

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Sumter County

S.C. SUPREME COURT

Honorable Brooks P. Goldsmith, Circuit Court Judge

DEXTER WALCOTT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002200

APPENDIX

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STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

COURT OF GENERAL SESSIONS

Dexter Antonio Walcott,)

PLAINTIFF,)

v.)

State of South Carolina,)

DEFENDANT.)
_____)

TRANSCRIPT OF PLEA
C/A No. 2013-GS-43-01017

Sumter County Courthouse
June 12, 2014

BEFORE:

HONORABLE R. FERRELL COTHRAN, PRESIDING JUDGE

APPEARANCES:

Assistant Solicitor Bronwyn McElveen
Attorney for State of South Carolina

Steven McKenzie, Esquire
Attorney for Dexter Antonio Walcott

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

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Certificate of Service

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1 Ms. McElveen: Your Honor, we are back on the record
2 with State of South Carolina vs. Dexter Antonio Walcott.
3 Indictment 2013-GS-43-1017. This is the trial we've been
4 in. After speaking to the defense and after speaking
5 with my victim for a longtime last night, we were able to
6 continue the plea offer that was stated before trial
7 reducing the burglary first degree to a burglary second
8 degree violent and besides that he's also pleading to his
9 other charges assault and battery first degree and
10 possession of a weapon during the commission of a violent
11 crime. Mr. Walcott's attorney indicates he wishes to
12 plead guilty to all three of those charges, the burglary
13 being reduced.

14 The Court: Okay. Is that right, Mr. Walcott?

15 Mr. Walcott: Yes, sir.

16 The Court: Raise your right hand for me.

17 (Mr. Walcott complies)

18 The Court: Do you solemnly swear to tell the truth,
19 the whole truth and nothing but the truth so help you
20 God?

21 Mr. Walcott: Yes, sir.

22 The Court: Okay. We've been trying this case this
23 whole week but you understand --- well, have you had
24 enough time to talk with your lawyer about this decision
25 to plead guilty?

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1 Mr. Walcott: Yes, sir. I did.

2 The Court: And you're satisfied with that
3 conversation?

4 Mr. Walcott: Yes, sir.

5 The Court: Has anybody promised you anything or
6 threatened you in anyway to get you to plead guilty?

7 Mr. Walcott: No, they didn't.

8 The Court: So you're pleading freely and
9 voluntarily?

10 Mr. Walcott: Yes, sir.

11 The Court: Are you under the influence of alcohol or
12 drugs today?

13 Mr. Walcott: No, sir, I'm not.

14 The Court: Do you have any mental diseases that will
15 keep you from understanding what you're doing today?

16 Mr. Walcott: No, I don't.

17 The Court: Do you understand that burglary second
18 degree violent carries up to 15 years in prison. It's a
19 violent offense and a serious offense. Do you understand
20 that?

21 Mr. Walcott: Yes, sir.

22 The Court: And assault and battery first degree is
23 ten years in prison, do you understand that?

24 Mr. Walcott: Yes, sir, I do.

25 The Court: Possession of a weapon during the

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1 commission of a violent crime is up to five years in
2 prison, do you understand that?

3 Mr. Walcott: I understand that.

4 The Court: By pleading guilty you're giving up your
5 right under the Fifth Amendment to remain silent by
6 telling me you are guilty, do you understand?

7 Mr. Walcott: Yes, sir.

8 The Court: You are also giving up your right to
9 finish this jury trial. You've sat throughout this trial
10 and you've confronted the witnesses that has testified
11 against you. Your lawyer has cross examined each one of
12 the state's witnesses. He has had the ability to
13 subpoena witnesses and have them testify in your behalf.
14 I've gone over your rights with you and you've told me
15 you understood them as far as your right to testify and
16 call witnesses. Do you understand that?

17 Mr. Walcott: Yes, sir.

18 The Court: And you want to give that up and plead
19 guilty at this time

20 Mr. Walcott: Yes, sir.

21 The Court: Do you have any questions you want to ask
22 me concerning your rights?

23 Mr. Walcott: I don't.

24 The Court: And you're pleading guilty because you
25 are guilty?

1 Mr. Walcott: Yes, I am.

2 The Court: Okay. I understand the facts. The State
3 has presented their entire case and the facts are already
4 in the transcript. I find there is a factual basis for
5 your plea. It is freely and voluntarily entered into.
6 You have admitted that you've had advice from a competent
7 counsel with whom you tell me you're satisfied and I will
8 accept your plea. And you understand, it's my
9 understanding that you have a prior record for
10 trafficking which is a serious offense?

11 Mr. Walcott: Yes, it happened in 2006.

12 The Court: And you understand that this burglary
13 second may put you in a situation for another serious
14 offense, so if you get caught again in the future you
15 will be looking at life without the possibility of
16 parole. Do you understand?

17 Mr. Walcott: I understand that.

18 The Court: All right. Anything either side want to
19 tell me before sentencing?

20 Ms. McElveen: Your Honor, if I may pass up his full
21 criminal record and also I know that the victim would
22 definitely like to address the court. May I pass up this
23 record.

24 The Court: Okay. Yes, sir.

25 Victim: How are you doing, Your Honor. I don't have

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1 a lot to say. What I'm going to say is by no means is
2 this over for me because I've got other issues that's
3 going to happen. My family. There are some serious
4 issues with their safety. I just ask that when you
5 deliver your sentencing that you take into consideration
6 five kids and I don't know exactly how I'm going to keep
7 them safe after this is over. I'm guilty of a lot of
8 this. I know this. But I do ask that you understand that
9 I was in my bed, when I had a bed, and I was shot. Left
10 for dead and I am scared every day since. I will have to
11 because of what I know. There is five of us. There's
12 five of us.

13 Ms. McElveen: Look straight, look at the Judge.

14 Victim: Be as stern as you can be, please.

15 The Court: Thank you, sir.

16 Victim: My life ain't going to be the same.

17 The Court: I understand. Thank you.

18 Ms. McElveen: Your Honor, you've heard from the
19 testimony and I think it's pretty clear from both the
20 victim and Mr. Sproud and from his criminal record that
21 Mr. Walcott is a very dangerous man. He has been
22 terrorizing our community for over a decade now and he
23 scares people. I ask that you keep that in consideration
24 with your sentencing.

25 The Court: Thank you. Mr. McKenzie.

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1 Mr. McKenzie: Your Honor, Mr. Walcott is married
2 with three children. A one year old, five year old and a
3 twelve year old. He does construction work and
4 remodeling houses. That's what he does when he's not in
5 court. In 2006, was the last time that he's been charged
6 with a crime. I think to say that he's been terrorizing
7 the community for the last nine years and he has not been
8 charged or convicted of anything since then is probably
9 is overstating the threat that the state thinks that Mr.
10 Walcott has imposed upon the community. You've heard
11 testimony in this case and I think we certainly had a
12 chance at the jury coming back with exactly probably what
13 we were pleading to. So I thank the solicitor's office
14 for this offer and the continuation of the offer. Mr.
15 Walcott appreciates the offer. Does not, we're not
16 trying to minimize the impact on the victim in this
17 situation. He was shot with a nine millimeter pistol. We
18 understand that. Also, understand, Your Honor, that this
19 is a situation that got out of hand, we think, and there
20 was evidence in the record that the only ones that really
21 knew what happened in this situation was Dexter Walcott
22 and Kevin Schrader because that's the only evidence that
23 we have as to how this gun went off and what happened and
24 all that and there is conflicting testimony about that.
25 Again, all that is in the record, you've heard all that.

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1 I think it's whenever you come into court and you're
2 a victim, it's one thing if you're a victim and you had
3 no part in what happened. If I'm in my home and somebody
4 comes in my home and shoots me and I'm just there with my
5 wife and my family and I'm just a victim that's one thing
6 but if I'm a victim and my MO is I'm a crack cocaine
7 addict and I had to sleep in the shed with no running
8 water, lights and that sort of thing and I go steal from
9 another person who supposedly is stealing and
10 "terrorizing the community" then I had a hand in what
11 happened to me. I'm not saying, Your Honor, that that
12 should minimize the sentence in this case. I'm just
13 simply saying this is a different situation then if it
14 would have been a law abiding citizen that has been
15 attacked by a person who was not abiding by the law. It
16 got out of hand and unfortunately somebody got shot. And
17 I understand that my client was the one who took the
18 firearm to the dispute. Having said that I would ask the
19 court to run these sentences concurrent. There were
20 three of them. I would ask the court to consider giving
21 less than the maximum of the fifteen years because of the
22 culpability of the victim in brining this action to the
23 court. I think had he not stolen the motorcycle from Mr.
24 Walcott, we would not be here. Had Mr. Walcott not gone
25 over there to get the stolen motorcycle that was stolen

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1 from him. I hate to say this, Your Honor, but apparently
2 there is no honor among thieves and that goes without
3 saying.

4 Where I'm going with this, Your Honor, it's not like
5 this man broke into my house, your house, Melissa's
6 house, Robbie's house, he broke into a shed that this guy
7 slept in sometimes, sometimes he didn't and it was over a
8 stolen motorcycle. And everybody admits that. And
9 everybody admits at this time that everybody was doing
10 drugs. So, no one has clean hands in this case and as a
11 result to that, Your Honor, I would ask the Court to
12 punish my client but punish him in the same thing that
13 you would punish him in regards to a situation where
14 unclean hands versus a person or victim comes in here
15 with clean hands. I would ask the Court to take all that
16 into consideration and run these sentences concurrent.
17 At one point there were plea negotiations in this case.
18 My client turned down those plea negotiations but, Your
19 Honor, I think something around that would be appropriate
20 for a sentence in this case. Thank you, your Honor.

21 My client would like to address the court.

22 The Court: Yes, sir.

23 Mr. Walcott: Dealing with the case, I mean I was
24 considered in the drug dealing and then got locked up for
25 eight years. I'm totally sorry about the situation and

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1 understand what me and Kevin got into but that's why I
2 had wanted to take the trial. There's two sides to
3 everything and I'm just sorry about the situation.

4 Mr. McKenzie: Thank you, Your Honor.

5 The Court: All right. On the burglary the sentence
6 of the court is you are committed to the State Department
7 of Corrections for the term of fourteen (14) years. On
8 assault and battery the sentence is ten (10) years to run
9 concurrent and possession of a weapon is five years to
10 run concurrent. You can have no contact with the victim
11 whatsoever, directly or indirectly when you make parole.
12 That will be a direct violation of your parole.

13 Ms. McElveen: Your Honor, we ask that he make no
14 contact with the victims family as well.

15 The Court: Yes. You can't have any contact with the
16 victim's family directly or indirectly.

17 Ms. McElveen: Thank you, Your Honor.

18 Mr. McKenzie: Thank you, Your Honor.

19 (End of Plea)
20
21
22
23
24
25

CERTIFICATE

This is to certify that the plea transcript in the matter of Dexter A. Walcott vs. State of South Carolina, consisting of Eleven (11) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 27thth day of May, 2015.



Melissa R. Singletary
Certified Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

RECORDED

IN THE COURT OF COMMON PLEAS

County of Sumter 2015 FEB 18 AM 8:57

2015-CP-43-434

Dexter Walcott
 Full name and prison number (if any) of Applicant
 JAMES S. CAMPBELL
 CLERK OF COURT
 SUMTER COUNTY, S.C.

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention EVANS Correctional Inst 610
High Way 9 West Bennettsville S.C 29512
2. Name and location of Court which imposed sentence Sumter county
Court House General Sessions 215 N. Main St.
3. Name(s) of co-defendant(s) (if any) Douglas SPAW
Verner Ray HODGE JR.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-BS-43-1017
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) June 12 2013 14 years Confinement
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- ☒ (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Did not know how to At the time
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) Prosecutorial misconduct
- (c) DENIAL OF DUE PROCESS
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failing To File Appeal, Involuntarily And unintelligently, plea
- (b) ect. ~~INEFFECTIVE~~ Indictment INEFFECTIVE under Rule 3 a ect.
- (c) Violated Rights, ect.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

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

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. Steve Mackenzie

 ii. _____

 iii. _____

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

i. _____

 ii. _____

 iii. _____

2015-CP-43-434

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

~~Enter name~~ ~~Enter name~~ ~~Enter name~~ ~~Enter name~~ I would like my
sentence over turn.

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

No

STATE OF SOUTH CAROLINA)

County of Sumter)

VERIFICATION

I, Dexter Walcott, 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.

Dexter Walcott

SWORN to and subscribed before me this 12th
day of February

S. Cantan (L.S.)
Notary Public

My Commission Expires: 2/24

RECORDED
2015 FEB 18 AM 8:57
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

2015-CP-43- 434

19

RECORDED
2015 FEB 18 AM 8:57
JAMES CAMPBELL
CLERK OF COURT
SUTTER COUNTY, S.C.

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

I, Dustin W. W. W., 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.

Dustin W. W. W.
Applicant

SWORN or affirmed to and subscribed before me this

12th day of February, 2015

S. O. W. W.
Notary Public

My Commission Expires: 2/24

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Dexter Walcott, #268361,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2015-CP-43-434

RETURN

RECORDED
2015 MAR 30 PM 2:48
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

The Respondent, making its Return to the application for post conviction relief (PCR) filed February 18, 2015, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was true bill indicted at the November 2013 term of the Sumter County Grand Jury for burglary-first degree, possession of a weapon during a the commission of a violent crime, and assault and battery – first degree (2013-GS-43-1017). Steven McKenzie, Esquire represented Applicant. On June 12, 2014, Applicant pled guilty as to the lesser included offense of burglary-second degree (violent), assault and battery – first degree, and possession of weapon during a violent crime before the Honorable R. Ferrell Cothran, Jr. Judge Cothran sentenced Applicant without negotiations or recommendations to fourteen years for burglary-second degree, ten years for assault and battery – first degree, and five years for possession of a weapon during a violent crime with all sentences running concurrently. Applicant did not appeal his guilty plea or sentence.

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

II.

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

1. Ineffective Assistance of Counsel
 - a. Failure to file an appeal
2. Involuntary guilty plea
3. Prosecutorial Misconduct
 - a. Indictment ineffective under Rule 3(c) etc...
4. Denial of Due Process
 - a. Violated rights etc...

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

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

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v.

Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442. 334 S.E.2d 813, 814 (1985).

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

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

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

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A

criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

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

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

V.

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S.

VI.

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

VII.

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

[Signature block on following page]

VIII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

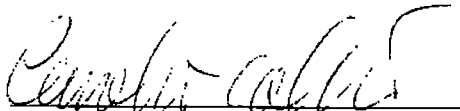
March 27, 2015.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2015-CP-43-434
	)	
DEXTER WALCOTT, #268361,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

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:

Lance S. Boozer, Esquire
The Boozer Law Firm, LLC
807 Gervais Street, Suite 203
Columbia, SC 29201

DATED this 27th day of March, 2015.


 Caroline Collins, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Dexter Walcott, #268361,

Applicant,

v.

State of South Carolina,

Respondent.

RECORDED

2015 NOV 12 PM 12:59

JAMES CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

IN THE COURT OF COMMON PLEAS

THIRD JUDICIAL CIRCUIT

C/A NO: 2015-CP-43-434

**FIRST AMENDMENT TO PRIOR
APPLICATION FOR PCR**

The Applicant, at his request and through appointed counsel below, makes the following additional claim and amendment to his prior application for post-conviction relief filed February 18, 2015:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (i) No factual basis for guilty plea rendering guilty plea involuntary.
 - (ii) Lack of subject matter jurisdiction due to defective indictment.
 - (iv) Ineffective assistance of counsel for failing to object to indictment.

THE BOOZER LAW FIRM, LLC



Lance S. Boozer
Attorney for Applicant
807 Gervais Street, Suite 203
Columbia, SC 29201
Phone: (803) 608-5543

November 9, 2015

RECORDED

STATE OF SOUTH CAROLINA)
NOV 12 PM 12:59)COUNTY OF SUMTER)
JANE J. CAMPBELL)
CLERK OF COURT)
SUMTER COUNTY, S.C.)

Dexter Walcott, #268361,

Applicant,

v.

State of South Carolina,

Respondent.

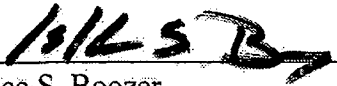
IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
C/A NO: 2015-CP-43-434

AFFIDAVIT OF SERVICE

I, the undersigned of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing First Amendment to Prior Application for PCR upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

Daniel Gourley
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

THE BOOZER LAW FIRM, LLC


 Lance S. Boozer

Attorney for Applicant
807 Gervais Street, Suite 203
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463

Columbia, South Carolina
November 9, 2015

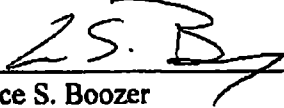
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	THIRD JUDICIAL CIRCUIT
Dexter Walcott, #268361, SUMTER COUNTY, SC	)	C/A NO: 2015-CP-43-434
	)	
Applicant,	)	
	)	
v.	)	MOTION FOR GRAND JURY
	)	IMPANELMENT DOCUMENTS
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

The Applicant, through appointed counsel below, respectfully moves for this Court to order the State to provide Applicant with a copy of any and all documents pertaining to the impanelment of the state grand jury which indicted him. Applicant alleges in his first amended PCR application that his plea counsel was ineffective for failing to object to the indictment as well as prosecutorial misconduct for moving forward with a defective indictment.

Specifically, Applicant believes a grand jury was never lawfully convened and illegally returned a "true bill" indictment for Accessory After the Fact; Burglary, First Degree; Possession of a Weapon during Commission of a Violent Crime; and Assault and Battery, First Degree (2013-GS-43-1017). The South Carolina Supreme Court has held that impanelment documents, including the State's petition, supporting materials, and the impaneling judge's order, may be released to a defendant prior to trial upon timely request or to an applicant in a PCR proceeding and that a defendant has a right to obtain such documents. Evans v. State, 363 S.C. 495, 611 S.E2d 510 (2005). Accordingly, Applicant respectfully requests that this Court grant his Motion.

Undersigned counsel for the Applicant conferred with counsel for the State, Daniel Gourley, who is unable to consent to this Motion and opposes Applicant's request.

THE BOOZER LAW FIRM, LLC

A handwritten signature in black ink, appearing to read "L.S. Boozer", is written over a horizontal line.

Lance S. Boozer
Attorney for Applicant
807 Gervais Street, Suite 203
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463

January 29, 2016

STATE OF SOUTH CAROLINA)
 COUNTY OF SUMTER)
 Dexter Walcott, #26836)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

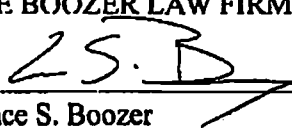
IN THE COURT OF COMMON PLEAS
 THIRD JUDICIAL CIRCUIT
 C/A NO: 2015-CP-43-434

AFFIDAVIT OF SERVICE

I, the undersigned of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby
 certify that I served the foregoing Motion for Grand Jury Impanelment Documents upon the
 persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as
 follows:

Daniel Gourley
 Assistant Attorney General
 P.O. Box 11549
 Columbia, SC 29211

THE BOOZER LAW FIRM, LLC


 Lance S. Boozer
 Attorney for Applicant
 807 Gervais Street, Suite 203
 Columbia, SC 29201
 Phone: (803) 608-5543
 Fax: (803) 926-3463

Columbia, South Carolina
 January 29, 2016

THE BOOZER LAW FIRM, LLC

RECORDED

2016 MAR -1 PM 1:59

Lance S. Boozer, Esq.*

*Also admitted in Florida

807 Gervais Street, Suite 203
Columbia, SC 29201Telephone: 803-608-5543
Fax: 803-926-3463JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.Email: ls@boozerlawfirm.com
Website: www.boozerlawfirm.com

February 29, 2016

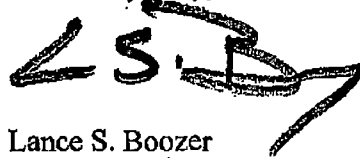
The Honorable James C. Campbell
Clerk of Court
141 N. Main St.
Sumter, SC 29150**RE: Dexter Walcott, #268361, v. State of South Carolina
2015-CP-43-434**

Dear Honorable Clerk:

I represent Mr. Walcott in the above-referenced action. Please clock and file the enclosed document considered a Second Amendment to PCR Application and return a clocked copy to me in the envelope provided.

Should you have any questions or concerns, please do not hesitate to contact me. I appreciate your assistance in this matter.

Yours very truly,

A handwritten signature in black ink, appearing to read 'LSB' with a stylized flourish extending from the end.

Lance S. Boozer

cc: Daniel Gourley, AAG
Mr. Dexter Walcott, #268361

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Dexter Walcott, #268361,

Applicant,

v.

State of South Carolina,

Respondent.

RECORDED

2016 MAR -1 PM 1:59

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

C/A NO: 2015-CP-43-434

**SECOND AMENDMENT TO PRIOR
APPLICATION FOR PCR**

The Applicant, at his request, makes the following additional claim and amendment to his prior application for post-conviction relief filed February 18, 2015:

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

- (i) "Counsel failed to obtain impaneling documents and supporting materials prior to trial."
- (ii) Prosecution "fail(ed) to comply with statutory law provisions Ann. 14-9-210."
- (iii) "Prosecutor knowingly and willingly caused false and misleading information to be printed and published in Applicant's indictment."
- (iv) "State unlawfully empaneled its grand jury outside the jurisdiction of the court of general sessions for illegal return of a true bill indictment."
- (v) "Grand jury failed to be sworn."
- (vi) "Indictment was not filed with clerk of court lacking personal jurisdiction to entertain the indictment."
- (vii) "State failed to comply with 17-25-10 as well as the Fifth Amendment."
- (viii) Applicant further alleges judicial misconduct for allowing an "illegal indictment."

THE BOOZER LAW FIRM, LLC



Lance S. Boozer
Attorney for Applicant
807 Gervais Street, Suite 203
Columbia, SC 29201
Phone: (803) 608-5543

February 29, 2016

I, the undersigned of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing Second Amendment to Prior Application for PCR upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, February 29, 2016, addressed as follows:

Daniel Gourley
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211



Lance S. Boozer

State of South Carolina)	In the Court of Common Pleas
County of Sumter)	Third Judicial Circuit
	2015-CP-14-0434

Dexter Antonio Walcott,	)	
	)	
Applicant,	)	
	)	
vs.	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
	)	

March 15, 2016
Sumter, South Carolina

B E F O R E:

The Honorable Brooks P. Goldsmith, Judge

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

Lance S. Boozer, Esquire
Attorney for Applicant

Daniel F. Gourley, II, Esquire
Attorney for Respondent

Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

I N D E X

Proceedings 4

Dexter Walcott,

 Direct Examination by Mr. Boozer 12

 Cross-Examination by Mr. Gourley 30

Steven Smith McKenzie, Esq.,

 Direct Examination by Mr. Gourley 37

 Cross-Examination by Mr. Boozer 44

Certificate Page 54

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
P-1	SCJD Calendar November 2013	4	8

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 11:06 a.m.)

(Whereupon, Plaintiff's Exhibit 1 was marked for identification prior to the commencement of the proceedings.)

MR. GOURLEY: This is *Dexter Walcott v. State of South Carolina*, Docket No. 2015-CP-43-434. He is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. He was true-bill indicted at the November 2013 term of the Sumter County Grand Jury for burglary in the first degree, possession of a weapon during the commission of a violent crime, and assault and battery in the first degree. Mr. McKenzie represented him.

On June 12th, 2014, he pled guilty to the lesser-included offense of burglary in the second degree -- and that was violent -- assault and battery in the first degree, and possession of a weapon during a violent crime. He pled before Judge Cothran. And Judge Cothran sentenced the applicant, without negotiations or recommendations, to 14 years for burglary in the second degree, 10 years for assault and battery in the first degree, and 5 years for possession of a weapon during a violent crime. Those sentence were run concurrently.

He did not appeal his guilty plea or sentence; filed a

1 timely application for postconviction relief on February
2 18th, 2015, alleging ineffective assistance of counsel for
3 failing to file an appeal, involuntary guilty plea,
4 prosecutorial misconduct, and a denial of due process
5 violation. Mr. Boozer has filed a couple of amended
6 applications, Your Honor, the first being on November 9th,
7 2015, alleging, again, an involuntary guilty plea, a lack
8 of subject-matter jurisdiction due to a defective
9 indictment, and an ineffective assistance of counsel for
10 failing to object to the indictment.

11 He filed a second amended application on February
12 29th, 2016, again alleging ineffective assistance of
13 counsel for failing to obtain or object to the indictment
14 and a prosecution -- prosecutorial misconduct for failing
15 to -- or allow misleading information to be printed and
16 published on the indictment.

17 And, Your Honor, I would -- the state filed its return
18 on March 26th, 2015. And I'll turn it over to Mr. Boozer.

19 THE COURT: Mr. Boozer?

20 MR. BOOZER: Thank you, Your Honor. If it pleases the
21 Court, I do have a couple of preliminary matters, Judge, in
22 this case, one of which is a motion filed on behalf of --
23 at -- at Mr. Walcott's request to obtain the grand-jury-
24 impanelment documents. That was a motion that was filed
25 back February 2nd, 2016, that would need to be heard, as

1 well -- Mr. Walcott has -- has asked me if I received in my
2 office, I guess, a copy of a brief that he sent to me that
3 he feels is imperative to his issues. And I think, really
4 specifically, as it relates to grand-jury-impanelment
5 documents, why he needs those, as well as some other issues
6 that he believe -- that he believes are necessary to
7 support his claims.

8 I have not received those as of -- as of late at my
9 office. He assures me that he has sent those. So they may
10 very well be there from yesterday or today. He wanted me
11 to bring that, I guess, to the Court's attention.

12 Court's indulgence, Your Honor?

13 (Whereupon, Mr. Boozer and the applicant conferred.)

14 MR. BOOZER: Judge, and -- and certainly,
15 respectfully, he believes that there is some -- there are
16 case law in his brief that would assist the Court in ruling
17 on, I guess, either his grand jury -- his entitlement to
18 what he believes are the grand-jury-impanelment documents
19 and his -- his case as a -- as a whole.

20 I believe I have cited the -- the chief case, which is
21 *Evans v. State*, for the motion. But Mr. Walcott believes
22 there is some additional authorities that support his --
23 his request.

24 THE COURT: And the position of the state on these
25 motions?

1 MR. GOURLEY: Your Honor, as -- in regards to the
2 impanelment documents, Your Honor, I don't believe there is
3 any kind of transcripts or recordings or any sort of
4 documents available to Mr. Walcott from the grand-jury
5 proceedings. In regards to the receiving of a brief today
6 that Mr. Walcott sent him, Your Honor, this case was on the
7 roster back in November. I have a subpoena where I
8 subpoenaed Mr. McKenzie in November for this case.

9 So this would be at least a second time it has
10 appeared on the roster. It's a little bit over a year old.
11 SCDC has obviously expounded the time to bring him here
12 today. Mr. McKenzie has been sitting here in the courtroom
13 this morning.

14 So the state is prepared to go forward, and we would
15 ask that you deny a motion for continuance and also deny
16 the motion for the grand-jury-impanelment documents.

17 THE COURT: And just to clarify things, Mr. Boozer,
18 specifically, your client wishes to obtain what kind of
19 impanelment documents?

20 MR. BOOZER: Yes, sir, Your Honor. Basically, my
21 client's position -- and -- and what he relays to me and
22 what is contained in his application -- is he -- he
23 believes that he was obviously -- there -- there is an
24 indictment for him for the crimes, which were burglary-
25 first, accessory after the fact, possession of a weapon,

1 and assault and battery-first degree. And it -- the -- the
2 indictment indicates that it was -- the indictment or the
3 grand jury met during the November 2013 term of the Court
4 of General Sessions and was true-billed on 11/14/2013.

5 Mr. Walcott believes that the grand jury never met.
6 He does not believe there -- the grand jury met and that
7 this indictment -- his belief is that this indictments was
8 -- was basically forged and -- and is false and he was
9 never indicted. I -- I have passed up to the Court, which
10 I will make -- I'd like to mark as a part of the record --
11 and I believe it's with the attorney general's consent -- a
12 calendar that was printed from the judicial-department Web
13 site and will be marked as Plaintiff's Exhibit 1.

14 THE COURT: That's without objection?

15 MR. GOURLEY: No -- no objection, Your Honor.

16 THE COURT: All right. I'll hand this back to our
17 court reporter. Let's mark it.

18 (Whereupon, Plaintiff's Exhibit 1 was entered into
19 evidence.)

20 MR. BOOZER: And, Judge, in -- in -- what he believes,
21 in looking at this from the judicial department, is that
22 during -- you see the circuit -- Your Honor sees the
23 circuit number is the third circuit. And then, during the
24 week of November 11th, 2013, there's a term of court of
25 common pleas, nonjury, and then, a general sessions in Lee.

1 And he believes that because of that document and because
2 of his own belief, that no grand jury ever met. So he
3 believes that he is entitled to evidence that the grand
4 jury met and the documents which were presented or
5 impaneling that grand jury, if there was impaneled, he
6 believes he's entitled to all of that to assist in proving
7 that claim. And that's what the basis of his motion for
8 the impanelment documents is.

9 MR. GOURLEY: And, Your Honor, it's my understanding,
10 according to the statute for South Carolina Code Annotated
11 14-7-1510 to 1540, an impanelment order does not exist in
12 the county grand juries. So any kind of document that Mr.
13 Walcott is seeking is just simply not there.

14 THE COURT: Yeah. I -- I -- that -- that -- that's
15 what I'm trying to figure out, Mr. Boozer. Let -- let's
16 just suppose I -- I were to sign an order -- grant your
17 motion and sign an order that said: Mr. Clerk, give me any
18 documents showing whether or not the grand jury actually
19 met. I don't know. What would the clerk give me?

20 MR. BOOZER: Well, Judge, and -- and I'm looking at --
21 this is the case of *Evans v. State*, which is 363 S.C. 495.
22 I do have a copy of the case, and I'm happy to hand that
23 up. It does have my notes on the -- on the case. But --
24 but essentially, the holding of this is that the Supreme
25 Court has held that impanelment documents, including the

1 state's petition, supporting materials, and the -- the
2 impaneling judge's order, may be released to a defendant
3 prior to trial upon timely request to an applicant in a PCR
4 proceeding and that a defendant has such right to obtain
5 such documents, which -- which is his position and
6 argument.

7 I -- I guess, to answer the Court's question, if that
8 order were entered and saying that he's entitled to this
9 and if we present that to -- to the county and they come
10 back and say, "Well, there aren't any," I guess then his
11 argument would be: "Well, that supports all of my claims.
12 There is nothing, and I was never indicted." I believe
13 that's what his position would be.

14 THE COURT: But -- but there is an indictment? I ---

15 MR. BOOZER: There is an indictment that he -- he's
16 contesting, which is part of his PCR claim. Correct.

17 THE COURT: All right.

18 MR. GOURLEY: Two things, Your Honor: I believe *Evans*
19 *v. State* -- and I may be completely wrong; I haven't read
20 it in quite a while. But I think that was dealing with the
21 state-grand-jury-impanelment documents, which certainly do
22 exist. And I think that's what the Supreme Court was
23 saying: You're certainly entitled to those because they do
24 exist. Again, the county grand jury, there's just simply
25 nothing there.

1 And in regards to the indictment, an indictment is a
2 notice document. It does not confer jurisdiction over the
3 general-sessions court, of course. I'm not sure who took
4 this plea. Judge Cothran had, you know, jurisdiction to
5 take this plea. And I -- I would submit to the Court that
6 you should deny this motion.

7 MR. BOOZER: And -- and, Judge, just as an officer of
8 the Court, the *Evans v. State* case is a state-grand-jury
9 case.

10 THE COURT: I -- I thought it was.

11 (Whereupon, Mr. Boozer and the applicant conferred.)

12 THE COURT: Just an -- as an aside in this case, it's
13 not the first time I've had this argument made before about
14 the application of *Evans*. But for the reasons argued and
15 -- and stated by the state, I'm going to deny the -- the
16 motion for continuance, the motion to obtain impanelment
17 documents -- was there another motion? I -- I wasn't
18 writing everything down when we were talking so fast.

19 MR. BOOZER: No, Your Honor. Those were -- those were
20 the only motions.

21 THE COURT: Okay. And ready to proceed?

22 MR. BOOZER: We are, Your Honor.

23 THE COURT: All right. You may call your witness.

24 (Whereupon, Mr. Boozer and the applicant conferred.)

25 MR. BOOZER: Your Honor, we'd call Mr. Walcott to the

DIRECT EXAMINATION BY MR. BOOZER - DEXTER WALCOTT

12

1 stand.

2 THE COURT: All right.

3 (Whereupon, the witness came forward.)

4 DEXTER WALCOTT, having been first duly sworn,
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. BOOZER:

8 Q Mr. Walcott, how are you?

9 A I'm okay.

10 Q All right. Do you know why you're here today?

11 A Yes, sir.

12 Q All right. And -- and what is it that you're asking
13 this Court to do for you?

14 A That -- that I never been indicted by the grand jury.

15 Q All right. But -- but specifically, you -- you filed
16 an application for postconviction relief, right?

17 A Yes, sir.

18 Q All right. And what is it, the relief that you're
19 seeking from this Court today? What do you want this Court
20 to do for you?

21 A Well, dealing with -- dealing with my Fifth Amendment,
22 that I -- that I supposed to be by a grand jury -- that I'm
23 supposed to be indicted by a grand jury for -- for the --
24 the grand jury could see the case to see -- see what the
25 facts is with -- within the case. But I'm stating that I

1 never been indicted by a grand jury, so that -- that'll be
2 violating my constitution right.

3 Q I understand that. I understand that's one of your --
4 one of your claims in support of your PCR application. But
5 do you understand that this Court -- what this Court can
6 do, which is to essentially, if you're successful in your
7 case, is to grant you a new trial on your original charges.
8 Do you understand that?

9 A Yes, sir.

10 Q Okay. And is that what you're asking this Court to
11 do?

12 A Basically, I'm -- I'm asking the Court to vacate -- to
13 vacate the sentence, reason being because I never been
14 indicted by the grand jury.

15 Q Okay. So your position is that you do not believe you
16 were ever indicted by a grand jury and, therefore, your
17 case should just be over and it should not be -- you should
18 not be able to be tried again; is that what you're saying?

19 A No. Not -- not -- not only that. When you're dealing
20 with the statutory law 14-9-210, which states that the --
21 that the prosecutor is responsible for preparing the
22 indictment, and by the prosecutor's responsible for
23 preparing -- preparing the indictment, the indictment,
24 which I got on Exhibit -- Exhibit 1 ---

25 Q Mr. Walcott, let -- let's walk through this, okay?

DIRECT EXAMINATION BY MR. BOOZER - DEXTER WALCOTT

14

1 You filed a -- a PCR application, correct?

2 A Yes, sir.

3 Q All right. And this Court can grant you a new trial
4 on your original charges. Is that what you're asking for?
5 Or are you asking for something different?

6 A Yes. Yes, sir.

7 Q Yes, sir ---

8 A I ---

9 Q --- what? You're asking for a new trial? Or you're
10 asking for something different?

11 A I mean, basically, I'm asking -- I'm asking -- yeah.
12 Basically, I'm asking for a new trial.

13 Q Okay. So do you understand that if you -- what did
14 you end up pleading guilty to?

15 A Fourteen years.

16 Q To what charge?

17 A Burglary the second and -- and high -- assault and
18 battery high -- high aggravated nature.

19 Q All right. What were your original charges?

20 A My original charges was first-degree burglary and
21 high-aggravated nature.

22 Q All right. So do you understand that if you were
23 granted a new trial, that you would go back and face the
24 original charge -- not the burglary-second -- you would go
25 back and face the burglary-first, in addition to the other

1 charges? Do you understand that?

2 A Yes, sir.

3 Q And do you understand that you could -- I -- I guess a
4 burglary-first carries 15 years to life. Do you understand
5 that that's what you would be facing, should you go back
6 and receive a new trial?

7 A I understand -- understand -- well, you basically
8 saying that facing a new trial, but I'm not -- I'm not here
9 to state that I want to go ahead and open for a new trial.
10 I'm here to challenge the allegations that I'm bringing
11 forth that the grand jury never -- never did indict me.

12 Q Okay. If -- if you -- if you feel that you prove your
13 case to the Court that this grand -- the grand jury never
14 indicted you, what do you want the Court to do?

15 A I mean, from my understanding, a individual that never
16 got indicted by the grand jury that is his right for the
17 grand jury to -- to -- to -- to see the case in order for
18 him to -- for -- for me to proceed. But I'm here right now
19 arguing that the grand -- the grand jury never -- I never
20 been indicted by the grand jury.

21 Q Okay. I don't want you to get something that you
22 don't want, okay? And so I need you to do understand what
23 this Court can do. And I understand -- are you saying that
24 if you prove that your indictment -- that you were never
25 indicted, that basically your case is over and that if the

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1 judge finds that, that you wouldn't be sent back for a new
2 trial? Is that what you're asking this Court?

3 A Yes. Because I -- I was violated -- my rights was
4 violated. Not only that my rights was violated, my
5 delivery -- I mean, in -- in the Fifth -- in the Fifth
6 Amendment, it states that if -- if anyone challenge -- if
7 anyone challenge and ask for the impanelment documentations
8 and the individual is denied of, you know, the -- the state
9 violate my liberty and my rights and property.

10 MR. BOOZER: Your Honor, if I may ---

11 A The Fifth Amendment.

12 MR. BOOZER: --- address the Court?

13 THE COURT: You may.

14 MR. BOOZER: Judge, I just want to make sure that my
15 client understands the relief that this Court can give.
16 And I do understand that I -- I'm hearing -- and he and I
17 have previously spoken about this. The request is for Your
18 Honor, if -- if the Court finds that he was never indicted,
19 his request is that basically his case is over; that --
20 that he doesn't go back for a new trial because he was
21 never ---

22 THE COURT: Yeah.

23 MR. BOOZER: --- indicted.

24 THE COURT: And -- and ---

25 MR. BOOZER: He'd go to the ---

1 THE COURT: And I don't have that authority to do
2 that. The -- the -- all I can do -- if your postconviction
3 relief application asks -- I assume it asks; let me look to
4 make sure. Postconviction relief proceedings are designed
5 to result, if -- if successful, for the applicant -- and --
6 and you, in this case -- to be granted another trial.

7 MR. BOOZER: And -- and, Judge, if -- if I may
8 interject, in -- in his original application, his claim for
9 relief that he seeks is to -- is to have his case -- or
10 sentence overturned, is -- is what his -- the relief that
11 he seeks. I -- I just wanted him to have the understanding
12 of what it is that this Court can do before we proceed any
13 further.

14 THE COURT: I can't give you legal advice. I can just
15 try to explain to you that I -- the power of this Court is
16 limited in what it can do. It can grant you a new trial.
17 But a new trial means what it says: You -- you go back to
18 square one.

19 THE WITNESS: So -- so ---

20 THE COURT: Conceivably, I guess they could -- that it
21 -- let's -- conceivably, I -- he could be indicted again.

22 MR. BOOZER: And -- and, Judge -- and I guess I'm
23 directing this to you, Mr. Walcott.

24 Q Should you be successful in -- in getting a new trial
25 in this Court, you can -- and it's found that maybe there

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1 was no indictment, then I guess that's an argument you --
2 your lawyer may have for you for a new trial if you
3 actually were not indicted. Now, of course, as His Honor
4 suggested, they could reindict and then you're back to
5 square one. But I just want you to have -- be aware of
6 what the -- this Court can do for you.

7 A So -- so reindict -- basically, I mean, I'm -- I can't
8 -- will you explain, like -- like -- like, reindict. If I
9 never been indicted, how can you reindict?

10 Q Issue a new indictment, I -- I would assume.

11 A I mean, in -- that would be against the law being hold
12 -- being held with -- without an indictment, right?

13 Q And I -- I'm not sure I can answer that question for
14 you.

15 A I mean, I'm not no lawyer. But basically, from my
16 understanding, an individual cannot be hold without a --
17 without a -- without an indictment by a grand jury.

18 MR. BOOZER: Your Honor, I guess at this point, I just
19 need to make sure that he is aware of what the relief is
20 and if it's his decision that he wants to move forward.
21 May I continue questioning ---

22 THE COURT: Certainly.

23 MR. BOOZER: --- Mr. Walcott?

24 Q Mr. Walcott, this Court is just -- has indicated to
25 both you and to I that the only thing that it can do is

1 grant you a new trial, not -- I certainly understand what
2 your claims are and those are items that you certainly can
3 testify to here in -- here in just a moment. But knowing
4 that this Court can only grant you a new trial -- and you
5 may have some defenses or whatnot regarding the indictment
6 once you get back to that point -- do you still wish to go
7 forward with your PCR hearing?

8 A Yes, sir.

9 Q Okay. All right. And -- and if this Court cannot
10 just -- if it finds that you were never indicted as you
11 claim, this Court will not -- as -- as His Honor has
12 indicated, can't just let you out and end your case ---

13 A Understood.

14 Q Okay. You still want to move forward?

15 A Yes, sir.

16 Q Okay. Now, tell the Court what your allegations are
17 regarding your PCR claim.

18 A My allegations will be Statutory Law 14-9-210. 14-9-
19 210 states that (As read): "The solicitor should prepare,
20 through the presiding judge of general sessions, to submit
21 to the grand jury while in attendance of the Court of
22 General Session and the bills -- and the bills in all cases
23 pending -- is pending in the county court which punishment
24 exceed a fine or \$100 or imprisonment."

25 I'm basically saying that the rule, 14-9-210, is a

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1 statutory law. And the solicitor did not went by the
2 statutory law of 14-9-210 to show and prove is through the
3 indictment, which I will call Exhibit 1. It -- it received
4 a -- a true bill November the 14, 2013. And the court
5 calendar be Exhibit 2.

6 Q Mr. Walcott, let me stop you, because you're starting
7 to make exhibits yourself. And -- and that's not how it
8 works. Let -- let me ---

9 MR. BOOZER: May I approach the witness, Your Honor?

10 THE COURT: You may. Let -- let me interrupt you just
11 a moment. The clerk handed me something a moment ago that
12 you might need to -- to know about ---

13 MR. BOOZER: Okay.

14 THE COURT: --- relating to the grand jury. It may
15 affect your client's decision, in other words, about
16 whether he wishes to proceed or not. The clerk ---

17 MR. BOOZER: May I also show this to ---

18 THE COURT: Yes.

19 MR. BOOZER: --- Mr. Attorney General?

20 THE COURT: I'm sorry. Yes. Yes, you can.

21 (Whereupon, Mr. Boozer and Mr. Gourley conferred.)

22 MR. BOOZER: Your Honor, this is a little bit of an
23 unusual circumstance. May I have a moment to confer off
24 the record with ---

25 THE COURT: You may.

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1 MR. BOOZER: --- with my client? Thank you.

2 THE COURT: You may. We're off the record.

3 (Off the record from 11:30 a.m. until 11:34 a.m.)

4 Q Mr. Walcott, you were explaining to the Court your --
5 your claim -- excuse me. Get that microphone settled for
6 you. You were explaining to the Court your claim that you
7 -- so continuing with your claim and what you believe
8 supports your PCR allegations. And -- and before you do
9 that, you were get -- you were starting to mark exhibits
10 and say "Exhibit 1" and "Exhibit 2."

11 MR. BOOZER: Your Honor, if I may approach the
12 witness?

13 THE COURT: Certainly.

14 Q Mr. Walcott, I'm going to hand you what's already been
15 marked Plaintiff's Exhibit 1. If you would take a look at
16 that for a moment.

17 A Okay.

18 Q And -- and before I do that, there was another
19 document that you wanted to take a look at. And this is
20 already a part of ---

21 MR. BOOZER: May I approach the witness, Your Honor?

22 THE COURT: You may.

23 Q This is already a part of the record. And this is
24 purported to be by the state, of course, the indictment.
25 If you would, take a moment and look at that. And I think

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1 that's what you were about to discuss. So if you would,
2 tell the Court what you believe about those two documents.

3 A Going -- going by the -- the court calendar for
4 November the 13 -- November the 14, 2013 ---

5 Q Which is when? What's -- what's significant about
6 November 14th, 2013?

7 A Going -- going by this court calendar right here, that
8 there was no Court of General Session, going by this court
9 calendar.

10 Q And you're looking at Plaintiff's Exhibit 1, which is
11 a -- a ---

12 A Which is the ---

13 Q --- a -- a printout of the calendar from the judicial
14 Web site?

15 A Yes, correct.

16 Q Okay. And on that for the week of November 11th,
17 there's a term of court for common pleas nonjury, and
18 there's also a term of court for general sessions in Lee
19 County.

20 A Yes, sir.

21 Q What is your position that you do not see on that
22 calendar?

23 A I doesn't see -- I doesn't see a court for Court of
24 General Session for Sumter County.

25 Q And so what does that lead you to believe?

1 A That lead me to believe that the indictment for -- for
2 2013, November the 14, was forged, going by the court
3 calendar.

4 Q Okay. Did you ever discuss or review the indictment
5 -- well, let me ask you this: Who represented you at your
6 plea?

7 A Steve McKenzie.

8 Q All right. How many times did you meet with Mr.
9 McKenzie prior to your plea?

10 A Me -- me and Steve McKenzie met two times.

11 Q All right. What did you and Mr. McKenzie discuss at
12 your plea -- or -- excuse me -- at your meetings?

13 A Well, I hired Steve McKenzie in April. And I seen him
14 two times in April. And then we went to court, like, in
15 June. So we never really had time to discuss the -- the
16 issues.

17 Q Did you initially set -- did you initially go to
18 trial?

19 A Yes. We initially went to trial. And in the middle
20 of it ---

21 Q What -- what happened at trial?

22 A Well, he -- he decided -- well, really, we decided in
23 the middle of the trial, to -- to take -- to take the plea.

24 Q What -- what caused that decision to be made?

25 A I mean, me personally, it was lack of evidence: lack

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1 of evidence and he didn't, you know, had -- had enough time
2 -- he didn't no -- no -- have time -- enough time to reveal
3 -- reveal the case from the start with. So we never had a
4 chance to build a strategy. And we end up going to trial
5 with -- with less than, like, 24 hours. He -- he really
6 never really see the paperwork or nothing. He really
7 didn't even know nothing about the case from the start
8 with.

9 Q Well, did you -- did you know anything about what sort
10 of defense you would be presenting at trial, if any?

11 A No.

12 Q Did you have any discussion with Mr. McKenzie about
13 witnesses that you would be calling and presenting on your
14 behalf?

15 A No, sir.

16 Q Did you have any discussion with Mr. McKenzie about
17 trial strategy?

18 A No, sir.

19 Q Did you have any discussion with Mr. McKenzie about
20 the evidence that was going to be used against you in
21 court?

22 A No, sir.

23 Q All right. Did you ever review with Mr. McKenzie the
24 state's response to a Rule 5 request?

25 A No, sir.

1 Q When -- obviously, in your PCR claim, you believe you
2 were never indicted. When did you come to that belief?

3 A At -- as I already said, dealing with the court
4 calendar.

5 Q When did you first learn that?

6 A In -- I mean, just doing research.

7 Q Was it after your plea?

8 A Yeah, it was after the plea.

9 Q All right. Did you have any discussion with Mr.
10 McKenzie about the indictment itself?

11 A Yeah. Yeah.

12 Q What was that discussion?

13 A Basically, he told me -- he was, like, it is --
14 probably we're going take a little while -- take a little
15 while for us to -- to even go to court. Because at that
16 time, I wasn't indicted. He didn't receive no information
17 that I -- I -- I had been indicted at the time.

18 Q Okay. What else did you discuss about the indictment?

19 A That was just -- it was just -- it was just that.

20 Q Did you ever review that indictment with Mr. McKenzie?

21 A Just -- just as I said, we never received no
22 paperwork, no Rule 5, or anything. At the time of trial,
23 if I'm not mistaken, I think it been indictment during that
24 time, if I'm not mistaken.

25 Q All right. Did you ever discuss with Mr. McKenzie

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1 about what you're alleging today, which is that the grand
2 -- you allege the grand jury didn't meet and that you were
3 not indicted? Did you ever have that discussion with Mr.
4 McKenzie?

5 A I -- to be honest with you, I didn't -- I didn't even
6 know -- know anything about that, you know.

7 Q Okay.

8 A Not -- I didn't know nothing -- anything about the
9 procedures.

10 Q Okay. Did you ever -- did your lawyer ever make a
11 request for any sort of impanelment documents for the grand
12 jury?

13 A No, sir, he didn't.

14 Q All right. Is that something you -- you wished he
15 would've done?

16 A Yes, at the time.

17 Q All right. And is your testimony that you learned
18 about -- or that you formed this belief that you were not
19 indicted by the grand jury after your plea?

20 A Yes, sir.

21 Q Had you had that belief prior to your plea, would you
22 have entered the plea?

23 A No, sir.

24 Q What would you have done?

25 A I mean, that would've give us time -- that would've

1 gave us time to -- to build a defense. I mean, you know,
2 we didn't even have a defense to take it to trial.

3 Q Well, if you would've been under that belief at the
4 time, that you were not indicted, would that have -- would
5 you have asked your lawyer to challenge the indictment?

6 A Yes. I would ask him to challenge it, I mean, because
7 at -- at the time, I mean, if I had know what I know now,
8 yeah, I would've asked him to challenge the indictment.

9 Q Okay. Mr. Walcott, do you recall the plea itself?

10 A The plea, far as?

11 Q Do you recall the judge -- obviously, there was a --
12 there was a plea. And there is a transcript that's already
13 a part of the record of the plea. Do you recall the plea
14 occurring?

15 A What -- what -- the original plea?

16 Q Correct. The plea -- when you entered the plea to
17 burglary-second. Do you recall the plea occurring?

18 A No. No. No, I don't.

19 Q You don't remember it?

20 A Unh-unh.

21 Q Okay. Do you recall the judge asking you any sort of
22 questions or anything like that at the plea?

23 A Yeah. You talking about during the plea, like, when
24 -- when he asked me if I -- if I was going to plead guilty?
25 Yeah.

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1 Q Okay. And do you remember responding to some of those
2 questions that the Court was asking you?

3 A Yeah. Some -- some -- some response.

4 Q All right. Well, why -- tell me this: Why was it
5 that you decided -- or ended up pleading guilty?

6 A I mean, just -- just as I said, I mean, when -- when
7 me and him discussed it, it was, like -- basically, it was
8 -- I mean, he -- he -- he basically told me -- he was,
9 like, the solicitor at the time was going to be seeking for
10 the -- you know, seeking the -- the maximum of -- of the
11 charges. So, you know, he basically told me -- he was,
12 like, if we probably plead right now, I wouldn't -- I
13 wouldn't get the max of the -- of the charges.

14 MR. BOOZER: Your Honor, may I approach the witness?

15 THE COURT: Yes, sir.

16 Q Mr. Walcott, I want to hand you a copy of the plea
17 transcript.

18 A Uh-huh.

19 Q And if you would -- and I'm looking directly at page
20 6. If you would, look at the time of the -- of the
21 transcript and review to yourself what the judge is -- is
22 speaking to you about.

23 A Okay.

24 Q Okay. And -- and looking at that, the Court says (As
25 read): "I understand the facts. The state has presented

1 their entire case, and the facts are already in the
2 transcript. I find there's a factual basis for your plea."

3 In -- what were you pleading to in the plea, burglary-
4 second?

5 A I don't -- I don't -- I don't know.

6 Q You don't remember?

7 A I don't even remember.

8 Q Okay. Other than what we've talked about, with regard
9 to the indictment and the impanelment of the grand jury, is
10 there anything else that you have not told the Court
11 regarding your allegations or anything that you feel you
12 need to raise to the Court about your allegations
13 supporting your PCR?

14 A I mean, just -- just as I stated with -- with -- with
15 the Rule 14-9-210, and the prosecutor was responsible for
16 preparing an indictment, and also going by the -- going by
17 this calendar right here, that I believe that I -- I stated
18 prosecutor misconduct too.

19 Q Okay.

20 A There was prosecutor misconduct, what I believe,
21 because the solicitor didn't go by the proper statute,
22 which was 14-9-210, to get a true bill back on the
23 indictment.

24 Q All right. Anything else that we're -- that is being
25 left out?

CROSS-EXAMINATION BY MR. GOURLEY - DEXTER WALCOTT

30

1 A I think that -- that -- that would be it.

2 Q Okay.

3 MR. BOOZER: May I approach, Your Honor?

4 THE COURT: Certainly.

5 MR. BOOZER: Your Honor, I don't have any further
6 questions at this time. Thank you.

7 THE COURT: Okay. Cross-examination?

8 MR. GOURLEY: Thank you, Judge.

9 (Whereupon, Mr. Gourley and Mr. Boozer conferred.)

10 CROSS-EXAMINATION

11 BY MR. GOURLEY:

12 Q Mr. Walcott, how many times did you meet with Mr.
13 McKenzie prior to your plea?

14 A Twice.

15 Q Sir?

16 A Twice. Twice.

17 Q Twice? Okay.

18 A Yeah.

19 Q And during those meetings y'all didn't review any
20 discovery at all?

21 A Nope.

22 Q Y'all didn't discuss any defenses?

23 A No, sir.

24 Q Did you give him any leads or witnesses to look into?

25 A It never -- it never -- it never occurred. Just as --

1 just as I stated, I mean, everything -- it happened so
2 fast. It was, like, is you going to trial today? And
3 basically, we never had time to even grab a defense.

4 Q Okay. Were you happy with Mr. McKenzie's services?

5 A I mean, at the time, you know -- I mean, basically, at
6 the time I was.

7 Q Okay. So despite the fact that you didn't review the
8 state's evidence, despite the fact that you didn't go over
9 any defenses, despite the fact that he didn't look into any
10 witnesses, you were still satisfied with his services?

11 A No. I wasn't satisfied, I mean, with -- with the --
12 the way how it occurred, you know, like, dealing with --
13 you know, I mean, he -- he -- he didn't even did any of
14 those -- any of those things right there. But at the end
15 of the day, I mean, I state -- stated on record -- I stated
16 on record that I had wanted another attorney at the time
17 and I was denied an attorney.

18 Q Why'd you want another attorney?

19 A Huh?

20 Q Why'd you want another attorney?

21 A Because he never did anything.

22 Q Okay.

23 A I mean, he -- I mean, far as, just like I said, I
24 talked to him two times and that was it.

25 Q Okay.

1 A I mean, we never ---

2 Q So ---

3 A --- had a chance to get a defense or either discuss
4 the case on any of it?

5 Q Okay. So you weren't satisfied with his services,
6 then?

7 A No, I wasn't.

8 Q Tried to get him relieved?

9 A Yeah.

10 Q Okay. Do you remember telling the judge that you were
11 satisfied with his services?

12 A Yes.

13 Q Okay. So that was a lie?

14 A It wasn't a lie. It was -- I don't consider it as
15 being a lie. It was basically just really trying to get
16 everything over with.

17 Q Trying to get everything over with?

18 A At the time.

19 Q Okay. What do you mean by that?

20 A I mean, being frustrated and everything that the judge
21 wouldn't allow me to get another attorney at the time. And
22 basically, so I was, like, you know, I'm satisfied with
23 whatever occurred to whatever.

24 Q Just wanted to plead guilty and get it all behind you?

25 A In a sense.

1 Q I got you. You remember telling the judge that no one
2 was promising you or threatening you to plead guilty?

3 A Yeah.

4 Q And you remember telling the judge that you were
5 indeed guilty?

6 A I don't occur [sic] that.

7 Q You don't remember admitting your guilt during your
8 guilty plea?

9 A I believe I -- I told him that I -- I apologize for
10 the way -- the -- the thing -- I apologized for -- for the
11 incident that occurred. I never, like -- I think that was
12 my exact words.

13 Q Okay. Do you have a copy of the transcript with you?

14 A I -- I don't have a copy of -- no, I don't.

15 MR. GOURLEY: Your Honor, may I approach?

16 THE COURT: You may.

17 Q Mr. Walcott, I'm going to show you a copy of your
18 guilty-plea transcript. If you -- just read to yourself
19 line 24 and then go to -- turn to the next page, please,
20 sir. Right here.

21 A Yeah. I might've -- I might've did say it.

22 Q So you did, in fact, say that you were guilty,
23 correct?

24 A I mean, that was the only way I was going to get the
25 -- I guess, get the plea -- whatever -- what I was pleading

1 to at the time.

2 Q Okay. So you pled guilty to get, what, the benefit of
3 the plea deal?

4 A I mean, just like I said, I mean, at the time I
5 pleaded guilty, I mean, just to get everything over with at
6 the time.

7 Q Okay. Any question that you're guilty of these
8 charges?

9 A Excuse me?

10 Q There's no question that you are guilty of these
11 charges, right?

12 A I mean, it -- it state -- it states that right there.

13 Q Okay. And you're not disputing your guilt, are you?

14 A I'm not disputing that -- am I ---

15 Q That you're ---

16 A --- guilty?

17 Q --- guilty?

18 A Of -- of -- of the crime?

19 Q Yes, sir.

20 A I mean, the way that it occurred -- I mean, way that
21 it occurred, no, I'm not guilty of it.

22 Q Okay. And what makes you not guilty of it?

23 A Well, how the accident occurred?

24 Q Yes, sir.

25 A I mean, basically, I mean, I don't think I ever said

1 it on record. But the process on how they occurred, me and
2 him was tussling -- me and -- me and Schrader was tussling
3 with the gun and the gun had went off. I didn't
4 intentionally went and shot -- shoot Mr. Schrader.

5 Q Okay.

6 A And that -- that was another thing in my defense:
7 that I was trying to tell my lawyer at the time. But I
8 guess everything was just in the heat of the motion [sic]
9 at the time. And basically, you know, he never really got
10 no statement -- just like I said, we never did -- we never
11 really even went over the case.

12 Q Okay. So how did this event come about? Didn't you
13 break into the victim's shed?

14 A No. I didn't break into the -- all right. You had --
15 you had another individual, too, which was -- I -- I
16 believe his name is Darius Spraw (phonetic).

17 Q Okay.

18 A Darius Spraw -- he intentionally kicked -- kicked in
19 the Schrader door.

20 Q Okay.

21 A He kicked in the Schrader door. And they had a little
22 confrontation before that -- that event had occurred.

23 Q Okay.

24 A And, you know -- you know what I'm saying? But he
25 admit -- he admitted on -- on -- on record that I was the

1 individual that told him to beat Kevin Schrader up.

2 Q Uh-huh.

3 A And, you know, so -- but at the time I didn't know Mr.
4 Spraw -- you know what I'm saying? -- Mr. Spraw was -- was
5 going even said that. I thought he was, you know, going --
6 going -- was -- was going to tell it how it eventually --
7 how -- how it went down.

8 Q Okay.

9 A But his story went in a whole nother direction when we
10 took it to trial. So ---

11 Q Okay.

12 A --- you know, it -- it -- it -- that's how it
13 occurred, you know.

14 Q Got you. All right. Well, one of your other
15 allegations is that your attorney, Mr. McKenzie, didn't
16 file an appeal on your behalf?

17 A Yeah.

18 Q Okay. Did you ask your attorney to file an appeal?

19 A At the time I don't -- I don't remember if I asked him
20 to file appeal or not.

21 Q Okay.

22 A I don't -- I don't even remember.

23 Q Okay. That's fair enough. Mr. Walcott, I don't have
24 any other questions. Thank you, sir.

25 MR. GOURLEY: Thank you, Judge.

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1 THE WITNESS: Okay.

2 THE COURT: Redirect?

3 MR. BOOZER: No redirect, Your Honor.

4 THE COURT: All right. Thank you, sir. You may step
5 down.

6 (Whereupon, the witness exited the witness stand.)

7 THE COURT: And you may call your next witness.

8 MR. BOOZER: No further witnesses on behalf of the
9 applicant, Your Honor.

10 THE COURT: All right. Applicant rests.

11 MR. GOURLEY: And, Judge, we would call Mr. McKenzie,
12 please.

13 THE COURT: All right.

14 (Whereupon, the witness came forward.)

15 STEVEN SMITH MCKENZIE, having been first duly
16 sworn, testified as follows:

17 MR. GOURLEY: May it please the Court, Your Honor?

18 THE COURT: Certainly.

19 DIRECT EXAMINATION

20 BY MR. GOURLEY:

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

22 A 1994, so that's 22 years.

23 Q And were you appointed or retained?

24 A I was retained.

25 Q And how many times did you meet with Mr. Walcott prior

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1 to his plea?

2 A I don't recall. But I do know that -- that in my file
3 I have an -- a substitution of counsel. It was dated for
4 late April -- I think it was April 22nd -- from the public
5 defender's office. He had a public defender before me.

6 Q Okay.

7 A And -- and so April of 2014 I was substituted as
8 counsel. And we went to trial in June.

9 Q Okay.

10 A I'm -- I -- I can't recall how many times I met with
11 him.

12 Q Okay. And did you have the opportunity to review
13 discovery with Mr. Walcott?

14 A I did. We -- we got discovery in. The -- the -- the
15 basis for what, as I can recall, happened, Mr. Walcott was
16 accused, along with another individual, of going into Mr.
17 Schrader's home over an incident where Mr. Walcott was
18 claiming that Mr. Schrader stole property from Mr.
19 Walcott's home or -- or, I guess, a -- an outbuilding is
20 home.

21 And when it -- when that happened, Mr. Walcott was
22 there. And another individual that was with Mr. Walcott
23 kicked the door in, or Mr. Walcott kicked the door in.
24 That's in dispute. Went into the home of Mr. Schrader and
25 -- and accused Mr. Schrader of speaking to Wayne DuBose,

DIRECT EXAMINATION BY MR. GOURLEY - STEVEN SMITH MCKENZIE 39

1 who was an investigator with the sheriff's department about
2 stolen property in the area.

3 And then the -- it got heated. And Mr. Schrader gave
4 a statement that Mr. Walcott shot him in the leg after
5 pointing a gun to his head, but then shot him in the leg.
6 And then they left.

7 Q Okay. How would you characterize the state's evidence
8 against Mr. Walcott?

9 A Well, they went into another person's residence and
10 shot him.

11 Q All right.

12 A That -- that was the accusation. I think that there's
13 no dispute that -- that Mr. Schrader was -- was shot with a
14 9-millimeter pistol. The state had -- issued a search
15 warrant on Ms. Cook, which was the girlfriend of Mr.
16 Walcott at the time, who owned a 9-millimeter pistol that
17 was located in her residence. She gave a statement about
18 the pistol and said that she did own it but she was unaware
19 of Mr. Walcott having used the pistol or having possession
20 of the pistol but the pistol was there.

21 Q Okay.

22 A So they had that evidence. They had the statement
23 from Mr. Schrader. No doubt that, you know, part of our
24 strategy at trial was to kind of shed the -- some bad
25 lights on Mr. Schrader or -- or make him look like an

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1 inconsistent witness with the fact that he was a -- he has
2 stolen from Mr. Walcott. That was kind of our trial
3 strategy going into it.

4 As we got into the trial -- and, of course, Mr.
5 Walcott was charged with burglary-first, which the state, I
6 felt like, could -- you know, with the evidence that was
7 presented against him, could have proven that case ---

8 Q Uh-huh.

9 A --- to the jury and a jury could've come back and
10 found that -- that he was -- and that would've been a
11 potential 15 to life. And so during the course of the
12 trial, we discussed the ramifications if the jury came back
13 with a burglary-first conviction. My thoughts that we need
14 to try to limit Mr. Walcott's exposure, based on the
15 evidence that was going forward in trial. And I felt like
16 that -- that -- I went to the state and negotiated a
17 burglary-second, although it was violent, but his exposure
18 was down from -- from 15 to life to -- to zero to 15.

19 Q Right.

20 A And obviously, the -- the weapon -- or the use of a
21 weapon during a violent crime carries 5. But I felt like
22 we needed to get his exposure down to where he at least
23 could get out at -- at a -- at a relatively young age and
24 continue with his life. But the evidence, I thought, I
25 felt like was pretty overwhelming against him that he shot

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1 Mr. Schrader in the leg.

2 Q Okay.

3 A I . . .

4 Q So y'all had begun trial, I guess?

5 A I'm sorry?

6 Q Y'all had started trial?

7 A We did. It was -- it was scheduled for June 6th. And
8 I did file a motion for a continuance ---

9 Q Uh-huh.

10 A --- based on the fact I felt, you know, the -- the
11 problem that we had in this case -- I think this was a 2013
12 case -- I got into the case relatively late, because I
13 think Mr. Walcott was not satisfied with his public
14 defender's handling of the case. And I got into the case
15 knowing that this case was coming up for the next term of
16 court, which ---

17 Q Uh-huh.

18 A --- would've been in June. I -- I did file a motion,
19 but it was denied because at that point in time, I -- the
20 -- I think the Court felt like Mr. Walcott was trying to
21 get me involved to get a continuance so -- you know, I
22 guess, kick the case down the road a little bit further.

23 The Court denied that motion. We did have the
24 discovery information, search warrant. I am certain I went
25 over that with Mr. Walcott. That's my normal procedure.

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1 Q Uh-huh.

2 A And, you know, again, the testimony of the witnesses
3 -- you know, it -- it's -- it's difficult to overcome the
4 fact that that your -- the -- Mr. Schrader testified that
5 he was laying on the floor and Mr. Walcott had a gun
6 pointed to his head and then shot him in the leg.

7 Q Uh-huh.

8 A And that's a -- that's a very difficult thing to
9 overcome.

10 Q Yes, sir.

11 A So anyway, that -- that's why we negotiated a plea.
12 Mr. Walcott accepted the plea. It was in front of Judge
13 Cothran, I believe.

14 Q Yes, sir.

15 A And Judge Cothran and I argued -- my argument at the
16 -- at the mitigation part -- portion of the plea was that
17 we had a thief who stole from Mr. Walcott. The -- I -- the
18 problem with that is, obviously, you don't take the law
19 into your own hands.

20 And that's -- Judge Cothran sentenced him to 14 years.
21 I was asking for something substantially lower than that.

22 Q Right.

23 A So . . .

24 Q Did Mr. Walcott ever request that you file an appeal?

25 A He did not. I -- I do advise all my clients of ten

DIRECT EXAMINATION BY MR. GOURLEY - STEVEN SMITH MCKENZIE 43

1 days' right to request an appeal or I have -- I have to put
2 notice of intent to appeal within ten days. He did not
3 request that. And I closed my file.

4 Q Did you ever look into the indictment or whether or
5 not it was properly true-billed by the county grand jury?

6 A No. The first time I've heard of that was when we
7 were sitting in court today. And I have a copy of the
8 indictment. And he was -- according to the indictment, it
9 -- he was -- he was indicted on four counts -- first-degree
10 burglary, assault and battery-first, possession of a weapon
11 during a violent crime, accessory after the fact to Class
12 A, B, and C.

13 I believe we got Count 4, which was accessory after
14 the fact, dismissed. He pled to -- to possession of a
15 weapon during a violent crime; assault and battery-first,
16 which carries zero to 10; and then, he pled -- we reduced
17 the burglary-first to a burglary-second, violent.

18 Q Okay.

19 MR. GOURLEY: Your Honor, I don't have any other
20 questions.

21 Q Thank you, Mr. McKenzie.

22 (Whereupon, Mr. Boozer and the applicant conferred.)

23 MR. BOOZER: Court's indulgence, Your Honor?

24 THE COURT: All right, sir.

25 (Whereupon, Mr. Boozer and the applicant conferred.)

CROSS-EXAMINATION BY MR. BOOZER - STEVEN SMITH MCKENZIE 44

CROSS-EXAMINATION

BY MR. BOOZER:

Q Mr. McKenzie, how you doing?

A I'm doing well. How are you?

Q I'm doing fine. Thank you. In meeting with Mr. Walcott -- and you may have already testified to this. But did you have any discussion with him about the indictment or any defects in the indictment?

A No. I don't think that was ever even an issue. And as I recall him testifying earlier, he -- I don't think he realized that until after the case was over with. But I don't -- I don't recall the indictment being an issue.

Q Okay. Did -- did you go and ever check to see whether the grand jury had ever met during the time frame when he was indicted, I believe November 14th of 2013?

A No, I did not check that, simply because, you know, I -- I had a copy of the indictment. It was true-billed. I'm looking at it right now. It was true-billed on 11/14/2013. And, of course, I was involved -- I got involved in the case on -- and I have my notice of appearance of counsel here. It was April 22nd, 2014. So that would've been some seven months later that I got involved.

So I didn't -- I didn't have any reason to doubt that the grand jury met. I mean, I had an indictment that was

CROSS-EXAMINATION BY MR. BOOZER - STEVEN SMITH MCKENZIE 45

1 signed by the -- I'm assuming the foreman of the grand jury
2 -- yes -- foreman of the grand jury. The solicitor's
3 signature is on here.

4 So I didn't have any reason to doubt that the grand
5 jury had met and that the -- and grand jury procedures were
6 proper. So . . .

7 Q Did you ever review a calendar or the judicial Web
8 site to see if there was a term of grand jury scheduled to
9 convene during that time frame?

10 A I did not. I -- I think that -- if -- if I recall
11 correctly, the grand jury normally meets the Thursday
12 before the general-sessions term. I could be wrong. You
13 know, it could be some other day. But usually, we meet the
14 week before and -- of -- of a grand -- of a general-
15 sessions term. But I -- I did not look at that. No.

16 Q Had -- had he raised that issue at the time, would you
17 have addressed the issue?

18 A Certainly. I would -- if he would've said anything
19 that he thought the indictment was improper, I would've
20 gone forward. And if I would've thought that the
21 indictment was improper, looking at it -- I -- I don't see
22 anything improper about it.

23 You know, I've made motions to quash indictments
24 before, based on time frames or, you know, the
25 inconsistencies with the indictment itself versus a Count 1

CROSS-EXAMINATION BY MR. BOOZER - STEVEN SMITH MCKENZIE 46

1 or 2. And -- and -- but I didn't see anything improper
2 with this indictment.

3 Q All right. Did you ever try and get any of the grand
4 jury -- the impanelment documents?

5 A No, I did not.

6 Q Who -- what was your relationship like with Mr.
7 Walcott, I guess, at trial? Was it a good relationship or
8 -- or had it deteriorated at all?

9 A It had deteriorated at some point. You know, it --
10 it's difficult for anybody -- and I've been -- I've been
11 doing this for a while. And it's difficult for anybody
12 sitting through a jury trial that, when the -- the evidence
13 is -- is pretty much stacked against you as it was here, I
14 mean, all those eyewitness testimony and the -- the person
15 that was testifying against him and the people that were
16 testifying against him were not the most reputable people
17 in the community.

18 It still was -- like I said, it was very difficult for
19 a jury -- you know, when the jury is sitting there and the
20 -- the person that's testifying said, "Yeah. You know, I'm
21 not the best person in the world. But I'm at my home and
22 someone breaks in and shoots me in the leg, and that's the
23 person that did it." That's pretty difficult evidence to
24 overcome.

25 Q And -- and talking about sort of the -- the character

CROSS-EXAMINATION BY MR. BOOZER - STEVEN SMITH MCKENZIE 47

1 of the -- the relationship at this point, when you say it
2 deteriorated, I mean, what -- what was it -- was it
3 contentious? I mean, was he disagreeing with you?

4 A It -- it was -- he was -- he was just -- I think he
5 was disagreeing to me, if I remember correctly -- I mean,
6 disagreeing with, you know, the witnesses and, you know, it
7 -- again, it's -- it's -- like I said, it's -- it's -- the
8 witness's statement against, you know, anything that he
9 would have said. Now, we didn't get to the point where he
10 would've testified. But the problem is he had a prior
11 record.

12 And one of the accusations that -- that we were making
13 was that Kevin Schrader, who was the victim in this case,
14 had a crack cocaine problem. That's the reason he stole
15 from Mr. Walcott. And the problem that we had is Mr.
16 Walcott had a prior trafficking charge, I think, in crack
17 cocaine -- conviction on his record. So, you know, that
18 would've been a difficult thing for us to -- you know, I
19 don't -- I don't want the jury speculating why this guy was
20 over there stealing from a former drug dealer and this --
21 this guy was a drug addict.

22 So it's -- it -- it was a -- it was a difficult,
23 contentious -- I don't know if it was contentious. But we
24 -- we had some discussions about what -- how our trial
25 strategy was going to evolve as a -- as the testimony was

CROSS-EXAMINATION BY MR. BOOZER - STEVEN SMITH MCKENZIE 48

1 evolving.

2 Q Have you had an opportunity to review the plea
3 transcript?

4 A I -- I think -- yeah. I -- I've read that.

5 Q Okay.

6 MR. BOOZER: And if I may approach the witness, Your
7 Honor?

8 THE COURT: Certainly.

9 Q And, Mr. McKenzie, if you would, just take a moment
10 and look at page 6 -- really, the Court's top question
11 there.

12 A At the -- at line 2? The Court -- I understand the
13 facts?

14 Q Yes, sir.

15 A Okay. You want me to read that or ---

16 Q Just to yourself for a moment.

17 A Okay. Yeah.

18 Q Here, the Court states on page 6 (As read): "The
19 state has presented their entire case, and the facts are
20 already in the transcript. I find there is a factual basis
21 for your plea."

22 Other than what had been presented at trial, were
23 there any independent -- was there a factual recitation in
24 the plea itself that he admits to? And if you want, I can
25 hand this back to you ---

CROSS-EXAMINATION BY MR. BOOZER - STEVEN SMITH MCKENZIE 49

1 A No. I don't -- I didn't see that in there.

2 Q Okay.

3 A I did not see -- yeah. The -- the judge had already
4 sat through the testimony. So he had a factual basis. I
5 -- I guess that's what Judge Cothran was saying: that, you
6 know, he'd been through the testimony; he was sitting here,
7 obviously attentive. And he heard what the -- what was
8 testified to by the witnesses.

9 MR. BOOZER: Court's indulgence, Your Honor?

10 THE COURT: All right, sir.

11 (Whereupon, Mr. Boozer and the applicant conferred.)

12 Q At the end of the plea, did you have any conversations
13 -- any further conversations with Mr. Walcott after the
14 plea?

15 A I am certain we did. But I don't recall what they
16 were.

17 Q Did -- did he ask you to file an appeal?

18 A He did not.

19 Q Okay. Did you have a discussion with him about filing
20 an appeal?

21 A I -- I -- I don't have any notes saying that I did
22 that specifically. That's normally what I do every time we
23 do an appeal. I say, "Listen, if you didn't like anything
24 about this, you need to do it within ten days, file an
25 appeal."

CROSS-EXAMINATION BY MR. BOOZER - STEVEN SMITH MCKENZIE 50

1 Q Okay.

2 A That's my normal course of business with anybody that
3 I -- I'm in trial with or do a plea with. A lot of times
4 -- and Judge Cothran will mention that on the record. I
5 noticed that he did not mention that this time on the
6 record, though.

7 Q And do you have any independent recollection, though,
8 of having that discussion with Mr. Walcott ---

9 A I don't have an independent recollection of that.
10 It's -- that's my normal practice.

11 Q Okay. Thank you, Mr. McKenzie. No further questions.

12 MR. GOURLEY: I have nothing further, Your Honor.

13 THE COURT: Thank you, sir.

14 THE WITNESS: Thank you.

15 THE COURT: You may step down.

16 (Whereupon, the witness exited the witness stand.)

17 THE COURT: Call your next witness.

18 MR. GOURLEY: No additional witnesses, Your Honor.

19 THE COURT: Anything in reply?

20 MR. BOOZER: Nothing in reply, Your Honor.

21 THE COURT: Brief argument?

22 (Whereupon, Mr. Boozer and Mr. McKenzie conferred.)

23 MR. BOOZER: Thank you, Your Honor. If it pleases the
24 Court: Judge, obviously, Mr. Walcott has a unique argument
25 in -- in his belief that the grand jury never met and he

1 was, therefore, never indicted. I'll -- I'll certainly let
2 Mr. Walcott's testimony stand as -- as to those
3 allegations. But he certainly -- he certainly believes
4 that that never occurred and, therefore, he should be
5 entitled to a new trial.

6 As he indicated before, it -- it's his belief that --
7 that he should not even -- even if he were successful on
8 that claim, a new trial shouldn't even happen. He should
9 just be basically let out because he was never indicted.
10 That's his -- that's what he requests with regard to that
11 allegation.

12 Judge, going to the appellate issue, I believe, based
13 on Mr. McKenzie's testimony, he indicated that he doesn't
14 believe Judge Cothran ever mentioned the right to an appeal
15 in the transcript. Mr. McKenzie did recall that it's his
16 course -- so, I guess, a practice -- to advise of an appeal
17 but he had no independent recollection of whether he had
18 that discussion with Mr. Walcott.

19 I would submit that Mr. Walcott has proven that he's
20 entitled to a belated direct appeal from the plea, based on
21 the lack of -- of that discussion in the transcript, as
22 well as the lack of recollection from Mr. McKenzie if -- if
23 he discussed that with Mr. Walcott. And that would be our
24 position, Judge.

25 THE COURT: All right. Thank you.

1 MR. GOURLEY: Your Honor, I would request that you
2 deny the -- Mr. Walcott's application for postconviction
3 relief. In regards to the indictment issue, I believe Mr.
4 Walcott has presented no credible evidence or arguments to
5 support his claim that the indictment was not properly
6 true-billed or that the county grand jury was convened
7 appropriately.

8 In regards to the appellate issue, Your Honor, I think
9 *Roe v. Flores-Ortega* states that there are two exceptions
10 as to require somebody to file a notice of appeal, one
11 being that the different affirmatively requests the counsel
12 file an appeal or that there was some constitutional
13 deprivation taking place during that guilty plea. I
14 certainly don't think that we had any constitutional --
15 constitutional deprivation during the course of the guilty
16 plea. And Mr. Walcott himself testified that he did not
17 request Mr. McKenzie to file an appeal.

18 Additionally, I think Mr. McKenzie only bolsters that
19 argument by testifying that his normal course of practice
20 is to file an appeal or discuss the right to an appeal with
21 his client. And he received no notice or request from Mr.
22 Walcott to file an appeal.

23 And for those reasons, Your Honor, I would ask that
24 you deny Mr. Walcott's application.

25 THE COURT: The Court agrees with the argument and

1 position of the state in this matter and, therefore, is
2 compelled to deny the request of the applicant, including
3 the belated-appeal issue.

4 And if you'd please prepare an order, Mr. Gourley?

5 MR. GOURLEY: Yes, Your Honor.

6 (Whereupon, the proceeding was concluded at 12:14 p.m.)

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

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CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND
COMPLETE TRANSCRIPT OF RECORD IN THE HEARING OF THE
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR SUMTER COUNTY, SOUTH CAROLINA, ON THE 15TH
DAY OF MARCH, 2016.

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



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

MAY 4, 2017

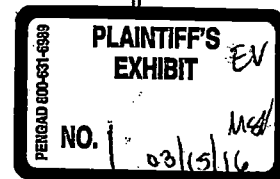
November 2013 Go To Date

Terms of Circuit and Family Court November 2013

Holidays:

Mon Nov 11 - Veterans Day
Thu Nov 28 - Thanksgiving Day
Fri Nov 29 - Day after Thanksgiving

Circuit Number	11/4/2013	11/11/2013	11/18/2013	11/25/2013
3	Common Pleas/Common Pleas Nonjury Sumter James, George SULLIVAN 4 NO CR NEEDED 5 SULLIVAN 6, 7 am NO CR NEEDED 8 General Sessions Williamsburg Newman, Clifton BAKIS-RAY 4, 5, 6 NO CR NEEDED 7, 8 General Sessions Clarendon Young, W. SINGLETARY 4, 5, 6, 7 NO CR NEEDED 8	Common Pleas Non- Jury Cothran, R. SINGLETARY General Sessions Lee James, George SULLIVAN 12, 13, 14 NO CR NEEDED 15	General Sessions Non-Jury James, George SMITH 18 NO CR NEEDED 19 SMITH 20, 21, 22 General Sessions Sumter Young, W. SULLIVAN	General Sessions/State Grand Jury 25 Sumter Seals, William SULLIVAN 25 General Sessions Non-Jury 25 Seals, William
	Family Court Sumter McFaddin, George M. SALTERS 4, 5 KELLY 6 SALTERS 7, 8	Family Court 11, 12, 13, 14 Sumter Jenkinson, Gordon B. NYE 12 NO CR NEEDED 13 NYE 14	Family Court Sumter McFaddin, George M. SALTERS Family Court Williamsburg	Family Court 25 Sumter McFaddin, George M. SALTERS 25 Family Court



STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Dexter Walcott, #268361,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

2015-CP-43-434

ORDER OF DISMISSAL

RECORDED
2016 OCT 24 PM 4:05
JUDGE: J. G. COCHRAN
CLERK: J. G. COCHRAN
SUMTER COUNTY, SOUTH CAROLINA

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Shawn H. Hart
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on February 18, 2015. Respondent submitted its return on March 27, 2015. An evidentiary hearing into the matter was convened on March 15, 2016, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance Boozer, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was true bill indicted at the November 2013 term of the Sumter County Grand Jury for burglary-first degree, possession of a weapon during a the commission of a violent crime, and assault and battery – first degree (2013-GS-43-1017). Steven McKenzie, Esquire represented Applicant. On June 12, 2014, Applicant pled guilty to the lesser included offense of burglary-second degree (violent), assault and battery – first degree, and possession of weapon during a violent crime before the Honorable R. Ferrell Cothran, Jr. Judge Cothran sentenced Applicant without negotiations or recommendations to fourteen years imprisonment

for burglary-second degree, ten years imprisonment for assault and battery – first degree, and five years imprisonment for possession of a weapon during a violent crime with all sentences running concurrently. Applicant did not appeal his guilty plea or sentence.

ALLEGATIONS¹

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

1. Ineffective Assistance of Counsel
 - a. Ineffective assistance of counsel for failing to object to indictment.
 - b. Counsel failed to obtain impaneling documents and supporting materials prior to trial.
2. Involuntary Guilty Plea
 - a. No factual basis for guilty plea rendering guilty plea involuntary.
3. Prosecutorial Misconduct
 - a. Indictment ineffective under Rule 3(c) etc...
 - b. Prosecution failed to comply with statutory law provisions Ann. 14-9-210.
 - c. Prosecutor knowingly and willingly caused false and misleading information to be printed and published in Applicant's indictment.
 - d. State unlawfully empaneled its grand jury outside the jurisdiction of the court of general sessions for illegal return of a true bill indictment.
 - e. Grand jury failed to be sworn.
 - f. State failed to comply with 17-25-10 as well as the Fifth Amendment.
4. Denial of Due Process
 - a. Violated rights etc...
5. Lack of Subject Matter Jurisdiction
 - a. Defective indictment
 - b. Indictment was not filed with clerk of court lacking personal jurisdiction to entertain the indictment.
6. Judicial Misconduct
 - a. Applicant further alleges judicial misconduct for allowing an illegal indictment.

¹ Applicant filed two amendments on November 9, 2015, and February 29, 2016 adding additional allegations.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented testimony from Steven McKenzie, Esquire. (hereinafter "Plea Counsel"). This Court also had before it a copy of the Sumter County Clerk of Court records, Applicant's South Carolina Department of Correction records, the guilty plea transcript, the PCR application, and both amendments to the application.

Applicant moved to be provided with a copy of all documents pertaining to the empanelment of the state grand jury which indicted him. Applicant also moved for a continuance to allow time to obtain these documents. This Court denied both motions.

Applicant testified that he met with plea counsel twice prior to his guilty plea. He stated that he did not recall reviewing discovery with plea counsel, they did not discuss possible defenses, and he did not give plea counsel any leads or witnesses to investigate. He testified that he did not want a new trial, he only wanted his sentence vacated. He stated that he had never actually been indicted by the grand jury. Applicant's Exhibit #1, a calendar of the terms of court from November 2013, was admitted without objection. Applicant testified that this calendar showed that the grand jury which indicted him never actually met in the time in which the indictment stated they did because it did not show the court of General Sessions for Sumter County.

Applicant testified that he did recall telling the plea judge that he was satisfied with his attorney's services, that no one was promising or threatening him in order to plead guilty, and that he was indeed guilty of this crime.

Plea Counsel testified that he had been practicing law for twenty-two years. He stated that he was retained to represent the Applicant in this case. He stated that he never thought to



check the indictment because it was true billed, and he never tried to get the empanelment documents from the grand jury because he never saw anything wrong with the indictments. He stated that some of the State's evidence against Applicant included the 9mm firearm that was used to shoot the victim in the leg and was found in Applicant's residence and a statement that Applicant's girlfriend gave to law enforcement. He opined that this was an easy burglary-first case.

Plea Counsel testified that he always advises his clients that they have ten days to file an appeal. He stated that he did not recall Applicant asking him to file an appeal after his guilty plea.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 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 pleas, 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 (1985).

Ineffective assistance of counsel for failing to object to indictment.

Applicant's allegation that plea counsel was ineffective for failing to object to the indictment is meritless and should be dismissed.

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003).



This Court finds that Counsel made no errors in advising Applicant on the sufficiency of the indictment and Applicant produced no evidence to support his allegations that the indictment is defective. Here there was simply no reason to object to the indictments. Counsel credibly testified that he never saw anything wrong with the indictments as they were true billed and properly presented to the grand jury. Accordingly, this Court finds Applicant has failed to satisfy his burden of proving that Counsel's performance in not challenging the sufficiency of the indictment was deficient.

Furthermore, Applicant has failed to show that a challenge to the indictment would have been successful. Applicant also failed to demonstrate that, but for plea counsel's advice, he would not have entered a guilty plea. Id. at 59; see also Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009) (applicant must show "something that would have affected counsel's advice to [the applicant] to accept the plea bargain offered or that would have caused [the applicant] to decline to accept it"). Furthermore, the record before the Court shows Applicant entered his plea freely and voluntarily with a full understanding of the evidence against him. See Simpson v. State, 317 S.C. 506, 508, 455 S.E.2d 175, 176 (1995) ("To knowingly and voluntarily enter a plea of guilty, all that is required is that a defendant have a full understanding of the consequences of his plea and of the charges against him." (citing Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991))). Because Applicant entered his plea after being fully advised of possible defenses, his plea waived his right to raise any defenses to his crimes. See Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) (holding knowing and voluntary plea waives non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence) (citations omitted). This Court finds there is no reasonable probability that had

Counsel challenged the sufficiency of the indictment, Applicant would have chosen to go to trial rather than plead guilty.

Accordingly, this Court finds Applicant has failed to satisfy his burden of proving he was prejudiced by any alleged error of Counsel. Therefore, this allegation is denied and dismissed.

Counsel failed to obtain impaneling documents and supporting materials prior to trial.

Applicant further alleges that plea counsel was inefficient for failing to obtain materials to prove the flaws in the indictments. This allegation is meritless and should be dismissed.

Even if Plea Counsel had moved to quash the indictment and been successful, jeopardy does not attach until a jury is sworn or the plea judge accepts the guilty plea. Crist v. Bretz, 437 U.S. 28, 37 (1978); United States v. Hecht, 638 F.2d 651, 657 (3d Cir. 1981). Under this well-settled principle, the State would have been readily able to re-indict Applicant on the same charge.

Furthermore, these alleged faulty indictments are not prejudicial because they put the Applicant on notice of the charges against him. "An indictment is merely a notice document." State v. Baker, 390 S.C. 56, 62, 700 S.E.2d 440, 442 (Ct. App. 2010) (citing State v. Gentry, 363 S.C. 93, 102-103, 610 S.E.2d 494, 500 (2005)). Whether or not the indictment could be made more definite and certain is irrelevant. Baker, 390 S.C. at 62, 700 S.E.2d at 442. The court noted the following:

"Rather, the court must look at "the indictment with a practical eye in view of all the surrounding circumstances. The sufficiency of the indictment is determined by whether: (1) the offense charged is stated with sufficient certainty and particularity to enable a court to know what judgment to pronounce, and the defendant to know what he or she is called upon to answer and whether he or she may plead an acquittal or conviction thereon, and (2) whether it apprises the defendant of the elements of the offense that are intended to be charged.

Id. (citing Gentry, 363 S.C. at 102-103, 610 S.E.2d at 500).

Moreover, “an indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood.” Id. at 63, 700 S.E.2d at 443 (citing State v. Tumbleston, 376 S.C. 90, 98, 654 S.E.2d 849, 853 (Ct. App. 2007.)) Furthermore, in order to challenge the sufficiency of an indictment, an objection must be made before the jury is sworn in. S.C. Code Ann. §17-19-90 (2003).

A court reviewing an indictment for sufficiency should consider the indictment “‘on its face,’ *and* consider the events at trial.” State v. Reddick, 348 S.C. 631, 636, 560 S.E.2d 441, 443 (Ct. App. 2002). (italics in original). In other words, a court should examine “the totality of the circumstances” to determine if Applicant was cognizant of the crimes for which he was charged. Id.

Moreover, when the indictment referenced the statute the elements of the charge are thereby incorporated into the indictment. See State v. Owens, 346 S.C. 637, 649, 552 S.E.2d 745, 751 (2001), overruled on other grounds by Gentry, 363 S.C. 93, 610 S.E.2d 494; see also State v. Beam, 336 S.C. 45, 50-51, 518 S.E.2d 297, 300 (Ct. App. 1999); see also State v. Crenshaw, 274 S.C. 475, 477, 266 S.E.2d 61, 62 (1980). This allegation is not proper for post-conviction relief as the sufficiency of an indictment must be challenged before the jury is sworn. Therefore, this allegation is denied and dismissed as it is improper for post-conviction relief, lacks factual support for the claim, and is without merit.

Involuntary Guilty Plea

Applicant argues his plea was not given freely and voluntarily. This Court finds otherwise and concludes that Applicant's plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full

understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

Applicant alleges that there was no factual basis for his guilty plea, and this renders his plea involuntary. This allegation is meritless. The Plea Court found on the record that there was a factual basis for Applicant's plea and that it was freely and voluntarily entered into. See Guilty Plea Transcript, p. 6, ll. 4-5. The record reflects Applicant fully admitted his guilt to the plea court. "A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)).

Notably the South Carolina Supreme Court has held "[a] guilty plea represents a break in the chain of events which has preceded it in the criminal process." Id. (citations omitted). "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense

with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Id. (citing Rice, 401 S.C. at 332, 737 S.E.2d at 486). Therefore, this Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made. Accordingly, this allegation must be dismissed.

Prosecutorial Misconduct

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief.

Regardless, it is Applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). Applicant has not carried his burden of proving actual prosecutorial misconduct, therefore, this allegation should be summarily dismissed. Applicant has presented no evidence to prove that any of the prosecutors involved in this case acted improperly in any manner or that they acted on this case with improper indictments. The records before this Court indicate that the indictments were properly true billed, the grand jury did meet and was sworn, and none of the information in the indictments was incorrect or improper. Therefore, these allegations of prosecutorial misconduct are meritless and should be dismissed.

Denial of Due Process

The Applicant alleges a denial of due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965).

Since the Applicant has failed to make even a *prima facie* showing that his due process and other constitutional rights were violated, this Court finds this allegation is meritless and should be denied.

Lack of Subject Matter Jurisdiction

This Court also finds that Applicant's subject matter jurisdiction challenge is without merit. It is clear that defects in an indictment do not affect subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); U.S. v. Cotton, 535 U.S. 625 (2002). An indictment is a notice document, and the indictments in this case were certainly sufficient to give Applicant notice of the charges against him. State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005). Furthermore, Applicant's indictment is valid on its face because it states all the necessary elements of the crime, the date of the offense, and the name of the accused. Costello v. United States, 350 U.S. 359, 363 (1956). Likewise, the indictments were "True Billed" and signed by the foreman. See Pringle v. State, 287 S.C. 409, 410-11, 339 S.E.2d 127, 128 (1986).

Thus, Applicant's indictments appear to have been lawfully obtained.² The indictment procedure in Applicant's case did not deprive him of due process.

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, supra. However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, supra, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

Based on the foregoing, this Court finds that this allegation should be denied and dismissed.

Judicial Misconduct

Applicant alleges judicial misconduct for allowing an illegal indictment. This allegation is meritless and should be dismissed.

A factual finding of judicial misconduct must be supported by clear and convincing evidence. Matter of Peeples, 297 S.C. 36, 374 S.E.2d 674 (1988) (per curiam); Matter of Gravely, 321 S.C. 235, 237, 467 S.E.2d 924, 925 (1996). First, in accordance with the findings above, Applicant has failed to prove that there were any insufficiencies in the indictments. Second, even if there were, Applicant has failed to meet his burden in presenting any evidence proving that the Plea Court knew about these alleged flaws and purposefully accepted the guilty

² Even if Plea Counsel moved to quash the indictment and been successful, jeopardy does not attach until a jury is sworn or the plea judge accepts the guilty plea. Crist v. Bretz, 437 U.S. 28, 37 (1978); United States v. Hecht, 638 F.2d 651, 657 (3d Cir. 1981). Under this well-settled principle, the State would have been readily able to re-indict Applicant on the same charge.

plea despite them. Applicant has proven no judicial misconduct at all, and has failed to point to even one of the Rules of Professional Conduct that would deem this action by the judge inappropriate.

Furthermore, even if Applicant had proven that the Plea Court had violated some Rule of Professional Conduct, this is not prejudicial because it would not alter the outcome of his guilty plea. "In our view, the Rules of Professional Conduct have no bearing on the constitutionality of a criminal conviction. Their purpose is to regulate and guide the legal profession by defining proper ethical conduct, and 'nothing in the Rules should be deemed to augment any substantive legal duty of lawyers or the extra-disciplinary consequences of violating such a duty.'" Langford v. State, 310 S.C. 357, 360, 426 S.E.2d 793, 795 (1993) (citing Rule 407, SCACR). Therefore, this allegation is meritless and should be dismissed.

ALL OTHER ALLEGATIONS

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

CONCLUSION

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

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate

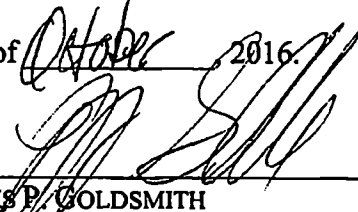


appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 3 day of October 2016.



 BROOKS P. GOLDSMITH
 Presiding Judge
 Third Judicial Circuit

2
 _____, South Carolina

WITNESSES

W. Dubose

Sumter County Sheriff

ARREST WARRANT NUMBER

2013A4310200958

2013A4310200959

2013A4310100673

2013A4310100674

2013A4310200962

ACTION OF GRAND JURY

TRUE BILL

B. De M. Jones

Foreperson of Grand Jury

Date: 11/14/13

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-43-1017

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

NOVEMBER

TERM

2013

THE STATE

vs.

DEXTER ANTONIO WALCOTT

DOUGLAS SPROW

VERNER RAY HODGE JR.

Indictment for

Accessory after the Fact
Burglary / Burglary (After June 20, 1985) - First degree
Poss. Weapon during commission of violent crime
Assault & Battery 1st degree

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF SUMTER)

Accessory after the Fact
Burglary / Burglary (After June 20, 1985) - First degree
Poss. Weapon during commission of violent crime
Assault & Battery 1st degree

At a Court of General Sessions, convened on November 14, 2013 the Grand Jurors of
SUMTER County present upon their oath:

COUNT ONEBURGLARY, 1ST DEGREE

That DEXTER ANTONIO WALCOTT and DOUGLAS SPROW did in Sumter County on or about August 10, 2013 enter the dwelling of Kevin Schrader located at Kolb Road, Sumter, South Carolina without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight, the defendant(s) were armed with a deadly weapon, did enter and/or remain in the nighttime, did use and/or threaten use of a dangerous instrument, and/or displayed what is or appeared to be a knife or firearm; in violation of Section 16-11-0311(A), Code of Laws of South Carolina, 1976, as amended.

COUNT TWOASSAULT & BATTERY 1ST DEGREE

That DEXTER ANTONIO WALCOTT did in Sumter on or about August 10, 2013, violate Section 16-3-600(C)(1) of the code of Laws of South Carolina (1976), as amended, in that he did unlawfully injure another person, Kevin Schrader, and the act occurred during the commission of a robbery, burglary, kidnapping, or theft.

COUNT THREEPOSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That DEXTER ANTONIO WALCOTT did in Sumter County, on or about August 10, 2013, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

COUNT FOURACCESSORY AFTER THE FACT TO CLASS A,B,C FELONY

That VERNER RAY HODGE, JR did in Sumter on or about August 10, 2013, knowing of the commission and completion of the felony of Burglary 1st degree, by the principal felon, Dexter Antonio Walcott and Douglas Sprow, 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 crime of Accessory After the Fact in commission of the felony.

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

Solicitor