

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

JAN 11 2018

Certiorari to York County

Honorable John C. Hayes, Circuit Court Judge

S.C. SUPREME COURT

JESSIE JAMES ROBINSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001688

APPENDIX

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JUSTIN J. HUNTER
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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CERTIFIED TRUE COPY
FORM 5
2013 JUL 24 AM 10:43

STATE OF SOUTH CAROLINA
County of YORK IN THE COURT OF COMMON PLEAS

Jessie James Robinson
Full name and prison number (if any) of Applicant

v.

State of South Carolina Attorney
General Office
Respondent

20130046-2174

APPLICATION FOR
POST-CONVICTION RELIEF

FILED-RECEIVED
2013 JUL 18 AM 10:17
DAVID HAMILTON
C.C.C.P. &
YORK COUNTY, SC

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 Perry correction inst 430 oaklawn Rd, Pelzer, SC 29669
2. Name and location of Court which imposed sentence York County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) NO
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2011-GS-46-03701

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) _____
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty Yes
- (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?
NA
8. If you answered yes to (7), list:
- (a) the name of each Court to which you appealed:
- i. NA
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. NA
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. NA
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NA
- ii. _____
- iii. _____
9. If you answered no to (7), state your reasons for not so appealing:
- (a) Counsel legal advise tell the defen-

(b) dant, That he could not Appeal.

(c) _____

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

(a) 6th

(b) 14th

(c) _____

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

(a) ineffective assistance counsel

(b) Due Process of Law State and Federal

(c) Constitution

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

(a) any petition in a State Court under South Carolina Law? NA

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NA

(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? _____

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. NA

ii. _____

iii. _____

iv. _____

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

i. NA

ii. _____

iii. _____

iv. NA

(c) the disposition thereof:

i. NA

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. NA

ii. _____

iii. _____

iv. _____

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

i. NA

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?

NA

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

(a) which grounds have been presented:

i. NA

ii. _____

iii. _____

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

i. NA

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) First PCR filed within court?
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? YES
- (b) your trial, if any? NO
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NA
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NA
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. B. J. Barrawelagh Public Defender York
County
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Guilty Plea
- ii. _____
- iii. _____

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

VACATE SET A SIDE SENTENCE

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

NA

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Peizer)

VERIFICATION

I, Jessie James Robinson #166280, 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.

Jessie James Robinson

SWORN to and subscribed before me this 10th
day of July, 2013.

Nancy Muehant (L.S.)
Notary Public

My Commission Expires: 1-23-2023

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

I, Jessie James Robinson, 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.

Jessie James Robinson
Applicant

SWORN or affirmed to and subscribed before me this
10th day of July, 2013.

Nancy C. Muckel
Notary Public

My Commission Expires: 1-23-2013

State of South Carolina
County of York

Jessie James Robinson
Applicant

VS

State of South Carolina
Respondent

To Respondent:

IN THE COURT OF COMMON
PLEAS

C/A 2013 CP 46-2174

Memorandum of Law
Support of PCR

FILED-RECEIVED
2013 JUL 18 AM 10:17
DAVID HAMILTON
C.C.P. & ES.
YORK COUNTY, SC

Statement of The facts

On August 8, 2011; Defendant Jessie James Robinson was Arrest for A Burglary 1st Degree, in the County of York S.C. At A Court of General Sessions, convened on November 10, 2011 the Grand Jurors of York County present upon their oath A Indictment for Burglary 1st Degree, And Action of Grand Jury True bill. November 10, 2011.

I Argument

Applicant was mentally incompetent at time of the burglary 1st Degree in 2011, And at the time of the guilty Plea in 2012, And was allowed to Plead guilty in violation of the South Carolina constitution, United States constitution, And the Federal constitutions Fourteenth Amendment due process clause. ~~incompetent~~ into Allegations is that applicant was denied effect Assistance of counsel and due process of Law at his 2012 Plea hearing for Burglary, because he was mentally incompetent at the time of this crime 2011 And At 2012 guilty Plea.

counsel prejudice the applicant failure
Request a second opinion personal psy-
chiatrist.

Applicant informed counsel to get a second opinion because feel totally prejudice of the opinion Report given by State personal psychiatrist basing on the applicant mental Health background, And counsel was so prejudice by failure get a second mental examination to determine opinion, was the applicant incompetent to Plead guilty to the Burglary 1st Degree, And counsel was prejudice failure to investigate determine the Applicant mental history.

Due process footnote (4) prohibits the conviction of a person who is mentally incompetent. Bishop v United
 350 U.S. 961 76 S. Ct 440. 100 LEd

835 (1956) "this constitutional right cannot be waived by the incompetency by guilty plea or other wise." Casper v. Beto, 421 F.2d 1065, 1067, 5th Cir. 1970

* While a guilty Plea may only be attacked on the basis that it was not knowing and voluntary, it contradictory to argue that a defendant may be incompetent, and yet knowingly or intelligently waive his right [5]

Pate v. Robinson, 383 U.S. 374 384, 86 S.Ct. 836, 841 LEd2 (1966)

[3] Pate v. Robinson, 383 U.S. 375 86 S.Ct. 836, 15 LEd2d 815 (1966) makes it clear that the conviction of an incompetent person who is not mentally competent to stand trial violates due

Process. This constitutional right cannot be waived by the incompetency - by guilty plea or other wise - And thus it must be protected by adequate state procedures.

When A prisoner, either state or Federal, seeking post-conviction relief, asserts with substantial fact to back up his allegation, that at the time of trial he was not mentally competent to stand trial, and that there was no resolution of that precise issue before he was tried, convicted and sentenced, the protection of the fourteenth Amendment to the constitution requires that such conviction and sentence be set aside unless upon adequate

hearing it is shown that he was mentally competent to stand trial. (386 F2d at 105)

[3] Constitution Law 268, 2(2)

As a matter of procedural due process procedures, a criminal defendant is entitled to an evidentiary hearing on claim of mental ~~in~~ incompetency. If he present clear and convincing evidence to create a real, substantial and legitimate doubt as to his mental capacity to meaningfully participate and cooperate with counsel.

Petitioner claims of incompetency to stand trial, insanity at time of act, and an unknowing and involuntary guilty plea were not barred

by the procedural default rule of Wainwright v. Sykes, 477 U.S. 59, 103 S.Ct. 2317, 91 L.Ed.2d 1558 (1986).

The petitioner argues his counsel was prejudiced for failing to request a second opinion examination which may have formed the basis of an insanity defense or a determination that he was not competent to stand trial, cite At Jeter v. State 417 S.E.2d 594 (S.C. 1992)

under Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) applicable to guilty pleas under Hill v. Lockhart 474 U.S. 52, 106 S.Ct. 366, both deficient performance and prej-

udice to prevail on an ineffective assistance of counsel claim.

II ARGUMENT

Trial counsel was ineffective Assistance by prejudice Applicant, failure to file a timely Notice of Appeal.

In the applicant case before bar trial counsel was required to file a timely Notice of Appeal which client had request counsel to seek a Notice of Appeal within the South Carolina Supreme Court which the Applicant may challenged his judgment conviction on record of Appeal for belated Appeal pursuant to White v State 263 S.C. 110, 208 SE2d 35 (1974) Applicant before bar did not knowingly and intell-

I gently waive his right to appeal.
see cite At Strickland v Washington,
466 U.S. 668, 688, 104 S. Ct 2052 (1984)

Conclusion

Applicant conviction and sentence
should be vacated and set aside,
and does required evidentiary hearing.

Date 7/14/13 2013

Jessie James Robinson
Jessie James Robinson

State of South Carolina) IN the Court of
 County of YORK) Common Pleas
 Jessie J. Robinson) C/A 2013 CP 46-2174
 Applicant)
 VS) Proof of Service
 State of South Carolina)
 Respondent)

FILED-RECEIVED
 2013 JUL 18 AM 10:17
 DAVID HAMILTON
 C.C.P. & C.S.
 YORK COUNTY, SC

To Respondent:

I Jessie J. Robinson, hereby certify that a true copy of PCR Application has been served upon the Respondent clerk of court's office At Post office Box 649 YORK S.C. 29745, By Placing a true copy in the United States mail.

Sworn or Affirmed to
 And subscribed before
 me this 10th day of
July, 2013
Doreen M. Mink
 Notary

S/ Jessie J. Robinson
 Jessie J. Robinson

my commission expires 1-23-2023

State of South Carolina
County of York

IN the Court of
Common Pleas

Jessie J. Robinson
Applicant

C/A 2013 CP 46-2174

Summons

VS
State of South Carolina
Respondent

FILED-RECEIVED
2013 JUL 18 AM 10:17
DAVID J. HARRISON
C.C.P. & CS
YORK COUNTY, SC

To Respondent's

YOU ARE Hereby SUMMONED and
required to answer the Post-Conviction
Relief Application herein, A copy of
which is herewith served upon you, and
to serve A copy of your answer to
this Post-Conviction Relief upon
the Subscribed, At the address shown
below, within (60) days after service
hereof, exclusive of the day of such
service, and if you fail to answer the
PCR judgment by default will be rendered
against you for the relief demanded
in PCR

Date 7/14/13

Jessie J. Robinson
JESSIE J. ROBINSON
430 OAK HILL RD

STATE OF York
VS.
Jessie James Robinson

INDICTMENT/CASE#: 2011GS4603701A/W#: J133425Date of Offense: 8/8/2011S.C. Code §: 16-11-0311CDR Code #: 0079

AKA:

Race: BLACK Sex: M Age: 45DOB: 3-1966 SS#: [REDACTED]Address: Squire RoadCity, State, Zip: Rock Hill, SC 29730DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Burglary / Burglary (After June 20, 1985) - First degree☐ CONVICTED OF or ☒ PLEADS

(15 - Life)

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.ATTEST: Hervey, Mindy L SC Bar# 14704 John D. [Signature] Attorney for Defendant 9297 SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

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

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 217 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5

3% to County (if paid in installments) \$

TOTAL \$ 130

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: Guilty But Mentally Ill
☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2140Sentence Date: 3-22-12

ARREST WARRANT

J-133425

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
ROCK HILL

THE STATE

against

ROBINSON, JESSIE JAMES

Address: SQUIRE RD
ROCK HILL SC 29730

Phone: 803-000-0000 SSN: [REDACTED]

Sex: M Race: B Height: 507 Weight: 150

DL State: SC DL#: [REDACTED]

DOB: [REDACTED]/1966 Agency ORI #: 460300

Prosecuting Agency: RHPD

Prosecuting Officer: DAVID RUTH

Offense: BURGLARY (1ST DEGREE) - 16-11-311

Offense Code: 16-11-311

Code/Ordinance Sec. 16-11-311

This warrant is **CERTIFIED FOR SERVICE** in the

☐ County/ ☐ Municipality of

The Accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant Jessie Robinson

on 8-8-11

Myers 5159
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

JUDGE

BLACK STREET

HILL SC 29730

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
ROCK HILL

Personally appeared before me the affiant
being duly sworn deposes and says that defendant

ROBINSON, JESSIE JAMES

did violate the criminal laws of the State of South Carolina (or ordinance of

in the following particulars:

DESCRIPTION OF OFFENSE:

BURGLARY (1ST DEGREE) - 16-11-311

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:
THE DEFENDANT DID WILLFULLY AND KNOWINGLY VIOLATE SC CODE OF LAWS 16-11-311 BURGLARY 1ST DEGREE BY KICKING IN THE FRONT DOOR AND ENTERING A RESIDENCE OF WHICH THE DEFENDANT DID NOT RESIDE. THIS INCIDENT OCCURRED AT [REDACTED] IN THE CITY OF ROCK HILL, AT APPROXIMATELY 12:45 AM.

POLICE INVESTIGATION

WITNESS STATEMENT

1108080329

RUTH-5580

THE AFFIANT IS SWEARING TO THIS BASED ON THE INFORMATION AND BELIEF PROVIDED BY THE ARRESTING OFFICER.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
ROCK HILL

Affiant's Address 120 E. BLACK STREET
ROCK HILL SC 29730

Affiant's Telephone - -

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that
on 08/08/2011 defendant ROBINSON, JESSIE JAMES
did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of ROCK HILL) as set forth below:

DESCRIPTION OF OFFENSE:

BURGLARY (1ST DEGREE) - 16-11-311

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

Sworn to and subscribed before me
on 8/8/2011

Williams (L.S.)
Signature of Issuing Judge

Judge Code: 6316

Judge's Address 120 E. BLACK STREET
ROCK HILL SC 29730

Judge's Telephone 803-329-5695

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF YORK

State of South Carolina

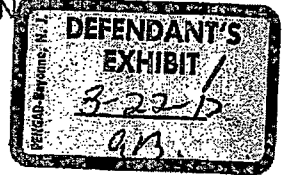
V.

Jessie James Robinson

Defendant.

CERTIFIED TRUE COPY

2013 JUL 23 AM 10:50

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SCIN THE COURT OF GENERAL SESSION
SIXTEENTH JUDICIAL CIRCUITAFFIDAVIT OF DEFENDANT FOR
GUILTY PLEA

The Defendant states to the Court that the Defendant wants to plead guilty, but mentally ill to the following charges:

Burglary 1st Degree

The negotiated plea agreement is as follows:

Cap of 20 years

In connection with the plea, I certify that the answers to the following questions are true:

- 1.) Are you under the influence of any alcohol, drugs, narcotics, medicines, pills or any other intoxicants? no
- 2.) Have the charges been explained to you by your lawyer, and do you understand the nature of the charges, and do you understand the element of every charge? yes
- 3.) Have you and your lawyer discussed the possible defenses, if any, to the charges? yes
- 4.) Are you satisfied with your lawyer's legal services? yes
- 5.) Do you understand that you have the right to plead not guilty and be tried by a jury? yes
- 6.) Do you understand you have the right to remain silent, that is the right against self-incrimination? yes
- 7.) Do you understand that you have the right to confront and to cross-examine witnesses against you? yes
- 8.) Do you understand that at a jury trial you have the right to have a jury determine whether the State has produced enough evidence to convict you beyond a reasonable doubt? yes
- 9.) Do you understand that a jury would be told that you are presumed innocent unless the State has proved beyond a reasonable doubt that you are guilty of the charge or charges against you? yes
- 10.) Do you understand that if you plead guilty you give up all of your constitutional rights (Except the right to appeal)? yes
- 11.) Do you understand that even though you have entered a guilty plea to the charge or charges you have a right to appeal the case and the sentence of the Court, but you must do that within 10 days? yes

Date: 3/26/12

Defendant

Attorney for Defendant

COMPETENCY TO STAND TRIAL EVALUATION
FORENSIC EVALUATION SERVICE
JOINT EVALUATION WITH THE
SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH (DMH)
AND THE
DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS (DDSN)

CERTIFIED TRUE COPY

2012 JUL 23 AM 10:50

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

NAME: Jesse James Robinson

DATE OF EVALUATION: November 2, 2011, November 9, 2011, and
February 1, 2012.

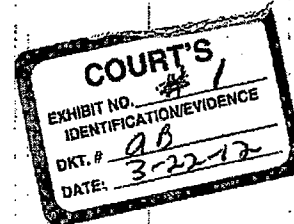
DMH EXAMINER: Kara Sieverdes, M.D., Forensic Psychiatry Fellow,
University of South Carolina School of Medicine

DDSN EXAMINER: Philip Cornelius, Ph.D., Forensic Examiner,
South Carolina Department of Disability and Special Needs
(February 1, 2012)

2nd DMH EXAMINER: Carol David, LISW-CP,
South Carolina Department of Mental Health
(November 2, 2011)

Tia Taylor Thomas, LMSW,
South Carolina Department of Mental Health
(November 9, 2011)

DIAGNOSES: AXIS I: Transvestic Fetishism
Alcohol Dependence, in a Controlled Environment
AXIS II: Borderline Intellectual Functioning
AXIS III: No Diagnosis



OPINION REGARDING COMPETENCY TO STAND TRIAL: Competent

DISPOSITION: Mr. Robinson was released to the custody of officers for return to the York County Detention Center.

REFERRAL INFORMATION: Mr. Robinson is a 45-year-old African American male who was seen at the Forensic Evaluation Center pursuant to a court order from the York County Court of General Sessions. This court order requests an evaluation of his competency to stand trial pursuant to State v. Blair, 275 S.C. 529, 273 S.E. 2d 536 (1981) and S.C. Code Ann. § 44-23-410 (1976). He is currently charged with Burglary First Degree. The basis for

ROBINSON, JESSE JAMES 1023-3953
SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICES 49705

this court order is as follows: "Mr. Robinson presents as slow of thought and slow of speech. He self reports hearing different voices [sic] and having different personalities. An interview with his brother, Lenzy Woodard (phone number [REDACTED] 3456) corroborated a history of hearing voices. Mr. Woodard believes his brother has schizophrenia. Mr. Woodard relates that the family has tried to get Mr. Robinson mental health help in the past but Mr. Robinson has been uncooperative. Mr. Woodard also relates a long history of substance abuse which may also play a role in mr. [sic] Robinson's mental capacity."

NOTIFICATION OF LIMITATIONS OF CONFIDENTIALITY: Prior to participating in the evaluation, Mr. Robinson was informed of the limitations of confidentiality. He was informed that the examination was court ordered, that the examiners work for the Department of Mental Health, and that a copy of the evaluation report would be provided to his attorney, the solicitor and the judge. He was also informed that the examiners could be called to testify at a hearing about his competency to stand trial. He verbalized an understanding of this information. As he stated he could not see well without glasses, an information form that explains these issues was read to him. He agreed to proceed with the evaluation.

SOURCES OF INFORMATION:

1. York County Court of General Sessions Order for Competency to Stand Trial Evaluation.
2. York County Court of General Sessions Order for Criminal Responsibility and Capacity to Conform Evaluation.
3. Forensic Division Psychiatric Social Work Admission Assessment done by Tia Taylor Thomas, LMSW, on November 1, 2011.
4. Social Work Addendum done by Tia Taylor Thomas, LMSW, dated November 2, 2011.
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24. Clinical forensic interview with the defendant on November 2, 2011 for approximately two hours and thirty minutes.
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CLINICAL INFORMATION: Mr. Robinson denied a history of psychiatric inpatient or outpatient treatment or receiving psychiatric medications. Mr. Robinson has no record of inpatient or outpatient psychiatric treatment with the South Carolina Department of Mental Health. Review of available records from the York County Detention Center and the South Carolina Department of Corrections reveal no mental health appointments at those facilities. Staff at the York County Detention Center confirmed Mr. Robinson has not seen mental health providers and is not currently prescribed psychiatric medication.

Mr. Robinson's brother reported concerns that he always acted "different" and appeared to have two personalities. He also noted Mr. Robinson has been "cross dressing for years." Mr. Robinson reported after an incident of sexual abuse at about age 15 he underwent a "transformation." He stated he began to enjoy dressing in female clothing. He described initially he would do this at home, but later he would go out in public fully dressed as a woman. He described he "got addicted to it" and "liked the feeling." He also reported a desire to "get rid of this problem" and "live a normal life." He reported a history of stealing women's clothing and shoes. He indicated that he portrays women for sexual pleasure. He described thinking about dressing like a woman every day, but also being ashamed of those thoughts. Mr. Robinson identified himself as heterosexual. He reported sexual relationships with females in the past and denied homosexual feelings. He stated that he has "different personalities" and explained this is when he portrays two to three different people by dressing up. He often remembers putting on these different personas and described it as acting.

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hearing voices, he reported he has been hearing voices since he was a child. He described this as "dream[ing] about bad things" and hearing screams at night or someone calling his name. He also reported seeing a man at a family member's house wearing a black suit with "a tall hat like Abraham Lincoln." He believed this might be the ghost of his uncle. He reported thoughts of wanting to hurt others in general, but no person in particular except for this ghost.

During the third interview (February 1, 2012), Mr. Robinson reported his mood was "not too good" and he slept "2 hours out of 24." He stated "I'm going to die here" and explained it was because "they won't give me the medicine they're supposed to." He expressed concerns about his medical problems. He further noted he was put in lockup for "complaining about [his] health." On this occasion, Mr. Robinson's report of hallucinations was somewhat different than the first two interviews. He recounted hearing his name called "all the time" by different voices. He endorsed seeing a "green man" he described as ugly and a monster who was only a few feet tall. He stated he felt this little green man pulling on his foot the previous night. He also noted he has seen ghosts and sometimes sees them in black and white. The medical supervisor at York County Detention Center confirmed Mr. Robinson is in lockup for medical observation.

SUBSTANCE USE HISTORY: Mr. Robinson stated he first drank alcohol at age 10 or 11 when his mother gave it to him. He reported over the years increasing his use to four to five 24 ounce beers every day. He noted an increased physiological tolerance to alcohol as well as withdrawal symptoms when he did not drink. Additionally, he noted difficulties discontinuing alcohol use on his own.

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SOCIAL HISTORY: Mr. Robinson reported he was born in Chester, South Carolina and soon after moved to Rock Hill where he was raised by his mother. He stated he has never seen his father. He noted he has four half brothers and three half sisters. He reported one

incident of sexual abuse at age 15 and denied experiencing physical abuse. He noted his mom was an alcoholic, and he witnessed domestic violence between his mother and her boyfriend. Mr. Robinson's brother gave a history that all of the siblings suffered mental abuse and neglect stemming from their mother's alcohol use. He reported their mother would leave the children home alone and at times they did not have enough to eat.

Mr. Robinson reported he finished high school but that the school "lost his diploma". He reported he was in "slow learning" classes but did not have to repeat grades. He denied suspensions or expulsions, but reported assaulting another student in fifth grade. He reported he broke into houses at age 15 after he experienced sexual abuse. He denied running away from home or cruelty to animals. Mr. Robinson's brother stated he did not attend high school and believed sixth grade may have been his highest grade completed.

Records from Rock Hills Schools reveal he received a psychological evaluation while at the Department of Youth Services Educational Program in January of 1982. That evaluation reported a Full Scale IQ of 70, Verbal IQ of 66, and Performance IQ of 78. No adaptive functioning evaluation was recorded. After that evaluation, Mr. Robinson was in resource classes and classified as Educable Mentally Handicapped. Records are available from Birchwood High School (Department of Youth Services Educational Program) through the 11th grade, although it is not clear if Mr. Robinson returned to Rock Hill High School after that time.

Mr. Robinson reported he has never been married and has no children although he has had girlfriends in the past. Regarding his prior arrest history, he noted he went to the Department of Juvenile Justice for housebreaking at age 15 or 16. He reported being in the South Carolina Department of Corrections "many times." He noted his last incarceration was February 2009 to March 1, 2011 for auto breaking, and he listed several other past charges.

Mr. Robinson reported prior employment in landscaping, painting, and the janitorial field. His longest period of employment was for four years as a janitor at a school. Most recently he noted he was working off and on through a temporary service. He reported trouble with bosses in the past and as a result left two jobs. For about six months prior to his arrest, Mr. Robinson was in a re-entry program for persons from prison called Jump Start. Mr. Tim Terry from the Jump Start program informed our social worker (Tia Taylor) that Mr. Robinson had two jobs with the program and lost both due to limited skills. He further stated Mr. Robinson participated in groups, was not a behavior problem, and did not show signs of mental illness.

MENTAL STATUS EXAM: On November 2, 2011, Mr. Robinson arrived for the evaluation dressed in a detention center jumpsuit. He had adequate grooming and hygiene. He was cooperative with the interview and maintained appropriate eye contact. He was overly dramatic in his presentation, crying loudly at one point. He demonstrated normal motor activity. His speech was normal in volume, rate, rhythm, and tone. He described his mood as "not too good" and "pretty depressed." His affect (observed expression of emotion) was labile in that he quickly shifted from being fearful to smiling. His thought process was organized, linear, and goal directed. He denied current auditory or visual hallucinations, and he did not appear to respond to internal stimuli during the evaluation. In addition, there was no evidence

of bizarre or delusional thinking. On cognitive exam, he appeared to give poor effort, but after repeated questioning would typically give correct answers. He was alert and oriented to person, place, time, and situation. On testing of his concentration, he incorrectly spelled the word *world* backward, but was able to spell the word *cat* backward. He performed two simple calculations correctly and then stated 20 minus 10 was 15. He stated he did not know how many pennies were in a dollar or quarters in a dollar; however, later knew two quarters equals fifty cents. On testing of his memory, he did not immediately repeat three words but provided approximations of the words. For example, if the words given were car, blue, penny, he immediately stated car, penny, black. After five minutes, he recalled two out of three words spontaneously and the third with a prompt. He demonstrated the ability to abstractly interpret simple proverbs, but not similarities. He displayed an average fund of knowledge. His judgment and problem solving skills were fair based on his solution to a hypothetical dilemma.

On November 9, 2011, Mr. Robinson arrived for the evaluation dressed in a detention center jumpsuit. He was oriented to person, place, month and year. He had adequate grooming and hygiene. He was less cooperative with this interview. He maintained appropriate eye contact. He was dramatic in his presentation, crying loudly and asking for his brother to bring him ice cream. He demonstrated normal motor activity. His speech was normal in volume, rate, rhythm, and tone. He again described his mood as "not too good." His affect (observed expression of emotion) was labile and changed quickly. His thought process was organized, linear, and goal directed. He reported hearing "screams" and someone calling his name. He described seeing a man who is dead wearing a tall black hat in the past. He did not appear distracted by unseen stimuli during the evaluation. He denied current suicidal ideation or thoughts of harming anyone in particular.

On February 1, 2012, Mr. Robinson arrived for the evaluation dressed in a detention center jumpsuit. He had adequate grooming and hygiene. He was somewhat uncooperative with the interview as he often would not answer questions or only answer after repeated prompting. His eye contact was poor at times. He was again dramatic in his presentation, crying loudly multiple times. He demonstrated normal motor activity. His speech was normal in rate, rhythm, and tone and soft in volume. He described his mood as "don't feel too good." His affect (observed expression of emotion) was labile. His thought process was organized, linear, and goal directed, although he typically gave short answers without elaboration. He reported auditory hallucinations of someone calling his name. He reported visual hallucinations of "ghosts" and a small green man who looks like a monster that "scares" him. He did not appear distracted by unseen stimuli during the evaluation. When asked about suicidal and homicidal ideation, he indicated he had thoughts a "couple times," but stated he did not know about current thoughts and refused to give further details. During this interview, he gave the correct year and with prompting the month and day of the week. He was aware he was in South Carolina and named two other states. He named the colors of the American flag as blue, red, and green. He was able to describe the function of a thermometer. Additionally, he knew the name of the first book of the Bible and what it is about. Initially he named the current president as Bush; however, when confronted with the fact he knew this information during the prior interview he then named the correct president. He was able to identify other historical figures as well. When asked to repeat three digits he repeated them in the wrong order. He was

correct in repeating four digits once, but gave incorrect answers at other times with the same task.

DIAGNOSTIC FORMULATION: Transvestic fetishism is diagnosed when over a period of at least six months a heterosexual male has recurrent sexual fantasies, urges or behaviors involving cross dressing which cause clinically significant distress or impairment. Mr. Robinson reported a history since age 15 of recurrent thoughts about cross dressing as well as cross dressing behaviors that were confirmed by his brother. Additionally, Mr. Robinson reported these behaviors cause him significant distress. Therefore, we opine he meets criteria for Transvestic Fetishism.

Mr. Robinson reported daily use of alcohol with increased physiological tolerance as well as withdrawal symptoms. Additionally, he reported difficulty discontinuing his use of alcohol. Therefore, he would meet diagnostic criteria for Alcohol Dependence. This is specified as *in a controlled environment* as he is currently incarcerated where access to alcohol is limited.

Mr. Robinson had testing of his IQ that fell in the range between mild Intellectual Disability (Mental Retardation) and Borderline Intellectual Functioning and in high school he was classified as Educable Mentally Handicapped. However, no evaluation of his adaptive functioning was performed. Additionally, he has shown some adaptive functioning throughout his lifetime as evidenced by his work history. Therefore it is opined he does not meet the level of impairment in adaptive functioning needed for a diagnosis of Intellectual Disability (Mental Retardation). However, an IQ in this range is consistent with a diagnosis of Borderline Intellectual Functioning.

From review of available records and the clinical interview, Mr. Robinson exhibited some traits of Antisocial Personality Disorder (repeated acts that are grounds for arrests, deceitfulness, and irritability), but did not meet the full criteria for this disorder. By Mr. Robinson's report, as a teenager he exhibited some behaviors such as theft and a physical altercation that would be consistent with a diagnosis of Conduct Disorder; however, that diagnosis was not noted in his record. Additionally, records from the York County Detention Center and the Department of Corrections do not show a pattern of aggressiveness or behavioral problems. Therefore, we are not assigning a personality disorder diagnosis at this time.

Although Mr. Robinson's brother reported he believes Mr. Robinson has Schizophrenia, this diagnosis would not be consistent with his lack of inpatient or outpatient mental health treatment or his presentation during the evaluation. Mr. Robinson reported his "multiple personalities" are related to acting out different personalities while cross dressing. This is not typical of true multiple personalities and furthermore different personalities are not a part of the symptomatology of Schizophrenia. Although Mr. Robinson reported a history of hearing voices, his descriptions were inconsistent during his evaluations. Additionally, there is some evidence of symptom exaggeration given these inconsistencies and his often dramatic presentation. For example, he described a visual hallucination of a man dressed in a suit with a hat like Abraham Lincoln that he believed to be a ghost and a little green man, both of which would not be typical for a psychotic disorder. During the evaluation, there was no evidence Mr.

Robinson was experiencing hallucinations and he did not demonstrate a disorganization in his thought process or behavior that would be typical in Schizophrenia.

CONCLUSION REGARDING COMPETENCY TO STAND TRIAL:

Information obtained in the initial interview November 2, 2011:

Mr. Robinson was able to accurately identify his current charge as First Degree Burglary and was aware of what police are saying he did to get this charge. He indicated this was a serious charge and demonstrated knowledge of the difference between a felony and a misdemeanor. He reported he could get fifteen years to life for this charge and added his attorney told him that information. He was aware that if he is found not guilty he would go home, but if he was found guilty, he could receive a prison sentence. He listed other possibilities as drug court and counseling. He demonstrated knowledge of the requirements of being on probation.

Mr. Robinson correctly identified the major participants and their roles in basic trial proceedings. For example, he noted the solicitor was trying to convict him and was working against him, but that his attorney was "pulling for [him]." Initially, he stated there were six or twelve people on a jury who decide guilty or not guilty. However, after education on the correct number of jurors, he was able to retain this information at the end of the evaluation. Mr. Robinson was able to describe the plea options of *guilty* and *not guilty*. He demonstrated knowledge of the terms *witness* and *evidence* and was able to identify a potential witness in his case. He was also able to describe how a plea bargain works and was able to reason through two different hypothetical plea bargain scenarios.

When questioned about appropriate courtroom behavior, Mr. Robinson indicated you are supposed to be "respectful" and are allowed to speak when the judge says. When asked what he would do if a witness told a lie about him in court, he stated he would tell his attorney "to see what he thinks." He noted if someone disrupts the proceedings they could "write you up." He was educated on the term *contempt of court*; however, did not recall this term at the end of the evaluation. In terms of his ability to assist his attorney, Mr. Robinson identified his attorney by name and stated he "has to trust him." He expressed the belief his attorney wants to help him. He stated he has been able to tell his attorney everything about his case so that his attorney can help with his case.

Information obtained in the joint DDSN interview February 1, 2012:

During this interview, Mr. Robinson appeared to give less effort in answering competency questions. Additionally, some of the factual information he knew at the initial interview he reported he did not know. For example, on November 2, 2011 he defined a plea bargain and the advantages to both the defendant ("so you won't get more time") and the solicitor ("save the state money"). However, on February 1, 2012 when asked about a plea bargain he stated he "can't remember all this stuff." Regardless of these inconsistencies, he did demonstrate a basic factual knowledge during this interview.

Mr. Robinson was able to identify his current charge. He identified his attorney by name and reported he is on his side to help him "go home." He reported the solicitor is against him and wants him to "go to prison." When shown a courtroom picture, he correctly identified the judge

and jury and stated the function of the jury was to "decide my case." He described the plea options of *guilty* and *not guilty*. He gave a definition of the term witness and an example of a piece of evidence that pertains to his case. When presented with the dilemma of whether to talk to the solicitor without his attorney present, Mr. Robinson stated he would not want to talk because the solicitor wants him to go to prison.

In summary, based on the above data it is our opinion that Mr. Robinson is currently competent to stand trial. He did not display symptoms of a mental illness that would significantly compromise his present capacity to understand the proceedings against him or to assist in his own defense. Although he demonstrated less factual knowledge during the last interview than the first, on all occasions his basic knowledge of the legal system was in our opinion sufficient. He demonstrated a rational appreciation of his legal situation. He also demonstrated the ability to evaluate his options in a logical manner and to consult with his attorney regarding a defense. He may need education regarding some elements of the legal process but he has the capacity to learn, understand, and recall this information if it is provided to him.

K Sieverdes, MD 2/9/12

Kara Sieverdes, M. D.
Forensic Psychiatry Fellow
University of South Carolina School of Medicine

KS/lb

D: 11/04/11

RT/EM: 11/08/11

F/EM: 02/08/12 (KS, PC, JC)



State of South Carolina
Department of Mental Health

MENTAL HEALTH COMMISSION:

Alison Y. Evans, PsyD, Chair
Joan Moore, Vice Chair
Jane B. Jones
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Division of Inpatient Services
G. Werber Bryan Psychiatric Hospital
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7401 Farrow Road, Building #6
Columbia, SC 29203
Information: (803) 935-6586

February 9, 2012

Re: The State of South Carolina vs. Robinson, Jessie
DMH Case #: 1023-3953
York County, Court of General Sessions

Dear Attorney Barrowclough:

In accordance with the court order issued by the Honorable Lee S. Alford, evaluations of criminal responsibility and capacity to conform were conducted by the South Carolina Department of Mental Health (SCDMH) pursuant to S.C. Code Ann. §17-24-10 (1976).

If the court order specifies either an "evaluation requested by either party after defendant's assertion of insanity defense" or an "evaluation requested by consent of both parties at any time," both the solicitor and the defense attorney will find a copy of the SCDMH report attached to this letter. However, if the court order specifies an "ex parte evaluation requested by defendant prior to assertion of insanity defense," only the defense attorney will find a copy of the SCDMH report attached to this letter.

This 2 page document is certified to be the original court-ordered evaluation report issued pursuant to S.C. Code Ann. § 44-23-410 (1976).

2/10/12
Date

Jeffrey E. Musick PhD, ABPP
Jeffrey E. Musick, Ph.D., ABPP
Chief Psychologist
Forensic Evaluation Services
Department of Mental Health

cc: Mindy Hervey-Lipinski, Esq., Asst. Solicitor

JM/tl

MISSION STATEMENT

To support the recovery of people with mental illnesses.



CRIMINAL RESPONSIBILITY AND CAPACITY TO CONFORM EVALUATION
SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICE

NAME: Jesse James Robinson

DATE OF EVALUATION: November 2, 2011, November 9, 2011, and
February 1, 2012

FIRST EXAMINER: Kara Sieverdes, M.D., Forensic Psychiatry Fellow,
University of South Carolina School of Medicine

SECOND EXAMINER: Carol David, LISW-CP,
South Carolina Department of Mental Health
(November 2, 2011)

Tia Taylor Thomas, LMSW,
South Carolina Department of Mental Health
(November 9, 2011)

Philip Cornelius, Ph.D., Forensic Examiner,
South Carolina Department of Disability and Special Needs
(February 1, 2012)

DIAGNOSES: AXIS I: Transversic Fetishism
Alcohol Dependence, in a Controlled Environment
AXIS II: Borderline Intellectual Functioning
AXIS III: No Diagnosis

OPINION REGARDING CRIMINAL RESPONSIBILITY: Criminally responsible

OPINION REGARDING CAPACITY TO CONFORM: Had to the capacity to conform

DISPOSITION: Mr. Robinson was released to the custody of officers for return to the York County Detention Center.

REFERRAL INFORMATION: Mr. Robinson is a 45-year-old African American male who was seen at the Forensic Evaluation Center pursuant to a court order from the York County Court of General Sessions. This court order requests an evaluation of his criminal responsibility and, if found to be responsible, capacity to conform his conduct to the requirements of the law on or about August 8, 2011 pursuant to S.C. Code Ann. §17-24-10 (1976). He is currently charged with Burglary First Degree. The basis for this court order is as follows: "Mr. Robinson presents as slow of thought and slow of speech. He self reports hearing different voices [sic] and having different personalities. An interview with his brother, Lenzy Woodard (phone number [REDACTED]-3456) corroborated a history of hearing voices. Mr. Woodard

ROBINSON, JESSE JAMES 1023-3953
SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICES

believes his brother has schizophrenia. Mr. Woodard relates that the family has tried to get Mr. Robinson mental health help in the past but Mr. Robinson has been uncooperative. Mr. Woodard also relates a long history of substance abuse which may also play a role in Mr. [sic] Robinson's mental capacity."

NOTIFICATION OF LIMITATIONS OF CONFIDENTIALITY: Prior to participating in the evaluation, Mr. Robinson was informed of the limitations of confidentiality. He was informed that the examination was court ordered, that the examiners work for the Department of Mental Health and that a copy of the evaluation report would be provided to his attorney. He was informed the report could also go to the solicitor and the judge. He was also informed that the examiners could be called to testify at a hearing. As he stated he could not see well without glasses, an information form that explains these issues was read to him. He agreed to proceed with the evaluation.

SOURCES OF INFORMATION:

1. York County Court of General Sessions Order for Competency to Stand Trial Evaluation.
2. York County Court of General Sessions Order for Criminal Responsibility and Capacity to Conform Evaluation.
3. Forensic Division Psychiatric Social Work Admission Assessment done by Tia Taylor Thomas, LMSW, on November 1, 2011.
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ROBINSON, JESSE JAMES 1023-3913
SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICES

Records from Rock Hills Schools reveal he received a psychological evaluation while at the Department of Youth Services Educational Program in January of 1982. That evaluation reported a Full Scale IQ of 70, Verbal IQ of 66, and Performance IQ of 78. No adaptive functioning evaluation was recorded. After that evaluation, Mr. Robinson was in resource classes and classified as Educable Mentally Handicapped. Records are available from Birchwood High School (Department of Youth Services Educational Program) through the 11th grade, although it is not clear if Mr. Robinson returned to Rock Hill High School after that time.

Mr. Robinson reported he has never been married and has no children although he has had girlfriends in the past. Regarding his prior arrest history, he noted he went to the Department of Juvenile Justice for housebreaking at age 15 or 16. He reported being in the South Carolina Department of Corrections "many times." He noted his last incarceration was February 2009 to March 1, 2011 for auto breaking, and he listed several other past charges.

Mr. Robinson reported prior employment in landscaping, painting, and the janitorial field. His longest period of employment was for four years as a janitor at a school. Most recently he noted he was working off and on through a temporary service. He reported trouble with bosses in the past and as a result left two jobs. For about six months prior to his arrest, Mr. Robinson was in a re-entry program for persons from prison called Jump Start. Mr. Tim Terry from the Jump Start program informed our social worker (Tia Taylor) that Mr. Robinson had two jobs with the program and lost both due to limited skills. He further stated Mr. Robinson participated in groups, was not a behavior problem, and did not show signs of mental illness.

MENTAL STATUS EXAM: On November 2, 2011, Mr. Robinson arrived for the evaluation dressed in a detention center jumpsuit. He had adequate grooming and hygiene. He was cooperative with the interview and maintained appropriate eye contact. He was overly dramatic in his presentation, crying loudly at one point. He demonstrated normal motor activity. His speech was normal in volume, rate, rhythm, and tone. He described his mood as "not too good" and "pretty depressed." His affect (observed expression of emotion) was labile in that he quickly shifted from being tearful to smiling. His thought process was organized, linear, and goal directed. He denied current auditory or visual hallucinations, and he did not appear to respond to internal stimuli during the evaluation. In addition, there was no evidence of bizarre or delusional thinking. On cognitive exam, he appeared to give poor effort, but after repeated questioning would typically give correct answers. He was alert and oriented to person, place, time, and situation. On testing of his concentration, he incorrectly spelled the word *world* backward, but was able to spell the word *cat* backward. He performed two simple calculations correctly and then stated 20 minus 10 was 15. He stated he did not know how many pennies were in a dollar or quarters in a dollar; however, later knew two quarters equals fifty cents. On testing of his memory, he did not immediately repeat three words but provided approximations of the words. For example, if the words given were car, blue, penny, he immediately stated car, penny, black. After five minutes, he recalled two out of three words spontaneously and the third with a prompt. He demonstrated the ability to abstractly interpret simple proverbs, but not similarities. He displayed an average fund of knowledge. His judgment and problem solving skills were fair based on his solution to a hypothetical dilemma.

On November 9, 2011, Mr. Robinson arrived for the evaluation dressed in a detention center jumpsuit. He was oriented to person, place, month and year. He had adequate grooming and

hygiene. He was less cooperative with this interview. He maintained appropriate eye contact. He was dramatic in his presentation, crying loudly and asking for his brother to bring him ice cream. He demonstrated normal motor activity. His speech was normal in volume, rate, rhythm, and tone. He again described his mood as "not too good." His affect (observed expression of emotion) was labile and changed quickly. His thought process was organized, linear, and goal directed. He reported hearing "screams" and someone calling his name. He described seeing a man who is dead wearing a tall black hat in the past. He did not appear distracted by unseen stimuli during the evaluation. He denied current suicidal ideation or thoughts of harming anyone in particular.

On February 1, 2012, Mr. Robinson arrived for the evaluation dressed in a detention center jumpsuit. He had adequate grooming and hygiene. He was somewhat uncooperative with the interview as he often would not answer questions or only answer after repeated prompting. His eye contact was poor at times. He was again dramatic in his presentation, crying loudly multiple times. He demonstrated normal motor activity. His speech was normal in rate, rhythm, and tone and soft in volume. He described his mood as "don't feel too good." His affect (observed expression of emotion) was labile. His thought process was organized, linear, and goal directed, although he typically gave short answers without elaboration. He reported auditory hallucinations of someone calling his name. He reported visual hallucinations of "ghosts" and a small green man who looks like a monster that "scares" him. He did not appear distracted by unseen stimuli during the evaluation. When asked about suicidal and homicidal ideation, he indicated he had thoughts a "couple times," but stated he did not know about current thoughts and refused to give further details. During this interview, he gave the correct year and with prompting the month and day of the week. He was aware he was in South Carolina and named two other states. He named the colors of the American flag as blue, red, and green. He was able to describe the function of a thermometer. Additionally, he knew the name of the first book of the Bible and what it is about. Initially he named the current president as Bush; however, when confronted with the fact he knew this information during the prior interview he then named the correct president. He was able to identify other historical figures as well. When asked to repeat three digits he repeated them in the wrong order. He was correct in repeating four digits once, but gave incorrect answers at other times with the same task.

DIAGNOSTIC FORMULATION: Transvestic fetishism is diagnosed when over a period of at least six months a heterosexual male has recurrent sexual fantasies, urges or behaviors involving cross dressing which cause clinically significant distress or impairment. Mr. Robinson reported a history since age 15 of recurrent thoughts about cross dressing as well as cross dressing behaviors that were confirmed by his brother. Additionally, Mr. Robinson reported these behaviors cause him significant distress. Therefore, we opine he meets criteria for Transvestic Fetishism.

Mr. Robinson reported daily use of alcohol with increased physiological tolerance as well as withdrawal symptoms. Additionally, he reported difficulty discontinuing his use of alcohol. Therefore, he would meet diagnostic criteria for Alcohol Dependence. This is specified as *in a controlled environment* as he is currently incarcerated where access to alcohol is limited.

Mr. Robinson had testing of his IQ that fell in the range between mild Intellectual Disability (Mental Retardation) and Borderline Intellectual Functioning and in high school he was classified as Educable Mentally Handicapped. However, no evaluation of his adaptive functioning was

performed. Additionally, he has shown some adaptive functioning throughout his lifetime as evidenced by his work history. Therefore it is opined he does not meet the level of impairment in adaptive functioning needed for a diagnosis of Intellectual Disability (Mental Retardation). However, an IQ in this range is consistent with a diagnosis of Borderline Intellectual Functioning.

From review of available records and the clinical interview, Mr. Robinson exhibited some traits of Antisocial Personality Disorder (repeated acts that are grounds for arrests, deceitfulness, and irritability), but did not meet the full criteria for this disorder. By Mr. Robinson's report, as a teenager he exhibited some behaviors such as theft and a physical altercation that would be consistent with a diagnosis of Conduct Disorder; however, that diagnosis was not noted in his record. Additionally, records from the York County Detention Center and the Department of Corrections do not show a pattern of aggressiveness or behavioral problems. Therefore, we are not assigning a personality disorder diagnosis at this time.

Although Mr. Robinson's brother reported he believes Mr. Robinson has Schizophrenia, this diagnosis would not be consistent with his lack of inpatient or outpatient mental health treatment or his presentation during the evaluation. Mr. Robinson reported his "multiple personalities" are related to acting out different personalities while cross dressing. This is not typical of true multiple personalities and furthermore different personalities are not a part of the symptomatology of Schizophrenia. Although Mr. Robinson reported a history of hearing voices, his descriptions were inconsistent during his evaluations. Additionally, there is some evidence of symptom exaggeration given these inconsistencies and his often dramatic presentation. For example, he described a visual hallucination of a man dressed in a suit with a hat like Abraham Lincoln that he believed to be a ghost and a little green man, both of which would not be typical for a psychotic disorder. During the evaluation, there was no evidence Mr. Robinson was experiencing hallucinations and he did not demonstrate a disorganization in his thought process or behavior that would be typical in Schizophrenia.

INFORMATION RELEVANT TO CRIMINAL RESPONSIBILITY AND CAPACITY TO CONFORM CONDUCT:

Records Pertinent to the Alleged Offense: According to a Municipality of Rock Hill Arrest Warrant (J-133425), it is alleged that on August 8, 2011, the defendant violated the law by "kicking in the front door and entering a residence of which the defendant did not reside ... at approximately 12:45am." The corresponding incident report describes that an officer arrived on the scene, entered the house and "announce himself as a police officer." The officer then "observed Jessie Robinson run down the hallway into a bedroom." When the officer asked him to put his hands in the air "Robinson put his hands in the air and began walking toward the bedroom window. Robinson then attempted to flee out the window." Later Mr. Robinson "attempted to run out the front door." This report also notes Mr. Robinson initially gave police a different name than his own.

Defendant's Account of the Alleged Offense: Mr. Robinson was able to provide a linear account of events as he remembered them on August 8, 2011. During the day, he recalled spending time with family. That night he went to his sister's house where he was staying. After talking on the phone with a female friend, he went to the store, bought cigarettes and was walking to her house when he saw "police coming that way." He denied knowing why police were present. He remembered an officer pulling off his shirt because "we got into it." He then recalled being

handcuffed and put in a police car. Mr. Robinson denied involvement in the burglary. He admitted he "used to break into houses," but had not done that in "22 years." When asked why he stopped breaking into houses, he stated it was "too many problems." He gave examples of the types of problems it caused as encountering an angry dog and "going to prison."

CLINICAL OPINION REGARDING CRIMINAL RESPONSIBILITY: Given the above information, it appears that at the time of the alleged offense Mr. Robinson was not suffering from a mental illness to the extent that he lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong. Additionally, there is evidence to suggest Mr. Robinson knew right from wrong at the time of the alleged offense. If the police account of events is correct, Mr. Robinson waited until night to enter the house, attempted to escape from police twice, and gave the police a false name (alias). This would all indicate that Mr. Robinson was aware of the wrongfulness of his actions. However if Mr. Robinson's account of events is correct, then he did not enter into the house because he reported he no longer burglarized houses because of the problems it caused, like "going to prison." This is evidence that he was aware the act of burglary was wrong. Therefore, in accordance with S.C. Code Ann. §17-24-10, it is our opinion that he would have been criminally responsible for the charge of Burglary First Degree on or about August 8, 2011.

CLINICAL OPINION REGARDING CAPACITY TO CONFORM: Given the above information, it is our opinion that Mr. Robinson at the time of the alleged offense on or about August 8, 2011 did not lack sufficient capacity to conform his conduct to the requirements of the law as a result of mental disease or defect. At this time, there is no evidence of mental illness symptoms from his report or collateral records that would have caused Mr. Robinson to lose the capacity to conform his conduct. Therefore, given available information, it appears that Mr. Robinson would not have lacked sufficient capacity to conform his conduct to the requirements of the law.

K Sieverdes, MD 2/9/12
Kara Sieverdes, M. D.
Forensic Psychiatry Fellow
University of South Carolina School of Medicine

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK)

CERTIFIED TRUE COPY

2013 JUL 23 AM 10:50

At a Court of General Sessions, convened on November 10, 2011, the Grand Jurors of York County present upon their oath:

BURGLARY 1ST DEGREE

The Defendant, Jessie James Robinson, did in York County, South Carolina, on or about August 8, 2011, willfully and unlawfully enter the dwelling of Perry Sutton, located at [REDACTED], Rock Hill, South Carolina, without consent and with the intent to commit a crime therein and the defendant did commit said offense during the nighttime and/or has two or more prior convictions for burglary and/or housebreaking, all in violation of Section 16-11-311, Code of Laws of South Carolina (1976, as amended).

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

Michael J. Ferguson
ASSISTANT SOLICITOR

DOCKET NO. 2011-GS-46-03701

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

WITNESSES

RMPD/Ruth

The State of South Carolina

County of York

Defendant

COURT OF GENERAL SESSIONS

November 10, Term 2011

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

ARREST WARRANT NUMBER

J-133425

THE STATE

VS.

Defendant

Witness:
Stephanie Naylis, Ct. Crm. Supvr
C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

JESSIE JAMES ROBINSON

TO THE GRAND JURY

For person of Grand Jury
Date: 11/10/11

VERDICT

Indictment for

BURGLARY 1ST DEGREE

SC Code: 16-11-311
CDR Code: 079

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
	)	
Jessie James Robinson, 166280,	)	2013-CP-46-2174
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed July 18, 2013, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for York County. The Applicant was indicted at the November 2011 term of the York County Grand Jury for Burglary 1st Degree (2011-GS-46-3701). B.J. Barrowclough, Esquire, represented him. On March 22, 2012, the Applicant pled guilty but mentally ill to Burglary 1st Degree. The Honorable Michael G. Nettles sentenced him to confinement for fifteen (15) years. Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the York County Clerk of Court regarding the subject conviction, SCDC records and the guilty plea transcript. 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 Counsel."
2. "Due Process of Law State and Federal Constitution!"

III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

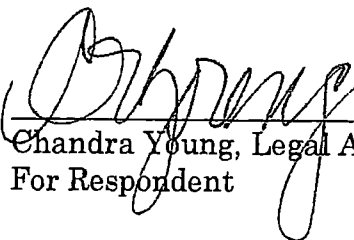
The Applicant alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. 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

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	
	)	
	)	2013-CP-46-2174
	)	
JESSIE J. ROBINSON, 166280	)	
	)	
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(s) by depositing same in the United States mail, postage prepaid:

W. Michael Hemlepp, Esquire
 2506 W. Cranbrook Lane #3
 Charlotte, NC 28207

DATED this 2nd day of October, 2013.


 Chandra Young, Legal Assistant
 For Respondent

State of South Carolina.,)	In the Sixteenth Circuit
)	Court of Common Pleas
)	
County of York.)	Case No. 2013-CP-46-2174

Jessie James Robinson.,)	
)	
Applicant.,)	
)	
-v-)	Transcript of Record
)	Post Conviction Relief
State of South Carolina.,)	
)	
Respondent.)	
)	

December 10, 2013
York, South Carolina

B E F O R E:

The Honorable John C. Hayes, III., judge.

Mr. William Michael Hemlepp, Jr.
City of Columbia
Columbia City Attorney's Office
PO Box 667
Columbia, SC 29202
wmhemlepp@columbiasc.net
(803) 737-4242
Attorney for the Applicant

ORIGINAL

Mr. J. Rutledge Johnson
Assistant Attorney General
South Carolina Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549
(803) 734-3737
Attorney for the Respondent

Wanda S. Nelson, CVR-M
Official Court Reporter
To the Honorable John C. Hayes, III
Sixteenth Judicial Circuit
Union and York Counties

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E-X-A-M-I-N-A-T-I-O-N

<u>WITNESS</u>	<u>BY:</u>	<u>PAGE NO.</u>
Jessie Robinson	Mr. Hemlepp	P.7-18
Bryson J. Barrowclough	Mr. Hemlepp	P.19-32
	Mr. Johnson	P.32-33
Court Reporter's Certificate Page		P.35

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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No Exhibits were received into the record.

1 (COURT IN SESSION IN THE MATTER OF JESSIE JAMES
2 ROBINSON VERSUS STATE OF SOUTH CAROLINA AT 12:27 PM.)

3 (APPLICANT, JESSIE ROBINSON, ENTERS COURTROOM.)

4 THE COURT: All right.

5 MR. JOHNSON: May it please the court, your Honor.

6 THE COURT: Yes, sir.

7 MR. JOHNSON: This is *Jessie Robinson versus State*
8 *of South Carolina*. This is Case No. 2013-CP-46-2174. Mr.
9 Robinson was indicted at the November of 2011 term of the
10 York County Grand Jury for burglary in the first degree.
11 On March 22nd, 2012 he pled guilty but mentally ill to
12 burglary in the first degree before the Honorable Michael
13 G. Nettles.

14 Per recommendation from the State he was sentenced to
15 fifteen years on the burglary first degree. There was no
16 appeal filed however there was a timely PCR application
17 filed July 18th, 2013. The State filed it's return October
18 2nd, 2013 and he is represented here today by Mr. Mike
19 Hemlepp.

20 THE COURT: All right. You want to tell me what the
21 issue is?

22 MR. HEMLEPP: May I beg the Court's indulgence for
23 just a moment?

24 THE COURT: Yes. Sure.

25 (PAUSE IN PROCEEDINGS AT 12:28 PM.)

1 MR. HEMLEPP: Thank you, your Honor. Thank you for
2 that moment with my client. In the petition that was filed
3 the allegation was ineffective assistance of counsel
4 specifically, and that is the only grounds upon which we
5 are going forward at this time. Actually in looking it's
6 the only grounds that's alleged. There is an attachment, a
7 statement of facts, that alleges constitutional arguments.
8 Really the only one of those that's applicable in this case
9 would be in regard to allegations with regards to how the
10 mental health issue was approached by the Court.

11 On that basis I would ask the Court, with the State's
12 consent, to make Petitioner's Exhibit Number 1 --

13 MR. JOHNSON: It's already in the record.

14 MR. HEMLEPP: Its already in the record?

15 MR. JOHNSON: It should be in your packet, your Honor.

16 THE COURT: Okay.

17 MR. HEMLEPP: Your Honor, I'm looking specifically at
18 the competency evaluation. It was clocked July 23rd, 2013.
19 It was marked as a Court's Exhibit Number 1 for the plea on
20 March 22nd of 2012 and it has both the competency
21 evaluation as well as the -- my copy has the February 9th
22 letter.

23 And I apologize, your Honor, in talking with the
24 Attorney General while I'm in front of the Court. That's
25 part of the record, your Honor.

1 THE COURT: All right. Let's see, I've got this
2 attachments, Competency to Stand Trial Evaluation, the
3 evaluation's November 2nd, 2011. And then let's see, that
4 one was signed 11/04/11. It looks like there are two.
5 Doctor Sieverdes, it looks like he signed 2/9/12.

6 MR. JOHNSON: That's correct, your Honor.

7 THE COURT: I don't understand the difference in the
8 dates. Help me. Which one are we talking about?

9 MR. HEMLEPP: That's one that has been marked as a
10 Court's Exhibit for the purposes of the plea.

11 THE COURT: Okay. And then we got another one dated,
12 a letter dated February 9th, 2012.

13 MR. HEMLEPP: Its --

14 THE COURT: Doctor Musik.

15 MR. HEMLEPP: Yes.

16 THE COURT: Okay. Well then I do have them both.

17 MR. HEMLEPP: And that one contained the evaluation
18 that is regarding criminal responsibility and capacity to
19 conform.

20 THE COURT: I gotcha. Okay. We have them, I do have
21 them both, they are part of the record.

22 MR. HEMLEPP: Thank you, your Honor. The petitioner
23 would call Mr. Jessie Robinson to the stand please.

24 MADAM CLERK: Mr. Robinson, can I have you stop here
25 and place your left hand on the Bible, raise your right.

1 THE COURT: All right. Let's see, I've got this
2 attachments, Competency to Stand Trial Evaluation, the
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25 and place your left hand on the Bible, raise your right.

JESSIE JAMES ROBINSON: DIRECT BY MR. HEMLEPP

-7-

1 ((WHEREUPON, JESSIE ROBINSON,
2 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

3 MADAM CLERK: Thank you. You can have a seat.

4 DIRECT EXAMINATION

5 JESSIE JAMES ROBINSON BY MR. HEMLELL:

6 Q. Mr. Robinson. Mr. Robinson.

7 A. Yes, sir.

8 Q. Could you please tell me what's your full name?

9 A. Jessie James Robinson.

10 Q. And Mr. Robinson, I believe you told me earlier that
11 you have difficulty hearing from one ear?

12 A. Yes.

13 Q. Okay. If there's anything you don't understand I
14 need you to tell me that so that I can speak louder. Is
15 that okay?

16 A. All right.

17 Q. Do you understand that?

18 A. Yes, sir.

19 Q. And I also understand that you have some difficulty
20 with your vision?

21 A. Yes, sir.

22 Q. Okay. If there's anything you can't understand you
23 need to make me know that.

24 A. Yes, sir.

25 Q. Okay. Can you -- How old are you?

- 1 A. Forty-seven.
- 2 Q. You're forty-seven?
- 3 A. Yes, sir.
- 4 Q. And how far did you go in school?
- 5 A. I finished.
- 6 Q. You finished school?
- 7 A. Yes, sir.
- 8 Q. Where did you finish school?
- 9 A. Rock Hill High.
- 10 Q. And do you remember when that was?
- 11 A. 1983.
- 12 Q. 1983? Are you originally from Rock Hill?
- 13 A. No.
- 14 Q. Okay. When did you move to Rock Hill?
- 15 A. I think about seven or eight years ago.
- 16 Q. Okay. And where were you from before that?
- 17 A. Chester.
- 18 Q. Okay. How long did you live in Rock Hill before
- 19 going to jail?
- 20 A. About --
- 21 Q. Your whole life?
- 22 A. Yeah. Just about.
- 23 THE COURT: You need to speak up so I can hear you.
- 24 A. Just about.
- 25 Q. Okay. Do you see the woman next you?

JESSIE JAMES ROBINSON: DIRECT BY MR. HEMLEPP

-9-

1 A. Yeah.

2 Q. She's taking down everything that you say and
3 everybody in the courtroom including Mr. Johnson. They
4 need to be able to hear you so I need you to speak up.

5 A. All right.

6 Q. Okay. Do you remember going to court and pleading
7 guilty with Mr. Barrowclough as your lawyer?

8 A. Yeah, somewhat.

9 Q. Okay. Do you remember Mr. Barrowclough?

10 A. Yes, sir.

11 Q. Okay. When was the first time you met him?

12 A. In 2011.

13 Q. Okay. And do you know where you were?

14 A. I was in the county jail.

15 Q. You were in the jail?

16 A. Uh-huh.

17 Q. Was it on this charge?

18 A. Yes, sir.

19 Q. Okay. Prior to you meeting Mr. Barrowclough, before
20 you met him, had you ever gone to a hospital for any mental
21 health treatment?

22 A. Yes, sir.

23 Q. Okay. When was the earliest time that you can
24 remember going to a hospital for mental health treatment to
25 see a psychiatrist or a psychologist?

- 1 A. It was back in 1981.
- 2 Q. 1981?
- 3 A. Yeah.
- 4 Q. Do you remember what hospital that was?
- 5 A. On Bull Street.
- 6 Q. On Bull Street in Columbia?
- 7 A. Yes, sir.
- 8 Q. How did it come about that you went to there to
- 9 Bull Street? Why did you go to Bull Street?
- 10 A. A judge ordered it.
- 11 Q. A judge ordered it?
- 12 A. Uh-huh.
- 13 Q. And how old were you at the time?
- 14 A. Uh -- about fifteen to sixteen.
- 15 Q. Okay. And did you stay there over night?
- 16 A. I stayed there for about thirty days.
- 17 Q. About thirty days?
- 18 A. Had a evaluation.
- 19 Q. Okay. Did you talk to doctors while you were there?
- 20 A. Yes, sir.
- 21 Q. Okay. And did they diagnose you with anything? Did
- 22 they tell you that there was anything wrong?
- 23 A. I don't remember all that but I remember talking to
- 24 doctors there.
- 25 Q. Okay. As a result from after you were released what

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1 happened then?

2 A. I was released back to my family and they released
3 me from there.

4 Q. Okay.

5 A. I didn't go back to see a judge or nothing.

6 Q. Okay. So you went back home?

7 A. Yeah.

8 Q. After that did you ever go back to a hospital for
9 mental health treatment to see a psychiatrist or a
10 psychologist?

11 A. No not after that. They didn't know nothing else and
12 I never went back to see a judge.

13 Q. Okay. At any time?

14 A. No, but after I got older I did, you know, got back
15 in more trouble after I got older.

16 Q. Okay. How old were you when you got into more
17 trouble?

18 A. I think it was bout a couple of years later or a year
19 later.

20 Q. Okay. And so a couple of years after Bull Street?

21 A. Yeah.

22 Q. Okay. Do you remember how old you were then?

23 A. Probably about seventeen, eighteen.

24 Q. Okay. And you went to a hospital?

25 A. No, I didn't go back to a hospital then.

1 Q. Okay. What happened?

2 A. I did time in the Department of Corrections I think.

3 Q. Okay.

4 A. If I can remember.

5 Q. Did you see a doctor, a psychologist or a
6 psychiatrist, at the Department of Corrections?

7 A. Uh -- I talked to some people but I don't remember.

8 Q. Okay. Do you remember pleading guilty to the burglary
9 that you're serving time for right now?

10 A. Yes, sir.

11 Q. Okay. Do you remember prior to -- Let me make this
12 clear. I don't want to be confusing. Do you remember
13 getting arrested on this? How did they arrest you?

14 A. What do you mean?

15 Q. Did they get you from your house and put you in a
16 police car or did they find you somewhere and put you in a
17 police car?

18 A. No.

19 Q. How did you get into the Detention Center on this
20 charge?

21 A. They found me walking on the street.

22 Q. Okay. By a police officer?

23 A. Yeah.

24 Q. And they arrested you?

25 A. Yes, sir.

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1 Q. Okay. Do you remember what date that was? Do you
2 remember when that was?

3 A. I don't remember the exact date but I know it was
4 in August. I think it was on the 8th or the 7th, something
5 like that.

6 Q. Okay. Between that date and the day that you went
7 to court with Mr. Barrowclough ---

8 A. Uh-huh.

9 Q. --- did you go to Columbia to be evaluated?

10 A. Yeah.

11 Q. Okay. How many times did you have to go to Columbia?

12 A. I think it was on three different occasions.

13 Q. Okay. And when you went down to Columbia on any of
14 those occasions, did you spend the night?

15 A. No.

16 Q. Okay. And how long did you spend down there on the
17 first occasion?

18 A. It was -- I think it was -- I left early that morning
19 and I didn't get back until it was dark ---

20 Q. Okay.

21 A. --- when we got back.

22 Q. Did you talk to anybody while you were down there?

23 A. Yes, sir.

24 Q. Did you talk to a doctor?

25 A. It was too ladies, I don't know if they was doctors

1 or what. They ask me all kind of questions.

2 Q. Okay. How long did that take?

3 A. I mean it was a hour. I talked to them some hours.

4 I don't know how many hours it was but I know it was a long
5 session.

6 Q. Okay. And on the second time that you went down there
7 did you talk to people then?

8 A. Yes, sir.

9 Q. And how long did that take?

10 A. It was long hours again.

11 Q. Okay. But you came back that night?

12 A. It was like in the day time when I came back.

13 Q. Okay.

14 A. Like about four or five or something.

15 Q. And the third time you went down, you went down
16 three times?

17 A. Yes, sir.

18 Q. The third time you went down how long were you
19 there?

20 A. It was the same period of time, hours.

21 Q. And did you talk to the same people?

22 A. Every time I went it was the same white lady, young
23 girl.

24 Q. Uh-huh.

25 A. But when they -- they had somebody else different in

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1 the room with her every time though.

2 Q. Did -- So it was the same two women and somebody else
3 was in the room?

4 A. Uh-huh.

5 Q. Okay. Were you honest with them?

6 A. I think I was as much as I could be.

7 Q. Okay. Do you remember how long it was between your
8 last time going to Bull Street and then you going to court
9 for the guilty plea in this case? The time that you went
10 before the judge with Mr. Barrowclough do you know how long
11 that was? Do you have a guess?

12 A. Before I went to court for my last session? Uh -- I
13 think it was almost three months or something like that.

14 Q. Okay. Has a doctor ever given you any medication for
15 mental health?

16 A. Not as I can remember.

17 Q. Okay. Do you remember the plea that you had in front
18 the judge when you plead guilty on this charge?

19 A. Yeah, somewhat.

20 Q. What did you plead guilty to?

21 A. A burglary.

22 Q. Burglary?

23 A. Yes, sir.

24 Q. And do you remember talking to the judge?

25 A. I didn't get to talk to the judge. I interrupted

1 the judge by accident and that's how I got to talk. There
2 wasn't no more though, maybe a thirty second talk, you
3 know, and then that was it.

4 Q. To the judge or your lawyer?

5 A. Yes, sir, to the judge.

6 Q. Okay. What happened at the guilty plea? Tell Judge
7 Hayes what happened at the guilty plea, what you remember
8 about that.

9 A. The only thing I remember was they offered -- they
10 offered a plea and, you know, what they decided on and
11 that's all I can remember. You know I never did to get to
12 really forward my information to the judge what I wanted to
13 say. That's all I can remember.

14 Q. Your information to the judge of what you wanted to
15 say?

16 A. Yes, sir.

17 Q. What did you want to say?

18 A. I wanted you to tell him what happened. You know what
19 they ordered for me, what they promised me.

20 Q. Okay. Okay. Now, you indicated in your petition
21 for this hearing ---

22 A. Yes, sir.

23 Q. --- today, not the plea, for this hearing, and you and
24 I spoke yesterday, that you believe that your mental health
25 history was a factor; that that should have been considered

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1 a different way by the judge.

2 A. Yes, sir.

3 Q. Tell Judge Hayes what you think about that. What do
4 you want Judge Hayes to know about that?

5 A. I want him to know that, you know, I do have problems,
6 you know, and I need some help. I don't think prison was
7 the answer, you know, for my help because I'm not getting
8 the help that I really need too.

9 Q. Uh-huh.

10 A. You know I think if I was on the outside I would
11 get more help, you know, more assistance.

12 Q. Okay. Okay. Did you plead guilty to this charge?

13 A. Yes, sir, I did.

14 Q. Okay. Do you know what guilty but mentally ill means?

15 A. No, I didn't. I didn't. Really I'm still --

16 Q. Do you know it now?

17 A. I still don't understand it.

18 Q. Okay. Is there anything else about this case that
19 you think that Judge Hayes needs to know?

20 A. I mean there's a lot of things I think he should
21 know.

22 Q. And now is your time to say.

23 A. I mean my case didn't get fully investigated like
24 it supposed to. You know I think if it would a gotten
25 investigated and more evidence and than discovery, I mean

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1 the case would a been probably throwed out.

2 Q. Okay. Okay. Is there anything else?

3 A. No, I don't think so.

4 Q. Okay.

5 MR. HEMLEPP: Thank you, Mr. Robinson. Mr. Johnson --

6 No, you need to sit there. Mr. Johnson is going to
7 ask you questions. Answer his questions.

8 A. Yes, sir.

9 MR. JOHNSON: No questions today, your Honor.

10 THE COURT: All right. You can step down and have a
11 seat with your attorney.

12 A. Yes, sir.

13 THE COURT: Thank you, Mr. Robinson.

14 (WITNESS LEAVES WITNESS STAND.)

15 A. Yes, sir.

16 THE COURT: Mr. Hemlepp, you have another witness?

17 MR. HEMLEPP: Your Honor, I would call Mr. B.J.

18 Barrowclough.

19 THE COURT: All right.

20 (WHEREUPON, BRYSON J.

21 BARROWCLOUGH, BEING FIRST CALLED AND DULY SWORN, TESTIFIED
22 AS FOLLOWS:)

23 MR. HEMLEPP: May it please the court, your Honor.

24 THE COURT: Yes, sir.

25 MR. HEMLEPP: And, your Honor, to simplify the matter,

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1 I'm sure the Attorney General's Office will stipulate that
2 Mr. Barrowclough has been a long-time employee here in York
3 County. He's been doing criminal law for a long time.
4 Works for the Public Defenders's Office and was the
5 appointed lawyer in this case.

6 THE COURT: You stipulate he's an old man who's been
7 practicing law for a while and works for the Public
8 Defender?

9 MR. JOHNSON: I do, your Honor.

10 THE COURT: Okay.

11 MR. HEMLIPP: I said it in a nice way.

12 May I approach the witness?

13 THE COURT: Yes, sir.

14 MR. HEMLIPP: Thank you.

15 DIRECT EXAMINATION

16 BRYSON J. BARROWCLOUGH BY MR. HEMLEPP:

17 Q. Mr. Barrowclough, when did you first meet Mr.
18 Robinson?

19 A. His initial appearance date was September 30th of
20 2011 so I would imagine it was that date.

21 Q. Okay. Was he incarcerated at the time?

22 A. Yes, he was.

23 Q. Okay. And did you have the opportunity to talk to
24 him?

25 A. Yes, I did.

1 Q. Okay. How many interviews did you have from that
2 initial appearance and that initial discussions to the time
3 of the guilty plea? How many times did you talk?

4 A. I'd say approximately ten.

5 Q. Okay. And during those ten times I would imagine
6 sometimes they would be brief, sometimes more involved. If
7 you had to add them all together how much time did you
8 spend with Mr. Robinson?

9 A. Maybe twelve hours.

10 Q. Okay. And in dealing with Mr. Robinson it's pretty
11 much stipulated that you've represented a lot of people.
12 Did you have any concern about his affect, or his ability
13 to understand what was going on, or anything about his
14 mental health, or intellectual reasoning?

15 A. Well, yes. I mean in talking to Mr. Robinson and
16 somewhat as you saw when he testified, I mean he would be
17 quick to bring up his past mental difficulties in talking
18 about his -- how he grew up and some of the problems that
19 he experienced. I think he was a victim of abuse and I
20 know from experience that that can affect your mental and
21 emotional development, and I think that he did suffer from
22 some of those issues.

23 When I first requested an evaluation I requested an
24 evaluation more for mental illness than competency because,
25 you know, he did seem to be, you know, I mean I'm not

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1 saying super intelligent but he did -- he could respond to
2 my questions. We did have a reasonable conversation about
3 the facts of the case, about the law that covered the case,
4 things like that. I was more concerned about how his
5 mental illness impacted him that day as well impacted him,
6 you know, in related to going to court, going to prison
7 potentially, things like that.

8 Q. Let me interrupt you for a minute. When you say
9 impacted him that day, do you mean the day of the
10 occurrence?

11 A. Right, right. Because he --

12 Q. Of that occurrence date?

13 A. Yes. Right. Because he had related to me that, you
14 know, he heard voices. He didn't say -- I don't recall him
15 saying whether or not he said he heard voices that day or
16 voices made him do it or anything like that. In fact, you
17 know, he vacillated between telling me he didn't do at all,
18 that he was just walking down the street and the police
19 jumped on him, so it wasn't that type of a situation.

20 But if he's hearing voices at all then that would be
21 concerning as far as whether or not, you know, if in fact
22 he did do it how did it come about that he did do it if
23 he's a person that hears voices.

24 So, my main concern with regards to his mental health
25 issues, were more along the lines of mental illness and

1 competency. And then as you saw I arranged for him to have
2 an evaluation with regards to mental illness and that it
3 came back that they wanted to have a joint evaluation.

4 Q. What is a joint evaluation?

5 A. Where both issues are explored, mental illness and
6 competency.

7 Q. And I noticed that in the evaluation the Department
8 of Disabilities and Special Needs which really deals not
9 with mental illness but intellectual functioning ---

10 A. Right.

11 Q. --- was also involved in that. Was that something
12 that you specifically requested or is that just standard in
13 York County?

14 A. That was really neither. If I recall correctly I
15 think that was at the initiation of the Department of
16 Mental Health. They felt like there might be some issues
17 so they had corresponded back to me saying that they felt a
18 joint evaluation warranted so then we set that up. By
19 doing an evaluation I mean someone from DDSN. I believe
20 Doctor Cornelius.

21 Q. Right. And did you agree with that decision, disagree
22 with that decision, neutral under that decision?

23 A. I mean they're the experts so obviously we defer to
24 that.

25 Q. When the evaluation was completed and it was returned,

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1 clearly the part that goes to the legal capacity to conform
2 your conduct was addressed to you and do you remember
3 getting that?

4 A. I do.

5 Q. And you reviewed that?

6 A. Yes.

7 Q. Did you review that with your client?

8 A. I'm sure I did. Whether or not I reviewed it as far
9 as reading it to him what they said versus saying I
10 received the report and this is what it said and this is
11 what it means, I think it was probably the latter.

12 Q. Okay. A transcript has been provided by the Attorney
13 General's Office to be a part of the record in this Post
14 Conviction Relief matter. Have you had an opportunity to
15 see the transcript?

16 A. I have.

17 Q. Okay. In the -- At the guilty plea, and I apologize,
18 do you remember the guilty plea?

19 A. I do.

20 Q. Okay. What was Mr. Robinson's affect at the time?

21 A. Soft.

22 Q. Okay. Tell me what you mean by soft.

23 A. I mean he was quiet and soft spoken. That's what I
24 mean.

25 Q. Okay. At the guilty plea -- And I apologize -- The

1 Assistant Solicitor Ms. Lipinski?

2 A. Correct.

3 Q. Have you and Ms. Lipinski discussed the evaluation,
4 the conclusions of the evaluation, and how to style the
5 guilty plea prior to going before the court?

6 A. Yes.

7 Q. What was the substance of those discussions?

8 A. In representing Mr. Robinson, and he did present
9 himself as I said at the plea, you know, somebody who had
10 some mental weaknesses, also a lot of physical weaknesses
11 and health problems, and he, you know, had been to prison
12 before and he was afraid of going back to prison, and the
13 Department of Mental Health did not find that he lacked the
14 capacity to conform in the report.

15 They're the experts, I'm not, but he certainly did
16 have enough mental difficulties that I felt like if I could
17 get him some mental health treatment to help him adjust for
18 his period of incarceration I felt I would say not so much
19 legally but maybe morally compelled to try to do that.

20 And, you know, he was legally in a bad situation.
21 This was a first degree burglary, he has as I'm sure you've
22 seen a lengthy prior record, he was eligible to be served
23 with Life Without Parole Notice which the solicitor did
24 talk about doing should he not enter a guilty plea. So,
25 legally our backs were up against the wall, but I still

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1 wanted to try to get him some type of help before he would
2 be embarking on a period of incarceration, so I did talk
3 with the prosecutor.

4 The evaluation as you have seen did note that he did
5 have mental difficulties that finally rose to the level. I
6 did talk with her about some of the problems that I had
7 noted. I had talked with Mr. Woodard, his brother, about
8 some of the things he had gone through in his past, and as
9 a result of all of those conversations they did agree to
10 not object to him entering his plea under Guilty but
11 Mentally Ill despite what the DMH evaluation said, so that
12 he would be -- I mean, as I know you know, he would still
13 be technically incarcerated but it would be at least in the
14 beginning in a Department of Correction run mental health
15 facility as opposed to prison. And it was my hope that at
16 that place he could receive treatment to help him deal with
17 the rest of his period of incarceration whether that
18 treatment was counseling, medication, or probably both.

19 So, once Ms. Lipinski agreed to that and I explained
20 that to him ---

21 Q. And by him, you're referring --

22 A. Mr. Robinson, yes. --- and how I thought that was
23 in his best interest and he agreed. And we did schedule
24 the plea, and prior to actually appearing before the court
25 because it was somewhat of an unusual way to go, Ms.

1 Lipinski and I did meet with Judge Nettles to see if he
2 would be amenable to accepting this type of plea and he was
3 and that's what we did.

4 And the one thing I do want to correct in the record,
5 Mr. Johnson said that it was a recommendation of fifteen;
6 that it was the State's recommendation with a cap of
7 twenty. And of course burglary first had a minimum of
8 fifteen so basically a fifteen to twenty year range which
9 Judge Nettles did decide to sentence him to the fifteen
10 years.

11 Q. Okay. Which is the minimum sentence?

12 A. Correct.

13 Q. Now, let's not talk about the mental health aspect of
14 this plea. Let's talk about the totality of the
15 circumstances. Do you agree with your client's decision to
16 plead guilty?

17 A. Yes.

18 Q. And at the time that he pled guilty do you believe
19 that was freely and voluntarily?

20 A. Yes.

21 Q. So, in talking to your client about what guilty but
22 mentally ill meant, did he appear to understand that?

23 A. Yes.

24 Q. You heard him testify that he doesn't know what that
25 means now. Does that surprise you?

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1 A. Well, in the -- One of the evaluations, I believe it
2 was Doctor Cornelius's DDSN evaluation, it did say that,
3 you know, he could be educated on the concept to where he
4 would grasp it, you know, for a period of time, but then
5 perhaps loose it and need to reeducate him. So I'm not
6 gonna say I'm totally surprised although as far as, you
7 know, the -- as far as I'm aware nothing has occurred that
8 would be different than what he and I had already talked
9 about.

10 Q. Uh-huh.

11 A. So from that point of view I would be surprised if he
12 all of a sudden said why, why am I here, why is this my
13 situation. That part would surprise me.

14 Q. Okay.

15 A. Far from the finer points of what guilty but mentally
16 means, that part would not surprise me if he didn't
17 remember all of that.

18 Q. Okay. When you went before the judge and the judge
19 ask about pleading guilty, did you -- did you or Ms.
20 Lipinski present any evidence to support a guilty but
21 mentally ill plea?

22 A. When you say present evidence, I did not call
23 witnesses. I believe his brother may have spoke and I had
24 spoke. I had spoken about, you know, what Mr. Robinson had
25 told me as well as my own impressions. As well as, you

1 know, what substantive things were found in his
2 evaluations. Now, you know, whether you can say that that
3 all adds up to meet some criteria for guilty but mental ill
4 I couldn't say

5 Q. Uh-huh.

6 A. You know I looked at it more as a sort of contractual
7 arrangement between the State and us that we had both
8 agreed to do this and as long as the judge was okay with it
9 that it -- that that's what it was.

10 Q. You read the evaluation and the evaluation the
11 conclusion of the doctor's in Columbia or wherever from the
12 Department of Mental Health and the Department of
13 Disabilities and Special Needs, was that he didn't fit the
14 definition of guilty but mentally ill. Guilty but mentally
15 ill being that you would know the difference between legal
16 right and legal wrong but you lack the ability to control
17 your actions.

18 A. Right.

19 Q. Well, let me back up. That -- Is that your definition
20 -- what you understand ---

21 A. Right, yeah.

22 Q. --- What you understand that to be ---

23 A. Sure.

24 Q. --- guilty but mentally ill?

25 A. Lack of capacity to conform to the law, yes.

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1 Q. Right. That you can differentiate between right and
2 wrong, legal right and legal wrong?

3 A. Right.

4 Q. But lack the ability to control your actions.

5 A. Right.

6 Q. Was any evidence of that and I understand you have
7 no experts because there was no testimony because this was
8 an agreement.

9 A. Uh-huh.

10 Q. Between you and the State.

11 A. Right.

12 Q. But was there any evidentiary support for the judge
13 to be able to take that plea?

14 A. When you say you mean --

15 Q. Was anything introduced?

16 A. No. And if you're saying to link up his problems that
17 we did show evidence of to have that specifically govern
18 what he did that day, then, no, obviously no.

19 Q. Okay. And would you agree with me that Judge Nettles
20 never made any finding on that?

21 A. On?

22 Q. On his capacity to conform? Let me back up and ask
23 that a different way.

24 A. I don't know -- Well go ahead.

25 Q. Let me ask that a different way. He did make a

1 finding on competency did he not?

2 A. He did.

3 Q. Okay.

4 A. He did.

5 Q. And he did accept the guilty plea?

6 A. Right.

7 Q. To GBMI guilty but mentally ill?

8 A. Right.

9 Q. But there was no finding in the record do you recall

10 --

11 A. I -- No. I'm sure there was not. I don't recall
12 asking for a finding that I recall.

13 Q. Okay.

14 A. Or asking him to accept the plea in the fashion that
15 it was presented.

16 Q. Okay. At the time that you looked at his report and
17 you made the determination that it would benefit him to
18 have treatment, did it ever occur to you that perhaps you
19 should make an ex parte motion before the administrative
20 judge to get funds to have another evaluation done for Mr.
21 Robinson?

22 A. Yes. If -- It's hard to go back and say what exactly
23 I would have done.

24 Q. Uh-huh.

25 A. But, you know, if we had not reached this agreement I

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1 would imagine I would have probably had to try to do that.

2 Q. Okay.

3 A. Now, one thing that, you know, would have been a
4 strike against, you know, that is that you know he had been
5 in trouble numerous times before and from my investigation
6 had never been found to be, you know, NGRI or anything like
7 that, that would really be something that would be useful
8 from a defense standpoint.

9 Q. Sure.

10 A. But, you know, like I said he did have enough problems
11 that at least as far as pursuing a GBMI that, you know,
12 that is certainly something I would have considered doing
13 had I not been able to work this arrangement out on his
14 behalf.

15 Q. Okay. Thank you. You -- and thank you. I'm gonna
16 close that line of questioning. Mr. Robinson a moment ago
17 when he testified, he testified to the court that he also
18 believed that the case wasn't properly investigated. Did
19 you investigate this case?

20 A. I did.

21 Q. Did you investigate the facts of the case?

22 A. I did. I did. We spoke with the eyewitness.

23 Q. Uh-huh.

24 A. There was as I alluded to at the plea a minor factual
25 discrepancy although nothing that would exonerate him. The

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CROSS BY MR. JOHNSON

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1 police officer said that he caught him in the house. I
2 think the witness said that they saw him run out of the
3 house and the police came out of the house and tackled him
4 on the sidewalk which was more consistent than with him
5 saying the police tackled him on the sidewalk.

6 But nevertheless as far as whether or not he had
7 actually been in that house the witness did say that he
8 came out of the house. There was another person arrested
9 in the tree line of the property. We investigated to find
10 out who that person was. His name was Ernest Walker. We
11 found out what they ended up charging him with, why he was
12 not a suspect in the crime as far as any type of third
13 party guilt issues. When we explored that fully that did
14 not pan out to be anything useful to his defense. I mean
15 we really investigated everything there was to investigate.

16 Q. Okay. I have no further questions.

17 MR. HEMLEPP: Please answer any questions Mr. Johnson
18 may have. Let me get my things out.

19 A. Sure.

20 MR. HEMLEPP: Thank you, your Honor.

21 CROSS-EXAMINATION

22 BRYSON JAMES BARROW CLOUGH BY MR. JOHNSON:

23 Q. Mr. Barrowclough, just to reiterate. You did enter
24 the evaluation into a Court's Exhibit?

25 A. Yeah.

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1 Q. At the plea?

2 A. Yes, I did.

3 Q. And you had an agreement with the State that he would
4 be able to enter a GBMI plea?

5 A. Yes, I did.

6 Q. Because you in your professional opinion thought that
7 would be the best thing for him?

8 A. In his best interest, yes.

9 Q. Because the facts of the case show that he did in
10 fact commit burglary in the first degree?

11 A. Correct.

12 Q. Okay. And he got the minimum sentence?

13 A. Correct.

14 Q. And received mental health treatment because of the
15 GBMI?

16 A. As far as I know, yes.

17 MR. JOHNSON: That's all I have, your Honor.

18 MR. HEMLEPP: Nothing further. Thank you, your Honor.

19 THE COURT: You can step down and be excused. We
20 appreciate your time.

21 MR. BARROWCLOUGH: Thank you, your Honor.

22 MR. HEMLEPP: Your Honor, the Petitioner rest.

23 THE COURT: All right. Anything further from the
24 State?

25 MR. JOHNSON: The State has no witnesses, your Honor.

1 THE COURT: All right. I'll take this one under
2 advisement.

3 MR. HEMLEPP: Thank you, your Honor.

4 MR. JOHNSON: That will do it for the day.

5 THE COURT: That's it for the day I believe.

6 (COURT IN RECESS AT 01:05)

7 (APPLICANT, JESSIE JAMES ROBINSON, EXITS COURTROOM.)

8 (END OF TRANSCRIPT OF RECORD.)
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CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for York County, South Carolina, on the 10th day of December 2013.

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

Wanda Nelson
Wanda Nelson, CVR-M
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: October 25 / 2017

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Jessie James Robinson, #166280,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2013-CP-46-2174

ORDER

FILED-RECEIVED
2013 DEC 12 PM 3:25
CLERK OF COURT
C.C.P. & GS
YORK COUNTY, SC

This is a post-conviction relief application filed July 18, 2013. The Court heard this matter December 10, 2013. The Applicant was represented by W. Michael Hemlepp, Esq., the State by J. Rutledge Johnson, Esq.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for York County. The Applicant was indicted at the November 2011 term of the York County Grand Jury for Burglary 1st Degree (2011-GS-46-3701). B.J. Barrowclough, Esquire, represented him. On March 22, 2012, the Applicant pled guilty but mentally ill to Burglary 1st Degree. The Honorable Michael G. Nettles sentenced him to confinement for fifteen (15) years. Applicant did not appeal his conviction or sentence.

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

1. "Ineffective Assistance Counsel"
2. "Due Process of Law State and Federal Constitution!"

JCH

At the hearing Applicant's counsel informed the Court that at issue in this matter is Applicant's mental status at the time of his plea and trial counsel's actions or inactions associated therewith.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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



counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial.

Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Applicant testified that he was 47 years old and graduated from Rock Hill High School in 1983. He also testified that he was from Chester and moved to Rock Hill at the age of 7 or 8 years old.

Applicant recalled pleading guilty and his appointed counsel. He testified that he first met B.J. Barrowclough, Esq. in 2011 at the County jail. He testified that he had, prior to that time, been to a mental hospital on Bull Street in Columbia, South Carolina, as early as 1981. He was 15 or 16 years old at the time and stayed there for 30 days. During this time, he talked with doctors and then went home. Thereafter, he got into trouble a year or two later at age 17 or 18, and went and did time at the South Carolina Department of Corrections where "he talked to some people."

He recalled being arrested and his plea on the current charge. The arrest was in August and from then until the plea, he went to Columbia three times for mental evaluations. He testified that he was never held overnight. During the first evaluation he was gone all day and during the day two ladies asked him questions for a long time. His second visit was also for a long time, "hours," and the third time he was again there for "hours." The same white lady interviewed him each time, and he answered her questions as truthfully as he could.

The time between his last visit for a mental evaluation and his plea was about three months. He could not recall being prescribed any medication for mental health. He recalls that he pled to Burglary and at the plea only spoke to the judge for about thirty seconds.

He recalls the State offered a plea and that is all he can remember. He was not able to tell the judge what he was promised. He is aware of his mental condition and that he needs help, but

9-11-13

he does not believe that serving time in prison is helpful. Applicant testified that by being out of incarceration he would be able to get more assistance for his mental issues.

The Applicant testified that he did not understand guilty but mentally ill when he pled, but does understand this plea now. He also testified that he felt his case was not properly investigated.

B.J. Barrowclough testified that he first met Applicant on December 30, 2011, while Robinson was incarcerated, and at this time he had an opportunity then to talk with Applicant. Thereafter, he met with Applicant 10 times for a total of about 12 hours. In talking to Mr. Robinson, he was quick to bring up his prior mental problems and prior abuse. The request for evaluation was related more to Applicant's conduct on the day of the alleged crime, not as to his competency. Mr. Barrowclough testified that Applicant related to him that at times Applicant heard voices. This concerned Mr. Barrowclough and he wondered if this impacted Applicant's conduct on the day of the alleged crime.

B.J. Barrowclough testified that the Department of Mental Health felt a joint evaluation with the Department of Disabilities and Special Needs was warranted. Applicant was evaluated and Mr. Barrowclough feels he discussed the evaluation with Applicant.

Mr. Barrowclough testified that at the plea Applicant was "soft", "quiet", "soft spoken." He testified that he discussed with the Solicitor the mental issues regarding Applicant. Mr. Barrowclough felt that the mental difficulties Applicant experiences were significant enough to allow him to enter a plea of guilty but mentally ill. Mr. Barrowclough thought entering such a plea would help the Applicant, who needed treatment and was scared of returning to prison. The State did not oppose Applicant entering a plea of guilty but mentally ill. This plea was explained to Applicant who agreed to go forward with his plea. Prior to the plea, Mr. Barrowclough and

JE 1/14/14

the Solicitor met with the trial judge to make sure he would accept the plea, and Applicant appeared to understand what guilty but mentally ill meant at the time, even though he now avers he did not.

Mr. Barrowclough believed the facts supported the plea and that the Applicant freely and voluntarily entered the plea. Mr. Barrowclough testified that he did not present any expert testimony as to Applicant's mental status, but did present a supportive witness on the issue. Mr. Barrowclough testified that no evidence was presented to support guilty but mentally ill and the trial judge never made a finding that Applicant fell into the guilty but mentally ill category.¹

Mr. Barrowclough did consider an additional evaluation even though Applicant had been in trouble before and had never been found guilty but mentally ill, but did not seek such evaluation.

Mr. Barrowclough testified that he did investigate the allegations by interviewing witnesses who placed Applicant in the house where the crime occurred. He believes he investigated everything there was to investigate. However, it is clear from the testimony that Mr. Barrowclough, the Solicitor, and the trial judge were convinced that Applicant met the criteria for the plea he entered.

The transcript of the plea reveals that the Solicitor, at the introduction of the plea, stated:

MS. LIPINSKI: May it please the Court.

Your Honor, this is Jessie Robinson. We did briefly talk to you about this case prior to calling in Court today. Mr. Robinson does have a mental health history. As a result of that Mr. Barrowclough pursued an evaluation by the Department of Mental Health. They came back and did determine that he was competent to stand try(sic). The mental evaluation also determined

¹ The trial judge in essence did make such a finding. See Plea Transcript, p. 14, LL 21-24.

JRH/5

that he could distinguish right from wrong at the time he committed this crime. There were nonetheless a substantial amount of other diagnoses such that the State does feel comfortable for the defendant to plead guilty but the mentally ill statute. (Plea Transcript, p. 2, LL 22-15).

The Transcript also reflects that Mr. Barrowclough agreed with Applicant's decision to enter a plea of guilty but mentally ill (Plea Transcript, p. 3, LL 21-25). Further, the Transcript reflects that the Solicitor again confirmed the State's acquiescence to Applicant's plea of guilty but mentally ill at page 7, lines 13 through 18, and that Applicant and trial counsel acknowledged therein understanding of the State's position (Plea Transcript, p. 7, LL 19-23).

The Plea Transcript also reflects that Mr. Barrowclough placed on the record a sufficient factual basis for the Applicant's plea of guilty but mentally ill (Plea Transcript, p. 10, L 1 through p. 12, L 16).

Finally, Applicant's brother's explanation to the Court as to what he believes drives Applicant to criminal behavior, supports the entry by Applicant of a plea of guilty but mentally ill (Plea Transcript, p. 3, L 4-25).

Applying the standards set forth above, Applicant has failed to prove that his trial counsel was to any degree ineffective, and therefore Applicant's application for Post-Conviction Relief is hereby denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rules 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

jcH#6

IT IS SO ORDERED.


John C. Hayes, III
Presiding Judge

December 11th, 2013
York, South Carolina

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FORM 5

CERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA

2015 APR 17

FROM THE COURT OF COMMON PLEAS

County of York

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

Jessie James Robinson #100230

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION F

POST-CONVICTION RELE

FILED - RECEIVED
2015 APR 16 PM 3:03
CLERK OF COURT
C.C.P. #35
YORK COUNTY, SC

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 Perry Correctional Institution 430 Oaklawn
Rd., Pelzer, South Carolina, 29669
2. Name and location of Court which imposed sentence York County Court of General Sessions
3. Name(s) of co-defendant(s) (if any)
none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
(b) ~~2011-35-46-3731)(Burglary 1st degree)~~

(c) _____

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

(a) march 22, 2012 (fifteen (15) years)

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty 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. n/a

ii. _____

iii. _____

(c) the date of each such result:

i. n/a

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. n/a

ii. _____

iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) counsel did not file an appeal

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) State appointed PCR counsel (Mr. W. Michael Hemlepp) _____
- (b) did NOT file a Notice of Appeal, appealing the PCR _____
- (c) Court's order of denial (2013-CP-46-2174) case. _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Since PCR counsel failed to appeal my PCR I am _____
- (b) entitled to an AUSTIN review. I received the Order _____
- (c) March 16, 2015. Nearly 2-years have passed and I am _____
- just now being informed of the PCR Court's order. _____
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? yes _____
- (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 Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. post conviction relief (2013-CP-46-2174) _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. York County Court of Common Pleas _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

i. denial

ii.

iii.

iv.

(d) the date of each such disposition:

i. December 11, 2013 (filed December 12, 2013)

ii.

iii.

iv.

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

i. none

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. n/a

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) I just received notice of the denial and I am now

(b) seeking an AUSTIN review

(c) _____

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

(a) your arraignment and plea? yes

(b) your trial, if any? n/a

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? n/a

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

none

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. B.J. Barrauelough, York County Public Defender

ii. William Michael Henlepp, Jr.; 3027 S. Parham Road; York, S.C. 29745

iii. _____

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

i. Guilty plea

ii. PCR application-hearing

iii. _____

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

I am entitled to an AUSTIN to appeal the denial and
adverse ruling of the PCR Court

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, Jessie James Robinson, 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.

Jessie Robinson

SWORN to and subscribed before me this 7th
 day of April, 2015.

Tamara Conwell (L.S.)
 Notary Public

My Commission Expires: September 25, 2023

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

I, Jessie James Robinson, 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.

Jessie Robinson
Applicant

SWORN or affirmed to and subscribed before me this

7th day of April, 2015.

Jamaica Conwell
Notary Public

My Commission Expires
September 25, 2023

My Commission Expires: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	2015-CP-46-1169
Jessie James Robinson,	)	
S.C.D.C. No. 166280,	)	
	)	
Applicant,	)	
	)	RETURN AND MOTION TO
	)	DISMISS ALL CLAIMS EXCEPT
v.	)	<u>AUSTIN</u> REVIEW
	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed April 16, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for York County. Applicant was indicted at the November 2011 term of the York County Grand Jury for Burglary 1st Degree (2011-GS-46-3701). B.J. Barrowclough, Esquire, represented him. On March 22, 2012, Applicant pled guilty but mentally ill to Burglary 1st Degree. The Honorable Michael G. Nettles sentenced him to confinement for fifteen (15) years. Applicant did not appeal his conviction or sentence.

2013-CP-46-2174

On July 18, 2013, Applicant filed his first application for post-conviction relief, alleging he was being held unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
2. "Due Process of Law State and Federal Constitution"

Respondent filed its Return and an evidentiary hearing was held in York County on December 10, 2013. Applicant was present and represented by W. Michael Hemlepp, Esquire. J. Rutledge Johnson, Esquire, represented Respondent. By and Order signed on December 11, 2013, and filed December 12, 2013, the Honorable John C. Hayes, III, denied and dismissed the application with prejudice.

II.

In his *second* and current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. "State appointed PCR counsel did not file a Notice of Appeal, appealing the PCR Court's order of denial (2013-CP-46-2174) case."

For the purpose of this Return, Respondent incorporates the Clerk of Court's records regarding Applicant's convictions, the current application, and the prior PCR records. Respondent reserves the right to amend this Return upon receipt of any relevant materials

III.

Except for Applicant's claim that he was denied an appeal from the denial of his first PCR application, the Respondent submits that this Application for Post-Conviction Relief should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant was convicted of the offenses he challenges in this application on March 22, 2012. Applicant was therefore required to file his application before March 23, 2013. This application was filed on April 16, 2015, well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, Respondent requests that this Court summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

IV.

There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under § 17-27-90." Aice, 305 S.C. at 451, 409 S.E.2d at 394.

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

Austin recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. Id. Austin "is limited to its particular factual situation..." Aice, 305 S.C. at 452, 409 S.E.2d at 394. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. Respondent requests an evidentiary hearing solely on the matter of the Applicant's entitlement to an Austin Review.

V.

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

VI.

WHEREFORE, with the exception of Applicant's allegation that he is entitled to belated review of his first PCR application, Respondent moves to summarily dismiss the application because it is successive to the Applicant's prior PCR action and was filed after the statute of limitations had expired. Respondent requests an evidentiary hearing solely on the matter of the Applicant's entitlement to an Austin Review.

[signatures on following page]

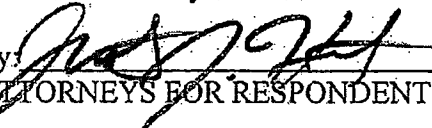
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

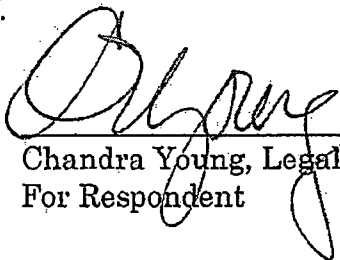
Aug 12, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	
	)	
	)	2015-CP-46-1169
	)	
Jessie Robinson, #166280	)	
	)	
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 and Motion to Dismiss All Claims Except Austin Review in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Leah B. Moody, Esquire
 235 East Main Street; Suite 115
 Rock Hill, SC 29731

DATED this 12th day of August, 2015.


 Chandra Young, Legal Assistant
 For Respondent

State of South Carolina	)	In Common Pleas of the
	)	Sixteenth Judicial Circuit
County of York	)	2015-CP-46-1169

JESSIE JAMES ROBINSON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Transcript of Record
	)	
THE STATE,	)	
	)	
Defendant.	)	
	)	
	)	

January 19, 2016
York, South Carolina

B E F O R E:

The Honorable Paul M. Burch

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

Mr. Justin James Hunter, Esquire
Attorney for the Plaintiff

Ms. Leah B. Moody, Esquire
Attorney for Defendant, Mr. Wilson

Hattie Gordon
Circuit Court Reporter

Transcribed by:
Lisa S. Carter

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I N D E X

WITNESSESPAGE

(NO WITNESSES INTRODUCED DURING HEARING)

(NO EXHIBITS INTRODUCED DURING HEARING)

1 THE COURT: Yes, sir.

2 MR. HUNTER: The next case is Jesse James Robinson
3 versus the State of South Carolina. It's 2015-CP-46-1169.
4 Your Honor, he filed this application April 16, 2015 and we
5 made our return August 12, 2015.

6 Your Honor, previously he was indicted at the November
7 2011 term of York County grand jury for first-degree
8 burglary. That was 2011-GS-46-3701. He was represented by
9 Mr. B.J. Barrowclough. Your Honor, on March 22, 2012 he
10 pled guilty but mentally ill to burglary first-degree.
11 Judge Nettles sentenced him to 15 years and he did not
12 appeal his conviction of sentence.

13 Your Honor, he filed his first post-conviction relief
14 action July 18, 2013. That was 2013-CP-46-2174. Your
15 Honor, he was represented by Mr. Mike Hemlepp. On that
16 action there was an evidentiary hearing December 10, 2013
17 and that case was dismissed by an order signed December 11,
18 2013 by Judge Hayes.

19 Your Honor, this is his second post conviction relief
20 action. The State asked for a hearing on whether or not,
21 his allegation whether or not his prior PCR counsel filed a
22 notice of appeal. Your Honor, just for the record I've
23 talked to Mike Hemlepp and he has a family emergency today
24 and could not make the hearing. After talking with him it
25 was apparent that his testimony would be that he always

1 filed a notice of appeal after the PCR dismissal and that
2 Mr. Robinson asked for one and he did not properly, Mr.
3 Hemplepp did not properly file that appeal. Your Honor, as
4 such the State is consenting to applicant being allowed an
5 Austin review and I believe Ms. Moody will take care of
6 that. I'll turn it over to her right now.

7 THE COURT: Ms. Moody?

8 MS. MOODY: Thank you, Your Honor. At this point,
9 my client, Mr. Robinson, via telephone, the issue is just
10 simply, um, filing a notice of appeal to the Court of
11 Appeals and the State has agreed and are waiting for an
12 order to do so.

13 THE COURT: Okay. Who is going to the order for a
14 belated appeal? You've got it?

15 MR. HUNTER: Your Honor, I have an order granting an
16 appeal pursuant to Austin.

17 THE COURT: All right.

18 (CONCLUSION OF THE HEARING ON JANUARY 19, 2016)
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CERTIFICATE

I, the undersigned Lisa S. Carter, Official Court Reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Sixteenth Circuit Court for York County, South Carolina, on the 19th day of January, 2016.

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

Lisa S. Carter

Lisa S. Carter

Circuit Court Reporter

November 5, 2017

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Jessie James Robinson,
SCDC# 166280

Applicant,

v.

State of South Carolina,
Respondent.

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DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

IN THE COURT OF COMMON PLEAS
THE SIXTEENTH JUDICIAL CIRCUIT

2015-CP-46-1169

ORDER GRANTING AN APPEAL
PURSUANT TO AUSTIN V. STATE¹

This matter comes before the Court by way of an application for post-conviction relief filed April 16, 2015. Respondent made its Return on or about August 12, 2015, requesting an evidentiary hearing solely on the issue of whether Applicant was entitled to an appellate review of his first post-conviction relief action pursuant to Austin. An evidentiary hearing on the matter was convened on January 19, 2016, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Leah Moody, Esquire. Justin Hunter, Esquire, of the South Carolina Office of the Attorney General represented the Respondent.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the November 2011 term of the York County Grand Jury for Burglary, 1st Degree (2011-GS-46-3701). B.J. Barrowclough, Esquire, represented him. On March 22, 2012, Applicant pled guilty but mentally ill to Burglary, 1st Degree. The Honorable Michael G. Nettles sentenced him to confinement for fifteen (15) years. Applicant did not appeal his conviction or sentence.

Applicant subsequently filed for post-conviction relief on July 18, 2013 (2013-CP-46-2174). In his application, Applicant asserted claims of ineffective assistance of counsel.

¹ Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

Respondent filed its Return and an evidentiary hearing was held in York County on December 10, 2013. Applicant was present and represented by W. Michael Hemlepp, Esquire. J. Rutledge Johnson, Esquire, represented Respondent. By and Order signed on December 11, 2013, and filed December 12, 2013, the Honorable John C. Hayes, III, denied and dismissed the application with prejudice. Applicant did not appeal.

ALLEGATIONS

In his current application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of PCR Counsel
 - a. "State appointed PCR counsel did not file a Notice of Appeal, appealing the PCR Court's order of denial (2013-CP-46-2174) case."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his prior application. Prior to the start of the evidentiary hearing, the State indicated to this Court that they would be consenting to the grant of an Austin appeal. Respondent explained that the State was consenting based off of its discussions with prior PCR Counsel and discussion with Applicant's current PCR Counsel.

After review of the facts and circumstances surrounding the waiver of Applicant's right to appeal the denial of his post-conviction relief application, this Court finds that Applicant is entitled to appeal the denial of his first post-conviction relief application (2013-CP-46-2174) pursuant to Austin v. State. This Court finds that Applicant did not voluntarily waive his right to

appeal the post-conviction relief court's denial and dismissal of his prior post-conviction relief action.

Based upon the foregoing, this Court finds that the granting of an appeal of Applicant's first post-conviction relief action (2013-CP-46-2174) pursuant to Austin v. State is warranted.

IT IS THEREFORE ORDERED:

1. That Applicant be granted an appeal of case 2013-CP-46-2174 pursuant to Austin v. State; and
2. That Applicant remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 19th day of January, 2016.


PAUL M. BURCH
Presiding Judge
Sixteenth Judicial Circuit

York, South Carolina.