishes to seek appellate review, PCR counsel must

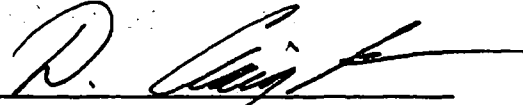
¹ Bell v. State, 410 S.C. 436, 765 S.E.2d 4 (Ct. App. 2014) (failure of counsel to communicate a plea offer that would have changed Applicant's course of conduct is ineffective assistance of counsel).

serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 7 day of March, 2016.


The Honorable D. Craig Brown
Presiding Judge

Florence, South Carolina