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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Honorable Larry B. Hyman, Circuit Court Judge

HAROLD B. TURNER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001769

APPENDIX

ROBERT M. PACHAK
Appellate Defender

ALAN WILSON
Attorney General

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

ALICIA OLIVE
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street
Room 519
Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3
 4 THE STATE)
 5 -vs-) TRANSCRIPT OF RECORD
 6 HAROLD TURNER,) 2013-GS-42-01470
 7 DEFENDANT.) 2013-GS-42-01471
) 2012-GS-42-04608
) JULY 8, 2013
) SPARTANBURG, SOUTH CAROLINA

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B E F O R E:

THE HONORABLE J. MARK HAYES, II, JUDGE.

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

KATE ROBINETTE, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

ANDREA PRICE, ASSISTANT PUBLIC DEFENDER
ATTORNEY FOR THE DEFENDANT

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

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WITNESSES

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(NO WITNESSES CALLED)

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NO. DESCRIPTION ID. EV.

(NO EXHIBITS MARKED)

1 (PROCEEDINGS, JULY 8, 2013)

2 THE COURT: When I call your name, if you would,
3 just raise your hand and let me eyeball where you are for a
4 moment.

5 And also if I call your name and you are sitting
6 in the audience in the gallery, I need for you to please
7 come forward.

8 We have Ashley Belton. Come forward, ma'am.

9 Teresa Ann Bushong. Come forward, ma'am.

10 Dominick Thompson.

11 Harold Turner.

12 Andrea McGlashan.

13 Rodrick Drummond.

14 Darryl Ridings.

15 Sheritta Boler.

16 Blake House.

17 (No response).

18 Blake House.

19 MS. ROBINETTE: We would ask for a bench warrant.

20 THE COURT: All right, get a bench warrant.

21 Lee Lane Robbs. Please come up here.

22 Donnie Ray Sims.

23 Is Caleb Hudson going to plead?

24 MR. SNYDER: Yes, sir.

25 THE COURT: All right, sir.

1 What about Vikki Corbin?

2 MS. JONES: Yes, sir.

3 THE COURT: She's going to enter a plea?

4 MS. JONES: Yes, sir.

5 THE COURT: And Minashe Wheeler. Is she going to
6 enter a plea as well?

7 MS. PRICE: Yes, sir. She's right here.

8 THE COURT: On my list they're showing them on the
9 trial docket. That's why I'm asking.

10 Joseph Whitehead?

11 MR. SHEALY: Your Honor, he's not here. I believe
12 he's going to enter a plea later.

13 THE COURT: Okay.

14 MR. SHEALY: He's on the trial docket, the
15 plea-trial docket.

16 THE COURT: Okay.

17 Thomas Spires.

18 Besides Mr. Williams, is there anyone in the jury
19 box whose name I did not call?

20 What's your name?

21 GREGORY GRICE: Gregory Grice.

22 THE COURT: Okay, Mr. Grice, I have been informed
23 by your lawyer that your case is going to be continued.

24 GREGORY GRICE: Yes, sir.

25 THE COURT: All right, ladies and gentlemen, I

1 need for you to all please listen to me for a few moments.

2 I have been told that each one of you has one or
3 more matters that are presently pending in the Court of
4 General Sessions. And I have also been told that each one
5 of you has expressed a desire or an intent to want to enter
6 a plea to those matters.

7 I need to let you know that as part of any plea
8 that is presented in front of me we make a recording. This
9 gentleman who is sitting over here to my right, he is a
10 court reporter. He's taking down everything that's said. I
11 tell you that because if ever during this process now or
12 later today if it becomes necessary for you to speak to me,
13 I need for you to speak up loud enough so that both he and I
14 can hear you, because if we can't hear you, I cannot accept
15 your plea. But, likewise, if ever during this process now
16 or later today if ever you cannot hear me, immediately let
17 me know and I will speak up as well.

18 Now, in just a few moments I'm going to ask you a
19 series of questions. I'm going to ask you these questions
20 as a group, but I do not want you to think, nor do I wish
21 for you to conclude, that simply because I'm asking you
22 these questions as a group that for some reason these
23 questions are not important, because these questions are
24 very important. The questions that I ask you and the
25 answers you give me to these questions help me decide

1 whether or not I can, in fact, accept your plea, so I need
2 you to listen to them.

3 If you need to respond to the questions, I'm going
4 to ask if you would to stand up and let me call on you one
5 at a time. Just don't everybody speak out at one time, but
6 stand up and let me call on you.

7 Now, if ever during this process if any of you
8 wish to speak to your lawyer, you just let me know and I'll
9 allow you to talk to your lawyer in private.

10 I'm now going to call your names one more time.
11 Now, this time when I call your name, I'm going to ask if
12 you would to please stand and remain standing. After
13 everybody's name has been called and the court reporter has
14 your names down, the lady on this side of the courtroom, the
15 clerk of court, she's going to swear you in, so please
16 respond out loud when she asks you to do so.

17 All right. We have Ashley Belton.

18 Teresa Bushong.

19 Dominick Thompson.

20 Harold Turner.

21 Andrea McGlashan.

22 Rodrick Drummond.

23 Darryl Ridings.

24 Sheritta Boler.

25 Lee Lane Robbs. Just remain standing, if you

1 would, sir.

2 Donnie Ray Sims.

3 Caleb Hudson.

4 Vikki Corbin.

5 Minashe Wheeler.

6 Thomas Spires.

7 Hang with me one second. Mr. Robbs, is there a
8 reason that you are not able to stand?

9 LEE LANE ROBBS: I'm going -- I'm going to have a
10 jury trial. There is my lawyer right there.

11 MR. WHELCHER: Your Honor, could we take Mr. Robbs
12 off of this for a moment?

13 THE COURT: Yes, sir.

14 Mr. Robbs, if you will, please go with your
15 lawyer.

16 Keep him out in the hallway, if you would, Mr.
17 Whelchel.

18 MR. WHELCHER: Thank you, Your Honor.

19 THE COURT: Uh-huh.

20 All right, ladies and gentlemen, please raise your
21 right hand.

22 VIKKI CORBIN, CALEB HUDSON, DONNIE SIMS, TERESA
23 BUSHONG, MINASHE WHEELER, ANDREA MCGLASHAN, RODRICK
24 DRUMMOND, DARRYL RIDINGS, DOMINICK THOMPSON, THOMAS SPIRES,
25 ASHLEY BELTON, HAROLD TURNER, SHERITTA BOLER, all defendants

1 having been first duly sworn, testified as follows:

2 (Whereupon, all defendants responded in the
3 affirmative)

4 THE COURT: Thank you. You may be seated.

5 Now, here are the questions that I need for you to
6 please listen to:

7 During the last twenty-four hours have you
8 consumed any type of substance that is adversely or
9 negatively affecting your ability to understand what we are
10 doing today? If you have taken something, I need for you to
11 please stand at this time.

12 (No response).

13 THE COURT: If you have ever received any type of
14 substance abuse treatment in the past for a drug or alcohol
15 problem, I need for you to please stand at this time.

16 All right, we will start on this end.

17 Yes, ma'am, your name?

18 DEFENDANT CORBIN: Vikki Corbin.

19 THE COURT: And Ms. Corbin, did you receive
20 treatment for drugs, alcohol, or both?

21 DEFENDANT CORBIN: Drugs.

22 THE COURT: And where did you receive that last
23 treatment?

24 DEFENDANT CORBIN: 2010, at Morris Village.

25 THE COURT: And was it successful at the time?

1 DEFENDANT CORBIN: That's the most successful
2 treatment I have ever had.

3 THE COURT: Thank you, ma'am. You may be seated.
4 Yes, ma'am, your name?

5 DEFENDANT BELTON: Ashley Belton.

6 THE COURT: And Ms. Belton, did you receive
7 treatment for drugs, alcohol, or both?

8 DEFENDANT BELTON: Both. I'm in treatment now.

9 THE COURT: Where?

10 DEFENDANT BELTON: SADAC.

11 THE COURT: And is it being successful?

12 DEFENDANT BELTON: Yes.

13 THE COURT: I beg your pardon?

14 DEFENDANT BELTON: Yes, sir.

15 THE COURT: All right. Thank you, ma'am. You may
16 be seated.

17 Yes, ma'am, your name?

18 DEFENDANT MCGLASHAN: Andrea McGlashan.

19 THE COURT: And Ms. McGlashan, did you receive
20 treatment for drugs, alcohol, or both?

21 DEFENDANT MCGLASHAN: Drugs.

22 THE COURT: And where?

23 DEFENDANT MCGLASHAN: SADAC in Spartanburg, South
24 Carolina.

25 THE COURT: About how long ago was that last

1 treatment?

2 DEFENDANT MCGLASHAN: I finished in October of
3 last year.

4 THE COURT: And was it successful at the time?

5 DEFENDANT MCGLASHAN: It was very successful.

6 THE COURT: Thank you, ma'am.

7 Yes, sir, your name?

8 DEFENDANT RIDINGS: Darryl Ridings.

9 THE COURT: And Mr. Ridings, did you receive
10 treatment for drugs, alcohol, or both?

11 DEFENDANT RIDINGS: Alcohol.

12 THE COURT: Where did you receive that last
13 treatment?

14 DEFENDANT RIDINGS: Drug and Alcohol Counseling in
15 Gaffney.

16 THE COURT: About how long ago was that?

17 DEFENDANT RIDINGS: It was probably about two
18 years ago.

19 THE COURT: And was it successful at the time?

20 DEFENDANT RIDINGS: Yes, sir.

21 THE COURT: Thank you, sir. You may be seated.

22 If you are satisfied with the work that your
23 lawyer has done for you, I need for you to please stand at
24 this time, if you are satisfied with the work that your has
25 done.

1 Let the record reflect there everyone stood.

2 Thank you very much. You may be seated.

3 If anybody has come to you and threatened you in
4 any way or if they have made you any promises in order to
5 get you to make the decision to enter the plea, then I need
6 for you to please stand at this time. If you have been
7 threatened in any way or promised anything, please stand.

8 (No response)

9 THE COURT: If the decision by you to enter the
10 plea is a free and voluntary decision on your part, then I
11 need for you to please stand at this time. If this is a
12 free and voluntary decision, please stand.

13 Let the record reflect that everyone stood.

14 Thank you very much. You may be seated.

15 I need for you to each understand that under the
16 law you are presumed innocent of each and every charge
17 that's presently against you and you are entitled to have a
18 jury trial on each and every charge that's presently against
19 you.

20 Now, at any jury trial that would take place it
21 would be the State that has the burden of proof and the
22 State would have to convince all twelve members of a jury
23 that you are, in fact, guilty beyond a reasonable doubt.
24 Now, in order to enter a plea, however, you have to give up
25 your wish to that jury trial. But if you wish to have a

1 jury trial on any of the charges that are presently against
2 you, that is perfectly fine. We will simply schedule a jury
3 trial for you.

4 Is there anyone who wishes to have a jury trial on
5 any of the charges that are presently against them? If you
6 do wish to have a jury trial, please stand at this time, if
7 you wish to have a jury trial.

8 (No response)

9 THE COURT: In addition to giving up your right to
10 a jury trial there are other very important Constitutional
11 Rights that you are entitled to, but that you have to give
12 up in order to enter a plea.

13 You have to give up your right to confront and
14 cross-examine the State's witnesses. You also have to give
15 up your right to present evidence which you or your lawyer
16 may feel would establish some type of defense to the charge
17 or charges against you, and you have to give up your right
18 of subpoena, and you have to give up your right to remain
19 silent.

20 If you understand all of those rights and wish to
21 give up those rights and go forward with entering the plea
22 at this time, then I need for you to please stand.

23 Let the record reflect that everyone stood,
24 except -- what's your name, sir?

25 DEFENDANT CALEB HUDSON: Caleb Hudson.

1 THE COURT: Except Mr. Hudson stood.

2 Thank you very much. You may be seated.

3 Again, now, if ever during this process if any of
4 you wish to speak to your lawyer, just let me know and I'll
5 allow you to talk to your lawyer in private.

6 All of you --

7 DEFENDANT CALEB HUDSON: I wish to do that, sir.

8 THE COURT: All right. If all of you who joined
9 us from the gallery, please return back to the gallery.

10 And Mr. Hudson, Mr. Snyder will speak with you.

11 (Off the record)

12 (Back on the record)

13 THE COURT: Your Honor, standing before you is
14 Harold Turner. He is pleading under True Billed Indictment
15 Number 2013-GS-42-1470, which is petit larceny; True Billed
16 Indictment Number 2013A4210100044, which is burglary first
17 degree. He's pleading to the lesser included of burglary
18 third degree; and also True Billed Indictment Number
19 2012-GS-42-4608, which is armed robbery. He's pleading to
20 common law robbery.

21 I'm also passing up a signed restitution order in
22 the amount of \$2,000.

23 He's represented by attorney Andrea Price.

24 As a result of this plea the State is dismissing a
25 pointing and presenting charge and also a possession of a

1 weapon during a violent crime charge.

2 The State is recommending a cap of seven years on
3 the robbery; concurrent sentencing and restitution in the
4 amount of \$2,000.

5 THE COURT: You are Mr. Turner?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Sir, I need to remind you that you
8 remain under oath. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And, sir, it is your intent -- it is
11 your intent to enter a plea to the charges that were
12 announced by the solicitor?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: How old are you?

15 THE DEFENDANT: I'm 20, sir.

16 THE COURT: How far did you go in school?

17 THE DEFENDANT: 9th grade.

18 THE COURT: Did you ever obtain a GED?

19 THE DEFENDANT: No, sir.

20 THE COURT: Are you married, single, divorced,
21 widowed?

22 THE DEFENDANT: Single.

23 THE COURT: Do you have children?

24 THE DEFENDANT: No, sir.

25 THE COURT: Do you have a job outside the home, or

1 did you have one at the time that you were arrested?

2 THE DEFENDANT: I used to go to Labor Finders.

3 THE COURT: Ever serve in the military?

4 THE DEFENDANT: No, sir.

5 THE COURT: And on these charges how long a time
6 have you been in jail?

7 THE DEFENDANT: I have been in jail six months.

8 MS. PRICE: 182 days, Your Honor.

9 THE COURT: Thank you.

10 Please listen to the solicitor. She is going to
11 provide us with the facts.

12 MS. ROBINETTE: Thank you, Your Honor.

13 First is the robbery. This incident occurred on
14 May 18th, 2012, at 5 Converse Street in Spartanburg. The
15 victim stated that he was traveling with his friend at the
16 Spinks Station at the intersection of Blackstock Road and
17 W.O. Ezell Boulevard when she drove to Wal-Mart at Dorman
18 Center Drive. They were slowly driving past the Cornerstone
19 Baptist Church when a high school friend called his name.
20 While he was talking with him, the defendant, who is known
21 by the nickname of "Big Jim", asked him if he wanted to buy
22 some marijuana, but he told him that he didn't smoke. He
23 said that the defendant then pulled out a gun and demanded
24 that the victim exit the vehicle. The defendant then
25 reached down and took his I-phone and charger, as well as

1 some cash and a debit card and fled.

2 Next is the burglary. On December 25th, 2012, at
3 [REDACTED] in Spartanburg officers received an
4 alarm call and observed the front door open of the
5 residence. There were several electrical wires and devices
6 strewn about the house, but otherwise appeared to be orderly
7 and clean. The back door had been forced open and there was
8 glass on the floor. A 50 inch television had been taken
9 from the living room wall.

10 Two witnesses, who were also neighbors, stated
11 that they had observed a vehicle in front of the residence
12 for several minutes and then drive past their homes. One of
13 the witnesses identified the defendant as "Big Jim". His
14 legal name is Harold Turner. The vehicle was driven by an
15 unidentified female and had another unidentified male
16 passenger inside.

17 Officers were driving on Howard Street when they
18 saw a vehicle matching the description given near where the
19 defendant lived with his mother.

20 The defendant was identified in a photo lineup by
21 the witnesses.

22 THE COURT: Do you believe that as she stated the
23 facts that the solicitor is substantially correct?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Sir, do you understand that I'm not

1 bound by the recommendation made by the State?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And that on the petit larceny charge I
4 could sentence you up to 30 days?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: On the burglary third I could sentence
7 you up to five years?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And on the common law robbery I could
10 sentence you up to 15 years?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And you still wish to enter these
13 pleas?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Are you, in fact, guilty of the
16 burglary in the third degree charge?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Are you also guilty of the common law
19 robbery charge?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Are you also guilty of the petit
22 larceny charge?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Have all of your answers to my
25 questions been truthful?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Discovery has been shared with the
3 defense?

4 MS. ROBINETTE: Yes, Your Honor.

5 THE COURT: Prior record?

6 MS. ROBINETTE: He has a 2010 escape.

7 2011 malicious injury to personal property and a
8 probation violation.

9 THE COURT: Do we have anything besides the
10 restitution in the amount of \$2,000 to the victim? Anything
11 from the victims?

12 MS. ROBINETTE: Your Honor, we have had no contact
13 with the victim of the armed robbery.

14 The victim of the burglary did not wish to be
15 present, but is in agreement with the offer.

16 THE COURT: Anything else from the State?

17 MS. ROBINETTE: No, Your Honor.

18 THE COURT: Yes, ma'am.

19 MS. PRICE: Thank you, Your Honor.

20 I have been representing Mr. Turner continuously.
21 He's been in jail for six months on these charges.

22 I can tell you I think he's learned something from
23 that time. Unfortunately Mr. Turner is 20 years old and he
24 sees himself before this court today.

25 We would ask that given the amount of restitution

1 that is involved, that you would sentence him on the lower
2 end of the zero to seven, Your Honor, and not go above the
3 cap. Thank you.

4 THE COURT: Do you agree with what your lawyer
5 just stated?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Sir, is there anything else that you
8 would like for me to know or wish for me to consider?

9 THE DEFENDANT: I'm just trying to get it out of
10 the way, sir.

11 THE COURT: I beg your pardon?

12 THE DEFENDANT: I'm just trying to get it out of
13 the way, sir.

14 THE COURT: All right.

15 I will find that there is a substantial factual
16 basis for the plea and that the defendant's decision to
17 enter the plea has been made freely, voluntarily, knowingly
18 and intellectually by him.

19 On the robbery charge, common law robbery charge,
20 it is a 15 year sentence at the Department of Corrections.
21 That would be suspended upon the service of 10 years and the
22 service of five years of supervision.

23 He gets credit for the 182 days.

24 Restitution has been ordered.

25 I have indicated on the sentencing sheet that you

1 are not to have any contact with the victim. That's direct
2 or indirect.

3 I have also indicated that once you are released,
4 if you are able to satisfy all monetary obligations, I would
5 allow you the opportunity to terminate the probation aspect
6 of the case.

7 That will run concurrent with the five year
8 sentence on the burglary charge and the 30 day sentence on
9 the petit larceny charge.

10 Again, restitution has been ordered as indicated
11 by the executed restitution order.

12 Good luck to you, sir.

13 MS. ROBINETTE: Thank you, Your Honor.

14 MS. PRICE: Thank you.

15 (END OF REQUESTED TRANSCRIPT OF RECORD)

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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for SPARTANBURG County, South Carolina, on the 8th day of July, 2013.

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

May 16, 2014



Michael R. Watts
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Spartanburg)

2014-CP-42-1251

Heedd BERNARD TURNER #345674
Full name and prison number (if any) of Applicant)

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

INSTRUCTIONS B 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 LEE Correctional Inst 990 Wilsack Hwy Bishopville, S.C. 29010
2. Name and location of Court which imposed sentence Spartanburg
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013GS4201470

FILED
CLERK OF COURT
SPARTANBURG COUNTY
MAR 31 4 11 PM '14
HOPE BLACKLEY

(b) 2012GS4204608

(c) 2013GS4201471

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

(a) 7/8/2012 30 days

(b) 7/8/2012 3.15 years; provide that upon service of 10 years Balance 5 yrs Probation

(c) 7/8/2013 5 years

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 Ayes@ 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 Ano@ to (7), state your reasons for not so appealing:

(a) PLEA COUNSEL WAS INEFFECTIVE FOR FAILING TO INFORM ME OF MY RIGHTS AFTER MY SIGN PLEA AGREEMENT WASN'T UP HELD.

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CLERK OF COURT
SPARTANBURG COUNTY
2014 MAR 31 AM 10:16
M. HOPE BLACKLEY

- (b) Plea Counsel was ineffective by not advising me I could have changed my plea once the plea agreement wasn't up held.
- (c) _____

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

- (a) ATTACHMENTS ON BACK.
- (b) _____
- (c) _____

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

- (a) SEE ATTACHMENTS
- (b) _____
- (c) _____

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

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

13. If you answered Ayes@ 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. _____

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 2014 MAR 31 AM 10:16
 M. HOPE BLACKLEY

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

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?

N/A

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

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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SPARTANBURG COUNTY
2014 MAR 31 AM 10:16
M. HOPE BLACKLEY

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) N/A
- (b) N/A
- (c) N/A

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

- (a) your arraignment and plea? ANDREA PRICE S.C. BAR # 75786
- (b) your trial, if any? SAME
- (c) your sentencing? SAME
- (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 Ayes@ to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. SAME
 - ii. " "
 - iii. " "
- (b) the proceedings at which each such attorney represented you:
 - i. SAME
 - ii. " "
 - iii. " "

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

CORRECTION OF SENTENCING COMPENSURATE by up holding my
CAP. PLEA AGREEMENT I signed FOR (7) YEAR MAXIMUM

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)
)
County of _____)

VERIFICATION

I, _____, 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.

Harold Turner

SWORN to and subscribed before me this 25
day of March, 2014.

Diana Srin (L.S.)
Notary Public

My Commission Expires: 11-4-2015

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SPARTANBURG COUNTY
2014 MAR 31 AM 10:16
M. HOPE BLACKLEY

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

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

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

Harold Turner
Applicant

SWORN or affirmed to and subscribed before me this
25 day of March, 2014.

Debra Sims
Notary Public

My Commission Expires: 11-4-2015

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 MAR 31 AM 10:16
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON
PLEAS
JUDICIAL CIRCUIT

HAROLD BENARD TURNER # 345674

ATTACHMENT TO (PCR)
APPLICATION

V.

STATE OF SOUTH CAROLINA

RESPONDENT

10.(A) APPLICANT U.S.C.A. CONST. AMENDS. 5, 6, 14 WAS VIOLATED BECAUSE PLEA WAS IN VIOLATION OF AN UNDISCLOSED PLEA BARGAIN THAT WAS UNKEPT BY THE STATE, THAT APPLICANT WOULD RECEIVE A MAXIMUM SENTENCE OF NO MORE THAN (7) YEARS. APPLICANT STATES HIS PLEA WAS NOT KNOWINGLY AND VOLUNTARILY MADE. APPLICANT STATES HIS PLEA OF GUILTY WAS ENTERED ONLY AFTER APPLICANT WAS PROMISED BY COUNSEL AND THE COURT AND ON THE SENTENCE SHEET WOULD NOT EXCEED A MAXIMUM OF (7) YEARS

M. HOPE BLACKLEY
24 MAR 31 AM 10:16
FILED
THE CLERK OF COURT
SPARTANBURG COUNTY

10.(B) IN CRAWFORD V. U.S., 519 F.2D 347 AND MORE PARTICULARLY HARRIS, 460 F. 2D 988, HELD A PRISONER THAT ESTABLISHED CAUSE WILL BE PERMITTED TO CONTROVERT THE STATEMENTS MADE BY HIM AT THE TIME THAT HE TENDERED A PLEA OF GUILTY. THE COURT HELD AN UNKEPT PLEA BARGAIN REQUIRES EXPLORATION OF THE RECORD OF ANY PROMISE THAT INDUCED APPLICANT PLEA. BECAUSE IT IS WELL KNOWN THAT A DEFENDANT WILL SOMETIMES

DENY THE EXISTANCE OF A BARGAIN... OUT OF FEAR THAT A TRUTHFUL RESPONSE WOULD JEOPARDIZE THE BARGAIN APPLICANT IS ALLEDGING THAT THE COURT IMPOSITION OF SENTENCE CONSTITUTES A BREACH OF THE PLEA BARGAIN ENTERED WITH THE STATE AND DEFENSE COUNSEL, WHO ASSURED APPLICANT BEFORE ENTERING HIS GUILTY PLEA THAT THE COURT WOULD FOLLOW THE RECOMMENDATION OF THE (7) YEARS MAXIMUM PLEA. APPLICANT GAVE HIS ADMISSION SOLEY ON THE ADVICE OF COUNSEL. APPLICANT STATES THE PLEA WAS NOT KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY MADE, BUT WAS THE PRODUCT OF ~~TRICKERY, MISADVICE, AND THE EFFECTIVE ASSISTANCE OF COUNSEL~~ WHICH VIOLATED APPLICANTS DUE PROCESS

IT IS AXIOMATIC THAT TO BE VOLUNTARILY AND KNOWINGLY MADE A PLEA OF GUILTY MUST BE SOLEY THE PRODUCT OF THE ACCUSED'S INFORMED FREE WILL. A GUILTY PLEA AND MUST BE STRICKEN IF THAT FREE WILL IS VIOLATED BY THE PROSECUTOR OR THE ACCUSED'S LAWYER

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 CLERK OF COURT
 SPANBURG COUNTY
 2014 MAR 31 AM 10:16
 M. HOPE BLACKLEY
 EVERBORNE

ARGUMENT

(A) AN UNKEPT BARGAIN WHICH HAS INDUCED A GUILTY PLEA IS GROUNDS FOR RELIEF FROM SENTENCE, SANTOBELLO V. NEW YORK, 404 U.S. 287, IT ALSO STATED THAT THE ADJUDICATIVE ELEMENT

INHERENT IN ACCEPTING A PLEA OF GUILTY, MUST BE ATTENDED BY SAFEGUARDS TO INSURE THE DEFENDANT WHAT IS REASONABLY DUE IN THE CIRCUMSTANCES. THOSE CIRCUMSTANCES WILL VARY. A CONSTANT FACTOR IS THAT WHEN A PLEA REST IN ANY SIGNIFICANT DEGREE ON A PROMISE OF AGREEMENT OF THE PROSECUTOR, SO THAT IT CAN BE SAID TO BE PART OF THE INDUCEMENT OR CONSIDERATION, SUCH PROMISE MUST BE FULLFIED.

(B) IF APPLICANT WAS INFACT PROMISED BY COUNSEL THAT HE WOULD RECIEVE A CAP. OF A (7) YEAR SENTENCE, APPLICANT IS ENTITLED TO RELIEF, U.S. V CARTER, 454 F.2D 426.

(C) WALKER V. JOHNSON, 312 U.S. 275 CLEARLY HELD THAT A FEDERAL PRISONER IF HE HAD BEEN TROCKED BY THE PROSECUTOR THROUGH MISREPRESENTATIONS INTO PLEADING GUILTY THEN HIS DUE PROCESS RIGHTS WERE OFFENDED. IT STATED THE LOWER COURTS HAVE UNINFORMLY HEID THAT A PRISONER IS ENTITLED TO SOME FORM WHEN HE SHOWS THAT THE PROSECTOR RENEGED ON AN AGREEMENT MADE IN CONNECTION WITH A PLEA BARGAIN.

(D) IT IS WELL KNOWN THAT A DEFENDANT WILL DENY THE EXISTANCE OF A BARGAIN THAT HAS IN FACT OCCURRED, WHITE V. GATNEY, 435 F. 2D 1241, JONES V. U.S. 423 F. 2D 252; OUT OF FEAR THAT THE TRUTH WOULD JEOPARDIZE THE BARGAIN.

FILED
CLERK OF COURT
PARTANBURG COUNTY
2011 MAR 31 AM 10:16
BY
H. HOPE BRACKLEY
SECRETARY

IF THE JUDGE, THE PROSECUTION, OR THE DEFENSE
 COUNSEL MAKES A STATEMENT IN OPEN COURT THAT
 IS CONTRARY TO WHAT HE HAS BEEN LED TO
 BELIEVE, ESPECIALLY AS TO PROMISES BY THE PROSECUTOR
 OR HIS DEFENSE COUNSEL... [THE DEFENDANT] WOULD
 NO MORE CHALLENGE THE STATEMENT IN OPEN
 COURT THAN HE WOULD CHALLENGE A CLERGYMAN'S
 SERMON FROM THE PULPIT, U.S. V WILLIAMS, 407 F. 2D 940.

THIS 25 DAY OF March 2014

s/ Harold Turner
 Respectfully Submitted

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2014 MAR 31 AM 10:16
 M. HOPE BLACKBURN

STATE OF SOUTH CAROLINA

THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
STATE VS.

INDICTMENT/CASE#: 2012GS4204608
A/W#: N157405
Date of Offense: 5/18/2012
S.C. Code § : 16-11-0325
CDR Code #: 0137

Harold Bernard Turner

AKA:

Race: BLACK Sex: M Age: 20

DOB: SS#:

Address:

City, State Zip:

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Robbery / Common law robbery, strong arm robbery (0-15 yrs)

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-11-0325 of the S.C. Code of Laws, bearing CDR Code # 0137
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

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

ATTEST: Timi Poulos 70455 SC Bar# Harold Turner Defendant Timi Poulos 75786 Attorney for Defendant SC Bar#

WHEREFORE, the Defendant 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 10 days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5

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

CONCURRENT or CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 19 2 days

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

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

SPECIAL CONDITIONS

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP once all \$ is paid

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

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	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$ 500.00
§ 14-1-212 (Law Enforce Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 18.90
TOTAL	\$	\$ 648.90

Clerk of Court/ Deputy Clerk B. Brumfield

Court Reporter: M. W. H. S.

SCCA 017 (02/2011)

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: reluctant with the

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

Presiding Judge _____

Judge Code: 2133

Sentence Date: 7-8-13

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 MAR 21 AM 10:16
M. HOBBS BLACKLEY

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG VS. STATE

Harold Bernard Turner

INDICTMENT/CASE#: 2013GS4201470

A/W#: 2013A4210100042

Date of Offense: 12/25/2012

S.C. Code § : 16-13-0030(A)

CDR Code #: 3419

Race: BLACK Sex: M Age: 20

DOB: [redacted] SS#: [redacted]

Address: [redacted]

City, State, Zip: [redacted]

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: Larceny / Petit or Simple Larceny - \$2,000 or less (0-30 days)

SENTENCE SHEET

[] CONVICTED OF or [X] PLEADS

in violation of § 16-13-0030(A) of the S.C. Code of Laws, bearing CDR Code # 3419

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

The charge is: [X] As Indicted, [] Lesser Included Offense, [] Defendant Waives Presentment to Grand Jury. (defendant's initials)

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

ATTEST: Timi Poulos 70455 SC Bar# [redacted] Defendant; [redacted] 75786 SC Bar# Attorney for Defendant

WHEREFORE, the Defendant is committed to the [] State Department of Corrections, [X] County Detention Center, for a determinate term of 30 days/months/years or [] under the Youthful Offender Act not to exceed [] years and/or to pay a fine of \$ []; provided that upon the service of [] days/months/years and/or payment of \$ []; plus costs and assessments as applicable*; the balance is suspended with probation for []

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

[X] CONCURRENT or [] CONSECUTIVE to sentence on: [X] 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. 182 days [] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-66 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

PTUP [] days/hours Public Service employment

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

Table with columns for Fee, Amount, and Total. Rows include various assessments like § 14-1-206, § 14-1-211(A)(1), § 14-1-211(A)(2), § 56-5-2995, § 56-1-286, Proviso 47.9, § 14-1-212, § 14-1-213, § 50-21-114, § 56-5-2942(J), Proviso 90.5, and 3% to County.

Clerk of Court/ Deputy Clerk: B. Beemhul; Court Reporter: M. Watts

Presiding Judge: [Signature]; Judge Code: 2132; Sentence Date: 1/8/13

FILED CLERK OF COURT SPARTANBURG COUNTY 2014 MAR 31 AM 10:16 M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
STATE VS.

Harold Bernard Turner

AKA: _____

Race: BLACK Sex: M Age: 20

DOB: _____ SS#: _____

Address: _____

City, State, Zip: _____

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 / Burglary (After June 20, 1985) - Third degree - 1st offense (0-5 yrs)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS4201471

A/W#: 2013A4210100044

Date of Offense: 12/25/2012

S.C. Code § : 16-11-0313

CDR Code #: 0427

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-11-0313 of the S.C. Code of Laws, bearing CDR Code # 0427

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

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

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

ATTEST: Timi Poulos 20455 Harold Turner Timi Poulos 75786
POULOS, TIMI SC Bar# Defendant Journey for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 5 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. 182 days

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 26-25-15.

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 _____ days/hours Public Service Employment

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	\$
§ 56-5-2995 (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(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

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: no contact with victim

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

Presiding Judge _____

Judge Code: 2132

Sentence Date: 7-8-13

Clerk of Court/ Deputy Clerk B Greenfield
Court Reporter: M White

FILED
CLERK OF COURT
SPARTANBURG COUNTY
MAR 31 AND 13
HOPPE-BLACKLEY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Harold Bernard Turner, #345674,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2014-CP-42-1251

RETURN

Respondent, making its Return to the application for post-conviction relief (PCR) filed March 31, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the August 2012 term of the Spartanburg County Grand Jury for armed robbery (2012-GS-42-4608); and possession of a weapon during a violent crime (count two). Applicant was subsequently indicted at the April 2013 term of the Spartanburg County Grand Jury for burglary – 1st degree (2013-GS-42-1471); and petit larceny (2013-GS-42-1470). The Applicant was represented by Andrea Price, Esquire. On July 8, 2013, the Applicant pled guilty to the lesser included offenses of common law robbery and burglary – 3rd degree. In addition, the Applicant pled guilty as indicted to petit larceny. The charge of possession of a weapon during a violent crime was *nolle prossed*. The State recommended a cap of seven years, concurrent sentences, and restitution. The Honorable J. Mark Hayes, II, sentenced Applicant to fifteen years for common law robbery, with the balance to be suspended with probation for five years after the service of ten years; however, upon the payment of all monetary obligations, any remaining

probationary sentence to be terminated. Judge Hayes also sentenced the Applicant to five years for burglary - 3rd degree, and thirty days for petit larceny. The sentences were set to run concurrently. The Applicant did not appeal his convictions or sentences.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Involuntary guilty plea; specifically:
 - a. Plea was made only after Applicant was promised by Counsel and the court and the sentence sheet that the sentence would not exceed a maximum of seven years;
2. Ineffective assistance of counsel; specifically:
 - a. Counsel failed to inform Applicant of rights, including right to withdraw the plea, once the signed plea agreement was not held up.

III.

The Applicant alleges that he did not plead guilty freely and voluntarily. The State submits this allegation has no merit. To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The State submits the transcript reflects that the pleas were knowingly and voluntarily

entered with a full understanding of the charges and consequences of the plea. Boykin, supra; Dover, supra. Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). The State submits the Applicant should not be allowed to depart from the truth of the statements he made during his guilty plea hearing.

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given the Applicant's burden of proof and the analysis to be applied to this claim, the Respondent submits that the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it should therefore, be treated as such.

IV.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process

that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 334 S.E.2d 813.

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

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

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

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the claims of involuntary guilty plea and ineffective assistance of counsel.

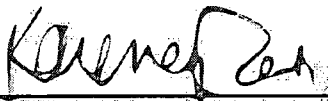
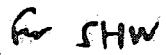
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General

By:  
~~ATTORNEYS FOR RESPON NT~~
 Office of the Attorney General
 P.O. Box 11549
 Columbia, SC 29211
 Telephone: (803) 734-3737

Oct 3, 2014.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
)
 HAROLD BERNARD TURNER, #345674)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

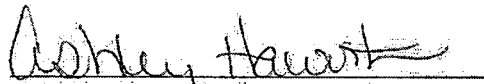
2014-CP-42-1251

AFFIDAVIT OF SERVICE BY MAIL

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

Mr. John Brandt Rucker, Esquire
Brandt Rucker Attorney At Law
522 North Church Street
Greenville, SC 29601

DATED this 3RD day of October, 2014.



 Ashley Haworth, Legal Assistant
 For Respondent

State of South Carolina)
) Court of Common Pleas
 County of Spartanburg)
 Post Conviction Relief

Harold Bernard Turner)
) vs.) Transcript of Record
))
))
 State of South Carolina)
) Defendant)

November 9, 2015
 Spartanburg, South Carolina

B E F O R E:

Honorable Larry B. Hyman, Judge

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

Alicia A. Olive, Assistant Attorney General
 Attorney for the State

J. Brandt Rucker, Esq.
 Attorney for the Defendant

Joy E. Holston
 Official Court Reporter

I N D E X O F W I T N E S S E S

(IC) - Denotes In Camera
(PW) - Denotes Defense Witness
(SW) - Denotes State's Witness

(PW) Harold Turner

Direct examination by Mr. Rucker: 5
Cross-examination by Ms. Olive: 9

(SW) Andrea Price

Direct examination by Ms. Olive: 11
Cross-examination by Mr. Rucker: 14
Redirect examination by Ms. Olive: 18

Certificate of Reporter: 22

EXHIBITS

(No Exhibits were introduced.)

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1 MS. OLIVE: Your Honor, the next case is Harold
2 Bernard Turner.

3 THE COURT: And this is who now? Harold Bernard
4 Turner?

5 MR. RUCKER: Yes, sir.

6 MS. OLIVE: Yes, Your Honor.

7 THE COURT: All right, Mr. Rucker, tell me about it,
8 what you seek and your basic grounds.

9 MR. RUCKER: Your Honor, my client alleges
10 involuntary guilty plea. He understood the terms of the
11 actual guilty plea were going to be different than he
12 ended up getting and we are seeking remand.

13 THE COURT: All right. Mr. Turner, you have asked
14 for a Post Conviction Relief?

15 MR. TURNER: Yes, sir.

16 THE COURT: And I am going to remind you that I can
17 either grant it or deny it, based on what I hear today.
18 If I grant you relief, that doesn't mean that these
19 charges go away, it doesn't mean that you are going to be
20 immediately released. What it means is this. You are
21 going to go back to square one, and if there were any
22 charges reduced, if there were any charges dismissed, they
23 are all going to come back to you. Do you understand
24 this?

25 MR. TURNER: Yes, sir.

1 THE COURT: And you are going to be retried just as
2 though that the first trial or plea never happened. Do
3 you understand that?

4 MR. TURNER: Yes, sir.

5 THE COURT: So you are going to be facing your
6 original charge, do you understand that?

7 MR. TURNER: Yes, sir.

8 THE COURT: All right, and Mr. Rucker has told you
9 that?

10 MR. TURNER: Yes, sir.

11 THE COURT: No question about it?

12 MR. TURNER: No, sir.

13 THE COURT: All right, let's go ahead.

14 MR. RUCKER: I call my client to the stand, Harold
15 Turner.

16 HAROLD TURNER, being
17 first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 By Mr. Rucker:

20 Q Mr. Turner, what is your current sentence that you
21 are serving?

22 A 15 years suspended to 10 with 5 years of probation.

23 Q And what was the charge you plead guilty to or
24 charges?

25 A They dropped the burglary first to a third degree,

1 first offense. And dropped the armed robbery to a common
2 law robbery.

3 Q And who was your attorney during that plea?

4 A Andrea Price.

5 Q How long had she represented you at that point?

6 A The whole six months I was locked up.

7 Q Were you brought over from jail to enter the plea?

8 A Yes, sir.

9 Q Were y'all on the trial docket at that time, to your
10 knowledge?

11 A I am not really sure.

12 Q Did you have, were you ever sent an offer from the
13 Solicitor's office to plead guilty?

14 A The plea that I had signed for, yeah.

15 Q Did you receive that offer from your attorney or
16 directly from the Solicitor's office?

17 A From my attorney.

18 Q How many times did you meet with your attorney during
19 the course of her representation?

20 A I met with her once, no, I met with her twice, I met
21 with her twice.

22 Q The last meeting you had with her, how long before
23 you entered the plea was that?

24 A It was the Friday before I went to court that Monday.

25 Q What did she tell you the offer was?

1 A She came in and said you are going to plea for 0 to
2 7. And I asked her, would that be a cap and she told me
3 she wasn't sure. So when I went to court that Monday and
4 she came in and there was a cap on it and I signed it.
5 She did not verbally tell me that it was a promise, an
6 agreement but being that it was a cap I signed for it, I
7 signed on the plea page.

8 Q Did you see the term or the phrase, cap of 7 years on
9 the sentencing sheet when you signed it?

10 A Yes, sir.

11 Q And is that the sentencing sheet that is in the
12 Clerk's office?

13 A Yes, sir.

14 Q What did you understand a cap of 7 years to mean?

15 A Meaning that it wasn't going to exceed the 7 years,
16 meaning I would not get no more than 7.

17 Q Okay. Did the Judge ask you what you thought, what
18 you were agreeing to?

19 A Yes, sir.

20 Q Did he specifically say on the record that it was a
21 cap of 7 years?

22 A No, he told me that it was a recommendation from the
23 State, that he did not have to go with any recommendation.

24 Q How did that affect your understanding of the cap of
25 7 years language on the sentencing sheet?

1 A Of what he said?

2 Q What he said, since he was going to sentence you?

3 A To my knowledge he was just telling me that he
4 didn't, he doesn't have to, to my knowledge. That was my
5 understanding.

6 Q Okay. When you went into the courtroom after talking
7 to Ms. Price did you think the Judge could do that, ignore
8 the cap of 7 years?

9 A I didn't think that he could.

10 Q Okay. Were you surprised by the sentence you
11 actually got?

12 A Yes, sir.

13 Q You feel like you voluntarily plead to a sentence
14 that was not what y'all had negotiated?

15 A No, sir.

16 Q So what kind of relief are you asking from the Court
17 at this point?

18 A I am just asking for what I signed for which is a cap
19 of 7 years.

20 Q No further questions.

21 THE COURT: Counsel, you are talking about a
22 sentencing sheet that has an indication on it that there
23 is a 7 year cap?

24 MR. RUCKER: Yes, sir.

25 THE COURT: I just want to, I am looking at the file,

1 I want to know what you are looking at.

2 MR. RUCKER: The copies I have received from the
3 Attorney General's office, above Andrea Price's signature,
4 attorney for the Defendant, it says cap of 7 years.

5 THE COURT: Okay, I see it, it is on the common law
6 robbery.

7 MR. RUCKER: I apologize, Your Honor, that is right.
8 Okay.

9 THE COURT: Ms. Olive.

10 MS. OLIVE: Thank you.

11 CROSS-EXAMINATION

12 By Ms. Olive:

13 Q Good morning, Mr. Turner. You testified a moment ago
14 that the Judge did tell you he was not bound by the
15 State's recommendation of a cap of 7 years, correct?

16 A Yes, ma'am.

17 Q And you understand the time that you would be facing,
18 that you would have been facing had you not, had you gone
19 forward on the burglary first charge?

20 A Yes, ma'am.

21 Q And you did, at your guilty plea hearing you did
22 admit that you were guilty, correct?

23 A Yes, ma'am.

24 Q That is all the questions that I have.

25 MR. RUCKER: Nothing further, Your Honor.

1 THE COURT: All right, let me ask you. The Judge
2 clearly told you he was not bound by that, didn't he?

3 A Yes, sir.

4 THE COURT: Did he tell you on the burglary third
5 degree you were looking at up to 5 years?

6 A Yes, sir.

7 THE COURT: And did he tell you with a common law
8 robbery, you were looking at 15 years?

9 MR. TURNER: Yes, sir.

10 THE COURT: And he told you he was not bound by the
11 cap?

12 A Yes, sir.

13 THE COURT: All right. Thank you. All right, Mr.
14 Rucker, let me hear from you.

15 MR. RUCKER: Your Honor, he is my only witness.

16 THE COURT: Do you have an argument?

17 MR. RUCKER: Certainly I do. Mr. Turner had no
18 experience or limited experience with the criminal justice
19 system. He relied on the advice of his counsel and then
20 he gets a sentencing sheet that clearly lays out cap of 7
21 years. He may of heard what the Judge said, this is a
22 complicated system, that is why we have lawyers in the
23 first place. He relied on his lawyer, he relied on--

24 THE COURT: The Judge makes sure that he understands.

25 MR. RUCKER: Yes sir, but I think, he didn't know the

1 way the system would work at that point and he had no
2 reason to believe that what he signed didn't trump
3 whatever the Judge said. And the Judge also told him he
4 could sentence him excessively over the amount of time
5 that he ended up getting so he could relate, he would
6 understand that he would get a less time than he was
7 exposed to.

8 THE COURT: Yes, ma'am.

9 MS. OLIVE: Your Honor, I would call his trial
10 counsel, Andrea Price to the stand.

11 THE COURT: Very well. I am sorry, I did not know
12 you were going to do that. I would not have ask you for
13 an argument. Okay, call her.

14 ANDREA PRICE, being
15 first duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 By Ms. Olive:

18 Q Good morning, Ms. Price.

19 A Good morning.

20 Q How long have you been practicing law?

21 A It will be, I have been with the Public Defender's
22 Office, it will be nine years in February.

23 Q So, the entire time you have been practicing law you
24 have been with the Public Defender's Office?

25 A That's correct.

1 Q And do you recall how many times you met with Mr.
2 Turner?

3 A I don't.

4 Q Is there a typical amount of times that you meet with
5 your clients before going to plea?

6 A There is not. While incarcerated, I do meet with my
7 clients more than I would if the clients are on bond. But
8 I do remember meeting with Mr. Turner at least twice.

9 Q And did you file a motion for discovery in this case?

10 A I did.

11 Q Did you go over the discovery with Mr. Turner?

12 A I did.

13 Q Did you discuss the State's evidence with him?

14 A I did. That is what I typically do with my clients.

15 Q And how would you characterize that in this case?

16 A There were, he had several different charges. He was
17 charged with burglary first, petty larceny and pointing
18 and presenting a firearm. He was given an offer and I
19 took him the offer after going over the discovery with
20 him.

21 Q And were any of his charges dismissed as a result of
22 this plea?

23 A Let's see, yes, they were. The pointing and
24 presenting and possession of a weapon during a violent
25 crime.

1 Q And did you discuss with him his version of the
2 events, his version of the facts?

3 A Yes, I am sure we did but I don't have any specific
4 notes on what we discussed.

5 THE COURT: Counsel, I am a little bit confused. Was
6 there a, the petitioner testified that there was an armed
7 robbery also, or I understood. And it was all reduced to
8 a burg third and a common law robbery.

9 MS. OLIVE: Your Honor, I am looking at our return
10 and that is correct, he was indicted for armed robbery,
11 possession of a weapon during the commission of a violent
12 crime and he was also indicted for burglary first and
13 petty larceny. What he plead to was common law robbery
14 and burglary third. And I am sorry, he also plead guilty,
15 indicted to petty larceny. The possession of a weapon
16 charge was nolle proded.

17 THE COURT: All right. Go ahead.

18 Q Ms. Price, did you discuss any potential defenses
19 that he might have to these charges with him?

20 A That is something that I talk about with my clients.

21 Q And did you feel that he had any defenses to these
22 charges?

23 A If I did I would have encouraged him to go to trial.

24 Q Have you, you already testified that you did discuss
25 the plea negotiations with Mr. Turner?

1 A I did, on May the 28th of 2013.

2 Q And did, would you have discussed whatever rights he
3 was waiving that would have been associated with going to
4 trial?

5 A I do and I do that again when I sign their sentencing
6 sheets with them.

7 Q And ultimately whose decision was it to plead guilty?

8 A The client's.

9 Q And do you have the sentencing sheet in front of you
10 for the common law robbery? Or let me just ask you this.
11 The cap of 7 years that was discussed, was that simply a
12 recommendation or was that negotiated?

13 A It was a recommendation.

14 Q Thank you, that is all the questions I have at this
15 time.

16 THE COURT: Mr. Rucker.

17 MR. RUCKER: Your Honor, may it please the Court.

18 CROSS-EXAMINATION

19 By Mr. Rucker:

20 Q Ms. Price, why was the cap of 7 years written on the
21 sentencing sheet above your signature line?

22 A Because that was the recommendation of the State.

23 Q Did you write that or did the State write that?

24 A Ms. Poulous wrote that, the prosecutor.

25 Q Was that on there before you signed it or after you

1 signed it?

2 A I don't know if it was on there before or after I
3 signed it. But that is the recommendation, that is the
4 offer that she made that I took to Mr. Turner.

5 Q Was that on the sentencing sheet before or after
6 Harold Turner signed it?

7 A I don't know.

8 Q Mr. Turner was pleading guilty, he was accepting his
9 responsibility to the underlying charges, correct?

10 A Yes.

11 Q And you were attempting to resolve the case that day,
12 right?

13 A Yes.

14 Q So, how could he not interpret, strike that. It says
15 a cap of 7 years on the sentencing sheet. You don't
16 debate or dispute that he saw that on the sentencing
17 sheet, do you?

18 A No.

19 Q Did you explain to him that he was looking at a cap
20 of 7 years in this case?

21 A I explained to him that was the State's
22 recommendation.

23 Q And the State put that on the sentencing sheet
24 specifically, do they normally write what the
25 recommendation cap is on their sentencing sheets?

1 A Yes, they usually do.

2 Q Has Mr. Turner been through that process before, to
3 your knowledge?

4 A I need to consult with His Honor for a moment.

5 (Whereupon, the witness, Ms. Price and the Court have
6 a conference.)

7 Q Did he sign sentencing sheets before that had caps
8 listed?

9 A I can't remember his previous sentence but I did
10 represent Mr. Turner previously.

11 Q And in that previous representation did he get the
12 sentence that he thought he was going to get?

13 A I don't know, I don't remember, I don't have that
14 file in front of me.

15 Q So the cap of 7 years is reasonable to think that he
16 could have interpreted that as to what the sentence was
17 going to actually be, is that fair as a non-attorney?

18 A That is reasonable to be an expectation what the
19 recommendation was. But I also explain to all of my
20 clients that that is typically a recommendation and it is
21 ultimately up to the Judge what the sentence will be.

22 Q You independently recall talking to him specifically
23 about the difference between a negotiated sentence and a
24 recommendation?

25 A No.

1 Q Did you take it in your notes, take down in your
2 notes that you had done that?

3 A No.

4 Q Is it fairly common for defendants to misunderstand
5 the difference between negotiated sentences and
6 recommendations?

7 A Not--

8 MS. OLIVE: Objection, Your Honor, that calls for
9 speculation.

10 Q In your experience have you had clients had trouble
11 before understanding the difference between negotiated
12 sentences and recommendations?

13 A No.

14 Q So every one of your defense clients have understood
15 the difference between a recommendation and negotiated
16 sentence?

17 A I can't speak for all of my clients, for almost the
18 nine years I have been practicing, but in a negotiated
19 sentence I have found in my recommendation is fairly rare.

20 Q Okay. But I am simply trying to clarify, would he
21 have understood from the sentencing sheet that he could
22 have gotten more than 7 years.

23 MS. OLIVE: Your Honor, objection, calls for
24 speculation.

25 THE COURT: I understand. Respond if you can.

1 MR. RUCKER: I will rephrase, Your Honor.

2 THE COURT: Okay.

3 Q Cap of 7 years was written on the sentencing sheet,
4 right?

5 A Yes, it is.

6 Q And y'all had talked at some point before about him
7 getting, the State recommending a cap of 7 years?

8 A That's correct.

9 Q And in his discussion with you did he explain to you
10 that he would take the 7 year offer?

11 A Yes, according to my notes I have about that, yes.

12 Q So he understood to be a 7 year offer at the time he
13 went to his sentencing?

14 A Yes.

15 Q No further questions.

16 REDIRECT EXAMINATION

17 By Ms. Olive:

18 Q Do you recall the Judge explaining to him at the plea
19 hearing that he was not bound by the cap of 7 years?

20 A As I read through the transcript, yes.

21 Q Thank you, nothing further.

22 MR. RUCKER: Nothing further.

23 THE COURT: You may step down.

24 MR. PRICE: Thank you.

25 THE COURT: Anything from the State?

1 MS. OLIVE: Just an argument, Your Honor.

2 THE COURT: All right. And I apologize, Mr. Rucker,
3 I cut you off earlier.

4 MR. RUCKER: The only thing that I would add to my
5 previous argument is that she admitted that my client
6 understood, as he expressed it to her, that he was going
7 to get 7 years, that he was looking at a 7 year sentence,
8 that he would do the 7 years.

9 THE COURT: Ms. Olive.

10 MS. OLIVE: Your Honor, it is our position that the,
11 to the extent that this Court finds that there was any
12 sort of miscommunication regarding the offer, which it is
13 our position it is not--

14 THE COURT: Miscommunication is not a deficient in
15 performance in my view. Go ahead.

16 MS. OLIVE: We do agree with that, Your Honor. Even
17 if there were, the Court clearly informed him that it was
18 not bound by the State's recommendation. He plead guilty
19 to a lesser included offenses, he was looking at a lot
20 more time. I think he clearly got a bargain in this case.
21 It is our position counsel was not ineffective and there
22 was no prejudice.

23 THE COURT: It is my ruling, my finding that in this
24 case the petitioner did enjoy the benefits of a
25 significant reduction in the charges that he had. In

1 order to show ineffective assistance of counsel in a plea
2 situation the petitioner would show that Counsel's
3 performance was deficient and that there was a reasonable
4 possibility that but for the counsel errors he would not
5 have plead guilty. I do not find that to be the case
6 here. First of all, I have serious doubts of whether
7 there is any deficiency in trial counsel's performance.
8 There seems to be no question that he was informed that it
9 was a recommendation, that it was a cap. There was no
10 protest on his part when the trial Judge informed him very
11 clearly that he could give him 5 years on the burg third
12 and 15 years on the strong armed robbery, that he could go
13 beyond it. He has admitted to that. Even if trial
14 counsel had said, you are going to get 7 years, which it
15 is not clear in this record and she said she did not tell
16 him, even if I believed that to be the case, it is clear
17 here that the Judge, trial Judge corrected that and
18 informed this petitioner clearly that he could receive
19 essentially 20 years. This plea was made under
20 circumstances for this petitioner, gave him tremendous
21 benefit from the work of trial counsel for getting these
22 charges reduced. And not only did he receive significant
23 less time, he dropped into the parolable area of
24 sentencing. These are not eighty-five percent sentences
25 that he received. I am going to deny relief. Prepare an

1 order, Ms. Olive.

2 MS. OLIVE: Yes sir, Your Honor.

3 MR. RUCKER: Thank you, Your Honor.

4 THE COURT: Thank you very much.

5 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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CERTIFICATE OF REPORTER

State of South Carolina)
)
County of Newberry)

I, Joy E. Holston, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the County of Spartanburg, South Carolina on the 9th day of November, 2015.

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

November 6, 2016

Joy E. Holston

Joy E. Holston, Court Reporter

My Commission expires: May 2, 2026

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Harold Bernard Turner, #345674,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 IN THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2014-CP-42-1251

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 31, 2014. Respondent made its Return on or about October 3, 2014. The Court convened an evidentiary hearing into the matter on November 9, 2015, at the Spartanburg County Courthouse. Applicant was present at the hearing and represented by John Brandt Rucker, Esquire. Alicia A. Olive, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Andrea Price, Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In August 2012, the Spartanburg County Grand Jury indicted Applicant for armed robbery and possession of a weapon during a violent crime (2012-GS-42-4608, count 1 and 2). Applicant was subsequently

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 CLERK OF COURT
 SPARTANBURG COUNTY

indicted at the April 2013 term of the Spartanburg County Grand Jury for burglary, first degree (2013-GS-42-1471); and petit larceny (2013-GS-42-1470). Andrea Price, Esquire, ("Counsel") represented him. On July 8, 2013, Applicant pleaded guilty before the Honorable J. Mark Hayes, II, to the lesser included offenses of common law robbery and burglary, third degree, and to petit larceny as indicted. The charge of possession of a weapon during a violent crime was *nolle prossed*. The State recommended a cap of seven years, concurrent sentences, and restitution. Judge Hayes sentenced Applicant to fifteen years for common law robbery, suspended on the service of ten years of imprisonment to five years of probation; however, he ordered that upon the payment of all monetary obligations, any remaining probationary sentence was to be terminated. Judge Hayes also sentenced Applicant to five years for third degree burglary and thirty days for petit larceny. Judge Hayes ordered the sentences to run concurrently. Applicant did not appeal his convictions or sentences.

II. ALLEGATIONS

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

1. Ineffective assistance of counsel; specifically:
 - a. Counsel failed to inform Applicant of rights, including right to withdraw the plea, once the signed plea agreement was not held up.
2. Involuntary guilty plea; specifically:
 - a. Plea was made only after Applicant was promised by Counsel and the court and the sentence sheet that the sentence would not exceed a maximum of seven years;

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact

and conclusions of law as required by S.C. Code Ann. § 17-27-80.

A. Ineffective Assistance of Plea Counsel

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove 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." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

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

The Court uses a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, the Court measures counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced Applicant such that "Here a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea

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 STATE OF SOUTH CAROLINA

counsel, Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Applicant alleges Counsel was ineffective in failing to inform him of his rights or that he could withdraw his plea. This Court finds Applicant has failed to satisfy his burden of proving that Counsel's performance fell below an objective standard of reasonableness. Counsel testified she met with Applicant at least twice prior to the plea. She testified that she reviewed discovery with Applicant and discussed the evidence that the State had against him. She testified that she received a plea offer from the State, which she discussed with Applicant. She stated she discussed his constitutional rights with him including those rights he would be waiving by pleading guilty. Counsel testified that there was a recommended cap of seven years by the State, but that she never promised Applicant that he would get a maximum of seven years. Counsel testified that as part of the agreement, the State dismissed count two of the armed robbery indictment. The plea judge also asked Applicant if he understood the judge was not bound by the recommendation and that he could sentence him up to five years on the burglary charge and fifteen years on the armed robbery charge. Applicant indicated his understanding and made no protest. See Crawford v. United States, 519 F.2d 347 (4th Cir.1975) (adopting rule that statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements). Further, as to the burglary charge, a witness identified Applicant. Applicant was also identified by witnesses in a photo line-up. Based on the evidence against him and the charges for which he was indicted, Applicant received a tremendous benefit of the work of Counsel in obtaining a

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reduction in the charges. Accordingly, this Court finds Applicant has failed to satisfy his burden of proving any deficiency in Counsel's performance.

This Court likewise finds Applicant has failed to satisfy his burden of proving prejudice. Ordinarily, to show prejudice when seeking relief from a guilty plea, Applicant must do "more than simply . . . [assert] that but for counsel's deficient performance he would not have pled but would have gone to trial." Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009) (citing Hill v. Lockhart, 474 U.S. 52 (1985)). Rather, he must show "something that would have affected counsel's advice to [the applicant] to accept the plea bargain offered or that would have caused [the applicant] to decline to accept it." See Id. at 563, 681 S.E.2d at 594. Here, Applicant was indicted for armed robbery, which carries ten to thirty years upon conviction, and first degree burglary, which carries fifteen years to life upon conviction. S.C. Code Ann. §§ 16-11-311, and -330(A). In accepting the State's offer, Applicant benefited from a significant reduction in these charges. Applicant has produced no evidence to show that he believed the sentence was a negotiated seven year sentence. The State made its recommendation at the plea hearing, but the plea judge also informed Applicant that he did not have to accept the recommendation and could sentence Applicant up to an aggregate twenty year sentence. On the plea sheet for robbery, "(0-15yrs)" was written beside offense to indicate the sentencing range. In addition, the box for "Recommendation by the State" was checked on Applicant's plea sheets. Underneath that checked box is the handwritten statement "cap of 7 yrs." Applicant has alleged only that he thought he would be sentenced to a maximum of seven years but actually received fifteen suspended to ten. Applicant has failed to satisfy his burden of proving that but for Counsel's alleged error he would have insisted on going to trial. Accordingly, this Court finds Applicant

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has failed to show either deficiency of counsel or resulting prejudice, and this allegation is denied and dismissed.

C. Involuntary Guilty Plea

Respondent alleges his guilty plea was involuntary because he was promised he would receive a maximum sentence of seven years. 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 pleaded guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). 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, 474 U.S. at 56; 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 (1969). Before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243. 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."

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Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). 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 PCR hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford, 519 F.2d 347; Edmonds v. Lewis, 546 F.2d 566 (4th Cir.1976).

This Court finds Applicant has failed to satisfy his burden of showing that his plea was involuntary. The plea judge asked Applicant if he understood he was not bound by the State's recommendation and that he could sentence Applicant up to a total of twenty years on his charges. Applicant indicated he understood and did not protest. Counsel testified she informed Applicant of the State's recommendation but never promised that he would not receive more than seven years. Further, the plea sheet indicated the sentencing range was zero to fifteen years, and that the plea was a recommendation by the State of a cap of seven years.

Applicant was advised of his constitutional rights by both Counsel and the plea judge. Counsel testified she reviewed the charges against him, including the elements the State would have to prove to satisfy its burden. She also reviewed with him his constitutional rights. The plea

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 STATE OF SOUTH CAROLINA
 CLERK OF COURT

judge also informed Applicant of his right to a jury trial, his right to confront any witnesses against him, his right to present a defense, and his right to remain silent. The plea judge explained he was waiving those rights by pleading guilty and asked whether he still wished to give up those rights and plead guilty. Applicant indicated he understood his rights and wished to go forward. Applicant never indicated to the plea judge that he wished to withdraw his plea and has failed to show that he informed Counsel of any desire to withdraw his plea. Applicant has produced no evidence to show that he believed the sentence was a negotiated seven year sentence. Therefore, this Court finds the record establishes that Applicant entered his plea with the full understanding of the consequences and of the charges against him. For these reasons and the reasons provided above, this Court finds Applicant has failed to satisfy his burden of proving any deficiency in Counsel's performance.

Furthermore, Applicant has failed to satisfy his burden of proving prejudice as to this allegation. If Applicant had proceeded to trial instead of pleading guilty, he was facing a minimum of ten years and a maximum of thirty years on the armed robbery charge and up to life imprisonment on the first degree burglary charge. Applicant received a significant benefit in exchange for accepting the plea offer and has failed to show that but for Counsel's alleged error, he would not have pleaded guilty but would have insisted on going to trial. Accordingly, this Court finds Applicant has failed to satisfy his burden of showing either deficiency or prejudice. Therefore, this allegation is denied and dismissed.

D. All Other Allegations

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

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M. HOFFE & ACLELLY
STATE BAR OF CALIFORNIA

such allegations.

IV. CONCLUSION


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

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

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

AND IT IS SO ORDERED this 17 day of July, 2016.


 THE HONORABLE LARRY B. HYMAN, JR.
 Presiding Judge, Seventh Judicial Circuit

Conroy, South Carolina

M. HOPE GLACKLEY
 2016 JUL 22 AM 9:28

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483

Phone (864) 596-2591
Fax (864) 596-2239



M. Hope Blackley
Clerk of Court

July 22, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

7TH JUDICIAL CIRCUIT

Harold Bernard Meyer
345107

Applicant

CASE # DKCP12-1251

CERTIFICATE OF SERVICE

vs
State

Respondent

I certify that, on this date, I served a copy of the Order of Dismissal
In this action dated 7-17-16 on 7-22-16

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Adley Hawsorth
John Ruelker
Suzanne White

7-22-16
(Date)

Cecilia Seaf
(Signature)



ALAN WILSON
ATTORNEY GENERAL

July 19, 2016

The Honorable M. Hope Blackley
Clerk of Court, Spartanburg County
Post Office Box 3483
Spartanburg, SC 29304-3483

Re: Harold Bernard Turner, #345674 v. State of South Carolina
2014-CP-42-1251

Dear Ms. Blackley:

Enclosed please find an original and a copy of an **Order of Dismissal** in connection with the above referenced case. Please file the original and return a certified copy to me in the self-addressed envelope provided for your convenience.

Sincerely,

Alicia A. Olive
Assistant Attorney General

AAO/ah
Enclosures

cc: J. Brandt Rucker, Esquire

2016 JUL 22 AM 9:28
M. HOPE BLACKLEY

WITNESSES

Spartanburg Public Safety Department

[Signature]

ARREST WARRANT NUMBER

Count One - N157405
Count Two - N157406

ACTION OF GRAND JURY

[Signature]

True Bill

Foreperson of Grand Jury
Date: AUG 23 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. - **12-GS-42-4608**

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 27 2012

TERM

THE STATE
vs.

Harold Bernard Turner

Indictment for

**ARMED ROBBERY; POSSESSION OF A
WEAPON DURING COMMISSION OF A
VIOLENT CRIME**

SC Code: 16-11-330 (A); 16-23-490
CDR Code: 139; 549
Class: FEL/A; FEL/F

Nolle Prossed Count Two

07-08-13

Pled guilty to other charges
Lindsey Kate Bolanette,
Assistant Solicitor

**FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 AUG 30 PM 3:38
M. HOPE BLACKLEY**

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on AUG 23 2012, the Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE – ARMED ROBBERY

That Harold Bernard Turner did in Spartanburg County on or about May 18, 2012 while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously take property and/or currency from the person or presence of Brandon Brown, to wit: U.S. currency, a cell phone, a data cable, a debit card, tennis shoes, and/or a remote control, by means of force, violence, and/or intimidation with the intent to deprive him permanently of such property, in violation of §16-11-330 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

**COUNT TWO – POSSESSION OF A WEAPON DURING
COMMISSION OF A VIOLENT CRIME**

That Harold Bernard Turner did in Spartanburg County on or about May 18, 2012 possess or visibly display a firearm during the commission of a violent crime, to-wit: ARMED ROBBERY, in violation of Code §16-23-490, *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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

Nolle Prossed Count Two

07-08-13

Pled guilty to other charges

Lindsey Kate Colonette,

Assistant Solicitor


ASSISTANT SOLICITOR

WITNESSES

- 1. SENTENCE MADE
- 2. REPORT ENDED
- 3. CARD PULLED
- 4. INDEXED
- 5. CHECKED
- 6. CHECKED SIGNATURE
- 7. ASSESSMENT AND FINE CARD MADE
- 8. TRAFFIC VIOLATION COPY

Computer
Computer

13-GS-42-1471

The State of South Carolina
County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

APR 08 2013

TERM

ARREST WARRANT NUMBER

2013A4210100044

THE STATE
vs.

ACTION OF GRAND JURY

True Bill

Harold Turner

Foreperson of Grand Jury
Date: MAR 29 2013

VERDICT

Foreperson of Petit Jury
Date:

Indictment for
BURGLARY, FIRST DEGREE
(Dwelling)

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

M. HOPE BLACKLEY
2013 APR -4 AM 10:30
SPARTANBURG COUNTY
CLERK OF COURT
FILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

MAR 29 2013

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

BURGLARY, FIRST DEGREE

(DWELLING)

That the Defendant, Harold Turner, did in Spartanburg County, on or about December 25, 2012, willfully and intentionally enter the dwelling located at [REDACTED] Spartanburg, South Carolina without consent and with the intent to commit a crime therein, and that the defendant did enter the dwelling either:

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

in violation of Section 16-11-311, Code of Laws of South Carolina (1976) as amended.

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


ASSISTANT SOLICITOR

WITNESSES

13-GS-42-1470

SCSO

1. SENTENCED

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

ARREST WARRANT

7. ASSESSMENT AND FINE CARD MADE

8. TRAFFIC VIOLATION COPY

2013A4210100042

Computer

Computer

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

APR 08 2013

TERM

ACTION OF GRAND JURY

True Bill

THE STATE

vs.

Harold Turner

Foreperson of Grand Jury
Date:

MAR 29 2013

VERDICT

Indictment for

PETIT LARCENY

SC Code: 16-13-0030 (A)
CDR Code: 3419
Class MIS/UNC

Foreperson of Petit Jury
Date:

M. HOPE BLACKLEY
2013 APR -4 AM 10:30
CLERK OF COURT
SPARTANBURG COUNTY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on MAR 29 2013 the Grand
 Jurors of Spartanburg County present upon their oath:

PETIT LARCENY

That Harold Turner did in Spartanburg County on or about December 25, 2012, feloniously take and carry away the goods and/or monies of Geraldine Agee, of the value of less than Two Thousand Dollars, described as follows: a flat screen TV, with the intent to deprive the owner permanently of such property, in violation of §16-13-0030 (A), of *THE CODE OF LAWS OF SOUTH CAROLINA, (1976)*, as amended.

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


 ASSISTANT SOLICITOR