

ORIGINAL

STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

SC SUPREME COURT

The Honorable Edward W. Dickson, Circuit Court Judge

Appellate Case No. 2015-002082

Vernell W. Harris,.....Respondent,

v.

State of South Carolina,.....Petitioner.

APPENDIX

ALAN WILSON
Attorney General

ROBERT M. DUDEK
Chief Appellate Defender

J. CROOM HUNTER
Assistant Attorney General
SC Bar No. 101253
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

S. C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589
(803) 734-1230

ATTORNEYS FOR PETITIONER

ATTORNEY FOR RESPONDENT

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In The Supreme Court

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ATTORNEY FOR RESPONDENT

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS	
COUNTY OF FLORENCE)	2011-GS-21-0014
The State,)	
Plaintiff,)	Transcript of Record
vs.)	Guilty Plea
Vernell W. Harris,)	August 4, 2011
Defendant.)	

B E F O R E :

Honorable William H. Seals, Jr.
 Florence County Courthouse
 Florence, South Carolina

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

John DeBerry, Esquire
 Attorney for Plaintiff

Henry Morris Anderson, Jr., Esquire
 Attorney for Defendant

Grace L. Hurley, CVR-CM-M
 Circuit Court Reporter



1 (There were no exhibits marked during the hearing.)
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1 (On the record, August 4, 2011.)

2 THE COURT: All right, fellows, if you all would
3 listen to me I want to go over some rights that you have, your
4 right to a jury trial and I want you to understand these
5 rights. First of all I want you to understand that if you are
6 signed up to plead guilty or you're thinking about pleading
7 guilty you don't have to. If you would rather have a jury
8 trial instead I'll make sure that you get one. I want you to
9 understand that if you have a jury trial the State of South
10 Carolina has the burden of proof, not you. The State of South
11 Carolina has to prove you guilty beyond a reasonable doubt in
12 regards to the crime for which you have been charged.
13 Furthermore I want you to understand that if you have a jury
14 trial it would take all 12 members of the jury, they have to
15 unanimously agree to convict you before the Court could
16 sentence you. Furthermore I want you to understand that if
17 you have a jury trial your lawyer would have the right to
18 cross examine and confront each and every one of the State's
19 witnesses. Furthermore if you have a trial you will have the
20 opportunity if you want to testify. You can get on the stand,
21 you can tell your side of the story, you can subpoena
22 witnesses, you can call witnesses and you and your lawyer can
23 present your case as you see fit. However, keep in mind that
24 you have the right to remain silent, the constitutional right
25 to remain silent. You do not have to testify. You do not

1 have to get on the stand and tell your side of the story and
2 answer questions, and in fact, if you chose to exercise that
3 right that you have, the right not to testify, I would
4 specifically tell the jury that they cannot use that against
5 you in any way whatsoever. I would tell the jury the fact
6 that you did not testify is something they cannot even talk
7 about in the jury room. It is to have absolutely no prejudice
8 against you in way whatsoever. Furthermore, if you have a
9 jury trial or if you plead guilty with me today and you're not
10 happy with something that takes place you can appeal it but
11 you've got to do so within ten days or you'll lose that right.
12 These are rights that I want you to understand. These are
13 rights, your right to a jury trial, that only you can waive
14 and plead guilty if you come before me today. If you have any
15 questions about your rights to a jury trial don't hesitate to
16 ask your lawyer, don't hesitate to ask me. All right,
17 Solicitor, I'm ready whenever you are.

18 OFF THE RECORD

19 (On the record.)

20 MR. DEBERRY: May it please the Court, Your Honor?

21 THE COURT: Sure.

22 MR. DEBERRY: Before you pleading guilty is Mr. Vernell
23 Walter Harris. He's pleading guilty today, Your Honor, to
24 indictment number 2011-GS-21-0014. Your Honor, the charge is
25 for one count of burglary in the first degree. There are some

1 victims here in this case today, Your Honor. They're seated
2 behind the desk out there, Mr. Andrew Munn and his
3 granddaughter, also Ms. Angela Hucks.

4 Your Honor, in, in conjunction with this plea the State
5 will be dismissing indictment number 2011-3, 4, 5, 6, 7, 8, 10
6 and 13. There is a negotiation in this case, Your Honor, for
7 a 15-year sentence and at the appropriate time I'll let you
8 know all about that.

9 THE COURT: And Mr. Harris, were you in the courtroom
10 when I went over your rights to a jury trial?

11 MR. HARRIS: Yes, sir.

12 THE COURT: Did you understand those rights?

13 MR. HARRIS: Yes, sir.

14 THE COURT: Do you have any questions about your
15 rights to a jury trial for either me or your lawyer?

16 MR. HARRIS: No, sir.

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

19 MR. HARRIS: Yes, sir.

20 THE COURT: You understand that you are pleading
21 guilty to burglary first degree, which has a minimum of 15
22 years in jail and a maximum of life?

23 MR. HARRIS: Yes, sir.

24 THE COURT: You understand, also, that this is a
25 negotiated recommendation. If I accept the negotiated

1 recommendation you will receive 15 years today by pleading
2 guilty. Do you understand that?

3 MR. HARRIS: Yes, sir.

4 THE COURT: Is that something you want to do?

5 MR. HARRIS: Yes, sir.

6 THE COURT: You satisfied with your lawyer?

7 MR. HARRIS: Yes, sir.

8 THE COURT: Has he answered all of your questions?

9 MR. HARRIS: Yes, sir.

10 THE COURT: Has he done everything you've asked him to
11 do?

12 MR. HARRIS: Yes, sir.

13 THE COURT: Do you need any more time with your
14 lawyer?

15 MR. HARRIS: No, sir.

16 THE COURT: Do you have any questions for your lawyer
17 at this present time?

18 MR. HARRIS: No, sir.

19 THE COURT: Has anybody promised you any type of
20 reward or a gift or anything like that to induce you into
21 pleading guilty?

22 MR. HARRIS: No, sir, just the ---

23 THE COURT: Is anybody threatening you, coercing you
24 or forcing you in any way to make you plead guilty?

25 MR. HARRIS: No, sir.

1 THE COURT: Are you under the influence of any drugs
2 or alcohol or anything that would affect your ability to
3 think, reason and understand and know what you're doing today?

4 MR. HARRIS: No, sir.

5 THE COURT: Are you guilty?

6 MR. HARRIS: Yes, sir.

7 THE COURT: Have you understood all of my questions?

8 MR. HARRIS: Yes, sir.

9 THE COURT: Have you answered me truthfully?

10 MR. HARRIS: Yes, sir.

11 THE COURT: All right, Solicitor.

12 MR. DEBERRY: Thank you, Your Honor, with regards to
13 indictment 2011-14 there was a - it's a - it is an indictment
14 for burglary in the first degree and also safecracking, Your
15 Honor. Mr. Harris is pleading to the burglary in the first
16 degree. The facts of this case, Your Honor, it occurred on
17 January the 7th of 2010. Mr. Vernell Harris along with a Co-
18 Defendant who's already pled guilty to this charge and a
19 couple of others, Your Honor, Donte Capers did break and enter
20 the home of Franklin Altman on Ballpark Road in - near
21 Johnsonville in Florence County, Your Honor. They kicked in
22 the back door to that residence and once inside they took a
23 safe, some money, video games, jewelry and a couple of guns,
24 Your Honor. Your Honor, this was a - part of a crime spree
25 that went on for some time. Investigator Poston and McFadden

1 from the Florence County Sheriff's Office are here today.
2 They did the bulk of the work along with other investigators.
3 Also here today would be Emmanuel Graham that worked on some
4 of these cases. Your Honor, there was about 15 or 16 cases
5 that were solved when this - when these Defendants were
6 captured and found out. There is a Co-Defendant, Gloria
7 Carrigan, who's not pled yet at this point, Your Honor. She
8 was the first to provide the State with information to help
9 solve these crimes. Shortly after Mr. Harris came on board
10 with the State, provided an immense amount of information.
11 Mr. Poston and Mr. McFadden may want to touch on that subject.
12 There's, there's been a lot of crimes solved because of Mr.
13 Harris. All of these crimes were strengthened against Mr.
14 Capers. He pled last term of court, Your Honor, and got 25
15 years. So, that's, that's the reason for our negotiation of
16 15 years, Your Honor. There is also a new statute that's
17 passed within the last year, Your Honor. It's South Carolina
18 Code 17-25-65 that says that if Mr. Harris or any Defendant
19 provides the State with useful information in solving crimes
20 after a sentence that they may be eligible to come back into
21 court for some consideration to be given by the judge. You
22 know, if that happens I think the law sets out that he is
23 eligible to come back to see if there's anything that can be
24 done for him. We wouldn't be opposed to that, Your Honor.
25 So, that, you know, that's the basis for our negotiations and

1 I think that covers it.

2 THE COURT: All right, Mr. Poston, anything you want
3 to add to it?

4 MR. POSTON: Your Honor, Mr. Harris has been very, very
5 cooperative with the Sheriff's Office. He has led to the
6 closure of I want to say estimated 40 burglaries in the
7 Florence County area which led to his Co-Defendant receiving
8 25 years. He has done everything that we've asked him to do.
9 The 15 years is on the low end for a burglary first. We
10 believe it is fair and just for his situation.

11 THE COURT: Thank you. Mr. McFadden?

12 MR. MCFADDEN: The same thing he said, every time we
13 needed him to come out he actually rode around and actually
14 showed us every house he did. In addition once he does his
15 sentence he's going to have additional information that he'll
16 come forward with it that leads to some more arrests.

17 THE COURT: All right, how about the victims, do they
18 want to speak?

19 MR. DEBERRY: Your Honor, I think they all - Mr. Munn
20 asked that I speak for him. They've been very concerned and
21 on board with this case and also Mr. Franklin Altman who
22 couldn't be here today is also very interested and Ms. Hucks.
23 I appreciate their help and they've been interested and
24 understand what's going on here today.

25 THE COURT: Are the victims in agreement with the

1 recommendation, with the negotiated offer?

2 MR. DEBERRY: Yes, sir, Your Honor.

3 THE COURT: All right, be glad to hear from you, Mr.
4 Anderson, if you need to add anything.

5 MR. ANDERSON: Judge, if it please the Court, Vernell is
6 here, Your Honor, his mom, Ms. Mary Fulton, is here and also
7 one of his brothers is here, Your Honor. They're here
8 supporting him, love him, don't approve of everything that
9 he's done, but they certainly love him and want him to know
10 that they support him.

11 Now, Your Honor, as the two investigators said and also
12 as Mr. DeBerry said, he has helped them a great deal, Your
13 Honor. As Mr. DeBerry said under 17-25-65 we anticipate that,
14 you know, hopefully he'll be back in the near future to be
15 before the Court to see whether or not he's eligible for
16 another time reduction.

17 Judge, he was served with these warrants on April the 9th
18 of last year. Judge, by my calculation he's been locked up
19 482 days, certainly ask that he be given credit for that.
20 Your Honor, I think probably in the early part of 2000 - or
21 the latter part of 2009 he received a revocation of a YOA and
22 then Judge Newman sentenced him to ten years on two counts of
23 receiving stolen goods. I would ask that this sentence be run
24 concurrent with that. Your Honor, it's my understanding the
25 Solicitor's Office nor law enforcement opposes that, but

1 Judge, I would ask you to accept the negotiation. If he wants
2 to speak or his mother wants to speak I'd certainly ask you to
3 allow them to.

4 THE COURT: All right, be glad to hear from any of
5 you.

6 MR. HARRIS: I ain't got nothing to say.

7 THE COURT: All right, I'll accept the negotiated
8 recommendation. The sentence of the Court is 15 years. He'll
9 be given credit for 482 days and this sentence will run
10 concurrent with the other crimes that he has pled to.

11 MR. ANDERSON: Thank you, Judge.

12 MR. DEBERRY: Thank you, Your Honor.

13 (Adjourned.)

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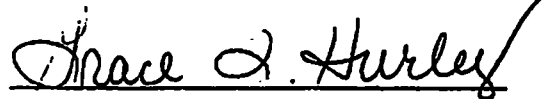
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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the Guilty Plea held in the case of The State versus Vernell Walter Harris, held in the Court of General Sessions for Florence County, Florence County Courthouse, Florence, South Carolina, on August 4, 2011.

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



Grace L. Hurley, CVR-CM-M
Official Reporter

September 10, 2012.

FORM 5

2012 CPAI 2004

STATE OF SOUTH CAROLINA

COUNTY OF Florence

CERTIFIED A TRUE COPY COURT OF COMMON PLEAS

Vernell W. Harris #391357
Full name and prison number (if any) of Applicant

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

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2012 AUG -6 PM 1:59
CLERK OF COURT
FLORENCE COUNTY, S.C.

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee CI
2. Name and location of Court which imposed sentence FLORENCE COUNTY GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) Donta Copers and Gloria Carragan
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-21-0014
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) ~~2011~~ Sentence Date 8-4-2011
 - (b) _____

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty I received 15 years Violent
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Just the Court of General Sessions (VWH)
- ii. The Supreme Court of Appeals. N/A
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. ~~other to get there while I talked to the VWH~~
- ii. ~~satellite I was told there was no need because~~
- iii. ~~all would happen is to go back to trial to get life~~
- (c) the date of each such result: OR the judge give me more time there
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (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/Involuntary
(b) guilty plea pursuant to
(c) _____

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

- (a) See Attachments
(b) _____
(c) _____

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

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

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

- i. _____
ii. _____
iii. _____

- iv. _____
- (d) the date of each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- 14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

- 15. If you answered "yes" to (14) identify:
 - (a) which grounds have been presented:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the proceedings in which each ground was raised:
 - i. _____
 - ii. _____
 - iii. _____
- 16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

 - (a) _____
 - (b) _____
 - (c) _____
- 17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? X
- (b) your trial, if any? N/A
- (c) your sentencing? X
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No I was by myself at the appeal
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

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

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

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

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

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

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

Due to ineffective assistance of counsel is grounds to have case vacated.

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

No

STATE OF SOUTH CAROLINA

County of Florence

VERIFICATION

I, , 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.

Kennell W. Harris

SWORN to and subscribed before me this 3
day of Aug, 2012

Diana Sims (L.S.)
Notary Public

My Commission Expires: 11-4-2015

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

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

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

Vernell Hawks
Applicant

SWORN or affirmed to and subscribed before me this

3 day of Aug, 2012.

Debra Series
Notary Public

My Commission Expires: 11-4-2015

FILED
2012 AUG -6 PM 1:09
COMM. REEL - SHEARIN
CCCP & GS
FLORENCE COUNTY, S.C.

CERTIFIED A TRUE COPY
Amie J. Spierin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	
	)	
	)	2012-CP-21-2184
	)	
Vernell W. Harris, 341357	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the Application for post conviction relief (PCR) filed August 6, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted by the Florence County Grand Jury for burglary first (2011-GS-21-0014). Henry Morris Anderson, Esquire, represented Applicant.

On August 4, 2011, Applicant pled guilty as indicted and was sentenced by the Honorable William H. Seals to fifteen years imprisonment. Applicant did not appeal.

Attached herewith and incorporated herein are the records of the Florence County Clerk of Court regarding the subject conviction, and Applicant's SCDC records, and the guilty plea transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of counsel"
2. "Guilty plea pursuant to"

III.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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 Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, 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.

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

V.

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

VI.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

10/4, 2012.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

VERNELL W. HARRIS, #341357

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2012-CP-21-2184

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:

Thurmond Brooker, Esquire
P.O. Box 1450
Florence, SC 29503

DATED this 4TH day of October, 2012.


Norma Bigbee, Legal Assistant
For Respondent

State of South Carolina) Court of Common Pleas
County of Florence) Twelfth Judicial Circuit
Case No. 2012-CP-21-02184

Vernell Harris,

Plaintiff,

-vs-

State of South Carolina,

Defendant.

Transcript of Record

October 8, 2014
Florence, South Carolina

B E F O R E:

The Honorable Edgar W. Dickson, Judge

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

Matthew Tyler, Esquire
Attorney for the Plaintiff

Croom Hunter, Esquire
Attorney for the Defendant

Krystal J. Smith
Court Reporter

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I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
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1	<u>PLAINTIFF'S EXHIBITS</u>			
2				
3	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
4	1	Letter		9
5				
6				
7	<u>STATE'S EXHIBITS</u>			
8				
9	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
10	1	Proffer Agreement		28
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1 OCTOBER 8, 2014

2 (WHEREAS this matter was scheduled for a post-conviction
3 relief hearing, the applicant appeared along with his
4 counsel of record. The hearing began at 11:05 a.m.)

5 MR. HUNTER: Your Honor, the next case we're going to do
6 is Vernell Harris.

7 THE COURT: Vernell Harris? Thank you, sir. All right.
8 Mr. Hunter, whenever you're ready.

9 MR. HUNTER: Okay, Your Honor.

10 THE COURT: And this is Vernell Harris?

11 MR. HUNTER: Yes, Your Honor. This is -- may it please
12 the Court.

13 THE COURT: Yes, sir.

14 MR. HUNTER: This is Vernell Harris versus the State of
15 South Carolina, 2012-CP-21-2184. Mr. Harris is presently
16 confined in SCDC pursuant to orders of the Florence County
17 Clerk of Court.

18 He was indicted by the Florence County Grand Jury for
19 burg 1st, and was represented by Hank Anderson. On August 4th,
20 2011, Mr. Harris pled guilty as indicted and was sentenced by
21 the Honorable William H. Seals to fifteen years' imprisonment.
22 He did not appeal.

23 He filed this application for post-conviction relief on
24 August 6th, 2012, and he is represented here today by Mr.
25 Tyler. I'll turn it over to Mr. Tyler.

1 THE COURT: Yes, sir.

2 MR. TYLER: Good morning, Your Honor.

3 THE COURT: Good morning, Mr. Tyler. How are you this
4 morning?

5 MR. TYLER: Doing fine. Thank you, sir.

6 THE COURT: Yes, sir.

7 MR. TYLER: Your Honor, Mr. Harris has filed his post-
8 conviction relief and it is based upon ineffective assistance
9 of counsel from Mr. Anderson. And whenever the Court is
10 ready, Your Honor, we'd like to call Mr. Harris to the stand.

11 THE COURT: I'm ready when you are.

12 MR. TYLER: All right, sir.

13 THE COURT: Right up here, Mr. Harris.

14 THE CLERK: Please step up to the Bible. Place your left
15 hand on the Bible and raise your right hand as much as
16 possible. Do you swear or affirm to tell the truth, the whole
17 the truth, and nothing but the truth?

18 THE APPLICANT: Yes, sir.

19 THE CLERK: Have a seat and state your name for the
20 record.

21 THE APPLICANT: Vernell Harris.

22 MR. TYLER: Okay. I need you to speak up a little bit
23 louder so everybody can hear you. Okay?

24 THE APPLICANT: My name is Vernell Harris.

25 VERNELL HARRIS, being first duly

VERNELL HARRIS - DIRECT BY MR. TYLER

1 sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. TYLER:

4 Q: Okay. Mr. Harris, do you understand why we're here
5 today?

6 A: Yes.

7 Q: Okay. Were you represented by Mr. Henry Anderson,
8 otherwise known as Hank Anderson --

9 A: Yes.

10 Q: -- in 2011?

11 A: Yes.

12 Q: All right, sir. And that was pursuant to some charges
13 that were filed against you in January of 2011; is that right?

14 A: Yes, sir.

15 Q: Okay. Did you enter a guilty plea before Judge Seals in
16 August of 2011?

17 A: Yes.

18 Q: Now, at the time that you entered your guilty plea, were
19 you told by Mr. Anderson what your sentence would be?

20 A: Yes. I heard two different sentences though. It was a
21 ten -- it was going to be a non-violent sentence. I know
22 that.

23 Q: All right, sir. Do you recall discussions regarding a
24 sentence reduction hearing before and during and after the
25 guilty plea?

VERNELL HARRIS - DIRECT BY MR. TYLER

1 A: Yes.

2 Q: Now I want to focus on that sentence reduction hearing
3 for a moment. Sometimes that's known as a downward departure.
4 Are you familiar with that term?

5 A: Yes.

6 Q: Okay. Did you cooperate with the investigators,
7 specifically Mr. McFadden and Mr. Poston?

8 A: Yes.

9 Q: Okay. Did you assist both of them before and after the
10 plea in helping solve some Florence County crimes?

11 A: Yes.

12 Q: Now, Mr. Harris, was it your understanding that by doing
13 so that this would assist you when it came time for the
14 sentence reduction hearing or downward departure?

15 A: Yes.

16 Q: All right. Now let me back up just a second. Following
17 your guilty plea, did you request from Mr. Anderson that he
18 appeal your sentence?

19 A: Yes.

20 Q: Was that ever done?

21 A: No. He said there wasn't no need.

22 Q: Okay. Did you request him to file a motion to have your
23 sentence reconsidered? The downward departure?

24 A: Yes.

25 Q: Let me show you, Mr. Harris, a letter.

VERNELL HARRIS - DIRECT BY MR. TYLER

1 MR. TYLER: Can we get this marked, Your Honor?

2 THE COURT: Yeah. Yeah. I'm sorry. And you've showed a

3 copy to Mr. Hunter?

4 MR. TYLER: I have not yet, Your Honor. I'll be glad to

5 do so.

6 THE COURT: Yeah. If you don't mind.

7 MR. TYLER: Yes, sir.

8 (WHEREUPON, the letter was marked as Plaintiff's Exhibit

9 Number 1.)

10 MR. HUNTER: And, Your Honor, I would just object to this

11 because I've never seen it before today.

12 THE COURT: Well, I understand. We'll see if he can

13 identify it. I just wanted to -- just wanted you to see what

14 was going on. I'll note your objection. I'm going to -- I'm

15 going to let you ask him and see if he can identify it and

16 tell --

17 MR. TYLER: Thank you.

18 THE COURT: -- me what it is.

19 BY MR. TYLER:

20 Q: Mr. Harris, let me show you what's been marked as Exhibit

21 Number 1, and I'll just ask if you can identify what that is,

22 sir?

23 A: A letter from Hank.

24 Q: All right. A letter from Mr. Hank Anderson?

25 A: Yes.

VERNELL HARRIS - DIRECT BY MR. TYLER

1 Q: What's the date of that letter?

2 A: August 12th, 2011.

3 Q: Okay. Now, looking at the very last paragraph on that

4 letter, did he mention to you about the downward departure?

5 A: Yes.

6 Q: Okay. Did he indicate to you in that correspondence that

7 he would continue to pursue that downward departure?

8 A: Yes.

9 Q: As of the date you filed your PCR, August of 2012, which

10 would have been right at a year --

11 A: Yes.

12 Q: -- to the date of your plea, had that motion for sentence

13 reduction ever been filed?

14 A: No. It never was.

15 Q: All right, sir. And as we sit here today, two years

16 after you filed your PCR, has that motion for sentence

17 reduction been filed?

18 A: No, it hasn't.

19 MR. TYLER: I move to introduce the letter, Your Honor.

20 THE COURT: Okay.

21 MR. HUNTER: I would object, Your Honor.

22 THE COURT: Okay. I'm -- I'm going to let it in. I'll

23 note your objection on the record. It is in evidence.

24 (WHEREUPON, Plaintiff's Exhibit Number 1, a letter, was

25 admitted into evidence.)

VERNELL HARRIS - DIRECT BY MR. TYLER

1 MR. TYLER: Thank you, Your Honor.

2 THE COURT: Thank you, sir.

3 BY MR. TYLER:

4 Q: Mr. Harris, as your attorney and as Mr. Anderson's
5 client, did you expect that he would pursue the downward
6 departure or sentence reduction for you?

7 A: Yes. I trusted his word. He said he was going to do it.

8 Q: All right, sir. And that is also what's noted in that
9 correspondence to you?

10 A: Yes.

11 Q: Did you feel that Mr. Anderson was ineffective in not
12 doing those things --

13 A: Yes.

14 Q: -- which would potentially result in a lesser sentence
15 for you?

16 A: Yes.

17 Q: Were you relying upon his effectiveness in assisting you
18 throughout this case?

19 A: Yes.

20 Q: Do you feel like you've been prejudiced by his
21 ineffective assistance?

22 A: Yes.

23 Q: Both before and after the plea?

24 A: Yes.

25 Q: Mr. Harris, do you feel that Mr. Anderson's assistance

VERNELL HARRIS - DIRECT BY MR. TYLER

1 was ineffective in any other way?

2 A: Just not getting the plea agreement -- the agreement
3 enforced and going through with the downward departure.

4 Q: All right, sir.

5 A: Filing the motion.

6 Q: Okay.

7 MR. TYLER: That's all I have, Your Honor.

8 THE COURT: Okay. Mr. Hunter, any questions of this
9 witness?

10 MR. HUNTER: Yes, Your Honor.

11 THE COURT: Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. HUNTER:

14 Q: So, Mr. Harris, you're not -- you're not up here today
15 denying the fact that you're guilty of this crime; is that
16 correct?

17 A: No, I'm not.

18 Q: Okay. Do you recall the judge when you pled guilty
19 asking you if anyone had promised you anything in exchange for
20 your guilty plea?

21 A: Yes, I remember.

22 Q: Okay. Do you recall telling the judge that no one had
23 promised you anything?

24 A: Yes.

25 Q: Okay. Mr. Harris, just a moment ago you said that Mr.

VERNELL HARRIS - CROSS BY MR. HUNTER

1 Anderson didn't get your plea agreement enforced; is that
2 correct?

3 A: Yes.

4 Q: However, do you recall when the -- when the plea judge
5 told you that you were pleading guilty to a negotiated
6 fifteen-year sentence?

7 A: Yes, I remember.

8 Q: Okay. But now you're saying there was another plea
9 agreement?

10 A: All right. They stated at the -- at the PCR -- like,
11 before -- before even -- like, they didn't tell me about the
12 downward departure until the day of and, before that, they was
13 saying something about some other -- it was going to be --

14 Q: Okay. Let me stop you there. When you say they, who are
15 you speaking of?

16 A: The investigators. We had a whole -- there was a meeting
17 with Hank, the investigators, solicitor.

18 Q: Okay. And that was the day that you pled guilty?

19 A: No. It was a -- it was a couple -- it was before that.

20 Q: Okay. And at that meeting, they told you that -- that if
21 you pled guilty to this fifteen-year sentence, then they would
22 get it reduced after that?

23 A: No. They was telling me about if -- if I cooperate.

24 Basically, if I just go ahead and tell them myself, basically
25 that's all that they -- that it was going to be a non-violent

VERNELL HARRIS - CROSS BY MR. HUNTER

1 sentence.

2 Q: Okay. And did they promise you that if you pled guilty

3 that you would get less than the fifteen years you were

4 pleading to?

5 A: Yeah.

6 Q: They promised you --

7 A: That's what I was led to believe, yeah.

8 Q: Okay.

9 A: By my lawyer, that's what I was led to believe the whole

10 time.

11 Q: Okay. Do you remember when the judge asked you if you

12 were satisfied with Mr. Anderson's work on this case?

13 A: Yes.

14 Q: Do you remember telling the judge that you were?

15 A: Yes.

16 Q: Okay. And do you remember telling the judge that you

17 wanted to plead guilty?

18 A: Yes.

19 Q: Okay. Do you recall the judge telling you that the

20 charge you were pleading to carried fifteen years to life?

21 A: Yes, I remember.

22 Q: Mandatory fifteen years?

23 A: Yeah.

24 Q: So you were getting the lowest sentence you could

25 possibly get?

VERNELL HARRIS - CROSS BY MR. HUNTER

1 A: Yes. I felt like I ain't had no choice but to do that
2 because I listened to my lawyer, and then I ain't had nothing
3 on paper really. I really didn't -- I was really ignorant to
4 the fact about the letters and stuff that he was sending me.
5 So I didn't know that I could just really show -- show this
6 right here.

7 Q: Okay. But you understand that if you had gone to trial
8 and been convicted that you could not have gotten less than
9 fifteen years in prison?

10 A: Yeah, I understand.

11 Q: Okay.

12 MR. HUNTER: No further questions.

13 A: Now I understand.

14 THE COURT: Okay. Anything on redirect?

15 MR. TYLER: Very briefly, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. TYLER:

18 Q: Mr. Harris, you understand that the statute that was
19 discussed the day of your plea that talked about downward
20 departure --

21 A: Yes.

22 Q: -- that required your cooperation after the sentence?

23 A: Yes.

24 Q: And so you -- it was your understanding -- and correct me
25 if I'm wrong. It was your understanding that you had to

VERNELL HARRIS - REDIRECT BY MR. TYLER

1 cooperate after you were sentenced to the fifteen years in
2 order to be eligible for a sentence reduction?

3 A: Yeah.

4 Q: Is that right?

5 A: Yeah.

6 Q: Okay. And as we sit here today, no one's ever made any
7 efforts to have that sentence reduced; is that correct?

8 A: No.

9 Q: No, that's correct, or no, that's incorrect?

10 A: No. Nobody -- nobody did any motions or nothing.

11 Q: All right, sir. And you recall the day of your plea the
12 solicitor indicating that if you would continue to provide
13 information and cooperate that the State would not oppose that
14 sentence reduction?

15 A: Yes.

16 Q: All right, sir.

17 MR. TYLER: Thank you, Your Honor.

18 THE COURT: All right. Now, I've got a question. Did
19 anybody -- did he cooperate afterwards? Does anybody --

20 MR. TYLER: Yes, sir.

21 THE COURT: Would you go into that, please, sir?

22 MR. TYLER: Yes, sir.

23 BY MR. TYLER:

24 Q: Mr. Harris, following your plea, did you cooperate with
25 Investigators McFadden and Poston?

VERNELL HARRIS - REDIRECT BY MR. TYLER

1 A: Yes.

2 Q: All right, sir. And did you --

3 A: I showed them -- I showed them -- it was about fifty-
4 something -- like, they wanted to know what homes I done
5 burglarized and I showed them about fifty-something homes.

6 Q: All right, sir. And as a result of your information to
7 them, those crimes were solved? Or at least that's --

8 A: Yes.

9 Q: -- your understanding?

10 A: Yes.

11 Q: Okay. All right, sir.

12 MR. TYLER: And, Your Honor, as an officer of the court,
13 I have spoken with these investigators and they have confirmed
14 that.

15 THE COURT: Okay. All right.

16 MR. TYLER: And that's all.

17 THE COURT: Mr. Hunter, anything else on recross?

18 MR. HUNTER: No, Your Honor.

19 THE COURT: Okay. Mr. Harris, you may step down. Okay.
20 Mr. Tyler, your next witness?

21 MR. TYLER: Yes, sir. Your Honor, at this time, I'd like
22 to call Mr. Henry Anderson to the stand.

23 THE COURT: Okay. Good morning, Mr. Anderson.

24 THE WITNESS: Good morning, Judge.

25 THE CLERK: Do you swear or affirm that the testimony

HENRY M. ANDERSON JR. - DIRECT BY MR. TYLER

1 that you are about to give is the truth, the whole truth, and
2 nothing but the truth?

3 THE WITNESS: I do.

4 THE CLERK: Have a seat and state your name for the
5 record.

6 THE WITNESS: My name is Henry Morris Anderson Jr.

7 THE COURT: All right. Mr. Tyler, he's also your
8 witness.

9 MR. TYLER: Thank you, Your Honor.

10 HENRY M. ANDERSON JR., being first
11 duly sworn testified as followed:

12 DIRECT EXAMINATION

13 BY MR. TYLER:

14 Q: Mr. Anderson, did you represent Mr. Vernell Harris from
15 his arrest in January 2011?

16 A: I did.

17 Q: All right, sir. And did his family hire you to represent
18 him?

19 A: Yes, sir.

20 Q: All right. So you were not court appointed; is that
21 correct?

22 A: That's correct.

23 Q: All right, sir. That representation resulted, as I
24 understand it, in a guilty plea August of 2011?

25 A: That's correct.

HENRY M. ANDERSON JR. - DIRECT BY MR. TYLER

1 Q: Prior to that plea, you discussed the sentencing with Mr.

2 Harris?

3 A: Yes, sir, I did.

4 Q: Okay. And you recommended the guilty plea?

5 A: I did.

6 Q: You told him that the sentence was negotiated with the

7 State?

8 A: Yes, sir.

9 Q: Now, pursuant to the Rules of Professional Conduct, Mr.

10 Anderson, and as an officer of the court, you were aware that

11 your duty of representation extends beyond the day of the

12 plea; is that correct?

13 A: Yes, sir.

14 Q: Okay. And as counsel for Mr. Harris, you have an

15 obligation to effectively represent him, don't you?

16 A: Yes, sir.

17 Q: Within the canons of ethics, you have a duty to represent

18 his interest to the best of your abilities; is that fair to

19 say?

20 A: Very fair.

21 Q: That duty would extend to filing timely motions, would it

22 not?

23 A: It would.

24 Q: Here, you were aware that Mr. Harris wanted to appeal his

25 sentence?

HENRY M. ANDERSON JR. - DIRECT BY MR. TYLER

1 A: Yes, sir. He wrote me a letter saying he wanted to
2 appeal it.

3 Q: All right, sir. And you were also aware that under
4 Section 17-25-65 of the South Carolina Code that he was
5 eligible for a post-plea sentence reduction motion, a downward
6 departure; is that right?

7 A: That's correct.

8 Q: Okay. The day of the plea, do you recall -- and I
9 believe it's on page 8 of the plea, but do you recall
10 discussions with the solicitor wherein the solicitor indicated
11 that after the sentence that if Mr. Harris cooperated that the
12 State would not oppose a sentence reduction hearing?

13 A: That's correct.

14 Q: Okay. And it's your understanding the investigators
15 agreed that day and afterward?

16 A: That's correct.

17 Q: Okay. Yet as we sit here today, a little over three
18 years after the plea, there's been no sentence reduction
19 motion ever pursued; is that correct?

20 A: That's correct.

21 Q: And there have been requests by Mr. Harris and others to
22 do so; is that right?

23 A: That's right.

24 Q: I'm going to show you what's been marked as Exhibit
25 Number 1, Mr. Anderson, and just ask you is this a letter that

HENRY M. ANDERSON JR. - DIRECT BY MR. TYLER

1 you wrote to Mr. Harris?

2 A: Yes, sir. It certainly appears to be.

3 Q: All right, sir. And the bottom paragraph of that letter,
4 doesn't it indicate that as of August 12th, 2011, the date of
5 that letter, that you would continue to pursue the downward
6 departure or a sentence reduction hearing?

7 A: Yes, sir. I mean it says what I would suggest is that we
8 continue to work on this and try and get you a downward
9 departure.

10 Q: All right, sir.

11 A: I think that is your best option.

12 Q: Okay. But as we sit here, that has not been done?

13 A: No, sir.

14 Q: Okay. And without fulfilling your -- your post-plea
15 duties, Mr. Anderson, your representation cannot be effective,
16 can it?

17 MR. HUNTER: I object to that, Your Honor.

18 THE COURT: Okay. Well, that's a conclusory opinion. I
19 -- I'll --

20 MR. TYLER: All right, sir. Your Honor, I'll move on.

21 THE COURT: Okay. Thank you.

22 BY MR. TYLER:

23 Q: Mr. Anderson, your job is to get the best result for your
24 client; is that right?

25 A: Absolutely.

HENRY M. ANDERSON JR. - DIRECT BY MR. TYLER

1 Q: Okay. And that means taking whatever measures you can to
2 get the least sentence possible for your client; is that
3 correct?

4 A: That's correct.

5 Q: Within ethical reason and bounds; right?

6 (No verbal response.)

7 Q: Okay. And you agree with me that the post-plea sentence
8 reduction hearing provides an opportunity for Mr. Harris to
9 have a lesser sentence; right?

10 A: It would.

11 Q: Okay. And so as we sit here today, all measures have not
12 been exhausted, have they?

13 A: No, sir.

14 MR. TYLER: That's all, Your Honor.

15 THE COURT: Okay. Anything on cross-examination?

16 MR. HUNTER: Yes, Your Honor.

17 THE COURT: Thank you. All right. Mr. Hunter?

18 CROSS-EXAMINATION

19 BY MR. HUNTER:

20 Q: Mr. Anderson, how long have you been practicing law?

21 A: I worked with Judge Waller in '91 and '92 and been in
22 private practice ever since.

23 Q: And you stated that you were retained in this case?

24 A: Yes, sir.

25 Q: Okay. Do you recall how many times you met with Mr.

HENRY M. ANDERSON JR. - CROSS BY MR. HUNTER

1 Harris prior to his plea?

2 A: I do not recall the exact number. I would estimate ten
3 or more times.

4 Q: And did you file appropriate Brady and Rule 5 motions in
5 this case?

6 A: Yes, sir.

7 Q: And so you didn't have any trouble getting discovery from
8 the Solicitor's Office?

9 A: No, sir.

10 Q: Okay. Did you review that discovery with Mr. Harris?

11 A: Yes, sir.

12 Q: Did you discuss his version of the facts of this case?

13 A: Yes, sir.

14 Q: Okay. Did you discuss whether or not he had any possible
15 defenses?

16 A: Yes, sir.

17 Q: Okay. Now, when it came time to plead guilty, whose
18 decision was it to plead guilty?

19 A: That was his decision.

20 Q: Okay. And based on your knowledge of the facts of the
21 case, did you think that was a good decision?

22 A: I thought that that was an excellent decision.

23 Q: Okay. Now, prior to his plea, did you discuss the
24 elements of the charges he was facing with Mr. Harris?

25 A: Yes, sir.

HENRY M. ANDERSON JR. - CROSS BY MR. HUNTER

1 Q: Okay. If you could briefly just kind of describe the
2 case that the State had against Mr. Harris for the Court?

3 A: There were probably forty to fifty break-ins that Mr.
4 Harris was alleged to have committed with a co-defendant named
5 Dante Capers. There was also another female co-defendant that
6 was kind of involved to a lesser extent.

7 Mr. Capers and I met several times. We met with the two
8 investigators, Warren Poston and Thomas McFadden. We worked
9 out a deal where they would only charge him with about eight
10 or ten of them, and that hopefully we could plead to one and
11 run it concurrent with the time that he was already doing out
12 of Kingstree.

13 Later, we met with Steven Deberry, who was the assistant
14 solicitor, and more or less did a proffer. That was probably
15 in April of 2011. We met with Mr. Steven Deberry, the
16 prosecutor, and also met with two investigators and basically
17 debriefed in hopes of, you know, getting the minimum sentence
18 in this case. Then later, we went to court in August and he
19 did get the minimum.

20 Q: So -- and that was my next question. So he did receive
21 the minimum he could possibly receive in this case; is that
22 correct?

23 A: Yes, sir.

24 Q: Okay. Prior to his plea, did you review Mr. Harris's
25 constitutional rights that he was waiving by pleading guilty

HENRY M. ANDERSON JR. - CROSS BY MR. HUNTER

1 as far as his right to trial and whatnot?

2 A: Yes, sir.

3 Q: Okay. And as you said, it was his decision to plead
4 guilty?

5 A: Yes, sir.

6 Q: Okay. Did you have any discussion with -- with Mr.
7 Harris about any further type of downward departure or
8 sentence reduction after his plea?

9 A: Yes, sir. I actually prepared a transport order, had him
10 brought from -- I cannot remember if he was in the Department
11 of Corrections or if he was still in the county, but I
12 prepared a transport order and got it signed by a Circuit
13 Court judge. And he met with Warren Poston, the investigator,
14 and also with Thomas McFadden, and then they actually rode
15 around and Mr. Harris showed them -- I don't know -- maybe
16 thirty or forty other houses that they had broken into.

17 I was not along with them. I was not there when they
18 went, but it's my understanding that they did go and do that.

19 Q: Now, this was after he pled guilty?

20 A: Yes, sir.

21 Q: Okay. And after his guilty plea, were you still under
22 the impression that -- or were you under the impression that
23 you were still representing Mr. Harris in any way?

24 A: I was not.

25 Q: Okay.

HENRY M. ANDERSON JR. - CROSS BY MR. HUNTER

1 A: I told Mr. Harris and his family that they still owed a
2 large sum of money. I continued to correspond with him. I
3 told him that he could file that motion, someone else could
4 file that motion, that anybody could file that motion, but
5 that basically I was getting out of it.

6 Q: And as far as you're aware, that motion can still be
7 filed?

8 A: Absolutely.

9 Q: Okay. Now, after he pled guilty, did Mr. Harris ask you
10 to file an appeal for him?

11 A: He wrote me a letter and asked me. I think he actually
12 filed one himself. I wrote him back and advised him to
13 withdraw that, that I thought that would work better for him
14 as far as any future motions or any future dealings that he
15 would have with the State and also with the investigators.

16 MR. HUNTER: And, Your Honor, if I may approach?

17 THE COURT: Yes.

18 MR. HUNTER: I have an exhibit to mark.

19 MR. TYLER: Your Honor, if you would just please note my
20 objection.

21 THE COURT: Okay.

22 MR. TYLER: Again, I've not seen this document before
23 today.

24 THE COURT: Okay.

25 MR. HUNTER: And, Your Honor, I haven't seen it before

HENRY M. ANDERSON JR. - CROSS BY MR. HUNTER

1 today either.

2 THE COURT: You know, it's always nice to see things for
3 the first time in court.

4 MR. HUNTER: Yes, sir.

5 THE COURT: Okay. If you -- are you going to ask Mr.
6 Anderson to identify it?

7 MR. HUNTER: I was.

8 THE COURT: Okay.

9 MR. HUNTER: I was going to have it marked first if --

10 THE COURT: Yeah. That would be great.

11 (WHEREUPON, a proffer agreement was marked as State's
12 Exhibit Number 1.)

13 BY MR. HUNTER:

14 Q: Mr. Anderson, could you identify that document for me?

15 A: Yes, sir. This is a proffer agreement that was prepared
16 by the State. It was signed by Mr. Harris on April the 4th, it
17 was signed by myself on April the 4th, and it was signed by
18 Steven Deberry on April the 4th, and it was witnessed by
19 someone with the Sheriff's Office on April the 4th.

20 Q: Okay. Mr. Anderson, if you wouldn't mind --

21 THE COURT: Is that April 4th?

22 THE WITNESS: Yes, sir.

23 THE COURT: Of 2011?

24 THE WITNESS: Yes, sir.

25 MR. HUNTER: Yes, Your Honor.

HENRY M. ANDERSON JR. - CROSS BY MR. HUNTER

1 THE COURT: So that was four months before the plea?

2 THE WITNESS: Yes, sir.

3 THE COURT: Okay. All right. Just wanted to make sure.

4 BY MR. HUNTER:

5 Q: And, Mr. Anderson, if you could just tell me what this
6 last section here says? Tell the Court.

7 A: This is a complete and accurate representation of all
8 negotiations between Vernell Harris and Ed Clements, the
9 solicitor, and no one has threatened or forced Vernell to
10 enter this plea agreement and no other promises have been
11 made. Vernell Harris enters this agreement freely and
12 voluntarily.

13 That's when we met with the solicitor and law enforcement
14 and cooperated for the first time.

15 MR. HUNTER: And, Your Honor, I'd move this into the
16 record.

17 THE COURT: Okay. And, Mr. Tyler, I know you're renewing
18 your objection.

19 MR. TYLER: Yes, sir.

20 THE COURT: You just hadn't seen it, but you had an
21 opportunity to review it?

22 MR. TYLER: Yes, sir, I have.

23 THE COURT: Okay. All right.

24 MR. TYLER: Thank you, Your Honor.

25 THE COURT: I'm going to let it in. I'll note your

HENRY M. ANDERSON JR. - REDIRECT BY MR. TYLER

1 objection on the record.

2 MR. TYLER: Thank you.

3 THE COURT: Thank you, sir. All right.

4 (WHEREUPON, State's Exhibit Number 1, the proffer
5 agreement, was admitted into evidence.)

6 MR. HUNTER: And, Your Honor, I don't have any other
7 further questions for Mr. Anderson.

8 THE COURT: All right. Mr. Tyler?

9 MR. TYLER: Very briefly, Your Honor.

10 THE COURT: Yes, sir.

11 REDIRECT EXAMINATION

12 BY MR. TYLER:

13 Q: Mr. Anderson, just to clarify, you mentioned there was
14 some money owed. Money being owed is no reason not to
15 continue on with whatever proper duties for representation are
16 though?

17 A: No, sir.

18 Q: Okay. With regard to the document that was marked as
19 State's Exhibit -- I believe -- Number 1 a moment ago --

20 MR. TYLER: Thank you, Your Honor.

21 Q: And this document, if I understood it correctly, you said
22 this was -- this was entered April of 2011. The plea was
23 August of 2011; right?

24 A: As far as I know, yes, sir.

25 Q: And the statute that we're focusing on with regard to

HENRY M. ANDERSON JR. - REDIRECT BY MR. TYLER

1 downward departure does not allow for a sentence reduction

2 until the individual, Mr. Harris, cooperates after the plea;

3 correct?

4 A: That's correct.

5 Q: All right, sir. So when this document, State's Exhibit

6 Number 1, was entered into and it talks about no further

7 promises, et cetera, there was no possible way that you could

8 promise something if he hasn't done it already; is that fair

9 to say?

10 A: Yes, sir.

11 Q: Okay.

12 A: That agreement was to cooperate for the first time and

13 hopefully negotiate the minimum sentence.

14 Q: All right, sir. And I believe -- you correct me if I'm

15 wrong, but I believe your testimony was that after the plea

16 that you arranged through a transport order for Mr. McFadden

17 and Mr. Poston, the investigators, to meet with Mr. Harris and

18 go out on this journey where Mr. Harris helped them with all

19 these crimes?

20 A: That's correct.

21 Q: Okay. And you -- you understand that the -- the motion

22 that we're talking about under 17-25-65, it requires that the

23 motion be filed on behalf of the State? Do you understand

24 that?

25 A: Yes, sir.

HENRY M. ANDERSON JR. - REDIRECT BY MR. TYLER

1 Q: Okay. So a moment ago when you said anybody can file it,
2 it's not necessarily anybody, can it?

3 A: I don't think Mr. Harris could file it himself.

4 Q: And that's where I was going. Mr. Harris couldn't file
5 it himself, could he?

6 A: No, sir.

7 MR. TYLER: Thank you, Your Honor.

8 THE COURT: Okay. Go ahead. Any other questions?

9 MR. TYLER: No, sir, Your Honor.

10 THE COURT: Okay. All right. Anything on recross?

11 MR. HUNTER: No, Your Honor.

12 THE COURT: Okay. You may step down. Thank you, sir.

13 THE WITNESS: Your Honor, that was -- I think that was
14 already --

15 THE COURT: Thank you, sir.

16 THE WITNESS: -- into evidence.

17 THE COURT: Okay. All right. Mr. Hunter -- I mean Mr.
18 Tyler, any other witnesses?

19 MR. TYLER: No other witnesses, Your Honor.

20 THE COURT: Okay. Mr. Hunter, any witnesses from the
21 State?

22 MR. HUNTER: No, Your Honor.

23 THE COURT: Okay. All right. Mr. Tyler, one question.
24 And I don't have the code section in front of me, but you
25 indicated that the motion must be filed on behalf of the

1 State?

2 MR. TYLER: Your Honor, the way -- and if you -- if I
3 may, Your Honor, I've got a copy of the statute I brought with
4 me.

5 THE COURT: Okay.

6 MR. TYLER: It says that the information -- excuse me.
7 It says upon the State's motion. That's the language used.

8 THE COURT: Okay.

9 MR. TYLER: But obviously, it is our position it would be
10 incumbent upon counsel for Mr. Harris to discuss this with the
11 solicitor in order to have this motion commenced. And in
12 essence, Your Honor, Mr. Harris has done everything that he
13 was asked of and, Your Honor, I draw the Court's attention to
14 page 8 of the plea agreement.

15 THE COURT: I've got it.

16 MR. TYLER: All right, sir. And on page 8, the --
17 actually, the solicitor talks about this reduction hearing and
18 that if Mr. Harris cooperates and does these things, then the
19 State would have no opposition to that motion being filed and,
20 of course, Mr. Harris could then be brought up for reduction
21 in sentence. And --

22 THE COURT: Of course, that's what my question is. If
23 the statute reads upon the State's motion, what is the -- is
24 the defense attorney supposed to file a motion to get the
25 State to file a motion?

1 MR. TYLER: Well, Your Honor, that's --

2 THE COURT: I've never done it. I'm just -- that's why
3 I'm curious.

4 MR. TYLER: Yes, sir. It's my understanding, Your Honor
5 -- and I may be subject to correction.

6 THE COURT: Okay.

7 MR. TYLER: But it's my understanding that counsel for
8 Mr. Harris would have to approach the solicitor, inform them
9 that the defendant, here Mr. Harris, has met his obligations
10 and that the investigators will confirm all of that
11 information, and at that point Mr. Harris -- it can be
12 arranged for Mr. Harris to be brought up --

13 THE COURT: Okay.

14 MR. TYLER: -- before a presiding judge.

15 THE COURT: Okay. And -- and you have already proffered
16 to me the fact that you've talked with the detectives and they
17 said that he did do this afterwards?

18 MR. TYLER: Yes, sir. And specifically, Your Honor, I
19 spoke to Mr. McFadden -- Investigator McFadden.

20 THE COURT: Uh-huh.

21 MR. TYLER: He tells me that Investigator Poston is no
22 longer working with the -- well, he's working with the police
23 department, but he's now the school resource officer. But he
24 -- but Mr. McFadden said we certainly agree with that and we
25 feel he is entitled to his downward departure because he

1 helped us with so many crimes.

2 THE COURT: Okay. But it's -- but there's also --

3 there's no time limit on it? He can do it -- they can -- the

4 Solicitor's Office could schedule that right now if somebody

5 would --

6 MR. TYLER: Yes, sir. Exactly.

7 THE COURT: -- light a fire under it.

8 MR. TYLER: And, Your Honor, that was -- that was where I

9 was headed with this --

10 THE COURT: Okay.

11 MR. TYLER: -- is that, you know, what we would -- the

12 relief that we would ask from the Court --

13 THE COURT: Uh-huh.

14 MR. TYLER: -- is that this matter -- the ruling on this

15 matter be held in abeyance pending either Mr. Anderson or Mr.

16 Hunter or someone --

17 THE COURT: Or you.

18 MR. TYLER: Well, they won't let me do it. I approached

19 them.

20 THE COURT: Okay.

21 MR. TYLER: And I'm -- I apparently don't have the

22 authority to push that forward, but someone to --

23 THE COURT: Tell me -- and, Mr. Tyler, I am anxious to

24 find out why the Solicitor's Office didn't feel like you could

25 push it forward.

1 MR. TYLER: Well -- and with all due respect, Your Honor,
2 I actually did not speak with the Solicitor's Office --
3 THE COURT: Oh.
4 MR. TYLER: -- directly. I spoke with -- I contacted
5 Judge Seals' law clerk.
6 THE COURT: Uh-huh.
7 MR. TYLER: And I informed them of my situation.
8 THE COURT: Uh-huh.
9 MR. TYLER: And they told me that that would have to be
10 something that was pursued by the Solicitor's Office, as
11 opposed to me being appointed in the civil matter of post-
12 conviction relief.
13 THE COURT: Okay.
14 MR. TYLER: So -- so here we are. We're in somewhat of a
15 catch-22 --
16 THE COURT: Uh-huh.
17 MR. TYLER: -- because Mr. Harris has lived up to his end
18 of the bargain and we just need someone to help advance the
19 ball so he can have his sentence reduction hearing. And it
20 was our position that Mr. Anderson was going to do that.
21 THE COURT: Uh-huh.
22 MR. TYLER: And hence, the ineffective assistance of
23 counsel because it's never been pursued despite the letter and
24 representations that it would be, and that's our position,
25 Your Honor.

1 THE COURT: Okay. Okay. All right. Mr. Hunter,
2 anything?

3 MR. HUNTER: Your Honor, just very briefly. I would -- I
4 would argue that -- that the sentence reduction hearing would
5 be -- or that a sentence reduction in general would be more
6 along the lines of a collateral consequence of Mr. Harris'
7 guilty plea. I mean the judge went over in the transcript
8 that this was a negotiated plea for fifteen years. No one had
9 promised him anything.

10 You know, I don't -- I don't know that the State -- I
11 don't know that I'm in a position to argue that he should not
12 have a resentencing hearing because I think that's something
13 for the Solicitor's Office, and so I think they -- I don't
14 want to speak for them and say that, you know, the State would
15 consent to him having a sentencing hearing.

16 THE COURT: No. I mean I understand you can't -- you
17 know, I -- you know, I understand that we are in a civil
18 hearing. I've got a -- a downward departure hearing that
19 should be heard. You can't order it, you know.

20 But I'll tell you I'm going to figure out some way to do
21 it because to me it's frustrating. It seems from the plea --
22 from discussions during his plea that everybody anticipated
23 that we would have a departure hear -- a downward departure
24 hearing at some point if he continued to help the -- the
25 Solicitor's Office and the Sheriff's Office. I don't think

1 anybody's contesting the fact that he did do that.

2 And now I am sitting here saying, well, we can't do

3 anything. Well, we're going to do something. I don't know

4 what we're going to do, but I'll take this matter at this time

5 under advisement and see if I -- see what we can do. Okay?

6 MR. TYLER: Thank you, Your Honor.

7 THE COURT: Okay. Thank y'all. Thank y'all all very

8 much for giving me something interesting.

9 MR. TYLER: Yes, sir.

10 THE COURT: Okay.

11 MR. HUNTER: Thank you, Judge.

12 THE COURT: Yes, sir. Okay.

13 (WHEREUPON, the proceedings ended at 10:53 p.m.)

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1 State of South Carolina)
2) Certificate
3 County of Florence)
4
5 I, the undersigned, Krystal J. Smith, Notary Public and
6 Official Court Reporter for the Twelfth Judicial Circuit of
7 the State of South Carolina, do hereby certify that the
8 foregoing pages, numbered 1 through 36_ constitute a true,
9 accurate, and complete Transcript of Record of all the
10 proceedings had and evidence introduced in the hearing of the
11 above captioned case, relative to appeal, in the Court of
12 Common Pleas for Florence County, South Carolina, on the 8th
13 day of October, 2014.
14 I do further certify that I am neither of kin, counsel,
15 nor interest to any party hereto.
16
17 Krystal J. Smith
18 Court Reporter
19
20 Florence, South Carolina
21 November 10, 2015
22
23
24
25

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE) TWELFTH JUDICIAL CIRCUIT
CASE NO. 2011-GS-21-00014

STATE OF SOUTH CAROLINA,
Plaintiff,

-vs-

VERNELL WALTER HARRIS,
Defendant.

TRANSCRIPT OF RECORD

January 27, 2015
Florence, South Carolina

B E F O R E:

THE HONORABLE WILLIAM H. SEALS, JR., Judge

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

JOHN JEPERTINGER, Esquire
Attorney for the Plaintiff

WILLIAM "VICK" MEETZE, Esquire
Attorney for the Defendant

KRYSTAL J. SMITH
Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No Exhibits Presented)

1 JANUARY 27, 2015

2 (WHEREAS this matter was scheduled for a sentence
3 reduction hearing, the defendant appeared along with his
4 counsel of record. The hearing began at 9:48 a.m.)

5 MR. JEPERTINGER: Mr. Harris, if you would, come around,
6 please. May it please the Court, Your Honor. This matter is
7 2011-GS-21-14, State against Vernell or Walter Harris.

8 Your Honor, it's my understanding Mr. Harris is in the
9 process of a post-conviction relief hearing against Mr.
10 Anderson alleging ineffective assistance of counsel. Your
11 Honor, that matter was before Judge Dickson at the end of
12 2014. Your Honor, he halted, I believe, the post-conviction
13 relief hearing, and he ordered that the State conduct a
14 hearing in regards to sentence reduction for Mr. Vernell
15 Harris.

16 Mr. Vernell Harris pled to a burglary first degree, and I
17 brought the sentencing sheet with me, Your Honor, for which he
18 received the minimum sentence -- mandatory minimum sentence of
19 15 years. As you can see, that -- that matter was -- took
20 place in 2011, Your Honor, and it would be the State's
21 position that under 17-25-65 for any assistance that he
22 provided, the motion was not made within a year's time of --
23 of that --

24 THE COURT: Plea.

25 MR. JEPERTINGER: -- plea and, therefore, this issue

1 would be moot.

2 Secondly, even if it were not moot, Your Honor, he got
3 the mandatory minimum. There was no way to reduce sentence
4 under 15 years for a sentence reduction hearing because the
5 legislator would not allow us nor the Courts allow us to go
6 under 15 years for burglary first degree. He got the absolute
7 bare-bones minimum.

8 Therefore, Your Honor, I think to have any sentence
9 reduction would be improper in this case, and my suggestion to
10 the defendant via his defense attorney, Mr. Meetze, would be
11 to seek relief through post-conviction.

12 THE COURT: It's my understanding the statute that would
13 allow for reductions does not allow us --

14 MR. JEPERTINGER: It doesn't.

15 THE COURT: -- to go below the minimum --

16 MR. JEPERTINGER: It doesn't.

17 THE COURT: -- even if it were done within --

18 MR. JEPERTINGER: That is --

19 THE COURT: -- the year period.

20 MR. JEPERTINGER: That is correct, Your Honor.

21 THE COURT: All right.

22 MR. JEPERTINGER: And I think there's case law to that
23 effect as well.

24 THE COURT: All right. Yes, sir?

25 MR. MEETZE: I don't know that there's case law to that

1 effect, but there's certainly nothing in the statute that
2 specifically says that a circuit court judge can reduce, under
3 those circumstances, a sentence below any mandatory minimum.
4 And -- and the sort of counterpart to the statute or the law
5 that this law was based on, I believe, is law that's been in
6 place for a number of years. The federal court -- the federal
7 law does specifically have a section that allows the federal
8 court system to go below statutory minimums in theirs, but
9 nothing like that was included in our law.

10 Your Honor, technically, I mean this law says in order
11 for somebody to be able to get relief under this statute, it
12 says that a motion made pursuant to this provision shall be
13 filed by the circuit solicitor in the county where the
14 defendant's case arose. Technically, there has never even
15 been any motion -- such motion filed, and I think what Mr.
16 Jepertinger has put forth to the Court is that at this point
17 in time filing such a motion would be moot because it's not --
18 would not be timely because it would not have been done within
19 the year.

20 I've explained all that to Mr. Harris, Your Honor. He
21 has a copy of the transcript from his plea that he allowed me
22 to look at, and while in that plea there were no promises made
23 to where it says, you know, he will definitely later get a
24 sentence reduction, the prosecutor in the case --

25 (Whereupon, the defendant speaks to his counsel off the

1 record.)

2 MR. MEETZE: I understand. But part of -- but the
3 prosecutor, as well as the defense attorney, both indicated in
4 their presentations to the Court during the plea that that
5 would be at least an option that would be possible for him.

6 I don't know if those are accurate statements. My
7 opinion is that they're not, but that's not for me to decide.
8 You know, I feel like, you know, that I should voice opinions
9 on different things like that, but, like I said, I don't -- as
10 an officer of the court, I think I'm bound by the law even
11 though I'm here representing Mr. Harris, and I want to do that
12 to the best of my ability.

13 I don't think it serves him any legitimate purpose for me
14 to -- to tell him something that I don't believe is true, and
15 I don't believe that a motion of this nature at this point in
16 time is something that's going to benefit him. I think if
17 he's going to get any benefit from his situation, it would be
18 through a post-conviction relief hearing, which he has filed,
19 which has been heard at one point in time and put off to -- to
20 give us an opportunity to have this hearing here today.

21 I hate that he's in the situation that he's in, and I
22 certainly wish him the best with regards to the post-
23 conviction relief when it is reconvened, but I just don't
24 believe at this point in time there's a lot that I can do for
25 him as it relates to any sentence reduction for substantial

1 assistance.

2 I think it's clear from the transcript from the officers,
3 as well as the prosecutor, that he did provide substantial
4 assistance in -- in wrapping up a number of burglary cases.
5 We're talking in the 20s and maybe even up to 40 or more. So
6 I don't think there's any question that he provided law
7 enforcement with -- with a great deal of help and settled a
8 lot of cases. I think one of the officers here in the court
9 today was an officer that was in the investigations unit at
10 the time that was involved, and I think he would agree with
11 that.

12 But in any event, that's really all that I want to put on
13 the record with regards to that issue. I think that we're
14 carrying out something that was ordered by Judge Dickson at
15 the PCR hearing, and that's what we're here for.

16 I would ask that you hear from Mr. Harris if he has
17 anything to say. You know, his position is that -- that him
18 getting a sentence reduction was always part of the
19 negotiations that led him to plead to begin with. And
20 obviously, I was not there or privy to any of those kinds of
21 discussions or conversations and, again, I think that is all
22 issues for a post-conviction relief hearing.

23 THE COURT: All right. Mr. Harris, anything you'd like
24 to say?

25 THE DEFENDANT: Yes, sir. It was -- it was promises

1 made. It was a part of the negotiation. That wasn't the
2 first -- the first negotiation. It's just the only
3 negotiation that I can really pursue because I've got the most
4 evidence I have to pursue it with. Like, they was supposed to
5 give me second degree burglary and I was supposed to plead to
6 the ten years and all.

7 Even the -- even if you look at the PCR transcript, I
8 think the judge asked Hank was there another negotiation made,
9 and that was part of it. He just stated that he wanted me to
10 come back before the judge that -- that I pled in front of,
11 which is you, and -- and go on your decision on the sentence
12 reduction.

13 But I know at the end of a day a sentence reduction has
14 to take place because it's -- it bound -- it bounds the
15 Prosecutor's Office. It bounds everybody. Like, I got -- I
16 got proof. I got too much proof. Like, they -- they made a
17 promise.

18 RULING

19 THE COURT: Okay. If -- I don't think I have the
20 authority to help him since no motion was filed within the
21 year and the statute does not allow me to go under the
22 mandatory minimum. I would help you. If I had the authority
23 to help you, I would.

24 I think it is a PCR issue though. I think he needs to
25 pursue it and take it up, and I think it needs to go back to

1 Judge Dickson to deal with at the appropriate time.
2 Solicitor, would you prepare me an order to that effect?
3 MR. JEPERTINGER: Will do. Yes, sir.
4 THE COURT: And would you let Judge Dickson know as well
5 so he can --
6 MR. JEPERTINGER: I will let him know.
7 THE COURT: All right. We'll make sure you get back to
8 your PCR application hearing with Judge Dickson.
9 THE DEFENDANT: Yes, sir.
10 THE COURT: And you tell him all that and take it up with
11 him.
12 THE DEFENDANT: So I don't have to go in front of you?
13 THE COURT: No, sir. I don't think I have the authority
14 pursuant to the statute to help you at this time. I think any
15 relief that you might have would be through your PCR --
16 THE DEFENDANT: All right.
17 THE COURT: -- application. All right. Thank you.
18 MR. JEPERTINGER: Thank you.
19 THE COURT: I appreciate you coming.
20 MR. MEETZE: Thank you, Your Honor.
21 (Whereupon, the proceedings end at 9:56 a.m.)
22
23 --- END REQUESTED TRANSCRIPT ---
24
25

1 STATE OF SOUTH CAROLINA)
2) CERTIFICATE
3 COUNTY OF FLORENCE)
4
5 I, the undersigned, Krystal J. Smith, Notary Public and
6 Official Court Reporter for the Twelfth Judicial Circuit of
7 the State of South Carolina, do hereby certify that the
8 foregoing pages, numbered 1 through 10 constitute a true,
9 accurate, and complete Transcript of Record of all the
10 proceedings had and evidence introduced in the hearing of the
11 above captioned case, relative to appeal, in the Court of
12 General Sessions for Florence County, South Carolina, on the
13 27th day of January, 2015.
14 I do further certify that I am neither of kin, counsel,
15 nor interest to any party hereto.
16
17 Krystal J. Smith
18 Court Reporter
19
20 Florence, South Carolina
21 April 1, 2015
22
23
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25

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF FLORENCE) 2011-GS-21-0014

State of South Carolina)

ORDER

v.)

Vernell Walter Harris, Defendant)

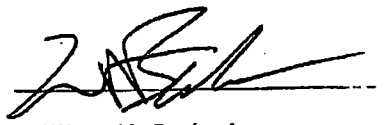
FILED
2015 JAN 27 PM 1:51
CLERK OF COURT
COURT & GS
FLORENCE COUNTY, SC

This matter came before me on January 27, 2015, for a hearing requested by the Court in a post- conviction relief matter, in which the above named defendant is a litigant, to determine if said defendant is entitled to any sentence reduction. At the hearing the State was represented by Deputy Solicitor, John C. Jepertinger. The defendant was present, along with his court-appointed attorney (for this matter only), William V. Meetze. After hearing from the State, Mr. Meetze, and the defendant, this Court determines that the defendant is not entitled to any sentence reduction. Firstly, pursuant to Section 17-25-65, the State must make a motion for reduction in sentence within one year of sentencing for information known to the defendant that substantially assisted the State in the investigation or prosecution of another person. That motion was never made within a year's period of time from sentencing. Secondly, even if the motion had been timely made, pursuant to Section 24-21-410, the defendant could not have received any further reduction in his sentence because he entered a plea to Burglary First Degree for which he received the bare minimum sentence of fifteen years. See also State v. Jacobs 393 SC 584 (2011). Although, it seems like a sentence reduction was contemplated by the State and defense attorney before the plea and sentence were rendered, this Court is without authority to assist in this matter. If the defendant seeks further relief, it must be granted by the PCR judge.

AND IT IS SO ORDERED!

Florence, SC

January 27, 2015


William H. Seals, Jr.

Chief Administrative Judge

Defendant.

ORDER GRANTING POST-CONVICTION RELIEF

very cooperative during the investigation, and recognizing he could provide information as to leads on pending investigations of criminal activity, the record (Investigator Poston) reflecting "shortly after Mr. Harris came on board with the State, provided an immense amount of information....there's been a lot of crimes solved because of Mr. Harris." The record also reflects representations by law enforcement agents to the court that Mr. Harris helped close 40 burglary cases and he is "going to have additional information that he'll come forward with that will lead to some more arrests."

Mr. Harris was sentenced to 15 years based upon the negotiated recommendation, with credit allowed for 482 days, and with the sentence to run concurrent with other pleas. This court notes that counsel for Mr. Harris, Attorney Anderson, stated on the record "under 17-25-65 we anticipate that, you know, hopefully he'll be back in the near future to be before the court to see whether or not he's eligible for another time reduction."

The PCR hearing testimony reflects that in follow up correspondence, after the plea, Attorney Anderson wrote to Mr. Harris confirming that he would work towards the sentence reduction hearing, as Mr. Harris had continued to work (post-plea) with law enforcement to solve many crimes in the Florence County area. Further, investigators with whom Mr. Harris had worked to solve these crimes (specifically including Investigator McFadden of the Florence County Sheriff's Department) were in favor of a sentence reduction for Mr. Harris in light of his cooperation. The record further reflects that Mr. Anderson made no effort to seek a sentence reduction for Mr. Harris despite the records reflecting, on numerous occasions, that he had represented to Mr. Harris that he would do so, both at the plea hearing and after the plea had been accepted.

2/5/20

The Honorable Edgar Dickson presided over the PCR hearing and requested that the State schedule a sentence reduction hearing before Judge Seals, pursuant to the negotiated plea offer that Mr. Harris accepted. Judge Seals determined that Mr. Harris was not entitled to a reduction due to the State failing to timely file a motion to reduce as required by law and due to the fact that Mr. Harris received the minimum sentence for Burglary First Degree, a charge which cannot be suspended below the mandatory minimum. The January 27, 2015 order further stated that while it appeared that a sentence reduction was contemplated by the parties prior to the plea, the presiding court lacked the authority to assist in the matter and further relief must be granted by the PCR judge.

ANALYSIS

As the PCR record reflects, Attorney Anderson acknowledged that his duty of representation extends beyond the day of the plea, and he has an obligation to effectively represent Mr. Harris within the canons of ethics, to the best of his abilities, and this duty includes timely filings of motions, appeals and pursuit of a reduction of sentence under §17-25-65 S.C. Code (Annotated). Section 17-25-65, among other things, requires the state to move within one (1) year of sentencing for a reduction sentence if the defendant provides substantial assistance in investigating or prosecuting another person, and further allows reduction of a sentence beyond the one (1) year time limit if the defendant's substantial assistance involved information not known to the defendant until one (1) year after sentencing, or information was provided to the defendant that did not become useful to the state until later, as well as other circumstances, and notes that the motion is to be filed by the circuit solicitor. This court recognizes that the solicitor may not move for a sentence reduction hearing for an individual such as Mr. Harris who has

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entered a plea and is serving time, however, zealous and effective representation by defense counsel, in following up and making sure that this motion is filed, is both logical and necessary.

This court finds that there were a number of discussions between Attorney Anderson and Mr. Harris following his plea, which included issues related to both a possible appeal and sentence reduction. However, Attorney Anderson failed to take any action whatsoever with regard to a motion under §17-25-65. Under the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L Ed. 2d 674 (1984), a PCR applicant alleging ineffective assistance of counsel must show (1) trial counsel “failed to render reasonably effective assistance under prevailing professional norms” and (2) “there is a reasonable probability, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” This court finds that Attorney Anderson was ineffective in his post-plea representation of Mr. Harris, and that such ineffective assistance has prejudiced Mr. Harris, denying him the opportunity to have his sentence reduction, as was both discussed on the record during the course of his plea and later as between Mr. Harris and Attorney Anderson both verbally and in written correspondence. Attorney Anderson acknowledged that his defense of Mr. Harris, including taking of all measures to achieve the best result for his client, was neglected, and further agreed that in this instance all such measures were not taken, specifically as to noting Petitioner’s cooperation and requesting the solicitor to pursue the statutory reduction. As noted in Strickland supra, in determining a claim of ineffective assistance of counsel, the focus is on “the fundamental fairness of the proceeding whose result is being challenged.” Further, with guilty pleas, counsel’s alleged deficiency turns on whether the plea was voluntarily, knowingly and intelligently entered. Hyman v. State, 723 S.E. 2d 375, 379 (2012) (citing Anderson v. State, 535 S.E. 2d 649, 651 (2000)). In order for a defendant to

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knowingly and intelligently enter into a plea, he must fully understand the consequences of said plea. State v. Hazel, 271 S.E. 2d 602, 603 (1980) (citing Boykin v. Alabama, 395 U.S. 238 (1969)).

This court finds that the applicant Harris was deprived of effective assistance of counsel due to the conditions of his plea agreement not being upheld. Applicant accepted a negotiated plea offer from the State that included a possible sentence reduction in exchange for Mr. Harris providing the State with useful information in solving other crimes. Mr. Harris upheld his end of the negotiated offer, but the State did not follow through as required by law (see South Carolina Code §17-25-65). Pursuant to the South Carolina Rules of Professional Conduct, an attorney's duties and obligations to his client extend until the conclusion of all matter undertaken for the client. Rule 1.3 CMT. 4, RPC, Rule 407, SCACR. In this case, although the applicant Harris had been convicted and sentenced, the matter had not concluded as the plea agreement provided additional actions that were to take place after sentencing. Defense counsel was ineffective for not remaining diligent in his continued representation of applicant, as he should have followed up with the State and pursued the outcome that applicant was promised. Therefore, applicant is entitled to the relief requested.

Consequently, the Post-Conviction Relief of Vernell Harris is hereby granted, and this case is to be remanded to the court of General Sessions for proceedings consistent with this ruling.

IT IS SO ORDERED.



EDGAR W. DICKSON
CIRCUIT COURT JUDGE
TWELFTH JUDICIAL CIRCUIT

 South Carolina

April 30, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)
Vernell W. Harris, #341357,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

Case No. 2012-CP-21-2004

**MOTION TO ALTER OR AMEND
JUDGMENT PURSUANT TO RULE
59(e), SCRPC**

Respondent, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, moves the court to amend its Order Granting Post-Conviction Relief as outlined below. As a threshold matter, the Order Granting Post-Conviction Relief was filed on May 11, 2015, and received by Respondent on May 13, 2015. In support of the motion, Respondent would show as follows:

I.

This matter comes before the Court pursuant to an Application for Post-Conviction Relief filed August 6, 2012. Respondent made a timely Return on or about October 4, 2012. The Court convened an evidentiary hearing into the matter on October 8, 2014, at the Florence County Courthouse. Applicant was present at the hearing and represented by Matthew N. Tyler, Esquire. J. Croom Hunter, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

II.

Respondent respectfully asks this Court to amend its Order to find trial counsel was not ineffective for failing to follow through in attempting to get Applicant a downward departure

hearing. (Order p. 5). Respondent submits Applicant failed to demonstrate he was prejudiced by Counsel's failure to pursue the downward departure hearing because subsequent to the PCR hearing, a downward departure hearing was held before the Honorable William H. Seals, Jr. At the hearing, Judge Seals denied Applicant's request for a sentence reduction because the solicitor did not move for the downward departure within one (1) year of the original sentencing as required under §17-25-65. The language of the downward departure statute clearly indicates the State, not defense counsel, is the party who must move for a sentence reduction. The Sixth Amendment only guarantees effective assistance of counsel at critical stages of a prosecution. State v. Clinkscales, 318 S.C. 513, 515, 458 S.E.2d 548, 549 (1995). However, a post-trial motion is not a critical stage of criminal proceedings. Id. As such, Respondent argues plea counsel could not have been ineffective for failing to uphold the conditions of Applicant's plea agreement. (Order p. 5). Respondent further argues that it is clear from the testimony and the record from Applicant's guilty plea that a sentence reduction was never guaranteed as a condition of the plea; only that it was a possibility. (Plea Transcript p. 8).

Next, Respondent argues that granting of the PCR Application is moot because Applicant has already received the relief he sought: a downward departure hearing. As previously stated, Applicant was not guaranteed a sentence reduction, merely the possibility of a sentence reduction in the future. As Mr. Harris has now had his sentence reduction hearing, the granting of PCR is moot. "A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy." Mathis v. S. Carolina State Highway Dep't, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973).

Finally, Respondent argues that PCR is not warranted because Applicant has failed to show any deficiency on the part of plea counsel leading up to Applicant's guilty plea.

Respondent submits the record clearly indicates that Applicant's plea was knowingly, voluntarily, and intelligently entered. The plea judge clearly informed Applicant that he would receive fifteen (15) years in prison by pleading guilty, and Applicant acknowledged that he understood. (Plea Transcript p. 6).

Accordingly, Respondent moves the Court to amend its order to reflect a finding trial counsel was not ineffective in failing to ensure Applicant received a downward departure hearing.

III.

WHEREFORE, Respondent respectfully requests the Court to amend its Order Granting Post-Conviction Relief to reflect a finding that counsel was not ineffective in failing ensure Applicant received a sentence reduction hearing.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. Croom Hunter
Assistant Attorney General
Bar No. 101253

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

By:


Attorneys for Respondent

May 15, 2015

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

VERNELL HARRIS, #341357

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2012-CP-21-2004

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 Motion To Alter or Amend Judgment Pursuant to Rule 59(e), SCRCF in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Matthew N. Tyler, Esquire
P.O. Box 1931
Florence, SC 29503

DATED this 15th day of May, 2015.


Norma Bigbee, Legal Assistant
For Respondent

12
CH

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)
Vernell W. Harris,)
Plaintiff,)
vs.)
State of South Carolina,)
Defendant.)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2012-CP-21-02004

**ORDER DENYING MOTION TO
ALTER OR AMEND**

FILED
2015 SEP 16 PM 2:56
CLERK OF COURT
FLORENCE COUNTY, S.C.

This Court, considering the Motion to Alter or Amend Judgment pursuant to Rule 59(e) S.C.R.C.P. filed by the Respondent State of South Carolina, hereby declines and denies such motion and reaffirms this Court's Order filed May 11, 2015 granting post-conviction relief.

It is this Court's position that Mr. Harris received ineffective assistance of counsel in this case. Although a sentence reduction hearing before the Honorable William Seals took place January 27, 2015, as noted by the Respondent in their Motion to Alter/Amend, this was not the sole issue causing concern for this Court, as the applicant Vernell Harris relied upon the promise of a sentence reduction hearing when he took the guilty plea. This is evident not only through the transcript of record from the guilty plea, but also through his plea counsel's testimony at the PCR hearing, as well as the testimony of Mr. Harris at the PCR hearing. This Court further notes that during the January 27, 2015 hearing before Judge Seals, Judge Seals determined that Mr. Harris was not entitled to a downward departure due to the State failing to move for a reduction within one (1) year after sentencing, as required by statute, and Mr. Harris' sentence not being able to be reduced any lower, as he received the mandatory minimum for Burglary first.

CERTIFIED: A TRUE COPY
Cornelia Red. Strawn
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

It is undisputed that the State must be the party to move for the reduction; however, it is the duty and obligation of plea counsel to make sure the State enforces the plea bargain that their client relied upon. Here, Mr. Harris relied upon the promise that he would receive a sentence reduction hearing when he took the guilty plea. Plea counsel (Attorney Anderson) had a duty to enforce the bargained for promise of a sentence reduction hearing, which should have taken place within one (1) year of Harris having been sentenced. Further, plea counsel owed a duty to Mr. Harris to advise Mr. Harris as to the benefits and disadvantages of accepting the plea bargain, and in doing so plea counsel should have realized the potential conflict between the sentence reduction statute and the fact that a mandatory minimum sentence cannot be suspended. Mr. Harris, to his detriment, relied upon the State's offer and plea counsel failed to provide adequate assistance in securing a satisfactory plea offer and further failed to make sure said offer was enforced.

In a plea bargain, the government takes on specific obligations, and if those obligations are not met, the Defendant may be entitled to withdraw his plea. Puckett v. United States, 556 U.S. 129 (2009). Plea counsel owes a duty to his client in protecting the client's rights to enforce a plea agreement. Custodio v. State, 644 S.E.2d 36, 40 (2007). In order for an applicant to assert ineffective assistance of counsel, he must prove that he was prejudiced by counsel's performance and that the outcome of his case would have been different but for counsel's ineffective assistance. Id. Regarding plea bargains and ineffective assistance of counsel, the applicant must show that he detrimentally relied upon the bargain offered and that counsel failed to have that bargain enforced. Id. "A defendant who provides beneficial information to law enforcement can be said to have relied to his detriment." Reed v. Becka, 511 S.E.2d 396, 402 (Ct. App. 1999).

Mr. Harris, the applicant, provided beneficial information, his plea counsel failed to provide adequate assistance in securing a satisfactory plea offer, and plea counsel did not make any effort that any plea offer was enforced. Consequently, this Court denies the Respondent's Motion to Alter or Amend, and the applicant's Motion granting post-conviction relief stands as set forth in this Court's May 11, 2015 Order.

It is so ordered.

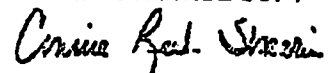
Date: 9/2/15



Edgar W. Dickson
Circuit Court Judge
Twelfth Judicial Circuit

FILED
2015 SEP 16 PM 2:15
CORRIE REEL-SHEATH
C.C.P. & G.S.
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY



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

15-~~50~~ L.H.

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Florence

STATE

Verneil vs Walter Harris

AKA:

Race:

Sex:

Age:

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

☐ CONVICTED OF or ☒ PLEADS

TO:

Burglary 1st Degree

In violation of §

16-11-0310

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

0079

☐ NON-VIOLENT

☐ VIOLENT

☐ SERIOUS

☒ MOST SERIOUS

☐ Mandatory GPS

☐ §17-25-45

The charge is:

☒ As Indicted,

☐ Lesser Included Offense,

☒ Defendant Waives Presentation to Grand Jury.

(def.'s Initials)

The plea is:

☐ Without Negotiations or Recommendation,

☒ Negotiated Sentence,

☒ Recommendation by the State. 15 yrs

ATTEST:

H. S. Davis

75573

Verneil W. Harris

Wm. M. Davis

064286

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections

☐ County Detention Center,

for a determinate term of

15 days/months/years or

☐ under the Youthful Offender Act not to exceed

years

and/or to pay a fine of \$

; provided that upon the service of

days/months/years and or payment

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

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

incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

all other crimes he has plead to

☒ 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.

482 days

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

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

SPECIAL CONDITIONS:

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

PTUP

Total: \$ plus 20% fee: \$

days/hours Public Service Employment

Payment Terms:

Obtain GED ☐

☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp.

Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

\$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

\$56-1-288 (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)

TOTAL

Clerk of Court/Deputy Clerk

Court Reporter:

Presiding Judge

Judge Code:

Sentence Date

2155
8-4-2011

WITNESSES

Russell Cox

Florence County Sheriff

DOCKET NO. 2011-GS-21-0014

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JANUARY

TERM

2011

THE STATE

vs.

GLORIA SUE CARRIGAN

No 1 Prose 1-4-2012 BT

DONTE LAQUAWN CAPERS

VERNELL WALTER HARRIS

Indictment for

BURGLARY FIRST DEGREE

(THREE COUNTS)

AND

SAFECRACKING

(THREE COUNTS)

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 1-13-2011

VERDICT

Foreperson of Petit Jury

Date:

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

2011 JAN 13 PM 1:55
CONNIE REEL-SHEARIN
Clerk of Court
C.P. & G.S.
FLORENCE COUNTY, SC

FILED

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

INDICTMENT FOR

BURGLARY FIRST DEGREE
(THREE COUNTS)

AND

SAFECRACKING
(THREE COUNTS)

At a Court of General Sessions, convened on JANUARY 13, 2011 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- BURGLARY FIRST DEGREE

That DONTE LAQUAWN CAPERS, GLORIA SUE CARRIGAN and VERNELL WALTER HARRIS did in Florence County on or about January 7, 2010, willfully and unlawfully entered the dwelling of Brenda Altman located at 506 Ballpark Road in Johnsonville, without consent and with the intent to commit a crime therein, and the defendants have two or more prior convictions of burglary and/or housebreaking, in violation of the Common Law and Section 16-11-311, S. C. Code of Laws, 1976, as amended.

COUNT TWO- SAFECRACKING

That DONTE LAQUAWN CAPERS, GLORIA SUE CARRIGAN and VERNELL WALTER HARRIS did in Florence County on or about January 7, 2010, use tools, explosives, or other implements in or about the safe used for keeping money or other valuables owned by the Brenda Altman located at 506 Ball Park Road in Johnsonville, with intent to commit Larceny, or any other crime, in violation of Section 16-11-0390, S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

WITNESSES

Warren Poston

Florence County Sheriff

CLERK OF COURT CP & GS
FLORENCE COUNTY, SC

H. STEVEN DEBERRY, IV

ARREST WARRANT NUMBER

M271864

M272062

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

1-13-2011

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-21-0003

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JANUARY

TERM

2011

THE STATE

vs.

VERNELL WALTER HARRIS - NOLPROS 8/4/11 ASD/dlk

DONTE LAQUAWN CAPERS

Indictment for

BURGLARY FIRST
(TWO COUNTS)

FILED
2011 JAN 13 PM 1:56
CONNIE REEL-SHEA
CLERK OF COURT
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

INDICTMENT FOR

BURGLARY FIRST
(TWO COUNTS)

At a Court of General Sessions, convened on JANUARY 13, 2011 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- BURGLARY FIRST DEGREE

That VERNELL WALTER HARRIS did in Florence County on or about March 02, 2010, willfully and unlawfully entered the dwelling of Teresa Benton, located at 521 West Lynhurst Road in Pamplico, without consent and with the intent to commit a crime therein, and the defendant has two or more prior convictions of burglary and/or housebreaking, in violation of the Common Law and Section 16-11-311, S. C. Code of Laws, 1976, as amended.

COUNT TWO- BURGLARY FIRST DEGREE

That DONTÉ LAQUAWN CAPERS did in Florence County on or about March 2, 2010, willfully and unlawfully entered the dwelling of Teresa Benton, located at 521 West Lynhurst Road in Pamplico, without consent and with the intent to commit a crime therein, and the defendant has two or more prior convictions of burglary and/or housebreaking, in violation of the Common Law and Section 16-11-311, S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

WITNESSES

Warren Poston

Florence County Sheriff

CERTIFIED A TRUE COPY
JAN 13 2011
CLERK OF COURT P & G
FLORENCE COUNTY, S.C.

H. STEVEN DEBERRY, IV

ARREST WARRANT NUMBER

M271750

M272059

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

1-13-2011

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-21-0004

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JANUARY

TERM

2011

THE STATE

vs.

VERNELL WALTER HARRIS - No 1 PMS HSOldk 8/14/11

DONTE LAQUAWN CAPERS

Indictment for

BURGLARY FIRST DEGREE
(TWO COUNTS)

2011 JAN 13 PM 1:56

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CCOF # 65
IN OFFICE C. D. 11/13/11

FILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

INDICTMENT FOR
BURGLARY FIRST DEGREE
(TWO COUNTS)

At a Court of General Sessions, convened on JANUARY 13, 2011 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- BURGLARY FIRST DEGREE

That VERNELL WALTER HARRIS did in Florence County on or about February 26, 2010, willfully and unlawfully attempt to enter the dwelling of Dan Gaster, located at 1367 Hyman Road in Pamplico, without consent and with the intent to commit a crime therein, and the defendant has two or more prior convictions of burglary and/or housebreaking, in violation of the Common Law and Section 16-11-311, S. C. Code of Laws, 1976, as amended.

COUNT TWO- BURGLARY FIRST DEGREE

That DONTE LAQUAWN CAPERS did in Florence County on or about February 26, 2010, willfully and unlawfully attempt to enter the dwelling of Dan Gaster located at 1367 Hyman Road in Pamplico, without consent and with the intent to commit a crime therein, and the defendant has two or more prior convictions of burglary and/or housebreaking, in violation of the Common Law and Section 16-11-311, S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

WITNESSES

Warren Poston

Florence County Sheriff

DOCKET NO. 2011-GS-21-0005

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JANUARY

TERM

2011

THE STATE

vs.

VERNELL WALTER HARRIS

DONTE LAQUAWN CAPERS

H. STEVEN DEBERRY, IV

ARREST WARRANT NUMBER

M271866

M272058

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

1-13-2011

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

BURGLARY FIRST DEGREE
(TWO COUNTS)

96

FILED

2011 JAN 13 PM 1:56

CORRE REC-SHERIFF
CCCP & GS
FLORENCE COUNTY, SC

-Not Pros HSD/dlk 8/14/11

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

INDICTMENT FOR
BURGLARY FIRST DEGREE
(TWO COUNTS)

At a Court of General Sessions, convened on JANUARY 13, 2011 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- BURGLARY FIRST DEGREE

That VERNELL WALTER HARRIS did in Florence County on or about February 26, 2010, willfully and unlawfully attempt to enter the dwelling of Deanna Weatherford located at 2292 South Friendfield Road in Scranton, without consent and with the intent to commit a crime therein, and the defendant has two or more prior convictions of burglary and/or housebreaking, in violation of the Common Law and Section 16-11-311, S. C. Code of Laws, 1976, as amended.

COUNT TWO- BURGLARY FIRST DEGREE

That DONTÉ LAQUAWN CAPERS did in Florence County on or about February 26, 2010, willfully and unlawfully attempt to enter the dwelling of Deanna Weatherford located at 2297 South Friendfield Road in Scranton, without consent and with the intent to commit a crime therein, and the defendant has two or more prior convictions of burglary and/or housebreaking, in violation of the Common Law and Section 16-11-311, S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

WITNESSES

Warren Poston

Florence County Sheriff

DOCKET NO. 2011-GS-21-0006

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JANUARY

TERM

2011

THE STATE

vs.

VERNELL WALTER HARRIS

DONTE LAQUAWN CAPERS

H. STEVEN DEBERRY, IV

ARREST WARRANT NUMBER

M271867

M272056

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

1-13-2011

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

BURGLARY FIRST DEGREE
(TWO COUNTS)

RECEIVED
CLERK OF COURT
FLORENCE COUNTY, SC

FILED

2011 JAN 13 PM 1:56

CORINNE LEE SHERMAN
CLERK OF COURT
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

INDICTMENT FOR
BURGLARY FIRST DEGREE
(TWO COUNTS)

At a Court of General Sessions, convened on JANUARY 13, 2011 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- BURGLARY FIRST DEGREE

That VERNELL WALTER HARRIS did in Florence County on or about February 25, 2010, willfully and unlawfully attempt to enter the dwelling of Steven Miller located at 602 West Shirley Road in Pamplico, without consent and with the intent to commit a crime therein, and the defendant has two or more prior convictions of burglary and/or housebreaking, in violation of the Common Law and Section 16-11-311, S. C. Code of Laws, 1976, as amended.

COUNT TWO- BURGLARY FIRST DEGREE

That DONTÉ LAQUAWN CAPERS did in Florence County on or about February 25, 2010, willfully and unlawfully attempt to enter the dwelling of Steven Miller located at 602 West Shirley Road in Pamplico, without consent and with the intent to commit a crime therein, and the defendant has two or more prior convictions of burglary and/or housebreaking, in violation of the Common Law and Section 16-11-311, S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

WITNESSES

Warren Poston

Florence County Sheriff

DOCKET NO. 2011-GS-21-0007

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JANUARY

TERM

2011

THE STATE

vs.

VERNELL WALTER HARRIS

Not Pres HSD/dk 8/4/11

DONTE LAQUAWN CAPERS

H. STEVEN DEBERRY, IV

ARREST WARRANT NUMBER

M271865

M272061

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

1-13-2011

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

BURGLARY FIRST DEGREE
(TWO COUNTS)

CERTIFIED A TRUE COPY
C. W. ...
CLERK OF COURT
FLORENCE COUNTY, SC

FILED

2011 JAN 13 PM 1:56

CORRIE BELL-SHEARIN
CLERK OF COURT
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

INDICTMENT FOR
BURGLARY FIRST DEGREE
(TWO COUNTS)

At a Court of General Sessions, convened on JANUARY 13, 2011 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- BURGLARY FIRST DEGREE

That VERNELL WALTER HARRIS did in Florence County on or about February 26, 2010, willfully and unlawfully attempt to enter the dwelling of Donna Sealy located at 7614 Francis Marion Road in Effingham, without consent and with the intent to commit a crime therein, and the defendant has two or more prior convictions of burglary and/or housebreaking, in violation of the Common Law and Section 16-11-311, S. C. Code of Laws, 1976, as amended.

COUNT TWO- BURGLARY FIRST DEGREE

That DONTE LAQUAWN CAPERS did in Florence County on or about February 26, 2010, willfully and unlawfully attempt to enter the dwelling of Donna Sealy located at 7614 Francis Marion Road in Effingham, without consent and with the intent to commit a crime therein, and the defendant has two or more prior convictions of burglary and/or housebreaking, in violation of the Common Law and Section 16-11-311, S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

WITNESSES

Warren Poston

Florence County Sheriff

DOCKET NO. 2011-GS-21-0008

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JANUARY

TERM

2011

THE STATE

vs.

DONTE LAQUAWN CAPERS

VERNELL WALTER HARRIS

H. STEVEN DEBERRY, IV

ARREST WARRANT NUMBER

M272057

M271868

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

1-13-2011

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

BURGLARY FIRST DEGREE
(TWO COUNTS)

FILED
CLERK OF COURT
FLORENCE COUNTY, SC

2011 JAN 13 PM 1:56

COPIES REEL-SHEAFER
CCOF & US
FLORENCE COUNTY, SC

FILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

INDICTMENT FOR
BURGLARY FIRST DEGREE
AND
ACCESSORY AFTER THE FACT

At a Court of General Sessions, convened on JANUARY 13, 2011 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- BURGLARY FIRST DEGREE

That DONTÉ LAQUAWN CAPERS did in Florence County on or about December 28, 2009, willfully and unlawfully entered the dwelling of Gregory Moore located at 2681 Old Manning Road in Scranton, without consent and with the intent to commit a crime therein, and the defendant has two or more prior convictions of burglary and/or housebreaking, in violation of the Common Law and Section 16-11-311, S. C. Code of Laws, 1976, as amended.

COUNT TWO- ACCESSORY AFTER THE FACT

That VERNELL WALTER HARRIS did in Florence County on or about December 28, 2009, violate Common Law and Section 17-25-0030 of the Code of Laws of South Carolina (1976) as amended in that knowing of the commission and completion of the felony of Burglary First Degree by the principal felon, Donte Laquawn Capers , harbor or assist such felon after the fact with the intention of enabling the felon to escape detection or arrest or otherwise avoid the consequences of the crime, in violation of the Common Law crime of Accessory After the Fact in commission of a felony.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

COMMITMENT / RELEASE

TO: FLORENCE COUNTY LAW ENFORCEMENT CENTER

DEFENDANT Vernell Harris
OFFENSE M271864, M271750; M271866; M271867. M271865
~~M271867~~ M271868. M271740; M271826; M271976
BY ORDER OF JUDGE William Seals

() RELEASE FOR TIME SERVED

() RELEASE—FINE PAID TO FLORENCE COUNTY CLERK OF COURT (\$ _____)
RECEIPT # _____

() BOND SET \$ _____

() BOND REDUCED TO \$ _____

() SENTENCE _____

() WEEKENDS BEGINNING _____

(✓) CHARGES NOLLE PROSEQUI BY SOLICITOR (DATE 8/4/11)

() BENCH WARRANT LIFTED (DATE _____)

() RELEASE—DEFENDANT CONTINUED ON PROBATION

() OTHER _____

W. Seals
FLORENCE COUNTY CLERK OF COURT

DATE 8/4/11

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

INDICTMENT FOR
BURGLARY FIRST DEGREE
(TWO COUNTS)

At a Court of General Sessions, convened on JANUARY 13, 2011 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- BURGLARY FIRST DEGREE

That DONTE LAQUAWN CAPERS did in Florence County on or about February 25, 2010, willfully and unlawfully entered the dwelling of Stacie Keefe located at 1903 Big Swamp Road in Pamplico, without consent and with the intent to commit a crime therein, and the defendant has two or more prior convictions of burglary and/or housebreaking, in violation of the Common Law and Section 16-11-311, S. C. Code of Laws, 1976, as amended.

COUNT TWO- BURGLARY FIRST DEGREE

That VERNELL WALTER HARRIS did in Florence County on or about February 25, 2010, willfully and unlawfully entered the dwelling of Stacie Keefe located at 1903 Big Swamp Road in Pamplico, without consent and with the intent to commit a crime therein, and the defendant has two or more prior convictions of burglary and/or housebreaking, in violation of the Common Law and Section 16-11-311, S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

WITNESSES

Thomas Mcfadden

Florence County Sheriff

DOCKET NO. 2011-GS-21-0013

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JANUARY

TERM

2011

THE STATE

vs.

DONTE CAPERS

VERNELL WALTER HARRIS - No Procs H501d1k 8/4/11

H. STEVEN DEBERRY, IV

ARREST WARRANT NUMBER

M271765

M271740

ACTION OF GRAND JURY

TRUE BILL

Indictment for

BURGLARY FIRST DEGREE

AND

ACCESSORY AFTER THE FACT

VERDICT

Foreperson of Petit Jury

Date:

CERTIFIED
Clerk of Court
Florence County, SC
8/4/11

CMTI330D	SCDC OFFENDER MANAGEMENT SYSTEM	09/07/12
OMCOMITA	RELEASE DATE SCREEN	C051123
SCDC# > 341357		LOC: LEE
HARRIS, VERNELL WALTER	SCDC CLASSIFICATION...: VIOLENT	
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE	SEXUAL REGISTRY...: N	
	SEXUAL PREDATOR...: NOT APP	
	DNA STATUS.....: COMPLETED	
	GPS REQUIREMENT...: N	
	PREA DECISION....:	
CURRENT SENTENCE: 015-00-000	CONSECUTIVE SENTENCE ...: N	
015-00-000	CURRENT SENT START DATE: 04/09/2010	
PROJECTED COMPLETION DATES		
MAXOUT DATE: 12/06/2023	CURRENT EWC ..: NOT CURRENTLY EARNING EWC	
VOA SIX YEAR DATE: / /	CURRENT EEC ..: NOT CURRENTLY EARNING EEC	
INITIAL PAROLE DATE: 00/00/0000	NEXT PAROLE HEARING DATE: 00/00/0000	
TOTAL GT DAYS EARNED: 000081	LABOR CREW/WORK PROG DATE: 99/99/9999	
TOTAL EARNED WORK CREDITS ...: 000000	LABOR CREW DISQ REASON:	
TOTAL EDUCATION CREDITS: 000000	CATEGORY 4 OR 5 OFFENSE	
TOTAL EXTRA EARNED CREDITS ..: 000	SUPERVISED REENTRY DATE...: 00/00/00	
TOTAL SERVICE TIME EARNED ...: 000876	ISS.....:	
PFKEYS:	5: HISTORY OF DATE CHANGES	
4-@	1 Sess-1 167.7.50.33	SCDC1572 3/11

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 09/07/12

C0511

HARRIS, VERNELL WALTER FBI # 264623MC7 SID# SC01695772 SCDC # 341357

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ...: LEE CORR INST

SECURITY/CUST.: 3 MINIMUM IN

CURR INCARC SENT...: 15 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: YES

SOCIAL SECURITY #...: 247754815

DORM.....: DAR2129T

RACE....: B SEX...: M

PROJ MAXOUT DATE: 12/06/2023

PROJ PAROLE DATE: 00/00/0000

EWC JOB...: NO CURRENT JOB

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 0 REC LEVEL:

ASSIGNMENT...: GENERAL DETAIL UNEM

CURRENT PROGRAM...: VALUES CLARIFICATION

AGE...: 24 DATE OF BIRTH...: 4/28/88

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE			COUNTY	SENTENCE		
	YRS	MOS	DYS		START	V/NV	CATEGORY
RECEIVE STOLEN PROPERTY	5	0	0	WILLIAMSBUR	7/21/2010	N	2
RECEIVE STOLEN PROPERTY	5	0	0	WILLIAMSBUR	7/14/2010	N	2
BURGLARY-1ST DEGREE	15	0	0	FLORENCE	4/ 9/2010	V	4
BURGLARY-2ND DEG/NON-VIO	4	0	0	FLORENCE	4/ 9/2010	N	3

PRIOR COMMITMENTS OVER 90 DAYS:

MISSING PRIORS DATA

DETAINERS (HOLD, WANTED, NOTIFY):

CODE NOT IN TABLE	HOLD	DPPPS/YOS	CATEG: 3
BURGLARY-1ST DEGREE	WANTED	JUDGE BELINDA TIMMONS	CATEG: 4
CODE NOT IN TABLE	WANTED	JUDGE R. EUGENE HARTIS	CATEG: 4
ACCESSRY TO FELONY-A, B, C	WANTED	JUDGE TIMMONS	CATEG: 4
BURGLARY-1ST DEGREE	WANTED	JUDGE TIMMONS	CATEG: 4
BRG-SAFE-VAULT	WANTED	JUDGE TIMMONS	CATEG: 3

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

9/ 3/11 REFUSING TO WORK CONVICTED ADMIN

7/12/11 REFUSING OR FAILING OBEY CONVICTED ADMIN

HISTORY OF MOVEMENTS:

DATE	LOCATION	STATUS	ADMINISTRATIVE
10/ 3/11	LEE	INCARCERATED	ADMINISTRATIVE
9/ 1/11	TURBEVILLE	INCARCERATED	RETURN FROM COURT
9/ 1/11	FLORENCE CO	AUTH ABSENCE (AWL)	TO COURT
8/ 5/11	TURBEVILLE	INCARCERATED	RETURN FROM COURT
8/ 2/11	FLORENCE CO	AUTH ABSENCE (AWL)	TO COURT
6/ 1/11	TURBEVILLE	INCARCERATED	RETURN FROM COURT
6/ 1/11	FLORENCE CO	AUTH ABSENCE (AWL)	TO COURT
4/ 8/11	TURBEVILLE	INCARCERATED	RETURN FROM COURT
4/ 8/11	FLORENCE CO	AUTH ABSENCE (AWL)	TO COURT
4/ 4/11	TURBEVILLE	INCARCERATED	RETURN FROM COURT
4/ 4/11	FLORENCE CO	AUTH ABSENCE (AWL)	TO COURT
3/25/11	TURBEVILLE	INCARCERATED	ADMINISTRATIVE
3/25/11	EVANS	INCARCERATED	MEDICAL
3/18/11	TURBEVILLE	INCARCERATED	ADMINISTRATIVE
3/18/11	EVANS	INCARCERATED	MEDICAL
7/16/10	TURBEVILLE	INCARCERATED	RETURN FROM COURT
7/13/10	WILLIAMSBURG CO	AUTH ABSENCE (AWL)	TO COURT
7/ 1/10	TURBEVILLE	INCARCERATED	ADMINISTRATIVE

6/21/10 KIRKLAND

INCARCERATED

NEW ADMISSION

HARRIS, VERNELL WALTER FBI # 264623MC7 SID# SC01695772 SCDC # 341357 (CONTINU
HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB	START	END	TERMINATION	JOB
DESCRIPTION	DATE	DATE	REASON	LVL
FOOD SERVICE AIDE	06/10/11	8/ 2/11	COURT	2F5
FOOD SERVICE AIDE	06/07/11	6/ 9/11	MI ELIGIBLE FOR LEVEL 2	3F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC	START	END	TERMINATION
DESCRIPTION	DATE	DATE	REASON
LVL 2 - FULL TIME(NO EWC)	09/02/10	6/ 6/11	COMPLETED EDUC PROGRAM
LVL 2 - FULL TIME(NO EWC)	07/02/10	7/20/10	COURT

***** END OF REPORT *****