

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County

Honorable Benjamin H. Culbertson, Circuit Court Judge

RECEIVED

MAY 24 2017

S.C. SUPREME COURT

DEQUAN SHAMAR ANDERSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-002400

APPENDIX

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EXHIBITS:

NO EXHIBITS WERE MARKED TO THIS PROCEEDING.

Certificate of Court Reporter

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1 MR. SCOTT: Your Honor, this is Dequan Anderson. He's
2 been indicted for burglary in the first degree, 2013-GS-38-
3 1124. He was also indicted for attempted murder, 2014-GS-38-
4 410. State is allowing Mr. Anderson to plead guilty to
5 burglary in the second degree non-violent on the 1124
6 indictment. State is allowing Mr. Anderson to plead guilty
7 to assault and batter of a high and aggravated nature on the
8 2014-GS-30-410 indictment.

9 State has negotiated a range with the defense, a range
10 of 10 to 12 years on the ABHAN and a concurrent sentence
11 will be the burglary second.

12 THE CLERK: Please raise your right hand.

13 (Whereas, Dequan S. Anderson was
14 sworn to tell the truth.)

15 THE CLERK: Thank you.

16 THE COURT: Both of you represent Mr. Anderson?

17 MS. HINDS: We do.

18 MR. MELLARD: Yes, sir.

19 THE COURT: All right. Do you agree with his decision to
20 enter the plea as indicated by the solicitor?

21 MS. HINDS: Yes, sir.

22 MR. MELLARD: Yes, sir.

23 THE COURT: And Mr. Anderson, you want to plead guilty
24 to burglary in the second degree?

25 MR. ANDERSON: Yes, sir.

1 THE COURT: And plead guilty under North Carolina verses
2 Alford to assault and battery of a high and aggravated
3 nature?

4 MR. ANDERSON: Yes, sir.

5 THE COURT: Burglary in the second degree carries a
6 penalty of possibly --

7 MR. SCOTT: Zero to 10 years, Your Honor.

8 THE COURT: And the other one?

9 MR. SCOTT: Zero to 20 years, Your Honor.

10 THE COURT: Is that your understanding, sir, to the
11 possible penalties?

12 MR. ANDERSON: Yes, sir.

13 THE COURT: And you want to waive your right to a jury
14 trial and enter the plea of guilty as I've just explained to
15 you to these two crimes?

16 MR. ANDERSON: Yes, sir.

17 THE COURT: Now, when you plead guilty you give up
18 important constitutional rights including your presumption
19 of innocense, your right to remain silent, your right to a
20 jury trial and your right to offer any defense that you
21 might have to these charges; do you understand that?

22 MR. ANDERSON: Yes, sir.

23 THE COURT: Are you on probation or parole now?

24 MR. ANDERSON: Yes, sir.

25 THE COURT: What are you on now?

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MR. ANDERSON: Probation.

THE COURT: Were you on probation when you committed this crime?

MR. ANDERSON: No, sir.

THE COURT: You got on probation after this crime?

MR. ANDERSON: Yes, sir.

THE COURT: Is that right?

MR. MELLARD: He was put on probation in June --

MR. SCOTT: That is correct, Your Honor.

THE COURT: All right. And what makes you guilty of burglary second degree, what did you do?

MR. ANDERSON: Honestly, Your Honor, I am being honest. I've been honest from day one.

THE COURT: We did swear you in, right?

MR. ANDERSON: Yes, sir.

THE COURT: That's generally the biggest test of honesty, at least it's supposed to be; correct?

MR. ANDERSON: Yes, sir. I did -- I did do the burglary second. I did went into the home of my victim.

THE COURT: Who's home did you go in?

MR. ANDERSON: Johnny West.

THE COURT: Johnny West?

MR. ANDERSON: Yes, sir.

THE COURT: Does he live near you?

MR. ANDERSON: No, sir. He lives in Vance. I lives in

1 Holly Hill. I mean, Santee. I lives in Holly Hill.

2 THE COURT: And you burglarized his house?

3 MR. ANDERSON: Yes, sir.

4 THE COURT: Why did you do that?

5 MR. ANDERSON: Can I explain in detail why?

6 THE COURT: Just give me the short answer and then I'll
7 come back to you for the long answer.

8 MR. ANDERSON: Well, a week prior to the incident a guy
9 that I met from out of Vance took me to his house to get
10 some marijuana and the marijuana wasn't the right type of
11 marijuana, and after I realized it, after about a week, I
12 kept calling him over and over trying to, you know, defuse
13 the situation and let him know what happened. On the day of
14 the incident, I went by his house. I went to speak to him.
15 I didn't know where he worked at at the time. I got
16 frustrated honestly and I went in his house without
17 permission.

18 THE COURT: Did you find the marijuana?

19 MR. ANDERSON: Well, actually, out of frustration I just
20 wanted to get something in the same price range. So I took
21 a loss.

22 THE COURT: What did you get?

23 MR. ANDERSON: I took a TV and a money jar, which he got
24 that back. I just took it outside the home, but I never left
25 the property with it. And a gun of his.

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1 THE COURT: A TV, a money jar and a gun.

2 MR. ANDERSON: Yes, sir.

3 THE COURT: Okay. Do you think if you had a jury trial
4 you would most likely would be found guilty?

5 MR. ANDERSON: Honestly, yes, sir, with my statement.
6 Yes, sir.

7 THE COURT: And if you had a jury trial you would have a
8 right to challenge any incriminating statement that you may
9 have made or any incriminating evidence the state would have
10 against you, do you understand that?

11 MR. ANDERSON: Yes, sir.

12 THE COURT: And you don't want to do that?

13 MR. ANDERSON: No, sir.

14 THE COURT: All right. Understanding everything you've
15 said to this point, how do you plead?

16 MR. ANDERSON: To burglary?

17 THE COURT: Yes.

18 MR. ANDERSON: I plead guilty.

19 THE COURT: Now, the assault and battery, is it a new --
20 you dispute what the state said you did but you want to
21 plead guilty to it without admitting that you are guilty or
22 what?

23 MR. ANDERSON: Well, actually, Your Honor, I really
24 don't want to plead guilty to it. It's like I'm kind of
25 forced into pleading guilty to it in order to take the plea

1 off of the non-violent burglary. I have admitted to that
2 and I feel like I'm wrong for that, but as far as the ABHAN,
3 I don't because I didn't intend nor hurt anyone.

4 THE COURT: Well, the state says you did and you say you
5 didn't, but in order to take advantage of the guilty plea in
6 reducing burglary in the first degree to burglary second
7 degree and whatever other considerations you want to plead
8 guilty to that assault and battery of a high and aggravated
9 nature under North Carolina verses Alford, which is pleading
10 guilty while still maintaining that you're not guilty.

11 Is that what you want to do?

12 MR. ANDERSON: Yes, sir.

13 THE COURT: Sir?

14 MR. ANDERSON: Yes, sir.

15 THE COURT: Yes, sir, solicitor?

16 MR. SCOTT: Your Honor, this incident took place on
17 February 15, 2013. It happened about 11:30 in the morning.
18 It took place at Intercostal Lane in Santee, South
19 Carolina, here in Orangeburg County. The victim in this
20 case is Jonathan West. Mr. West, Your Honor, he was at
21 work. He works in a barber shop in the Town of Santee.
22 While he was at work he got a phone call saying his alarm
23 was going off. So Mr. West and a friend of his named
24 Otarious Pelzer, drove to the victim's house, which is about
25 seven minutes away right there on Intercostal Lane. When

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1 they got there they took a little cursory inspection of Mr.
2 West's home. At first they didn't really notice a whole heck
3 of a lot. Mr. West decided he was going to go next door and
4 speak with his father to see if his father had seen or heard
5 anything. In the process of doing that, Your Honor, Mr.
6 West's friend, Mr. Pelzer saw the front door open, to Mr.
7 West's resident. The defendant, Your Honor, came out of the
8 home, basically hopped off the front porch and took off
9 running into the woods. The victim tells me, Your Honor,
10 that they tried to chase the defendant. They said the
11 defendant was brandishing a handgun and fired some warning
12 shots. The victim, Your Honor, they stopped chasing the
13 defendant, but they still tried to monitor where he sort of
14 went in the woods. The victim and his friend tried to sort
15 of parallel the defendant as the defendant ran down the wood
16 line. About that time, Your Honor, a green Cadillac turned
17 down the street. The driver of that vehicle drove passed
18 the victim and his friend and went back up the roadway. Mr.
19 West got a little bit suspicious at that point and asked the
20 driver to stop. The driver did so. It was a female later
21 identified as Montrise Brightman, who is in the courtroom
22 today. She was later determined to be the defendant's
23 girlfriend. Mr. West asked the female driver, can I help
24 you, basically because he was suspicious. The female asked
25 or said something, I'm looking for Josh Bailey, which is not

1 -- it's just basically a fictitious name or somebody that
2 she knew that lived in that area. At that point, the victim
3 says Joshua Bailey, you know, he doesn't live on this
4 street. The female drove back up the street. The witnesses
5 say that the car stopped, the defendant come out from hiding
6 and get into the Cadillac and drive out. They turned right
7 on Highway 6 and went back towards Highway 6. It wasn't
8 until a few months after this incident that Investigator
9 Johnny Thrower told the assigned investigator on this case,
10 Lakeisha Gillard, that the facts and circumstances
11 surrounding this case were similar to a case Investigator
12 Thrower had investigated with the female Monrise Brightman.
13 On July 9 of 2013, about four or five months after the
14 incident investigators went to the Department of Probation
15 and Parole, because Ms. Brightman was reporting that day.
16 They escorted Ms. Brightman back to the Sheriff's Office.
17 The defendant, who had gone with his girlfriend to Probation
18 and Parole that day, my understanding was their personal
19 vehicle followed them back to the Sheriff's Office. And on
20 that date, Your Honor, both ms. Brightman and the defendant,
21 Mr. Anderson gave statements implicating themselves in this
22 burglary.

23 THE COURT: All right. Is everything he said true, Mr.
24 Anderson?

25 MR. ANDERSON: No, sir.

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THE COURT: All right. What part is not true?

MR. ANDERSON: The part about me being in the home.

When I ran out of the home, Your Honor, I ran out of the home and got off their property like, maybe, 200 yards away from the property. My victim's got guns from they father's house next door, which I was shot and grazed in the neck. When I fell they turned around and went to the house and got the drugs. I was in his house, so I know he had drugs in there. The victim cousin, Octerious Pelzer, took the drugs. By the time I got in the car and was leaving he was in front of us and we seen, I seen him myself personally take the drugs out of the car in his hand and took it to his friend house, which was maybe a mile from his house. But as far as me being in the house, Your Honor, that's honest, but, Your Honor, on the day of the incident and it was five months after the incident. I got locked up in July from Probation and they asked me to follow them. My kids was in the car and they threatened to take my kids unless I gave a statement. But as far as the ABHAN, as far as being charged with that, I don't see why, Your Honor, I can't plead to the burglary second, because I'm guilty of that, I confessed to that, rather than me pleading guilty to the ABHAN and I don't feel like I'm guilty of that. But the solicitor say he feel like the 10 years non-violent is not enough time for me.

THE COURT: You are charged with burglary, first degree

1 which carries 15 years to life. You're here to plead
2 guilty. You know it doesn't matter to me whether you plead
3 or don't plead. I understand your -- you know, you want to
4 be righteous about one offense, but then if, based on your
5 admission, if you break in a house and steal guns, that's
6 first degree burglary. That's a minimum 15 years, up to
7 life in prison.

8 You are represented by lawyers and I'm sure they've
9 weighed and discussed all these different factors with you
10 and that's why you're standing there right now to plead
11 guilty. You don't have to plead guilty to anything. Of
12 course, I don't have to accept any recommendations or
13 negotiations on the sentence. Where there's a negotiated
14 sentence either I'll accept the guilty plea as negotiated
15 and give you a sentence within the range of those
16 negotiations or I will not accept your guilty plea. So if
17 you're saying you don't want to plead guilty, then you don't
18 have to. If you say you want to then I still have to decide
19 if I'm going to accept it.

20 MR. ANDERSON: Yes, sir.

21 THE COURT: So what you think?

22 MR. ANDERSON: I'm going to plead guilty. I'm just
23 asking that you have mercy on the sentence. My mom --

24 MS. HINDS: We'll get to that. We'll get to that.

25 THE COURT: What did you do with the TV?

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1 MR. ANDERSON: He got it back.

2 THE COURT: He got it back?

3 MR. ANDERSON: Yes, sir.

4 MR. SCOTT: I left that out. I told you when the
5 victim's initially responded they did a cursory inspection
6 and didn't notice anything out of place. After the brief
7 chase with the defendant they went back to the house and
8 after the deputies responded, they found a flat screen TV
9 that had been moved out of the house and was sort of set on
10 the side of the porch, which was kind of hard to see. And
11 there was one of those empty water jugs that had change in
12 it and that was sitting next to the TV.

13 THE COURT: So he left them on the porch?

14 MR. SCOTT: Yes.

15 MR. ANDERSON: Yes, sir, on the ground.

16 THE COURT: On the ground.

17 MR. SCOTT: I also left out that later the defendant's
18 statement, the defendant admitted to stealing one of the
19 victim's guns out of the house.

20 THE COURT: Did the victim want to be here today?

21 MR. SCOTT: He's been up here several times to bond
22 hearings and things of that nature. I've met with him
23 before, as far as trial preparation and he was fine with us
24 handling the --

25 THE COURT: Does he admit or deny being a drug dealer?

1 MR. SCOTT: He denies being a drug dealer, Your Honor.

2 THE COURT: All right. His criminal history is?

3 MR. SCOTT: Yes, Your Honor. He's got a 1997 conviction
4 for grand larceny from Berkeley County. He's got a 2000
5 conviction for strong armed robbery. He got 15 years on
6 that from Berkeley County. He's got a 2008 conviction for
7 ABHAN from Berkeley County and in June 19, 2013 he pled
8 guilty to assault and battery in the second degree. He
9 received an 18 month sentence suspended to 18 months
10 probation.

11 THE COURT: Is that your rap sheet?

12 MR. ANDERSON: Yes, sir.

13 THE COURT: All right. Counselor, what are you saying?

14 MR. MELLARD: Yes, sir. Your Honor, he's been in jail
15 since July 9, 2013. That's a period of 282 days. Prior to
16 being locked up, he worked at a drywall and an installation
17 business. He was going to start culinary classes. I'll tell
18 the Court before he got locked up he had, he still does, he
19 has a very supportive family. His mom's in the courtroom.
20 His girlfriend, she just ran out of the courtroom, as the
21 Court saw. There's children that are in the hall he's been
22 taking care of. So he has people that care about him.

23 THE COURT: Are her charges still pending or is she
24 cleared?

25 MR. MELLARD: She's on probation, Your Honor.

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1 So he's raising children with his girlfriend. His
2 girlfriend is standing by him. She has told him she will be
3 waiting for him. His mother is here. So unlike a lot of
4 people that come into this courtroom, Your Honor, he
5 actually has family that care about him, and he's an
6 intelligent person and he's worked in his life and he has a
7 chance to make good once he does whatever time the Court
8 decides to do. I just want the Court to understand that.
9 It's our position that if the Court would consider giving
10 him the 10 that would allow him to pay for his crime, but it
11 also would allow him to have a chance at having a good life
12 because he does have good things when he comes out, Your
13 Honor. His girlfriend wanted to speak. Obviously, she's not
14 able to at this time, but I think his mom also wanted say a
15 few words.

16 THE COURT: Very well.

17 MR. SCOTT: Can I clarify one thing. His girlfriend was
18 not charged. She tells me that on the incident date that
19 the defendant asked to be dropped off. They were on the way
20 to McDonald's to get breakfast. He asked to be dropped off,
21 and that she did not have any knowledge of what he was about
22 to do. Mr. Anderson said in his statement that she did not
23 have any knowledge. So she was never charged. She was on
24 probation for burglary from another incident.

25 THE COURT: Was he involved in that?

1 MR. SCOTT: There was an unidentified male from the
2 female's prior charge.

3 THE COURT: Okay.

4 MS. HINDS: This is his aunt. If you'd tell the Judge
5 your name please?

6 MS. BROWN: Linda Anderson Brown.

7 THE COURT: Yes, ma'am.

8 MS. BROWN: I'd like to say good afternoon to you.

9 THE COURT: Good afternoon.

10 MS. BROWN: Dequan has admitted to things that he really
11 is not that type of person. Dequan is my sister's son, but
12 he's like my son. My husband and I -- by my husband being
13 an ex-policeman, we decided to take Dequan in and Dequan
14 he's really not a bad child. This is kind of hard for me
15 right now. And I have four other kids that I raised along
16 with Dequan. I don't -- I don't really believe deep down in
17 my heart that Dequan went to just rob or to hurt someone or
18 to rob because he really don't have a reason to. I mean, my
19 family, we're close knitted, we're well to do, you know.
20 Dequan didn't have to do what he did. I'm just asking you
21 to please in your heart deeply give lenience with him,
22 please, and we can take him home and he can go home with me
23 and my husband. It's just the two of us at my house.

24 THE COURT: Well, they've already negotiated the
25 sentence of between 10 and 12 years.

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1 MS. HINDS: You mean when he gets out?

2 MS. BROWN: When he gets out, yeah.

3 THE COURT: Whether he gets 10, 11 or 12.

4 MS. BROWN: Could you be lenience with him?

5 THE COURT: You say he's not a bad child, of course,

6 he's 34 years old. He's not a child at all.

7 MS. BROWN: I mean -- he's a young man, now.

8 THE COURT: All these crimes that the solicitor read out

9 you all couldn't get him to turn it around when he started

10 getting in all that trouble over in Berkeley?

11 MS. BROWN: Yes. Can I say one more thing?

12 THE COURT: Yes.

13 MS. BROWN: It's one of the robberies that he spoke of.

14 Dequan didn't do that. The person that Dequan was with did

15 it and ran and Dequan being drunk was there and so he got

16 penned with the charge.

17 MR. ANDERSON: That was the strong armed robbery charge.

18 MS. BROWN: Right.

19 MR. ANDERSON: And I just didn't told on the person who

20 it was and I took the time. And my other charges, Your

21 Honor, if I can speak on it. My grand larceny, I was 17 and

22 I was doing wild stuff, I admit, and, you know, my grand

23 larceny charge -- my charge from 2008 with the ABHAN, I just

24 had got out of prison and my mama -- I got a history of --

25 when I grew up, my moms and my step-father, they used to

1 abuse us. So they got in a fight and I fought them and he
2 pressed charges on me. I was on parole. Other than that, I
3 don't get in trouble, Your Honor, those charges are old.
4 And assault in 2012 was with my cousin, which is my aunt
5 daughter. It was an incident that took place at my house,
6 but we resolved it. I could have beat it if I'd took it to
7 trial, but I was scared to took it to trial so I plead out
8 on probation.

9 THE COURT: How do you go to someone's house and steal a
10 gun, a TV and money?

11 MR. ANDERSON: The money -- I was just frustrated, Your
12 Honor. I'm not trying to justify my wrong, but when I went
13 and bought the drugs, I would have known that he had worked
14 to the barber shop I would have went to the barber shop and
15 talked to him instead. But I didn't -- I remembered --

16 THE COURT: How much drugs did you buy?

17 MR. ANDERSON: \$200 worth of marijuana.

18 THE COURT: \$200 worth of marijuana. What you going to
19 do with all that marijuana?

20 MR. ANDERSON: Smoke it.

21 THE COURT: Okay. You must have been pretty heavy into
22 it, buying \$200 worth.

23 MR. ANDERSON: It's just the -- it wasn't that much,
24 it's just the price of it because it was like a up-grade of
25 marijuana.

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1 THE COURT: Well, what was wrong with the marijuana he
2 sold you?

3 MR. ANDERSON: It was the wrong type of grade.

4 THE COURT: How could you tell that?

5 MR. ANDERSON: The smell, the color.

6 THE COURT: You didn't look at it before you bought it?

7 MR. ANDERSON: No, sir. I sent someone in to get it. I
8 didn't went in myself, personally.

9 THE COURT: They didn't do the job they were supposed to
10 do?

11 MR. ANDERSON: No, sir. Actually, I didn't keep it. I
12 got rid of it once I seen it wasn't the right type.

13 THE COURT: You got rid of it?

14 MR. ANDERSON; Yes, sir.

15 THE COURT: You sold it to someone else?

16 MR. ANDERSON: Yes, sir.

17 THE COURT: Okay. Pick up a distribution case for that.

18 MR. ANDERSON: I mean, I'm just being honest, Your
19 Honor.

20 THE COURT: I understand. You're just in a web of
21 criminal activity; buying drugs, burglarizing drug dealers
22 house, plus one thing to another.

23 MR. ANDERSON: Your Honor, I'm just asking to please
24 give me a chance if it's in your heart to do so.

25 THE COURT: Well, I feel for you. It's a bad situation

1 because you look like a reasonably intelligent person from a
2 good family, and here you have these kinds of situations. .
3 It doesn't add up.

4 MR. ANDERSON: I mean, Your Honor, before this incident
5 took place I was actually on the verge of getting my life
6 together. It's not like -- I suffered. I did prison time.
7 I did nine years and I was out since 2009 and I was getting
8 my life together. I wasn't getting in no trouble, Your
9 Honor, since 2009 up until this incident. So it's not like
10 I was out there being a desperado, Your Honor. I was really
11 fighting hard. I was like suffering from some mistakes I
12 made as a teenager. So now being in society trying to get my
13 life together and I had support and I had help and I mean I
14 had a career, Your Honor.

15 THE COURT: At some point in time it didn't register in
16 your mind I better not go in this man's house?

17 MR. ANDERSON: I mean --

18 THE COURT: How did you get in?

19 MR. ANDERSON: I picked his door with a knife.

20 THE COURT: Didn't it register to you that considering
21 all that you had at stake that you should just turn around
22 and get in that car?

23 MR. ANDERSON: I mean, like, Your Honor, I'm not trying
24 to justify it, but like one of my biggest flaws, and I'm
25 confessing to it, like when I get upset, like -- I don't

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1 know -- I'm not trying to justify it, but me going being
2 through, going through a lot, me being able to handle my
3 anger always been a problem and I was seeking counseling for
4 that when I was in society, but, you know, I got
5 incarcerated.

6 THE COURT: Okay. What else do I need to know?

7 MR. SCOTT: Nothing from the state, Your Honor.

8 MR. MELLARD: Nothing.

9 MS. HINDS: I'll just say he is here taking
10 responsibility. He knows he's going to do a substantial
11 amount of time and he's here, still.

12 MR. MELLARD: Oh, and, Your Honor, his girlfriend is
13 back in Court. I believe she wants to say a few words, if
14 the Court will allow.

15 MS. HINDS: State your name.

16 MS. BRIGHTMAN: Montrise Brightman.

17 THE COURT: Yes, ma'am?

18 MS. BRIGHTMAN: Your Honor, I'm not asking for Dequan
19 not to be punished at all. I'm just asking for a little bit
20 of leniency. We have four kids. I'm struggling. I'm
21 trying to raise these kids. They're outside asking if they
22 daddy is coming home today. I don't know if I can do it all
23 by myself. I'm just asking for a little bit of leniency.
24 That's it.

25 THE COURT: What about the gun and the house?

1 MS. BRIGHTMAN: Because I didn't know he was going into
2 the house.

3 THE COURT: He robbed a home.

4 MS. BRIGHTMAN: He just told me he was going to get some
5 more weed. Just drop him off.

6 THE COURT: I understand it's a tuff situation.

7 MS. BRIGHTMAN: I know it is. It's just for my kids.
8 He has the oldest son. I have four small kids; seven, six,
9 five and four.

10 THE COURT: He said he grew up under abuse and all of
11 that and now he's --

12 MS. BRIGHTMAN: And my kids was going through the same
13 thing and so he came into my life.

14 THE COURT: Now, well -- now he's done this. They'll
15 have to see him down at the prison. That compounds the
16 problem. A bad situation at best. I understand. I
17 appreciate everything you've said. Thank you very much.

18 Anything else?

19 MR. MELLARD: Your Honor, if the Court would not mind
20 his mother would like to say a few words. She wasn't able
21 to talk earlier but she has found the strength.

22 THE COURT: Late breaking. He'll be gone in a minute.
23 One out the door and one can't -- yes, ma'am, happy to hear
24 from you, though.

25 MS. : My son is -- I'm sick and I'm asking you please

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1 give him a second chance. I need him home.

2 THE COURT: All right, ma'am, thank you very much.

3 Anything else?

4 MR. MELLARD: No, sir.

5 MS. HINDS: No, sir.

6 THE COURT: On the burglary, the sentence is 11 years.

7 On the ABHAN the sentence is the same negotiated

8 recommendations on the ABHAN as well?

9 MR. SCOTT: The ABHAN is a negotiated 10 to 12. The
10 burglary only carries 10, zero to 10. The recommendation
11 that it run concurrent.

12 THE COURT: So the ABHAN is 10 years on a negotiated 10
13 to 12?

14 MR. SCOTT: Yes, Your Honor.

15 MS. HINDS: Yes, sir.

16 THE COURT: That's 10 years. On the burglary will then
17 be -- which one is 85 percent?

18 MR. SCOTT: The ABHAN.

19 MS. HINDS: The ABHAN.

20 MR. MELLARD: The ABHAN.

21 THE COURT: On the burglary the sentence is 10 years.

22 MR. SCOTT: Thank Your Honor.

23 THE COURT: And the two will run concurrent.

24 MR. SCOTT: Thank Your Honor.

25 THE COURT: Thank you.

1 PROBATION AGENT: Your Honor, if I may, the probation
2 that's also to run concurrent with his time?

3 THE COURT: What he's on probation for?

4 PROBATION AGENT: He's currently on probation for
5 assault and battery second.

6 MR. SCOTT: This happened four months before this.

7 THE COURT: Who did you assault?

8 MR. ANDERSON: My first cousin. I didn't really assault
9 nobody. She attacked me at my house. It was a situation
10 that was resolved really, in court, but like out of court.

11 THE COURT: What was the sentence on that?

12 PROBATION AGENT: He was given 18 months suspended to 18
13 months probation by Judge Goodstein.

14 THE COURT: What year was that?

15 PROBATION AGENT: That was on June 19, 2013.

16 MR. SCOTT: This happened in February of 2013.

17 THE COURT: Okay.

18 PROBATION AGENT: So the violation is the fact that he's
19 pleading right now.

20 THE COURT: This happened in February and this happened
21 in -- he was out on bond?

22 MR. ANDERSON: I went to court already.

23 THE COURT: On this charge.

24 MR. ANDERSON: No, I --

25 MS. HINDS: No, sir. He wasn't arrested --

State v. Dequan S. Anderson

4/17/14

25

1 MR. ANDERSON: I wasn't arrested. I didn't even have a
2 warrant. I've never had a warrant.

3 THE COURT: Okay.

4 MR. ANDERSON: Actually, the case was closed until they
5 took my statement because they didn't have no evidence, no
6 DNA, no nothing. I told on myself actually.

7 MR. SCOTT: He was arrested December of 2012. He plead
8 guilty in June of 2013. The incident he's pleading guilty
9 to happened in February of 2013.

10 PROBATION AGENT: We would just like to add, if we
11 could, for his case to be closed, he not be placed on
12 administrative monitoring. That's all we're trying to get
13 out it, and civil for his monies.

14 THE COURT: On that case?

15 PROBATION AGENT: Yes, sir.

16 THE COURT: All right. So that case just closed.

17 MR. SCOTT: Thank Your Honor.

18 MS. HINDS: Thank Your Honor.

19 THE COURT: Good luck to you, sir.

20 MR. MELLARD: Oh, Your Honor, credit for time served?

21 THE COURT: How much time is he entitled to?

22 MR. MELLARD: 282 days, Your Honor, by my calculation.

23 THE COURT: He gets credit for 282 days.

24 MS. HINDS: Thank Your Honor.

25 MR. SCOTT: Thank Your Honor.

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THE COURT: Thank you.

(This proceeding was concluded.)

State v. Dequan S. Anderson

4/17/14

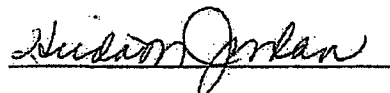
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C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT REPORTER FOR THE FIRST 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 PLEA IN THE CAPTIONED CAUSE, IN THE COURT OF GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE 17 DAY OF APRIL, 2014.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



Hilda M. Jordan, CVR-M

April 11, 2015

FORM 5

STATE OF SOUTH CAROLINA)

County of Orangeburg)

Dequan S. Anderson)

Full name and prison number (if any) of Applicant)

244678)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

FILED
CLERK OF COURT
ORANGEBURG, SC
SEP 23 2014

APPLICATION FOR

POST-CONVICTION RELIEF

Am

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 McDougall Corr. Inst.
1516 Old Gilliard Rd, Ridgerville, SC 29472
2. Name and location of Court which imposed sentence
Court of General Sessions - Orangeburg Co.
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) 2013 GS 38-1124
(b) 2014 GS-38-410

Burglary 2nd Degree
Attempted Murder

RECEIVED

OCT 09 2014

Referred to PCR Idm
Answered _____

(c) _____

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

(a) April 17, 2014

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty Guilty Plea Entered.

(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?

See Attached Sheet

8. If you answered "yes" to (7), list: N/A / See Attached Sheet.

(a) the name of each Court to which you appealed:

i. * See S.C. Appellate Case No.: 2014-000929.

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: N/A

(a) _____

(b) _____

(c) _____

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

- (a) Ineffective Assistance of Counsel
- (b) Malicious Prosecution/Illegal Indictment
- (c) Plea Not knowing and Voluntarily Entered.

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

- (a) See Attached Sheets...
- (b) /
- (c) /

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

- (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 "yes" to any part of (12), list with respect to each petition, motion or application: N/A

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

(c) the disposition thereof: *N/A*

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition: *N/A*

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- 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? *N/A*

- _____
- _____

15. If you answered "yes" to (14) identify: *N/A*

(a) which grounds have been presented: *N/A*

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised: *N/A*

- 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) Counsel Informed Me I could
- (b) Not Raise Any Arguments Challenging
- (c) My Conviction, per se.

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? _____
- (c) your sentencing? yes.
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes.
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

Questionable and/or No.

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

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

i. Robert Douglas Mellard

ii. Please see Counsel's Bar Number
in reference to Plea Counsel
on Sentence Sheet.

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

i. plea, sentencing, ect.

ii. /

iii. /

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

Sentence Modification of [Non-Violent]
To Vacate Sentence or Conviction of
_____ due to Lack of Evidence

ABHAN

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

No.

STATE OF SOUTH CAROLINA)

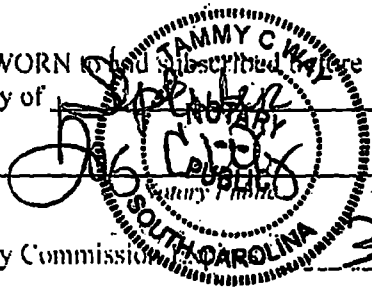
VERIFICATION

County of Orangeburg)

I, Dequan S. Anderson # 264678, 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.

Dequan S. Anderson

SWORN to and subscribed before me this 24th day of SEP 2014.



(L.S.)

My Commission 3/4/2024

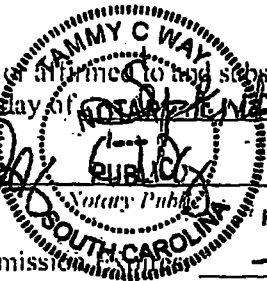
APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Dequan S. Anderson # 264678, 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.

Dequan S. Anderson
Applicant

Subscribed and affirmed to me subscribed before me this
3/4/2024 day of APRIL, 2024.
[Signature]
 Notary Public
 My Commission 3/4/2024



1. Ineffective Assistance of Counsel
2. Guilty Plea Not Voluntarily and knowingly Entered.
3. Malicious Prosecution.

FILED
CLERK OF COURT
CRIMINAL DIVISION

2011 SEP 27 PM 1:17

Applicant, Dequan S. Anderson, would respectfully move before the Honorable Court to state that He received:

Ineffective Assistance of Counsel by virtue of Counsel's Failure to Motion to alleviate the Indictment against Him which was a Nullity.

The Indictment was True Billed 5 (Five) Days prior to Grand Jury Sessions, thus any Disposition by the office of the Solicitor and Grand Jurors polled was premature, at the very most.

It is the Applicant, Dequan S. Andersons request on His Application

for post Conviction Relief to thoroughly Investigate each and every Allegation made therein and **AMEND** the Application to reflect any and all Additional Legal Arguments that Can be made in Support of this Application.

He further wishes to state that upon Assignment of the PCR Attorney to the Case that He would Expound upon more Details of the Case or "[Specifics]" left out that the Attorney may ask of Him both face to face or in writing.

The second argument and/or Allegation surrounds a ~~violation~~ violation of Rule 3 (c) of South Carolina Rules of Criminal Procedure, mandating the True Billing of an Indictment to not supercede 90 days of

Transmittal of The Record of The Arrest.

The State via the Solicitors office violated Court Rules by not complying with Law.

Applicant states that the Incident on and/or about February 15, 2013. He was not Indicted until March 5, 2014 and some 2 (two) after DNA alleged evidence from The Burglary First Degree offense proved to be or rendered Negative Results which should have warranted the Nolle prosequing of said offense or a Bond-Motion which was Interestingly: Never Filed by Counsel as a Direct and Proximate Cause of "Stimulations" from the Judge.

The Applicant, Anderson states that it was some 13

(Thirteen) Months Later that an Indictment appeared.

The Indictment should have been Squashed due to the Clear * Fraudulent practice involved, which created a significant and unnecessary hardship on Applicant, Dequan S. Anderson.

That because of such "Fraudulency" (known by his Attorney) He was Threatened of serious Consequences if He went to Trial. Such Evidence Demonstrates a 6th Amend. violation. The Applicant, now presents the Honorable Court with a Summary or General Narrative of the Case and one for which He wishes for the Duty assigned [PCR] Attorney to tailor a possible **AMENDED** Complaint and/or Application around.

The offense occurred on or about February 15, 2013. on July 9, 2013 He was taken in by police for

Questioning. The Applicant made a statement while Under a State of Duress, which renders such statement Inadmissible. He was Threatened with the Loss of His kids to placement in the Custody of the South Carolina Dept. of Social Services (DSS). He and His fiancée and Children's Mother wrote Statements. Her Statement Did Not Implicate Him in any manner. Again, Evidence obtained after an Investigation by Police Crime Scene Investigators Demonstrated * No Fingerprints linked him to the Crime, nor could He be Identified out of a 6 Man Line up. No Gun was found, yet Interestingly one was allegedly taken out of the Residence of the Victim.

The Crux of Applicant's Contentions surrounds getting the Attempted Murder offense Vacated.

In spite of being *Denied Bond on
 on December 4, 2013, Judge
Dickson stipulated that if the
 DNA results came back:

** Inconclusive His Bond can
 be Revisited and/or the opportunity
 for Reconsideration on the Bond
 would be Granted. On March 3,
2014 the DNA results came
 back with No positive Results
 linking Applicant to the Crime-
 Counsel Douglas Mellard was
 Ineffective or rendered Ineffec-
 tive Assistance by Failure to
 file Motion for the Bond,
 Consistent with the Judge's
 Order of December 4, 2013.

To Demonstrate Vindictiveness
 centered on *Malicious prosecution
 the solicitor, Thomas Scott
 sent the Charge to the Grand

Jury on *March 5, 2014, for a charge of Attempt Murder, in spite of a Lack of Evidence, and 8 (Eight) Months [After] His Incarceration and Thirteen (13) Months from Incident Date.

The Applicant further contends No gun, gun powder residue or shell casing was found involving him or the alleged or supposed victims.

Counsel knew The Indictment was fraudulent and Applicant argues that in spite of such his attorney allowed the state to threaten him with not proceeding to trial.

* Legal Analysis *

The Applicant's primary contention in this action is that the offense of ABHAW from Attempted

Murder:

was at most Far Fetched and thus Improper, since No Evidence Exsisted to even confirm an Attempted murder occurred.

When the state could not have convicted the Applicant on the Attempt Murder, the state should have not come with a Lesser offense, since it only complicated the problem and did Nothing in the way of Changing It.

Counsel conspired with the Solicitors office to get a plea to ABHIAN and subpoenaed the Applicant's Fiancee and threaten her that if the Applicant went to Trial He would get 35 years.

The Applicant should have never been Coerced into believing that the ONLY way He'd get an offer of 10 years at 85% is if He pled to Both offenses in spite of a Lack of Evidence surrounding the Burglary 2nd offense. He was also Threatened with yet another Bogus

Burglary offense.

The Law Clearly and Unequivocally States that a Guilty plea is only Voluntary and knowingly entered when the accused has a [Full] understanding of the

Consequences of The Plea.

See, Boykin v. Alabama, 395 U.S. 238
see also, Hill v. Lockhart, 474 U.S. -
52, and Pittman v. State, 337 SC -
597, 524 SE2d (1999).

In Ray v. State, 303 SC 374, 401 SE2d, -
151, the Court ruled that a Defen-
dant's Guilty Plea [was not] Intelligently
and voluntarily made in light of
the erroneous advice of Counsel.

See also, Alexander v. State, 303 SC -
539, 542, 402 SE2d 485 (1991), where

the Court found that generally
Constitutionally Defective performance
is found when Defense Counsel offers
Erroneous advice concerning an
Issue Central to the Defendant's
plea.

Counsel was Ineffective for failure
to Challenge the sufficiency of
the Indictment and in the alter-
native for failure to ensure the
Applicant receive the best possible
Outcome, or Results.

see, U.S. v. Randall, 171 F3d 195,

and U.S. v. Morrow, 925 F2d 779.

Below are Additional Legal Arguments
The Applicant wishes to use or
Case Laws He wishes to be

Included in this matter. He
would ask that the Assigned
Counsel Apply Additional Arguments as well.

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Dequan S. Anderson, #264678,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2014-CP-38-01605

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed September 29, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. Applicant was indicted at the October 2013 term of the Court of General Sessions for Orangeburg County for burglary, first degree (2013-GS-38-1124) and at the March 2014 term for attempted murder (2014-GS-38-0410). Applicant was represented by R. Douglas Mellard, Esq. On April 17, 2014, Applicant pled guilty to the lesser included offenses of assault and battery of a high and aggravated nature (ABHAN) and burglary, second degree. The Honorable Clifton Newman sentenced Applicant to ten (10) years' imprisonment for ABHAN and ten (10) years' for burglary, second degree. The sentences were to be served concurrently

A timely Notice of Appeal was filed on Applicant's behalf. By Order filed June 26, 2014, the South Carolina Court of Appeals dismissed the appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. The Remittitur was issued on July 14, 2014.

Attached herewith and incorporated herein by reference are the records of the Orangeburg County Clerk of Court regarding the subject conviction(s), the transcript from Applicant's plea hearing, Applicant's records for the Department of Corrections, and Applicant's appellate records. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

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

1. Ineffective Assistance Counsel, in that;
 - a. Counsel's "failure to motion to alleviate the indictment against [Applicant] which was a nullity",
2. Due Process Violation, in that;
 - a. "Malicious prosecution/Illegal Indictment",
 - b. "Violation of Rule 3(c) of South Carolina Rules of Criminal Procedure [sic]"
3. Involuntary Guilty Plea, in that;
 - a. "Counsel conspired with the solicitor's office to get a plea to ABHAN and subpoenaed [sic] the Applicant's fiancée and threaten [sic] her that if the Applicant went to trial he would get 35 years"

III.

Applicant's first claim is an allegation of ineffective assistance of plea counsel. Respondent contends that Applicant's plea counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of

the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." 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, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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 cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant also alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must specifically set forth the grounds upon which the application is based. Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since Applicant has failed to make even a prima facie showing, Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

Respondent further submits Applicant's allegation his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and

would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding the voluntariness of the plea may raise questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper, 279 S.C. 264, 305 S.E.2d 247.

VI.

Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, Respondent 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.

IX.

WHEREFORE, having made its Return, Respondent requests that a hearing be held solely on the claims of ineffective assistance of counsel.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

J. CLAYTON MITCHELL
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

8/19, 2015

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
)
 DEQUAN S. ANDERSON, #264678)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS


2014-CP-38-01605

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:

Jonathan D. Waller, Esquire
Giese Law Firm
1315 Blanding Street
Columbia SC 29201

DATED this 19th day of August, 2015.


 Ashley Haworth, Legal Assistant
 For Respondent

I N D E X

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1 THE COURT: All right, this is case 2014-CP-38-1605,
2 *Dequan S. Anderson vs. State of South Carolina*. The matter
3 is before the court on an application seeking
4 post-conviction relief, wherein the applicant is seeking to
5 set aside his guilty plea to assault and battery of a high
6 and aggravated nature for which he received a ten-year
7 sentence, as well as -- is that all he pled guilty to? No,
8 as well as a guilty plea to a burglary in the second
9 degree, being a nonviolent offense for which he received a
10 ten-year sentence, and these were concurrent sentences
11 according to the sentence sheet. Is that correct?

12 MR. WALLER: That's correct, Your Honor.

13 THE COURT: All right. If you'd please give the court
14 reporter your name and who you represent.

15 MR. MITCHELL: Clay Mitchell for state.

16 MR. WALLER: Jonathan Waller for the applicant.

17 Your Honor, the burglary second was a reduction as
18 well, down from a burglary first.

19 THE COURT: All right, I've got both of these; I've
20 got assault and battery of a high and aggravated nature was
21 a lesser-included offense of attempted murder.

22 MR. WALLER: That's correct, Your Honor.

23 THE COURT: And I've got that burglary in the second
24 degree nonviolent was a lesser-included offense of burglary
25 in the first degree. Is that correct?

1 MR. WALLER: That's correct, Your Honor.

2 THE COURT: All right. All right, Mr. Anderson, if I
3 could get you to stand and raise your right hand, please,
4 while the clerk puts you under oath.

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

7 APPLICANT: Dequan Anderson.

8 DEQUAN S. ANDERSON, BEING DULY
9 SWORN, TESTIFIES AS FOLLOWS:

10 THE COURT: All right, sir, your name is Dequan Shamar
11 Anderson?

12 APPLICANT: Yes, sir.

13 THE COURT: All right, Mr. Anderson, I understand you
14 have filed this application seeking post-conviction relief
15 asking the court to set aside your guilty pleas and
16 convictions for assault and battery of a high and
17 aggravated nature and burglary in the second degree, being
18 a nonviolent classification, and want me to set aside those
19 convictions and sentences. Is that correct?

20 APPLICANT: Yes, sir.

21 THE COURT: All right. Now before we go forward on
22 this, I've got to explain to you certain rights that you
23 have and the consequences of seeking this application for
24 post-conviction relief.

25 First of all, if I find that you are not entitled to

1 post-conviction relief, you will simply be returned to the
2 Department of Corrections to complete that portion of your
3 sentence that you have not served. You understand that?

4 APPLICANT: Yes, sir.

5 THE COURT: All right. Now, if I grant your request
6 for post-conviction relief, I will vacate your conviction
7 and/or your sentence and your case will be sent back for
8 further proceedings; the case will start all over. It will
9 begin from the very beginning of the proceedings against
10 you, and if any charges were reduced, dropped, dismissed,
11 or nolle prossed, they could be brought back against you,
12 and you could be facing the original charges again. Do you
13 understand that?

14 APPLICANT: Yes, sir.

15 THE COURT: So, if I grant your request for
16 post-conviction relief, you could be facing charges of
17 attempted murder for which you could receive up to thirty
18 years in prison, and you could be facing charges for
19 burglary in THE first degree for which you could receive a
20 sentence of life in prison without the possibility of
21 parole. Do you understand that?

22 APPLICANT: Yes, sir.

23 THE COURT: All right. So, whereas now you are
24 serving a ten-year sentence, even if you prevail at a
25 post-conviction relief hearing, you could wind up getting a

1 sentence of imprisonment for the rest of your life. Do you
2 understand that?

3 APPLICANT: Yes, sir.

4 THE COURT: All right. Have you had an ample
5 opportunity to discuss this matter with your attorney?

6 APPLICANT: Yes, sir.

7 THE COURT: All right, and do you wish to proceed with
8 your application seeking post-conviction relief?

9 APPLICANT: Yes, sir.

10 THE COURT: All right, anything further you want to
11 place on the record in that regard, Mr. Waller?

12 MR. WALLER: Nothing further, Your Honor.

13 THE COURT: Anything further the state wants placed on
14 the record in that regard?

15 MR. MITCHELL: No, Your Honor.

16 THE COURT: All right. All right, Mr. Waller, you can
17 call your first witness.

18 MR. WALLER: Thank you, Your Honor. One other, I
19 guess, housekeeping if I could put on the record, Your
20 Honor. I filed a motion for a rule to show cause in this
21 case. I sent a subpoena back in December. We had a term
22 of court in February. The subpoena was not complied with.
23 The case was continued during the term of court in
24 February. I filed a rule to show cause following that.
25 Since that time, the subpoena has been complied with, and I

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1 guess I just need to withdraw that, that motion on the
2 record.

3 THE COURT: All right. That sounds good.

4 MR. WALLER: Thank you, Your Honor. I would call
5 Dequan Anderson.

6 THE COURT: All right, sir. Would you come around,
7 please?

8 (A PAUSE.)

9 THE COURT: All right, sir.

10 MR. WALLER: Thank you, Your Honor. May it please the
11 court?

12 THE COURT: Yes, sir.

13 DIRECT EXAMINATION BY MR. WALLER:

14 Q. Good afternoon, Mr. Anderson. How are you today?

15 A. I'm fine. How are you?

16 Q. I'm good. Mr. Anderson, if I could, let me just jump
17 right in. When you were first arrested, who, who was your
18 attorney?

19 A. Counselor Douglas Mellard.

20 Q. Okay. You were arrested. Was there some time between
21 this incident that allegedly took place and when you were
22 actually arrested?

23 A. Yes, sir. It was a five-month period from February
24 the 15th to July the 9th of '13.

25 Q. Okay. How did you ultimately get arrested?

D. ANDERSON - DIRECT EXAMINATION BY MR. WALLER

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1 A. On July the 9th, I took my fiancée to a probation
2 visit and Investigators Collins and Lakeisha Gilyard
3 conspired with her agent, which was Agent Kitrell, about a
4 M.O. in a, in a burglary case. And as, as upon arrival,
5 the investigators approached the car and asked me to step
6 out. They asked was I Dequan, and I complied. They asked
7 me to step out and they then escorted my fiancée, Montricee
8 Brightman, out of the probation office and put them -- put
9 her in the car with them, and they asked me to follow them
10 for questioning, but they didn't, they didn't state why.

11 So, I complied and I followed immediately, along with
12 my three young kids, and we went to the investigator's
13 office, and my kids was left in the car by they self, my
14 two daughters and my son. So, we went inside for
15 investigation, interrogation, and, you know, they started
16 all out blitz on me, interrogating me about a supposed
17 incident that occurred on February the 15th.

18 Q. Okay. Let me back you up just a little bit. Your
19 fiancée was on probation already. Is that right?

20 A. Yes, sir.

21 Q. Okay. So, you went with her to the probation office
22 for her to check in?

23 A. Yes, sir, for her monthly visit.

24 Q. Okay. When you were asked by the investigators or law
25 enforcement in general to go with them for questioning,

D. ANDERSON - DIRECT EXAMINATION BY MR. WALLER

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1 were you under arrest at the time?

2 A. I wasn't but I felt under arrest.

3 Q. Okay.

4 A. Because ---

5 Q. You drove the car that ---

6 A. Yes, sir.

7 Q. Okay, and who was with you in the car?

8 A. My two daughters and my youngest son.

9 Q. Okay. What are their ages?

10 A. My daughters were six and seven at the time, and my
11 youngest son was four.

12 Q. Okay, and was your fiancée -- is it your fiancée or
13 your wife?

14 A. My -- well, fiancée. Common-law wife but fiancée.

15 Q. Okay. Was she under arrest at that point?

16 A. I'm not sure because I didn't speak to her at all
17 since she got out of the car to go inside to see her
18 probation officer, so.

19 Q. Okay, but she didn't ride with you?

20 A. No, sir. They put her in the car with her.

21 Q. Okay. When y'all got to the investigator's office,
22 what happened then?

23 A. They put us in split rooms, and they asked me about a
24 robbery and I, I declined. I don't know nothing about a
25 robbery.

- 1 Q. All right, let me, let me back you up on the -- let me
2 ask you this question. When you got -- when you pulled
3 into the parking lot, okay, how did you get -- how did you
4 know where to go when you got out of your car? Did
5 somebody come up to you?
- 6 A. Yes, sir. They came to the car and they was, like,
7 could you please follow, me and Ms. Brightman, inside for
8 questioning.
- 9 Q. Okay. Where were your children during this?
- 10 A. In the backseat.
- 11 Q. Okay. Why were your children still in the car?
- 12 A. Because they told me to leave my kids right there
13 until I come back.
- 14 Q. Okay, and what time of the year was this?
- 15 A. July the 9th in the summertime.
- 16 Q. Okay. When you go into the investigator's office,
17 what happened then?
- 18 A. They, they walked me to this room and they sat me
19 down, and they start questioning me about a robbery.
- 20 Q. Are you with Ms. Brightman at this time?
- 21 A. No. She was in a separate room somewhere.
- 22 Q. Okay. To the best of your knowledge, were y'all being
23 questioned at the same time?
- 24 A. I suppose so, sir.
- 25 Q. Okay. How long, if you recall, were you in the room

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1 talking to law enforcement?

2 A. About an hour.

3 Q. How did that conversation go? What was said during
4 that conversation?

5 A. Well, they -- a lieutenant came in. I think his name
6 was Lieutenant Ravenel. He came in. He was, you know,
7 drilling me about a robbery. He was telling them how much
8 he was looking for me, and then it flipped into -- they
9 straightened it up and it was like, well, a burglary, and
10 then they just start asking me about a burglary that
11 happened at Intercoastal Lane and I -- which I, I declined.
12 I told them I didn't know nothing about it. And they, they
13 left out the room, came back in the room, and they went
14 back and forth.

15 Q. Okay. So, when they were questioning you about a
16 robbery, that was not the incident we're here on today?

17 A. I don't, I don't know what they was talking about, to
18 be honest with you.

19 Q. But their questions weren't about the incident in
20 February?

21 A. No, sir, it was about something else.

22 Q. Okay. Were you under arrest at that time?

23 A. I felt I was because I was -- I kept asking about me
24 leaving to go, you know, tend to my kids, to at least check
25 on them. And they was, like, well, we'll be right back.

1 So, they left out and then they came back and they read me
2 my Miranda rights after they was done questioning me about
3 the incident.

4 Q. Okay. So, did you feel that you were free to leave?

5 A. No, sir, not at all.

6 Q. And how long had they been talking to you when they
7 finally read you your Miranda rights?

8 A. About twenty minutes.

9 Q. Okay. How long total were you in the room
10 specifically with them?

11 A. A total, about an hour.

12 Q. Okay.

13 A. Or maybe a little longer.

14 Q. Okay. What happened when you -- after that hour?

15 A. They, they left and they came back about five or ten
16 minutes later and they was, like, well, if you're not going
17 to tell us what happened, then I'm going to lock your
18 fiancée up and take your kids, and take your kids to DSS.

19 Q. Okay. What happened after that?

20 A. Then they came back to me. They left again. After
21 they said they was going to take my kids, they walked out
22 and then they came back and it was, like, well, your, your
23 fiancée wrote a statement on you. And if you're not going
24 to tell us, we're going on and we're going to lock her up
25 and take your kids again, and then I wrote, I wrote a state

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1 -- well, then Investigator Collins wrote my statement for
2 me.

3 Q. Okay. How long were you in the law-enforcement
4 facility total?

5 A. About an hour and ten minutes.

6 Q. Okay. How about your fiancée?

7 A. The same.

8 Q. Okay. Were you under arrest then?

9 A. Yes, sir. They put me in handcuffs, and they took me
10 to go see my kids.

11 Q. Okay. Where were your kids at that point?

12 A. They wanted out of my -- out at the car.

13 Q. Okay, but they -- so, the kids were in the car for
14 about an hour and ten minutes also?

15 A. Yes, sir.

16 Q. Was there a video camera in the room where you were --
17 gave your statement?

18 A. Yes, sir. There was a video camera, like, in the
19 corner right hand -- left-hand corner at that top.

20 Q. Did it look like the ones here in the courtroom?

21 A. Yes, sir.

22 Q. Okay. Do you -- did you have any indication that it
23 was on and functioning?

24 A. Yes, sir, because my fiancée, when she came to see me,
25 she said she -- they had her, recording her on a laptop and

- 1 when she walked by some room, she could see my hand
2 gestures and she could hear that I was, you know, arguing
3 back and forth with them.
- 4 Q. So, she saw you on a screen being interviewed?
- 5 A. Yes, sir.
- 6 Q. Okay. Were you ever, ever provided with any copies of
7 that video recording?
- 8 A. No, sir.
- 9 Q. Okay. Do you know if that -- if a video recording
10 exists at all?
- 11 A. It should have.
- 12 Q. Okay, but you were never provided it?
- 13 A. No, sir.
- 14 Q. Was your attorney ever provided it to your knowledge?
- 15 A. No, sir, but I asked him to, to try to get one.
- 16 Q. Okay. So, this was several -- five months or so after
17 the, the incident took place. Is that right?
- 18 A. Correct.
- 19 Q. Okay, and you hadn't been approached by law
20 enforcement in the meantime of that?
- 21 A. Not at all.
- 22 Q. Okay, and you gave a statement?
- 23 A. Yes, sir.
- 24 Q. Okay. What did you and Mr. Mellard discuss about your
25 statement?

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1 A. When I first got appointed Counselor Mellard, I
2 explained to him what happened at that interrogation and,
3 you know, how I was coerced into writing a statement. And
4 he explained to me that if I was to take that to trial,
5 then the investigators would come on the stand and lie at
6 pretrial saying that they didn't coerce me, and the judge
7 would enter my statement as evidence and find me guilty.

8 Q. Okay. What happened with your kids?

9 A. Once they, once they escorted me out to put me in the
10 police car, they brought my kids around for me to see them
11 and my fiancée, and after that they took me in the car and
12 we left.

13 Q. Did your fiancée get arrested also?

14 A. No, sir. They let her go.

15 Q. Okay. When you gave that statement, were you under
16 the influence of any drugs or alcohol?

17 A. No, sir. I was just more worried about my kids'
18 safety and my fiancée well being as well.

19 Q. Okay. So, there was nothing else going on that would
20 have affected you except for your children being left in
21 the car?

22 A. Yes, sir.

23 Q. Okay. Did you and Mr. Mellard have an opportunity to
24 go over the evidence that the state had in their case
25 against you?

1 A. No, sir, because he was more concentrated on the fact
2 that I wrote a statement, and he was stuck on the fact that
3 my statement was enough to convict me. So, he didn't, he
4 didn't do -- he didn't raise no defense or prepare an
5 investigation.

6 Q. Okay, but did y'all talk about anything else the state
7 might have that they were going to intend to use against
8 you?

9 A. No, sir.

10 Q. Okay. To the best of your knowledge, was there any
11 other evidence the state had against you except for your
12 statement?

13 A. No, sir, no physical evidence.

14 Q. Okay. How about your fiancée's statement?

15 A. Well, he stated that when my DNA came back negative
16 off of a hat that was related to the burglary first, he
17 stated that that was the only thing that could hurt me in
18 the burglary first was what -- my fiancée's statement.

19 Q. Okay. The allegations were, leading to the burglary
20 first, were that you went into this home and one of the
21 items that you took was a gun. Is that your understanding?

22 A. Yes, sir.

23 Q. There was never any allegation that you came to the
24 location armed. Is that ---

25 A. No.

D. ANDERSON - DIRECT EXAMINATION BY MR. WALLER

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1 Q. --- right?

2 A. No, sir, not at all.

3 Q. It wasn't at nighttime?

4 A. No, sir.

5 Q. No one was injured in the, the crime?

6 A. No, sir.

7 Q. So, is it your understanding that that's why you were
8 originally charged with burglary first was the gun that you
9 took from the house?

10 A. Yes, sir.

11 Q. Okay, and you pled guilty to -- you had no issue
12 pleading guilty to the burglary charge. Is that right?

13 A. That's right.

14 Q. Okay. You pled pursuant to *North Carolina vs. Alford*
15 to the attempted murder charge?

16 A. Yes, sir.

17 Q. What was your understanding of what the state alleged
18 took place that, that ---

19 THE COURT: Excuse me for interrupting. Are you
20 saying he pled guilty to attempted murder?

21 MR. WALLER: He pled pursuant to -- I, I apologize --
22 ABHAN, the ---

23 THE COURT: Okay.

24 MR. WALLER: --- the attempted murder charge, Your
25 Honor.

1 THE COURT: All right. I gotcha, but he pled guilty
2 to ABHAN?

3 MR. WALLER: Yes, sir, he did.

4 THE COURT: All right. Go ahead.

5 BY MR. WALLER:

6 Q. What was your understanding of what the allegations
7 were, as the state contended, that led to you initially
8 being charged with attempted murder and ultimately pleading
9 pursuant to *North Carolina vs. Alford* to the ABHAN?

10 A. Well, actually because my -- it was two victims and
11 they both said that -- well, one victim said I pointed a
12 firearm at them. The second victim said that I fired shots
13 in pursuit of me leaving the incident. But me pleading to
14 the ABHAN down to -- under that *North Carolina vs. Alford*
15 plea, I didn't -- I pled to that from, from the advice of
16 Counselor Doug Mellard. I didn't want to. I didn't plea,
17 I didn't plea voluntarily but I was, I was told that, you
18 know, they had enough evidence at trial to convict me to
19 both charges. So, that kind of discouraged me from my
20 right to going to trial.

21 Q. Okay, and you, you pled guilty to the burglary,
22 though?

23 A. Yes, sir.

24 Q. You pled pursuant to *North Carolina vs. Alford* to the
25 ABHAN?

D. ANDERSON - DIRECT EXAMINATION BY MR. WALLER

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1 A. Correct.

2 Q. Okay. There was never any allegation that anyone was,
3 was actually shot?

4 A. At all.

5 Q. Okay. So, part of the state's evidence against you
6 was the victims' statements versus your statements?

7 A. Yes, sir.

8 Q. You said you didn't shoot. They said you did.

9 A. And before, the day before I plead, which was April
10 the 16th, Investigator Danny went and talked to the victims
11 and the victims told Counselor Doug Mellard and Peggy Hines
12 that the victims say that they didn't -- it wasn't no shots
13 fired at all.

14 Q. Okay. When you said Investigator Danny, is it Danny
15 McDaniel?

16 A. Yes, sir.

17 Q. Okay. Is he a private investigator in Orangeburg?

18 A. Yes, sir.

19 Q. Okay. Was he hired by your attorneys?

20 A. Yes, sir.

21 Q. Okay. You pled pursuant to kind of a package deal.
22 Is that right?

23 A. Right.

24 Q. You made it clear in, in speaking to the court during
25 your, your plea that the only reason you were pleading to

1 the ABHAN was to get the deal on the burglary second. Is
2 that right?

3 A. That's right. Also because Counselor Doug Mellard
4 didn't raise a defense. So, I felt like I had no other way
5 but to plead guilty, but my initial plan was to go to
6 trial.

7 Q. Okay. You said your initial plan was to go to trial?

8 A. Correct.

9 Q. What did you and Mr. Mellard discuss in regards to
10 going to trial, getting ready for trial?

11 A. He would, he would ask me continuously what would be
12 my defense and, you know, like I say, he was just stuck on
13 the fact that I wrote a statement. He was saying that was
14 enough evidence to convict me. So, outside of, you know,
15 investigating the attempted murder charge that was on the
16 table at the time and the burglary first, it was never, it
17 was never an investigation. It was just more so my
18 statement was enough and, and that was that.

19 Q. Okay. Did you and Mr. Mellard discuss trying to
20 suppress your statement?

21 A. Yes, sir, we did. Continuously.

22 Q. Okay. What, what did he tell you?

23 A. If I was to go to pretrial, then my -- at my pretrial
24 hearing the judge would hear the investigators and they
25 would, they would listen to the investigators and, and they

D. ANDERSON - DIRECT EXAMINATION BY MR. WALLER

21

1 would get on the stand and lie and say that that's enough
2 evidence. That my statement wasn't, wasn't coerced and
3 that would have been enough evidence to convict me on a
4 burglary first.

5 Q. Okay.

6 A. But the burglary first, that was before the attempt
7 murder when my DNA came back negative on March the 3rd of
8 2014 for the burglary first. On March the 10th, I was
9 called back to Counselor Mellard for another visit and
10 handed the indictment for attempt murder. So, attempt
11 murder wasn't never an initial charge from the beginning.
12 It was just burglary first.

13 Q. When you pled pursuant to *North Carolina vs. Alford*,
14 what was your understanding of a plea entered pursuant to
15 that? What did that mean to you?

16 A. My understanding that was explained to me before I
17 signed the plea papers was I'm pleading guilty, but I'm not
18 really guilty, but I feel like if I go to trial, then they
19 got enough evidence for the ABHAN to convict me.

20 Q. Okay. Mr. Anderson, what ultimately -- you've
21 testified you wanted to go to trial. You wanted try to get
22 your statement suppressed. What changed? Why did you end
23 up plea -- taking this plea?

24 A. Because Counselor Doug Mellard didn't raise a defense
25 to the, to the attempt murder charge, which was handed to

1 me, like I said, on March the 10th, and then on March the
2 17th they came with a plea. So, I -- in between time, a
3 week in between time, there was never no investigation.

4 But I did try to relieve Counselor Mellard on April
5 the 11th in front of Judge Dickson, and he stated that he
6 couldn't do it because we was too close to trial. So, we
7 proceeded. But he never, he never raised a defense to it,
8 so I felt like if I'd'a went to trial with him, then, you
9 know, I probably wouldn't have been successful because he
10 didn't challenge the charge that I caught in between.

11 Q. Okay. If he had done the investigation that you think
12 he should have done, and if he'd tried to suppress your
13 statement, would you have pled guilty?

14 A. No, sir. I would have went to trial.

15 Q. Okay. You don't take issue at all with the burglary?

16 A. No, sir. No, sir, because I openly plea to that,
17 but ---

18 Q. Okay.

19 A. --- my issue is the ABHAN charge because...

20 Q. And is it your understanding that the evidence the
21 state had against you on the ABHAN would be your statement
22 and the victims' statements?

23 A. Correct.

24 Q. Okay, and to the best of your knowledge, is that the
25 only evidence they had against you?

D. ANDERSON - CROSS-EXAMINATION BY MR. MITCHELL

23

1 A. Yes, sir. There's no physical evidence.

2 Q. Okay. Mr. Anderson, I've asked you everything that,
3 that I -- all the questions I have for you. Is there
4 anything you think I've forgotten or left out about just
5 Mr. Mellard's representation of you that you think the
6 court needs to be aware of?

7 A. No, sir.

8 MR. WALLER: Please answer any questions Mr. Mitchell
9 has.

10 WITNESS: Okay.

11 CROSS-EXAMINATION BY MR. MITCHELL:

12 Q. Good afternoon, Mr. Anderson.

13 A. Good afternoon.

14 Q. Now, you pled to -- it was a negotiated range of ten
15 to twelve years. Is that correct?

16 A. Yes, sir.

17 Q. So, you knew going in you were going to get between
18 ten, eleven, or twelve?

19 A. Yes, sir.

20 Q. You pled down from burg first and from attempted
21 murder, correct?

22 A. Correct.

23 Q. Okay. Now, you took advantage of that deal in lieu of
24 going to trial, right?

25 A. Not necessarily. I pled on -- due to the advice of

1 counsel, Doug Mellard.

2 Q. Okay. So, his advice that there didn't seem to be any
3 defenses is what you're concerned with?

4 A. Yes.

5 Q. Okay. You talked about suppressing the statement,
6 that that was something that could have been raised, right?

7 A. Yes.

8 Q. And that was something Mr. Mellard went over with you,
9 that you could have challenged the statement if you had
10 gone to trial, right?

11 A. But he more advised me that it wouldn't have a
12 standing chance.

13 Q. So, he thought the likelihood of it being suppressed
14 was not good?

15 A. Yes.

16 Q. So, he advised you to plead guilty because he thought
17 that he -- the statement was probably coming in and that
18 you were going to be looking at more time if you were
19 convicted at trial. Is that fair?

20 A. That's, that's sort of what he said.

21 Q. Okay. Now, your girlfriend also gave -- or your
22 fiancée, excuse me, also give a statement, right?

23 A. Correct.

24 Q. Is that Ms. Brightman?

25 A. Yes, sir.

D. ANDERSON - CROSS-EXAMINATION BY MR. MITCHELL

25

1 Q. Okay. Now, her statement implicated you in the
2 incident as well, right?

3 A. Correct.

4 Q. Okay. Now, there was no physical evidence like no
5 gunshot residue or anything like that, but there was your
6 statements and your fiancée's statements?

7 A. Yes.

8 Q. And the victims' statements?

9 A. Okay.

10 Q. Is that right?

11 A. Yes, sir.

12 Q. Okay. Now, it seems that you understand what *Alford*
13 was, and that you were pleading guilty knowing that you
14 could -- likely -- that you would likely be convicted if
15 going to trial. Is that right?

16 A. No, sir, because I -- you know, I was briefly
17 explained what it mean, but I was uncertain what it mean
18 because if it -- if, if, if, if it means that I go to
19 trial, it's enough evidence to convict me, I didn't feel
20 that way towards the ABHAN because that was a crime I never
21 committed.

22 Q. Okay. So, your problem really is just the ABHAN, not
23 with the burg?

24 A. Correct.

25 Q. Okay, and you told that to Judge Newman, right?

1 A. Yes, sir.

2 Q. Now, you had a good bit of back and forth with Judge
3 Newman, didn't you?

4 A. Yes.

5 Q. And it's -- you told him a lot of what you're telling
6 the court today. Is that fair?

7 A. Yes, sir.

8 Q. Okay.

9 MR. MITCHELL: One second, Your Honor. Sorry.

10 THE COURT: All right.

11 (A PAUSE.)

12 BY MR. MITCHELL:

13 Q. You talked about the evidence. Did you go over all
14 that evidence with Mr. Mellard?

15 A. Yes, sir, several times.

16 Q. Just the statements? Is that about it?

17 A. No. I went over the lack of evidence supporting both
18 cases.

19 Q. So, did you go over, go over the victim's statement
20 and your fiancée's statement as well?

21 A. As well, yes, sir.

22 Q. So, you were aware of what all that was and what the
23 state as -- would plan to present at the trial, right?

24 A. No, sir. I wasn't -- it was more so -- Counselor,
25 Counselor Mellard intention was more so just me pleaing.

D. ANDERSON - CROSS-EXAMINATION / REDIRECT EXAMINATION 27

1 It wasn't no preparation for trial even though I was in a
2 trial phase -- phrase -- phrase, but he didn't give no
3 attention to that. He gave more attention to the fact that
4 I wrote a statement. So, he was, like, that's concrete
5 enough, so.

6 Q. Okay.

7 A. It is -- you know.

8 Q. So, that was just his advice, right?

9 A. Yes, sir.

10 MR. MITCHELL: All right, no further questions. Thank
11 you.

12 THE COURT: Redirect?

13 MR. WALLER: Just briefly, Your Honor.

14 REDIRECT EXAMINATION BY MR. WALLER:

15 Q. Mr. Anderson, you testified that Mr. Mellard told you
16 the investigators would lie to make sure your statement
17 came in?

18 A. Yes, sir.

19 Q. Okay. Did y'all discuss your statement, the actual
20 merits of the statement outside of what the investigators
21 might testify to?

22 A. Told him we -- I explained to him the circumstances of
23 what created the statement and all of that. None of that
24 seemed to matter, sir.

25 Q. Did he ever -- what did he tell you about it outside

1 of what the investigators -- he thought the investigators
2 would testify to?

3 A. That was it.

4 Q. Okay.

5 MR. WALLER: No further questions.

6 THE COURT: All right. You may step down.

7 (THE WITNESS EXITS THE STAND.)

8 THE COURT: You can call your next witness.

9 MR. WALLER: Your Honor, the applicant has no further
10 witnesses.

11 THE COURT: Does the state wish to call anyone?

12 MR. WALLER: Your Honor, the state calls Mr. Douglas
13 Mellard.

14 CLERK OF COURT: Raise your right hand. State your
15 full name for the record.

16 WITNESS: Robert Douglas Simmons Mellard.

17 ROBERT DOUGLAS SIMMONS MELLARD,
18 BEING DULY SWORN, TESTIFIES AS FOLLOWS:

19 MR. MITCHELL: May it please the court, Your Honor?

20 DIRECT EXAMINATION BY MR. MITCHELL:

21 Q. Good afternoon, Mr. Mellard.

22 A. Good afternoon.

23 Q. Thanks for being here today. Let's see. So, can you
24 give us a brief background of your professional experience?

25 A. Graduated law school in '97. Did private practice in

D. MELLARD - DIRECT EXAMINATION BY MR. MITCHELL

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1 a law firm for about five years. Was out on my own for
2 three years and then went to the public defender's office
3 in 2005. Been there ever since.

4 Q. I suspect you've handled a number of serious crimes.

5 A. Quite a number of them.

6 Q. So, you're purporting to represent Mr. Anderson on
7 this case?

8 A. Yes.

9 Q. In your meetings with him, did you review burg first
10 and attempted murder charges with him?

11 A. I reviewed it and I sent him a letter laying out what
12 it is, that it's most serious. I think I even put in hands
13 of one, hands of all. I don't know if there was a
14 co-defendant involved. Laid out all that kind of stuff for
15 him. I usually put it in letters simply because some
16 people, they learn by reading; some people, they learn by
17 talking. So, I try to do both.

18 Q. We talked a little bit about the evidence the state
19 wanted to present. Did you review those statements with
20 Mr. Anderson?

21 A. I did.

22 Q. And what was your advice on the admissibility of his
23 statement?

24 A. Well, what I told him was that if it went to trial,
25 we'd have a hearing on that, and at the hearing he would be

1 able to take the stand and at the hearing the police
2 officers would come in. They'd take the stand, and then
3 the judge would determine who was telling the truth.

4 Q. So, you think he took that to -- meant that they would
5 lie and that the judge would believe them?

6 A. Yeah. I guess that's kind of -- he, he took it to
7 believe that the state would win, I guess, is the best way
8 to put it.

9 Q. Was that your advice to him?

10 A. Well, here's the thing. I went and talked with his
11 co-defendant, Ms. Brightman, and I put her statement in
12 front of her, and me and her went over that statement line
13 for line. And what she told me was that statement, line
14 for line, every line was true. So, I'd met with her a
15 couple of times on that.

16 So, based on the fact her statement was true, and her
17 statement was basically she dropped him off at a house, and
18 he came running down the road, and he came running with a
19 gun, and the gun that he had was taken from the house,
20 well, that's burglary first degree. So based on her
21 statement, it seemed like if we went to trial, we were in
22 trouble.

23 Q. Okay. So, as far as your advice on whether he should
24 take the case to trial or plead guilty, did you advise him
25 that you thought it would be best to take advantage of this

D. MELLARD - DIRECT EXAMINATION BY MR. MITCHELL

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1 plea offer?

2 A. Yeah. I mean, if we didn't take the plea offer, we're
3 going to trial for burglary first and attempted murder. It
4 didn't look like we were going to win the burglary first.
5 Burglary first is, is -- carries up to life in prison. It
6 just didn't seem wise to go to trial on that.

7 Q. So, he really was able to limit his exposure here?

8 A. I got the solicitor to -- this was an interesting case
9 because I'd trying to negotiate the case with the
10 solicitor. The defendant wanted to actually speak to the
11 solicitor himself. So, I went to the solicitor and said,
12 look, he wants to talk to you, and I was surprised the
13 solicitor actually agreed to talk to him.

14 So, they sat down. We were in there. They talked
15 about it, and the solicitor laid out why he wanted what he
16 wanted. I think it was ten to twelve or something like
17 that. I think the defendant wanted five, but he actually
18 wanted to speak to the solicitor, and for some reason the
19 solicitor agreed to do it. I didn't think he was going to.

20 Q. So, you were able to get both charges dropped down and
21 to a very small negotiated range?

22 A. Correct.

23 Q. How did that come about? Was this something you had
24 been working on for a while or ---

25 A. I'd been working on it for a while. Originally,

1 originally I think -- let me just double check here. Yeah,
2 originally Mr. Anderson wanted a year and probation on
3 burglary second. Solicitor wanted fifteen on burglary
4 first, and that was back in November 2013. So, since then
5 I'd been bothering the solicitor. The solicitor had been
6 -- we'd been going back and forth, but the solicitor was
7 ready to try this case. He was about done with it, and I
8 think we just finally reached those numbers, and it was
9 take it or just go to trial.

10 Q. Were, were you on a trial docket ---

11 A. I believe ---

12 Q. --- at this point?

13 A. I believe so. I don't recall off the top of my head,
14 but I know I've got the jury return cards in here. So, I
15 would assume that, yes, we were.

16 Q. Did you prepare for trial?

17 A. Well, what we did was we had obviously spoken to the
18 witness, Ms. Brightman. She wasn't going to be help at, at
19 all. She was going to convict on basically burg first.

20 We'd -- also during my discussions with Mr. Anderson,
21 he had -- he seemed fine to me, but he said he was mentally
22 ill. So, I had him evaled -- I mean, he came back
23 competent on that -- just to make sure he's okay if we did
24 go to trial. And then like I said, we'd been over the
25 statements, and I'd spoken to him about what defenses he

D. MELLARD - DIRECT EXAMINATION BY MR. MITCHELL

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1 thought there were and things of that nature.

2 Q. So, if the case had gone to trial, you were ready to
3 challenge the statement in a *Denno* hearing?

4 A. Right. I mean, that would have been the first thing
5 we did, have that pretrial *Denno* hearing.

6 Q. And what, what type of defense would you have put up?

7 A. Well, I don't think I would have called Ms. Brightman.
8 That would be the first thing. Whether the state would
9 have done it or not, I don't know. At that point, we would
10 have just tried to poke holes in the state's case.

11 Q. He mentioned an investigator that he had worked with.

12 A. Danny McDaniel?

13 Q. Yes, sir.

14 A. Uh-huh.

15 Q. What, what was he able to do turn up with his
16 investigation?

17 A. I don't really know. I don't remember what he said
18 about the victim saying that they didn't -- he didn't shoot
19 at them. I don't recall that, so I don't know. I know
20 that usually when we get into trial phase, we get Mr.
21 McDaniel to go out, see what he can find. We also get him
22 to kind of look at it. He used to be a law-enforcement
23 officer, and sometimes he can see things that -- you know,
24 from the law-enforcement perspective, but I don't recall
25 what Mr. Anderson said.

D. MELLARD - CROSS-EXAMINATION BY MR. WALLER

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1 Q. Okay. So, you thought it was in -- you advised Mr.
2 Anderson it was in his best interest to accept this plea
3 offer?

4 A. That's correct.

5 Q. Okay.

6 MR. MITCHELL: No further questions. Please answer
7 anything Mr. Waller has.

8 THE COURT: Cross-examination?

9 MR. WALLER: Briefly, Your Honor.

10 CROSS-EXAMINATION BY MR. WALLER:

11 Q. Mr. Mellard, you mentioned that you talked to Ms.
12 Brightman during the course of your representation of Mr.
13 Anderson?

14 A. That's correct.

15 Q. Okay, and you said you went over her statement with
16 her and her statement was -- she said her statement was
17 consistent with what she had given at the time. It was
18 accurate?

19 A. Correct. Yeah.

20 Q. Did her -- her statement didn't mention anything about
21 any shots being fired?

22 A. That's correct.

23 Q. It was that she dropped him off, and then he came
24 sometime later back to the car, and she didn't know
25 anything about anything really?

D. MELLARD - CROSS-EXAMINATION BY MR. WALLER

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1 A. She -- he did -- he came back with a gun that he took
2 from the house.

3 Q. Okay, but she didn't ---

4 A. That's what she said.

5 Q. But she didn't, she didn't see anybody chasing after
6 him? She didn't see him shoot at anybody or anything like
7 that?

8 A. I ---

9 Q. Is that your recollection?

10 A. I'd have to look at her statement, but I think she
11 said he came running down the road or something.

12 Q. Okay. Did you talk to her at all about any of the
13 facts surrounding the two of them really giving the
14 statements?

15 A. Yeah. She -- you know, Mr. Anderson's statement has
16 always been that she was coerced. They were going to take
17 her kids and that kind of stuff. I didn't quite get that
18 vibe from her. You know, what she told me was her
19 statement was true. There wasn't -- I didn't, I didn't get
20 that they were going to take her kids from her.

21 Q. Did you ask her about it?

22 A. I don't know if I did. My notes don't show that it --
23 that I did ask her about it. What my notes show is that I
24 went over her statement line for line with her.

25 Q. Okay, but there was never any question, at least from

1 her, that her statement wasn't accurate, correct?

2 A. That's correct. Right.

3 Q. Was there any question that Mr. Anderson's statement
4 was accurate? Did he contend that his statement wasn't
5 accurate?

6 A. His big thing was he always wanted to plead to burg
7 second, all right? That was, that was his big thing. The,
8 the -- whether or not shots were fired, he says that shots
9 were not fired. That was always his contention.

10 Q. Okay. Was his contention regarding his statement in
11 the manner that it was given, not its accuracy, to the best
12 of your recollection?

13 A. Pretty, pretty, yeah. I mean, he was, you know -- his
14 big thing was he was coerced. As far as going in the house
15 and things of that nature, it's my understanding that, that
16 he went in the house.

17 Q. Okay. As far as the manner in which he gave his
18 statement, did you talk to him about his before you talked
19 to Ms. Brightman?

20 A. Yeah, I talked to him. Let's see. I met with him in
21 -- October the 8th. We went over the charges, went over
22 the discovery. He says he went in the house. This is what
23 my notes say. He also says he paid Brad Hutto to do the
24 bond hearing, been in three months. That's basically what
25 those notes say. Now, I met with Ms. Brightman; I met with

1 her November the 13th of 2013.

2 Q. Okay, and your notes, you said, don't indicate that
3 you specifically talked to her about the nature of the
4 statement?

5 A. Right. My notes say: Meeting with Ms. Brightman, his
6 girlfriend, and witness to the events. Note:

7 Brightman wrote statement for police. Went over
8 Brightman's statement with her line for line and
9 per Brightman, everything that she put in
10 statement was true.

11 Q. Okay, but y'all -- you don't remember asking her
12 anything about the manner in which it was given or the
13 coercion aspect of it?

14 A. No, she never -- let me double check she didn't say
15 anything about that, but let me -- I met with her again on
16 November 20th. I spoke to her again. She told me again
17 everything she said was true. No, she doesn't say
18 anything. I just said if she -- you know, that was pretty
19 much it.

20 Q. Okay. Did the fact that Mr. Anderson was perfectly
21 fine with pleading guilty to the burglary but was adamant
22 that he was not guilty of the ABHAN or attempted murder,
23 did that not give some credence in your mind that he was
24 telling the truth about his statement?

25 A. It, it -- my concern was -- I don't really remember

1 what credence I, I -- but my concern was if we're going to
2 trial, it was going to be on everything: burglary first,
3 attempted murder.

4 Q. Okay. If his statement had been suppressed at trial
5 if you'd gotten there, what other evidence do you, aside
6 from Ms. Brightman's statement, what other evidence did the
7 state have against Mr. Anderson?

8 A. They had his statement, which you're saying if it
9 gets ---

10 Q. Sure.

11 A. All right, they had Ms. Brightman's statement, and
12 they had the statement of the people that were chasing him
13 down the road.

14 Q. Okay.

15 A. And they also spoke to Ms. Brightman, too.

16 Q. Okay.

17 MR. WALLER: Beg the court's indulgence.

18 THE COURT: All right.

19 (A PAUSE.)

20 MR. WALLER: No further questions. Thank you.

21 THE COURT: Redirect?

22 MR. WALLER: Very briefly.

23 REDIRECT EXAMINATION BY MR. MITCHELL:

24 Q. The state's case on the burg, burglary first was maybe
25 a little bit stronger than it was on the attempted murder?

D. MELLARD - REDIRECT EXAMINATION BY MR. MITCHELL

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1 A. That's, that's correct.

2 Q. And in framing this plea deal, both were, both were
3 reduced and he was still able to plead *North Carolina vs.*
4 *Alford* on the ABHAN. Is that right?

5 A. That's correct.

6 Q. And that was to kind of alleviate his concerns with
7 the lack of evidence?

8 A. That's correct.

9 Q. Okay.

10 MR. MITCHELL: No further questions. Thank you.

11 THE COURT: All right, you may step down. Thank you.

12 (THE WITNESS EXITS THE STAND.)

13 THE COURT: State can call your next witness.

14 MR. MITCHELL: I have no further witnesses, Judge.

15 THE COURT: All right, anything in reply?

16 MR. WALLER: Nothing in reply, Your Honor.

17 (A PAUSE.)

18 RULING OF THE COURT:

19 THE COURT: All right, Mr. Mitchell, if I could get
20 you to prepare an order that denies the application for
21 post-conviction relief. I don't see any evidence of any
22 ineffective assistance of counsel or coerced guilty plea,
23 all right? It was an *Alford* plea, and he pretty much put
24 on the record, I notice from reading this transcript, his
25 position that he didn't do it and things of that nature.

1 But it was an *Alford* plea, and it was all part of the
2 arrangement for the reduced charges and the recommendation.
3 So, I'm going to deny the post-conviction relief, all
4 right?

5 MR. WALLER: Thank you.

6 THE COURT: Thank you.

7 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE 16TH DAY OF MAY, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

FEBRUARY 11TH, 2017

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Dequan S. Anderson, #264678,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2014-CP-38-1605

ORDER OF DISMISSAL

FILED FOR REC'D
WINNIFRA B. CLARK
2016 NOV - 1 P 5
CLERK OF COURT
ORANGEBURG, SC

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed September 29, 2014. Respondent made its Return on August 21, 2015, requesting an evidentiary hearing be convened. Jonathan D. Waller, Esquire, was appointed by the Orangeburg County Clerk of Court to represent Applicant. An evidentiary hearing was held on May 16, 2016, at the Dorchester County Courthouse. Applicant was present and represented by Counsel Waller. J. Clayton Mitchell, of the South Carolina Attorney General's Office, represented Respondent.

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

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. Applicant was indicted at the October 2013 term of the Court of General Sessions for Orangeburg County for burglary, first degree (2013-GS-38-1124) and at the March 2014 term for attempted murder (2014-GS-38-0410). Applicant was represented by Counsel Mellard. On April 17, 2014, Applicant pled guilty

MAC

CLERK OF COURT

to the lesser included offenses of assault and battery of a high and aggravated nature (ABHAN) and burglary, second degree. The Honorable Clifton Newman sentenced Applicant to ten (10) years' imprisonment for ABHAN and ten (10) years' for burglary, second degree. The sentences were to be served concurrently

A timely Notice of Appeal was filed on Applicant's behalf. By Order filed June 26, 2014, the South Carolina Court of Appeals dismissed the appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. The Remittitur was issued on July 14, 2014.

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

1. Involuntary and unintelligent guilty plea due to Counsel's failure to challenge the admissibility of Applicant's statement and Counsel's failure to investigate and obtain the video of the statement.

II. APPLICABLE LAW

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

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

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

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

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible and persuasive.

These credibility findings have been applied to the Court's findings and conclusions set forth below.

Applicant's Statement to Law Enforcement

Applicant alleges Counsel was ineffective for failing to challenge the admissibility of his confession. Applicant further alleges Counsel was ineffective in failing to investigate and obtain the video recording of his statement. He testified that the video would have helped support his argument that the statement was not given voluntarily. He argues his statement would have been suppressed had a challenge been raised. Applicant acknowledged that he pled guilty to take advantage of the favorable plea deal and that he understood he would be able to challenge the statement if offered at trial by the prosecution. He further testified that the video recording should have existed. He testified that he believed his statement would be admitted because the officers would lie. He was advised by Counsel that the likelihood of having the statement suppressed was low. Counsel testified that he explained to Applicant how the statement could be suppressed after a pre-trial hearing. Counsel emphasized that the prosecution had a strong case and believed Applicant would be convicted if he proceeded to trial.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal

inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

Post-conviction relief "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction." S.C. Code Ann. § 17-27-20(b); see also Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("It is uniformly held that an application for post-conviction relief is not a substitute for an appeal."). Applicant's allegations regarding the charges against him are an inappropriate challenge to the sufficiency of the evidence. Simmons, 264 S.C. at 423, 215 S.E.2d at 885 ("[T]he Uniform Post-conviction Procedure Act 'shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.'" (citing Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973))). "A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)).

This Court finds allegations challenging the evidence are not proper for this forum. Applicant must have taken this case to trial and argued for suppression of the statement and dismissal of the charges at that stage. Instead, he admitted to the truth of the allegations set forth in the indictments at the plea hearing. Applicant may not now challenge the sufficiency of the evidence.

It was certainly reasonable for Counsel to advise Applicant to plead guilty to a negotiated plea arrangement where he would be sentenced between ten to twelve years. This Court finds Applicant took advantage of a favorable plea deal and, by doing so, waived any evidentiary challenges to the evidence. This Court also finds it is not likely Applicant's statement would have been suppressed. Applicant has not presented any credible evidence showing that law enforcement did not follow proper procedures when interrogating Applicant.

To the extent Applicant argued his plea was not entering freely, knowingly, and voluntarily, this Court finds the record fully supports the contrary. The Court finds the record reflects Applicant was fully advised of his rights. The plea court's thorough colloquy with Applicant demonstrates that he understood the charges, penalties, and waiver of rights. Applicant did not present any credible evidence to show that he did not plead guilty knowingly, voluntarily, and intelligently. The Court finds credible Counsel's testimony regarding his preparation and advice regarding the case. This allegation is denied and dismissed.

Applicant has also alleged Counsel was ineffective in failing to investigate and obtain the video recording of Applicant's statement. Despite PCR Counsel's efforts, Applicant was not able to obtain the video of his statement for this Court's review.¹ See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) ("failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result."). The Court will not speculate as to the substance of the video, so this allegation must be denied and dismissed for Applicant's failure to produce the video.

All Other Allegations

As to any and all allegations that were raised in the application and not specifically

¹ The Court granted discovery to allow Applicant to subpoena the Orangeburg County Sheriff's to see if the recording was still available.

addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 27 day of October, 2016.

Benjamin H. Culbertson

BENJAMIN H. CULBERTSON

Presiding Judge

Conway, South Carolina

WITNESSES

Lakesha Gillard

Orangeburg County Sheriff

ARREST WARRANT NUMBER
2014ORB9

Arrested: July 10, 2013

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: March 5, 2014

VERDICT

TRUE BILL

Winniford B. Clark

Date **MAR 05 2014**

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS38-0410

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

March 10, 2014 TERM

THE STATE
vs.

Dequan Shamar Anderson

Indictment for

ATTEMPTED MURDER

ATTEST: TRUE COPY

Winniford B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

SC Code: 16-3-29

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.

FILED FOR RECORD
WITH CLERK OF COURT
ORANGEBURG COUNTY, SC

2014 MAR -5 PM 11:25

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2014GS38-0410

At a Court of General Sessions, convened on March 10, 2014 the Grand Jurors of Orangeburg County present upon their oath:

ATTEMPTED MURDER

In that the defendant, Dequan Shamar Anderson, did in Orangeburg on or about February 15, 2013 did with the intent to kill, attempt to kill one Johnathan West and/or Otarius Pelzer with malice aforethought by means of shooting a firearm at the victim(s), this offense being in violation of Section 16-3-29 of the South Carolina Code of Laws, as amended.

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

Th 3. Scott III

Thomas B Scott, III, Solicitor

WITNESSES

Lakesha Gillard

Orangeburg County Sheriff's Office

20131409

ARREST WARRANT NUMBER
2013A3810100088

Arrested: July 10, 2013

TRUE BILL
ACTION OF GRAND JURY

Date OCT 09 2013

Foreperson of Grand Jury
Date: October 9, 2013

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013GS38-1124

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

October 21, 2013 TERM

THE STATE
vs.

Dequan Shamar Anderson

Indictment for

BURGLARY - FIRST DEGREE

ATTEST: TRUE COPY

Winnifia B. Clark

CLERK OF COURT
ORANGEBURG COUNTY, SC

SC Code: 16-11-311

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

Defendant

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

Defendant

Witness:

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

2013 OCT -9 AM 10: 22
FILED FOR RECORD
WINNIFIA B. CLARK
CLERK OF COURT
ORANGEBURG, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2013GS38-1124

At a Court of General Sessions, convened on October 21, 2013 the Grand Jurors of Orangeburg County present upon their oath:

BURGLARY - FIRST DEGREE

That in Orangeburg County, South Carolina, on or about February 15, 2013, the Defendant, Dequan Shamar Anderson, did willfully and unlawfully enter the dwelling of Johnathan West, without consent and with the intent to commit a crime therein and the defendant, when in effecting entry or while in the dwelling or in immediate flight, was armed with a deadly weapon or used or threatened the use of a dangerous instrument or displayed what appeared to be a pistol or other firearm, this offense being a violation of Section 16-11-311 of the South Carolina Code of Laws, as amended.

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

Th B. Scott, III

Thomas B Scott, III, Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Orangeburg
STATE VS. Dequan Shamar Anderson

AKA:
Race: BLACK Sex: M Age: 34
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: Assault and Battery of a High and Aggravated Nature

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS38-0410
A/W#: 2014ORB9
Date of Offense: 2/15/2013
S.C. Code § : 16-3-29
CDR Code #: 3410

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-3-600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
ATTEST: Scott, III, Thomas B SC Bar# 15881 Defendant Attorney for Defendant SC Bar# 13521

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

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

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. (282 days credit)
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$

Payment Terms:
Set by SCDPPPS

Recipient: Winnifred B. Clark
CLERK OF COURT

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 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, § 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, 3% to County (if paid in installments) \$3.90, TOTAL \$133.90

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

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

Clerk of Court/ Deputy Clerk V. Glen
Court Reporter: J. Jordan

Presiding Judge C. Neuman
Judge Code: 2129
Sentence Date: April 17 2014

COUNTY OF Orangeburg
STATE VS. Dequan Shamar Anderson
AKA:
Race: BLACK Sex: M Age: 34
DOB: SS#:
Address:
City, State, Zip:
DL#: SID#:

INDICTMENT/CASE#: 2013GS38-1124
A/W#: 2013A3810100088
Date of Offense: 2/15/2013
S.C. Code § : 16-11-311
CDR Code #: 0079

SENTENCE SHEET

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

CONVICTED OF or PLEADS

in violation of § 16-11-312 of the S.C. Code of Laws, bearing CDR Code # 0080
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
ATTEST: Scott, III, Thomas B Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, 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.

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

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

SPECIAL CONDITIONS:

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

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 assessment type, amount, and total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 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, § 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, 3% to County (if paid in installments) \$3.90, TOTAL \$133.90

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

Clerk of Court/ Deputy Clerk: V. Glenn
Court Reporter: Felicia Jordan
SCCA/217 (03/2011)

Presiding Judge: C. W. Nunn
Judge Code: 2121
Sentence Date: April 17, 2014

WARRANT 2013004270

2013A3810100088

STATE OF SOUTH CAROLINA
County/ Municipality of
Orangeburg

THE STATE 20131409
against

Dequan Shamar Anderson

Address:

Phone: -7139 SSI
Sex M Race: B Height: 6 weight: 250
DL State: SC DL #:
DOB: Agency ORI #: SC0380000
Prosecuting Agency: Orangeburg County Sheriff
Prosecuting Officer: Lakesha Gillard - 0785
Offense: Burglary / Burglary (After June 20, 1985) - First degree
Offense Code: 0079
Code/Ordinance Sec: 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the
County/ Municipality of

is to be arrested and brought before me to be dealt with according to the law.
ATTEST: TRUE COPY
Winnifred B. Clark (L.S.)
CLERK OF COURT

Signature of Clerk
ORANGEBURG COUNTY, SC

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Dequan Shamar Anderson on 7-10-13

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
151 Docket Street
P. O. Box 9000
Orangeburg, SC 29116

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA
County/ Municipality of
Orangeburg

AFFIDAVIT

ORIGINAL

Form Approved by S.C. Attorney General
April 21, 2009
SCCA 618

Personally appeared before me the affiant Lakesha Gillard who being duly sworn deposes and says that defendant Dequan Shamar Anderson did within this county and state on or about 2/15/2013 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Orangeburg) in the following particulars:

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

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

On 2-15-13 Dequan Anderson (defendant) violated section 16-11-313 of SC Code of Laws: Burglary 1st. in that Anderson did unlawfully enter a secured residence, by force, at Intercoastal Lane Santee with intent to take and carry personal property of Jonathan West (victim). Anderson took a flat screen TV and money jar and sat them outside of the home on the ground but was not able to get away with the property due to West returning home. Anderson also took West's gun, shot at him while in flight, jumped into a Green Cadillac and got away. The affiant knows this to be true due to the statement of Anderson. This offence occurred in the County of Orangeburg, State of SC.

Signature of Affiant

STATE OF SOUTH CAROLINA
County/ Municipality of
Orangeburg

Affiant's Address P. O. Box 9000
Orangeburg, SC 29116
Affiant's Telephone (803)531-4647

ARREST WARRANT

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

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

on or about 2/15/2013 defendant Dequan Shamar Anderson

did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Orangeburg) as set forth below:

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

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

Sworn to and subscribed before me

Signature of Issuing Judge
Derrick F. Dush (L.S.)

Judge Code: 5909

Judge's Address Post Office Box 9000
Orangeburg, SC 29116
Judge's Telephone (803)533-5848

Issuing Court: [X] Magistrate [] Municipal [] Circuit

ORIGINAL

ORIGINAL

ORIGINAL

2013 JUL 12 PM 1:40
FILED
CLERK OF COURT
ORANGEBURG

