

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Florence County

Honorable D. Craig Brown, Circuit Court Judge

DONSHAY EUGENE SEARLES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000101

APPENDIX

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Appellate Defender

South Carolina Commission on Indigent
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Division of Appellate Defense
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S.C. SUPREME COURT

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INDICTMENTS79

STATE OF SOUTH CAROLINA)	
)	COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE)	2011-GS-21-1186
)	2011-GS-21-1469
)	
)	
State of South Carolina))
)	
vs.)	TRANSCRIPT OF RECORD
)	
Donshay Eugene Searles))
<u>DEFENDANT</u>)	October 5, 2011
		Florence, South Carolina

B E F O R E:

THE HONORABLE WILLIAM H. SEALS, JR., JUDGE.

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

JOHN JEPERTINGER, DEPUTY SOLICITOR
Attorney for the State

JAY JORDAN, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

KESHIA REED
Official Court Reporter

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I N D E X

(WHEREUPON, there were no witnesses called.)

1 MR. JEPERTINGER: If it please the Court, Your
2 Honor, standing in front of you Donshay Searles on
3 2011-GS-21-1186. In that indictment, he is pleading
4 guilty to carjacking. The arm robbery charge is being
5 dismissed against him. This is a carjacking where the
6 maximum sentence is 20 years. There's no great bodily
7 injury involved, Your Honor. Also on 2011-GS-21-1469,
8 he's pleading to burglary second degree non-violent. The
9 accompanying charge of grand larceny is being dismissed on
10 that one. We're also dismissing another burglary case
11 upon request of the victim, that will be on 2011-1769.
12 Your Honor, Mr. Searles is represented by Jay Jordan. We
13 do have the victims of the carjacking present in the
14 courtroom. Ms. Montalvo is the victim of the carjacking.
15 And we also have a Ms. Tamara Inman. If you like to
16 stand, she's also the victim of the burglary case, Your
17 Honor. And they are present in the courtroom.

18 THE COURT: Mr. Searles is that how you
19 pronounce it?

20 MR. JEPERTINGER: Searles.

21 THE COURT: Mr. Searles, you are pleading guilty
22 to carjacking, which carries up to 20 years in jail; is
23 that correct?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And you're also pleading guilty to

1 burglary non-violent second degree, which carries up to 15
2 years in jail; is that correct?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You understand that you're facing up
5 to 35 years in jail today with this plea?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Understanding that, do you still
8 want to go forward with the plea?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Were you in the courtroom when I
11 went over your rights to a jury trial?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Did you understand those rights?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you want to give up your right to
16 a jury trial and plead guilty today?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Are you satisfied with your lawyer?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Has he answered all of your
21 questions and done everything you've asked him to do?

22 THE DEFENDANT: Yes, sir, he did.

23 THE COURT: Has anybody promised you any type of
24 reward or gift or anything like that to get you to plead
25 guilty?

1 THE DEFENDANT: No, sir.

2 THE COURT: Has anybody been coercing you or
3 threatening you in any way to make you plead guilty?

4 THE DEFENDANT: No, sir.

5 THE COURT: Are you under the influence of any
6 drugs or alcohol at this time that would affect your
7 ability to think and reason and know what you're doing?

8 THE DEFENDANT: No, sir.

9 THE COURT: Are you guilty?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Have you understood all of my
12 questions?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Have you answered me truthfully?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Solicitor.

17 MR. JEPERTINGER: Okay. Please the Court, in
18 terms of the carjacking, this happened on October 27th.
19 Ms. Montalvo works for Ms. Avant doing domestic work. She
20 got to Ms. Avant's home about eight in the morning that
21 day. She was going to quit 2:00 p.m., that day left at
22 12 p.m. Ms. Avant paid her. Her son Anthony, who's 12
23 year olds and goes to Spaulding Elementary, called her.
24 He wasn't going to after school. And, Your Honor, she
25 decided based on that phone call to have a little time

1 after she got done with work to go to the Dollar General,
2 which is located on Alligator Road near the intersection
3 of Norwood and Alligator here in Florence County. She
4 shopped, she bought some things, food, Clorox, puzzles for
5 the kids things like that nature. She paid, left the
6 store. She parked on the east side of the store. She
7 open the driver's side back door and put her stuff in the
8 vehicle. She close the door. She open the driver's door.
9 She heard someone else yell at her. She got in. Before
10 she could close the door, Mr. Searles came up, he ran,
11 grabbed the door, had his right hand in his pants. She
12 saw a knife in his hand and he said go, go. She
13 identified the individual about being a black male about
14 17 years old.

15 After he said go, go to her, he said I need your
16 car and she said I understand. He was very young from
17 appearance. At the time, he was wearing a purplish-color
18 shirt, dark pants, short sleeve. She didn't see any
19 shoes, didn't see any glasses. He didn't have a hat. His
20 hair was short, not long. He had at the time -- there
21 were no cornrows or anything of that nature. She got out,
22 had her purse on her left arm and keys in her right hand.
23 When he got out, he grabbed the keys out of her hand. He
24 left in her car. She went into the store to call the
25 police.

1 Your Honor, she was shown a photo line-up. She
2 identified him as being the perpetrator from the photo
3 line-up. Apparently, the police -- city police -- this
4 happened in the county. The city police arrested him in
5 that vehicle that was taken about three or four days
6 later. There were also two juveniles in that stolen
7 vehicle, Your Honor. Your Honor, when she got the vehicle
8 back, she noticed that there were clothes and a cell phone
9 that did not belong to her initially. She had a sweater
10 in the vehicle, but she -- her sweater has never been
11 recovered, Your Honor. That's pretty much the size of
12 that case, Your Honor.

13 In terms of the other case involving Ms. Inman,
14 on April the 27th, Your Honor, of this year -- and, of
15 course, the other crime happened on October 27th of 2010.
16 On April 27th 2011, Mr. Searles broke and entered the
17 residence of Ms. Inman breaking out a window to gain
18 entrance. And this house is located on [REDACTED] Candy Lane
19 here in Florence County. Once inside, he took
20 approximately \$4,500 worth of jewelry, reasonably the
21 same, fingerprints were taken match up to Donshay Searles'
22 fingerprints, Your Honor. He is 17 years old. And we
23 understand the severity of this case, but we are making no
24 recommendation other than a concurrent sentence, Your
25 Honor.

1 THE COURT: All right. The victims like to
2 address the Court?

3 VICTIM'S ADVOCATE: Ms. Inman would.

4 THE COURT: Is she the carjacking?

5 MR. JEPERTINGER: This is the burglary.

6 THE COURT: Burglary, all right.

7 If you would begin by giving me your name.

8 TAMARA INMAN: Tamara Inman.

9 THE COURT: Be glad to hear from you.

10 TAMARA INMAN: Definitely there has been some
11 changes in my family's life style. We're now cautious of
12 our surroundings. We pay close attention to people and
13 what they're doing. We have hurt mentally. My kids have
14 hurted and struggled. We have a problem with or they have
15 a problem with being scared, being away from people. I
16 have to reassure them that they'll be safe, everything
17 will be okay. Our house is not a home any more, so I'm
18 selling my house now. And I had to pay all of my repairs,
19 had to come out of my pocket. Everything that was taken
20 was a total loss to me. And I had to take days off from
21 work. And that's all I have for you.

22 THE COURT: Thank you very much.

23 COURT REPORTER: John, what's her first and last
24 name?

25 MR. JEPERTINGER: This Ofelia is spelled

1 O-F-E-L-I-A. Montalvo is spelled M-O-N-T-A-L-V-O.

2 THE COURT: Okay.

3 (WHEREUPON, the victim Ms. Ofelia Montalvo is
4 speaking Spanish and John Jepertinger, the Deputy
5 Solicitor, translated it in English what victim
6 said.)

7 MR. JEPERTINGER: She says I work hard cleaning
8 houses, sweeping up and he kind of took it by force and
9 it's not right.

10 THE COURT: Thank you very much.

11 Anything further? Does he have a record of any
12 kind?

13 MR. JEPERTINGER: No, he's 17 year old, Your
14 Honor.

15 MR. JORDAN: No record.

16 THE COURT: All right. I'll accept the plea and
17 find it was given freely and voluntarily, made
18 intelligently and advice of very competent counsel.

19 MR. JORDAN: Please the Court, Your Honor, I
20 guess, start at the beginning as you can tell, as you know
21 and as you can see, Mr. Searles is very young. He was 16
22 at the time, but been waived up, of course, doesn't have a
23 record prior to this. As you can also see and I can
24 testify to, he got excellent family support. This is
25 everyone knows here today very serious. A lot of time, a

1 lot of talk, lot of discussion gone into this. Standing
2 with him is his grandmother, his mother and his father. A
3 lot of discussion has been held with myself, Donshay, Mr.
4 McKenzie of our office and some issues had to be going
5 around as you might understand.

6 Certainly, I think Donshay has recognize to me
7 he made a very very bad mistake. He's -- I guess, the
8 thing that I keep coming back to he's so young. And as my
9 experience is and as I believe in this particular case,
10 when you have someone who's so young and with no record
11 and often the case as I believe in this case, get around
12 certain folks, a lot of times older than you and they
13 don't have what's best for you.

14 As I told Donshay, the people that care most
15 about you in this world are stranding with you here today.
16 And they're the ones that gone be there for you when you
17 get out and try and help you get back on the straight and
18 narrow. His mother's talk to me about they have plans, I
19 believe, to move to the Charlotte area. They have other
20 family up there. I think that's solely for the purpose of
21 trying to get Donshay started off in the right direction
22 because hopefully he's still gone be a young man when he
23 get this put behind him.

24 As to the facts of the case, it's bad certainly,
25 he's not running from that. I don't believe he intended

1 to physically hurt anyone. He certainly could have and
2 certainly being in a much different situation if that were
3 the case. But I don't believe that was his intent at any
4 point in time ever to physically harm someone or I don't
5 think ever it was his intent in time to emotionally harm
6 someone. In discussing with him, I don't think he gave
7 hardly thought to the repercussions or consequences that
8 his actions could potentially have or having here today.

9 Judge, as I can't say it enough times given the
10 fact of his age, given the fact that he does have strong
11 family support. He's not running from this in any way,
12 Judge. He's here to basically beg, Your Honor, to have
13 mercy and leniency on him as much as he could possibly
14 stand taking into consideration all the facts of the case.
15 Again, he's not running from a -- it's a bad situation,
16 but certainly could have been so much worse. I hate to be
17 standing here today if he had done something violent in
18 the sense of hurting someone physically. But I don't
19 believe, you know, you look at someone and you see someone
20 so young and he looks younger than he is, I think. But in
21 all the conversations I've have had with him, he just
22 doesn't seem to be someone who's got that violent -- and
23 sometimes you can get in a room and you can tell when
24 someone's got that within them to do violent things. I
25 just don't think he has that within him.

1 Again, his family they been nothing but
2 cooperative with me. He's been nothing but cooperative
3 with me. I know his father wishes speak to, Your Honor,
4 if you would consider hearing that. I know he wrote a
5 little brief note, I think he wanted to -- he wanted to
6 cross the line and communicate with the victims here
7 today. He certainly wanted to extend his apologies to
8 them and the damage this done there.

9 THE COURT: All right. Be glad to hear from the
10 father. If you would state your name for the record.

11 RASHAWN BROWN: My name is Rashawn Brown. Shay
12 he's a good kid. I guess, in his life, he's made a lot of
13 bad decisions. As a child, you make bad decisions, most
14 his decisions he has made in his life is pretty much been
15 hanging around the wrong people. I understand it feels --
16 I'm a father and this is my son. I'm begging for you to
17 have a little leniency for him. I apologize on his behalf
18 to the family that he has hurt. But we have plans for
19 him. We're planning on moving to Charlotte. I'm taking a
20 totally different career path for him, so he can get from
21 around here. I just apologize on our behalf to the
22 families that he has hurt. Thank you.

23 MR. JORDAN: Judge, I did want to say too he
24 does have a little work history. He worked for Bojangles
25 here in Florence. His boss manager at Bojangles

1 communicated wanted us to convey -- he couldn't be here
2 today because of his work schedule. But he did -- Donshay
3 always worked hard, did a good job and was welcome back at
4 his job. I think that says a little bit about when you
5 get him in the right environment, you give him direction,
6 give him focus, you give him a task, he does some good
7 things. It's when he gets around the wrong folks and he
8 starts making bad decisions. Your Honor, I think he had a
9 note.

10 THE DEFENDANT: Sir, I wanted to say I'm sorry.
11 I'm sorry, Your Honor. I'm truly sorry. I promise, I'm
12 sorry. I just had turn 16 at the time doing crazy things.
13 I wasn't thinking at the time. I got two kids. My baby
14 girl been born Thursday, sir. Like I said, I'm truly
15 sorry. I want you to be lenient as possible. I'm
16 begging, I'm sorry. I promise you I'm sorry.

17 THE COURT: Anything further?

18 MELODY BROWN: I'm his mother Melody Brown. He
19 is a good kid. He been working for a year this June. And
20 his boss said if everything worked out, he would always
21 have his job back, that he understand that kids make
22 mistakes when they're young. But I haven't had no
23 problems with him, but, you know, this right here.
24 There's not a day that go by that I don't talk to my son.

25 MR. JORDAN: Your Honor, we would ask for the

1 credit that he been locked up the last four months.

2 THE COURT: In reference to the carjacking
3 indictment 2011-GS-21-1186, the sentence of the Court is
4 that the defendant be committed to the department of
5 corrections for a term of 15 years. You're to be given
6 credit for the time he's served thus far. In reference to
7 the burglary, sentence of the Court is ten years. He'll
8 be given credit for the time he's served and they are to
9 run concurrent.

10 END OF REQUESTED TRANSCRIPT

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FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
 Donshay Eugene Searles, #348058)
 Full name and prison number (if any) of Applicant.)
)
 v.)
)
 State of South Carolina)
)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

CERTIFIED: A TRUE COPY
 Clerk of Court C.P. & G.S.
 FLORENCE COUNTY, S.C.

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution
2. Name and location of Court which imposed sentence Florence County General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-21-1469
 - (b) 2011-GS-21-1186
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) October 5, 2011
 - (b) October 5, 2011

FILED
 2012 OCT -3 PM 12:03
 CORNIE REEL-SHEARIN
 CLERK OF COURT
 FLORENCE COUNTY, SC

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Claims of ineffective assistance of counsel are not cognizable on direct appeal.
State v. Carpenter, 286 S.E.2d 384 (S.C. 1982).
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Petitioner's 6th amendment right to counsel was violated in that Petitioner's trial counsel's performance fell below an objective standard of reasonableness and Petitioner was prejudiced by his trial counsel's substandard performance.

(b) _____

(c) _____

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

(a) Petitioner was incorrectly advised by his trial counsel that a Youthful Offender Act Sentence was available to him if he pled guilty to carjacking (S.C. Code § 16-3-1075) and armed robbery (S.C. Code § 16-11-330). Petitioner relied on his trial counsel's misstatement concerning the availability of a YOA sentence and would not have pled guilty had he known a YOA sentence was not available for carjacking and armed robbery under S.C. Code § 24-19-10(d). Petitioner was also assured by his trial counsel that he would be classified as non-violent.

(b) Petitioner only met with his trial counsel one time for 45 minutes the day of his guilty plea. Petitioner was never given the opportunity to review the discovery materials with his lawyer. The trial counsel failed to develop a defense surrounding Robert Ham, the individual who admitted the crime in facebook conversations with the Petitioner.

(c) _____

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

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Claims of ineffective assistance of counsel are not cognizable on direct appeal.
State v. Carpenter, 286 S.E.2d 384 (S.C. 1982).
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
- (b) your trial, if any? N/A
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Wallace Jordan
- ii. P.O. Box 2010
- iii. Florence, SC 29501
- (b) the proceedings at which each such attorney represented you:
- i. guilty plea and sentencing 10/5/2011
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
Vacate sentence and a new trial
20. Are you now under sentence from any other court that you have not challenged?
No.

STATE OF SOUTH CAROLINA)
)
County of FLORENCE)

VERIFICATION

I, Donshay Eugene Searles, 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.

Donshay E Searles

SWORN to and subscribed before me this 25th
day of September, 2012.

J. Thomas M. Britney (L.S.)
Notary Public

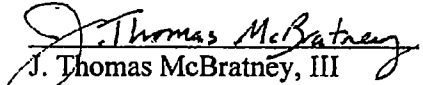
My Commission Expires: 5/4/2020

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Clerk of Court
FLORENCE COUNTY, S.C.

FILED
2012 OCT -3 PM 12:03
CONNIE REE-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

Respectfully submitted,

October 3, 2012


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Attorney for Applicant
Donshay Eugene Searles

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STATE OF SOUTH CAROLINA*)
)
 COUNTY OF FLORENCE)
)
 DONSHAY EUGENE SEARLES,)
 INMATE #348058,)
)
 Petitioner,)
)
 v.)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 TWELFTH JUDICIAL CIRCUIT
 CASE NO.: 2012-CP-21-2586

FILED
 2012 JAN 23 PM 4:09
 CONNIE REEL-SHEARIN
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, SC

**AMENDED APPLICATION FOR
 POST-CONVICTION RELIEF**

Petitioner, Donshay Eugene Searles, through the undersigned counsel, hereby submits the following Amended Application for Post-Conviction Relief:

1. Petitioner, Donshay Eugene Searles, ("Searles") is currently incarcerated at Lee Correctional Institution in Bishopville, South Carolina.
2. On October 5, 2011, in Florence County, in the Court of General Sessions, Searles pled guilty and was sentenced to 10 years for 2nd degree burglary, Indictment No. 2011-GS-21-1469, and 15 years for carjacking and armed robbery, Indictment No. 2011-GS-21-1186. The court ordered the sentences to run concurrently.
3. Petitioner seeks relief solely with respect to his carjacking and armed robbery charge, Indictment No. 2011-GS-21-1186.
4. Searles was represented by Wallace Jordan, Esq., an attorney with the Florence County Public Defender's Office.
5. Searles did not file a direct appeal to his conviction and sentencing.
6. Searles' 6th amendment right to counsel was violated in that his plea counsel's performance fell below an objective standard of reasonableness in the following ways:

CERTIFIED: A TRUE COPY
Connie Reel Shearin
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

a. Counsel failed to investigate and develop a defense surrounding Robert Ham, an individual who admitted the crime in a Facebook conversation with Searles. Searles was arrested and charged with carjacking and armed robbery after being caught driving the victim's car. Searles maintained throughout the case that Robert Ham loaned Searles the vehicle and that Searles did not know the vehicle was stolen.

On March 8, 2011, the day after Searles was arrested on the carjacking/armed robbery charge, Ham sent Searles a message essentially warning him not to speak to law enforcement about his involvement. Ham also boasted that the police would not catch him. Searles wrote back saying "I was not trying to snitch . . . they ask me who truck it was and I said urs, I didn't kno it was stolen. yu should of told me it was stolen." Ham responded by saying "yeah you right I should of told ya fa(?) you could have been cautious but fuCc it now what they said whenyu got caught with it?"

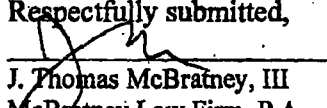
Counsel's performance fell below an objective standard of reasonableness when he failed to investigate and develop a defense that Robert Ham was the individual who committed the carjacking offense. Counsel concluded that Ham's Facebook statement was inadmissible and ended his investigation there. Neither Counsel nor his investigators spoke to Mr. Ham or took any steps to verify his ownership of the Facebook account. Counsel should not have recommended to Searles that he plead guilty in light of evidence that Searles did not commit the crime.

- b. Counsel failed to review the Rule 5 discovery material with Searles and was not prepared for trial. Counsel failed to prepare a defense or meet with Searles to discuss any possible defenses despite the fact that Searles maintained his innocence on the charges.
7. Searles was prejudiced by his counsel's substandard performance as described above in the following ways:
- a. If counsel had investigated and pursued a defense surrounding Robert Ham, Searles would not have pled guilty and would have chosen to go to trial. If counsel had not concluded the statement was inadmissible and attempted to introduce the statement through Ham at trial, the evidence would have likely changed the outcome of the trial.
- b. Counsel's lack of preparation or investigation into the carjacking/armed robbery offense led Searles to feel that he had no choice but to plead guilty.
8. As a result of counsel's substandard performance as described above, Searles' guilty plea was not knowing and voluntary.

WHEREFORE, Petitioner, Donshay Eugene Searles, hereby requests that his conviction and sentence for carjacking and armed robbery, Indictment No. 2011-GS-21-1186, be vacated and a new trial ordered.

January 22, 2014

Respectfully submitted,

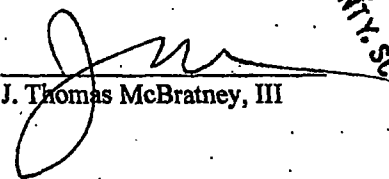

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Attorney for Petitioner
Donshay Eugene Searles

CERTIFICATE OF SERVICE

I hereby certify that Petitioner's Amended Application for Post-Conviction Relief was served on opposing counsel via U.S. Mail, postage prepaid, this 22 day of January, 2014, at the following address:

Joshua L. Thomas, Esq.
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

January 22, 2014


J. Thomas McBratney, III

FILED
2014 JAN 23 PM 4:09
CONNIE REEL-SHEARIN
CLERK C.C.C.P. & G.S.
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY



CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS

2012-CP-21-7584

Donshay Eugene Searles, 348058

Applicant,

RETURN

v.

State of South Carolina,

Respondent.

Respondent, making its Return to the Application for post conviction relief (PCR) filed October 3, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the September 2011 term of the Florence County Grand Jury for burglary and grand larceny (2011-GS-21-1469) and carjacking (2011-GS-21-1186). Wallace Jordan, Esquire, represented Applicant.

On October 5, 2011, Applicant pled guilty before the Honorable William H. Seals. Judge Seals sentenced Applicant to ten years imprisonment on the burglary charge and to fifteen years on the carjacking charge, with both charges to run concurrently. Applicant did not appeal. Attached herewith and incorporated herein are the records of the Clerk of Court regarding the subject conviction, and Applicant's SCDC records, and if available, the transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Applicant alleges that he is being held in custody unlawfully due to ineffective assistance of counsel.

III.

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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. 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 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. Respondent submits that Applicant cannot satisfy either requirement of the Strickland test.

IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed without prejudice, and with leave to re-file once the appeal is concluded.


Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
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12/14, 2012.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
)
)
)
 DONSHAY EUGENE SEARLES, #348058)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS


2012-CP-21-7584

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 in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James T. McBratney, Jr., Esquire
P.O. Box 3890
Florence, SC 29502

DATED this 14th day of December, 2012.


 Norma Bigbee, Legal Assistant
 For Respondent

State of South Carolina)	Court of Common Pleas
)	Twelfth Judicial Circuit
County of Florence)	Case No. 2012-CP-21-02586
)	
Donshay Searles,)	
)	
Plaintiff,)	
)	
-vs-)	Transcript of Record
)	
State of South Carolina,)	
)	
Defendant.)	
)	

November 9, 2016
 Florence, South Carolina

B E F O R E:

The Honorable D. Craig Brown, Judge

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

Jonathan Waller, Esquire
 Attorney for the Plaintiff

Lindsey McAllister, Esquire
 Attorney for the Defendant

Krystal J. Smith
 Court Reporter

I N D E X

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1	Facebook Printout	16	

1 NOVEMBER 9, 2016

2 (WHEREUPON, the proceedings began at 10:15 a.m.)

3 THE COURT: All right. Call your first case, Ms.

4 McAllister.

5 MS. MCALLISTER: May it please the Court, Your Honor.

6 Donshay Searles.

7 THE COURT: All right.

8 MS. MCALLISTER: Your Honor, this is Donshay Searles
9 versus the State of South Carolina, 2012-CP-21-2586. We're
10 before the Court today on his application for post-conviction
11 relief, which was filed October 3rd, 2012.

12 He is presently confined in the South Carolina Department
13 of Corrections pursuant to orders of commitment from the
14 Florence County Clerk of Court. He was indicted at the
15 September 2011 term of the Florence County Grand Jury. Two
16 different indictments for burglary -- burglary second -- two
17 counts of burglary second, grand larceny, carjacking, and
18 armed robbery. He was represented on those charges by Wallace
19 Jordan.

20 On October 5th, 2011, he pled guilty before Judge William
21 H. Seals and was sentenced to 10 years on the burglary second
22 and 15 years on the carjacking charge, with those sentences to
23 run concurrently. He did not appeal his plea or his sentence.
24 He is present in the courtroom today represented by Jonathan
25 Waller, and I believe Mr. Waller has a motion for the Court.

1 THE COURT: Yes, sir, Mr. Waller?

2 MR. WALLER: Thank you, Your Honor. May it please the
3 Court.

4 Your Honor, in speaking with my client, there seems to be
5 an issue with mail getting into the Department of Corrections.
6 I mailed him notice of this hearing on October 19th and he
7 tells me that he just received it on Monday. Your Honor, he
8 tells me that he has retained other counsel for this matter, a
9 Patricia Blanche out of Orangeburg.

10 Your Honor, I haven't had any contact with Ms. Blanche,
11 but based on the information that he has provided to me, I
12 would ask the Court grant a continuance until the next term so
13 that he and Ms. Blanche may work his case, and I'll leave that
14 in the Court's discretion.

15 THE COURT: When did -- Mr. Searles, if you'd stand up,
16 please, sir? Raise your right hand. Do you swear to tell the
17 truth, the whole truth, and nothing but the truth, so help you
18 God?

19 THE APPLICANT: Yes, sir.

20 THE COURT: When did you retain the services of Ms.
21 Blanche? You can put your hand down, sir.

22 THE APPLICANT: A month ago. About a month ago. A
23 little less than a month.

24 THE COURT: Can you -- has the State received any
25 correspondence -- is it Ms. Blanche or Blanchard?

1 THE APPLICANT: Ms. Blanche.

2 MS. MCALLISTER: Your Honor, we have not received
3 correspondence from anyone indicating that they have taken
4 over representation from Mr. Waller. Your Honor?

5 THE COURT: Yes.

6 MS. MCALLISTER: I also searched the court website for
7 the last name Blanche in the attorney information system and I
8 did not see one.

9 THE COURT: All right. Well, the way this process works,
10 Mr. Searles -- I mean you certainly have a right to go hire a
11 lawyer, but what you can't do -- I mean this case has been
12 pending, for instance, since 2012. Okay? That's when your
13 application for post-conviction relief was filed. All right?

14 What you can't do and what I'm not going to allow to
15 happen is -- and I don't allow it in criminal cases that come
16 in front of me, and that is the retention of a lawyer at the
17 last second, the last minute or the 11th hour, so to speak, in
18 putting a case off. Okay?

19 Now, what typically happens is when a lawyer is retained
20 -- I'll give you an opportunity to speak in a second. Okay?

21 THE APPLICANT: Yes, sir.

22 THE COURT: When a lawyer is retained, the first order of
23 business is is that that lawyer contacts your current lawyer,
24 which would be Mr. Waller here, and in turn contacts the
25 Attorney General's Office by virtue of a letter or something,

1 and files something with the court saying I've been retained
2 to represent whoever it may be. Okay?

3 None of that has taken place according to Ms. McAllister.
4 Sorry. I had to look for your name again. Ms. McAllister or
5 Mr. Waller. Okay? None of that has been done.

6 And so what I'm -- I'm sitting here and I look at the
7 file and say Mr. Waller is still the attorney of record.
8 Whoever this other lawyer is or may be hasn't done what
9 they're supposed to do and so what am I to do?

10 Now, you wanted to say something?

11 THE APPLICANT: Yeah. The facility I'm in -- we get our
12 mail -- it be backed up and so I knew -- I knew I may come to
13 court Monday and --

14 THE COURT: Well --

15 THE APPLICANT: But I never knew I'd be coming to court.

16 THE COURT: Everything I've said to this point has
17 nothing to do with you getting your mail. Do you understand
18 that? It's got everything to do with whomever is retained to
19 represent you doing what they're supposed to do.

20 THE APPLICANT: Uh-huh.

21 THE COURT: Do you understand? So what I'm going to do
22 is I'm going to deny the request for continuance and we're
23 going to proceed forward here today. I know I see Mr. Jordan
24 -- Mr. Daniel and Mr. Jay Jordan are here. Mr. Jay Jordan is
25 a witness in this.

DONSHAY SEARLES - DIRECT BY MR. WALLER

1 A: Uh-huh.

2 Q: Okay. You need to speak up so the court reporter --

3 A: Yes.

4 Q: -- can hear you.

5 A: Yes, I did.

6 Q: Okay. And also so the judge can hear you. What did you

7 get arrested on first?

8 A: Carjacking.

9 Q: Okay. Did you -- did you pick up some other charges?

10 A: Not at first I didn't.

11 Q: Okay. But did you -- did you ultimately -- when you pled

12 guilty, you pled guilty to more than just carjacking?

13 A: Uh-huh.

14 Q: Is that right?

15 A: Yes, sir.

16 Q: Okay. And today, we're not here about the burglary; is

17 that right?

18 A: Right.

19 Q: We're only talking about the carjacking?

20 A: Yes, sir.

21 Q: Okay. Who represented you on the carjacking?

22 A: Jay Jordan.

23 Q: Okay. Did he also represent you on the burglary?

24 A: Yes, he did.

25 Q: Okay. When -- if you recall, when was the first time you

DONSHAY SEARLES - DIRECT BY MR. WALLER

1 met Mr. Jordan?

2 A: When I -- when I -- when I got my time, when I came to
3 court.

4 Q: Okay. The first time you met him was in court?

5 A: Yes, sir.

6 Q: Okay. Was he appointed to represent you or did you hire
7 him?

8 A: He was appointed.

9 Q: Okay. Did you -- did he work for the Public Defender's
10 Office?

11 A: Yes, he did.

12 Q: Okay. Did you meet with anybody else from the Public
13 Defender's Office?

14 A: I met with an investigator one time when I was in the
15 county. I didn't know who he was. I met with him one time
16 and that been it.

17 Q: Okay. Did you -- what did you all -- what did you and
18 the investigator talk about?

19 A: We just talked about my case, just really what I've been
20 locked up for. We ain't talked about nothing really.

21 Q: Okay. You had four total charges; is that right?

22 A: Yes, sir.

23 Q: Okay. Did you and Mr. Jordan have an opportunity to talk
24 about each of those four charges?

25 A: No, we did not.

DONSHAY SEARLES - DIRECT BY MR. WALLER

1 Q: Okay. Did you have a chance to talk about what the
2 potential penalties of each of those charges was?

3 A: No, sir.

4 Q: Okay. Did you and Mr. Jordan have an opportunity to go
5 over the evidence that the State would present against you if
6 you had gone to trial?

7 A: No. Me and Mr. Jordan -- he never went over no evidence
8 at all, sir.

9 Q: Okay. Did you and Mr. Jordan ever meet at the detention
10 center?

11 A: No, sir. Actually -- actually, Mr. Jordan came to the
12 detention center to see another inmate and I actually asked
13 the officer to let me out to go speak with him and he couldn't
14 talk to me because he ain't came up there to see me. So, no,
15 I didn't.

16 Q: Okay. When you -- the day you pled guilty, did you know
17 what you were going to court for?

18 A: I mean, yeah, I knew what I'd been going to court for,
19 but --

20 Q: Okay. Well, what did -- how did you get to the point
21 where you pled guilty if you hadn't talked to Mr. Jordan?

22 A: Really, my mother. My mother was the reason why I pled
23 guilty. I mean I been young. I been 16 at the time. I ain't
24 know nothing about nothing. I ain't know you can get no time,
25 no anything like that. Like I said, I ain't never talked to

DONSHAY SEARLES - DIRECT BY MR. WALLER

1 Mr. Jordan about none of this and I ain't never seen the man
2 or anything until I came to court.

3 So I mean I ain't -- I ain't really know what been going
4 on. Like I say, my mama -- she just been doing a lot of
5 crying, telling me to go ahead and do it, do this and do that
6 and, like I say, I remember -- I remember just like it been
7 yesterday. Mr. Jordan was, like, you ain't going to get a lot
8 of time. He was, like, when you get out, you'll be younger
9 than me. He said that like yesterday. So I was, like, I been
10 young. So I went ahead and did it. I ain't -- I ain't know
11 nothing.

12 Q: Okay. Just to back up just a little bit, the carjacking
13 and armed robbery were from one incident and the burglary was
14 from a completely separate incident?

15 A: Correct.

16 Q: Okay. And he represented you on both sets?

17 A: Correct.

18 Q: Okay. When you were arrested on the carjacking, were you
19 able to -- do you remember when you were arrested?

20 A: No. I know it was October, but I don't -- October.

21 Q: Okay. Were you -- were you released at some point after
22 you were arrested on the carjacking?

23 A: Matter of fact -- excuse me. I was never -- October. It
24 been October. I was never arrested. They stopped -- they
25 pulled us over and, like I said, I been young; so they ain't

DONSHAY SEARLES - DIRECT BY MR. WALLER

1 never took me in custody. They called my mama and my mama
2 came and picked me up that night. They waited until I turned
3 17 to bring up their prior charges talking about -- saying
4 something about the carjacking and all type of things like
5 that.

6 Q: Okay. So you got stopped in October?

7 A: I got stopped because the car -- the car that we had
8 ain't had no tags on it.

9 Q: Okay.

10 A: And so they stopped it for that, but they couldn't prove
11 or nothing that the car been stolen or what not like that.
12 When I turned 17, like three months in January, that's when
13 they came up with some warrants and things like that.

14 Q: Okay. So the next year --

15 A: Yes, sir.

16 Q: -- is when you got arrested?

17 A: Correct.

18 Q: Okay.

19 A: For these charges here. Uh-huh.

20 Q: Okay. Did you and Mr. Jordan ever have a chance to talk
21 about the circumstances surrounding you getting stopped
22 originally in October?

23 A: Me and -- me and Mr. Jordan ain't -- like I said, we
24 ain't talked about my case, sir. Me and Mr. Jordan ain't
25 necessarily talked about anything.

DONSHAY SEARLES - DIRECT BY MR. WALLER

1 Q: Okay. Did you -- did you ever give him any information
2 that might have helped you -- might have helped him in your
3 defense?

4 A: No. I ain't never give Mr. Jordan anything because, like
5 I tell you, I never seen Mr. Jordan except when I came -- when
6 I came to get my time.

7 Q: Okay. How about the investigator for the Public
8 Defender's Office?

9 A: I seen -- when I came -- they brought me up here twice
10 back to back. I seen some guy, some dark-skinned guy named
11 Thomas. I don't -- he was -- I think he was supposed to be an
12 investigator.

13 Q: Okay.

14 A: But he got the paperwork from me. I don't know if he was
15 working for Mr. Jordan or who he be working for, but I know he
16 talked to me.

17 Q: Okay. What did y'all talk about?

18 A: We talked about my case and he asked me what all I had
19 and asked me whose vehicle was it and things like that.

20 Q: Okay. When he asked you whose vehicle was it, what did
21 you tell him?

22 A: I told him whose vehicle -- whose vehicle was it.

23 Q: Okay.

24 A: And he told me -- and he was, like -- and I -- and I told
25 him -- I gave him what I -- what I had. He was, like, we

DONSHAY SEARLES - DIRECT BY MR. WALLER

1 can't -- we can't -- we can't do anything with that. We can't
2 use nothing.

3 Q: Okay. And I'm going to get to that in just a second. Do
4 you know an individual by the name of Robert Hamm?

5 A: Yes, I do.

6 Q: Okay. Did you know him prior to getting arrested?

7 A: Yes. Yes, I did.

8 Q: And how did you know him?

9 A: He stay beside my granddaddy. He stay -- he a older guy.
10 He stay beside my granddaddy.

11 Q: Okay. Were y'all friends? Acquaintances?

12 A: Yeah. We -- he -- I knew him since I've been a little
13 boy.

14 Q: Okay. And you would see him pretty regularly?

15 A: Uh-huh.

16 Q: Okay. Did you all -- did you have a Facebook account at
17 that time?

18 A: Yes, I had one since 2009.

19 Q: Okay. Did you and -- did Mr. Hamm have a Facebook
20 account that you know of?

21 A: Yes. Robert -- he had one.

22 Q: Okay. Did you ever talk to him on Facebook?

23 A: Uh-huh. Yes, I did.

24 Q: Did you talk to him on Facebook before you were stopped
25 in October?

DONSHAY SEARLES - DIRECT BY MR. WALLER

1 A: Yes, I did.

2 Q: Okay. And you -- I believe you already testified that
3 you -- you'd known him because he lived next door to your
4 grandfather?

5 A: Uh-huh.

6 THE COURT: Has she seen this?

7 MR. WALLER: She has, Your Honor.

8 MS. MCALLISTER: I've seen it, Your Honor. I'm going to
9 have an objection though.

10 MR. WALLER: Certainly.

11 BY MR. WALLER:

12 Q: Mr. Searles, I'm going to hand you what's been marked as
13 Plaintiff's Exhibit 1 for identification purposes and ask you
14 if you've seen that before?

15 A: Actually, yes, sir. My mama had -- my mama -- an
16 investigator came to my house, Investigator Thomas McFadden.
17 He came to my house and that's when I first seen this right
18 here.

19 Q: Okay. Did you -- what is that? Is it -- what is that
20 piece of paper?

21 A: I mean it's -- I guess it been -- well, this was when me
22 and Robert been talking going back and forth on Facebook.

23 Q: Okay.

24 A: About what happened.

25 Q: So you had a conversation with Robert Hamm on Facebook?

DONSHAY SEARLES - DIRECT BY MR. WALLER

1 A: Yes, I did.

2 Q: And that took place when?

3 A: It took place -- I had a conversation with Robert Hamm
4 after I got caught and before I got caught.

5 Q: Okay. Did you have -- did you have a chance to speak
6 with Mr. Hamm after you were arrested on Facebook?

7 A: Yes, I did.

8 Q: Okay. Do you recall that conversation?

9 A: Oh, yeah. Yes, sir.

10 Q: Is that an accurate representation of that -- of that
11 conversation?

12 A: Yes, it is.

13 Q: Okay.

14 MR. WALLER: Your Honor, I would move to admit
15 Plaintiff's Exhibit 1 or Applicant's Exhibit 1 at this time.

16 THE COURT: Can I see it?

17 MR. WALLER: Sure.

18 THE COURT: What's your objection?

19 MS. MCALLISTER: Your Honor, I object. It's hearsay,
20 Your Honor. It's allegedly a conversation between him and a
21 third person who is not here to testify, not here to
22 authenticate that in any way.

23 MR. WALLER: Your Honor, it's a -- it's a conversation
24 that he testifies that he participated in. He testifies he
25 knew Mr. Hamm. He participated in the conversation. That's

DONSHAY SEARLES - DIRECT BY MR. WALLER

1 an accurate portrayal of the -- of the conversation.

2 THE COURT: Why is it not hearsay?

3 MR. WALLER: Your Honor, because -- because Mr. Searles
4 participated in the conversation. I think it would go to the
5 weight of the evidence and not the admissibility.

6 THE COURT: I'm going to sustain the objection. We'll
7 make it an exhibit for purposes of appeal. If I'm wrong, they
8 can address it.

9 MR. WALLER: Thank you, Your Honor.

10 THE COURT: But I'm not going to let -- I mean it goes
11 into what the substance of it is. The State would have a
12 right to cross-examine that individual pertaining to anything
13 that conversation may have entailed, but I'll -- I'm going to
14 sustain the objection and not consider it, but it will be in
15 the record for purposes of appeal --

16 MR. WALLER: Thank you, Your Honor.

17 THE COURT: -- depending on what I do.

18 MR. WALLER: Thank you, Your Honor.

19 THE COURT: All right.

20 BY MR. WALLER:

21 Q: Mr. Searles, did you -- you testified that you talked to
22 Mr. McFadden?

23 A: I did.

24 Q: And he was an investigator?

25 A: Yes. Thomas McFadden.

DONSHAY SEARLES - DIRECT BY MR. WALLER

1 Q: Okay. Did you -- what did you tell him about your
2 conversations with Mr. Hamm?

3 A: I really ain't tell him anything. When I got that
4 message from Mr. Hamm, my mama called. My mama called down
5 and my mama actually went behind me and she got in touch with
6 Mr. Thomas McFadden. So I was at work and I was getting off
7 and I came home and he was -- he was -- he was at there at my
8 house on the computer and things like that, him and another
9 police. And he was like -- my mama was showing him all the
10 stuff like that and he --

11 MS. MCALLISTER: Your Honor?

12 A: Actually, he --

13 MS. MCALLISTER: Your Honor, I object. I think he's
14 getting into hearsay if he's going to talk about a
15 conversation between Investigator McKenzie [sic.] and his
16 mother.

17 THE APPLICANT: No. This ain't -- I ain't talking about
18 that.

19 THE COURT: Hold on a minute. You can testify as to your
20 own personal knowledge, but I'm not going to allow you to
21 testify as to what other people said right now. All right?
22 Go ahead.

23 MR. WALLER: Thank you, Your Honor.

24 BY MR. WALLER:

25 Q: Mr. Searles, did you -- did you bring up any of these

DONSHAY SEARLES - DIRECT BY MR. WALLER

1 issues to Mr. Jordan?

2 A: Like I said, I never seen Mr. Jordan. I keep telling you
3 that I never seen Mr. Jordan until it been time to go and get
4 my time. I ain't never seen this man.

5 Q: Okay. Mr. Searles, what -- what ultimately led -- led to
6 you pleading guilty?

7 A: Like I told you before, my mother. My mother was the
8 reason why I plead guilty. It was not because of Mr. Jordan
9 or any of that. Like I tell you again, I don't know Mr.
10 Jordan. I never talked to this man about my case. We never
11 talked about anything with my case, period.

12 Q: Okay.

13 A: And it wasn't Mr. Jordan what made me plead or anything
14 like that. It be my mother. It wasn't -- it wasn't Mr.
15 Jordan. I never talked to this man.

16 Q: Okay.

17 MR. WALLER: No further questions. Please answer any
18 questions Ms. McAllister has.

19 THE APPLICANT: Uh-huh.

20 THE COURT: Cross-examination.

21 MS. MCALLISTER: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. MCALLISTER:

24 Q: Mr. Searles, do you remember the day of your plea having
25 some conversation back and forth with the judge?

DONSHAY SEARLES - CROSS BY MS. MCALLISTER

1 A: Somewhat, yes, ma'am.

2 Q: Okay. Do you remember him asking you -- asking you some
3 questions about what you were doing there that day?

4 A: Excuse me? Say that again?

5 Q: Do you remember the judge asking you some questions about
6 what you were doing there in court that day?

7 A: Uh-huh. Yes, ma'am.

8 Q: You do? Okay. Do you remember the judge asking you if
9 you were satisfied with your attorney, Mr. Jordan?

10 A: I think he probably did, yes, ma'am, if I'm not mistaken.

11 Q: Okay. Do you remember what you told the judge about
12 that? What was your answer to that question?

13 A: I'm not -- I'm not sure what I told him -- what exactly
14 what I told him to the question. Like I said, that been 5 --
15 6 years ago. I'm not exactly sure what I told him about Mr.
16 Jordan.

17 MS. MCALLISTER: I beg the Court's indulgence a moment,
18 Your Honor.

19 BY MS. MCALLISTER:

20 Q: If I showed you a transcript of that hearing, do you
21 think that that might refresh your memory of what you said?

22 A: I mean it might. Like I said, it been six years ago.
23 That's a long time to me, ma'am.

24 MS. MCALLISTER: May I approach the witness, Your Honor?

25 THE COURT: Yes, ma'am.

DONSHAY SEARLES - CROSS BY MS. MCALLISTER

1 BY MS. MCALLISTER:

2 Q: I'll call your attention here on page 4. Do you want to
3 read that --

4 A: Yes, ma'am.

5 Q: -- and see if that helps you remember?

6 A: I do.

7 (WHEREUPON, there was a pause in the proceedings.)

8 A: Okay. I see it.

9 Q: Do you see that?

10 A: Yes, ma'am.

11 Q: Thank you. Okay. So the judge asked you if you were
12 satisfied with your lawyer?

13 A: Uh-huh.

14 Q: Correct? Do you remember that now?

15 A: Now that I see it, yeah. I think so.

16 Q: Okay. And do you remember now what you told the judge?

17 A: On that paper, I told him yes. On that paper, I told him
18 yeah.

19 Q: You told him you were satisfied with your attorney?

20 A: Uh-huh.

21 Q: And do you see -- do you remember that he also asked you
22 if Mr. Jordan had answered all of your questions and done
23 everything you had asked him to do, and you told him yes?

24 A: On that paper, I see that's what it says, yes.

25 Q: Okay.

DONSHAY SEARLES - CROSS BY MS. MCALLISTER

1 THE COURT: What page was that on, Ms. McAllister?

2 MS. MCALLISTER: That's on page 4, Your Honor.

3 THE COURT: All right.

4 BY MS. MCALLISTER:

5 Q: Do you also remember the judge going over with you the
6 constitutional rights that you were giving up by choosing to
7 plead guilty?

8 A: No, ma'am, I don't.

9 MS. MCALLISTER: May I approach again, Your Honor?

10 THE COURT: Yes.

11 BY MS. MCALLISTER:

12 Q: Do you see on page 4 again?

13 A: Uh-huh. Yes, ma'am, I see it.

14 Q: Okay. So do you remember what you told the judge when he
15 asked you if you understood all of your rights that you were
16 giving up?

17 A: That what -- that what it says on the paper.

18 Q: Did you -- you told him, yes, sir; correct?

19 A: Yes, ma'am. On the paper, that what it says.

20 Q: Okay. And do you remember the judge asking you if you
21 were indeed guilty and you wished to plead guilty?

22 A: Yes.

23 Q: And did you -- what did you tell him?

24 A: I told him yes.

25 Q: Okay.

DONSHAY SEARLES - CROSS BY MS. MCALLISTER

1 MS. MCALLISTER: I beg the Court's indulgence, Your
2 Honor. I'm sorry.

3 THE COURT: Yes, ma'am.

4 BY MS. MCALLISTER:

5 Q: Do you remember the judge going over with you exactly
6 what you were pleading to and how much time you were facing
7 for those charges?

8 A: No, ma'am.

9 MS. MCALLISTER: May I approach the witness, Your Honor?

10 THE COURT: Yes.

11 BY MS. MCALLISTER:

12 Q: Page 3 going on to page 4.

13 (WHEREUPON, there was a pause in the proceedings.)

14 A: Yeah. I see it right there.

15 Q: So you recall that the judge went over the charges to
16 which you were pleading and the sentences that you were
17 facing?

18 A: No. I don't -- I don't -- I don't remember that, ma'am.

19 Q: Do you remember it after seeing it on the transcript?
20 Does that help you remember?

21 A: No. I still don't -- no, I don't remember, but it's on
22 that paper; right? But I don't remember that day. I don't
23 remember it. I don't remember that.

24 Q: Do you agree with me that you did plead guilty to
25 carjacking?

DONSHAY SEARLES - CROSS BY MS. MCALLISTER

1 A: Yeah. It's on that paper. Yes, ma'am.

2 Q: And you would agree with me that that happened? You did
3 that?

4 A: Yeah.

5 Q: Yes?

6 THE COURT: Is that a yes or a no? I need a verbal
7 response, please.

8 THE APPLICANT: Yes.

9 THE COURT: Thank you.

10 MS. MCALLISTER: Okay.

11 BY MS. MCALLISTER:

12 Q: So you did plead guilty to the carjacking on that day and
13 you told your attorney at that time -- I mean you told the
14 judge at that time you were satisfied with your attorney and
15 he had done everything you asked him?

16 A: Say that again?

17 Q: On the day that you pled guilty to the carjacking, you
18 told the judge that you were satisfied with your attorney and
19 he had done everything you asked him?

20 A: Uh-huh.

21 THE COURT: Is that a yes or a no?

22 THE APPLICANT: Yes, sir.

23 THE COURT: Thank you. I understand what you're saying,
24 sir, but for the record I need it clear. If it's a yes or no
25 answer, give me a yes or no and not an uh-huh or huh-uh. It's

DONSHAY SEARLES - REDIRECT BY MR. WALLER

1 not as clear. Okay?

2 THE APPLICANT: Yes, sir.

3 THE COURT: Thank you.

4 MS. MCALLISTER: Nothing further, Your Honor.

5 THE COURT: Any redirect?

6 MR. WALLER: Just very briefly, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. WALLER:

9 Q: Mr. Searles, if you never met with Mr. Jordan, how could
10 you have asked him to do anything for you?

11 A: You're right, but like I -- you're right. You're exactly
12 right. Like I tell you again, sir, I been young. Mr. Jordan
13 ain't do nothing and you can ask Mr. Jordan hisself did he do
14 anything for me and, like I said, even my mother -- it wasn't
15 Mr. Jordan doing anything like that and, like, you're right.
16 If he ain't do anything -- I mean like I said, I been young,
17 sir. I've been just listening to my mama. My mama been
18 telling me go ahead and get it out the way. I ain't know. I
19 ain't know nothing about no time or nothing, no charges or
20 nothing like that. I just was telling the judge, yeah. My
21 mama just told me to get it over with; so that what I've been
22 going on with. I ain't -- I ain't know nothing.

23 MR. WALLER: No further questions.

24 THE COURT: Any recross?

25 MS. MCALLISTER: Nothing further, Your Honor.

JAY JORDAN - DIRECT BY MS. MCALLISTER

1 THE COURT: Sir, you may step down. Thank you.

2 THE APPLICANT: Uh-huh.

3 MR. WALLER: No further witnesses, Your Honor.

4 THE COURT: Counsel?

5 MS. MCALLISTER: Your Honor, the State would call Jay
6 Jordan.

7 THE COURT: Sir, if you'd come around to be sworn,
8 please?

9 THE CLERK: Do you swear to tell the truth, the whole
10 truth, and nothing but the truth, so help you God?

11 THE WITNESS: I do.

12 THE CLERK: Thank you. Have a seat and state your name
13 for the record.

14 THE WITNESS: My name is Wallace Jordan Jr. However, I'm
15 pretty much known as Jay.

16 THE COURT: All right.

17 JAY JORDAN, being first duly
18 sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. MCALLISTER:

21 Q: Mr. Jordan, how long have you been practicing law?

22 A: I believe I'm headed towards my 10-year anniversary
23 coming up.

24 Q: Okay. And how much criminal law do you do?

25 A: A substantial amount. I've been a part-time public

JAY JORDAN - DIRECT BY MS. MCALLISTER

1 defender with Florence County I believe since 2010 and did
2 criminal work prior to that, and I also do a fair amount of
3 federal criminal defense work as well.

4 Q: Okay. So how much criminal experience did you have at
5 the time of Mr. Searles' case?

6 A: This would have been four years ago, but it still
7 would've been substantial. I would have been -- I had done,
8 again, part-time public defender work over in Marion County in
9 years prior to that and had been with the Florence County
10 Public Defender's Office for a period of time prior to that as
11 well and had, again, been practicing in federal court. So
12 again, it would have been substantial even four years ago.

13 Q: Okay. Were you appointed in this case?

14 A: Yes. That's correct.

15 Q: Okay. And that was through the Florence County Public
16 Defender's Office?

17 A: Yes.

18 Q: Okay. Can you -- do you recall how these charges came
19 about with Mr. Searles?

20 A: Yes. I remember the case. I remember -- I remember
21 first being assigned the case. So yes.

22 Q: Okay. Can you briefly discuss what happened and how he
23 came to be arrested and you came to be involved with him?

24 A: Mr. Searles had multiple charges. I think it's been
25 discussed prior, carjacking, burglary, et cetera, and they

JAY JORDAN - DIRECT BY MS. MCALLISTER

1 were sort of spread out over time. All of his charges
2 eventually made a way to my offices once I was originally
3 assigned to the beginning, the first charge, and then the rest
4 of them followed in.

5 Once I was assigned the case, I immediately, because it
6 was a serious charge, made contact with our in-house -- one of
7 our in-house investigators, Mr. McKenzie, and then we both sat
8 down with the file and started working on the file together.

9 If I remember correctly, the carjacking was the first
10 case and it was from a Dollar General on the south side of
11 Florence wherein the alleged victim was entering her -- I
12 believe it was a Jeep Cherokee. She was getting in her
13 vehicle and Mr. Searles was accused of coming up and
14 carjacking.

15 Q: Okay. Do you recall how many times you met with Mr.
16 Searles?

17 A: It was multiple times. I don't have an exact figure. It
18 was multiple times. I'd say five or six times at least.

19 Q: Okay. Do you recall what you discussed when you met with
20 him?

21 A: Well, we -- of course, certainly every time he would --
22 you know, a new file would find its way to my office, we would
23 discuss that case. We discussed the carjacking, the burglary.
24 If I remember correctly, one of the burglaries was a family
25 member. I believe it was his aunt.

JAY JORDAN - DIRECT BY MS. MCALLISTER

1 So we would discuss the charges at hand, his options.
2 You know, to some degree, it would have been specific to -- or
3 to a large degree, it would have been specific to the charges,
4 but in some degree it would have been generic. We would have
5 gone over what his options were. Certainly, it always comes
6 down to -- or in most cases it comes down to plea or trial.
7 There were plea offers that were as to I believe multiple of
8 the charges that we would have discussed. So we would have
9 had several conversations that, you know, dealt with all those
10 issues.
11 Q: Okay. Did you discuss the evidence that the State had
12 against him?
13 A: Yes.
14 Q: Okay. Can you briefly describe what that evidence was?
15 A: The most specific thing would have been that he was
16 identified in a photo lineup by the victim. That, as to the
17 carjacking, would have been the most specific evidence.
18 Q: Okay. And you discussed that evidence with him?
19 A: Yes.
20 Q: Okay. And did you develop any opinion about whether the
21 State was going to be able to prove him guilty beyond a
22 reasonable doubt?
23 A: I felt like the State had a fair -- fairly good case.
24 Q: Okay. And did you talk about that with him, your
25 assessment of the case with him?

JAY JORDAN - DIRECT BY MS. MCALLISTER

1 A: Certainly. You know, I always tell my clients it's not
2 my decision to make. It's your decision to make. My job is
3 to give you options and to do my best to represent you, and in
4 this case to give you sort of a -- for lack of a better way to
5 say it, an idea of what could happen and, certainly, being
6 found guilty by a jury was a -- was a serious real possibility
7 in my opinion.

8 Q: And do you recall -- do you recall ever discussing going
9 to trial in this case or do you -- did you only discuss a
10 plea?

11 A: We would have discussed it in an option sense. I do
12 remember that, but I don't recall from Mr. Searles'
13 perspective that he ever said that he wanted a trial. You
14 know, a lot of times I have people tell me out the gate this
15 is a trial. That was not the case in this case.

16 Q: I think you heard a little bit of testimony about a
17 potential third-party. Did you --

18 A: Mr. Hamm, I believe, yes.

19 Q: Mr. Hamm, yes. Did you -- were you aware of that person
20 at the time that you were discussing this case with Mr.
21 Searles?

22 A: I was. I was made aware of the Facebook page that's I
23 believe been presented today. Once I was made aware of that
24 and I was made aware of that by Mr. Searles' mother I believe,
25 immediately me and Mr. McKenzie got together again, as he had

JAY JORDAN - DIRECT BY MS. MCALLISTER

1 been assisting me throughout this case, and we started looking
2 into this.

3 And -- and I did discuss the Facebook -- that particular
4 issue with -- with my client. My concern was a couple things
5 that I shared with him. Number one, admissibility issues
6 that, you know, it may or may not be allowed to be considered,
7 depending on the judge's discretion. And then secondly, you
8 know, if it did get through that gamut, so to speak, then it
9 would just -- it would simply be a factor a jury could
10 consider and they -- bearing in mind they still had eyewitness
11 testimony linking him to the crime. So -- but yes, we did
12 discuss it.

13 Q: Okay. So you -- okay. And eventually, you entered into
14 plea negotiations on his behalf and were able to secure a plea
15 for him; is that correct?

16 A: Yes. Mr. Jupertinger, who had this case -- we met
17 multiple times concerning Mr. Searles because, again, he had
18 multiple charges and multiple things were discussed as far as
19 the carjacking and then the burglaries. Ultimately, it was
20 determined that Mr. Searles wished to go forward with what we
21 classify straight up essentially and plead guilty.

22 Q: Did you explain to him what straight up means in terms of
23 a plea?

24 A: Yes.

25 Q: Okay. And you discussed with him all of the elements of

JAY JORDAN - DIRECT BY MS. MCALLISTER

1 the charges, all of the possible punishments, and all of his
2 constitutional rights?

3 A: Yes.

4 Q: Including a trial?

5 A: Yes.

6 Q: And you -- in order to do that, then you must've conveyed
7 the plea offer to him and let him --

8 A: Yes.

9 Q: -- discuss it with you?

10 A: I mean, again, given the way our system works when you
11 get multiple charges, I would have had to meet with him
12 several times to discuss that. And the plea offers would have
13 sort of been a moving target given that, you know, when the
14 file first comes in, an offer might be made, but it would have
15 been before it sort of caught up with the next file. So there
16 were multiple offers, all of which -- some of which would have
17 been taken away by the solicitor, some of which would've been
18 continued to be available.

19 Q: Okay. And whose decision was it ultimately to plead
20 guilty?

21 A: Mr. Searles.

22 Q: And did you feel like that was in his best interest?

23 A: Yes. Given the case that I felt like was going to be
24 presented against him, I felt like that was his best option.
25 I certainly didn't and could not have foreseen the sentence,

JAY JORDAN - DIRECT BY MS. MCALLISTER

1 but I felt like that was his best option given the
2 circumstances.

3 Q: Did you -- did you ever tell Mr. Searles specifically
4 what his sentence would be?

5 A: No. I would have told him, you know, that's in the
6 discretion of the judge and I would have given him, you know,
7 a bookend so that it could have been -- you know, what -- but
8 I would not have told him what it would have been --

9 Q: Okay.

10 A: -- in advance.

11 Q: And did you have a chance to talk with his family about
12 his case and the decision that he was having to make in terms
13 of a plea offer?

14 A: Yes. I believe on the phone several times and then the
15 day of and then again Mr. McKenzie met -- doing a lot of
16 investigative work associated with the case, he would have
17 talked to them as well.

18 MS. MCALLISTER: That's all the questions I have at this
19 time, Your Honor.

20 THE COURT: Cross-examination.

21 MR. WALLER: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. WALLER:

24 Q: Mr. Jordan, you talked about Mr. Searles being picked out
25 of a photo lineup. Did you have an opportunity to discuss

JAY JORDAN - CROSS BY MR. WALLER

1 with him the procedures of a photo lineup?

2 A: We would've talked about the photo lineup. I don't
3 recall if we'd have gone into the exact -- well, what do you
4 mean by procedures?

5 Q: Did you -- did you go over with him the admissibility of
6 that lineup and what the State would have to -- the State
7 would have to show in order to have that be used against him?

8 A: Yes. I would have walked through with him, you know, how
9 a photo lineup comes to be, to the best of my knowledge, and
10 then the process by which it's employed and then, you know,
11 how it's used at trial.

12 Q: Okay. Did you have an opportunity to view the photo
13 lineup in this case?

14 A: Yes.

15 Q: Okay. You testified that you all discussed the Facebook
16 conversation -- purported conversation. Did you have -- what
17 steps did you take to locate Mr. Hamm?

18 A: I talked to Mr. McKenzie, who would have been the
19 investigator in our office, and we would have discussed -- we
20 discussed the Facebook post that you're referencing and he
21 would've attempted to locate Mr. Hamm.

22 Q: Okay. Do you -- do you have any knowledge of his success
23 or failure?

24 A: To my recollection, he attempted to, but could not find
25 Mr. Hamm.

JAY JORDAN - CROSS BY MR. WALLER

1 Q: Okay. What information did Mr. Searles provide you as
2 far as how to locate Mr. Hamm?

3 A: I don't recall.

4 Q: Okay.

5 A: That would have -- that would have been -- most likely
6 would have been a discussion with Mr. McKenzie.

7 Q: Okay. Well, what conversation did you have with Mr.
8 Searles regarding the purported Facebook conversation?

9 A: We would have -- we talked about certainly the
10 admissibility issues and we talked about, you know, if it did
11 get through and was admissible and could be considered by a
12 jury that it would have -- it would have been also weighted, I
13 guess you'd say, by other evidence, specifically the photo
14 lineup.

15 Q: Okay. You testified a minute ago that there were --
16 there were plea offers that you would have conveyed to Mr.
17 Searles?

18 A: Yes.

19 Q: Do you have any notes as to what those plea offers were?

20 A: I looked through the file this morning and -- because,
21 again, there were multiple files. The -- I believe there was
22 a -- the burglary second had a plea offer. Two of his charges
23 were a burglary second and a grand larceny that ultimately --
24 that he was offered -- and I think I saw this reference where
25 he was offered a concurrent YOA as to those charges.

JAY JORDAN - CROSS BY MR. WALLER

1 As to -- he did get a burglary first, which I believe it
2 was a 25-year offer extended, and I don't have the -- I looked
3 through. I did not see a plea offer as to the carjacking in
4 my file, but again, Mr. Jepertinger and I would have had
5 multiple conversations concerning most of these plea offers.
6 It would've been kind of a moving target as these new charges
7 came along, if that makes sense.

8 Q: Okay.

9 MR. WALLER: I beg the Court's indulgence, please.

10 THE COURT: All right.

11 MR. WALLER: No further questions, Your Honor. Thank
12 you.

13 THE COURT: Anything further from the State?

14 MS. MCALLISTER: No, Your Honor.

15 THE COURT: Sir, you may step down. Thank you.

16 THE WITNESS: Thank you.

17 MS. MCALLISTER: That's the State's case, Your Honor.

18 THE COURT: All right. Anything by applicant's counsel
19 by way of argument, Mr. Waller?

20 MR. WALLER: Nothing, Your Honor. I would just ask that
21 you consider everything contained in the record, including his
22 application.

23 THE COURT: All right. Anything further?

24 MS. MCALLISTER: No, Your Honor.

25 THE COURT: All right. I will look at it and I'll let

1 you know.

2 MR. WALLER: Thank you, Your Honor.

3 THE COURT: All right.

4 (WHEREUPON, the proceedings ended at 10:59 a.m.)

5

6 --- END REQUESTED TRANSCRIPT ---

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1 State of South Carolina)
2) Certificate
3 County of Florence)
4

5 I, the undersigned, Krystal J. Smith, Notary Public and
6 Official Court Reporter for the Twelfth Judicial Circuit of
7 the State of South Carolina, do hereby certify that the
8 foregoing pages, numbered 1 through 38 constitute a true,
9 accurate, and complete Transcript of Record of all the
10 proceedings had and evidence introduced in the hearing of the
11 above captioned case, relative to appeal, in the Court of
12 Common Pleas for Florence County, South Carolina, on the 9th
13 day of November, 2016.

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

16

17 s/Krystal J. Smith

18 Court Reporter

19

20 Florence, South Carolina

21 March 18, 2017

22

23

24

25

CERTIFIED: A TRUE COPY

Connie Reel Shearin

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
MARK OF COURT C.P. IN THE COURT OF COMMON PLEAS
FLORENCE COUNTY, S.C. TWELFTH JUDICIAL CIRCUIT

Donshay Searles, #348058,

Applicant,

v.

State of South Carolina,

Respondent.

2586

2012-CP-21-7584

ORDER OF DISMISSAL

2016 DEC 30 PM 3:06
CONNIE REEL-SHEARIN
C.C.P. & C.S.
FLORENCE COUNTY, SC

FILED

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed October 3, 2012. Respondent made its Return on December 14, 2012. An evidentiary hearing into the matter was convened on November 9, 2016 at the Florence County Courthouse. Applicant was present at the hearing and represented by Jonathan Waller, Esquire. Lindsey McCallister, Esquire, of the South Carolina Attorney General's Office represented the Respondent. At the call of the case, Mr. Waller made a motion for a continuance based on Applicant's representation that he had hired another attorney to represent him in this matter. Neither Mr. Waller nor the State had received any documentation indicating that counsel had been retained on Applicant's behalf. The Court denied Applicant's request for a continuance.

Applicant testified on his own behalf at the PCR hearing. Applicant's plea counsel, Wallace H. Jordan, Esquire, also testified at the hearing. This Court had before it the guilty plea transcript, the records of the Florence County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the PCR application, and Respondent's Return thereto.

*PCB
P. 10/8*

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Florence County. Applicant was indicted at the September 2011 term of the Florence County Grand Jury for burglary, grand larceny, and carjacking. Wallace H. Jordan, Esquire, represented the Applicant. On October 5, 2011, Applicant pled guilty to burglary and carjacking. Pursuant to the State's recommendation, the Honorable William H. Seals sentenced the Applicant to confinement for concurrent terms of 15 years for carjacking and 10 years for burglary. Applicant did not appeal the plea or sentence.

Applicant alleges he is being held in custody unlawfully for the following reasons: ineffective assistance of counsel. At the hearing, Applicant waived all grounds for relief except ineffective assistance of counsel. Applicant only challenges the sentence for carjacking in this PCR action.

II. SUMMARY OF TESTIMONY

Applicant's Testimony

Applicant testified that he only met with his attorney one time, on the day of the plea, and Counsel did not go over any of the charges, evidence, or possible sentences with him. Applicant testified that he did meet with an investigator prior to his plea and gave the investigator some possible leads for a defense, but Applicant was told that none of his information was usable. Applicant testified that Counsel promised him that he wouldn't get much time, and Applicant stated that he decided to plead guilty because that was what his mother wanted him to do. On cross examination, Applicant conceded that the judge went over the possible sentences with him and that he told the judge he wished to plead guilty and was indeed guilty. Applicant also admitted that the transcript reflects that he told the judge he was satisfied with his attorney.

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Counsel's Testimony

Counsel testified that he had been practicing law for six years at the time of this plea, with substantial criminal experience. He testified that he met with Applicant several times, as he represented Applicant on multiple indictments. Counsel stated that every time a new charge was added, he would meet with Applicant to discuss the new case. Counsel testified that he discussed the State's evidence with Applicant, and he advised Applicant that there was strong evidence against him, including an identification from a photo lineup. Counsel also testified that he was aware of the information regarding a possible defense given to the investigator by Applicant and Applicant's mother, and it was investigated and ruled out.

Counsel stated that he did not remember Applicant ever wanting to take the case trial, and he worked to get Applicant the best plea bargain he could. Counsel stated that he never told Applicant he would receive a specific sentence, but he would have discussed the range with Applicant. Counsel also testified that he explained to Applicant what it meant to plead "straight up," and they discussed the constitutional rights that Applicant would waive by choosing to plead. Counsel testified that it was solely Applicant's decision to plead guilty, although Counsel did agree and felt it was in Applicant's best interest. Counsel stated the he was surprised by the length of the sentence, given Applicant's young age.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the

relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Applicable Law

Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. 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. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 U.S. 668, 688 (1984)). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the

outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

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, 243-44 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

Findings of Fact

This Court finds Applicant's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is credible. This Court also finds Counsel provided effective assistance of counsel in this case. Counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with Applicant on numerous occasions. During conferences with Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof. The

record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. Applicant acknowledged that he was guilty of these offenses. Applicant told the plea court that he was satisfied with his attorney. This Court finds that Applicant understood the terms of the plea bargain and the possible range of sentences that he was facing.

Regarding Applicant's claims of ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with Applicant, conducted a proper investigation, and provided thorough representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions while representing Applicant. Applicant failed to show that counsel's performance was deficient. Therefore, this Court need not address prejudice. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

All Other Allegations

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

allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

IV. CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

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


{Signature on following page.}

DCB
P 7/7/8

IT IS THEREFORE ORDERED:

1. That the Application for post-conviction relief be denied and dismissed with prejudice; and
2. That Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 21 day of Dec., 2016.



THE HONORABLE D. CRAIG BROWN
Presiding Judge
Twelfth Judicial Circuit

Florence, South Carolina.

2016 DEC 30 PM 3:06
CORRIE REEL-SHEARIN
CLERK
FLORENCE COUNTY, SC

FILED

DCB
1-8-18

WITNESSES

Russell Cox Florence County Sheriff

DOCKET NO. 2011-GS-21-1469

The State of South Carolina

County of

FLORENCE

FILED

2011 SEP -8 AM 11:35

CONNOR PHEL-SHEARIN
CCLP & GS
FLORENCE COUNTY, SC

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2011

JOHN C JEPERTINGER

THE STATE

vs.

ARREST WARRANT NUMBER

DONSHAY SEARLES

M273455 M273456

CERTIFIED TRUE COPY
Clerk of Court
CLERK OF COURT CP & GS
FLORENCE COUNTY, S.C.

ACTION OF GRAND JURY
ARREST WARRANT

Indictment for

BURGLARY SECOND DEGREE

AND

GRAND LARCENY

Foreperson of Grand Jury
Date: 9-8-11

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)

INDICTMENT FOR
 BURGLARY SECOND DEGREE
 AND
 GRAND LARCENY

At a Court of General Sessions, convened on SEPTEMBER 08, 2011 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- BURGLARY SECOND DEGREE

That DONSHAY SEARLES did in Florence County on or about April 27, 2011, enter without consent and with the intent to commit a crime therein, the dwelling of Tamara Inman, located at ■ Candy Lane in Florence, in violation of Section 16-11-0312(A), S. C. Code of Laws, 1976, as amended.

COUNT TWO- GRAND LARCENY

That DONSHAY SEARLES did in Florence County on or about April 27, 2011, take and carry away the personal goods of Tamara Inman, valued at more than two thousand (\$2,000.00) dollars, but less than ten thousand (\$10,000.00) dollars, described as follows: jewelry, with the intent to deprive the owner permanently of such property and to convert the goods to his/her own use, in violation of Section 16-13-0030(B), S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
 TWELFTH CIRCUIT SOLICITOR

WITNESSES

Thomas Mcfadden Florence County Sheriff

DOCKET NO. 2011-GS-21-1186

The State of South Carolina

County of

FLORENCE

2011 JUL 21 11:55

FLORENCE COUNTY, S.C.

COURT OF GENERAL SESSIONS

JULY TERM 2011

THE STATE

vs.

DONSHAY SEARLES

JOHN C JEPERTINGER

ARREST WARRANT NUMBER

M273161 2011GS2101186A

ACTION OF GRAND JURY

TRUE BILL

Indictment for

CARJACKING AND ARMED ROBBERY

Samuel K. Jones
Foreperson of Grand Jury

Date: 7-21-11

VERDICT

Foreperson of Petit Jury

Date:

CERTIFICATE A TRUE COPY
Clerk of Court
CLERK OF COURT, C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)

INDICTMENT FOR
 CARJACKING
 AND
 ARMED ROBBERY

At a Court of General Sessions, convened on JULY 21, 2011 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- CARJACKING

That DONSHAY SEARLES did in Florence County on or about the October 27, 2010, take and/or attempt to take one Jeep Cherokee from Ofelia Montalvo by force and violence or by intimidation while said victim was operating and/or in the vehicle, in violation of Section 16-3-1075(B)(1), S. C. Code of Laws, 1976, as amended.

COUNT TWO- ARMED ROBBERY

That DONSHAY SEARLES did in Florence County on or about October 27, 2010, while armed with a deadly weapon, to wit: a knife, take and carry away personal property of Ofelia Montalvo from or in the immediate presence of Ofelia Montalvo with intent to deprive Ofelia Montalvo of possession of a Jeep Cherokee Automobile, by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
 TWELFTH CIRCUIT SOLICITOR