

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

J. Michael Baxley, Circuit Court Judge

RECEIVED

DEC 18 2012

S.C. Supreme Court

JAVARIS LAWREN COLEMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-212892

APPENDIX

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)	
COUNTY OF GREENVILLE)	COURT OF GENERAL SESSIONS
State of South Carolina)	2009-GS-23-3208a
)	
)	
-vs-)	TRANSCRIPT RECORD
Javaris Coleman)	

November 10, 2009
Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD MILLER, Judge.

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

Lauren C. Davis, Esquire
Assistant Solicitor
Attorney for the State

Alexander Culbertson, Esquire
Attorney for Defendant

CAROLINE HISKELL
Circuit Court Reporter

State versus Coleman

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I N D E X

(There were no exhibits or witnesses presented.)

State versus Coleman

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P R O C E E D I N G S

THE CLERK: Your Honor, this is Indictment 2009-GS-23-4318, Buddha Shahid Shabazz, indicted for possession of marijuana with intent to distribute, pleading to the same. It is a Waiver.

Indictment 2009-GS-23-3208, Javaris L. Coleman, indicted for burglary, first degree, pleading to the same. It is a True Bill.

Indictment 2009-GS-23-4339, Gary David Smith, Jr., indicted for possession of contraband in county prison, pleading to the same. It is a Waiver.

Please raise your right hand.

BUDDHA SHAHID SHABAZZ, JAVARIS L. COLEMAN, GARY DAVID SMITH, JR., having been duly sworn, testified as follows:

Thank you.

THE COURT: Jail days.

MS. DAVIS: Zero on Mr. Shabazz, 147 days on Mr. Coleman and zero on Mr. Smith. He's in on child support.

THE COURT: In the last 24 hours, have you had any drugs, alcohol, or medication? Mr. Shabazz?

DEFENDANT SHABAZZ: No, sir.

THE COURT: Mr. Coleman?

DEFENDANT COLEMAN: No, sir.

State versus Coleman

1 THE COURT: Mr. Smith?

2 DEFENDANT SMITH: No, sir.

3 THE COURT: Have you ever been treated for
4 the abuse of alcohol, drugs, mental illness or emotional
5 problems? Mr. Shabazz?

6 DEFENDANT SHABAZZ: No, sir.

7 THE COURT: Mr. Coleman?

8 DEFENDANT COLEMAN: No, sir.

9 THE COURT: Mr. Smith?

10 DEFENDANT SMITH: No, sir.

11 THE COURT: Mr. Shabazz and Mr. Smith you
12 each have an indictment that has not been presented to the
13 grand jury. You have an absolute right to require the
14 State to present the case to the grand jury where they
15 would have to prove more probably than not that a crime
16 was committed and you did it. You want to give that right
17 up which would allow you to go forward today, Mr. Shabazz?

18 DEFENDANT SHABAZZ: Yes, sir.

19 THE COURT: Mr. Smith?

20 DEFENDANT SMITH: Yes, sir.

21 THE COURT: Mr. Shabazz, you're up here on
22 Indictment 09-4318 alleges you did in Greenville County,
23 November 26, '08 possess with intent to distribute a
24 quantity of marijuana; five years, \$5000, do you
25 understand that?

State versus Coleman

1 DEFENDANT SHABAZZ: Yes, sir.

2 THE COURT: Mr. Coleman, you're up here on
3 09-3208a alleges you did in Greenville County, August 7,
4 '08 unlawfully enter the dwelling of James Hood on Dydeson
5 Avenue, Greenville, South Carolina without consent with
6 the intent of committing a crime and the entering or
7 remaining occurred in the nighttime, burglary, first
8 degree carries from 15 years to life. It's a Violent
9 Offense which means no parole. It's a Most Serious
10 Offense and if you get convictions for two or more Most
11 Serious Offenses then you're eligible for life in prison
12 without parole, do you understand that?

13 DEFENDANT COLEMAN: Yes, sir.

14 MS. DAVIS: Your Honor, just briefly on that
15 indictment, I'm sorry, the State would move to amend. The
16 address should be Dykeson, D-Y-K-E-S-O-N, and not
17 Dydeson.

18 THE COURT: Any objection to me changing that
19 on the indictment. It's just misspelled. Do you have any
20 objection to that?

21 DEFENDANT COLEMAN: No, sir.

22 MS. DAVIS: Thank you, Your Honor.

23 THE COURT: Mr. Smith, you're up here on
24 09-4339, alleges you did in Greenville County, March 24,
25 '09 unlawfully possess marijuana while confined at the

State versus Coleman

1 Greenville County Detention Center and that's contraband
2 and that's 10 years, do you understand that?

3 MR. SMITH: Yes, sir.

4 THE COURT: Understanding the nature of the
5 charges against you and the maximum possible punishment,
6 how do you want to plead, Mr. Shabazz?

7 DEFENDANT SHABAZZ: Guilty.

8 THE COURT: Mr. Coleman?

9 DEFENDANT COLEMAN: Guilty.

10 THE COURT: Mr. Smith?

11 DEFENDANT SMITH: Guilty.

12 THE COURT: Has anybody forced you in any way
13 or coerced you or threatened you or promised you anything
14 to get you to enter that plea? Mr. Shabazz?

15 DEFENDANT SHABAZZ: No, sir.

16 THE COURT: Mr. Coleman?

17 DEFENDANT COLEMAN: No, sir.

18 THE COURT: Mr. Smith?

19 DEFENDANT SMITH: No, sir.

20 THE COURT: Do you each understand you have
21 an absolute right to a trial by jury where you would be
22 presumed innocent unless and until the State could prove
23 you guilty beyond any reasonable doubt of each and every
24 element of each offense that you're charged with and you
25 would have a right to confront and cross-examine the

State versus Coleman

1 witnesses and the evidence put up against you by the
2 State? You'd have a right to compel in court all relevant
3 and competent evidence in your own defense or you could
4 remain silent and that silence could not be held against
5 you and you could never be compelled to incriminate
6 yourself.

7 Do you understand all those right,
8 Mr. Shabazz?

9 DEFENDANT SHABAZZ: Yes, sir.

10 THE COURT: Mr. Coleman?

11 DEFENDANT COLEMAN: Yes, sir.

12 THE COURT: Mr. Smith?

13 DEFENDANT SMITH: Yes, sir.

14 THE COURT: Are you want to give up all those
15 rights to enter this plea, Mr. Shabazz?

16 DEFENDANT SHABAZZ: Yes, sir.

17 THE COURT: Mr. Coleman?

18 DEFENDANT COLEMAN: Yes, sir.

19 THE COURT: Mr. Smith?

20 DEFENDANT SMITH: Yes, sir.

21 THE COURT: Are you guilty, Mr. Shabazz?

22 DEFENDANT SHABAZZ: Yes, sir.

23 THE COURT: Mr. Coleman?

24 DEFENDANT COLEMAN: Yes, sir.

25 THE COURT: Mr. Smith?

State versus Coleman

1 DEFENDANT SMITH: Yes, sir.

2 THE COURT: And are you totally and
3 completely satisfied with your lawyer, Mr. Shabazz?

4 DEFENDANT SHABAZZ: Yes, sir.

5 THE COURT: Mr. Coleman?

6 DEFENDANT COLEMAN: Yes, sir.

7 THE COURT: Mr. Smith?

8 DEFENDANT SMITH: Yes, sir.

9 THE COURT: Have you had enough time to
10 review the evidence the State has against you,
11 Mr. Shabazz?

12 DEFENDANT SHABAZZ: Yes, sir.

13 THE COURT: Mr. Coleman?

14 DEFENDANT COLEMAN: Yes, sir.

15 THE COURT: Mr. Smith?

16 DEFENDANT SMITH: Yes, sir.

17 THE COURT: Okay. Tell us about it.

18 MS. DAVIS: May it please the Court, Your
19 Honor, on or about November 26th of '08, this defendant,
20 Mr. Shabazz was stopped on US25 in Greenville County for
21 speeding. As the officer approached the defendant's
22 window, he tapped on the vehicle to motion the driver to
23 roll his window down. The defendant let down the rear
24 window instead and the officer observed plant material in
25 a bag on the rear seat.

State versus Coleman

1 Following a narcotics K9 alert, the vehicle
2 was searched and this defendant was found to be in
3 possession of 888.97 grams of marijuana.

4 There is no recommendation, Your Honor, and
5 his prior record is 1991 a petty larceny; in 1993 two
6 counts of criminal sexual conduct, second degree, and two
7 counts of burglary.

8 And, Your Honor, just to let the Court know
9 Officer Hand is present in the courtroom and wish to be
10 heard at the appropriate time prior to sentencing very
11 briefly.

12 THE COURT: All right, let me hear from him.

13 MS. DAVIS: State your name for the record.

14 MR. HAND: Joseph P. Hand, State Transport
15 Police. Thank you, Judge. Just to make you aware, I had
16 been notified and we do do commercial vehicle along with
17 POV, personal vehicle enforcement, due to having a K9. I
18 had been notified of a problem over in this area and I ---

19 COUNSEL: I don't understand has to do with
20 this area. It's just a traffic stop.

21 THE COURT: Well ---

22 MR. HAND: Your Honor, after the stop was
23 made and I identified -- and the arrest was made, the next
24 day after this, this residence was pointed out where
25 Mr. Shabazz lives and was identified as a problem over

State versus Coleman

1 there in that neighborhood. And the neighbors were
2 appreciative of what had been done by the State, and I
3 stated that I would come over here on the State's behalf
4 to state that there is problems in that area with the
5 children receiving marijuana coming from this general area
6 and that the State's behalf would be that a recommendation
7 that this gentleman receive some type of punishment
8 besides probation for this. It being the amount and ---

9 THE COURT: That's a lot of marijuana.

10 MR. HAND: Thank you, Your Honor.

11 COUNSEL: May it please the Court, Your
12 Honor.

13 THE COURT: Yeah.

14 COUNSEL: Your Honor, I just add there are
15 problems all over Greenville County and I appreciate that,
16 and the Officer, I understand, wants to be here on this
17 case. However, Your Honor, I would object to anything
18 that he heard from the community from this case. I just
19 wanted to get that on the record. I apologize.

20 THE COURT: That's his job, though, he's got
21 to talk to all the citizens.

22 COUNSEL: I understand. I would ask, Your
23 Honor, Mr. Shabazz's previous conviction was in 1993.
24 He's got no drug convictions on his record whatsoever. I
25 will tell you, Your Honor, he's a barber. He's been a

State versus Coleman

1 barber for approximately eight years at the place he works
2 right now. This offense occurred right around Christmas
3 time, Your Honor. Mr. Shabazz is married. He has four
4 kids in this house with him. He got a little bit
5 desperate. He made a terrible decision to attempt to try
6 to get some marijuana to distribute, I would assume.

7 THE COURT: How much is that? Two pounds?

8 COUNSEL: It's a little less than two pounds,
9 Your Honor. He never got that opportunity. I would
10 certainly alert the Court that he has figured out the way
11 to go in this world. He's working every day. He's at
12 home taking care of his family. He does have a wife who
13 is here who supports him.

14 Your Honor, I've know Buddha my whole life.
15 I've known him before he was Buddha. He, in fact, went
16 through the process of changing his own name. I've know
17 him for quite a while. He's a good guy. His family lives
18 next door to my family, and his father actually lives next
19 door to my parents.

20 I would ask, Your Honor, to consider -- he
21 doesn't have a long history. He does have a prior
22 conviction. I understand that and his most recent
23 conviction is from 1993, and this is just a mix-up and I
24 don't think you're going to see him before the court
25 again.

State versus Coleman

1 I would ask you to just consider probation.
2 If Your Honor would not think that that's appropriate, I
3 would ask that Your Honor consider home incarceration and
4 a split sentence of maybe a year of home incarceration. I
5 do believe that Mr. Shabazz would like to speak to you.

6 THE COURT: I'd be happy to hear from you.

7 DEFENDANT SHABAZZ: I made a mistake. I got
8 desperate. I had a lot of things going on. I was trying
9 plan for a wedding. My daughter was graduating and I was
10 trying to get her something really nice. My clientele had
11 slowed down and I made a mistake. I was trying to earn
12 some extra money and I made ---

13 THE COURT: Well, you don't get two pounds of
14 marijuana right out of the box, do you?

15 DEFENDANT SHABAZZ: I don't guess so.

16 THE COURT: I'm going to give him five years
17 provided upon 18 months of home incarceration, probation
18 for three, substance abuse counseling, random drug and
19 alcohol testing.

20 COUNSEL: Thank you, Your Honor.

21 THE COURT: So you're in jail in your own
22 house. It cost money and it's just like being in jail,
23 and if you can't do it, tell me now and I'll change it.

24 DEFENDANT SHABAZZ: My wife (inaudible).

25 THE COURT: You live up to it.

State versus Coleman

1 COUNSEL: Thank you, Your Honor.

2 DEFENDANT SHABAZZ: Thank you.

3 MS. DAVIS: With respect to Mr. Coleman,
4 during the nighttime hours approximately 11:00 p.m.,
5 actually, on August 7th, 2008, the defendant threw a stone
6 through the window at the home of James Hood at [REDACTED]
7 [REDACTED] in Greenville County. He then entered the
8 home where he then took and carried away jewelry,
9 approximately \$1700 worth of jewelry, and left the area.
10 He then sold the jewelry at a pawn shop.

11 The defendant's fingerprint was located on
12 the interior of the residence on the glass of the broken
13 window in which he gained entry as well as on the window
14 screen. He also gave a statement to the police post
15 Miranda admitting to this crime and that he did this after
16 he saw -- he was watching the home and saw the residents
17 leave and then went back at 11:00 to commit this crime.

18 Your Honor, his prior record is an assault
19 and battery in 2007 and also I'd like to state on the
20 record that the State is dismissing, as part of this
21 negotiation dismissing, a burglary second degree which was
22 the 08-7868 grand larceny, 7867 criminal conspiracy, 7869
23 criminal conspiracy, 7866 armed robbery, 2009-1293 grand
24 larceny, 08-7870 burglary first, 2008-7871.

25 The recommendation, Your Honor, is a 15-year

State versus Coleman

1 mandatory minimum.

2 The victim would have been here, but he's in
3 Australia doing missionary work. He was planning on
4 coming back in December if we were to go to trial, but I
5 believe that it has been resolved.

6 I also want to make it clear on the record to
7 Mr. Patel had been representing him, and still does is my
8 understanding, and Mr. Culbertson came on the scene this
9 morning or yesterday afternoon and is also standing with
10 him, but I'll let me clarify that for the record.

11 THE COURT: Which one is the mouthpiece.

12 MS. DAVIS: Yes, sir.

13 THE COURT: Is what she told me true about
14 the facts?

15 DEFENDANT COLEMAN: Yes, Your Honor.

16 THE COURT: All right, I'll hear from one of
17 them.

18 MR. CULBERTSON: Your Honor, I'll speak on
19 Mr. Coleman's behalf. Your Honor, he's 18 years old. We
20 hear a lot of talk about people jumping into it but he
21 clearly is the top of that lift of people who jumped into
22 it with both feet.

23 He had a bit of a prior record before and he
24 just got stupid. Like I said, he's 18 years old. He
25 attended Berea High School to the 11th grade in Greenville

State versus Coleman

1 County. Since that time, he's been trying to catch some
2 work.

3 The house that he actually broke in that
4 we're here for today, it's true this fellow is doing
5 missionary work over in Australia. Prior to him going
6 over the Australia, he was doing work with Mr. Coleman
7 here. They were somewhat friends and they had a bit of
8 connection with one another.

9 Why he chose to break into one of his friends
10 and confidant's house, I don't know and I don't think
11 anybody ever will. But he understands now, after some
12 conversation, he's had opportunities. In fact, the
13 Solicitor's Office has made opportunities for him in the
14 past to dispose of these charges.

15 So he understands that today is the last day
16 he's got to take the little bit they have offered him in
17 exchange for the rest of his life. He understands that
18 were he not to take the plea today, he could possibly be
19 looking at a life sentence on this charge and on the other
20 charges from the Solicitor's Offices.

21 THE COURT: This is one of the biggest Blue
22 Ribbon Hams I have ever seen. If you don't want to take
23 it, I'll let you withdraw it and go to trial.

24 DEFENDANT COLEMAN: No, sir.

25 THE COURT: Are you sure? I'll give you that

State versus Coleman

1 opportunity.

2 DEFENDANT COLEMAN: No, sir.

3 THE COURT: Okay. Go ahead.

4 MR. CULBERTSON: He wants to go ahead with
5 the plea today, Your Honor. He understands. With him
6 today in the courtroom is various members of his family.
7 His grandmother, cousins, mom and everybody else have been
8 here throughout this thing. He'll be the first one to
9 tell you he made a mistake and he understands of the
10 realities of the world and what he is looking at.

11 What I'm going to do is ask you to give him
12 as little as you can. He knows that 15 is the least he
13 can get, and I'll remind the Court again that he is only
14 18 years old and he screwed up and made a stupid mistake.
15 And after he does his 15 years, he's going to try to get
16 out and still have a life.

17 THE COURT: Is that your grandfather back
18 there?

19 DEFENDANT COLEMAN: Yes, sir.

20 THE COURT: That's your grandmother and your
21 mother? Who is that?

22 DEFENDANT COLEMAN: My cousin.

23 THE COURT: Do you know how many hearts
24 you've broken?

25 DEFENDANT COLEMAN: Yes, sir.

State versus Coleman.

1 THE COURT: Until it happens to you, you're
2 not going to know how much it hurts. It's just a -- what
3 do you want to tell me?

4 DEFENDANT COLEMAN: The thing I want to say
5 is I'm sorry and I wish I had never did this, and I don't
6 realize I would hurt my grand mom and granddad's heart.
7 If I would just had a second chance at life, itself, I
8 would improve myself.

9 THE COURT: Well, you're going to get a
10 second chance but you're going to have to earn it. You're
11 going to have to pay for what you've done. I hope you can
12 put meat on the bone of those words. I hope they mean
13 something that's not just words. I hear words all day
14 long. The proof is in the pudding.

15 DEFENDANT COLEMAN: Yes, sir.

16 THE COURT: I'd like to be able to fix all
17 your problems. I'd love to be able to wind the clock and
18 whatever got into you to make you do all this stuff, I
19 wish we could fix it. There's really now only one person
20 who could fix it and that's you. When you grow up, you'll
21 understand that. Fifteen years, good luck.

22 DEFENDANT COLEMAN: Yes, sir.

23 THE COURT: I'll tell you what, your lawyers
24 did a great job for you.

25 (Whereupon, Defendant Gary David Smith pled

State versus Coleman

1 guilty at this time.)

2 ---END OF TRANSCRIPT RECORD---

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State versus Coleman

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I, the undersigned Caroline Hiskell, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court of Greenville County, South Carolina on the 12th day of November, 2009.

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

February 7, 2011

Caroline Hiskell

Caroline Hiskell

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 County of GREENVILLE)

JAVARIS LAWREN COLEMAN)
 Full name and prison number (if any) of Applicant)

v.

State of South Carolina)

APPLICATION FOR
 POST-CONVICTION RELIEF

RECEIVED
 CLERK OF COURT
 11/11/10 9:53 AM

2010-CP-23- 9/95

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution

2. Name and location of Court which imposed sentence Greenville County
Courthouse (General Sessions) Greenville S.C. 29601
3. Name(s) of co-defendant(s) (if any) Travis N. Shamley, TAVARIUS L.
Jones
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) _____

- (b) _____
 (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) November 7, 2009, Sentence of 15 years
 (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?
NO
8. If you answered Ayes@ to (7), list:
 (a) the name of each Court to which you appealed:
 i. N/A
 ii. _____
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. _____
 ii. _____
 iii. _____
 (c) the date of each such result:
 i. _____
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. _____
 ii. _____
 iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
 (a) Defense Counsel did not inform me I could have appealed my conviction.

- (b) _____
- (c) _____

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

- (a) my defense counsel was ineffective which would make my sentence in violation of the constitution of the United States
- (b) _____
- (c) _____

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

- (a) Defence counsel failed to advise me of the lesser included offense which the jury would have been instructed on if he went to trial.
- (b) _____
- (c) _____

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

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

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

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

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

NO

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

(a) which grounds have been presented:

i. N/A

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) This is the first opportunity applicant has had and only
- (b) remedy available for collateral attack upon any ground of alleg
err
- (c) _____

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? _____
- (c) your sentencing? _____
- (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 Ayes@ to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Nihar Patel - Greenville County Courthouse,
Greenville S.C. 29601
 - ii. Symmes W. Culbertson - 9 toy street, Greenville S.C.
29601
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. guilty plea and pretrial preparation
 - ii. _____
 - iii. _____

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

To vacate Guilty plea and remand for new trial

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)
)
County of GREENVILLE)

VERIFICATION

I, JAVARIS COLEMAN, 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.

Javaris Coleman

SWORN to and subscribed before me this 22
day of Oct, 2010.

Debra Swain (L.S.)
Notary Public

My Commission Expires: 11-4-2015

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

I, JAVARIS COLEMAN, 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.

Javaris Coleman
Applicant

SWORN or affirmed to and subscribed before me this
22 day of Oct, 2010.

Debra Sun
Notary Public

My Commission Expires: 11-11-2015

1272

Merged und
2010-923

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Javaris Lawren Coleman,)
 S.C.D.C. No. 337895,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2010-CP-23-9195

RETURN

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(11)

In response to the post-conviction relief application filed November 9, 2010, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the April 2009 term of General Sessions for first-degree burglary (2009-GS-23-3208A). Nihar Patel, Esquire represented the Applicant.

On November 10, 2009, the Applicant pled guilty as indicted. The Honorable Edward W. Miller sentenced the Applicant to fifteen (15) years imprisonment. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript.

II.

In his application for post-conviction relief the Applicant alleges he is being held in

3/10/11 (Sel)
 2010-CP-23-9195

custody unlawfully for the following reason:

1. Ineffective assistance of counsel:
 - a. Failed to advise of a lesser-included offense.

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 Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held on the issues raised in the application.

Respectfully submitted,

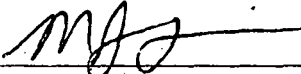
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: 
Attorneys for Respondent

March 7, 2011

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
)
)
)
 JAVARIS LAWREN COLEMAN, 337895)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

2010-CP-23-9195

AFFIDAVIT OF SERVICE BY MAIL

RECEIVED
 CLERK OF COURT
 GREENVILLE COUNTY
 SOUTH CAROLINA
 MARCH 10 2011
 10:00 AM

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:

R. Mills Ariail, Jr., Esquire
11 North Irvine Street; Suite 11
Greenville SC 29601

DATED this 7th day of March, 2011.

Judy A. Carey

 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JAVARIS L. COLEMAN,)
)
 APPLICANT,)
)
 -VS-)
)
 STATE OF SOUTH CAROLINA,)
)
 RESPONDENT.)
 _____)

2010-CP-23-09195

TRANSCRIPT OF RECORD

JULY 30, 2012
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE J. MICHAEL BAXLEY

APPEARANCES:

ATTORNEY FOR APPLICANT:

R. MILLS ARIAIL, JR., ESQUIRE

ATTORNEY FOR RESPONDENT:

KAREN C. RATIGAN
ASSISTANT ATTORNEY GENERAL

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
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(No Exhibits Were Presented During This Hearing)

1 (Whereupon Roberto Santiago, Javaris Coleman,
2 Christopher Wilson and Jose Maldonado were brought before
3 the Court).

4 **THE COURT:** All right. Good morning, gentlemen.

5 **MS. RATIGAN:** Judge, if I may.

6 **THE COURT:** Why don't we let everybody sit in the jury
7 box for a moment, ---

8 **MS. RATIGAN:** Okay.

9 **THE COURT:** --- 'cause it's going to take me a moment
10 to speak with them. Please be seated.

11 **MS. RATIGAN:** And, Judge, just for the record, two of
12 these defendants, Mr. Santiago and Mr. Maldonado, don't
13 speak English.

14 **THE COURT:** All right.

15 **MS. RATIGAN:** So Mr. Pollock is here to translate for
16 both of them. So he may need things to be a little bit slow
17 so he can translate for them.

18 **THE COURT:** Very good.

19 **MS. RATIGAN:** And he'll have to be sworn, of course.

20 **THE COURT:** Right. All right. Good morning. Buenos
21 dias.

22 **MR. WILSON:** Good morning.

23 **MR. COLEMAN:** Good morning.

24 **MR. SANTIAGO:** Buenos dias.

25 **MR. MALDONADO:** Buenos dias.

1 THE COURT: My name is Judge Baxley.

2 (Whereupon the Court introduced himself in Spanish)

3 THE COURT: And I'm going to speak slowly so that
4 everyone can understand. Let me say to everyone in the
5 courtroom, not only our four applicants who are here, but
6 those also in the audience, welcome to this term of Post
7 Conviction Relief Court for Pickens and Greenville Counties.

8 I asked that all four of you be brought out before we
9 start so we could talk a little bit about PCR. And when I
10 say PCR, I'm referring to Post Conviction Relief. And I
11 wanted us all to have an understanding of how Post
12 Conviction Relief works.

13 When you file a PCR claim you are alleging that your
14 lawyer, who represented you below, was ineffective and that
15 you were prejudiced by that. The applicant bears the burden
16 of proof, so that's you, to prove two things. As I just
17 said, number one, that your lawyer below was -- that his
18 performance was defective.

19 What that means is that you must prove that his or her
20 representation failed below the standards required of
21 lawyers practicing criminal law in South Carolina. And, not
22 or, but, and you must prove that you were prejudiced by that
23 deficient performance. And our Supreme Court has ruled that
24 prejudice in a PCR context means that because of your
25 lawyer's poor performance the outcome of the trial was

1 different than it should have been.

2 Now, when we are at PCR Court there's many things or
3 some things that this Court does not have the authority to
4 look into. One is I can't change anything about your
5 conditions of confinement, or where you're housed, what your
6 security classification is, what your max-out date is
7 because the Legislature has set the rules for PCR. And all
8 they let me decide is whether or not your lawyer was
9 deficient and you were prejudiced.

10 Now, if you win your case today, I want us also to
11 understand what will happen from there. You don't walk out
12 the door to the street and go free. You go right back to
13 square one as if the trial below or the plea below had never
14 happened. And the solicitor starts the prosecution all over
15 again.

16 If you had several charges, for example, that were
17 dismissed and then you pled to one of them as part of a plea
18 deal, all that comes off the table, and you go back and
19 start over with all those charges pending again. Now,
20 please understand, I don't say this as a threat, but I want
21 us all to be aware that there are risks involved in PCR just
22 like there are benefits.

23 Because a benefit is if you win, then you get another
24 opportunity for your guilt or innocence to be determined.
25 But when you win, all those charges come back on the table

1 again, which means that you could come out with a worse
2 result after winning PCR than you had before you ever
3 started.

4 So I would suggest to you that before we call your
5 individual case you talk with your lawyer about whether it's
6 in your best interest right here and now to go forward with
7 the PCR and have the Court make a determination. And please
8 understand, I'm not on the side of the State, not on the
9 side of the defense, I'm not trying to give you legal
10 advice. I just simply want us all to understand together
11 how PCR works and what are the risks and the benefits.

12 Now, having said this, is there any member of our group
13 here, of our four, who wants to talk with their lawyer again
14 before your case is called? If so, please raise your hand.

15 (Whereupon one applicant raised his hand)

16 **THE COURT:** Please tell me your name, sir.

17 **MR. WILSON:** Christopher Wilson.

18 **THE COURT:** Mr. Wilson. All right. We'll give you
19 that chance. Anyone else?

20 **MR. POLLOCK:** I do. But I really don't want anything.
21 I'm okay.

22 **THE COURT:** All right. Well, we'll let you discuss
23 that with your lawyer before your case is called just to
24 make sure we all understand one another. All right.

25 Gentlemen, I'm going to return you to the back. And good

JAVARIS COLEMAN - DIRECT EXAMINATION BY MR. ARIAIL

8

1 luck today.

2 (Whereupon all the applicants exited the courtroom)

3 THE COURT: And, counsel, are you ready?

4 MR. ARIAIL: Yes, Your Honor.

5 MS. RATIGAN: Yes, Your Honor. May it please the
6 Court. This is the case of Javaris Coleman versus the State
7 of South Carolina. The docket number is 2010-CP-23-9195.
8 Mr. Coleman was indicted for first degree burglary. He was
9 represented on that charge by Mr. Patel.

10 On November 10th of 2009 he pled guilty to the charge
11 before Judge Miller, received a mandatory minimum fifteen
12 year sentence. He did not file an appeal. The State's
13 ready to proceed at this time.

14 THE COURT: All right. Let me ask counsel for Mr.
15 Coleman, is there any objection to the history that was just
16 given to us by Ms. Ratigan?

17 MR. ARIAIL: No, Your Honor.

18 THE COURT: All right. Are you ready to proceed?

19 MR. ARIAIL: Yes, Your Honor, we are.

20 THE COURT: All right. Then please call your first
21 witness.

22 MR. ARIAIL: I call Mr. Javaris Coleman to the stand.

23 THE COURT: Mr. Coleman, we're going to get you to come
24 forward, please, and accept the oath of a witness.

25 Javaris Coleman, being

JAVARIS COLEMAN - DIRECT EXAMINATION BY MR. ARIAIL

1 duly sworn testified as follows:

2 MADAME CLERK: Thank you. You may be seated. Please
3 state your full name for the record.

4 MR. COLEMAN: Javaris Lawren Coleman.

5 THE COURT: And, counsel, go ahead, please.

6 MR. ARIAIL: Thank you, Your Honor.

7 Direct Examination by Mr. Ariail:

8 Q. Javaris, I'll give you a little background in regards
9 to this. You were indicted in regards to, I think, a first
10 degree burglary, is that correct?

11 A. Yes, sir.

12 Q. And you were represented by Mr. Nihar Patel, is that
13 correct?

14 A. Yes, sir.

15 Q. Okay. And as part of this, I think this was back in
16 2009, you had some additional charges that you were indicted
17 for, is that right?

18 A. Yes, sir.

19 Q. What other charges do you remember having?

20 A. Another burglary -- burglary, first degree, armed
21 robbery, two conspiracies and two grand larcenies.

22 Q. Okay. Now, he represented you on all those charges,
23 correct?

24 A. Yes, sir.

25 Q. Now, you pled guilty, I think it was on November 10th,

JAVARIS COLEMAN - DIRECT EXAMINATION BY MR. ARIAIL

10

1 2009, is that right?

2 A. Yes, sir.

3 Q. You were in front of Judge Miller when you pled guilty?

4 A. Yes, sir.

5 Q. Okay. Now, you've filed a petition for PCR, which is

6 basically saying that you believe that Mr. Patel was

7 ineffective in his representation of you, is that correct?

8 A. Yes, sir.

9 Q. Okay. And you've talked with me and we've discussed

10 how you believe he's been ineffective during the

11 representation. And I just want to go through a little bit

12 of what you believe the grounds are.

13 Now, we've discussed that when he -- when was the first

14 time you met Mr. Patel? Do you remember?

15 A. I don't remember.

16 Q. Okay. How many times did you meet with him during his

17 representation of you?

18 A. Maybe twice.

19 Q. Twice? Okay. What were -- did y'all discuss the

20 charges? What did y'all talk about during that time?

21 A. Nothing. He just brought forth pleas.

22 Q. Plea offers?

23 A. Yes, sir.

24 Q. Okay. And did y'all discuss the evidence? Did he give

25 you discovery?

JAVARIS COLEMAN - DIRECT EXAMINATION BY MR. ARIAIL

1 A. No, sir.

2 Q. Did he tell you what the evidence was against you?

3 A. No, sir.

4 Q. What information did he provide you other than the plea
5 offers?

6 A. Just plea offers, that's all.

7 Q. Okay. And when you say plea offers, what were the plea
8 offers that he brought to you?

9 A. The fifteen and a ten -- a ten year plea with -- with
10 -- I had to testify against my co-defendant.

11 Q. Okay. Let's go back. Hold on. You had a fifteen year
12 plea?

13 A. Yes, sir.

14 Q. Was that under a first degree burglary?

15 A. Yes, sir.

16 Q. Okay. And that was the first one he brought to you?

17 A. No, sir.

18 Q. Okay. Which one was the first one he brought?

19 A. The ten year plea with the testify.

20 Q. We had a ten year plea to testify. And what was the
21 charge you were going to be pleading to?

22 A. A strong arm robbery.

23 Q. A strong arm robbery?

24 A. (Affirmative nod).

25 Q. Was that a -- was that a recommendation of ten years or

JAVARIS COLEMAN - DIRECT EXAMINATION BY MR. ARIAIL

12

1 how was it structured? Do you remember?

2 A. No, sir.

3 Q. Okay. Just -- you remember it was ten years under
4 strong arm robbery?

5 A. Yes, sir.

6 Q. And with a condition on it?

7 A. Yes, sir.

8 Q. What was -- any other conditions other than testifying?

9 A. No, sir.

10 Q. Okay. And when you discussed that with him what was
11 your response in regards to testifying?

12 A. Well, I told him -- I denied it because I didn't have
13 anything to testify.

14 Q. Okay. So you're saying you didn't want to testify.

15 Did you -- did he explain to you that that plea offer would
16 be withdrawn if you did not testify?

17 A. Yes, sir.

18 Q. Okay. And you still made a decision not to take that
19 and just move forward?

20 A. Yes, sir.

21 Q. What was the -- did you have any discussions with him
22 in regards to your first degree burglary charge?

23 A. No, sir.

24 Q. Did you talk with him in regards to reasons why you did
25 not believe it was a first degree burglary charge?

JAVARIS COLEMAN - DIRECT EXAMINATION BY MR. ARIAIL

1 A. No, sir.

2 Q. Okay. And you sent me a bunch of information in
3 regards to your view as to why this should be a second
4 degree burglary instead of a first degree burglary.

5 A. Yes, sir.

6 Q. Now, what are you -- what is your position in regards
7 to that?

8 A. Because they both occurred in the hours of darkness.

9 Q. Okay. So you're saying you could -- you could have had
10 a second degree burglary charge?

11 A. Yes, sir.

12 Q. Okay. Did he ever bring you a second degree burglary
13 charge or try and get that for you?

14 A. No, sir.

15 Q. Now, you went forward and you pled guilty, is that
16 right?

17 A. Yes, sir.

18 Q. Did you -- and Judge Miller asked you a bunch of
19 questions on the record in regards to pleading guilty 'cause
20 you're doing it freely and voluntarily, you know what you're
21 doing, all those type of -- you remember those responses you
22 gave?

23 A. No, sir.

24 Q. Okay. During that time did you understand or did you
25 have, I guess, information that you say you could have been,

JAVARIS COLEMAN - DIRECT EXAMINATION BY MR. ARIAIL

14

1 I guess, charged or pled guilty to second degree burglary?

2 Did you -- did you have full knowledge of what was going on?

3 A. No, sir.

4 Q. Okay. Now, since that time, I guess, you're saying you

5 have learned stuff or have understood a little bit more

6 about the process.

7 A. Yes, sir.

8 Q. And what do you believe that Mr. Patel didn't do that

9 he could have done to help you understand this process a

10 little bit better?

11 A. I mean, well, he -- all in all he failed to bring forth

12 a lesser included offense. And we never talked about

13 burglary as a whole and what separates the first degree,

14 second degree and third degree.

15 Q. Okay. And you say he didn't bring forth a lesser

16 included offense?

17 A. Yes, sir.

18 Q. Okay. When you say he didn't bring that to you, what

19 do you mean by that?

20 A. I mean, it would never -- I guess he never tried to

21 negotiate that with the solicitor and, you know, ...

22 Q. Okay. And you understand that he can't reduce charges

23 up to the Solicitor's Office, correct?

24 A. Yeah.

25 Q. Do you know if he had any discussions with the

JAVARIS COLEMAN - DIRECT EXAMINATION BY MR. ARIAIL

1 Solicitor's Office to try to reduce that charge?

2 A. I don't know.

3 Q. Okay. Did he ever tell you about anything like that?

4 A. No, sir.

5 Q. Now, you've alleged in here that you did not know of
6 your right to appeal, is that correct?

7 A. Yes, sir.

8 Q. Did he discuss that with you?

9 A. No, sir.

10 Q. Based on the information, I guess, you're telling me
11 today, you would have appealed this?

12 A. Yes, sir.

13 Q. Okay. And you were sentenced to fifteen years, is that
14 correct?

15 A. Yes, sir.

16 Q. And that's the, I guess, that's the mandatory minimum
17 that you could have under that?

18 A. Yes, sir.

19 Q. Okay. So there would be no less time that you could
20 have gotten under that first degree burglary?

21 A. Yes, sir.

22 Q. Okay. Are there any other items that you want to set
23 forth to Judge Baxley in regards to this to let him know as
24 to why you believe Mr. Patel had been ineffective?

25 A. No, sir.

JAVARIS COLEMAN - CROSS EXAMINATION BY MS. RATIGAN

16

1 Q. That's pretty much the grounds for your relief today,
2 is that correct?

3 A. Yes, sir.

4 Q. Okay.

5 MR. ARIAIL: Thank you. I have no further questions,
6 Your Honor.

7 THE COURT: All right. Now we're going to have cross
8 examination by the State. And, Ms. Ratigan.

9 MS. RATIGAN: Thank you, Your Honor. May it please the
10 Court.

11 Cross Examination by Ms. Ratigan:

12 Q. Mr. Coleman, you stated you had two meetings with Mr.
13 Patel, is that correct?

14 A. Yes, sir. Yes, ma'am. Pardon me.

15 Q. And your testimony is you didn't discuss the State's
16 evidence with him at all?

17 A. No, ma'am.

18 Q. All you did was discuss the plea offer from the State?

19 A. Yes, ma'am.

20 Q. Well, during the plea Judge Miller asked you if you had
21 enough time to review the evidence and you said that you
22 had. Do you remember that?

23 A. No, ma'am.

24 Q. Okay. So you don't recall that?

25 A. (Negative nod).

JAVARIS COLEMAN - CROSS EXAMINATION BY MS. RATIGAN

1 Q. But you're saying now you didn't have enough time to
2 review the evidence with your attorney?

3 A. Yes, ma'am.

4 Q. And your testimony today is that you turned down that
5 ten year plea offer because you didn't want to testify
6 against your co-defendant?

7 A. No, just because I didn't have anything to testify on.

8 Q. You just didn't have anything to say?

9 A. No, ma'am.

10 Q. And that's why you turned down that ten year offer?

11 A. Yes, ma'am.

12 Q. Okay.

13 **THE COURT:** And let's make sure, that was on common law
14 robbery, am I correct, Ms. Ratigan?

15 **MS. RATIGAN:** That was Mr. Coleman's testimony that it
16 was on the strong arm.

17 **THE COURT:** All right. Thank you.

18 Q. And, Mr. Coleman, you ended up pleading guilty to the
19 State's offer for fifteen years and for them to dismiss
20 several charges, is that correct?

21 A. Yes, ma'am.

22 Q. And you discussed that with Mr. Patel that if you went
23 in there and pled guilty they would dismiss seven or eight
24 charges against you and offer that fifteen year sentence?

25 A. Yes, ma'am.

JAVARIS COLEMAN - CROSS EXAMINATION BY MS. RATIGAN

18

1 Q. And are you saying today that you wish you had had an
2 appeal from your guilty plea?

3 A. Yes, ma'am.

4 Q. What did you want to appeal?

5 A. The burglary, first degree.

6 Q. What do you mean? You wanted the Court to review the
7 evidence or the ---

8 A. The evidence.

9 Q. --- charges? Okay.

10 A. Yes, ma'am.

11 Q. So was there anything that happened during the plea
12 hearing, the conversation you had with the judge that was
13 some kind of error you wanted to appeal?

14 A. No, ma'am.

15 Q. Okay. You just wanted the Appellate Court to kind of
16 look over your evidence?

17 A. Yes, ma'am.

18 Q. Okay.

19 MS. RATIGAN: That's all I have, Your Honor.

20 THE COURT: All right. Sir, you may step down. Mr.
21 Coleman, I'm going to let you return there with Mr. Ariail
22 and be seated at the table. And are there further witnesses
23 for that?

24 MR. ARIAIL: No, Your Honor. That's our case.

25 THE COURT: Very good. From the State?

NIHAR PATEL - DIRECT EXAMINATION BY MS. RATIGAN

1 MS. RATIGAN: The State would call Mr. Patel, Your
2 Honor.

3 THE COURT: All right. Sir, please come forward and
4 take the oath of a witness.

5 Nihar Patel, being duly
6 sworn testified as follows:

7 MADAME CLERK: Thank you. Please state your full name
8 for the record.

9 MR. PATEL: It's Nihar Patel.

10 Direct Examination by Ms. Ratigan:

11 Q. Mr. Patel, do you recall representing Mr. Coleman on
12 these charges?

13 A. I do.

14 Q. And where were you employed at the time that you
15 represented him?

16 A. At the Greenville County Public Defender's Office.

17 Q. Did you file the usual Brady Rule 5 motions?

18 A. I did.

19 Q. Did you receive those materials from the State?

20 A. I did.

21 Q. Did you review them with your client?

22 A. I did.

23 Q. Did you explain to him the elements of the charges he
24 was facing?

25 A. I did.

NIHAR PATEL - DIRECT EXAMINATION BY MS. RATIGAN

20

- 1 Q. I'm sorry. Go ahead.
- 2 A. We had more than two meetings, but we talked about the
3 charges that he was facing and the evidence against him.
- 4 Q. And the transcript reveals that he had an additional
5 seven or eight charges. Does that sound accurate?
- 6 A. It is. He had an additional armed robbery, two
7 conspiracies, a burglary, second degree, and two grand
8 larcenies along with this burglary, first degree, is what he
9 was facing total.
- 10 Q. And did you review with him all the evidence and the
11 charges in those cases as well?
- 12 A. We did. And I'm looking back through my notes, my
13 handwritten notes. I see where he had asked me for a copy
14 of the discovery back in February, February 21st in 2009. I
15 cannot recall whether or not that copy was furnished with
16 him. I don't have notes in here. But I do see where he had
17 requested a copy of those.
- 18 Q. In your general practice at the time if your client had
19 asked for a copy of discovery would you have provided that?
- 20 A. Yes.
- 21 THE COURT: What was that date, please, sir? February
22 21st?
- 23 A. February 21st of '09.
- 24 THE COURT: Thank you.
- 25 Q. And I believe you testified your notes revealed that

NIHAR PATEL - DIRECT EXAMINATION BY MS. RATIGAN

1 you had more than two meetings with Mr. Coleman?

2 A. Yes, Your Honor. Or yes, I'm sorry.

3 Q. Thanks.

4 A. I had met with Mr. Coleman a number of times. He was
5 actually brought over, I believe, at least three or four
6 times for different opportunities to plead guilty, at which
7 time we had lengthy conversations about his charges. I
8 actually met with his family at least on one occasion,
9 according to my notes, as well.

10 Q. Now, Mr. Coleman testified about a prior ten year plea
11 offer, that he would plead guilty to strong arm robbery if
12 he testified against his co-defendant. Can you talk about
13 that for the Court?

14 A. The plea offer, it wasn't for strong arm robbery. It
15 was -- it was a reduction from the burglary, first, to a
16 burglary, second degree. The State would recommend ten
17 years.

18 They wanted him to testify against his co-defendants in
19 the case. And he would have to testify in order to get that
20 -- get that plea offer.

21 And I -- from my notes, if I remember correctly, and
22 from remembering speaking with the solicitor or talking to
23 the solicitor, it was a -- that offer was given to other co-
24 defendants as well that were charged similarly. First, to
25 testify would get the plea offer. But I think at the end of

NIHAR PATEL - DIRECT EXAMINATION BY MS. RATIGAN

22

1 the day he ended up giving everyone that ended up
2 cooperating that same deal.

3 Q. And did Mr. Coleman explain to you why he did not want
4 to take that ten year offer?

5 A. He -- at that time he didn't want to -- he didn't want
6 to testify.

7 Q. And did you explain to him that if he turned down that
8 offer he'd be facing burglary, first, again with that
9 sentence range?

10 A. I did.

11 Q. In the course of your representation had you ever
12 discussed with Mr. Coleman the right to an appeal?

13 A. I don't believe I did. I'm looking back at my personal
14 notes. I know -- it was an odd plea. I believe the day
15 before the plea or the day of the plea another attorney was
16 hired by the family to come in and actually do the -- do the
17 actual plea.

18 I think I was standing up there with Mr. Coleman, but I
19 don't believe I addressed the court as to any mitigation.
20 And I don't know if that attorney explained to him his right
21 to appeal. But I don't have anything in my notes where I
22 did.

23 Q. But your testimony is you were present at the plea that
24 day?

25 A. I was.

NIHAR PATEL - CROSS EXAMINATION BY MR. ARIAIL

1 Q. In your opinion were there any appealable errors from
2 that plea?

3 A. Not from the plea itself.

4 MS. RATIGAN: That's all I have, Your Honor.

5 THE COURT: All right. And now cross examination.

6 MR. ARIAIL: Thank you, Your Honor.

7 Cross Examination by Mr. Ariail:

8 Q. Mr. Patel, just questions in regards to this. When was
9 the first time you remember meeting Mr. Coleman? What's the
10 date on that?

11 A. I've got August 28th of 2008 was my initial bond talk,
12 I guess.

13 Q. Okay. Did you -- and he would be incarcerated at that
14 time, I guess?

15 A. Yes.

16 Q. Did he get out on bond at some point?

17 A. I don't believe so. Uh-uh (negative).

18 Q. Okay.

19 A. No.

20 Q. So he was incarcerated in the LEC during the whole time
21 until, I guess, the plea happened?

22 A. Yes.

23 Q. And, I guess, you've said you've met with him more than
24 two times in regards to that?

25 A. (Affirmative nod).

NIHAR PATEL - CROSS EXAMINATION BY MR. ARIAIL

24

1 Q. You've heard him testify, I guess, in regards to not
2 receiving information from you. Do you remember discussing
3 or going over the discovery with him?

4 A. We went over the discovery. We discussed the charges.
5 We discussed the offer, the reduction in the charge, and the
6 consequences of him not taking the plea offer, what the
7 charge would end up being and the mandatory minimums for a
8 burglary, first.

9 Q. Okay. And it sounded like the whole -- the whole basis
10 of this was he was going to get the same offer as everybody
11 else for a reduction down to second degree burglary if he
12 testified.

13 A. (Affirmative nod).

14 Q. Did you go over his statement with him?

15 A. I did.

16 Q. Okay. And based on that you're saying he did not want
17 to accept second degree burglary based on having to testify?

18 A. He didn't want to testify in open court.

19 Q. Okay. And he came up here three or four times, I
20 guess, to do the plea and it didn't get done?

21 A. That's right.

22 Q. Okay. And he -- the discussions -- do you remember the
23 discussions you had with him prior to his plea that day? If
24 you discussed or had any conversation with him about it not
25 being a second degree burglary and it's a first degree

1 burglary?

2 A. Yeah. I mean, he knew what he was pleading guilty to.

3 Q. Okay. Did he say anything that day that concerned you
4 in regard to him not understanding the process, or what he
5 was pleading to, anything like that?

6 A. No. And, like I said, he also had another attorney
7 that was hired by the family that also spoke with him.

8 Q. Okay.

9 A. Now, what -- if he said anything to him, I wasn't privy
10 to that conversation.

11 Q. All right. Okay. This issue in regards to, I guess,
12 first degree versus second degree burglary, did you ever
13 have a discussion with him or remember anything about it not
14 being at night or any issue in regards to it being something
15 other than a first or second degree burglary?

16 A. No.

17 Q. Okay. And I saw as part of the transcript, it said it
18 happened at 11:00 at night. Is that your understanding?

19 A. That's what the allegation was.

20 Q. Okay. The Appellate issue, you don't have any
21 recollection in regards to any conversations about him
22 appealing or wanting to appeal?

23 A. I do not.

24 Q. And, I guess, he got the mandatory minimum under this.

25 A. (Affirmative nod).

NIHAR PATEL - CROSS EXAMINATION BY MR. ARIAIL

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1 Q. Did he -- do you remember any conversations of him
2 being upset afterwards, or saying he didn't understand
3 something or anything like that?

4 A. No. As I said, he got the mandatory minimum. And as
5 part of that, the armed robbery, the two conspiracies, the
6 two grand larcenies and the other burglary, second, were
7 dismissed as part of the ---

8 Q. Okay.

9 A. --- the plea.

10 Q. Do you remember doing any additional investigation or
11 talking with any of the witnesses or anything else as part
12 of your review of this case?

13 A. I don't believe I spoke to any of the witnesses. I
14 mean, I looked over Mr. Coleman's -- his statement or
15 confession or whatever as well as the other co-defendants.
16 I believe there were a couple of other statements they had
17 written and just the basic review of the actual police
18 reports and ...

19 Q. Okay.

20 MR. ARIAIL: Your Honor, if you'd bear with me one
21 second.

22 THE COURT: Yes, sir.

23 (Pause)

24 MR. ARIAIL: I've got no further questions, Your Honor.

25 THE COURT: All right. Very good. Anything further?

1 MS. RATIGAN: No, Your Honor. The State would rest at
2 this time.

3 THE COURT: All right. Ma'am -- Sir, let me ask before
4 you step down, you said you discussed the consequences of
5 the plea with your client. Would that include the service
6 requirements of a burglary, first, as opposed to a burglary,
7 second?

8 A. Yes, Your Honor.

9 THE COURT: All right. And you said earlier that he
10 did not wish to plea, excuse me, he did not wish to testify.
11 Did he express to you or do you know why he didn't wish to
12 testify?

13 A. From talking with him, the co-defendants that were
14 involved were people that he knew, friends, just didn't want
15 to testify against them.

16 THE COURT: And based upon the statement that was given
17 by the Defendant, was that given prior to your appointment
18 and your representation?

19 A. Yes, Your Honor.

20 THE COURT: All right. And how would you gauge the
21 strength of that evidence that would then be used against
22 him?

23 A. It would have been strong.

24 THE COURT: All right. Now, based on the questions the
25 Court has asked is there follow up from either side? Ms.

NIHAR PATEL - CROSS EXAMINATION BY MR. ARIAIL

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1 Ratigan, you have questions?

2 MS. RATIGAN: No, Your Honor.

3 THE COURT: And, Mr. Ariail?

4 MR. ARIAIL: None, Your Honor.

5 THE COURT: All right. Now, sir, you may step down.

6 Thank you.

7 A. Thank you, Judge.

8 THE COURT: All right. Now, both sides have rested.

9 Anything further in final comment to the Court before the
10 Court determines whether to go ahead and decide this case or
11 whether to take the matter under advisement? From the
12 State?

13 MS. RATIGAN: The State would rest on the testimony and
14 the record. We waive any kind of argument.

15 THE COURT: All right. Anything from ---

16 MR. ARIAIL: Your Honor, we'd do the same.

17 THE COURT: All right. Just a moment, please.

18 (Pause)

19 THE COURT: All right. Mr. Coleman, the Court is
20 prepared to go ahead and rule at this time. And, sir, let
21 me just discuss with you a moment about the evidence before
22 me today.

23 As I mentioned to you a few minutes ago, there are two
24 things you have to prove at Post Conviction Relief. One is
25 that your lawyer's performance below was deficient. That is

1 it fell below the standard we require of lawyers practicing
2 criminal law in South Carolina.

3 And, number two, that you were prejudiced by that. And
4 in terms of a guilty plea our Supreme Court has specifically
5 said that prejudice means that but for your lawyer's poor
6 performance you would not have pled guilty and you would
7 have gone forward to trial.

8 And, sir, I find that you have failed to meet either
9 prong of proof that you must meet. And these are my
10 reasons. First of all, you found yourself in a difficult
11 situation. You had multiple charges against you, which
12 would have really -- could have added up to a lifetime and
13 beyond in prison.

14 You determined to enter a plea so that all those
15 charges except for one could be dismissed. You made a
16 decision yourself not to cooperate with the State based upon
17 the fact that either your co-defendants were your friends or
18 you simply did not wish to testify against them, but that
19 was an expensive decision for you because it ended up with
20 you going to prison on a burglary, first, because you had
21 not cooperated with the State.

22 And that was your decision that you made at this time
23 -- at that time. But I don't find any reason now to turn
24 around and collaterally attack that decision because I find
25 that you had a confession against you, which was substantial

1 that you had made yourself and find yourself in a difficult
2 way and came out of it the best way you could.

3 I don't find that your lawyer was deficient. I don't
4 find that you were prejudiced by it. The fact that you say
5 you were not told about an appeal by your attorney, Mr.
6 Patel, I don't find any Appellate issues in this record that
7 would be meritorious for you. So I don't find any prejudice
8 for any of these issues you've raised.

9 Now, I'm going -- I just entered a temporary order.
10 And I'm going to ask Ms. Ratigan to prepare a formal order
11 that I'll sign and for her to do that within thirty days of
12 the day of this decision.

13 Now, you have a right to appeal this decision, but
14 let's talk about that. The right doesn't begin today.
15 What'll happen is Ms. Ratigan will send me the order, I'll
16 -- within thirty days.

17 I'll review it, I'll finalize it, sign it, send it back
18 to her. She will clock it here in Greenville, then serve it
19 on your lawyer. And your thirty days begins to run on the
20 day it's served on your lawyer. So not from today, but from
21 that future date. Do you understand that, sir?

22 MR. COLEMAN: Yes, sir.

23 THE COURT: All right. Well, then that is the decision
24 of the Court. And good luck to you, sir. And I'm going to
25 return you now to the detention center. All right. To Mr.

1 Coleman's family, have a good day, ladies and gentlemen.

2 Thank you for being here today.

3 Mr. Ariail, I've signed off a little temporary order.

4 And we're going to give you a copy of it just so your

5 records will show that -- what the decision was today.

6 MR. ARIAIL: Thank you, Your Honor. Appreciate it.

7 THE COURT: Thank you.

8 (Hearing Ended at 10:18 AM)

9 (End of Requested Transcript of Record)

1

CERTIFICATE OF REPORTER

2 I, The undersigned, Susan W. Hudgins, Official Court
3 Reporter for the Thirteenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all the
6 proceedings had and evidence introduced in the trial/hearing
7 of the captioned case, relative to appeal, in the Circuit
8 Court for Greenville County, South Carolina, on the 30th day
9 of July 2012.

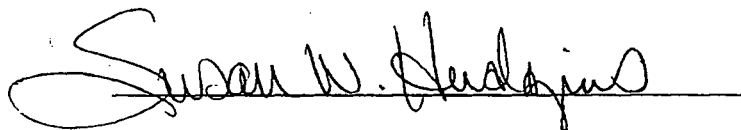
10 I do further certify that I am neither of kin, counsel,
11 nor interest to any party hereto.

12

October 31, 2012

13

14

A handwritten signature in cursive script that reads "Susan W. Hudgins". The signature is written in black ink and is positioned above a horizontal line.

15

Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
)
 Javaris Lawren Coleman,)
 S.C.D.C. No. 337895,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE THIRTEENTH JUDICIAL CIRCUIT
 C.A. No. 2010-CP-23-9195

**ORDER DENYING
 POST-CONVICTION RELIEF**

FILED
 2012 JUN 23 PM 3:51

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed November 9, 2010. Respondent made its return on March 7, 2011. An evidentiary hearing into the matter was convened on July 30, 2012, at the Greenville County Courthouse. Applicant was present at the hearing and represented by R. Mills Arial, Jr., Esquire. Karen C. Ratigan, Esquire, of the South Carolina Attorney General's office represented Respondent.

JMS

Applicant testified on his own behalf at the PCR hearing. Also testifying was Applicant's plea counsel, Nihar M. Patel, Esquire. The Court had before it the transcript of the guilty plea hearing, the records of the Greenville County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and Respondent's return.

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. Applicant was indicted at the April 2009 term of the Greenville County Grand Jury for first-degree burglary (2009-GS-23-3208A).

He was represented on this charge by Nihar M. Patel, Esquire, of the Public Defender's office. On November 10, 2009, Applicant pled guilty as charged. The Honorable Edward W. Miller sentenced Applicant to the minimum fifteen (15) years imprisonment. Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. Failed to advise of a lesser-included offense.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court had the opportunity to review the record in its entirety, and heard the testimony and arguments presented at the PCR hearing. This Court further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court weighed the testimony accordingly.

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

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v.

State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

At the hearing, Applicant testified he had only two meetings with plea counsel and that they did not review or discuss the State's evidence and discovery materials. Applicant stated there was a ten year plea offer from the State to plead to strong-arm robbery if he testified against his co-defendant. Applicant stated he turned down this offer because he "did not have anything to testify about." Applicant stated plea counsel never brought him a plea offer that reduced the first-degree burglary to second-degree. Applicant admitted he discussed with counsel the State's final recommendation for a fifteen year sentence and the dismissal of numerous other charges. Applicant stated he was not advised of the right to appeal and wanted an appeal from his guilty plea so the appellate court could review the evidence regarding his first-degree burglary charge.

Plea counsel testified he represented Applicant on the burglary first degree charge and at least six others that were dismissed as a part of the plea deal—one armed robbery, one burglary second degree, two grand larcenies, and two criminal conspiracy charges. Plea counsel testified he filed discovery motions, received those materials, and reviewed them with Applicant. Plea counsel testified he had more than two meetings with Applicant – and in fact they had several meetings – in which they also discussed Applicant's confession, the elements of the charges, and the potential sentences he could receive. Plea counsel testified the State made a plea offer to reduce the first-degree burglary to second-degree and recommend a ten year sentence if

Applicant testified against his co-defendant. Plea counsel testified that, while he explained the risks of turning down this offer, Applicant rejected it because he did not want to be a "snitch." Plea counsel testified Applicant knew he was pleading guilty that day to first-degree burglary with a fifteen year recommendation and never indicated he did not understand this. Plea counsel testified that, while he likely did not discuss the right to appeal, there were no appealable issues from the guilty plea hearing.

Regarding Applicant's claims of ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

Applicant clearly admitted to the plea judge that he was guilty and that the facts recited by the solicitor were true. (Plea transcript, p.7; p.14). Applicant also told the plea judge that he understood the trial rights he was waiving by pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.6-8).

This Court finds Applicant failed to meet his burden of proving plea counsel did not properly meet with him to review evidence and discuss his case. Plea counsel testified he had several meetings with Applicant in which they reviewed the State's evidence, his statement, the elements of the charges, the potential sentences he could receive, and the State's plea offers. This Court finds plea counsel to be more credible than Applicant. This Court notes Applicant told the plea judge he had enough time to review the evidence in this case and was satisfied with plea counsel. (Plea transcript, p.8).

This Court finds Applicant failed to meet his burden of proving plea counsel did not

properly convey the State's plea offer in this case. While Applicant states he was never informed of a plea offer for second-degree burglary, plea counsel testified they discussed this offer and Applicant rejected it because he did not want to testify against his co-defendant. Plea counsel also testified they discussed the risks of rejecting this offer, but Applicant chose to do so anyway. This Court finds plea counsel to be more credible than Applicant on this point. This Court finds trial counsel fulfilled his responsibilities in conveying and discussing the plea offer. Cf. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (holding counsel's failure to convey the State's plea offer to defendant constituted deficient performance).

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance.

This Court concludes that Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds Applicant waived such allegations and failed to meet his burden of proof regarding them; therefore, they are hereby denied and dismissed.

CONCLUSION

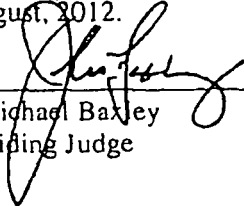
In this case, Applicant found himself in a difficult situation facing multiple criminal charges. He voluntarily entered a plea to one charge, with full knowledge of his constitutional rights and the options before him, as this was clearly in his best interests. To now collaterally attack this decision, and blame counsel for ineffective assistance, is neither a meritorious course of action nor supported in any way by the evidence. Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and Applicant was not prejudiced by counsel's representation; therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That Applicant remain in the custody of Respondent for the completion of his sentence.

IT IS SO ORDERED this 9th day of August, 2012.



J. Michael Baxley
Presiding Judge

Greenville, South Carolina.

MS
WITNESSES

Matthew Smith

Greenville County Sheriffs Office

8/20/2008

ARREST WARRANT NUMBER
DIRECT PRESENTMENT

B/M 248-81-7005 12-31-1989

ACTION OF GRAND JURY
TRUE BILL
Nicki Cummins

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury Date:

DOCKET NO. 2009-GS-23-
RDW 003203 A

✓
The State of South Carolina
County of Greenville

COURT OF GENERAL SESSIONS
April TERM 2009

THE STATE
vs.

JARVARIS L COLEMAN

(J)

Culberts

✓
0079 Indictment for

BURGLARY FIRST DEGREE

VIOLATION § 16-11-0311

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

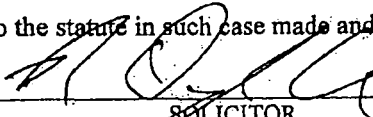
INDICTMENT FOR
BURGLARY FIRST DEGREE

At a Court of General Sessions, convened on: **APR 14 2009** the Grand Jurors of Greenville

County present upon their oath:

That JARVARIS L COLEMAN did in Greenville County, on or about the 7th day of August, 2008, willfully and unlawfully enter the dwelling of JAMES HOOD located at _____, Greenville, South Carolina, without consent and with the intent to commit a crime therein and the entering and/or remaining did occur in the nighttime. This is in violation of §16-11-311 of the South Carolina Code of Laws (1976) as amended.

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



SOLICITOR