

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Calhoun County

Maite Murphy, Circuit Court Judge

TERRY WHISENHUNT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001253

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

RUSTON NEELY
Assistant Attorney General
Rembert Dennis Building
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

RECEIVED

NOV 23 2016

S.C. SUPREME COURT

INDEX

INDEX	i
GUILTY PLEA TRANSCRIPT DATED AUGUST 27, 2012	1
APPLICATION FOR POST-CONVICTION RELIEF	39
RETURN.....	48
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	54
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED FEBRUARY 25, 2016.....	57
ORDER OF DISMISSAL.....	97
INDICTMENTS	104

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF CALHOUN) FIRST JUDICIAL CIRCUIT

COPY

State of South Carolina,)
vs.) Case Nos.:
) 2012-GS-09-0011 through -15
Jamie Benton Smoak,)
Defendant.)

* * * * *

State of South Carolina,)
vs.) Case Nos.:
) 2012-GS-09-0016 through -20
Terry Damien Whisenhunt,)
Defendant.)

* * * * *

State of South Carolina,)
vs.) Case Nos.:
) 2012-GS-09-0021, -22, -23,
Anthony Allen Dempsey,) -25, and -26
Defendant.)

TRANSCRIPT OF PROCEEDINGS
SENTENCING HEARING
HEARD BEFORE JUDGE KRISTI HARRINGTON
ON AUGUST 27, 2012

ROLAYNE M. VOLPE, CCR, RPR
Court Reporter for the State of South Carolina at Large
Post Office Box 342
Summerville, South Carolina 29484

A P P E A R A N C E S

For the State of South Carolina:

DONALD N. SORENSON
Assistant Solicitor
Courthouse, Amelia Street
P.O. Box 1525
Orangeburg, South Carolina 29116
(803) 533-6252

For the Defendants:

BATES NELSON FELDER
Felder Prickett & McGee, LLP
614 F.R. Huff Drive
St. Matthews, South Carolina 29135
(803) 874-2010
Attorney for Jamie Benton Smoak

JEFFREY P. BLOOM
1911 Pickens Street
Columbia, South Carolina 29201
(803) 256-7001
Attorney for Anthony Allen Dempsey

GLENN WALTERS, SR.
Glenn Walters Attorney at Law, P.A.
1910 Russell Street
P.O. Box 1346
Orangeburg, South Carolina 29116
(888) 966-8844
glennwaltersp@gmail.com
Attorney for Terry Damien Whisenhunt

For Probation:

ERIC W. REED
Calhoun County Office
902 South Huff Drive
St. Matthews, South Carolina 29135
(803) 874-2537

Reported by:
ROLAYNE M. VOLPE, CCR, RPR

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DESCRIPTION

PAGE

PROCEEDINGS

4

COURT'S SENTENCING

36

REPORTER'S CERTIFICATE

38

E X H I B I T S

DESCRIPTION

PAGE

(No exhibits were marked during the proceeding.)

Reported by:
ROLAYNE M. VOLPE, CCR, RPR

1 The above-styled cause came on for hearing on
2 the 27th day of August, 2012, at 10:32 a.m., before
3 Judge Kristi Harrington, Judge at Large, presiding over
4 the General Sessions Court for the County of Calhoun,
5 when the following proceedings were had and entered of
6 record, to wit:

7 PROCEEDINGS

8 THE COURT: Good morning. Please be seated.

9 MR. SORENSON: Please the Court, your Honor.

10 The first matter we have is a guilty plea
11 involving three co-defendants that I think we'd like to
12 maybe at least do the initial part of the plea, all of
13 them together. Your Honor, we have Jamie Smoak, Terry
14 Whisenhunt, and Anthony Dempsey. The three of y'all
15 come around. I guess once they get lined up, I'll kind
16 of let you know who's who, your Honor.

17 Your Honor, to the left is James Smoak. He is
18 represented by Bates Felder.

19 THE COURT: Hold on one moment, Counselor.

20 Mr. Smoak --

21 MR. SORENSON: -- to your left.

22 THE COURT: All right.

23 MR. SORENSON: Anthony Dempsey, in the middle,
24 represented by Jeffrey Bloom. And Terry Whisenhunt,
25 represented by Mr. Glenn Walters, on your Honor's right.

 Reported by:
ROLAYNE M. VOLPE, CCR, RPR

1 THE COURT: Please swear the Defendants.

2 THE CLERK: Please raise your right hand.

3 (The oath is administered by the Clerk, and the
4 Defendants answer in the affirmative.)

5 THE CLERK: Please state your full name for the
6 record.

7 DFT. SMOAK: Jamie Benton Smoak.

8 DFT. DEMPSEY: Anthony Allen Dempsey.

9 DFT. WHISENHUNT: Terry Damien Whisenhunt.

10 THE COURT: All right. Mr. Smoak, Mr. Dempsey,
11 and Mr. Whisenhunt, that is the order in which I will
12 address you. I will be looking down making notes, so
13 when I ask a question, Mr. Smoak, I will -- you will
14 answer, and then, Mr. Dempsey, you will answer, and
15 then, Mr. Whisenhunt, you will answer. Do you
16 understand that?

17 DFT. SMOAK: Yes, ma'am.

18 DFT. DEMPSEY: Yes, ma'am.

19 DFT. WHISENHUNT: Yes, ma'am.

20 THE COURT: Counsel, I -- or excuse me.
21 Mr. Smoak, Mr. Dempsey, and Mr. Whisenhunt, I need you
22 to speak very loudly. I'm having a hard time hearing
23 you, and what that means to me, is my court reporter is
24 also having a hard time hearing you. Do you understand?

25 DFT. SMOAK: Yes, ma'am.

1 DFT. DEMPSEY: Yes, ma'am.
2 DFT. WHISENHUNT: Yes, ma'am.
3 THE COURT: All right. Mr. Smoak, Mr. Dempsey,
4 Mr. Whisenhunt, I may be looking down, but I am
5 listening to you. So just because I'm not looking at
6 you does not mean that I do not require an answer. Do
7 you understand that?
8 DFT. SMOAK: Yes, ma'am.
9 DFT. DEMPSEY: Yes, ma'am.
10 DFT. WHISENHUNT: Yes, ma'am.
11 THE COURT: Mr. Smoak, who is your attorney?
12 DFT. SMOAK: Mr. Bates.
13 MR. FELDER: Felder Bates.
14 THE COURT: All right. Mr. Felder, you
15 represent Mr. Smoak?
16 MR. FELDER: Yes, your Honor.
17 THE COURT: Mr. Dempsey, who is your attorney?
18 DFT. DEMPSEY: Mr. Jeffrey Bloom.
19 THE COURT: Mr. Bloom, you represent
20 Mr. Dempsey?
21 MR. BLOOM: Yes, your Honor. Good morning.
22 THE COURT: And, Mr. Whisenhunt, who is your
23 attorney?
24 DFT. WHISENHUNT: Mr. Glenn Walters.
25 THE COURT: Mr. Walters, you represent

1 Mr. Whisenhunt?

2 MR. WALTERS: Yes, ma'am.

3 THE COURT: And, Solicitor, all the victims
4 have been notified? Here today?

5 MR. SORENSON: Yes. He is present. I don't
6 believe he's going to wish to address the Court, but he
7 is present. Mr. Neil is the victim.

8 THE COURT: All right. Mr. Smoak, you're here
9 to plead guilty on Indictment 2012-GS-09-12 and -14.

10 DFT. SMOAK: Yes, ma'am.

11 THE COURT: The State is recommending that
12 these two indictments run concurrent and have offered a
13 range of 10 to 15 years. Is that your understanding?

14 DFT. SMOAK: Yes, ma'am.

15 THE COURT: Mr. Smoak, I can sentence you on
16 Indictment -12, which is burglary second degree, under
17 the violent provision, up to 15 years. Do you
18 understand that, sir?

19 DFT. SMOAK: Yes, ma'am.

20 THE COURT: I can sentence you on the armed
21 robbery, which is -14, from 10 to 30 years. It is a
22 mandatory ten years. Do you understand that, sir?

23 DFT. SMOAK: Yes, ma'am.

24 THE COURT: And that means I cannot give you
25 any less than ten years. Do you understand that here

1 today?

2 DFT. SMOAK: Yes, ma'am.

3 THE COURT: And I am going over it, so it's
4 important that each of the other co-defendants listen to
5 the questions, because I have the very same questions
6 for you. Do you understand, Mr. Dempsey?

7 DFT. DEMPSEY: Yes, ma'am.

8 THE COURT: You understand, Mr. Whisenhunt?

9 DFT. WHISENHUNT: Yes, ma'am.

10 THE COURT: Thank you.

11 Mr. Smoak, these are considered -- the armed
12 robbery is considered a violent and most serious
13 offense. Do you understand what that means?

14 DFT. SMOAK: Yes, ma'am.

15 THE COURT: And the burglary second degree and
16 violent provision is considered a violent and serious
17 offense. Do you understand what that means?

18 DFT. SMOAK: Yes, ma'am.

19 THE COURT: Knowing those things, do you still
20 wish to enter this plea here today?

21 DFT. SMOAK: Yes, ma'am.

22 THE COURT: Mr. Dempsey, you are here to plead
23 guilty on Indictment 2012-GS-09-22, which is a -- the
24 State's allowing you to plead to the lesser included
25 burglary in the second degree. You're also here to

1 plead guilty on 2012-GS-09-25, which is a True Billed
2 Indictment for armed robbery. I can sentence you on the
3 burglary second under the violent provision to up to 15
4 years in the Department of Corrections. And on the
5 armed robbery, I must sentence you at a minimum of 10
6 years up to 30 years. Do you understand that is the
7 possible punishment?

8 DFT. DEMPSEY: Yes, ma'am.

9 THE COURT: Do you understand that the burglary
10 in the second degree under the violent provision is
11 classified as a violent and a serious offense?

12 DFT. DEMPSEY: Yes, ma'am.

13 THE COURT: Do you understand that the armed
14 robbery is classified as a violent and a most serious
15 offense?

16 DFT. DEMPSEY: Yes, ma'am.

17 THE COURT: The recommendation is for a -- for
18 the two indictments to run concurrent and for a range
19 of 10 to 15 years. You understand that's merely a
20 recommendation; I do not have to go along with that?

21 DFT. DEMPSEY: Yes, ma'am.

22 THE COURT: Knowing that, do you still wish to
23 go forward here today?

24 DFT. DEMPSEY: Yes, ma'am.

25 THE COURT: Mr. Whisenhunt, you're here to

1 plead guilty on Indictment 2012-GS-09-17. The State is
2 allowing you to plead to the lesser included burglary in
3 the second degree under the violent provision. Do you
4 understand that is a violent and a serious offense?

5 DFT. WHISENHUNT: Yes, ma'am.

6 THE COURT: Do you understand that I can
7 sentence you up to 15 years in the Department of
8 Corrections on this offense?

9 DFT. WHISENHUNT: Yes, ma'am.

10 THE COURT: You're also here to plead guilty on
11 2012-GS-09-20, which is a True Billed Indictment for
12 armed robbery. That is a violent and most serious
13 offense. Do you understand that I can sentence you
14 from 10 years, which is the minimum mandatory, up to 30
15 years in the Department of Corrections?

16 DFT. WHISENHUNT: Yes, ma'am.

17 THE COURT: Knowing that, do you still wish to
18 go forward here today?

19 DFT. WHISENHUNT: Yes, ma'am.

20 THE COURT: The State is also making the same
21 recommendation, that the two indictments run concurrent,
22 and they are recommending a range of 10 to 15 years. Do
23 you understand that's merely a recommendation; I do not
24 have to go along with that?

25 DFT. WHISENHUNT: Yes, ma'am.

1 THE COURT: Knowing that, do you still wish to
2 enter your plea here today?

3 DFT. WHISENHUNT: Yes, ma'am.

4 THE COURT: Mr. Smoak, Mr. Dempsey,
5 Mr. Whisenhunt, you do not have to plead guilty here
6 today. By pleading guilty you're waiving, or giving up,
7 certain rights. You are giving up your right to a jury
8 trial; your right to have a jury determine your guilt
9 beyond a reasonable doubt based upon the evidence the
10 State presents, as well as any evidence you may
11 introduce; your right against self-incrimination; your
12 right to say nothing at all; your right to confront and
13 be confronted by the witnesses against you, as well as
14 the right to call witnesses on your behalf. By pleading
15 guilty here today, you give up any defense you have to
16 this charge. Do you understand those constitutional
17 rights?

18 DFT. SMOAK: Yes, ma'am.

19 THE COURT: And do you waive those rights at
20 this time?

21 DFT. SMOAK: Yes, ma'am.

22 DFT. DEMPSEY: Yes, ma'am.

23 THE COURT: And do you waive those rights at
24 this time?

25 DFT. DEMPSEY: Yes, ma'am.

1 THE COURT: Do you understand those rights?
2 DFT. WHISENHUNT: Yes, ma'am.
3 THE COURT: And do you waive all those rights
4 at this time?
5 DFT. WHISENHUNT: Yes, ma'am.
6 THE COURT: Has anybody promised you anything,
7 threatened you, or forced you to plead guilty here
8 today?
9 DFT. SMOAK: No, ma'am.
10 DFT. DEMPSEY: No, ma'am.
11 MR. WHISENHUNT: No, ma'am.
12 THE COURT: Have you been satisfied with the
13 services of your attorney?
14 DFT. SMOAK: Yes, ma'am.
15 DFT. DEMPSEY: Yes, ma'am.
16 DFT. WHISENHUNT: Yes, ma'am.
17 THE COURT: Do you need any additional time to
18 meet with them?
19 DFT. SMOAK: No, ma'am.
20 DFT. DEMPSEY: No, ma'am.
21 DFT. WHISENHUNT: No, ma'am.
22 THE COURT: Any complaints about the way he's
23 handled this case?
24 DFT. SMOAK: No, ma'am.
25 DFT. DEMPSEY: No, ma'am.

Reported by:
ROLAYNE M. VOLPE, CCR, RPR

1 DFT. WHISENHUNT: No, ma'am.

2 THE COURT: Understanding the charge that you
3 are facing, the possible punishment, as well as the
4 consequence of this plea, how do you plead to armed
5 robbery?

6 DFT. SMOAK: Guilty.

7 THE COURT: How do you plead to burglary in the
8 second degree, violent?

9 DFT. SMOAK: Guilty, your Honor.

10 THE COURT: How do you plead to armed robbery?

11 DFT. DEMPSEY: Guilty.

12 THE COURT: How do you plead to the burglary in
13 the second degree under the violent provision?

14 DFT. DEMPSEY: Guilty.

15 THE COURT: How do you plead to the armed
16 robbery?

17 DFT. WHISENHUNT: Guilty.

18 THE COURT: How do you plead to burglary in the
19 second degree under the violent provision?

20 DFT. WHISENHUNT: Guilty.

21 THE COURT: Are you pleading guilty because
22 you, in fact, are guilty of both of these offenses?

23 DFT. SMOAK: Yes, ma'am.

24 DFT. DEMPSEY: Yes, ma'am.

25 DFT. WHISENHUNT: Yes, ma'am.

1 THE COURT: Has anybody threatened you,
2 promised you anything, to get you to plead guilty here
3 today?

4 DFT. SMOAK: No, ma'am.

5 DFT. DEMPSEY: No, ma'am.

6 DFT. WHISENHUNT: No, ma'am.

7 THE COURT: Whose decision was it for you to
8 plead guilty here today?

9 DFT. SMOAK: Mine, your Honor.

10 DFT. DEMPSEY: Mine.

11 DFT. WHISENHUNT: Mine.

12 THE COURT: Have you understood all of my
13 questions so far?

14 DFT. SMOAK: Yes, ma'am.

15 DFT. DEMPSEY: Yes, ma'am.

16 DFT. WHISENHUNT: Yes, ma'am.

17 THE COURT: Mr. Smoak, Mr. Dempsey, and
18 Mr. Whisenhunt, please listen to the facts. I'll have a
19 few more questions for you. Mr. Sorenson.

20 MR. SORENSON: Thank you. May it please the
21 Court, your Honor. This offense occurred back on the
22 early morning hours of December 27th, 2011, 3856 Old
23 State Road, here in St. Matthews. That's the residence,
24 at the time, of the victim in this case, Daniel Neil,
25 goes by Russ. Mr. Neil had been awoken that night about

1 two o'clock or so in the morning by a banging. Had kind
2 of gotten up, initially. Didn't know what it was. And
3 I think he kind of, like, fiddled around, checked his
4 phone and all. And while doing that, heard basically
5 the sound -- like a door being kicked in. At that point
6 in time, he got on the phone to 911. He got through to
7 them and at least was able to relay that information
8 about what was going on.

9 In the interim, your Honor, the Calhoun County
10 Sheriff's office had been notified earlier that evening
11 from the Orangeburg County Sheriff's office that they
12 had gotten some information about a vehicle that was
13 possibly heading over into this county for the purposes
14 of going to break into a house, that they had gotten
15 that information from another young man over in
16 Orangeburg. So officers were kind of out -- or ended up
17 not being very far from this residence. Mr. Neil
18 indicates that there were four individuals that came
19 into his home, and they all had their faces covered. He
20 indicates that he -- he felt like that there were three
21 of them that were armed. He ended up ultimately
22 recognizing a couple of the voices, and, ultimately, all
23 these Defendants were identified and caught. They were
24 all people that he was at least familiar with and
25 possibly had had some prior difficulties with a couple

Reported by:
ROLAYNE M. VOLPE, CCR, RPR

1 of them.

2 But needless to say, they ended up stealing
3 some items from him during the process of this. Had
4 gotten a little bit of money, your Honor, about \$20 from
5 the wallet, they took his phone and his charger, and
6 were in the process of kind of -- kind of breaking some
7 stuff in the residence when the sheriff's office arrived
8 on the scene. The first officer, Deputy Herrod
9 (phonetic), with the Calhoun County Sheriff's office,
10 when he first pulled in to the victim's residence, saw a
11 vehicle parked outside with another man by the name of
12 Robert Hendrix, that Deputy Herrod actually knew him
13 there. Mr. Hendrix was taken into custody at that point
14 in time, and he indicated that there were four other
15 individuals that were with him, that were inside the
16 home.

17 At that point in time, I believe one of them
18 inside saw that the police were outside, and they all
19 ended up taking -- fleeing, diving through windows,
20 running out doors, and fleeing from the scene at that
21 point in time.

22 The four of them got away. About an hour or so
23 later, one of -- the fifth co-defendant, who's -- walked
24 in and cooperating, he was caught, and Mr. Mitchell was
25 found walking down the road. He was taken into custody.

Reported by:
ROLAYNE M. VOLPE, CCR, RPR

1 They ultimately, your Honor, in talking to Mr. Mitchell
2 -- Mr. Hendrix learned the identity of the other three
3 individuals, who are before you, that are here this
4 morning, who they had been implicated as being the ones
5 that were armed during -- during the course of this
6 incident.

7 Mr. Smoak, your Honor, Mr. Felder's client, I
8 believe, turned himself in a day or so later, when they
9 were looking for him; and I believe had indicated that
10 he had basically kind of spent the night out in the
11 woods and ultimately made it home before finding out
12 that police were looking for him. They had found out
13 where Mr. Whisenhunt and Mr. Dempsey were living over in
14 Orangeburg and executed the search warrant. And I
15 believe the two of them were taken into custody at that
16 point in time over there. I know they did recover a
17 nine millimeter pistol that had some gray duct tape
18 wrapped around the handle, which was consistent with
19 the -- with the description of one of the weapons that
20 Mr. Neil had given.

21 Additionally, your Honor, from talking to them,
22 law enforcement -- the sheriff's office was able to
23 corroborate that they had gone initially to a Walmart
24 in Orangeburg -- I believe that was all of the
25 co-defendants, except for Mr. Smoak -- that went in

1 there purposefully for buying masks and gloves and
2 things of that nature for the use of this burglary. And
3 then, I believe they had gone and picked up Mr. Smoak
4 over in Lexington, and then had gone to the Walmart in
5 Lexington for the purpose of Mr. Smoak getting these
6 items to use also. That basically would be the facts,
7 your Honor.

8 THE COURT: All right. Mr. Smoak, you heard
9 the facts as presented by the State. Are those facts
10 true, sir; is that what you did?

11 DFT. SMOAK: Yes, ma'am. If I may speak? I
12 was young. And he was correct, I did not -- I did not
13 go into Walmart and --

14 THE COURT: Tell me what you did with reference
15 to Mr. Neil's home.

16 DFT. SMOAK: I did go inside the home, and I
17 did exit through the window with Mr. James Mitchell,
18 when the police did arrive, and --

19 THE COURT: Did you have permission to be in
20 Mr. Neil's home?

21 DFT. SMOAK: No, ma'am.

22 THE COURT: Do you know Mr. Neil?

23 DFT. SMOAK: Yes, ma'am.

24 THE COURT: How did you know Mr. Neil?

25 DFT. SMOAK: I used to hang out with him in the

1 river -- at a river, off Santee Road. We used to hang
2 out. I met him a couple of times.

3 THE COURT: And was Mr. Dempsey and
4 Mr. Whisenhunt with you?

5 DFT. SMOAK: Yes. Yes, ma'am.

6 THE COURT: Did you have permission to be in
7 Mr. Neil's home?

8 DFT. SMOAK: No, ma'am.

9 THE COURT: To your knowledge, did someone --
10 You indicated you were not armed. Did someone have a
11 weapon when they went into the home?

12 DFT. SMOAK: Yes, ma'am.

13 THE COURT: And do you know what the purpose of
14 having that weapon was?

15 DFT. SMOAK: Your Honor, I believe a scare
16 tactic.

17 THE COURT: To scare Mr. Neil?

18 DFT. SMOAK: Yes, ma'am.

19 THE COURT: Did you know that Mr. Neil was home
20 when you went in?

21 DFT. SMOAK: No, ma'am.

22 THE COURT: Mr. Dempsey, you heard the facts as
23 presented by the State. Not what Mr. Smoak told me, but
24 the facts as presented by the State. Are those facts
25 true, sir? Is that what you did?

1 DFT. DEMPSEY: Yes, ma'am.

2 THE COURT: Mr. Whisenhunt, you heard the facts
3 as presented by the State. Are those facts true? Is
4 that what you did?

5 DFT. WHISENHUNT: Yes, ma'am.

6 THE COURT: I find a substantial factual basis
7 for your plea. Your decision to plead guilty has been
8 freely, voluntarily, knowingly, and intelligently made.
9 Each of you have indicated to the Court you had the
10 advice of counsel of a competent attorney with whom you
11 told the Court you were satisfied. I hereby accept your
12 plea of guilty.

13 Mr. Smoak -- I'll be happy to hear from you
14 regarding sentencing, Mr. Felder.

15 MR. FELDER: Thank you, your Honor. Bates
16 Felder for James Smoak. I appreciate my client
17 listening closely to the facts. He's been consistent
18 with me from the start, in that he didn't actually
19 possess a gun, and, you know, I understand the law, and
20 he had knowledge of the gun; but I think that's why he
21 wanted to -- not say they were accurate. But, anyway,
22 he's been cooperative from the start with me. He's been
23 remorseful from the start with me. He has been treated
24 -- or is currently being treated for a depressive
25 disorder. Doesn't affect anything we're doing here

1 today. But I think that just goes to show the level of
2 the remorse he has. He kind of got caught up -- went
3 along with the crowd. Not making excuses for him. But
4 he wasn't in the area when this started. He got picked
5 up and came down. Certainly took part in it, and is
6 sorry for that. Made a serious, bad decision.

7 He was employed at the time this happened,
8 living with his mother, working for a flooring company.
9 I think he would like to get this behind him. I think
10 he can be a productive member of society. He knows he's
11 looking at some significant time, and he's willing to
12 accept that. And that's why we're here today, to
13 hopefully let him start that process.

14 And the Solicitor has recommended a range of 10
15 to 15, and we certainly would ask, you know, for you to
16 go along with that range, and, if possible, consider the
17 lower end of that for my client.

18 THE COURT: Thank you, Mr. Felder. Mr. Smoak,
19 anything you wish to tell the Court?

20 DFT. SMOAK: Yes, ma'am. I would like -- I
21 would like the County of Calhoun to know that I am truly
22 sorry for the actions that I have made. I would also
23 like the County of Calhoun to know that no matter what
24 happens, I would like to show a better side of me
25 towards the County. I would like to be, as my lawyer

1 has said, a productive member to the County. And I hope
2 the County does not look at me as a criminal, because
3 I'm not a violent man. I would also like the victim to
4 know that I apologize, and I pray to God I wish I could
5 take it back. I wish that I had stayed at home that
6 night with my mom that night that all this took place.
7 I want to ask the Court, your Honor, as well as you, if
8 you'll have mercy on me.

9 THE COURT: Anything else?

10 MR. FELDER: That's it, your Honor.

11 THE COURT: Mr. Dempsey, I'll be happy to hear
12 from -- Mr. Bloom, on behalf of Mr. Dempsey, I'll be
13 happy to hear from you regarding sentencing.

14 MR. BLOOM: Please the Court, your Honor.
15 Mr. Dempsey has a fairly long mental health history of
16 counseling, and those sorts of things, you know, from
17 his prior record, that he was previously in D.J.J., as a
18 juvenile. I obtained those records. It's rather thick.
19 He has also been an outpatient at the department here --
20 the health center. I had him evaluated at the state
21 psychiatric hospital. We don't need a Blair hearing.
22 I've received those reports. The Solicitor has those
23 reports. He was found competent, and there were no
24 mental health defects such as that deal with the
25 mentally ill or deal with the elements of insanity. But

1 it does paint a recurring theme of a young man
2 who -- sometimes he has mental health challenges, as
3 well as someone who's easily led and doesn't think
4 through the consequences before allowing himself to --
5 to be so led, and it is my humble interpretation of the
6 facts that night, that that's one of those situations he
7 was in.

8 I would note, your Honor, that the one person
9 of the five people involved that night, Mr. Hendrix, who
10 is not here before you, his case is not before you. I
11 understand that. But that is the one person who was
12 apparently friends with the victim, Mr. Neil, and knew
13 where Mr. Neil lived. So, but for Mr. Hendrix,
14 Mr. Dempsey, and likely these other two gentlemen, would
15 not have been there, because they didn't know where
16 Mr. Neil lived. And we would just ask you to give that
17 whatever weight that your Honor deems appropriate.

18 In terms of any additional conversations I've
19 had with Mr. Sorenson, the Solicitor, I would note that
20 this plea, of course, dismisses kidnapping, possession
21 of a weapon, a criminal conspiracy charge, but also
22 Mr. Dempsey has a pending unrelated case in Orangeburg.
23 Mr. Sorenson and I have made a good faith effort to
24 bring that to a resolution today, and for a number of
25 reasons, we weren't able. But Mr. Sorenson has agreed,

1 whatever plea negotiations we're able to achieve in
2 Orangeburg today, that would be concurrent, if
3 Mr. Sorenson uses these convictions today as part of a
4 two- or three-strike purpose to seek life without
5 parole. Those would be our only additional grievance.
6 I believe, though --

7 THE COURT: Is that -- One second.

8 Mr. Sorenson, is that correct?

9 MR. SORENSON: That is accurate, your Honor.
10 He does have another pending matter over in Orangeburg
11 that I met -- I met with the victim, and I think we're
12 pretty close to resolving it, but it just wasn't
13 something we were going to be able to do this week; so I
14 told Mr. Bloom what I would do is, you know, that I
15 would agree that whatever happens -- it may not
16 necessarily be limited to what you give him today, but
17 that the sentence will run concurrent with this matter,
18 and it will not be, obviously --

19 THE COURT: You would not --

20 MR. SORENSON: -- potentially set him up
21 for a two strike. It is an armed robbery, but it will
22 not be -- will not be -- will not be serving him with
23 that, even if he were ultimately requesting a trial, we
24 would --

25 THE COURT: So these two convictions, because

1 they are now a most serious and a serious strike, will
2 not be used against Mr. Dempsey in his Orangeburg
3 matters?

4 MR. SORENSON: That would be correct.

5 THE COURT: All right.

6 MR. BLOOM: Lastly, I would just note for your
7 Honor that Mr. Dempsey has a pending probation
8 revocation matter, and we're willing to proceed with
9 that at some point this morning, as well, whenever your
10 Honor feels that's appropriate. He has been in jail
11 since his arrest on December 27th of 2011.

12 His family is here. They support him
13 throughout, and I want to thank them for their support
14 and participation in this case.

15 THE COURT: Mr. Dempsey, you understand you are
16 on probation, and that by my accepting your plea of
17 guilt, has violated the terms and conditions of your
18 probation?

19 DFT. DEMPSEY: Yes, ma'am.

20 THE COURT: Do you still wish for me to accept
21 your plea, knowing that it affects your probationary
22 status?

23 DFT. DEMPSEY: Yes, ma'am.

24 THE COURT: And, Mr. Bloom, you're willing to
25 go ahead and handle that matter today?

1 MR. BLOOM: Yes, ma'am.

2 MR. REED: He has been served, your Honor. The
3 citation and a waiver; we've agreed to go forward today.
4 He was on probation in Orangeburg County for a burglary
5 second nonviolent, and three counts of intent to defraud
6 the lottery. He's got approximately seven years on one
7 case and four years on the other, suspended, and we
8 would just ask for some form of revocation to run
9 concurrent with the sentence today and bring closure to
10 these cases.

11 THE COURT: Mr. Dempsey, do you need any
12 additional time to meet with Mr. Bloom to discuss your
13 probationary matter?

14 DFT. DEMPSEY: No, ma'am.

15 THE COURT: Do you agree you have violated the
16 terms and conditions of your probation?

17 DFT. DEMPSEY: Yes, ma'am.

18 THE COURT: Mr. Bloom, anything further
19 regarding the probation matter?

20 MR. BLOOM: Just, your Honor, that we would be
21 asking you to consider running that concurrent. I think
22 probation is acceptable with that resolution. I
23 actually initiated that at the beginning of the
24 summer. We tried to get it done prior to this so that
25 Mr. Dempsey could go ahead and begin serving that

1 sentence and get out of the Orangeburg jail, but because
2 of the paperwork issues, it wasn't possible. So we ask
3 you to take that into account.

4 Lastly, I would just -- as Mr. Felder said --
5 ask your Honor to accept the Solicitor's recommendation
6 of the range in this case. It's my understanding that
7 Mr. Neil is also satisfied with that type of sentence.
8 Thank you.

9 THE COURT: Is there anyone else you wish for
10 me to hear from, Mr. Bloom? Anything you wish to tell
11 me, Mr. Dempsey?

12 MR. BLOOM: If I may just ask his mother or
13 sister if they want to --

14 THE COURT: I'll hear from one.

15 MR. BLOOM: One of them, yes.

16 MR. FELDER: Your Honor, if I may? Based on --
17 just for the record, I asked him to stay -- he's been in
18 jail since his arrest, and I don't know about asking --
19 but would like to see him receive credit for whatever
20 time he's been in --

21 THE COURT: 12-27-2011.

22 MR. FELDER: Yes.

23 THE COURT: Thank you.

24 Ma'am, I need you to state your full name for
25 the record and please spell your last name.

1 MS. DEMPSEY: My name is Donna K. Dempsey,
2 D-e-m-p-s-e-y. I'm Anthony's mother.

3 THE COURT: I'll be happy to hear anything that
4 you wish to tell me.

5 MS. DEMPSEY: I love my son. He has had a real
6 hard life. He's never had a father figure in his life.
7 And I -- I know he's done wrong, but I just wish you
8 would be lenient on him, so when he gets out, he can
9 have the life he needs and live the right way.

10 THE COURT: Thank you.

11 MS. DEMPSEY: I love him very much.

12 MR. BLOOM: Thank you, your Honor.

13 THE COURT: Thank you.

14 All right. Mr. Walters, I'll be happy to hear
15 from you regarding sentence for Mr. Whisenhunt.

16 MR. WALTERS: May it please the Court. Your
17 Honor, my client, he is 21 years old; he's originally
18 from the Cordova area in Orangeburg County; he has one
19 child that is now two years old, a little girl; he
20 attended the Refuge Outreach Ministries. As you can
21 gather from this particular event, all these guys know
22 each other, and they're all buddies and friends. It's
23 sad that it escalated to this point where we've got
24 burglary charges, kidnapping charges, and things of that
25 nature. My client's role in this process -- It seems

1 sort of silly. -- he sat on the victim, inside the
2 house, to keep the fight from escalating any further.
3 But he's here to accept full responsibility for what
4 occurred. As Attorney Bloom stated, it was one
5 individual that led them to the household, and, of
6 course, here in the household, sat on the victim, and,
7 of course, it could have escalated further into another
8 point, but it didn't.

9 Under the circumstances, he's been in jail
10 since December, and, of course, in this particular case,
11 this young man is only 21 years old. He's very, very
12 young. I still think there's some good in him, and
13 certainly he would like to be able to participate in
14 raising his daughter, since she's only two years old.
15 He's learned from this experience in following the
16 crowd. In this particular case, he's embarrassed by
17 being a part of the Calhoun 5. In addition to that, his
18 mother couldn't be present today, but Ms. Tina Craig,
19 his aunt, is here today, and she would like to address
20 your Honor.

21 THE COURT: Thank you, Mr. Bloom.

22 Ma'am, I need you to state your full name for
23 the record and please spell your last.

24 MS. CRAIG: Tina Marie Craig, C-r-a-i-g. And I
25 wrote some things down. Thank you for letting me speak.

1 Because I'm not here to defend what Damien's done --
2 He's Damien to me. But I wanted -- I wanted to share a
3 minute about who he is. Okay. He's my nephew, and I do
4 love him very much, and I don't want his life to be
5 defined by this one, reckless, stupid act. He is a much
6 loved nephew, grandson, son, and brother. He's the
7 father of a two-year-old daughter, who needs him to be
8 present in her life, and he is a Christian who is loved
9 unconditionally by his Father, although these are not
10 the actions that we would expect a Christian to do. I
11 know that he is very remorseful about what he's done and
12 will take it back if at all possible. But he is a baby
13 Christian. He had just joined my church, Refuge
14 Ministries, he was attending weekly Bible study, and he
15 was seeking the truth of God's fellowship when he made
16 this catastrophic mistake. He fell back into old crowds
17 and old ways suddenly, and we didn't have time to
18 intervene.

19 I know that the courts are here to pass
20 judgment, but I'm here to ask for mercy. I know that
21 Damien can be rehabilitated to never be a danger to our
22 society again. I believe that the necessary changes
23 already occurred in his soul and in his spirit, and I
24 know that there is a price to pay for crime, but, again,
25 I ask for leniency.

Reported by:
ROLAYNE M. VOLPE, CCR, RPR

1 During the past eight months of incarceration,
2 Damien has made plans for positive changes in his life,
3 if given the chance. He has pledged to be a good
4 father. He has had me checking on his daughter, and I
5 know that he's committed to her. He would like to share
6 his testimony with other youths to try to keep them from
7 making the same mistakes that he has made and to give
8 back to society instead of being a drain on it.

9 He will not be left alone. He has a family and
10 a church that will stand behind him no matter what the
11 outcome is today. And many of them are present in the
12 court. Would it be appropriate for them to stand?

13 THE COURT: They may stand.

14 MS. CRAIG: We love him, and we support him,
15 and we will encourage him and hold him accountable. We
16 have made plans to help him get on his feet with a
17 Christian rehabilitation program, a place to live
18 outside the influence of his past, and help in finding a
19 job, so that he can take a responsible role in his
20 daughter's life.

21 And, please, I ask you -- and I do not
22 understand the legal avenues that are available. But I
23 ask you to make some leeway in your legal maneuverings
24 to accommodate rehabilitation, to save the hope of this
25 young man's future, to give us the opportunity to sew

1 restoration into Damien's life, and I'm convinced that
2 he will never be in this situation again. Thank you.

3 THE COURT: Thank you.

4 Mr. Walters, I noticed that your client is on
5 YOA parole, and this will affect his parole eligibility.
6 Did you inform your client of that?

7 MR. WALTERS: Yes, ma'am. We've discussed that
8 matter, and he's aware of the implications of that. We
9 would ask that the Court to please follow the
10 recommendation from the Solicitor's office. We
11 certainly would agree with that.

12 In addition to that, as Attorney Bloom stated,
13 I believe that the charge of kidnapping, conspiracy, and
14 the weapon charge would be dismissed as a result of this
15 plea.

16 THE COURT: Is that correct, Mr. Sorenson?

17 MR. SORENSON: I have the paperwork while
18 we're -- while I'm standing here.

19 THE COURT: And, Mr. Reed, I understand we do
20 not address the YOA parole revocation, but they will do
21 that at some later time --

22 MR. REED: Yes, ma'am.

23 THE COURT: -- regarding the sentence that I
24 impose here today; right?

25 MR. REED: Yes, ma'am. We'll forward that to

1 the Orangeburg office.

2 THE COURT: Mr. Whisenhunt, I did not ask
3 before I accepted your plea. You understand that this
4 plea in and of itself will affect your YOA parole?

5 DFT. WHISENHUNT: Yes, ma'am.

6 THE COURT: And you still wish for me to accept
7 your plea?

8 DFT. WHISENHUNT: Yes, ma'am.

9 THE COURT: Is there anything that you wish to
10 tell me, Mr. Whisenhunt?

11 DFT. WHISENHUNT: A lot of people go through
12 the system, in jail and in prison, and they don't get
13 rehabilitated. I can tell you for a fact, I know I
14 have. Mostly for my daughter's sake, as well as mine.
15 But I'd like to thank my aunt and my church for being
16 here for me. That's it.

17 THE COURT: Mr. Whisenhunt, why did you go in
18 that house?

19 DFT. WHISENHUNT: I had a problem with alcohol.
20 And I'm not saying it's because I was drunk that I did
21 it, because alcohol doesn't make you do things. But me
22 being intoxicated and me being around the individuals
23 that I was around, and the influences of them, that
24 I just -- I went along with it. I was drunk. It
25 was -- it was stupid.

1 THE COURT: Were you going to take something?

2 DFT. WHISENHUNT: I wasn't. I had went in
3 there with them, and as my lawyer said, I sat on
4 Mr. Neil.

5 THE COURT: I'm trying to figure out,
6 Mr. Sorenson, what was the point of them going into the
7 house. Do you know?

8 MR. SORENSON: What Mr. Neil has told me, in my
9 meetings with him, is that there -- is that he was kind
10 of familiar with all these individuals; and sometime
11 leading up to this, apparently, there's an altercation
12 where Mr. Smoak was under the impression that Mr. Neil
13 had taken his cell phone, and that kind of led up to, I
14 guess, some words and him receiving some text messages
15 throughout the evening. And other than that, when they
16 came in, they were just -- you know, kind of in the
17 process of sort of ransacking the place when the police
18 arrived, which I've indicated happened pretty quick. I
19 would say he did indicate to me that -- Mr. Neil, that
20 they all -- he was under -- kind of under the impression
21 they were all fairly intoxicated, from the way they
22 acted and were smelling.

23 THE COURT: Mr. Smoak, did he have your cell
24 phone? Did you believe he had your cell phone?

25 DFT. SMOAK: Your Honor, I guess a month before

1 this happened, I -- we went over to his house, and I had
2 a brand-new \$600 Galaxy II phone. I laid it down.
3 Everybody was drinking and smoking weed. And I had a
4 few drinks -- more than a few drinks, and I was
5 intoxicated, as well. And I remember a point in time
6 that Damien had left, and a couple other people started
7 leaving, and they had a taser, passing it around, and, I
8 don't know, everybody being drunk, it was a couple of
9 guys tasing themselves [sic]. They're like, Hey, try
10 it. So I started tasing myself. And after that time, I
11 subconsciously thought about my phone, and I didn't see
12 it nowhere. I then asked the owner of the home if he'd
13 seen my phone. I did assume that he had some knowledge
14 of where my phone had been taken or -- or -- or who had
15 taken my phone, sorry. However, your Honor, that
16 incident -- that incident has no pertaining to this
17 case. I -- I'm -- I'm agreeing with everybody that we
18 don't know what the cause was. Alcohol.

19 THE COURT: Anything further, Mr. Felder?

20 MR. FELDER: I don't have anything else.

21 THE COURT: Mr. Bloom?

22 MR. BLOOM: Nothing.

23 THE COURT: Mr. Walters?

24 MR. WALTERS: No, ma'am.

25 THE COURT: Mr. Smoak, I wish they could

1 have given me some better understanding of why the three
2 of you are standing in front of me here today, because
3 that absolutely makes no sense. I think there's
4 something that -- there's a piece missing that -- that
5 Mr. Sorenson doesn't know; that only the three of you
6 and Mr. Neil truly do know. But I'm taking what you've
7 told me, and I'm looking at your past record, and it's
8 the Order of the Court, Mr. Smoak, on Indictment
9 2012-GS-09-14 and -12, that they will run concurrent,
10 you will be given credit for the time that you have
11 served, that you be sentenced to the State Department of
12 Corrections for a term of 15 years.

13 So Order of the Court on Indictment
14 2012-GS-09-22 and -25, they will run concurrent; giving
15 you credit for the time that you have served since
16 December 27th 2011; that you be committed to the State
17 Department of Corrections for a term of 15 years.
18 Revoke your probationary sentence in full. They are to
19 run concurrent.

20 So Order of the Court on Indictment
21 2012-GS-09-20 and -17, that you be committed to the
22 State Department of Corrections for a term of 15 years.
23 Those are to run concurrent, and you are to be given
24 credit for the time that you have served.

25 Good luck to each of you.

1 ATTORNEYS IN UNISON: Thank you, your Honor.

2 THE COURT: Please remember, Mr. Felder,
3 Mr. Bloom, and Mr. Walters, to advise your client that
4 they have ten days to appeal this plea. Thank you.

5 MR. WALTERS: Yes, ma'am.

6 (The hearing of this cause concluded at
7 11:11 a.m., on August 27, 2012.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Reported by:
ROLAYNE M. VOLPE, CCR, RPR

REPORTER'S CERTIFICATE

STATE OF SOUTH CAROLINA)
) ss.
COUNTY OF BERKELEY)

I, ROLAYNE M. VOLPE, Certified Court Reporter, CCR, and Registered Professional Reporter, RPR, do hereby certify that the transcript of the foregoing proceedings accurately reflects the events that occurred before me to the best of my ability at the time and place set out on the caption hereto, the witnesses having been duly cautioned and sworn, or affirmed, to tell the truth, the whole truth, and nothing but the truth.

I FURTHER CERTIFY that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken or to any attorney or counsel employed by the parties hereto, nor financially interested, directly or indirectly, in the outcome of this action.

CERTIFIED AND SIGNED on this 4th day of October, 2012.

COPY

S/: *Rolayne M. Volpe*
ROLAYNE M. VOLPE, CCR, RPR
Certified Court Reporter and
Registered Professional Reporter



Reported by:
ROLAYNE M. VOLPE, CCR, RPR

FORM 5

STATE OF SOUTH CAROLINA

County of CalhounTerry Whisenant #343850

Full name and prison number (if any) of Applicant

v.

State of South Carolina

2014-CP-09-00004

IN THE COURT OF COMMON PLEAS

KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
SOUTH CAROLINA

2014 JAN 21 P 1:57

FILED

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber C.I., P.O. Box 205 Ridgerville,
SC 29472
2. Name and location of Court which imposed sentence Calhoun County
Courthouse; St. Matthews, SC 29135
3. Name(s) of co-defendant(s) (if any) Jamie Smith; Anthony Dempsey;
James Mitchell
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012GS09-0017 - Burglary 2nd Degree
 - (b) 2012GS09-0020 - Armed Robbery

ATTEST TRUE COPY

KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY

40

5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 27 August 2012 - 15 years in SCDC (concurrent)
 - (b) 27 August 2012 - 15 years in SCDC (concurrent)
 - (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?
Yes
8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeals
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Affirmed
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. 13 March 13
 - 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) _____ (See Attached) _____
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____ (See Attached) _____
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- 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) There are none
 (b) _____
 (c) _____

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

(a) your arraignment and plea? Yes
 (b) your trial, if any? No
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
 (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. Glenn Walters, Sr., Esquire, 1910 Russell Street,
P.O. Box 1342, Orangeburg, S.C. 29116
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. 17, (a) (c)
 ii. _____
 iii. _____

44

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

10. (a) - Reverse and Remand for new trial;

10. (b) - Correct Sentence imposed to ensure equal protection.

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

No

STATE OF SOUTH CAROLINA)

County of Calhoun)

VERIFICATION

I, Terry Whisenbunt #343850, 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.

Terry Whisenbunt

SWORN to and subscribed before me this 3rd day of December, 2013.

Ludeman Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
SOUTH CAROLINA

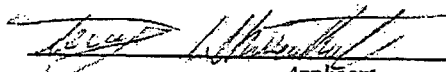
2014 JAN 21 P 1:57

FILED

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

1. Terry Whisenhunt #393857, 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.


Applicant

SWORN or affirmed to and subscribed before me this
3rd day of December, 2013.


Notary Public

My Commission Expires: May 26, 2020

KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
ST. MATTHEWS, SC

2014 JAN 21 P 1:57

FILED

10. State concisely the grounds on which you base your allegations that you are being held in custody unlawfully:

(a)- Applicant was denied the right to effective assistance of counsel granted by the United States Constitution's 6th amendment resulting in an unknowing and unintelligently made plea, and Prejudicing applicant;

(b)- Applicant's right of Equal Protection of the law guaranteed by the United States Constitution's 14th amendment was violated and applicant was discriminated against for exercising 5th amendment right to remain silent;

(c)- Applicant believes he has additional claims for post conviction relief, but at this time has no collateral counsel, access to discovery process, or funds for expert services to investigate these claims. Further, by claiming ineffective assistance of counsel, applicant is NOT waiving Attorney-Client privilege.

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

(a)(1)- Counsel lied to applicant regarding guilt under theory of The Hand of one is the Hand of all;

(a)(2)- Counsel never informed applicant of the elements of the crimes applicant was charged with and plead guilty to;

(a)(3)- Counsel grossly misinformed applicant about plea bargain;

(a)(4)- Counsel grossly misinformed applicant regarding the effects of plea bargain concerning YOA revocation, rendering the plea Unknowingly and unintelligently made, and prejudicing applicant;

(a)(5)- Counsel failed to object to charges applicant was pleading to at hearing;

- (b)(1)- Applicant received a 15 year sentence and exercised 5th amendment right to remain silent;
- (b)(2)- Co-defendants James Mitchell, and Robert Hendrix received a much lighter sentence and chose to waive right to remain silent both writing statements;
- (b)(3)- Robert Hendrix implicated and identified in statement James Mitchell as being a participant in crime;
- (b)(4)- James Mitchell denied in his statement his involvement on any level;
- (b)(5)- Both James mitchell and Robert Hendrix received time served though they contradicted one another, making one or both statements a lie, rendering their cooperation moot, yet both received extremely light sentences for the "cooperation".

s/

Terry Whisenhunt #343850

STATE OF SOUTH CAROLINA
COUNTY OF CALHOUN

Terry Whisenhunt, #343850,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

2014-CP-09-0004

RETURN

Respondent, making its Return to the application for post-conviction relief filed January 21, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Calhoun County Clerk of Court. Applicant was indicted by the Calhoun County Grand Jury for Armed Robbery (2012-GS-09-0020) and Burglary in the First Degree (2012-GS-09-0017). Applicant was represented by Glenn Walters, Sr., Esquire. On May 27, 2012, Applicant appeared before the Honorable Kristi Harrington, where he pled guilty as indicted to Armed Robbery and to the lesser included offense of Burglary in the Second Degree. Judge Harrington sentenced Applicant to fifteen years for each offense, with the sentences to be served concurrently.

Counsel filed a notice of appeal at Applicant's request. The South Carolina Court of Appeals dismissed Applicant's appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. The Remittitur was sent on March 28, 2013.

Attached herewith and incorporated herein are the records of the Calhoun County Clerk of Court regarding the subject convictions, Applicant's appellate court records, Applicant's

records from the South Carolina Department of Corrections, and Applicant's guilty plea transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel;
 - a. Counsel lied to applicant regarding the guilt under theory of hand of one is the hand of all;
 - b. Counsel never informed applicant of the elements of the crime applicant was charged with and pled guilty to;
 - c. Counsel grossly misinformed applicant about plea bargain;
 - d. Counsel grossly misinformed applicant regarding the effect of plea bargain concerning YOA revocation, rendering the plea unknowingly and unintelligently made, and prejudicing applicant;
 - e. Counsel failed to object to charges applicant was pleading to at hearing.
2. Violation of 5th Amendment right to remain silent; and

Any claims not specifically enumerated in the application or amendments made by counsel of record will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCPP.

III.

Applicant alleges various claims of ineffective assistance of counsel. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be

relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

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

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

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel raises questions of fact that 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).

IV.

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

V.

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

VI.

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

Signature page to follow

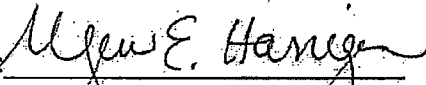
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

March 26, 2014

STATE OF SOUTH CAROLINA
COUNTY OF CALHOUN

IN THE COURT OF COMMON PLEAS

2014-CP-09-0004

TERRY WHISENHUNT, #343850

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

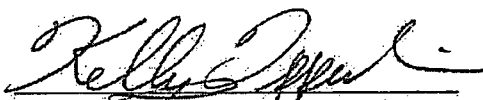
STATE OF SOUTH CAROLINA,

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:

Jonathan Waller, Esquire
The Law Office of Jonathan Waller, LLC
1720 Main Street, Suite 104
Columbia, South Carolina 29201

DATED this 26th day of March, 2014.


Kelly Oppenheimer, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF CALHOUN)

Terry Whisenhunt,)

vs.)

The State of South Carolina.)
_____)

IN THE COURT OF COMMON PLEAS
Docket Number: 2014-CP-09-0004

**AMENDED APPLICATION FOR
POST-CONVICTION RELIEF**

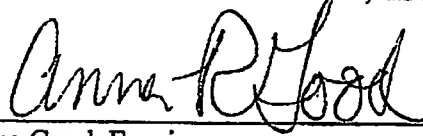
Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby amended as follows to include in addition to prior grounds stated in the original application for post-conviction relief:

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

- (a) Ineffective assistance of trial counsel – trial counsel failed to investigate facts surrounding the case;
- (b) Ineffective assistance of trial counsel—trial counsel failed to mitigate on the applicant's behalf at plea hearing;
- (c) Ineffective assistance of trial counsel—trial counsel failed to present a case/strategy based on Applicant and followed trial strategy of codefendant; and
- (d) Ineffective assistance of trial counsel—trial counsel failed to request a new juror.

[SIGNATURE ON NEXT PAGE]

LAW OFFICE OF ANNA GOOD, LLC

A handwritten signature in cursive script, reading "Anna R. Good", written over a horizontal line.

Anna Good, Esquire
Attorney for Applicant
PO Box 7284
Columbia, SC 29202
803-661-6758
803-403-8752 (fax)

Columbia, South Carolina
This 18th day of May, 2015

IN THE COURT OF COMMON PLEAS

Terry Whisenhunt,

Docket No. 2014-CP-09-0004

Applicant,

VS.

AFFIDAVIT OF SERVICE BY MAIL

State of South Carolina,

**AMENDED APPLICATION FOR
POST-CONVICTION RELIEF**

Respondent.

Alexandra M. Carlson, certifies that on the 18th day of May 2015, she served the Amended Application for Post-Conviction Relief on Megan E. Harrigan, Attorney General, by placing a copy of the same in the U.S. Mail with due and proper postage attached thereto, addressed as follows:

Megan E. Harrigan
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

By:

Alexandra M. Carlson
Legal Assistant

LAW OFFICE OF ANNA GOOD, LLC
P.O. Box 7284
Columbia, SC 29202
(803) 661-6758

Columbia, South Carolina
This 18 day of May, 2015

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF CALHOUN FIRST JUDICIAL CIRCUIT
3 2014-CP-09-00004
4
5
6

7 TERRY WHISENHUNT,) TRANSCRIPT OF
8 APPLICANT,) RECORD
9 VS.)
10) FEBRUARY 25, 2016
11 THE STATE OF SOUTH) ST. GEORGE SC
12 CAROLINA,)
13 RESPONDENT.)

14 B E F O R E:

15 HONORABLE MAITE MURPHY

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

17 CLAY MITCHELL, ESQUIRE
18 Attorney for the Respondent

19 ANNA GOOD, ESQUIRE
20 Attorney for the Applicant

21 * * * * *

22
23 Ruth C. Weese, RDR
24 Official Court Reporter
25 Ninth Judicial Circuit

I N D E X

Page

POST-CONVICTION RELIEF HEARING

3

WITNESSDIRECTCROSSREDIRECT

Terry Whisenhunt

4

9

14

Glenn Walters

15

23

32

APPELLANT'S EXHIBITMARKEDENTERED

1- notice of appeal

27

28

CERTIFICATE OF REPORTER 34

1 MR. MITCHELL: Judge, may it please the
2 Court, this is Terry Whisenhunt versus the State of
3 South Carolina, case number 2014-CP-09-0004. Mr.
4 Whisenhunt was indicted by the Calhoun grand jury
5 for armed robbery and burg first. He was
6 represented on the charges by Mr. Glenn Walters.
7 He pled guilty before Judge Harrington on May 27th,
8 2012, pled to armed robbery and the lesser included
9 of burglary second, sentenced to 15 years on each
10 offense. Those would be served concurrently.
11 There was a notice of appeal filed. The Court of
12 Appeals dismissed that. This application was
13 timely filed January 21st, 2014, where he has
14 alleged various aspects of ineffective assistance
15 of counsel. Mr. Whisenhunt is present and
16 represented by Ms. Anna Good. I turn it over to
17 her.

18 THE COURT: Ms. Good.

19 MS. GOOD: Thank you, Your Honor. At
20 this time we will call Terry Whisenhunt.

21 THE CLERK: State your full name for
22 the record.

23 THE APPLICANT: Terry Whisenhunt.

24 TERRY WHISENHUNT

25 who, after being first duly sworn, testified as

1 follows:

2 THE COURT: Your witness.

3 DIRECT EXAMINATION

4 BY MS. GOOD:

5 Q. Thank you, Your Honor. Mr. Whisenhunt,
6 you're currently incarcerated on burglary second
7 degree and armed robbery for 15 years, correct?

8 A. Yes, ma'am.

9 Q. And your attorney was Glenn Walters?

10 A. Yes, ma'am.

11 Q. And was he appointed or retained?

12 A. Retained.

13 Q. And when were you originally arrested
14 on this, do you remember?

15 A. December 27th, 2011, I believe.

16 Q. And was he immediately retained?

17 A. Within the first month I think he was.

18 Q. And were you incarcerated the whole
19 time or were you --

20 A. Incarcerated.

21 Q. And about how many times do you
22 remember meeting with Mr. Walters?

23 A. Three, four, something like that.

24 Q. And when meeting with him did you ever
25 have discussions with him regarding plea

1 negotiations?

2 A. At the very end the last couple of
3 times that I went to see him which is a couple of
4 days before the plea hearing he spoke to me about
5 the plea.

6 Q. And what was your discussion regarding
7 the plea?

8 A. Basically he said that I would be going
9 -- taking a plea to accessory, third degree
10 burglary accessory, strong arm robbery and I would
11 be going back on my Y.

12 Q. You said back on your Y. Were you
13 currently on a YOA sentence?

14 A. Yes, ma'am, I still am. I haven't been
15 to my revocation hearing or anything yet.

16 Q. So you were on a YOA sentence when you
17 were arrested?

18 A. Yes, ma'am.

19 Q. And when you discussed the plea offer
20 with him can you specifically tell the judge what
21 he told you regarding your YOA sentence?

22 A. Not really in detail exactly what we
23 spoke about. It was about four years ago. So it
24 is vague. Basically said that I would be going
25 back on my Y because it would be lower.

1 Q. And that was your understanding of what
2 was going to happen?

3 A. Yes, ma'am.

4 Q. And going into the day of the plea when
5 you went over your sentencing sheet with Mr.
6 Walters can you describe to the judge how that
7 process went?

8 A. Whenever I was discussing the plea?

9 Q. The day of the plea when you were
10 signing the sentencing sheets.

11 A. Sentencing sheet, he said that
12 basically signing these we will go in, take the
13 plea. And that we would have another revocation
14 hearing and then I would go back.

15 Q. And did he go over any of your rights
16 or anything like that with you?

17 A. No, ma'am.

18 Q. Did you understand what you were
19 pleading to?

20 A. The charges of burglary and such, no.
21 I didn't know that I was taking a plea to burglary
22 second and armed robbery. I didn't understand the
23 elements of the crime of that either.

24 Q. Okay. Did he go over the elements of
25 the crime with you?

1 A. No, ma'am.

2 Q. And during the plea when they brought
3 up the recommendation of 10 to 15 years, did you
4 say anything to your attorney regarding this?

5 A. I spoke to him. I asked him about
6 that. He said we would have another hearing.

7 Q. He said you would have another hearing?

8 A. YOA hearing revocation.

9 Q. So you didn't believe you were going to
10 be getting 10 to 15 years?

11 A. No.

12 Q. And did he ever ask for a YOA sentence
13 or anything on the record as you thought he was
14 going to do?

15 A. On the record, no. The only thing that
16 I recall about on the record that they spoke about
17 the YOA, the judge asked me after I took my --
18 after I, you know, agreed to the plea and such, she
19 asked -- reasked me if I was going to accept the
20 plea because she didn't know that I was on Y as
21 such. And I continued with it because I thought I
22 would go back and have another hearing after that.
23 They even said as well that I would be going back.

24 Q. And at what point did you realize you
25 didn't think you were going to that -- you weren't

1 going back on your YOA?

2 A. Several months down the line probably.

3 Q. When you were already in prison?

4 A. Yes, ma'am. I wrote several letters to
5 the individual, I believe his name was Mr. Reed at
6 the hearing, said that he had the paperwork and all
7 that. I wrote him several times about receiving
8 the paperwork. I wrote him several times on the
9 kiosk at SCDC about what was going on with it. And
10 they took me to the administration building to sign
11 a paper saying do you want to be present at your
12 revocation hearing and such like that. I signed it
13 and I still haven't been to the hearing.

14 Q. And if you had known that you weren't
15 going to be going back on your YOA sentencing would
16 you have pled guilty that day?

17 A. No, ma'am.

18 Q. And why not?

19 A. I got a child.

20 Q. You have a child and you thought that
21 by going back on your YOA you would be able to get
22 back to your child?

23 A. Yes.

24 MS. GOOD: No further questions, Your
25 Honor.

1 THE COURT: Cross-examination.

2 CROSS-EXAMINATION

3 BY MR. MITCHELL:

4 Q. Good morning, Mr. Whisenhunt.

5 A. Good morning.

6 Q. I mean you understood that you were
7 pleading to armed robbery though, correct?

8 A. Accessory, I thought.

9 Q. What's that?

10 A. Accessory to.

11 Q. You thought it was accessory and not
12 actually armed robbery?

13 A. Same thing that he said in his
14 explanation for filing an appeal. He told me
15 lesser sentencing, lesser time.

16 Q. So you thought you were pleading guilty
17 to accessory, but Judge Harrington doesn't say
18 anything about accessory to armed robbery at the
19 plea?

20 A. No, she didn't.

21 Q. And you didn't say anything, you didn't
22 speak up to say that no, I thought that was
23 accessory, right?

24 A. That is correct. I asked Mr. Walters
25 though while she was speaking. I asked him about

1 this. And as I said before, he basically indicated
2 that I would have another hearing, which even SCDC
3 said that I was going to have another hearing
4 whenever I got there originally and had me sign
5 paperwork. And they even indicated that at the
6 hearing itself.

7 Q. You keep talking about this other
8 hearing. Are you talking about a YOA probation
9 revocation hearing?

10 A. Yes, sir.

11 Q. But this is a guilty plea hearing; you
12 understood that, right? You are pleading guilty to
13 the burg second degree and armed robbery.

14 A. I understood it was a guilty plea
15 hearing, yes, sir.

16 Q. You understood the minimum on armed
17 robbery is ten years, right?

18 A. Did I understand that? Yes, sir,
19 because she told-- said that in court. Whenever I
20 asked him about that as I understood there would be
21 corrections made at another hearing.

22 Q. So you thought you were just going to
23 plead guilty there, receive some time and then come
24 back and fix it at some other point?

25 A. I would have another hearing and the

1 alterations or however that would be because I
2 still don't understand what kind of hearing this
3 is. I didn't understand if it was in front of a
4 judge. I didn't understand if it's in front of a
5 counselor. I don't understand this hearing. I
6 still don't, never been.

7 Q. You don't understand a guilty plea
8 hearing or you don't understand this hearing?

9 A. Sir?

10 Q. You are saying you don't understand the
11 guilty plea hearing?

12 A. No, I am saying that I don't understand
13 the revocation hearing nor I didn't then, I don't
14 now. To my knowledge I thought -- my belief was
15 basically that I would go to this and there would
16 be corrections.

17 Q. You were kind of under the impression
18 that if you go to this probation -- YOA probation
19 revocation hearing that you would somehow have your
20 guilty plea fixed?

21 A. Yes.

22 Q. There's no mention of that with Judge
23 Harrington, though, right?

24 A. The only thing that they talk about
25 with that was whenever Mr. Reed I believe his name

1 was indicated to her there would be another
2 hearing. Other than that there is not. I have
3 asked several times for any paperwork involving,
4 you know, my YOA. I have asked Mr. Walters. I
5 have asked Mr. Reed. I have wrote on the kiosk to
6 SCDC and I still haven't received anything other
7 than what I was told. So I have no paperwork on
8 any of this.

9 Q. The guilty plea hearing, I mean you
10 understood that you were pleading guilty and you
11 were going to receive a number of years by pleading
12 guilty, right?

13 A. Yes, I did.

14 Q. Judge Harrington went through a talk
15 with you, didn't she?

16 A. Yes.

17 Q. She asked you questions and you
18 answered them, right?

19 A. Yes, sir.

20 Q. And she asked you if you understood,
21 she asked you if you were guilty, those types of
22 questions, right?

23 A. Um-hmm. And to my knowledge at the
24 time I wasn't guilty.

25 Q. You agreed with the facts as the way

1 the State presented them, right?

2 A. I agreed to it. I also, you know,
3 whenever I explained to Walters my part in the
4 whole thing and he went back and even reiterated
5 that to the court. He told them the reason I even
6 went -- the reason I went in there was to keep the
7 situation from escalating because I knew -- I mean
8 my brother had some problems with this individual.
9 Whenever I woke up where I was I realized, I
10 understood what the situation was. I understood
11 the severity of the situation.

12 Q. Okay. You also had some kidnapping
13 charges, right?

14 A. That was all under the same.

15 Q. Is it all the same incident, right?

16 A. Yes.

17 Q. And they dismissed those in exchange
18 for your plea, right?

19 A. Yes, sir.

20 Q. You talked about you had a problem with
21 alcohol at the time; you might have been under the
22 influence when it all happened; is that right?

23 A. Yes, sir. I remember I woke up in the
24 car. I woke up and saw where we were and what was
25 going on.

1 MR. MITCHELL: I don't have any further
2 questions. Thank you.

3 THE COURT: Redirect?

4 MS. GOOD: Very briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MS. GOOD:

7 Q. So you thought you were pleading to
8 accessory to armed robbery, correct?

9 A. Yes, ma'am.

10 Q. And that you understand there was going
11 to be a YOA hearing later that was going to address
12 basically your sentencing and you are going to go
13 back on your YOA?

14 A. Yes, ma'am.

15 Q. And kind of based on what Mr. Mitchell
16 just said here, you are not sitting here saying you
17 are not guilty, you're just saying you didn't
18 knowingly plea as to what the sentence was going to
19 be because you weren't aware how the process was
20 going to --

21 A. I didn't mean to interrupt you. I
22 didn't have the intent to commit a crime when I went
23 in the house. Whenever I went in it was because I
24 had a really bad feeling about the situation
25 because I understood what my brother wanted to do,

1 how he felt, things he said in the past and things
2 that he, you know, led me to believe the situation
3 would probably go bad so I went in.

4 MS. GOOD: No further questions, Your
5 Honor.

6 THE COURT: You may step down, sir.
7 Thank you. You may call your next witness.

8 MS. GOOD: No other witnesses, Your
9 Honor.

10 THE COURT: Mr. Mitchell.

11 MR. MITCHELL: Your Honor, the State
12 calls Mr. Glenn Walters.

13 THE CLERK: State your full name for
14 the record.

15 THE WITNESS: Glenn Walters.

16 GLENN WALTERS
17 who, after being first duly sworn, testified as
18 follows:

19 THE COURT: Your witness.

20 DIRECT EXAMINATION

21 BY MR. MITCHELL:

22 Q. Good morning, Mr. Walters.

23 A. Good morning.

24 Q. Thanks for being here today. Can you
25 give us a background of your law practice?

1 A. I have been practicing law 27 years
2 now. And it's a general practice. So we handle
3 criminal cases, domestic cases, probate, worker's
4 comp, fair labor standards, also civil cases, civil
5 litigation, personal injury, worker's comp, Social
6 Security, disability, SSI cases, in addition to
7 fair labor standards. We do civil rights cases,
8 police brutality, 1983 actions.

9 Q. How long have you been representing
10 criminal defendants, your entire career?

11 A. For 27 years.

12 Q. How did you become involved in Mr.
13 Whisenhunt's case?

14 A. He hired me.

15 Q. And can you give us a bit of like your
16 general practice, your general routine with
17 clients, what you advise them of early on in the
18 case?

19 A. First they sign a retainer with the
20 office. We send out Brady motion, Rule 5, get a
21 copy of the file, provide the Defendant a copy of
22 the file, Brady motion. We then inform the client,
23 we sit down and read it and sit down talk with you
24 about your case. If there are any witnesses or
25 anyone that we hire a private investigator to talk

1 to or any information we need to obtain. Of course
2 during that process we determine if you are
3 competent and you understand what is going on and
4 once we determine that we would look at the viable
5 options in the case. Is it a case that's good for
6 going to trial or is it a plea that should be
7 worked out. Or is there a possibility we could
8 divert it into some other alternative.

9 So what we do is we sit down and
10 evaluate the case and determine what we have, get
11 the input from the client. If they sign a waiver
12 and agree for to us talk to a family member, then
13 we incorporate that person in the process and we go
14 forward from there.

15 Q. So in this case did you follow that
16 normal routine?

17 A. Same routine for 27 years.

18 Q. You talked about evaluating the case,
19 whether it may be in the best interest of Mr.
20 Whisenhunt to either plead or go to trial. What
21 did you determine in this case?

22 A. It's a group of guys that were drunk.
23 They were high and they broke inside a house and it
24 was a big uproar in Calhoun County. Of course it
25 was really silly because they stole items out of

1 the house. I think one of the main things they
2 were taking was a cell phone.

3 And it was clear that they committed
4 the act, but the implications of it, they didn't
5 realize that an unlawful entry a home and I believe
6 it was at night. Also they had weapons. Of course
7 Mr. Whisenhunt said well, I think there was going
8 to be confrontation between the victim and his
9 brother so he was high. But he said he sat on top
10 of him and he also participated in going in the
11 house and doing whatever. But it appeared that it
12 was all in consort. They emboldened each other,
13 supported each other in doing so and didn't make
14 sense, but there was an unlawful entry and they had
15 weapons and of course the victim made it clear this
16 was no game. It was real and it was very serious.

17 Q. Did the victim know the assailants?

18 A. There was some words back and forth
19 between one of the co-defendants. And there was
20 some tit for tat with regards to a cell phone what
21 was being said to each other. What was really
22 striking about the case was it was three or four
23 guys and they were all involved in this process and
24 there were admissions made by two co-defendants.
25 They implicated everybody and the victim was very

1 serious. He said they pulled guns on me and they
2 broke inside my home.

3 There was also a kidnapping charge and
4 there was also I think carrying weapon during
5 commission of a violent crime in addition to the
6 armed robbery and also burglary, either first or
7 second.

8 Q. This kidnapping and those weapons
9 charges, they were dropped as part of the plea; is
10 that correct?

11 A. Well, that was the key. Ten to 15
12 years, it was a kidnapping charge, I believe at
13 that time it carried 30. He also had a weapons
14 charge. He also had the armed robbery. He also
15 had a burglary, I think it was a burglary first,
16 but I think he pled to the burg second.

17 So what happened was we took the path
18 of least resistance and of course two of the
19 co-defendants had cooperated and given statements.
20 So it was clear to my client that you are going to
21 be implicated in this no matter what you do.

22 Q. Do you think it was in his best
23 interest to plead guilty?

24 A. It was in his best interest to take the
25 plea considering the implications of how much time

1 he was facing because they ran it consecutive.
2 That was an outrageous number and of course if he
3 was convicted of the kidnapping that was 30. And
4 of course the weapons charges and at that time if
5 memory serves me correct, it might have been a
6 burglary first that was reduced to the burglary
7 second. So he was in a world of trouble. So this
8 was the path of least resistance and of course
9 there's no honor among thieves. The other
10 co-defendants made it clear we will testify against
11 him or do anything we have to do.

12 Q. How did you come about the 10 to 15
13 year range for the recommendation?

14 A. We negotiated back and forth and usual
15 negotiation and that's what we ended up with.

16 Q. This is kind of backing up. Did you go
17 over with Mr. Whisenhunt his rights to a trial and
18 different rights, right to remain silent and kind
19 of the litany?

20 A. Same drill every time. Giving up your
21 Fifth Amendment right, giving up the right to
22 confront witnesses, giving up your right to -- if
23 it wasn't an indictment have your case presented
24 before the grand jury, have the indictment brought
25 down, giving up the right to cross-examine those

1 witnesses, you are pleading guilty because you are
2 guilty. And you need to be aware of the fact that
3 if there is a YOA hanging over your head, it's a
4 possibility it could be revoked. Bottom line is
5 you got a deal now to get rid of 30 on a
6 kidnapping, you got a weapons charge, burglary
7 first degree goes to a burglary second and of
8 course we got armed robbery and we got two
9 co-defendants that are not going to go along with
10 this. They are going to testify against you.

11 Q. What about this accessory charge that
12 he mentioned that he believed he was pleading to?

13 A. Theory of hand of one hand of all was
14 explained to him. He emboldened them. He
15 empowered them by being there. They all went into
16 this house and, you know, as far as what went on in
17 the house and whether I really wanted to be there
18 and I didn't want to be there, bottom line is a
19 house was broken into. I think it was at night and
20 the sheriff's department over in Calhoun County is
21 very small. It was a big issue because they went
22 after all these guys and the victim was very clear.
23 I think his name was Mr. Neil or something like
24 that.

25 Q. Did you make any assurances to Mr.

1 Whisenhunt that his sentence would be amended at a
2 later time?

3 A. No, there was no guarantees and the
4 transcript reflects that. There was no talk of it
5 being bifurcated and a possibility that
6 subsequently something great is going happen. In
7 fact, when I talked with Mr. Whisenhunt, I visited
8 him in jail one time. To show how nonchalant he
9 was he wanted to talk about getting custody of his
10 kid. I said well, I don't think you can get
11 custody of your kid considering the implications of
12 what's going on at this time. You got to address
13 this issue before we talk about an issue of custody
14 of your child.

15 Q. What about the YOA? What was your talk
16 with him about his YOA probation?

17 A. Well, from what I understood first I
18 had to go back and explain to him what a YOA is. I
19 said evidently you got one hanging over your head.
20 In addition to that I said it's probably going to
21 be revoked on you because right now if you plead
22 guilty to burglary or any of these offenses you are
23 in trouble. The benefits of YOA are going to go
24 down the drain because of what we got on the table
25 here. But in addition to that, you need to

1 consider the fact that we are also going to get rid
2 of the kidnapping and also a weapons charge. So
3 that's over 30 years that we are getting off the
4 table. So it is what it is.

5 MR. MITCHELL: I don't have any further
6 questions. Please answer anything Ms. Good may
7 have for you.

8 THE COURT: Cross-examination.

9 CROSS-EXAMINATION

10 BY MS. GOOD:

11 Q. Mr. Walters, you said you looked at the
12 discovery in evaluating the case. Wasn't it your
13 opinion that Mr. Whisenhunt's role in this case was
14 far less than anybody else's of the co-defendants?

15 A. My opinion -- I don't know what my
16 opinion was that many years ago back in 2012. What
17 I do know is that if you were going into a house
18 with two or three other guys and they implicate you
19 being involved in a burglary and some foolishness
20 over a cell phone, you break inside a house, you
21 got guns and weapons, it's a strong probability you
22 are going to end up going to jail. And Mr.
23 Whisenhunt said well, I don't know if I really
24 wanted to be there, I think someone else was going
25 to get into a fight. But nevertheless he was high

1 and he went inside the house and ransacked the
2 house and took it apart. To be honest with you,
3 really didn't care. It's like a group of college
4 kids having a party on a weekend and then sit down
5 and tell me I want to get custody of my child. I
6 said well, let's not talk about that. Let's talk
7 seriously about what's going on here. He was very
8 jovial about it.

9 Q. Just from those conversations wouldn't
10 it indicate to you that he didn't understand the
11 implications of these charges and thought that he
12 was potentially going to get out?

13 A. He clearly understood. That was really
14 -- that was the shocking part. He knew how much
15 time. He didn't give a statement to the police.
16 He understood the implications what was going on.
17 He thought Mr. Neil was going to simply come in and
18 say all he did was sit on top of him. Mr. Neil
19 made it clear no, they broke in my house and robbed
20 me and, you know, I was going to be pistol whipped
21 or kicked or whatever, and they went through the
22 house and they took what they wanted. So his
23 perception of reality was clear. The only problem
24 was is that as many kids that I represent between
25 18 and 35, they belittle the implications of what

1 they do. I don't know why. Maybe television,
2 internet, whatever else, somebody gets shot, break
3 into a house, just not a big deal.

4 Q. And you indicated you had to explain to
5 him about the YOA, correct?

6 A. He was already under a YOA and he
7 talked as if the YOA was ongoing. I said no, no,
8 you need to understand -- I don't know what you did
9 before, as far as getting into the YOA, but let's
10 make sure we are clear about the program and how it
11 works. And right now you are about to plead to a
12 very serious offense and you need to understand the
13 implications of pleading to burglary, pleading to
14 armed robbery and how this will affect you. In
15 fact, in the transcript the judge asked him the
16 question are you aware you got this YOA, you
17 understand the implications, and he didn't raise
18 the issue. All he knew was he was getting rid of
19 30 years plus a weapons charge.

20 Q. This whole discussion regarding
21 accessory versus hand of one hand of all, did you
22 go into detail with him about accessory versus hand
23 of one hand of all? Is it possible that he
24 understood it as an accessory charge instead of
25 just he's part of it as a hand of one hand of all?

1 A. He never used the word accessory. He
2 understood that he emboldened them, he empowered
3 them. He was there. He was there to support them.
4 And under the theory or hand of one hand of all,
5 certainly he fit into that mode going inside that
6 house at night. Then he came up and he said well,
7 maybe I was there to stop my brother from doing
8 something. But it's clear from the co-defendant's
9 statement he knew what he was doing. He was aware
10 of it. He knew about it. And most importantly,
11 when he went in front of the judge he accepted it
12 completely. He owned it completely. Later when
13 the PRC came out he said well, I didn't really
14 understand and he started using the word accessory.

15 Q. And so you're saying the word accessory
16 came about when it came to the PCR, that's the
17 first time you heard it?

18 A. Sure.

19 Q. And after his plea he indicated to you
20 he wanted to appeal, correct?

21 A. I can't remember. If that's in the
22 transcript, fine. I don't remember, but the point
23 is is that plenty of Defendants after they are
24 convicted go down to the law library at the jail
25 and all of a sudden they quote due process and

1 Fifth Amendment. They take a course on
2 constitutional law.

3 (APPELLANT'S EX 1, notice of appeal,
4 was marked for identification.)

5 BY MS. GOOD:

6 Q. Let me show you what's marked as
7 Appellant's 1. Do you recognize this?

8 A. That's the appeal. His family came
9 back and they said we want to pay you to do the
10 appeal. And then what happened was they came in
11 and they said we don't have any money. And there
12 was an assurance that was given by I think a
13 grandmother or something like that I am coming with
14 the money, take care of him and then they showed up
15 at the office and they said we don't have a dime.
16 We don't have any money.

17 Q. Did you prepare that appeal?

18 A. Sure, yeah. I mean they were good
19 people. They came in and paid for his case to be
20 taken care of for the criminal case and there was
21 no reason for me to sit down and say you are lying,
22 you are not going to do what you are supposed to
23 do. So when she called said and we are going to do
24 it, of course when she got there she said she
25 didn't have the money. And the other issue was

1 after taking the plea they said we don't know if we
2 want to go forward and do this. Of course he was
3 calling them about getting custody of a kid. I
4 said well, how can you do that while you are in
5 incarcerated.

6 MS. GOOD: I will enter that as
7 Exhibit 1, Your Honor.

8 THE COURT: Any objection?

9 MR. MITCHELL: No objection.

10 (Appellant's Ex 1 in evidence.)

11 BY MS. GOOD:

12 Q. So you prepared that, correct?

13 A. Yes, ma'am.

14 Q. And that's the explanation that you
15 were going to give to the appeal court for the
16 plea?

17 A. Sure.

18 Q. In that it mentions Mr. Whisenhunt
19 believing it was accessory, correct?

20 A. Um-hmm.

21 Q. Which would indicate that he brought up
22 the term accessory before his PCR, right?

23 A. No, that's creative lawyering. He
24 called me and told me this is what's going on, this
25 is what's happening. You need to do this. His

1 family contacted me and I said okay, fine. I will
2 file an appeal for you.

3 Q. And did you believe there was a basis
4 for an appeal?

5 A. I'd have to say yes to a degree. The
6 problem we have is after they plead guilty and they
7 are incarcerated all of a sudden someone in the
8 family calls and they say well, this is what the
9 facts are, this is what we believe and all of a
10 sudden he's quoting constitutional law.

11 My position was look, if you want to
12 pay for an appeal we will go ahead and file one for
13 you and I'll try to look for a way to try to help
14 you. But I'm not here to hurt you and certainly I
15 wasn't going to argue with him and say I think you
16 are wrong and I'm not going to file this appeal for
17 you. Once you said I will go ahead and pay you and
18 you can go ahead and do the appeal for us, I said
19 if I did something wrong I accept responsibility
20 for it. And certainly if I can help him I'm going
21 to do that.

22 Q. And as a result of that you determined
23 that he could have potentially gotten a lesser
24 sentence and that was one of the reasons for the
25 appeal because the co-defendants had higher

1 sentences?

2 A. No, no, no. I'm not going that far.

3 Q. Is that not what was in the explanation
4 for your appeal that you signed?

5 A. What it says here is that the
6 appellate's guilty plea for the charges were
7 accepted. He was sentenced to 15 years in the
8 Department of Corrections by Judge Harrington. The
9 appellant believes that his plea was not freely and
10 voluntarily given, as he was charged with being
11 accessory to the charges of armed robbery and
12 burglary. The other Defendants received the same
13 sentence. He was informed he should have received
14 a lesser sentence because the charges against him
15 were lesser in nature. That's exactly what the
16 family came in and told me.

17 MS. GOOD: Beg the Court's indulgence,
18 Your Honor.

19 (Attorney confers with client.)

20 BY MS. GOOD:

21 Q. What were the sentences of the
22 co-defendants, do you remember?

23 A. I don't remember. I know they
24 cooperated in the beginning and they gave written
25 statements, things of that nature.

1 Q. And did their written statements, did
2 they coincide with each other or were they
3 conflicting in nature, do you remember?

4 A. I can't remember. I remember that I
5 saw in the PRC that Mr. Whisenhunt said that some
6 of their statements contradicted each other and I
7 can't remember. All I know is is that they were
8 waiting for a chance for Mr. Whisenhunt to go to
9 trial so they could work out something further.

10 Q. So they got lesser sentences because
11 they were going to testify against him?

12 A. I don't remember. All I know is they
13 cooperated up front and provided the statements and
14 as you can see from the explanation for the filing
15 of the appeal I did exactly verbatim what Mr.
16 Whisenhunt wanted me to say. Certainly I said if
17 we did something wrong we will accept
18 responsibility for it, but I don't want it said
19 that I tried to hurt you and his grandmother just
20 -- I think it was the grandmother who said look, we
21 don't have any money. I said okay, fine.

22 (Attorney confers with client.)

23 MS. GOOD: No further questions, Your
24 Honor.

25 THE COURT: Any redirect, Mr. Mitchell?

REDIRECT EXAMINATION

BY MR. MITCHELL:

Q. As far as to the accessory, you put that in there, but there was no talks of him pleading guilty to accessory prior to?

A. No, this was after he was convicted. He was arrested and he had pled. And all of a sudden you notice there is no talk of YOA here either. I think before it was I was confused about the YOA. I said well, that's not going to fly. He said well, if I am an accessory what better chance do I have? Of course his grandmother said we will pay you for the appeal. I said okay, fine. I said if we find something wasn't done right, but he clearly understood he got rid of the 30 and got rid of the weapons charge and he could do the -- I think 15 years as opposed to going to trial and the co-defendants geared up and said we will certainly participate and cooperate and do whatever we have to do under the circumstances.

MR. MITCHELL: No further questions, thank you.

THE COURT: You may step down, Mr. Walters. Thank you. You may call your next witness.

1 MR. MITCHELL: I have no further
2 witnesses, Your Honor.

3 THE COURT: I will take the time to
4 review the entire record and notify you of my
5 ruling.

6 (These proceedings were concluded at
7 11:47 a.m., February 25, 2016, Dorchester County,
8 South Carolina.)
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, Ruth C. Weese, Registered Diplomat
Reporter for the State of South Carolina at Large,
do hereby certify that the foregoing transcript is
a true, accurate, and complete record.

I further certify that I am neither related
to nor counsel for any party to the cause pending
or interested in the events thereof.

Witness my hand, I have hereunto affixed my
official seal this 24th day of June, 2016 at
Charleston, Charleston County, South Carolina.

Ruth C. Weese

Ruth C. Weese

Registered Diplomat

Reporter

STATE OF SOUTH CAROLINA
COUNTY OF CALHOUN

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Terry Whisenhunt, #343850,

2014-CP-09-0004

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

2016 JUN -2 P 4:01

FILED

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed January 21, 2014. Respondent made its Return on March 28, 2014, requesting an evidentiary hearing be convened. Jonathan D. Waller, Esquire, was appointed by the Calhoun County Clerk's Office to represent Applicant. Counsel Waller filed a motion to be relieved as Counsel on March 4, 2014. The Court relieved Counsel Waller, and Anna R. Good, Esquire, was appointed by the Calhoun County Clerk of Court. An evidentiary hearing was held on February 25, 2016, at the Dorchester County Courthouse. Applicant was present and represented by Counsel Good. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, Glenn Walters, Sr., Esquire. This Court had before it the Calhoun County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the guilty plea transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Calhoun County Clerk of Court. Applicant was indicted by the

ATTEST TRUE COPY

KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY

Calhoun County Grand Jury for Armed Robbery (2012-GS-09-0020) and Burglary in the First Degree (2012-GS-09-0017). Applicant was represented by Glenn Walters, Sr., Esquire. On May 27, 2012, Applicant appeared before the Honorable Kristi Lee Harrington, where he pled guilty as indicted to Armed Robbery and to the lesser included offense of Burglary in the Second Degree. Judge Harrington sentenced Applicant to fifteen (15) years for each offense, with the sentences to be served concurrently.

Counsel filed a notice of appeal at Applicant's request. The South Carolina Court of Appeals dismissed Applicant's appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. The Remittitur was sent on March 28, 2013.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Involuntary and unintelligent guilty plea.

III. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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. 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).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the guilty plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Involuntary and Unintelligent Guilty Plea

Applicant alleges he did not plead guilty knowingly and voluntarily. Specifically, Applicant argues that Counsel failed to advise him of the plea he was entering. This Court finds Applicant's guilty plea was ~~entered~~^{made} freely and voluntarily entered. 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. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights 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)). 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, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

Applicant claims he did not plead guilty voluntarily because he believed he was pleading guilty to a sentence under the Youthful Offender Act (YOA). He testified that Counsel failed to advise him of his rights and also failed to adequately explain the plea he was entering. Applicant believed there would be a separate hearing to address the different charges. This Court finds these contentions meritless and finds Applicant's testimony not credible. This Court finds the record reflects Applicant was fully advised of his rights. Counsel also reviewed the State's

evidence with Applicant. The plea court's thorough colloquy with Applicant demonstrates that he understood the charges, penalties, and his waiver of rights. Applicant presented no credible evidence as to why he should be able to depart from his statements at the plea hearing. Counsel unequivocally testified that Applicant fully understood the charges, the plea agreement, and that he was not pleading guilty to a YOA sentence. This Court finds very credible Counsel's testimony regarding his preparation and advice concerning the case, specifically that he reviewed the charges, plea offer, and all evidence with Applicant. The record further reflects Applicant fully admitted his guilt to the plea court. Therefore, this Court finds the plea judge correctly found Applicant's plea was freely, ^{voluntarily} ~~voluntary~~, and intelligently made. MM

All Other Allegations

As to any and all allegations that were raised in the application 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.

V. 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. Applicant failed to demonstrate ^{counsel's} ~~counsel's~~ performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

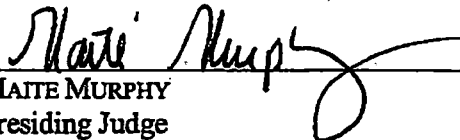
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate

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), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must 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 shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 23 day of May, 2016.


MAITE MURPHY
Presiding Judge

St. George, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CALHOUN

Terry Whisenhunt, #343850,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2014-CP-09-0004

ORDER OF DISMISSAL

2016 JUN -2 P 4:01

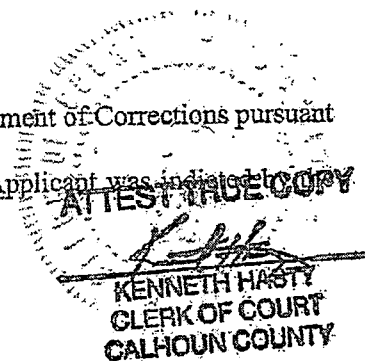
FILED

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed January 21, 2014. Respondent made its Return on March 28, 2014, requesting an evidentiary hearing be convened. Jonathan D. Waller, Esquire, was appointed by the Calhoun County Clerk's Office to represent Applicant. Counsel Waller filed a motion to be relieved as Counsel on March 4, 2014. The Court relieved Counsel Waller, and Anna R. Good, Esquire, was appointed by the Calhoun County Clerk of Court. An evidentiary hearing was held on February 25, 2016, at the Dorchester County Courthouse. Applicant was present and represented by Counsel Good. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, Glenn Walters, Sr., Esquire. This Court had before it the Calhoun County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the guilty plea transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Calhoun County Clerk of Court. Applicant was indicted by



Calhoun County Grand Jury for Armed Robbery (2012-GS-09-0020) and Burglary in the First Degree (2012-GS-09-0017). Applicant was represented by Glenn Walters, Sr., Esquire. On May 27, 2012, Applicant appeared before the Honorable Kristi Lee Harrington, where he pled guilty as indicted to Armed Robbery and to the lesser included offense of Burglary in the Second Degree. Judge Harrington sentenced Applicant to fifteen (15) years for each offense, with the sentences to be served concurrently.

Counsel filed a notice of appeal at Applicant's request. The South Carolina Court of Appeals dismissed Applicant's appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. The Remittitur was sent on March 28, 2013.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Involuntary and unintelligent guilty plea.

III. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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. 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).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the guilty plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Involuntary and Unintelligent Guilty Plea

Applicant alleges he did not plead guilty knowingly and voluntarily. Specifically, Applicant argues that Counsel failed to advise him of the plea he was entering. This Court finds Applicant's guilty plea was ~~entered~~^{made} freely and voluntarily entered. 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. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights 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)). 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, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

Applicant claims he did not plead guilty voluntarily because he believed he was pleading guilty to a sentence under the Youthful Offender Act (YOA). He testified that Counsel failed to advise him of his rights and also failed to adequately explain the plea he was entering. Applicant believed there would be a separate hearing to address the different charges. This Court finds these contentions meritless and finds Applicant's testimony not credible. This Court finds the record reflects Applicant was fully advised of his rights. Counsel also reviewed the State's

evidence with Applicant. The plea court's thorough colloquy with Applicant demonstrates that he understood the charges, penalties, and his waiver of rights. Applicant presented no credible evidence as to why he should be able to depart from his statements at the plea hearing. Counsel unequivocally testified that Applicant fully understood the charges, the plea agreement, and that he was not pleading guilty to a YOA sentence. This Court finds very credible Counsel's testimony regarding his preparation and advice concerning the case, specifically that he reviewed the charges, plea offer, and all evidence with Applicant. The record further reflects Applicant fully admitted his guilt to the plea court. Therefore, this Court finds the plea judge correctly found Applicant's plea was freely, ^{voluntarily} ~~voluntary~~, and intelligently made. ^{MM}

All Other Allegations

As to any and all allegations that were raised in the application 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.

V. 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. Applicant failed to demonstrate ^{counsel's} ~~counsel's~~ performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

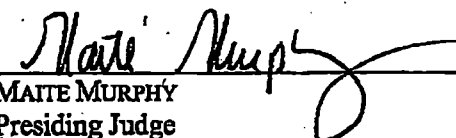
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate

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), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must 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 shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 23 day of May, 2016.


MAITE MURPHY
Presiding Judge

St. George, South Carolina

WITNESSES

Matt Trentham

Calhoun County Sheriff

ARREST WARRANT NUMBER
M355139

Arrested: December 28, 2011

ACTION OF GRAND JURY

TRUE BILL

Mitchell H. Hester
Foreperson of Grand Jury
Date: August 17, 2012

VERDICT

104

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS09-0017

The State of South Carolina
County of CALHOUN

COURT OF GENERAL SESSIONS

August 27, 2012 TERM

THE STATE
vs.

Terry Damien Whisenhunt

Indictment for

BURGLARY - FIRST DEGREE

SC Code: 16-11-311

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person
and plead guilty to the within indictment
or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED
2012 AUG 17 A 10:35
KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF CALHOUN)

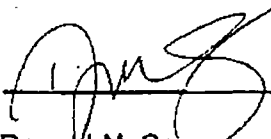
INDICTMENT
2012GS09-0017

At a Court of General Sessions, convened on August 27, 2012 the Grand Jurors of Calhoun County present upon their oath:

BURGLARY - FIRST DEGREE

That in Calhoun County, South Carolina, on or about December 27, 2011, the Defendant, Terry Damien Whisenhunt, did willfully and unlawfully enter the dwelling of Daniel "Russ" Neil, without consent and with the intent to commit a crime therein and the defendant did so during the hours of darkness and/or was armed with a deadly weapon. This offense being a violation of Section 16-11-311 of the South Carolina Code of Laws, as amended.

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


Donald N. Sorenson, Solicitor

WITNESSES

Matt Trentham

Calhoun County Sheriff

ARREST WARRANT NUMBER
M361230

Arrested: December 28, 2011

ACTION OF GRAND JURY

TRUE BILL

Nitz G. Weeks
Foreperson of Grand Jury
Date: August 17, 2012

VERDICT

106
Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS09-0020

The State of South Carolina

County of CALHOUN

COURT OF GENERAL SESSIONS

August 27, 2012 TERM

**THE STATE
vs.**

Terry Damien Whisenhunt

Indictment for

ARMED ROBBERY

SC Code: 16-11-330(A)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED
2012 AUG 17 A 10:35
KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
S.C. MATTHEWS, SC

STATE OF SOUTH CAROLINA)
COUNTY OF CALHOUN)

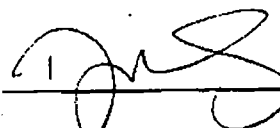
INDICTMENT
2012GS09-0020

At a Court of General Sessions, convened on August 27, 2012 the Grand Jurors of Calhoun County present upon their oath:

ARMED ROBBERY

That on or about December 27, 2011, in Calhoun County, the defendant, Terry Damien Whisenhunt did by use of force, threats or intimidation and while armed with a deadly weapon or while alleging either by words or action that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, take and carry away goods and/or monies from the person or presence of the victim, Daniel "Russ" Neil, with the intent to permanently deprive the victim of possession of the goods or monies. Such weapon or alleged weapon described as a deadly weapon. This offense in violation of Section 16-11-330 of the South Carolina Code of Laws, as amended.

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


Donald N. Sorenson, Solicitor