

THE STATE OF SOUTH CAROLINA
SUPREME COURT

APPEAL FROM PICKENS COUNTY

R. Knox McMahon, Circuit Court Judge

RECEIVED

DEC 13 2016

S.C. SUPREME COURT

Case No. 2014-CP-39-0397

Eli Torrence, #00356338.....Petitioner,

v.

State of South Carolina.....Respondent.

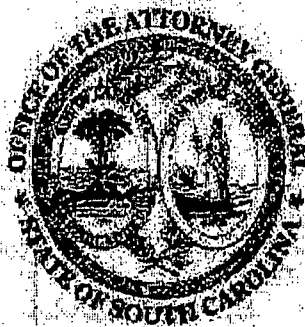
APPENDIX

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516 29th Ave. North
Myrtle Beach, SC 29577
(843) 444-6122
Attorney for Petitioner

Attorney General's Office
Patrick Schmeckpeper, Esquire
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Columbia, SC 29211
Attorney for Respondent

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ALAN WALSH
ATTORNEY GENERAL

August 11, 2016

Bobby G. Frederick, Esquire
Frederick Law Office
1053 London Street
Myrtle Beach SC 29577

Re: Eli James Torrance, 356338 v. State of South Carolina
2014-CP-39-0397

Dear Mr. Frederick:

Enclosed please find a copy of the Order of Dismissal dismissing the above-captioned post-conviction relief application, signed by the Honorable R. Knox Mahon, Presiding Judge for the 13th Judicial Circuit on July 29, 2016.

Sincerely,

Patrick Schmeckpeter
Assistant Attorney General

PLS/jac
Enclosure

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS
IN THE COURT OF COMMON PLEAS

ELI JAMES TORRENCE,

Applicant.

v.

STATE OF SOUTH CAROLINA

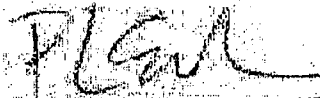
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Order of Dismissal has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

Bobby G. Frederick, Esquire
Frederick Law Office
1053 London Street
Myrtle Beach SC 29577

This 11th day of August, 2016.



Patrick Schmeckpeper
Assistant Attorney General
Attorney for Respondent

SWORN to before me this 11th day of August, 2016.


Notary Public for South Carolina
My Commission Expires: May 14, 2024

2014-CP-35-0197

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Eli James Torrence,
S.C.D.C. No. 356338

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

C.A. No. 2014-CP-39-0397

**ORDER OF DISMISSAL
(with prejudice)**

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on April 2, 2014. Respondent filed his Return on August 25, 2014. An evidentiary hearing into the matter was convened on April 18, 2016, at the Pickens County Courthouse. Applicant was present at the hearing and was represented by Bobby G. Frederick, Esquire. Respondent was represented by Patrick Schmeckpeper, Esquire, of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Pickens County Clerk of Court's orders of commitment. The Pickens County Grand Jury indicted the Applicant at the December 2012 term of General Sessions for three counts of first-degree burglary (2012-GS-39-2704, -2705, -2712) and grand larceny (2012-GS-39-2713); and at the January 2013 term for two counts of second-degree burglary (2013-GS-39-0065, -0068) and two counts of grand larceny (2013-GS-39-0066, -0067). The Applicant also waived presentment to the Grand Jury on the charges of escape (2013-GS-39-2052) and willful injury to courthouse or jail (2013-GS-39-2053). John W. Delong, Esquire represented the Applicant. On July 29,

2013, the Applicant pled guilty to three counts of second-degree burglary (non-violent), two counts of second-degree burglary (violent), three counts of grand larceny (\$2000-\$10,000), escape, and willful injury to courthouse or jail. The Honorable Leutia H. Verdin sentenced the Applicant to ten years on each count of second-degree burglary (non-violent), fifteen years on one count of second-degree burglary (violent), five years on each count of grand larceny (\$2000-\$10,000), ten years for escape, and three years for willful injury to courthouse or jail. Judge Verdin levied a sentence of fifteen years suspended with five years of probation for the second count of second-degree burglary (violent) and ordered it to be consecutive to the sentence for the first count of second-degree burglary (violent). The Applicant did not appeal.

Allegations

In his application for post-conviction relief, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. "Counsel failed to wait on Rule 5 Brady Documents before advising Defendant to take plea."
 - b. "Legal counsel didn't fully inform me of the decisions being made on my case."
 - c. "Counsel advised defendant to take a plea of guilty on charges where 'no' evidence of Brady documents had been viewed by the defendant or counsel."
2. Involuntary guilty plea.
 - a. "Time exceeded the agreement of 0-15 year open plea arrangement."
3. "[N]ever knowing, voluntarily, or intelligently enter a plea of guilty to the escape charge."

Applicant subsequently submitted through counsel an amended application raising the following additional allegations:

1. Counsel was ineffective for failing to object to the amendment of Applicant's charges to burglary second degree under subsection (B), where Applicant had no prior notice of the change and did not waive

indictment as to burglary second degree, subsection (B), and plea counsel was ineffective for failing to communicate with Applicant to explain that he was pleading guilty to un-indicted offenses that was [sic] not a lesser-included offense of the charges for which he had been indicted.

2. Counsel was ineffective for failing to object to the State's recommendation to the judge that Applicant's sentence be at least fifteen years, followed by probation.

At the evidentiary hearing, Applicant waived all allegations other than ineffective assistance of counsel for allowing Applicant to plead guilty to burglary, second degree (violent), and that he was serving an unlawful sentence for escape.

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 reviewed the Clerk of Court records regarding the subject guilty pleas, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and the legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2015), this Court makes the following findings of fact and conclusions of law based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption 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. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 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." Id. at 117-18, 386 S.E.2d at 625. Because Applicant pled guilty, he 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).

Sufficiency of Indictment

This Court first finds Applicant has failed to meet his burden to show counsel ineffective for failing object to the sufficiency of the indictment. Applicant has failed to show any actual deficiency or otherwise meritorious reason for objecting to the indictment. Burglary, second degree, is a lesser included offense of burglary, first degree. (See State v. Wright, 354 S.C. 48, 54, n.2, 579 S.E.2d 538, 541, n.2 (Cl. App. 2003) *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); see also State v. Burton, 356 S.C. 259, 264, 589 S.E.2d 6, 8

(2003) (when an offense has traditionally been considered a lesser included offense of the greater offense charged, it will continue to be construed as a lesser included offense).

Accordingly, Applicant was not required to waive indictment with respect to his guilty plea for burglary, second degree, because it was a lesser included offense of burglary, first degree – for which he was validly indicted. See State v. Myers, 313 S.C. 391, 393, 438 S.E.2d 236, 237 (1993) (waiver of indictment not required where the charge is a lesser included offense of the crime charged in the indictment). Applicant has therefore failed to show counsel was deficient in failing to challenge the sufficiency of the indictment, where there was no reasonable basis on which to base an objection. This Court would also point out that, even assuming there were objectionable issues with the indictment, Applicant received the benefit he bargained for. See Rollison v. State, 346 S.C. 506, 511, 552 S.E.2d 290, 292 (2001) (plea agreements are governed by contract principles). Accordingly, counsel's actions were objectively reasonable – the reduced offense was significantly less serious than the original.

Applicant has also failed to meet the second prong of the Strickland analysis and show that he suffered any resulting prejudice from counsel's purported deficiency. In order to prove prejudice in the context of a guilty plea, an applicant must show that but for counsel's alleged unprofessional errors, he would have refused to plead guilty and insisted on going to trial. After reviewing the record and listening to testimony presented at the evidentiary hearing, this Court finds Applicant has failed to make such a showing. In spite of the fact that Applicant's conduct – as admitted during the plea hearing² – warranted the charge of first degree burglary, he was

² The facts as recited by the solicitor indicated Applicant and several co-defendants broke into eight houses and stole a number of objects, including firearms. Plea Tr., p. 7, l. 4-11. Applicant admitted that he "did break into some homes and steal some stuff." Plea Tr., p. 17, l. 21-22. Applicant further stated that he "did admit to what [he had] done and notify who else is also involved in the case to help further the investigation." Plea Tr., p. 18, l. 2-4. Counsel testified at the evidentiary hearing that Applicant gave a confession to law enforcement.

offered a deal that allowed him to avoid a potential life sentence.³ In fact, counsel testified that the potential sentence on first degree burglary was the reason Applicant ultimately pled guilty. This Court finds counsel's testimony credible.

Applicant's contrary testimony -- that he would have insisted on going to trial if he had only known that he was pleading to entering a building, rather than a dwelling, is nonsensical. The primary benefit of Applicant's plea deal was that he was allowed to plead to entering a building rather than a dwelling. Given the aggravating circumstances involved and potential for a life sentence, this benefit was substantial. After taking into account that substantial benefit, as well as the fact that Applicant confessed and cooperated with police before pleading guilty, this Court finds his testimony is also not credible. As there is nothing else in the record to support this allegation, it is hereby denied and dismissed.

UNLAWFUL SENTENCE

Applicant's next allegation appears to be that because the plea judge did not make an oral pronouncement of his sentence for escape, his guilty plea should be vacated on that charge.⁴ This argument is entirely without merit. The sentencing sheet for escape clearly states what the sentence is, and is signed by the judge, counsel, and Applicant. See Tanis v. South Carolina Dept. of Correction, 408 S.C. 334, 344, 759 S.E.2d 398, 403 (2014) (the sentencing sheets were signed by the judge and both attorneys without objection and are assumed to memorialize the judge's intention no less than what was pronounced from the bench); see also Finley v. State, 219 S.C. 278, 284, 64 S.E.2d 881, 883 (1951) ("A sentence should be so complete as to need no construction of a court to ascertain its import"). The sentencing sheet clearly memorializes the

³ Burglary in the first degree is a felony punishable by life imprisonment, although "[t]he court, in its discretion, may sentence the defendant to a term of not less than fifteen years." S.C. Code Ann. § 16-11-31 (2010).

⁴ Applicant also appears to be alleging he was "affirmatively misled" by the plea judge with respect to the escape charge. Applicant has not presented any credible evidence that he was misled by the plea judge.

Judge's intent to sentence Applicant to ten years, concurrent to his other offenses, for escape. Applicant has not made any other actual claim or allegation that his sentence was otherwise unlawful.⁵ Accordingly, this allegation is denied and dismissed with prejudice.⁶

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

(Signature follows)

⁵ Applicant has not alleged any other deprivation or constitutional violation as a result of the judge's failure to make an oral pronouncement of his sentence. Cf. *Tam*, at 344, 759 S.E.2d at 403 (applicant's constitutional right to be present at every stage of his proceeding not implicated where no allegation that his sentence was increased in the sentencing sheets). Nor has Applicant alleged his sentencing sheets were ambiguous. Cf. *Burdick v. State*, 410 S.C. 495, 500, 763 S.E.2d 143, 144 (2014) (unambiguous sentencing pronouncement will control over an ambiguous sentence, whether oral or written, so long as giving effect to that pronouncement does not result in an illegal sentence or a deprivation of a defendant's constitutional rights); see also *Tam*, at 337, 759 S.E.2d at 399 (Department of Corrections generally confined to the face of the sentencing sheets in determining the length of a sentence, but may refer to the sentencing transcript if there is an ambiguity in the sentencing sheets).

⁶ This Court would also note that the remedy Applicant is requesting is inappropriate due to the nature of his allegation. Because Applicant's only argument is an error in sentencing regarding escape, the correct remedy is not that the offense be vacated, but rather that the matter be remanded for resentencing. See *Doan v. State*, 368 S.C. 272, 277, 693 S.E.2d 850, 852 (2010).

CONCLUSION

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

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR, Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED

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

AND IT IS SO ORDERED this 29 day of July, 2015.


R. Knox McMahon
Presiding Judge
Thirteenth Judicial Circuit


South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Pickens

VS.

Eli James Torrence

AKA:

Race: WHITE Sex: M Age: 22

DOB: 1991 SSN: [REDACTED]

Address: 19 Symbola Ct

City, State, Zip: Greenville, SC 29617

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Burglary / Burglary (Non-Violent) - Second degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS3900065

A/W#: 2012A3910600293

Date of Offense: 4/15/2012

S.C. Code §: 16-11-0312

CDR Code #: 0080

SENTENCE SHEET

0-10

☐ CONVICTED OF or ☒ PLEADS

In violation of § 16-11-0312 of the S.C. Code of Laws, bearing CDR Code # 0080

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45

w/minor 1st or Lowd Act)

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

WEST

Hinton, Brandi Estelle
Hinton, Brandi Estelle
SC Bar# [REDACTED]
DefendantJ. W. D. [REDACTED]
Attorney for Defendant
SC Bar# [REDACTED]WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

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

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5%)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ 100.00
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (DUI Breath Test Fee)	\$50	\$
§ 56-5-2942(7) (Vehicle Assessment)	\$40/ex	\$
Proviso 90.5 (SCCJA Surcharge)	\$3	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.50
TOTAL	\$	\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

HAROLD P. WILSON JR.

Presiding Judge

Judge Code:

Sentence Date:

7/29/15

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Pickens

VS.

Eli James Torrence

AKA:

Race: WHITE Sex: M Age: 22

DOB: 1991 SSN: [REDACTED]

Address: 19 Symbola Ct

City, State, Zip: Greenville, SC 29617

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Burglary / Burglary (Non-Violent) - Second degree

in violation of § 16-11-0312

of the S.C. Code of Laws, bearing CDR Code # 0080

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45

w/minor 1st or Lowd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.TEST: Brandon Burton 77844 SC Bar# [REDACTED] Defendant

John W. DeJoy 001620 SC Bar# [REDACTED] Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ 5 plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fines:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-3995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$30	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$
Proviso 50.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Clerk of Court/Deputy Clerk

Court Reporter:

010/0000 002P:00 010Z 02 107

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS3900068

A/W#: 2012A3910600288

Date of Offense: 10/28/2012

S.C. Code § : 16-11-0312

CDR Code #: 0080

SENTENCE SHEET

0-10

☐ CONVICTED OF or ☒ PLEADSClerk of Court/Deputy Clerk Harold P. Welborn Jr.

Presiding Judge

Judge Code:

Sentence Date:

[Signature]
7/29/13

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Pickens

VS.

Eli James Torrence

AKA:

Race: WHITE Sex: M Age: 22

DOB: 1991 SS#

Address: 514 Sumter St.

City, State, Zip: Greenville, SC 29617

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: BURGLARY, SECOND DEGREE (DWELLING)

INDICTMENT/CASE#: 2012GS3902704

A/W#: 2012A3910600268

Date of Offense: 10/26/2012

S.C. Code §: 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

0-10

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-11-0312

of the S.C. Code of Laws, bearing CDR Code # 0080

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
whichever 1st or Lawd Act)The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.Attorney: Brandi Hixon 77844 SC Bar DefendantAttorney: John W. DeJoy 1201620 SC BarWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION; ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2599 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to Commy (If paid in installments)	\$	\$ 1.90
TOTAL	\$	\$ 123.90

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Clerk of Court/Deputy Clerk

Court Reporter:

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Pickens
STATE VS
Eli James Torrance

AKA:
Race: WHITE Sex: M Age: 22
DOB: -1991 SS#:
Address: 514 Sumter St
City/State/Zip: Greenville, SC 29617
DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Harmer Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Burglary, Second Degree Violent

INDICTMENT/CASE#: 2012GS3902705
A/W#: 2012A3910600272
Date of Offense: 10/29/2012
S.C. Code §: 16-11-0311
CDR Code #: 0079

SENTENCE SHEET

0-15

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-11-0312(B) of the S.C. Code of Laws, bearing CDR Code # 0086
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lowd Act)

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

John W. DeJoy 77844 John W. DeJoy 001420
Minion, Brandi Bouson SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

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

Pursuant to 18 U.S.C Section 922, It is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION; ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
☐ Set by SCDPPPS

Recipient:

*Fine:
§ 14-1-206 (Assessment 107.5%) \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 36-3-2995 (DUI Assessment) \$12 \$
§ 36-1-236 (DUI Breath Test) \$25 \$
Proviso 47.9 (Public Def/Prob) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 36-21-114 (BUI Breath Test Fee) \$50 \$
§ 36-3-2942(J) (Vehicle Assessment) \$40/ea \$
Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.00
3% to County (if paid in installments) \$ 3.90
TOTAL \$ 133.90

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

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

Clerk of Court/Deputy Clerk
Court Reporter:

Harold P. Welborn, Jr.
Susan Hedgins

Presiding Judge
Judge Code:
Sentence Date:

7/29/13

010/2012 WOL:ED ELOZ 62 100

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Pickens

VS.

Eli James Torrence

AKA:

Race: WHITE Sex: M Age: 22

DOB: -1991 SS#

Address: 19 Symbolic Cr

City/State/Zip: Greenville, SC 29617

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Escape / Escape

INDICTMENT/CASE#: 2013-GS-39-2052

A/W#: 2013A3910600255

Date of Offense: 6/21/2013

S.C. Code §: 24-13-0410

CDR Code #: 2527

SENTENCE SHEET

☐ CONVICTED OF ☒ PLEADS

in violation of § C/L

of the S.C. Code of Laws, bearing CDR Code # 2570

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

Hinton, Brandt Butson SC Bar# Defendant

John W. DeJong SC Bar# Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable; the balance is suspended with probation formonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Refrained ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPFS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$300	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/en	\$
Proviso 90.5 (SCC/A Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Pickens

VS.

Eli James Torrence

AKA:

Race: WHITE Sex: M Age: 22

DOB: 1991 SSN: [REDACTED]

Address: 19 Symbola Cr

City, State, Zip: Greenville, SC 29617

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Molestation / Molestation injury, willful injury to courthouse or jail

In violation of § 04-17-0070 of the S.C. Code of Laws, bearing CDR Code # 0051

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC) ☐ §17-25-43The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Prosecution to Grand Jury (Defendant's Initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

Brandi Hinton T1944 SC Bar Defendant John W. DeJoy 201620 SC Bar Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$ provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable; the balance is suspended with probation formonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-10 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Del. Waive Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Comm. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-3-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (DUI Breath Test Fee)	\$50
§ 56-5-2942(D) (Vehicle Assessment)	\$40/ea
Proviso 90.3 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ 133.90

Clerk of Court/ Deputy Clerk:

Court Reporter:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013-GS-39-2053

A/W#: 2013A3910500257

Date of Offense: 6/21/2013

S.C. Code §: 04-17-0070

CDR Code #: 0051

SENTENCE SHEET

0-3

☐ CONVICTED OF or ☒ PLEADS

Clerk of Court/ Deputy Clerk: Harold P. Welborn Jr.

Presiding Judge:

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA

COUNTY OF Pickens
STATE VS.

Eli James Torrence

AKA:

Race: WHITE Sex: M Age: 22

DOB: 1991 SS#: [REDACTED]

Address: 514 Sumter St.

City, State, Zip: Greenville, SC 29617

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: BURGLARY, SECOND DEGREE (DWELLING)

In violation of § 16-11-0312 of the S.C. Code of Laws, bearing CDR Code # 0080

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

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

TEST: Brandi Batson 77844 SC Bar# Defendant

John W. DeJoy 201670 SC Bar# Attorney for Defendant

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

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
☐ Set by SCDPPPS:

Recipient:

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-299S (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 56-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.3 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>134.90</u>

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

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

Clerk of Court/ Deputy Clerk

Court Reporter: Susan Hodge

SCCA/217 (03/2011)

Harold P. Welborn Jr. Presiding Judge

Judge Code:

Sentence Date: 7/29/13

[Signature]

THE STATE OF SOUTH CAROLINA
SUPREME COURT

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Case No. 2014-CP-39-0397

The State, ... Respondent.
v.
Eli Torrence, ... Appellant.

NOTICE OF APPEAL

Eli Torrence appeals the denial of post-conviction relief in this case. The Order of Dismissal was served on Appellant on August 16, 2016.


Lacey Thompson
316 29th Ave. North
Myrtle Beach, SC 29577
Phone: 843-444-6122
Attorney for Appellant

Other Counsel of Record:
Patrick Schmeckpeper, Esquire
Attorney General's Office
P.O. Box 11549
Columbia, SC 29211
Attorney for Respondent

August 23, 2016

THE STATE OF SOUTH CAROLINA
SUPREME COURT

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

R. Knox McMahon Circuit Court Judge

Case No. 2014-CP-39-0397

The State.....Respondent
v.
Eli Torrence.....Appellant

PROOF OF SERVICE

I certify that I have served the Notice of Appeal and copy of the request for transcript to the following recipients by depositing a copy of it in the United States Mail, postage prepaid, on August 23, 2016, addressed to:

Other Counsel of Record:
Patrick Schmeckpeper, Esquire
Attorney General's Office
P.O. Box 11549
Columbia, SC 29211
Attorney for Respondent

Pickens County Common Pleas
Clerk of Court
PO Box 215
Pickens, SC 29671

August 23, 2016

Daniel Shearouse, Clerk of Court
Supreme Court Building
1231 Gervais Street
Columbia, SC 29201


Mindi Ellison

FORM 3

STATE OF SOUTH CAROLINA

County of Pickens

Eli James-Torrence #356338

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2014-CP-39- 397

APPLICATION FOR

POST-CONVICTION RELIEF

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2014 APR 2 PM 2 38

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 Prison Correctional Institution SMU-A-223,
P.O. Box 205, Ridgeville SC 29472
2. Name and location of Court which imposed sentence Court of Common Pleas
Pickens County
3. Name(s) of co-defendant(s) (if any) #1-Mark Smith, #2-Shafte Curry,
#3-Melita Waters, #4-unknown
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: 2012A3910600288 10 yrs
(a) NA 2012A3910600216 2012A3910600098
(b) 2012A3910600276 " 10600255
2012A3910600271 2012A3910600257
2012A3910600272
" " 10600293
" " 10600294

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
(a) July 29th 2013 - 15 years incarcerated, 5 years probation + Restitution.
(b) _____
(c) _____
6. Check whether a finding of guilty was made:
(a) after a plea of guilty ☒
(b) after a plea of not guilty _____
(c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
(a) the name of each Court to which you appealed:
i. _____
ii. _____
iii. _____
(b) the result in each such Court to which you appealed:
i. _____
ii. _____
iii. _____
(c) the date of each such result:
i. _____
ii. _____
iii. _____
(d) if known, citations of any written opinion or orders entered pursuant to such results:
i. _____
ii. _____
iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
(a) (equi course) "John De Song" failed to file appeal as requested.
(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel - see Attachment "Exhibit A"
- (b) Involuntary guilty plea - see Attachment "Exhibit B"
- (c) Counsel failed to wait on Rule 5 Brady Documents before advising defendant to take plea
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Strickland v. Washington 466 U.S. 668 - Hill v. Lockhart 474 U.S. 52 -> "Exhibit A"
- (b) State v. Evans 454 S.E. 2d 418 -> "Exhibit B"
- (c) Judge v. State 471 S.E. 2d 146 -> "Exhibit 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.

Revised 3/2003

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) This is my first attempt for Post Conviction Relief

(b) _____

(c) _____

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

(a) your arraignment and plea? Yes

(b) your trial, if any? N/A

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

N/A

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

(a) the name and address of each attorney who represented you:

i. John De Jong 113 A. Court St. Pickens, SC 29671

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. John De Jong - Plea and sentencing

ii. _____

iii. _____

Revised 3/2003

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

Applicant hereby request this court to grant to reverse his conviction and reduce his time to inbetween the 0-15 year plea agreement, remove the Escape charge, and fix any other wrong doing's.

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

No

STATE OF SOUTH CAROLINA

County of Pickens

VERIFICATION

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2011 APR 2 PM 2:39

I, El: James Torrance, 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.

El: Torrance 3-27-2011

SWORN to and subscribed before me this 27th
day of March, 2014

Quadrone Burpitt (L.S.)
Notary Public

My Commission Expires: May 26, 2015

Revised 3/2003

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

Eli J. Torrence, #00356338
Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2014-CP-39-00397

Supplement to PCR Petition

Petitioner was sentenced on indictment number 2012-GS-39-02712, to a fifteen year sentence, consecutive to indictment number 2012-GS-39-2705, suspended to probation. The consecutive fifteen year suspended sentence is for a charge of burglary second degree violent, under 16-11-312 (B), and is to begin upon Petitioner's completion of his fifteen year sentence for burglary second degree violent on indictment number 2012-GS-39-2705.

Petitioner requests that this Court: 1) vacate each of his burglary second degree violent convictions, indictment numbers ending in 2712 and 2705, because he was not indicted for burglary second degree violent and did not waive indictment for burglary second degree violent, which requires the additional element of entry into a building; and 2) vacate his sentence and remand for resentencing with specific performance of his plea agreement.

- 1) Petitioner asks this Court to vacate each of the two burglary second degree violent sentences. Petitioner did not knowingly and voluntarily plead guilty to the burglary

second degree violent charges. Petitioner's offense was based upon entry of a dwelling, not a building. Petitioner was sentenced under 16-11-312(B) on the indictments ending in 2705 and 2712, reduced from a charge of burglary first degree, which was based upon Petitioner's entry of a dwelling. Petitioner did not waive indictment as to the additional element of entry into a building, nor was petitioner informed by his attorney or the Court that the elements of what he was being sentenced to were different than the elements of the crime he had been charged and indicted for.

Plea counsel was ineffective for failing to object to the amendment of Petitioner's charges to burglary second degree under subsection (B), where Petitioner had no prior notice of the change and did not waive indictment as to burglary second degree, subsection (B), and plea counsel was ineffective for failing to communicate with Petitioner to explain that he was pleading guilty to an un-indicted offense that was not a lesser-included offense of the charges for which he had been indicted.

A waiver of indictment cannot be presumed from a silent record, there was no waiver of indictment as to the two burglary second degree violent offenses, and burglary second degree violent is not a lesser-included offense of burglary first degree where there was no allegation of entry into a building as opposed to a dwelling. Based on the foregoing,

Petitioner requests that his conviction and sentences for burglary second degree, violent, indictment numbers ending in 2705 and 2712, be vacated.

- 2) The State was bound by its plea agreement with Petitioner, and plea counsel was ineffective for failing to object to the State's recommendation which exceeded the agreed-upon plea deal. Petitioner agreed to plead guilty to a sentence that did not exceed fifteen years; however, the prosecutor recommended to the judge that Petitioner's sentence be at least fifteen years, followed by probation. Petitioner is now exposed to an additional fifteen year sentence, following and in addition to the fifteen year sentence that he agreed to. The state cannot make an agreement with a defendant and then change the recommendation during the plea hearing (see Santobello v. New York, 404 U.S. 257 (1971)).

Based on the foregoing, Petitioner requests that his sentence be vacated, that his case be remanded for specific performance of his plea agreement, and that he be re-sentenced to a sentence not to exceed fifteen years.


Bobby G. Frederick
Attorney for the Petitioner
1053 London Street
Myrtle Beach, S.C. 29577
843-798-8880

December 7, 2015

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS)

C.A. No. 2014-CP-39-0397

Eli James Torrence,
S.C.D.C. No. 356338,

Applicant,

RETURN

v.

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed April 2, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Pickens County Clerk of Court's orders of commitment. The Pickens County Grand Jury indicted the Applicant at the December 2012 term of General Sessions for three counts of first-degree burglary (2012-GS-39-2704, -2705, -2712) and grand larceny (2012-GS-39-2713) and at the January 2013 term for two counts of second-degree burglary (2013-GS-39-0065, -0068) and two counts of grand larceny (2013-GS-39-0066, -0067). The Applicant also waived presentment to the Grand Jury on the charges of escape (2013-GS-39-2052) and willful injury to courthouse or jail (2013-GS-39-2053). John W. DeJong, Esquire represented the Applicant.

On July 29, 2013, the Applicant pled guilty to three counts of second-degree burglary (non-violent), two counts of second-degree burglary (violent), three counts of grand larceny (\$2000-\$10,000), escape, and willful injury to courthouse or jail. The Honorable Letitia H.

Verdin sentenced the Applicant to ten years on each count of second-degree burglary (non-violent), fifteen years on one count of second-degree burglary (violent),¹ five years on each count of grand larceny (\$2000-\$10,000), ten years for escape, and three years for willful injury to courthouse or jail. Judge Verdin levied a sentence of fifteen years suspended with five years of probation for the second count of second-degree burglary (violent) and ordered it to be consecutive to the sentence for the first count of second-degree burglary (violent). The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Pickens County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript.

II.

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

1. Ineffective assistance of counsel.
 - a. "Counsel failed to wait on Rule 5 Brady Documents before advising defendant to take plea."
 - b. "Legal counsel didn't fully inform me of the decisions being made on my case."
 - c. "Counsel advised defendant to take a plea of guilt on charges where 'no' evidence of Brady documents had been viewed by the defendant or counsel."
2. Involuntary guilty plea.
 - a. "Time exceeded the agreement of 0-15 year open plea arrangement."
 - b. "[N]ever knowing, voluntarily, or intelligently enter a plea of guilt to the escape charge."

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is

¹ 2012-GS-39-2705.

without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

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

Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

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

IV.

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

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin,

the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

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

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

V.

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

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

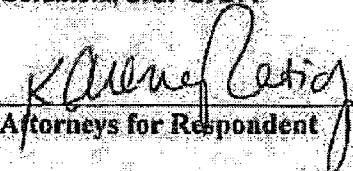
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By:


Attorneys for Respondent

8/22, 2014

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

-VS-)

ELI JAMES TORRENCE,)

DEFENDANT.)

2012-GS-39-02704, 02705, 02712 & 02713
2013-GS-39-00065 - 00068
2013-GS-39-02052, 02053

TRANSCRIPT OF RECORD

JULY 29, 2013
PICKENS, SOUTH CAROLINA

BEFORE:

THE HONORABLE LETITIA H. VERDIN

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

GRAHAM BUCKNER, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

JOHN DeJONG, PUBLIC DEFENDER

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

INDEX

WITNESS

PAGE NO.

CERTIFICATE OF REPORTER

20

EXHIBITSNODESCRIPTIONIDEVIDENCE

(No exhibits were presented during this hearing)

1 **THE CLERK:** This is docket number 2013-GS-39-2053, the
2 State versus Eli James Torrence, indictment for wilful
3 injury to courthouse or jail. Docket number 2013-GS-39-
4 2052, indictment for escape. Docket number 2013-GS-39-68,
5 indictment for burglary, second. Docket number 2013-GS-39-
6 67, indictment for grand larceny. Docket number 2013-GS-39-
7 66, indictment for grand larceny. Docket number 2013-GS-39-
8 65, indictment for burglary, second degree.

9 Docket number 2012-GS-39-2713, indictment for grand
10 larceny. Docket number 2012-GS-39-2712, indictment for
11 burglary, first degree. Docket number 2012-GS-39-2705,
12 indictment for burglary, first degree. Docket number 2012-
13 GS-39-2704, indictment for burglary, first degree. And
14 there is a restitution order as well.

15 Sir, if you would raise your right hand as best you
16 can. Do you solemnly swear or affirm the testimony you're
17 about to give in this case to be the truth, the whole truth
18 and nothing but the truth so help you God?

19 **MR. TORRENCE:** Yes, sir.

20 **THE COURT:** Mr. Torrence, you're here today to plead to
21 burglary, second degree, that carries up to ten years,
22 burglary, second degree, violent, that carries up to fifteen
23 years, two counts of that, grand larceny that carries up to
24 five years, another burglary, second degree, non-violent,
25 that carries up to ten years, another grand larceny that

1 carries up to five, another count of grand larceny that
2 carries up to five, another burglary, second degree, non-
3 violent, that carries up to ten, and an escape that carries
4 up to ten, and malicious injury to courthouse or jail that
5 carries up to three. Is that your understanding?

6 MR. TORRENCE: Yes, ma'am.

7 THE COURT: Have you discussed these charges with your
8 lawyer?

9 MR. TORRENCE: Yes, ma'am.

10 THE COURT: Are you happy with what your lawyer's done
11 for you?

12 MR. TORRENCE: Yes, ma'am.

13 THE COURT: Are you under the influence of drugs or
14 alcohol here today?

15 MR. TORRENCE: No, ma'am.

16 THE COURT: Has anybody forced you to plead guilty?

17 MR. TORRENCE: No, ma'am.

18 THE COURT: Has anybody promised you anything to get
19 you to plead guilty?

20 MR. TORRENCE: No, ma'am.

21 THE COURT: When you plead guilty you give up certain
22 constitutional rights. One is your right to remain silent
23 about these charges. Do you know that?

24 MR. TORRENCE: Yes, ma'am.

25 THE COURT: You also give up your right to a jury

1 trial. At that trial your attorney could call witnesses for
2 you and cross examine witnesses against you. But when you
3 plead guilty you give up your right to a jury trial. Do you
4 know that?

5 MR. TORRENCE: Yes, ma'am.

6 THE COURT: You do? You've got at least one charge
7 that has not been indicted by the Pickens County Grand Jury.
8 You want to give up that right and plead guilty today
9 anyway?

10 MR. TORRENCE: What is that charge ---

11 THE COURT: Okay. That's the malicious injury to the
12 courthouse or jail. It's not been before the Pickens County
13 Grand Jury to be indicted. Do you want to give up that
14 right?

15 MR. TORRENCE: Yes, ma'am.

16 THE COURT: How do you plead, guilty or not guilty?

17 MR. TORRENCE: Guilty.

18 THE COURT: You have ten days from today's date to
19 appeal this plea if you so choose, but you must do so in
20 writing to this Court, all right?

21 MR. TORRENCE: Yes, ma'am.

22 THE COURT: Yes, sir.

23 MR. BUCKNER: Thank you, Judge. May it please the
24 Court.

25 THE COURT: Yes.

1 MR. BUCKNER: And, Your Honor, this is a straight-up
2 plea.

3 THE COURT: Okay.

4 MR. BUCKNER: Your Honor, between the dates of April
5 15th, 2013 and October 29th, excuse me, 2012, the Defendant
6 and his co-defendants, Mark Smith, Shake Curry and Marqual
7 Griffin, all of whom were active participants in these
8 burglaries, broke into eight homes within Pickens County and
9 stole various items including firearms, electronics, tools,
10 knives, jewelry and other items. The Defendant admitted to
11 officers that he committed these offenses.

12 Also, Your Honor, on June 21st the Defendant tried to
13 escape the Pickens County Law Enforcement Center by forcing
14 a door open and in the process destroyed a TV, intercom,
15 security camera and other items. Those are the facts,
16 Judge, as they'd be presented at trial.

17 Your Honor, as to his prior record, he's got two CDV
18 charges. He also has similar charges to these in Laurens
19 County that have not been dealt with yet or not been
20 resolved.

21 Judge, it's the State's position that the Defendant
22 should serve at least fifteen years active time on these
23 charges, that he should be put on probation following that
24 sentence, pay restitution and have no contact with the
25 victims in these cases. The victims are present in the

1 courtroom. Two of them would like to address the court at
2 the appropriate time, but before they do, I'd just like to
3 put on the record what the State has reduced in this case.

4 THE COURT: All right.

5 MR. BUCKNER: The State has reduced two burg, first,
6 charges to burg, second, violent, one burg, first, to burg,
7 second, non-violent. The escape charge has been reduced to
8 common law escape.

9 The State is also dismissing two burg, third, charges,
10 four petty larcenies and an auto breaking. The State feels
11 that given all these reductions in charges that the
12 Defendant's already caught a pretty significant break in
13 this matter.

14 THE COURT: All right.

15 MR. BUCKNER: And, Judge, if the victims are ready to
16 address the Court ---

17 THE COURT: All right. I accept the plea as being
18 freely and voluntarily made with the advice of extremely
19 competent counsel with whom the Defendant says he's well
20 satisfied. And I'll wait to hear -- no, you've gone over a
21 factual basis. I'm so sorry. And the plea has an adequate
22 factual basis.

23 Yes, victims, will you tell me your name for the
24 record, please.

25 MR. CARSON: My name is Harry Carson.

1 THE COURT: Yes, sir.

2 MR. CARSON: This is my wife, Beverly.

3 THE COURT: All right. Yes, sir.

4 MR. CARSON: Your Honor, I appreciate the opportunity
5 to address the Court in the case of the State of South
6 Carolina versus Eli James Torrence.

7 Eli is a serial criminal. It's very evident by the
8 fifteen charges and eight plus victims in Pickens County
9 that he has affected. I understand he also faces charges in
10 Greenville County, Laurens County and Gastonia, North
11 Carolina.

12 The method he used to break in my house proved he was a
13 serial criminal. He broke the glass out of the basement
14 window, entered and exited through the window. If he had of
15 raised a window or opened a door, the burglar alarm would
16 have went off.

17 It is evidence he cannot function in society. He has
18 -- he cannot abide by the rules of the Pickens County
19 Detention Center. He has been charged with escape twice,
20 incite prisoners to riot and malicious injury to courthouse
21 or jail.

22 My wife and I chose a life of hard work to have
23 valuables. He stole a diamond ring that she bought for
24 herself because I took my money and built a home before we
25 were married. He stole a twenty-five year watch that I was

1 given by Alice Manufacturing that I only wore on special
2 occasions.

3 He stole a garter that my mother-in-law wore in her
4 wedding, that my wife wore in our wedding and my niece wore
5 in her wedding. My daughter did not get to wear it in her
6 wedding on August 12th -- on August 2012 because Eli James
7 Torrence stole it.

8 Only the good Lord should have mercy on his soul. The
9 State of South Carolina should have none and let him be a
10 deterrent to crime by serving the rest of his life in the
11 only place society has for him, in prison. Thank you.

12 THE COURT: I thank you, sir. And I'm so sorry for --
13 it's just senseless. It's absolutely senseless is exactly
14 what it is. And I am so sorry.

15 MR. BUCKNER: Judge, I believe ---

16 THE COURT: Yes.

17 MR. BUCKNER: --- some of the other victims ---

18 THE COURT: Yes, sir. Tell me your name, please.

19 MR. TODD: I'm Roger Todd.

20 THE COURT: Yes, sir.

21 MR. TODD: Pastor of Wayside Baptist Church.

22 THE COURT: Yes, sir.

23 MR. TODD: Eli broke into our home, locked doors,
24 locked windows, that didn't stop him, didn't slow him down.
25 He picked up a rock, throwed it through a bedroom window,

1 climbed in. You destroyed, you ramshackled the house, tore
2 everything up that you could tear up.

3 You stole two pellet rifles, two pellet pistols. At a
4 hundred yards they've got the power of a .22 pistol. These
5 law officers can probably testify to it. You stole a .22
6 revolver, cowboy-action. All those are still floating out.
7 We haven't heard anything about anything being found or
8 returned. And you done it along with those other two
9 people, Shake and Smith. And y'all are guilty of wrecking
10 and ruining, messing up.

11 I pastor a church. We deal with deaths, we deal with
12 sick people. And you robbed me from some people that were
13 needing dire attention during that time. It was because of
14 these people that are on dope or drunk or whatever. And all
15 they do is get a wrist slap. I think they ought to be
16 thrown as far as they can be thrown in jail for the crimes
17 that they've done.

18 Now I know God can give mercy to them. I know that.
19 I've preached in prisons. But everybody I dealt with was
20 innocent. But if you believe that, I've got land and ocean
21 front property in Arizona I'd let you have. But everybody
22 claims they're innocent.

23 But somehow somebody's guilty. And I think these
24 people are guilty. They've been proved -- because of -- I
25 think he admitted -- at least he admitted to being guilty.

1 Now man-up to what's being offered to you.

2 THE COURT: All right. Thank you, sir, for being here.

3 Again, I'm so sorry for ---

4 MR. BUCKNER: And, Judge, ---

5 THE COURT: --- what was taken from you. Yes.

6 MR. BUCKNER: I didn't mean to interrupt. I believe
7 one of the other victims showed up while we ---

8 THE COURT: Okay.

9 MR. BUCKNER: --- started the plea and wants to address
10 the Court.

11 THE COURT: Yes, ma'am. Tell me your name.

12 MS. O'DONALD: My name is Lynn O'Donald.

13 THE COURT: Yes, ma'am.

14 MS. O'DONALD: I'm standing here for my elderly eighty-
15 two year old mom who -- she's in -- right now she's back in
16 the hospital, she's in such bad shape. You know, I don't
17 know if she'll make it or not.

18 But Eli, from what I understand, is part of the sprig
19 together with his Shake Curry friend and Michael Smith or
20 whoever, who broke into my mom's house violently in a back
21 window.

22 On this one particular afternoon when my mom usually
23 has to stay home because she's handicapped, she can't get
24 out. We have a terrible time trying to take care of her.
25 But on one afternoon when we decided to let her get out and

1 go see a sister-in-law, I don't know if they were watching
2 us. I'd like to know that from him. How, you know, it just
3 seemed like somebody must have been watching us knowing we
4 were loading her up, a handicapped woman, into the car. So
5 there was no car at my mom's house. It just made me wonder.

6 THE COURT: Mr. Torrence, ---

7 MS. O'DONALD: Was it just random or ---

8 THE COURT: --- what about it?

9 MS. O'DONALD: --- were they watching us?

10 MR. TORRENCE: No.

11 MS. O'DONALD: Up on Sunset, little east of Torry Road.
12 Was it just random or were you watching us?

13 MR. TORRENCE: No, ma'am. Actually -- it was actually
14 just random. We just knocked on the doors or whatever and
15 seeing if anybody was home. We didn't mess with anybody
16 that was home.

17 And I'd like to let you know that I'm very sorry ---

18 MS. O'DONALD: Okay. That was going to be my question,
19 had my mom been home by herself, a handicapped old woman,
20 would you have still broken in and crashed in her back
21 window like you did and come into her home with her there?
22 Would you have hurt her, harmed her?

23 What would your intentions been then if you had -- my
24 mom could have been in bed asleep when you went to her home
25 because there are times we put her back in her hospital bed,

1 and we may run to our home to take care of something we need
2 to.

3 THE COURT: All right.

4 MS. O'DONALD: Would you have came into her home, found
5 her in bed, would you have roughed her up? Would you have
6 harmed her? Would you have still robbed her? What would
7 you do with an old handicapped woman who can barely get
8 around in her home?

9 THE COURT: He's going to tell you he wouldn't have
10 gone in. That's exactly what he's going to say sitting
11 right here today.

12 MS. O'DONALD: Okay. But he stole things from her ---

13 THE COURT: All right.

14 MS. O'DONALD: --- that's irreplaceable like her high
15 school ring, my grandmother, her mother's diamond necklace
16 that will never, I mean, it ---

17 THE COURT: No sense ---

18 MS. O'DONALD: --- meant more to us ---

19 THE COURT: --- whatsoever.

20 MS. O'DONALD: It's just -- it was such a stupid thing
21 to do. My mom had a little modest house with little modest
22 things in there. There's all medical equipment around. You
23 had to see somebody sick had to live there in this house
24 with all this stuff around.

25 THE COURT: He didn't care.

1 MS. O'DONALD: He didn't care. He didn't.

2 THE COURT: Thank you, ma'am, for being here. And I'm
3 so sorry. I'm so sorry about what was done to your mother
4 and to you. Yes, sir.

5 MR. DeJONG: Your Honor, I can agree with what the last
6 victim said. It was a stupid thing.

7 Mr. Torrence is now twenty-two years of age, Your
8 Honor. At the time this was going down he lived in
9 Greenville. He actually lived with his girlfriend and her
10 mom. He has three children. My ages are probably wrong now
11 because information gets a little old, one, two and five.

12 Obviously he is unemployed and has been unemployed for
13 a while. He's been in the Pickens County Law Enforcement
14 Center for some period of time. He has an eighth grade
15 education, but he does have his GED, Your Honor.

16 He last worked for Dependable Drywall & Construction.
17 He left there because he did not have transportation. Tried
18 to work a couple of other places, but transportation became
19 an issue.

20 He was born in Charlotte, North Carolina, Your Honor.
21 He has and has had over the years no contact with his mother
22 or with his father. His mother is deceased. He was
23 actually reared by his great grandmother, who is now
24 deceased. He has three sisters and two brothers.

25 On these charges, Your Honor, in looking through the

1 discovery in this case, Mr. Torrence was actually
2 apprehended on one burglary. Then, however law enforcement
3 managed to do it, they got him loaded up in a car, they
4 started driving him around Pickens County and he was
5 literally pointing out the places that he and these other
6 guys had burglarized.

7 Frankly, as I look at the discovery, I'm not sure that
8 a lot of these burglaries would have ever been solved had it
9 not been for his cooperation with law enforcement. He was
10 very cooperative. And, again, in pointing out these places
11 to the best he could, he would describe what they took in
12 the various homes, all homes, obviously. And certainly I
13 understand with one victim's concern, but to my knowledge,
14 no one was home during any of these burglaries.

15 I have not confirmed, Your Honor, but my client shares
16 with me that Mr. Curry, he's not sure of the entire
17 sentence, but he has pled out. He got ten months. Does not
18 know if there was any probation on the back-end or if that
19 was a suspended sentence.

20 He said Mark Smith, and again, not confirmed, got ten
21 years suspended to three years probation. The gentleman
22 whose first name is Marqual, and I apologize to the Court, I
23 do not have his last name on my -- tip of my tongue. His
24 charges are still pending.

25 He is a young man, obviously, Your Honor. He obviously

1 went on a bit of a rampage, I think, between, what, April
2 and October, if memory serves me correctly. We're not
3 trying to shift the blame to the other co-defendants. I
4 think they were all pretty much equally culpable, but
5 certainly he was a grown man at the time. Not an old man by
6 any stretch of the imagination, but a grown man.

7 No question in my mind about his competency or criminal
8 responsibility. I would certainly ask for the Court's mercy
9 in this case. Again, I don't know as to the other sentences
10 that my client say were imposed. I do not know that and I
11 cannot stand here and portray to the Court that's exactly
12 what happened, Your Honor.

13 THE COURT: Okay.

14 MR. DeJONG: I don't know -- he had indicated to me
15 that he might like to address the Court, Your Honor.

16 THE COURT: Yes, sir.

17 MR. TORRENCE: Is it all right if I turn around and say
18 something to these people?

19 THE COURT: All right. I might stop you, but you can
20 turn around, yes.

21 MR. TORRENCE: I did break into some homes and steal
22 some stuff. And I'd like to basically let y'all know I'm
23 sorry. And if I worked hard for stuff I would not like
24 other people -- somebody to come in and steal stuff from my
25 home or take something that didn't belong to them that I had

1 to work hard for to earn.

2 And I'd just like to let y'all know I'm sorry. And I
3 did admit to what we've done and notify who else is also
4 involved in the case to help further the investigation.
5 That's all I'd like to say.

6 THE COURT: Yes, sir. Thank you. Yes, sir.

7 MR. TODD: Said he couldn't get a job because he didn't
8 have transportation. Well, son, you found a way to get
9 around the County and break into houses.

10 THE COURT: That's right.

11 MR. TODD: I wished you could explain that to me.

12 MR. TORRENCE: It ---

13 MR. TODD: If you couldn't get a ride to go to work ---
14 I went to work when I was eleven years old. I've worked all
15 my life and still working pastoring a church.

16 THE COURT: All right.

17 MR. TODD: I hitchhiked to work in the cotton mill ---

18 THE COURT: Okay.

19 MR. TODD: --- when the car tore up for work. Somehow
20 you got rides to get around the country or Pickens County
21 and all to break in, but you couldn't get a ride to work.

22 THE COURT: There you go.

23 MR. TODD: Can you explain that?

24 THE COURT: All right. I understand there's a lot of
25 unanswered questions in this. And the simple fact of the

1 matter is, he didn't want to work, but he wanted to break in
2 your house. And people can do what they want -- what they
3 put their mind to and what they want to do. That's the
4 simple answer.

5 Mr. Torrence, the sentence of the Court on the
6 burglary, second degree, violent, is fifteen years.

7 On the burglary, second degree, violent, fifteen years;
8 suspended with probation for five years. That sentence will
9 begin upon your release from the Department of Corrections.
10 So that's a consecutive sentence.

11 And then on the others, three years on the malicious
12 injury, concurrent. Five on the grand larceny, concurrent.
13 Five on the grand larceny. On each of them, concurrent.

14 On the burglary, second degrees, each, ten years,
15 concurrent. And, of course, credit for the time you have
16 served. Good luck to you.

17 MR. BUCKNER: Thank you, Judge.

18 THE COURT: Thank you all for being here.

19 (Hearing ended at 12:03 PM)

20 (End of requested transcript of record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Pickens County, South Carolina, on the 29th day of July 2013.

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

May 7, 2014


Circuit Court Reporter

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF PICKENS) IN THE COURT OF COMMON PLEAS
3
4 Eli James Torrence,)
5 Applicant,) TRANSCRIPT OF RECORD
6 - vs -) 2014-CP-39-0397
7 The State,)
8 Respondent.) April 18, 2016
9 Pickens, South Carolina
10

11 B E F O R E:

12 HONORABLE R. KNOX MCMAHON, JUDGE
13

14
15 A P P E A R A N C E S:

16 BOBBY G. FREDERICK, ESQUIRE
17 Attorney for the Applicant
18 PATRICK LOWELL SCHMECKPEPER, ESQUIRE
19 Attorney for the Respondent
20

21
22
23 Margaret A. Woods
24 Circuit Court Reporter
25

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MOTIONS AND MATTERS

1 THE COURT: Alright, uh, Mr. Schmeckpeper, will you, uh,
2 prep the record for me, please.

3 MR. SCHMECKPEPER: Yes, Your Honor. May it please the
4 Court. This is the matter Eli James Torrence vs. the State of
5 South Carolina, 2014-CP-39-0397. Applicant was indicted in
6 December of 2012 for three counts of first degree burglary,
7 grand larceny and January of 2013 for two counts of second
8 degree burglary and two counts of grand larceny, applicant
9 also waived presentment to the grand jury on charges of escape
10 and wilfer injury -- willful injury to courthouse or
11 jailhouse, he was represented by John DeJong. On July
12 twenty-thir -- on July 29th 2013, applicant pled guilty to
13 three counts of second degree burglary non-violent, two counts
14 of second de -- degree burglary violent, three counts of grand
15 larceny, escape, one count of escape, willful injury to
16 courthouse or jail. He was sentenced by Judge Verdin to 10
17 years on each count of second degree burglary, 15 years on
18 each count of second degree burglary violent, 5 years on grand
19 larceny,
20 10 years for escape, 3 years for willful injury to courthouse
21 or jail, he's also given a 15-year sentence suspended for
22 fi -- suspended after 5 years probation for the second count
23 of second degree burglary and ordered it consecutive to the
24 previous sentences, applicant not, did not appeal. At this
25 time I'm gonna turn matters over to opposing counsel to put

MOTIONS AND MATTERS

1 his allegations on the record and call the case.

2 THE COURT: Let let me make sure I'm tracking. His
3 sentences were, uh, concurrent?

4 MR. SCHMECKPEPER: Yes, Your Honor, the first set of
5 sentences ---

6 THE COURT: That ---

7 MR. SCHMECKPEPER: --- were ---

8 THE COURT: --- except for the pro -- the suspended
9 15-year probation.

10 MR. SCHMECKPEPER: Yes, Your Honor.

11 THE COURT: So, uh, he got, uh, however numbers, uh, 15,
12 however many numbers of 10, 5, 10, 5, so he got, uh, all of
13 that was concurrent?

14 MR. SCHMECKPEPER: Yes, Your Honor.

15 THE COURT: So he's serving a 15-year, uh, sentence
16 violent or non-violent?

17 MR. SCHMECKPEPER: Your Honor, I think it's 15 years
18 violent if I'm not mistaken. Yes, Your Honor.

19 THE COURT: And tell me again, uh, he had, uh, three
20 burglary first?

21 MR. SCHMECKPEPER: He was originally indicted for three
22 burglary firsts ---

23 THE COURT: I understand.

24 MR. SCHMECKPEPER: --- but and he pled those down to
25 burglary seconds.

MOTIONS AND MATTERS

1 THE COURT: And, uh, the three burglary first what does,
2 uh, what does burglary first carry?

3 MR. SCHMECKPEPER: It's 15 years to life, Your Honor.

4 THE COURT: And, uh, is it your opinion, uh, Mr. Attorney
5 General, that 15 years is a a minimum mandatory?

6 MR. SCHMECKPEPER: Yes, Your Honor, absolutely and it's
7 up to a life sentence on each a those burglary accounts in the
8 sentencing judge's discretion or in the ---

9 THE COURT: Alright, alright, thank you, uh, thank you
10 very much. Mr. Frederick.

11 MR. SCHMECKPEPER: Thank Your Honor.

12 MR. FREDERICK: Yes, Your Honor.

13 THE COURT: Good afternoon.

14 MR. FREDERICK: Good afternoon.

15 THE COURT: Alright, uh, you ready to proceed?

16 MR. FREDERICK: We are, Your Honor.

17 THE COURT: Alright, uh, you may call your first witness.

18 MR. FREDERICK: Uh, we call Eli Torrence to the stand,
19 Judge.

20 THE COURT: Alright, Mr. Torrence, if you'd come around
21 and, uh, be sworn, please.

22 (Whereupon, the applicant came forward.)

23 THE CLERK: Place your left hand on the Bible and raise
24 your right hand, please.

25 ELI JAMES TORRENCE, having been

1 first duly sworn testified as follows:

2 THE CLERK: State your full name for the record.

3 THE APPLICANT: Eli James Torrence.

4 THE CLERK: Please be seated.

5 DIRECT EXAMINATION BY MR. FREDERICK:

6 Q. Afternoon, Mr. Torrence.

7 A. Yes, sir.

8 Q. I'm gonna ask ya first about your convictions for
9 burglary second degree violent under subsection (B), okay?

10 A. Yes, sir.

11 Q. Uh, before your guilty plea, specific as to these
12 charges, did you discuss with your attorney the difference
13 between subsection (a) and (b) violent, non-violent and what
14 each of those, uh, what proof each a those required?

15 A. No, sir.

16 Q. Okay. Did the Court in the transcript explain to you
17 that there were different elements for each of those or what
18 proof each of those required?

19 A. No, sir.

20 Q. Did you know when you entered that plea that you were
21 pleading guilty to entering a building as opposed to a
22 dwelling?

23 A. No, sir.

24 Q. Uh, were you at any time accused of entering a building
25 as opposed to a dwelling?

1 A. No, sir, never.

2 Q. Did you specific to this case ever enter a building and
3 commit a burglary as opposed to a dwelling?

4 A. No, sir.

5 Q. If you had known that you were pleading guilty to
6 something you didn't do, would you have pled guilty specific
7 to and I'm talking about the indictments handled: 2705 and
8 2712 that were reduced from burglary first degree to burg
9 second non-violent, if you had known would you have pled
10 guilty to those specific charges?

11 A. No, sir, I wouldn't have pled guilty, I woulda taken it
12 to trial because I didn't commit a burglary to a building or
13 in nighttime.

14 Q. Okay. Did you on the record specific to 2705 and 2712,
15 the burglary second degree violent, did you waive indictment
16 for those charges specifically?

17 A. No, sir.

18 Q. On your sentencing sheet did you initial or sign saying
19 that you would waive indictment specific to those charges?

20 A. No, sir.

21 Q. Okay. Let me ask you a few questions about the escape
22 charge specifically. Did you, specific to the escape charge,
23 did you initial the sentencing sheet stating that you waived
24 presentment to the grand jury?

25 A. I initialed the sentencing sheet, uh, for a waiver

1 but ---

2 Q. At the time that you did that, did you know which charges
3 you're initialing, uh, can you describe that for us?

4 A. Uh, when I was initialin' the sentencing sheets, I was
5 shown the sentencing sheets in front of me and they just
6 pointed and told me, Initial here, initial here, initial here,
7 nothin' else was explained except for to initial to the
8 agreement that I understood that charges or the offenses that
9 were bein' accused against me were.

10 Q. On the record during the plea hearing, did you waive
11 presentment to the grand jury as to the escape charge?

12 A. No, sir, I never waived presentment. I specifically
13 asked the judge when being sentenced what charges am I
14 supposed to waive my rights to presentment in order for me to
15 be sentenced and she said, Hold on, give me a second, and she
16 looked through it, she said, The only charge that you need to
17 waive presentment to was the malicious injury to courthouse or
18 jail, that was the only charge that on the record I, uh,
19 willingly and acknowledged that I was waiving my rights to.

20 Q. Okay. And the exact language would be in the transcripts
21 but from your recollection you asked the judge which charges
22 were you waiving presentment on and she answered the escape
23 charge, is that what you're sayin'?

24 A. She never asked to waive my rights to present ---

25 Q. I mean, ---

1 A. --- ment on escape charge.

2 Q. --- I'm I'm sorry, not the escape charge but she did say
3 one charge, didn't she?

4 A. She said that, I think you have charges that you need to
5 waive presentment on in order for me to rule on your case or
6 or to be able to sentence you and I asked specifically what
7 charges are those and the only charge that was given notice to
8 me was, uh, the malicious injury to courthouse or jail, that
9 was the only charge.

10 Q. Okay, so when you asked that question she did not say
11 escape, ---

12 A. No, sir.

13 Q. --- she said a willful injury to courthouse or jail.

14 A. Yes, sir.

15 Q. Okay.

16 A. Also, can I say one more thing about the escape?

17 Q. Yeah, go ahead.

18 A. Uh, also, in the transcript, uh, legally, technically I
19 was never sentenced on the escape, never throughout the whole
20 transcript did the judge say, This is how much time I'm givin'
21 you for the escape charge, I was never sentenced throughout
22 the whole transcript.

23 Q. Okay. Eli, next question I have for you is if there's
24 anything else that you want to tell the Court about?

25 A. Um, it's alright. if I have a minute to look through my

1 paper?

2 Q. I think so, yes.

3 THE COURT: Of course.

4 (Pause.)

5 A. Um, yes, sir, I, uh, I do have somethin' else to say as
6 far as the charges. Um, when I was bein' sentenced or told
7 that I was being offered a plea, um, I was told that they were
8 second degree burglaries, I didn't know the difference between
9 the subsections you were asking about: subsection (a) dealing
10 with a a dwellin', uh, in the daytime and the subsection (b),
11 dealin' with a buildin', also includin' at the nighttime, uh,
12 and the difference of, uh, the first degree bein' reduced down
13 to a second degree and aggravating circumstances being dropped
14 down to the propers -- proper elements of an crime that I was
15 pleading to, I didn't understand any a this, uh, I wasn't
16 explained to it on transcript in court, I wasn't explained by
17 my initial counsel Mr. John DeJong the differences, uh, and if
18 I was notified I woulda been able to, uh, have my trial
19 counsel object or I could object -- objected to myself and
20 corrected the Court, at least let them know that I didn't
21 commit a burglary to a building, uh, never was accused, the
22 indictment that I got I received on the first degree burglary
23 was for homes.

24 Q. And, you know, you're you're you're specifically talking
25 about 2705 and 2712 now?

1 A. Yes, sir, those are the two, uh, I got three, I had three
2 first degree burglaries and outta those three first degree
3 burglaries they they reduced one of 'em to subsection (A) and
4 gave me 0 to 10 years and gave me 10 years on it which has the
5 same elements of the first degree burglary, the other two that
6 I was given a 15-year sentence, active prison sentence and the
7 other one which was 15 suspended to 5 years a probation both
8 of those were reduced down to subsection (B) to different
9 elements that I wasn't aware of.

10 Q. You're familiar with this now, uh, 'cause you've been
11 studying it, right?

12 A. Yes, sir.

13 Q. Were you familiar with it at the time that you entered
14 the plea?

15 A. I didn't know difference between any of it, ---

16 Q. Okay.

17 A. --- it was never explained me, again by the judge nor my
18 counsel. Uh, I just thought I was, you know, goin' in to plea
19 to charges that I was supposed to be sentenced on, I didn't
20 know that I was pleein' to somethin' that I didn't do.

21 Q. Okay. Is there anything else that you wanna tell the
22 Court?

23 A. Um, . . .

24 Q. Eli, take your time.

25 (Pause.)

1 A. I believe that's it for the moment, ---

2 Q. Yes, sir.

3 A. --- and that's ---

4 Q. Okay.

5 A. --- it for right now.

6 Q. Okay. Uh, answer any questions that the Attorney General
7 has for you, okay?

8 A. Okay.

9 THE COURT: Thank you, uh, Mr. Frederick.

10 MR. FREDERICK: Thank you, Judge.

11 THE COURT: Um.

12 MR. SCHMECKPEPER: May it please the Court.

13 CROSS-EXAMINATION BY MR. SCHMECKPEPER:

14 Q. Good afternoon, Mr. Torrence.

15 A. Good afternoon.

16 Q. I'm gonna try and hone in on what it ac -- what actually
17 is that you're alleging, okay?

18 A. Yes, sir.

19 Q. You're saying you never broke into a building?

20 A. No, sir.

21 Q. Did you break into a house?

22 A. Just a house.

23 Q. But you admit to breaking into a house?

24 A. I was pleadin' to burglary of a house.

25 THE COURT: No, that wasn't a question.

1 Q. You have a transcript in front of you?

2 A. (No audible response.)

3 MR. SCHMECKPEPER: Do you have a copy of the transcript
4 there?

5 MR. FREDERICK: I do.

6 (Whereupon, counsel handed the document to the
7 applicant.)

8 BY MR. SCHMECKPEPER:

9 Q. Read her, turn to page 13, please, look at line 13.

10 A. You said page 13 line 13?

11 Q. Yes, sir. Could you read that for the Court.

12 A. Page 13 line 13 states, Mr. Torrence ---

13 Q. Is that you?

14 A. Yes, sir, it is.

15 Q. Alright.

16 A. No, ma'am, actually, it was actually ---

17 Q. Now this is in, this is in response to somebody asking
18 you whether or not, and correct me if I'm wrong, the houses
19 ya'll broke into was random or not, correct?

20 A. That house is ---

21 Q. Mrs. O'Donald one of the victims asked whether the house
22 you broke into was random or whether you were watching them
23 and you said, "No, ma'am, actually it was just random," is
24 that correct? You said, ---

25 A. That's ---

1 Q. --- "We would ---

2 A. --- that's what we s ---

3 Q. --- just knock on doors and or whatever and see if
4 anybody was home, we didn't wanna mess with anybody that was
5 home." Those are houses, correct?

6 A. Those are homes, yes, sir.

7 Q. If you could turn to page 17, look at line 21, did you
8 not say, quote, to the judge, "I did break into some houses
9 and steal some stuff"?

10 A. Yes, sir.

11 Q. So you're tellin' me your defense to, I mean, they were
12 charging with first degree burglary for this and I believe the
13 indictments reflect that shotguns and rifles were stolen from
14 these houses?

15 A. The indictments did state there were a firearm stolen
16 from the home but there was no bill a sale or proof of serial
17 numbers to prove that there were any firearms stolen from
18 homes.

19 Q. That very well may be but rather than go to trial and try
20 and prove that to a jury you decided to plead guilty to second
21 degree burglary, is that correct?

22 A. Under the understandin' that it was dwellings and stuff.
23 If I woulda known that it was a buildin' in nighttime and it
24 wasn't the same elements, I would have not pled guilty, I
25 woulda taken it to trial or at least tried to correct the

1 Court.

2 Q. Let's move on to another allegation. Now you're talking
3 about it -- your your escape charge, you weren't actually
4 sentenced for escape?

5 A. No, sir, it was never in the transcript that I was ever
6 sentenced for escape and she sentences on page . . .

7 MR. SCHMECKPEPER: Your Honor, may I approach?

8 THE COURT: Yes, sir.

9 (Whereupon, counsel approached the witness stand.)

10 Q. You recognize this (indicating) document?

11 A. That is the sentencing sheet I signed before I even
12 entered the courtroom to be saint -- sentenced.

13 Q. That's (indicating) your signature, correct?

14 A. (No audible response.)

15 MR. FREDERICK: Your Honor, if we could get him to talk
16 into the microphone.

17 THE COURT: Alright, well you speak up. Alright.

18 A. That seems to be my signature.

19 Q. Well you just said you signed it, right?

20 A. I signed the, initialed and ---

21 Q. Right there (indicating) it says 10 years for escape?

22 A. It says 10 years for escape.

23 Q. That's concurrent, right?

24 A. Yes, sir.

25 Q. So it doesn't actually add anything to the number of

1 years of your sentence?

2 A. No, sir, but ---

3 Q. But if you ---

4 A. --- it does ---

5 Q. --- woulda known ---

6 THE COURT: Let let him finish, Mr. Schmeckpeper, ---

7 MR. SCHMECKPEPER: I ---

8 THE COURT: --- his ---

9 MR. SCHMECKPEPER: --- apologize.

10 THE COURT: Well finish your answer, Mr. Torrence.

11 A. Alright, I I -- what was the question that you asked one
12 more time, the one that you just asked me?

13 Q. It was 10 years, it didn't add anything to your sentence?

14 A. It is ran concurrent but it does have some type of weight
15 on the sentence that I'm bein' part of because I have to be
16 placed on a level 3 yard where violence is a lot worse than it
17 is on a level 2 or a level 1 yard where I could be if I didn't
18 have the escape on my record so it does affect me.

19 THE COURT: That that's that's your allegation? Let me
20 make sure I'm tracking. Your allegation is not bein'
21 sentenced by the judge on the record has effect on your
22 sentence or ---

23 THE APPLICANT: Um, ---

24 THE COURT: --- is I I'm just not tracking the question
25 already answered.

MOTIONS AND MATTERS

1 THE APPLICANT: To my understandin' of bein' sentenced
2 the judge has to put it on the record, the transcript to
3 reflect that a sentence was imposed and it can't be based off
4 of a silent record.

5 THE COURT: Alright, just I'm still not tracking but ask
6 your next question.

7 MR. SCHMECKPEPER: Judge, I have no further questions.

8 THE COURT: Alright, thank you. Mr. Frederick.

9 MR. FREDERICK: Nothin' further, Judge.

10 THE COURT: Alright, thank you, uh, thank you very much.
11 Anything else you wanna say, uh, Mr. Torrence?

12 THE APPLICANT: Yes, sir, since he did bring up the part
13 about signing the sentencin' sheet before entering the
14 courtroom and the sentencing sheet stating 10 years but the
15 judge never imposin' a sentence, I do have somethin' to say on
16 that.

17 THE COURT: Alright, let me, let me find the, uh, escape
18 sentencin' sheet, uh, and, uh, tracker that, uh, I'm tracking.
19 Alright, go right ahead.

20 THE APPLICANT: Yes, sir, I'm just tryin' to find my
21 place in my documents to read.

22 THE COURT: Oh.

23 (Pause.)

24 THE APPLICANT: I found a piece that I wanted to add to
25 that, it's not complete, I'll have to look through the rest a

MOTIONS AND MATTERS

1 my papers to get the rest of it but pursuant to art. 1 section
2 11 South Carolina Constitution, Applicant has a right to be
3 indicted and can only waive his rights to be indicted pursuant
4 to 17-19-20 South Carolina Code of Laws, *Carter vs. the State*,
5 and such rights cannot be waived based on a silent record,
6 *Moore vs. the State*, 732 S.E.2d 871 (2012) as it is a
7 constitutional right and such waiver must be written. Is it
8 okay if I ask my attorney a question?

9 THE COURT: No.

10 THE APPLICANT: No, sir.

11 THE COURT: Is it okay to ask your attorney a question?

12 THE APPLICANT: My legal ---

13 THE COURT: Oh, ---

14 THE APPLICANT: --- counsel?

15 THE COURT: --- your lawyer, I thought you meant your
16 lawyer in your PCR no, sir, it's not. Once you're on the
17 stand, you're on the stand, uh, under, uh, even if you're
18 bein' tried for a criminal case right now under, uh, *Perry*
19 case, uh, you don't, you don't have any right to confer with
20 your attorney once you take that stand.

21 THE APPLICANT: Yes, sir. This piece right here
22 (indicating) is about the question that you were askin' me of
23 a building in a home, The applicant, I myself, Eli James
24 Torrence pled guilty to three counts of second degree burglary
25 16-11-312(A) which out of three, one being reduced from first

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1 degree burglary which is a lesser included offense in which he
2 was indicted for was first degree burglary pursuant to
3 16-11-311(A) South Carolina Code of Laws 2013, which was the
4 year that I was sentenced, this was pursuant to a negotiated
5 plea agreement. The Court sentenced three out of five of the
6 second degree burglaries to 10 years as allowed by
7 16-11-312(A) and then sentenced applicant to two 15-year
8 sentences, one which was suspended consecutive upon service of
9 5 years probation pursuant to 16-11-312(B). The Court imposed
10 an active 15-year sentence for second degree burglary pursuant
11 to 16-11-312(B). The 30 years suspended to 15 years active
12 and 5 years probation was outside the parameters of the plea
13 contract and the applicant cannot be sentenced under
14 16-11-312(B) PCR. Applicant asserts his plea for the escape,
15 for the two burglary second violents under subsection (B) that
16 carry 15 years for a buildin' was involuntary, that the plea
17 contract has violated and his attorney was ineffective
18 pursuant to *Strickland vs. Washington* 466 U.S. 668 (1984) and
19 *Clark vs. the State* 468 S.E.2d 653, (1996) held a plea
20 agreement rests upon contract law principles and each party
21 should receive the benefit of the bargain in the case.

22 Counsel failed to object to court sentencing applicant
23 pursuant to 16-11-312(B) to 15 years consecutive when
24 16-11-312(B) is not a lesser included offense of the
25 16-11-311(A) to which he was indicted for 16-11-311(A) first

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1 degree burglary of a dwellin' prejudiced and further he
2 legally could only be sentenced to 10 years pursuant to
3 16-11-312(A), not 15 years pursuant to 16-11-312(B) and but
4 for counsel's failure to object, the applicant could have only
5 received 10 years pursuant to 16-11-312(A) but received 15
6 years under a statute he was not indicted upon and did not
7 waive presentment to grand jury upon counsel's performance
8 fell below professional norms, *Strickland vs. Washington*. The
9 Court failed to, failed pursuant to *Pittman vs. State* to
10 advise applicant to the elements of the offense he was
11 pleadin' to which was the cru -- crucial omission in the
12 context of this case. As pursuant to *Wilson vs. Lindler*, the
13 elements of entry of a dwelling pursuant to 16-11-312(A) are
14 different from the elements of entry of a buildin' pursuant to
15 16-11-312(B). The applicant was never indicted for entry of a
16 buildin' and he did not waive indictments for entry of a
17 buildin' and most importantly under the due process clause was
18 never put on notice he was pleading to the entry of a buildin'
19 nor did the Court advise him he was being prosecuted for entry
20 of a buildin'. The Court had a duty to advise applicant the
21 elements of the offense to which he was pleading guilty to and
22 trial counsel was grossly ineffective for failing to bring
23 this omission to the Court's attention. Had court properly
24 advised the applicant he was pleading guilty to the entry of a
25 buildin' in the nighttime he woulda corrected the Court's

MOTIONS AND MATTERS

1 error that he did not enter a buildin' in the nighttime, he
2 was not indicted for entry of a buildin' is not a lesser
3 included offense of entry of a dwellin' and that the extra 5
4 years of course would have been noted did not apply.
5 16-11-312(A) is 10 years, 16-11-312(B) is 15 years and court's
6 failure to annunciate and advise applicant to the elements he
7 was pleading to render the waiver of applicant's trial rights
8 involuntary pursuant to *Pittman vs. State*, *Boykin vs. Alabama*
9 as the waiver was not knowingly entered. *Hill vs. Lockhart*
10 held but for counsel's error -- errors applicant would have
11 not pled guilty and counsel had a duty to advocate for his
12 client and protect his statutory rights, South Carolina and
13 U.S. Constitutional rights pursuant to art, 1, section 11,
14 South Carolina Constitution, applicant has a right to be
15 indicted and can only waive his rights to be indicted pursuant
16 to 17-19-20 South Carolina Code of Laws, *Carter vs. the State*
17 and such rights cannot be waived based on a silent record,
18 *Moore vs. the State* 732 S.E.2d 871, (2012), see *Campbell vs.*
19 *the State* 535 S.E.2d 928 which is directly on point with the
20 facts of this case, sentencing to an offense that is not a
21 lesser included offense where they did not waive grand jury
22 indictment, *Brooks vs. the State*, 481 S.E.2d 712 speaks
23 directly to the Court's failure to advise the defendant that
24 the plea court could sentence outside the plea agreement. In
25 *Carter vs. the State*, 495 S.E.2d 777 (1996) case requires a

MOTIONS AND MATTERS

1 written, a written waiver of grand jury indictment in *Campbell*
2 *vs. the State*, 535 S.E.2d 928 South Carolina 2000 held
3 16-3-655 is not a lesser included offense of 16-3-653 and PCR
4 court Supreme Court vacated the plea because *Campbell* did not
5 waive pursuant to 17-19-20 grand jury indictment a
6 constitutional right pursuant to art. 1 Section 11 South
7 Carolina Constitution, *Sprouse vs. the State*; likewise,
8 *Weinhauer vs. the State* 514 S.E.2d (1999) held that
9 16-11-312(B) is also not a lesser included offense of
10 16-11-311(A), see *Wilson vs. Lindler* 995 f2d 1256, applicant
11 did not waive his rights to be indicted. Trial counsel failed
12 to object to sentencing applicant under Statute 16-11-312(B)
13 when he was not indicted for 16-11-312(B) and did not waive
14 grand jury indictment. Again, court cannot presume a waiver
15 of constitutional rights from a silent record, *Johnson vs.*
16 *Zerbst*, 304 U.S. Supreme Court case 458 (1938) ---

17 MR. SCHMECKPEPER: Your Honor, I I I just wanna object at
18 this point, I believe he's made that same point several times
19 and cited several different points of law, uh, there's nothing
20 else I'd object to this going on any further.

21 THE COURT: Nature, time, and patience, three greatest
22 posi -- physicians. You may continue, Mr. Torrence.

23 THE APPLICANT: Thank you, sir. Trial counsel has a duty
24 to protect the defendant from pleading guilty and being
25 sentenced to an offense he was not indicted upon which carries

MOTIONS AND MATTERS

1 an additional five years and bein' used to violate the plea
2 contract under *Clark vs. State* to ensure applicant received
3 the full benefit a the plea bargain. Counsel's performance
4 fell well below professional norms, applicant prejudiced by
5 these omission -- omissions: failure to object to the
6 violation of the contract and also not advising the applicant
7 of the elements of the offense to which he was pleading. U.S.
8 Constitutional Amendment 5 or the 5th United States
9 Constitutional Amendment, In order to sustain a conviction an
10 indictment needs to give defendant sufficient notice of the
11 charge against him to enable him to prepare his defense and
12 also to raise the bar on double jeopardy in the event he is
13 again brought for trial for the same offense; also, South
14 Carolina court rules 1.4(A)(1), (2) and (3), A lawyer shall
15 promptly inform the client of any decision or circumstance
16 with respect to which the client's informed consent, as
17 defined in Rule 1.0(G), is required by these Rules: Reasonably
18 consult with the client about the means by which the client's
19 objectives are to be accomplished and keep the client
20 reasonably about the status of the matter, and also South
21 Carolina of court rule 1.0(C), "Consult" or "consultation"
22 denote the communication of information reasonably sufficient
23 to permit the client to appreciate the significance of the
24 matter in question. Finality is important but not as
25 important as due process and fundamental fairness. Due

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1 process requires a guilty plea to be knowing, intelligent and
2 voluntary, *Boykin vs. Alabama* 395 U.S. 238; also, burglary
3 second that I received two different 15-year sentences on, one
4 active in prison and one suspended and reduced to 5 years a
5 probation was also a three-strike offense that I wasn't
6 informed about and I received two strikes under the
7 circumstances, again sentenced under crimes I did not commit
8 and a defendant has the right to know that he's pleadin' to an
9 offense that involves three strikes.

10 My initial lawyer John DeJong was ineffective for failing
11 to object to the mischaracterization of the statute that gave
12 me two strikes out of one plea, see *Koon vs. the State*, 643
13 S.E.2d 2007, had I known I was pleadin' to two strikes at one
14 time, no reasonably sane person nor I, myself, would have pled
15 guilty, to compound this error, the trial judge never advised
16 me of the fact I was pleadin' to two strikes nor did my
17 counsel.

18 THE COURT: That's not required under *Boykin vs. Alabama*
19 so move on, uh, Mr. Torrence.

20 THE APPLICANT: That's all I have, sir.

21 THE COURT: Alright, I noticed on page 4 of the, uh,
22 transcript that the Court says, "Mr. Torrence, you're here
23 today to plead to burglary second degree that carries up to 10
24 years; burglary second degree violent that carries up to 15
25 years; two counts of the grand larceny that carries up to 5

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1 years; another burglary second degree non-violent, carries up
2 to 10 years; another grand larceny that carries up to 5 years;
3 another count of grand larceny that carries up to 5 years;
4 another burglary second non-violent that carries up to 10
5 years and an escape that carries up to 10 years and malicious
6 injury to courthouse or jail, it carries up to 3, is that your
7 understanding," what was your response on page 5, line 6 of
8 the transcript?

9 THE APPLICANT: "Yes, ma'am."

10 THE COURT: And then the Court says, "Have you discussed
11 these charges with your lawyer," and what was your re --
12 response?

13 THE APPLICANT: My response was, "Yes, ma'am."

14 THE COURT: And ---

15 THE APPLICANT: I just ---

16 THE COURT: --- the next, and your next question is line
17 10, "Are you happy with what your lawyer has done for you,"
18 and your response?

19 THE APPLICANT: "Yes, ma'am."

20 THE COURT: Thank you, step down. You may step down,
21 Mr. Torrence.

22 THE APPLICANT: Can I -- I need to say one more thing ---

23 THE COURT: Yes, sir?

24 THE APPLICANT: --- regards to what you said, sir.

25 THE COURT: You may step down.

1 (Whereupon, the applicant left the stand.)

2 THE COURT: Alright, uh, Mr. Frederick you may call your
3 next witness.

4 MR. FREDERICK: No further witnesses, Judge.

5 THE COURT: Alright, thank you, uh, thank you very much.
6 Uh, Mr. Attorney General.

7 MR. SCHMECKPEPER: Your Honor, the state calls
8 Mr. DeJong.

9 THE COURT: Alright, uh, if you'd come around be sworn
10 for us, please.

11 THE WITNESS: Yes, Your Honor.

12 (Whereupon, the witness came forward.)

13 THE CLERK: Place your left hand on the Bible and raise
14 your right hand.

15 JOHN WILLIAM DEJONG, having been
16 first duly sworn, testified as follows:

17 THE CLERK: State your name for the record.

18 THE WITNESS: John William DeJong, last name spelled
19 D-E-J-O-N-G.

20 THE CLERK: Thank you.

21 THE COURT: Alright, yes, sir.

22 MR. SCHMECKPEPER: Thank Your Honor, may it please the
23 Court.

24 DIRECT EXAMINATION BY MR. SCHMECKPEPER:

25 Q. Good afternoon, Mr. DeJong.

1 A. Good afternoon.

2 Q. How are you doin' today?

3 A. I am well thank you.

4 Q. How how is your recollection of your representation of,
5 uh, the applicant?

6 A. I I'm sorry, sir, there's a little air, I'm a little hard
7 a hearing so could you speak up just a little bit.

8 Q. Yes, sir. Yes, sir, I apologize. How well do you
9 remember your representation of Mr. ---

10 A. Uh, ---

11 Q. --- Torrence?

12 A. --- fairly well.

13 Q. And you remember what he was originally charged with?

14 A. Can't do it off memory, I can do it from my file.

15 Q. But you would agree there were several first degree
16 burglaries that he was being charged with?

17 A. Yes.

18 Q. And the sentence is 15 to life on those, correct?

19 A. That is correct.

20 Q. Was Mr. Torrence interested wi -- during your
21 representation of him of facing 15 years to life in prison?

22 A. It was both of our concerns and that's where the plea
23 negotiation really came into effect.

24 Q. Did you explain to him the charges of first degree
25 burglary?

1 A. I did. I know going by element I think we talked about
2 the allegations or the weapons were stolen and that's what
3 turned it into a burglary first degree.

4 Q. And did he seem to understand that?

5 A. He did. I -- yeah, what will we talked about on many a
6 these cases as memory serves me he was originally charged
7 perhaps on one or two burglaries and before I started my
8 representation Pickens County Sheriff's Office deputies
9 actively took him on a ride and he pointed out the various
10 places that had been burglarized and what particular items had
11 been stolen from each particular place so in in light of that
12 there was a confession, if you will, I'm certain that we
13 talked about that.

14 Q. Was it the applicant's decision to plead guilty?

15 A. I beg your pardon?

16 Q. Was it the applicant's decision plead guilty?

17 A. It was. We met several times and, uh, finally it was his
18 decision to plead guilty. Uh, I certainly put no pressure on
19 him to plead guilty other than to share with him the possible
20 punishments on the burglary first.

21 Q. And did you explain to him the possible punishments for
22 the crime he was -- crimes he was pleading guilty to?

23 A. We talked about the possible punishments, we talked about
24 what he would be pleading guilty to would take him out of the
25 85 percent nonparolable, whether I actually went over the

1 elements of the crime, that is, burglary second violent, I
2 can't say that I did that. We did dwell more on the
3 penaco -- on the penalties than the elements of the crime.

4 Q. But he had an understanding of what he was facing?

5 A. Yes.

6 MR. SCHMECKPEPER: Beg the Court's indulgence.

7 THE COURT: Yes, sir.

8 MR. SCHMECKPEPER: Your Honor, I have no further
9 questions.

10 THE COURT: Thank you. Uh, Mr. Frederick.

11 CROSS-EXAMINATION BY MR. FREDERICK:

12 Q. Just just a couple, Mr. DeJong.

13 THE COURT: Okay.

14 Q. Uh, when he went on that ride with the detectives, to
15 your knowledge did he point out any unoccupied buildings that
16 had been burglarized?

17 A. I don't know.

18 Q. Okay.

19 A. And I I don't know that was in the discovery.

20 Q. And to your knowledge did he confess at any point to
21 burglarizing unoccupied buildings?

22 A. Would you ask that again please, sir.

23 Q. Did he confess, you'd said he gave a confession, right?

24 A. Yeah.

25 Q. As part of that confession, at any point did he confess

1 to burglarizing unoccupied buildings?

2 A. I don't recall that.

3 Q. Okay, no further ---

4 A. Now ---

5 Q. --- question.

6 A. --- he did have several burglaries that got dismissed, I
7 do know that, and that could have worked in, I just really
8 don't know the answer to that question.

9 Q. Well, as far as you know, the burglary first degree
10 charges that he had those were definitely based on homes that
11 had people living in them, is that right?

12 A. Correct.

13 Q. Okay, no further questions.

14 MR. SCHMECKPEPER: Your Honor, if I can ask two questions
15 to follow up.

16 THE COURT: Of course. Redirect.

17 REDIRECT EXAMINATION BY MR. SCHMECKPEPER:

18 Q. Mr. DeJong, how long have you practicing criminal law?

19 A. Uh, ---

20 Q. Approximately.

21 A. --- well my ---

22 MR. FREDERICK: Judge, can we limit it to redirect?

23 THE COURT: Well I'm I'm pretty liberal with, uh,
24 redirect and, uh, re-cross, uh, Mr. Frederick, uh, so you you
25 may ask the question, uh, . . .

1 A. Thank you, that give me a moment to try to do some math,
2 u, I think about twenty-eight years.

3 Q. And is it your understanding after practicing criminal
4 law for twenty-eight years that burglary second degree is a
5 lesser included offense of burglary first degree?

6 A. It's always been my understanding, yes.

7 MR. FREDERICK: Judge, I object to him askin' about the
8 law and continuing objection to matters not covered on
9 cross-examination, Judge.

10 THE COURT: Alright.

11 MR. FREDERICK: The Court ---

12 THE COURT: Uh, ---

13 MR. FREDERICK: --- will just determine what ---

14 THE COURT: --- your mo ---

15 MR. FREDERICK: --- the law is.

16 THE COURT: --- your objection and you may certainly
17 answer the question. You may answer the question, Mr. ---

18 THE WITNESS: I beg ---

19 THE COURT: You may answer the question, yes, sir.

20 THE WITNESS: And that bein' whether it's my
21 understanding why the burglary second was a lesser included of
22 burglary first that was my understanding yes, sir.

23 MR. SCHMECKPEPER: I have no further questions.

24 THE COURT: Mr. Frederick.

25 MR. FREDERICK: Uh, no, no, Judge, no further questions.

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1 THE COURT: Thank you, uh, thank you very much.

2 Thank ---

3 MR. FREDERICK: Thank ---

4 THE COURT: --- you for bein' with us this afternoon, you
5 may ---

6 THE WITNESS: My pleasure.

7 THE COURT: --- step down.

8 THE WITNESS: My pleasure, Your Honor.

9 (Whereupon, the witness left the stand.)

10 THE COURT: Next witness.

11 MR. SCHMECKPEPER: Your Honor, the State rests, be happy
12 to provide clo -- closing argument or or memoranda or
13 anything, any -- answer any questions you might have.

14 THE COURT: Any, uh, evidence or testimony in reply,
15 Mr. Frederick?

16 MR. FREDERICK: None, Your Honor, ---

17 THE COURT: Alright.

18 THE BAILIFF: Ma'am, please ---

19 MR. FREDERICK: --- and can I ask the Court a question?

20 THE COURT: Yes, sir, course.

21 MR. FREDERICK: Uh, the transcript, the sentencin' sheets
22 that were part a the State's return those are part a the
23 record already, is that correct?

24 THE COURT: Yes, sir, and I I was gonna review that, uh,
25 with ya'll. Uh, as I review the, uh, sentencing sheets, the,

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1 uh, indictments, the warrants -- well just to begin with is I
2 reviewed the applicant's, uh, I take it, uh, pro se
3 application for post-conviction relief, uh, ---

4 MR. FREDERICK: That's ---

5 THE COURT: --- that ---

6 MR. FREDERICK: --- all ---

7 THE COURT: --- well ---

8 MR. FREDERICK: --- was originally filed, there's
9 also ---

10 THE COURT: Right.

11 MR. FREDERICK: --- a supplemental petition, does Your
12 Honor have that?

13 THE COURT: And, uh, yes, sir, I do, uh, and the numbers
14 on number 4 those are warrant numbers, not the indictment
15 numbers, correct?

16 MR. FREDERICK: Well ---

17 THE COURT: On question number 4 those are the warrant
18 numbers?

19 MR. FREDERICK: I'd have to look at it, Judge, and I
20 don't have that original petition in front of me.

21 THE COURT: Okay.

22 MR. FREDERICK: Judge, it -- can I say somethin' that
23 might ---

24 THE COURT: Of course.

25 MR. FREDERICK: --- streamline this? Uh, Mr. Torrence

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1 based on the testimony and my conversations with him before
2 the hearing is withdrawing all, uh, issues except he is, uh,
3 asking the Court to vacate the burglary second violent, uh,
4 convictions under subsection (B) that specifically the
5 indictment numbers ---

6 THE COURT: 2705 and 2712.

7 MR. FREDERICK: That's correct, Judge, and also he's
8 going forward and asking the Court to vacate the escape
9 conviction, all other' ---

10 THE COURT: Well what what do you, what do you mean,
11 Mr. Frederick, let me make sure I'm tracking you, what does
12 that mean "vacate" convictions?

13 MR. FREDERICK: Judge, he was, uh, did not waive the
14 indictment to the escape charge ---

15 THE COURT: No, I'm not askin' why you're askin' me do
16 that, I'm askin' what does "vacate" conviction mean?

17 MR. FREDERICK: You're asking me for a definition of
18 vacate?

19 THE COURT: Yes, sir, I want, I'm ask you help
20 me understand what that, uh, that means if if I "vacate" a
21 conviction.

22 MR. FREDERICK: Well, Judge, he's currently convicted of
23 escape and sentenced on escape, if Your Honor vacates that
24 conviction, that specific conviction is a nullity, at which
25 point he will return on that charge to the county and face

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1 trial.

2 THE COURT: Okay, so you're you're askin' me to grant him
3 a new trial, I just wanna make sure we -- I was on ---

4 MR. FREDERICK: Yes, sir.

5 THE COURT: --- your page if you ---

6 MR. FREDERICK: Yes, ---

7 THE COURT: --- planned on asking.

8 MR. FREDERICK: --- Your Honor.

9 THE COURT: Okay.

10 MR. FREDERICK: We we're asking specifically on the
11 escape charge which I don't have that indictment number in
12 fronta me but there is ---

13 THE COURT: That ---

14 MR. FREDERICK: --- another one ---

15 THE COURT: --- indictment number on the escape is, uh,
16 2052 and it's a lesser included offense. He pled guilty to a
17 common law escape, I haven't read the, uh, ---

18 MR. FREDERICK: What I ---

19 THE COURT: --- statutory but, uh, it is a lesser
20 included offense but that's 2052, okay?

21 MR. FREDERICK: Yes, sir, and is asking, uh, Mr. Torrence
22 is asking the Court to vacate the conviction and remand for a
23 new trial, uh, the two burglary second convictions that we
24 already discussed, all other allegations he is withdrawing at
25 this time.

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1 THE COURT: So if I track it, that would leave him
2 incarcerated with a 10-year sentence for burglary second
3 non-violent, 5, 5-year sentence for grand larceny, another
4 10-year sentence for non-violent burglary, 5-year sentence for
5 grand larceny, 5-year sentence for grand larceny, 10-year
6 sentence for burglary non-violent and 3-year sentence, uh, let
7 me see if I track that, 10, 20, 30, 35, 40, 45, 48 but all
8 that, all that's concurrent, ---

9 MR. FREDERICK: That's correct, Judge.

10 THE COURT: --- right, so basically it's 10-year
11 concurrent sentence.

12 MR. FREDERICK: That's correct, Judge.

13 THE COURT: That he wants me to vacate and give him a new
14 trial, he wants me to vacate the two counts burglary second
15 violent and he wants to come back to Pickens County and
16 be tried for burglary first degree, that that's what he
17 wants, ---

18 MR. FREDERICK: That's correct, Judge, same with ---

19 THE COURT: --- is that ---

20 MR. FREDERICK: --- the escape charge.

21 THE COURT: And of course the minimum mandatory for
22 burglary first degree's 15 years ---

23 THE APPLICANT: No, wait.

24 THE COURT: --- up to life.

25 MR. FREDERICK: Judge, he's -- my client's tryin' talk to

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1 me ---

2 THE COURT: I ---

3 MR. FREDERICK: --- and I don't ---

4 THE COURT: --- I'm tryin' ---

5 MR. FREDERICK: --- mean ---

6 THE COURT: --- to talk, okay. If you need just, if you
7 need to confer with your client, Mr. Frederick, I'd I'd be
8 delighted ---

9 MR. FREDERICK: Yes.

10 THE COURT: --- to allow you to do so and I don't mean it
11 like that.

12 MR. FREDERICK: That's what I was askin', Judge.

13 THE COURT: Alright, certainly. Uh, well we'll take
14 about a, uh, 10-minute recess and, sheriff, would you please
15 give Mr., uh, Frederick the opportunity to talk with, uh,
16 Mr. Torrence.

17 (Whereupon, a recess was taken.)

18 THE COURT: Alright, you had, uh, ample opportunity to
19 confer with, uh, Mr. Torrence?

20 MR. FREDERICK: Yes, sir.

21 THE COURT: Alright, uh, alright, uh, Mr. Frederick, uh,
22 I'll I'll be glad to, uh, hear from you.

23 MR. FREDERICK: Judge, we're askin' the Court to, uh,
24 vacate and grant a new trial on those three charges that we
25 identified before the break.

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1 THE COURT: Alright, thank you, uh, thank you very much.
2 Mr., uh, Mr. Attorney ---

3 MR. FREDERICK: Judge, ---

4 THE COURT: --- General.

5 MR. FREDERICK: --- judge if you would would like
6 argument on that ---

7 THE COURT: I'll I'll be, uh, delighted to hear from you,
8 Mr. Frederick.

9 MR. FREDERICK: Okay. Well, judge, uh, I'm sure that you
10 are familiar with the burglary statutes, you deal with this
11 all the time, uh, I can pass a copy up if court likes.

12 THE COURT: Yes, sir.

13 (Whereupon, counsel handed the documents to the Court.)

14 (Whereupon, a discussion was held off the record.)

15 MR. FREDERICK: Also, Your Honor, there are several cases
16 that Mr. Torrence identified during his testimony that I'll
17 pass up to the court, *Weinhauer vs. State* and, Judge, the
18 reason -- I'll take the escape statute first, the escape
19 conviction first. Uh, Judge, he's askin' the Court to grant a
20 new trial on the escape charge because he did not waive
21 presentment to the grand jury on the record and the transcript
22 reflects that, also he was affirmatively misled on the record
23 as to whether or not that charge had been indicted. Uh, the
24 Court stated to him that there were one or more charges that
25 had not been indicted, uh, did he want to waive indictment to

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1 those charges and Mr. Torrence's response was, What is the
2 charges, and the Court responded, uh, that she was referring
3 to the malicious injury to a jailhouse or courthouse charge
4 and he said on the record, Yes, I'll waive indi -- indictments
5 to that charge, so, Your Honor, not only is the record silent
6 on whether he waived indictment presentment to the grand jury
7 on the escape charge, but he was, not intentionally but he was
8 affirmatively misled as to whether that charge had been
9 indicted, the ---

10 THE COURT: Yeah, well ---

11 MR. FREDERICK: --- Court all but ---

12 THE COURT: --- by the Court?

13 MR. FREDERICK: --- said it had not.

14 THE COURT: He's misled by the Court?

15 MR. FREDERICK: Not intentionally but yes, ---

16 THE COURT: No, ---

17 MR. FREDERICK: --- sir.

18 THE COURT: --- he was "affirmatively" misled by the
19 Court, that that's a word you used.

20 MR. FREDERICK: Ye -- yes, sir. Uh, he asked what charge
21 has not been indicted and the court responded, Injury to
22 jailhouse or courthouse, ---

23 THE COURT: Alright.

24 MR. FREDERICK: --- uh, never said escape, even in
25 response to his specific question.

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1 THE COURT: Okay.

2 MR. FREDERICK: Uh, not only did he not waive presentment
3 and was informed that it was a different charge he was waiving
4 presentment to on the record, uh, but he was never sentenced
5 on the record to the escape charge, Your Honor, those are the
6 grounds and the reasons he's asking the Court to grant him a
7 new trial specifically on the escape charge.

8 THE COURT: Alright.

9 MR. FREDERICK: As to the burglary second degree charges,
10 Judge, burglary second degree under subsection (A) which is
11 non-violent is when a person goes into a dwelling, a home that
12 is occupied by persons, uh, burglary first degree is an
13 enhancement with the, uh, an aggravating circumstance of
14 burglary second degree subsection (A); on the other hand,
15 burglary third degree is when a person goes into a building
16 that is unoccupied, as opposed to a dwelling, and when it is
17 enhanced by the aggravating circumstance, uh, whether it's
18 prior convictions, nighttime, possessing a weapon, that is
19 enhanced to burglary second degree subsection (B) which is
20 violent. Judge, subsection (A) of burglary second degree is
21 clearly a lesser included offense of burglary first degree,
22 subsection (B), entering a building is not a lesser included
23 offense of burglary first degree and I'll point out that
24 *Weinhauer* the case I passed up that, uh, is one of many many
25 many cases that were specifically overruled by *Gentry* on other

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1 grounds, I'm presenting that to the Court only for the
2 proposition that ---

3 THE COURT: Gentry was what? notice and opportunity of
4 notice of the, uh, charges brought against one and so that the
5 individual would be able answer the charges and the sentencing
6 court, you know, what sentence was and that's that's where the
7 indictment is; in other words, document, correct?

8 MR. FREDERICK: That that's correct, Judge, and an
9 objection to the indictment must be raised before trial, uh,
10 but the reason I'm presenting this case to the court, uh,
11 we're not raising Gentry issues, subject matter jurisdiction,
12 it's just there are several cases, uh, several which have been
13 overruled by Gentry on other grounds that make clear that
14 burglary second degree subsection (B) specifically is not a
15 lesser included offense of burglary first degree because it
16 changes the nature of the offense charged. There is a
17 different requirement of proof for burg. first or second
18 subsection (A) as opposed to burg. second subsection (B) or
19 burg. third: one requires entry into a home or dwelling, the
20 other requires entry into a building. When he pled guilty he
21 had not been indicted at all, we're not, we're not objecting
22 to the sufficiency of the indictment, there was no indictment
23 even alleging that he entered a building, there was never that
24 allegation at all. He did not waive presentment to the grand
25 jury on those two charges, 2705 and 2712, on the record nor

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1 did he initial on the sentencing sheets which are in the
2 record as well. Judge, my point is that it has different
3 elements, it requires different proof. Subsection (B) as
4 opposed to subsection (A) is not a lesser included
5 offense of burglary first, he had to either be indicted for
6 subsection (B) entering building or he had to waive
7 presentment to the grand jury on those charges, Judge.

8 THE COURT: Alright. Thank you.

9 MR. FREDERICK: And, Judge, I think out of everything
10 that was included and, there there are a whole lotta issues
11 that were raised, uh, by myself and Mr. Torrence and we're
12 waiving most of those issues because these three issues are
13 the ones that he has a valid claim for, Judge, ---

14 THE COURT: Okay.

15 MR. FREDERICK: --- and that the evidence supports.

16 THE COURT: Thank you, Mr. Frederick. Mr. Attorney
17 General.

18 MR. SCHMECKPEPER: Thank Your Honor, may it please the
19 Court and ju -- just to clarify *State v. Gentry*, uh, *State v.*
20 *Gentry*, uh, in addition to holding, uh, that indictments
21 notice document it also holds that the, uh, indicts -- the
22 indictment doesn't bring into effect, doesn't bring, doesn't
23 have any subject matter jurisdiction implications, uh, so just
24 to clarify circuit court obviously had or the respondent
25 contends that the circuit court obviously had subject matter

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1 jurisdiction to take these pleas. Uh, concerning the
2 indictment after having just read *Weinhauer*, I don't see where
3 it stands for a proposition that burglary second isn't a
4 lesser inclu -- burg -- burglary second under subsection (B)
5 is not a lesser included of burglary first degree. Uh,
6 certainly amending the indictment from subsection (A) to
7 subsection (B), um, has, according to this subject matter
8 jurisdiction implications I'd argue that's overruled by
9 *Gentry*. In any event, uh, in order to show, and the the
10 allegation here is still ineffective assist of counsel, and in
11 order to show ineffective assistance of counsel *Strickland* is
12 still a standard, it have deficient performance and prejudice,
13 that includes failure to attack defects in the indictment.
14 Um, here we have applicant alleging that, uh, had counsel not
15 raised the issue that he wasn't indicted for second degree
16 burglary, he wouldn't pled guilty and would proceeded to trial
17 on a first degree burglary charge. I think the first issue
18 that is credibility. Uh, the applicant was asked by the judge
19 whether or not he wanted to waive indictments, waive indi --
20 waive indictment to I think, uh, malicious injury to
21 courthouse and the applicant pretty much without hesitation
22 said yes, it mighta been an oversight of the part of the
23 tr -- sentencing judge or plea judge to ask him about the
24 second issue, uh, I'd argue that applicant's current
25 allegation he wouldn't a pled guilty had he been asked about

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1 that is, uh, entirely not credible. Ya know plea counsel got
2 up and explained why applicant, why, explained why applicant
3 pled guilty and I think it makes a lotta sense 'cause he was
4 faced with first degree burglary he didn't wanna face 15 years
5 to life and because a lot of other charges were getting
6 dropped he got a substantial benefit from this deal. He
7 deri -- and he is right, he, uh, he mentioned earlier, he is
8 right, plea bargain is based on contract principles, uh, he
9 pled guilty and he got a substa -- he derived a substantial
10 benefit and I think that also goes towards prejudice. You've
11 gotta, he has to show, it's his burden to show here that but
12 for counsel's purportedly deficient performance he would not
13 have pled guilty and woulda proceeded to trial. Uh, I just
14 don't think there's anything in the record here, it's any
15 credible evidence in the record to support that as -- that
16 assertion, uh, for those reasons I think the, uh, for those
17 reasons I'd I'd ask that, uh, this court deny PCR with respect
18 to his allegation on burglary and second degree burglary.

19 Uh, concerning the escape charge, it may have been an
20 oversight that the plea judge didn't orally pronounce the
21 guilty plea or the sentence at, uh, a trial but there's
22 dispute that applicant actually and did in fact plead guilty
23 and admit guilt to escape. Uh, in addition, he si -- we have
24 a sentencing sheet that he signed that says 0 to 10 years
25 possibility for escape and he was, uh, sentenced to 10-years

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1 concurrent. Uh, to the extent that he's alleging that he is
2 now suffering, uh, negative consequences in his I think a
3 detention categorization, that's not something PCR can hear,
4 uh, and; finally, I I would, in the event this court decides
5 to grant limited relief on, uh, three different charges, I
6 would argue that if he's saying his his his guilty plea was
7 ineffect -- was was involuntary respect to specific
8 allegations, I'd like the opportunity to debrief whether or
9 not he can even go back on just those three and has to instead
10 attack his entire, uh, guilty plea. I don't think you can
11 throw out those three guilty pleas alone, I think you'd have
12 to throw out the entire guilty plea but I I wasn't prepared to
13 brief that specific issue 'cause ---

14 THE COURT: Okay.

15 MR. SCHMECKPEPER: --- I thought they were going forward
16 on their -- this -- their entire argument. Uh, if there -- I
17 I'd be happy -- I -- answer any questions, Your Honor,
18 otherwise I'll rest.

19 THE COURT: Anything in response, Mr. Frederick?

20 MR. FREDERICK: No, Your Honor.

21 THE COURT: Thank you. Alright, uh, as to, uh,
22 Indictment, uh, 2013-GS-39-2052 Eli James Torrence for escape,
23 he is, although it may not appear in the record in the
24 transcript, the record from the proceedings in court at the
25 guilty plea, there is a sentence on that sentencing sheet, uh,

MOTIONS AND MATTERS

1 signed by, uh, Judge, uh, Verdin 10 years, uh, in that regard,
2 uh, there is a case I can't, it's rattling around in my brain,
3 I believe it's Judge Goode's case, uh, e -- even if the record
4 had a a, transcription had a statement in it and the written
5 document was different then you go by the written document
6 that the judge signed, that's part a the record that's been
7 presented to the Court, I deny your PCR, uh, as to, uh, the
8 escape. Um, you, when you indicate I believe, uh,
9 Mr. Frederick, and correct, please correct me if I I misheard
10 that there there was a misleading on the record by the Court
11 and did not waive, uh, uh, grand jury indictment, that same
12 sentence she she'd indicates, uh, defendant waived presentment
13 to the grand jury and initials appear E.T. on his, uh, his
14 signature is also on that, uh, sentencing sheet, Eli Torrence,
15 uh, as the defendant.

16 MR. FREDERICK: Uh, Your ---

17 THE COURT: As to, uh, burglary, uh, ---

18 MR. FREDERICK: Which which was the last one you were
19 talkin' about, Judge?

20 THE COURT: The escape, that's the only one I've talked
21 about, ---

22 MR. FREDERICK: Okay.

23 THE COURT: --- that was the Indictment, uh,
24 2013-GS-39-2052.

25 MR. FREDERICK: Alright.

MOTIONS AND MATTERS

1 THE COURT: Alright, uh, as to, uh, the burglary, uh,
2 burglary second, uh, violent, uh, the Court, uh, indicated to
3 Mr., uh, Torrence, uh, on page, uh, 4 the transcript what he
4 was pleadin' guilty to: burglary second degree carries up to
5 10 years, burglary second degree violent carries up to 15
6 years, uh, so, uh, if plea bargaining is a contract, uh, which
7 I think it is contract principles and I won't address the
8 others and he knew he was pleading guilty to three burglary
9 second degree non-violent, the, uh, C -- uh, CDR codes, uh,
10 0080 appear on those three, uh, sentencin' sheets and 0086
11 appears on the two burglary second, uh, violent, uh, 2705 and
12 2712. Uh, 2705, uh, clearly indicates that he signed this
13 document the, that it went from 0079 which is 16-11-311
14 burglary first degree to 008616110, uh, 312(B), uh,
15 parenthetically indicated as a lesser included offense without
16 negotiation and recommendations, he signed it, uh, also, uh,
17 I, uh, I uh, find, uh, I deny his PCR, uh, in that regard, uh,
18 uh, indicating and that's part, that's part a plea bargaining
19 process, I mean, why why plead to a burglary first degree, uh,
20 when you're facin' up to life and then 2712, uh, my same
21 reason, it indicates it's a violent offense, a lesser included
22 offense, he signed it, uh, so with that being said, uh,
23 Mr. Attorney General, uh, please, uh, please, uh, prepare a an
24 order, I'm denyin' his PCRs both those in 2705, 2712 and 2052
25 burglary second non-violent, burglary second non-violent and

MOTIONS AND MATTERS

1 common law escape. Alright, thank you, ---

2 MR. SCHMECKPEPER: Thank Your Honor.

3 THE COURT: --- uh, thank you very much.

4 MR. FREDERICK: Thank you, Judge.

5 THE COURT: Thank you, uh, thank you very much there,
6 Mr. Frederick.

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CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on April 18, 2016 at the time and place heretofore set forth; and that the foregoing pages numbered from 3 through 48, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

November 11, 2016

Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

ARREST WARRANT

2013A3910600255

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Pickens

THE STATE
against

PCSO13-32415

Eli James Torrence

Address: 19 Symbolic Ct
Greenville, SC 29617-Phone: SSN: [REDACTED]
Sex: M Race: W Height: 5 9 Weight: 150
DL State: AZ DL #: [REDACTED]
DOB: [REDACTED] 1991 Agency ORI #: SC0390000

Prosecuting Agency: Pickens County Sheriff

Prosecuting Officer: Keith Galloway - 0115

Offense: Escape / Escape, attempted escape or possess tools
to escape from prison, recapturedOffense Code: 2527
Code/Ordinance Sec: 24-13-0410

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me
to be dealt with according to the law.

(L.R.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant

on 7/11/2013

[Signature]
Signature of Constable Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
PO Box 215
Pickens, SC 29671

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Pickens

Personally appeared before me the affiant Keith Galloway

being duly sworn deposes and says that defendant Eli James Torrence

did within the county and state on or about 6/21/2013

State of South Carolina (or ordinance of ☒ County/☐ Municipality of

Pickens

in the following particulars:

DESCRIPTION OF OFFENSE: Escape / Escape, attempted escape or possess tools to escape from prison, recaptured

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:On or about 06/21/13 the defendant, ELI JAMES TORRENCE, while confined to the Pickens County Detention Center, did attempt
to escape from custody. While officers were focused on another inmate, the defendant tried to force the cell block door open and
escape. This incident occurred within Pickens County SC. Probable cause based on: 1-PCSO Incident Report #13-32415, 2- Video
Recording.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Pickens

Affiant's Address 216 Leo Road

Pickens, SC 29671-

Affiant's Telephone (864)898-5500

ARREST WARRANT

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

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

on or about 6/21/2013

defendant Eli James Torrence

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Pickens

) as set forth below.

DESCRIPTION OF OFFENSE: Escape / Escape, attempted escape or possess tools to escape from prison, recaptured

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable.Sworn to and subscribed before me
on 6/28/2013[Signature]
S. Michael Gillespie (L.R.)

Judge's Address

S. Michael Gillespie

Judge Code: 7209

Judge's Address 115-B Commons Way

Central, SC 29630-

Judge's Telephone (864)639-8084

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ARREST WARRANT

2013A3910600257

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Pickens

THE STATE

PCSO#13-32415

against

Eli James Torrence

Address 19 Symbolic Ct

Greenville, SC 29617-

Pictorial: SSN: [REDACTED]

Sex: M Race: W Height: 5 9 Weight: 150

DL State: AZ DL #: [REDACTED]

DOB: [REDACTED] /1991 Agency ORI #: SC0390000

Prosecuting Agency: Pickens County Sheriff

Prosecuting Officer: Keith Galloway - 0115

Offense: Malicious / Malicious injury, willful injury to courthouse or jail

Offense Code: 0051

Code/Ordinance Sec: 04-17-0070

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant: Eli James Torrence

on 7/11/2013

[Signature]

Signature of Constable or Enforcement Officer

RETURN WARRANT TO:

General Sessions

P O Box 215

Pickens, SC 29671

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Pickens

Personally appeared before me the affiant Keith Galloway

being duly sworn, deposes and says that defendant Eli James Torrence

did within this county and state on or about 6/21/2013

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Pickens

in the following particulars:

DESCRIPTION OF OFFENSE: Malicious / Malicious injury, willful injury to courthouse or jail

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

On or about 06/21/2013 the defendant, ELI JAMES TORRENCE, did willfully injure or destroy part of the Pickens County Detention Center by destroying a television, an intercom box and security camera, mats, mop buckets and handles. The defendant is was an inmate at the Pickens County Detention Center. The damage is estimated over \$3000.00. The offense did occur within Pickens County SC. Probable cause based on: 1- PCSO Incident Report #13-32415. 2- Video Recording.

Signature of Affiant

[Signature]

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Pickens

Affiant's Address 216 Lee Road

Pickens, SC 29671-

Affiant's Telephone (864)898-5500

ARREST WARRANT

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

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

on or about 6/21/2013

defendant Eli James Torrence

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Pickens

) as set forth below:

DESCRIPTION OF OFFENSE: Malicious / Malicious injury, willful injury to courthouse or jail

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

Sworn to and subscribed before me

on 6/28/2013

[Signature] (L.S.)

S. Michael Gillespie

Judge Code: T209

Judge's Address 115-B Commons Way

Central, SC 29630-

Judge's Telephone (864)639-8084

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

JUL - 2013

ARREST WARRANT

2012A3910600268

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Pickens

THE STATE

2012-20266

against

Eli James Torrence

Address: 514 Sumter St.

Greenville, SC 29617-

Phone: SSN: [REDACTED]
Sex: M Race: W Height: 5 9 Weight: 150DL State: AZ DL #: [REDACTED]
DOB: 1/19/1991 Agency ORI #: SC0390000

Prosecuting Agency: Pickens County Sheriff

Prosecuting Officer: Benjamin Dow - 0093

Offense: Burglary / Burglary (After June 20, 1985) - First degree

Offense Code: 0079

Criminal Ordinance Sec: 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant ELI TORRENCEon 11/15/12
[Signature]
Signature of Constable Law Enforcement Officer

RETURN WARRANT TO:

General Session

P.O. Box 215

Pickens, SC 29671

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Pickens

Personally appeared before me the affiant

Benjamin Dow

being duly sworn deposes and says that defendant Eli James Torrencedid within this county and state on or about 10/26/2012

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Pickens)

in the following particulars:

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

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

That on or about October 26, 2012, in the county of Pickens, one Eli James Torrence did enter a dwelling located at 694 Little Crowe Creek Rd. without consent and with intent to commit a crime therein. Eli James Torrence, along with unidentified co-defendant's, did upon entering the victim's residence arm themselves by stealing the victim's rifles. The defendant threw a golf cart battery through the victim's front door and upon entering did steal several rifles belonging to the victim. The defendant provided the affiant with a statement admitting guilt. This offense occurred within Pickens County SC. Probable cause based upon:
1) PCSO incident 12-25938, 2) Defendant statement, 3) Partial recovery of stolen property

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Pickens

Affiant's Address: 216 Lec Road

Pickens, SC 29671-

Affiant's Telephone: (864)898-5500

ARREST WARRANT

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

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

on or about 10/26/2012 defendant Eli James Torrence

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Pickens) as set forth below.

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of his execution, or as soon thereafter as is practicable.
Sworn to and subscribed before meon 11/13/2012[Signature]
Signature of Issuing Judge

Michael Baker

Judge Code: 1257

(L.S.)

Judge's Address: West End Hall

Easley, SC 29640-2901

Judge's Telephone: (864)850-7076

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ARREST WARRANT

2012A3910600270

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Pickens

THE STATE
against

2012-28515

Eli James Torrence

Address: 514 Sumter St.
Greenville, SC 29617-Phone: [REDACTED] SSN: [REDACTED]
Sex: M Race: W Height: 5' 9" Weight: 150DL State: AZ DL #: [REDACTED]
DOB: 1991 Agency ORI #: SC0390000Prosecuting Agency: Pickens County Sheriff
Prosecuting Officer: Benjamin Dow - 0093
Offense: Burglary / Burglary (After June 20, 1985) - First degreeOffense Code: 0079
Code/Ordinance Sec: 16-11-0311This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

It is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant: Eli Torrence
on: 11/3/12

Signature of Law Enforcement Officer

RETURN WARRANT TO:

General Session
P.O. Box 215
Pickens, SC 29671

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Pickens

Personally appeared before me the affiant Benjamin Dow

being duly sworn deposes and says that defendant Eli James Torrence

did within this county and state on or about 10/24/2012

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Pickens)

in the following particulars:

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

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

That on or about October 24, 2012, in the county of Pickens, one Eli James Torrence did enter a dwelling located at 3020 Moorefield Memorial Hwy. without consent and with intent to commit a crime therein. Eli James Torrence, along with unidentified co-defendant's, entered the victim's residence by breaking a window and upon entering armed themselves with seven different rifles and shotguns belonging to the victim's Christopher and Roslyn Holcombe. The defendant provided the affiant with a statement admitting guilt. This offense occurred within Pickens County SC. Probable cause based upon: 1) PCSO incident: 12-25589, 2) Defendant statement.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Pickens

Affiant's Address: 216 Lec Road
Pickens, SC 29671-
Affiant's Telephone: (864)898-5500

ARREST WARRANT

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

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

on or about 10/24/2012 defendant Eli James Torrence

did violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Pickens) as set forth below.

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

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

on 11/3/2012

Signature of Judge

Michael Baker

Judge Code: 7257

(L.S.)

Judge's Address: West End Hall
Easley, SC 29640-2901

Judge's Telephone: (864)850-7076

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2009
SCC-09-010

ARREST WARRANT

2012A3910600288

STATE OF SOUTH CAROLINA

☒ County☐ Municipality of

Pickens

THE STATE
Magistrate

Eli James Torrence

Address: 19 Symbolic Ct

Greenville, SC 29617-

Phone:

SSN

Sex: M

Race: W

Height: 5' 9"

Weight: 150

DL State: AZ

CL#:

DOB: 1991

Agency ORI #: SC0390000

Prosecuting Agency: Pickens County Sheriff

Prosecuting Officer: Gary Anthony - 777

Offense: Burglary / Burglary (Non-Violent) - Second degree

Offense Code:

0080

Code/Ordinance Sec:

16-11-0312

This warrant is CERTIFIED FOR SERVICE in the

☐ County/☐ Municipality of

This accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

Eli James Torrence

on

11-14-12

Signature of Constable or Enforcement Officer

RETURN WARRANT TO:

Bond Court

216-ALEC. Road

Pickens, SC 29671

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Pickens

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Judicial Council
April 21, 2008
SSCA 610

Personally appeared before me the affiant Gary Anthony

who

being duly sworn deposes and says that defendant Eli James Torrence

did within this county and state on or about 10/28/2012

violate the criminal laws of the

State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Pickens

in the following particulars:

DESCRIPTION OF OFFENSE: Burglary / Burglary (Non-Violent) - Second degree

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on October 28, 2012, in the county of Pickens, one Eli James Torrence did enter a dwelling located at 522 Little Eastoce Rd.
Sunset SC without consent and with intent to commit a crime therein. Upon entry the defendant committed a larceny.
Probable cause is based on: 1. Incident report #12-25887. 2. Statement from defendant admitting guilt.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Pickens

Affiant's Address: 216 Lec Road

Pickens 29671-

Affiant's Telephone

ARREST WARRANT

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

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

on or about 10/28/2012

defendant Eli James Torrence

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Pickens

as set forth below:

DESCRIPTION OF OFFENSE: Burglary / Burglary (Non-Violent) - Second degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable.
Sworn to and subscribed before me
on 11/10/2012

Signature of Issuing Judge

(L.S.)

Bruce E Anders (Magistrate)

Judge Code: 7064

Judge's Address: 147-B Kay Holcombe Road

Liberty, SC 29657-

Judge's Telephone: (864)843-5821

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ARREST WARRANT

2012A3910600293

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Pickens

THE STATE
against

Eli James Torrence

Address: 19 Symbolic Ct
Greenville, SC 29617-Phone: [REDACTED] SSN: [REDACTED]
Sex: M Race: W Height: 5 9 Weight: 150DL State: A7 DL #: [REDACTED]
DOB: [REDACTED] 1991 Agency ORI #: SC0390000Prosecuting Agency: Pickens County Sheriff
Prosecuting Officer: Anthony Raines - 0224
Offense: Burglary / Burglary (Non-Violent) - Second degreeOffense Code: 0080
Code/Ordinance Sec: 16-11-0312This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Eli James Torrence
on 11-14-12

Signature of Constable or Law Enforcement Officer

RETURN WARRANT TO:

Bond Court
216-A L.E.C. Road
Pickens, SC 29671

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Judge Code:

7064

Signature of Issuing Judge

(L.S.)

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Pickens

Signature of Affiant

Affiant's Address: 216 Lec Road
Pickens, SC 29671-
Affiant's Telephone: (864)898-5500

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that
on or about 4/15/2012 defendant Eli James Torrencedid violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of Pickens) as set forth below:

DESCRIPTION OF OFFENSE: Burglary / Burglary (Non-Violent) - Second degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of his execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me
on 11/13/2012

Signature of Issuing Judge

(L.S.)

Judge's Address:

147-B Key Hulcomb Rd.
Pickens, SC 29671

Judge's Telephone:

864-843-5821

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Pickens

Personally appeared before me the affiant Anthony Raines who
being duly sworn deposes and says that defendant Eli James Torrence
did within this county and state on or about 4/15/2012 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Pickens)
in the following particular:

DESCRIPTION OF OFFENSE: Burglary / Burglary (Non-Violent) - Second degree

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on April 15, 2012, in the county of Pickens, one Eli James Torrence did enter a dwelling located at 2092 Farris Bridge Rd.
without consent and with intent to commit a crime therein.
Probable cause is based on: 1. Incident report #12-8650. 2. Recovery of stolen property. 3. Statement from victim.

AFFIDAVIT

ORIGINAL

Form Approved by
U.S. Attorney General
April 27, 2003
SCCA 018

STATE OF SOUTH CAROLINA)

INDICTMENT FOR
ESCAPE

COUNTY OF PICKENS)

At a Court of General Sessions, convened on

the Grand Jurors of Pickens

County present upon their oath:

That ELI JAMES TORRENCE did in Pickens County, on or about the 21st day of June, 2013, unlawfully escape
or attempt to escape from lawful confinement or custody, to-wit: PICKENS COUNTY DETENTION CENTER.

This is in violation of §24-13-410 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

Keth Galloway

Pickens County Sheriff's Office

7/1/2013

ARREST WARRANT NUMBER
2013A3910600255

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-39- ^{BBH} 2052

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

TERM 2013

THE STATE

VS.

ELI JAMES TORRENCE

Indictment for

2527

ESCAPE

VIOLATION § 24-13-0410

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
WILLFUL INJURY TO COURTHOUSE OR JAIL

At a Court of General Sessions, convened on

the Grand Jurors of Pickens

County present upon their oath:

That ELI JAMES TORRENCE did in Pickens County, on or about the 21st day of June, 2013, while an inmate at the Pickens County Detention Center willfully and intentionally cause injury to the Pickens County Detention Center by destroying a television, intercom box, security camera, mats, mop buckets and handles. This is in violation of § 4-17-70 of the South Carolina code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

KEITH GALLOWAY

Pickens County Sheriff's Office

7/1/2013

ARREST WARRANT NUMBER
2013A3910600257

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-39-^{BBH}

2053

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

TERM 2013

THE STATE

vs.

ELI JAMES TORRENCE

Indictment for

0051

WILLFUL INJURY TO COURTHOUSE OR JAIL

VIOLATION § 04-17-0070

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

INDICTMENT FOR
BURGLARY FIRST DEGREE

At a Court of General Sessions, convened on DEC 11 2012 the Grand Jurors of Pickens County present upon their oath:

That ELI JAMES TORRENCE did in Pickens County, on or about the 26th day of October, 2012, willfully and unlawfully enter the dwelling of ALVIN BAGWELL located at 694 Little Crowe Creek Road, Pickens South Carolina, without consent and with the intent to commit a crime therein and the defendant armed himself with weapons. This is in violation of §16-11-311 of the South Carolina Code of Laws (1976) as amended.

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

Bianca Hinton
SOLICITOR

WITNESSES

Benjamin Dow

Pickens County Sheriff's Office

11/3/2012

ARREST WARRANT NUMBER
2012A3910500268

ACTION OF GRAND JURY

TRUST

Date

DEC 11 2012

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-39-⁸⁸⁴

2704

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

DEC 11 2012

TERM 2012

THE STATE

VS.

ELI JAMES TORRENCE

Indictment for

0079

BURGLARY FIRST DEGREE

VIOLATION § 16-11-0311

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

INDICTMENT FOR
BURGLARY FIRST DEGREE

At a Court of General Sessions, convened on

DEC 11 2012

the Grand Jurors of Pickens

County present upon their oath:

That ELI JAMES TORRENCE did in Pickens County, on or about the 24th day of October, 2012, willfully and unlawfully enter the dwelling of CHRIS AND ROSLYN HOLCOME located at 3020 Moorefield Memorial Highway, Pickens, South Carolina without consent and with the intent to commit a crime therein and the defendant armed himself with weapons. This is in violation of §16-11-311 of the South Carolina Code of Laws (1976) as amended.

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

Brand Hutton
SOLICITOR

WITNESSES	
Benjamin Dow	
Pickens County Sheriff's Office	
11/3/2012	
ARREST WARRANT NUMBER	
2012A9910600270	
ACTION OF GRAND JURY	
JURY DATE	
Date:	
DEC 11 2012	
Foreperson of Grand Jury	
VERDICT	
Foreperson of Petit Jury	
Date:	

DOCKET NO. 2012-GS-39-^{BBH} 2712

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

DEC 11 2012 TERM 2012

THE STATE

vs.

ELI JAMES TORRENCE

Indictment for

0079

BURGLARY FIRST DEGREE

VIOLATION § 16-11-0311

INDICTED

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

INDICTMENT FOR
BURGLARY FIRST DEGREE

At a Court of General Sessions, convened on

DEC 11 2012

the Grand Jurors of Pickens

County present upon their oath:

That ELI JAMES TORRENCE did in Pickens County, between the dates of October 25, 2012 and October 29, 2012, willfully and unlawfully enter the dwelling of TOMMY TODD located at 2815 Crowe Creek Road, Pickens, South Carolina, without consent and with the intent to commit a crime therein and the defendant did arm himself with firearms. This is in violation of §16-11-311 of the South Carolina Code of Laws (1976) as amended.

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

Brian H. Hinton
SOLICITOR

WITNESSES

Benjamin Dow

Pickens County Sheriff's Office

11/3/2012

ARREST WARRANT NUMBER
2012A3910600272

ACTION OF GRAND JURY

TRUE BILL

Date

DEC 11 2012

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-39-^{BBH} 2705

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

DEC 11 2012

TERM 2012

THE STATE

VS.

ELI JAMES TORRENCE

Indictment for

0079

BURGLARY FIRST DEGREE

VIOLATION § 16-11-0311

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

INDICTMENT FOR
BURGLARY SECOND DEGREE

At a Court of General Sessions, convened on

JAN 29 2013

the Grand Jurors of Pickens

County present upon their oath:

That ELI JAMES TORRENCE did in Pickens County, on or about the 28th day of October, 2012, willfully and unlawfully enter the dwelling of CATHERINE GILSTRAP located at 522 Little Eastatoc Road, Sunset, South Carolina, without consent and with the intent to commit a crime therein. This is in violation of §16-11-312 of the South Carolina Code of Laws (1976) as amended.

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

Diana Huiter
SOLICITOR

WITNESSES

Gary Dean Anthony

Pickens County Sheriff's Office

11/14/2012

ARREST WARRANT NUMBER

2012A3910600288

ACTION OF GRAND JURY

TRUE BILL

Date

JAN 29 2013

Steven Richardson
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-39-

BBH

0068

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

JAN 29 2013

TERM 2013

THE STATE

vs.

ELI JAMES TORRENCE

Indictment for

0080

BURGLARY SECOND DEGREE

VIOLATION § 16-11-0312

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

INDICTMENT FOR
BURGLARY SECOND DEGREE

At a Court of General Sessions, convened on

JAN 29 2013

the Grand Jurors of Pickens

County present upon their oath:

That ELI JAMES TORRENCE did in Pickens County, on or about the 15th day of April, 2012, willfully and unlawfully enter the dwelling of HARRY CARSON located at 2092 Farris Bridge Road, Easley, South Carolina, without consent and with the intent to commit a crime therein. This is in violation of §16-11-312 of the South Carolina Code of Laws (1976) as amended.

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

Deana Hunter
SOLICITOR

WITNESSES

Anthony Raines

Pickens County Sheriff's Office

11/14/2012

ARREST WARRANT NUMBER
2012A3910600293

ACTION OF GRAND JURY

TRUE BILL

Date JAN 29 2013

Steven Richardson
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-39-0065
BBH

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

JAN 29 2013

TERM 2013

THE STATE

vs.

ELI JAMES TORRENCE

Indictment for

0080

BURGLARY SECOND DEGREE

VIOLATION § 16-11-0312

THE STATE OF SOUTH CAROLINA
SUPREME COURT

APPEAL FROM PICKENS COUNTY

R. Knox McMahon Circuit Court Judge

Case No. 2014-CP-39-0397

Eli Torrence #00356338, Petitioner,

v.

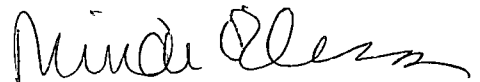
State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

I certify that I have served the Appendix to the following recipient by depositing a copy of it in the United States Mail, postage prepaid, on December 12, 2016, addressed to:

Patrick Schmeckpeper, Esquire
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
803-734-3737
Attorney for Respondent

December 12, 2016



Mindi Ellison
Legal Assistant
Thompson Defense Firm
516 29th Ave. North
Myrtle Beach, SC 29577
843-444-6122