

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Sumter County

Honorable Jocelyn J. Newman, Circuit Court Judge

RECEIVED
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S.C. SUPREME COURT

DAVID ABRAHAM DUREN, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000605

APPENDIX

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J. SMITH - CROSS-EXAMINATION BY MR. DUREN

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1 Q. Isn't it the lawyer duty to do to a proper
2 investigation if they're going to use these indictments for
3 enhancement?

4 A. Certainly, and that's something that would have been
5 done.

6 Q. Certainly. It's ---

7 A. Again, I represented you for three months.

8 Q. Huh?

9 A. I represented you for three months.

10 Q. Three months?

11 A. I looked at the convictions. You had prior
12 convictions, that's correct. I reviewed the indictment
13 that was served on you.

14 Q. Is, is two indictments supposed to be on the same --
15 two warrants, two warrants supposed to be on the same
16 indictment, two charges?

17 A. Again, you pled guilty to those charges, I believe,
18 back in 2002. I had ---

19 Q. I, I understand, but these, these indictments -- this
20 indictment is being used to enhance me.

21 A. I understand that. The conviction was being used to
22 enhance you, yes.

23 Q. But you did no investigation?

24 MS. COLEMAN: Your Honor, I object. The indictment
25 has been dismissed from this application.

1 THE COURT: Right. Yes.

2 David, I understand you want to talk about his
3 investigation, but we're not talking about the 2002 cases
4 now. We're only talking about the 2015 case.

5 MR. DUREN: This has to do with my life without parole
6 hearing. This, this, this has nothing to do with the
7 cases. I'm just asking him whether he did a proper
8 investigation.

9 THE COURT: Okay.

10 MR. DUREN: That's all I'm asking.

11 THE COURT: All right.

12 BY MR. DUREN:

13 Q. Mr. Smith.

14 A. Yes, sir.

15 Q. Did you ever give the investigative report to Mr.
16 Duren that you were investigating for his alibi defense?

17 A. I believe you spoke about that, about the ---

18 Q. Did, did you ever gave him the investigative report
19 that Mr. Davis...

20 A. That John Davis completed?

21 Q. Yes.

22 A. John Davis never actually completed a written report.
23 I was relieved as counsel before that, and his file was
24 shut down.

25 Q. His file was shut down?

J. SMITH - CROSS-EXAMINATION BY MR. DUREN

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1 A. Yeah. His, his use of -- as a PI was ended, but we
2 did discuss, as far as his findings, that there was nobody
3 that he could make contact with the names and numbers you
4 provided.

5 Q. Mr. Smith, what, what, what was Mr. Duren originally
6 indicted for in 2012?

7 A. Burg second nonviolent or violent.

8 Q. Huh? In 2012, what was the original indictment?

9 A. I can't recall off the top of my head. I know you had
10 two pending burg second violent and one pending burg second
11 nonviolent.

12 Q. Now we can talk about this charge, two thousand --
13 that I got the life sentence for. What was he originally
14 indicted for in 2012?

15 A. Again, like I was saying, you, you were indicted for
16 burg second violent.

17 Q. Second violent.

18 MR. DUREN: If it please the court, Your Honor?

19 THE COURT: Yes, sir.

20 BY MR. DUREN:

21 Q. Indictment, burglary after June 25th first degree,
22 first count:

23 That David A. Duren did in Sumter County on
24 or about 8 -- enter the building of Thomas
25 Howell ---

- 1 COURT REPORTER: Slow down, please.
- 2 Q. --- at Highway South Harbor Street without
3 consent with intent to commit a crime therein and
4 in violation of South Carolina Code 16-11-03-118.
5 Which is burglary first degree?
- 6 A. Correct.
- 7 Q. Original indictment?
- 8 A. Correct.
- 9 Q. Did you ---
- 10 A. I believe you were charged with burglary second
11 violent in 2012, and that's the enhancement paper you're
12 holding in your hand.
- 13 Q. This is not the enhancement page. This is the
14 original indictment in ---
- 15 A. It's, it's ---
- 16 Q. --- 2012.
- 17 A. It's the enhancement indictment that was served on you
18 in court, yes.
- 19 Q. This is -- this indictment?
- 20 A. Correct.
- 21 Q. Okay. Mr. Jacob, what are the elements for
22 first-degree burglary?
- 23 A. Are you talking about your enhancement to first-degree
24 burglary, or are you talking about the original ---
- 25 Q. What are the elements for first-degree burglary?

J. SMITH - CROSS-EXAMINATION BY MR. DUREN

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1 A. Breaking and enter -- breaking and entering into a
2 dwelling at night.

3 Q. So, was the entry into a dwelling when this indictment
4 was originally charged?

5 A. Again, that's an enhancement incident. You were
6 enhanced to a burg first.

7 Q. They can't, they can't enhance a nonviolent
8 second-degree burglary into a first-degree burglary.
9 There's no way.

10 A. It -- I believe it was a burg second and violent that
11 you were charged with.

12 THE COURT: Let me interrupt. David, you can ask him
13 questions about what he did or didn't do.

14 MR. DUREN: Okay.

15 THE COURT: What he -- who he talked to or didn't talk
16 to, but arguing the law with ---

17 MR. DUREN: Okay.

18 THE COURT: --- Mr. Smith isn't going to get you
19 anywhere.

20 BY MR. DUREN:

21 Q. First-degree burglary is entering into a dwelling?

22 A. Yes.

23 Q. Okay. You never put in a motion for dismissal?

24 A. No, I didn't.

25 Q. Why not?

1 A. Because you were enhanced.

2 Q. Huh?

3 A. You were enhanced.

4 Q. I was enhanced?

5 A. Due to your prior convictions.

6 Q. Okay. So, you just -- you did -- you investigated the
7 whole thing? You investigated the whole charge?

8 A. I ---

9 Q. As far as you...

10 A. Again, I represented you for about three months, three
11 or four months. I did what I could do in that time, yes.
12 And I believe, if I'm not mistaken, that discovery -- even
13 after I was relieved of counsel, you were provided a copy
14 of discovery on the record. I left the public defender
15 office shortly thereafter, so I wasn't actually here for
16 it, but I seem to recall hearing that that hearing took
17 place. So, I also gave you a copy of all the discovery
18 that we reviewed, and then you also got a copy from the
19 state on the record.

20 Q. Did you, ever did you ever have the intention to file
21 for a motion of dismissal?

22 A. I did not.

23 Q. Did you ever check to see whether the solicitor office
24 filed for continuancy in the case?

25 A. Not at the time I was representing you, no.

J. SMITH - CROSS-EXAMINATION BY MR. DUREN

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1 Q. Were you aware of the 180 day rule, 180 day order by
2 Judge Finney dated March 5, 1999, that all criminal cases
3 were to be disposed of within 180 days after defendant's
4 arrest?

5 A. I wish that that was the case in Sumter County.

6 Q. Oh, it was the case.

7 A. I can assure you that it wasn't.

8 Q. Huh?

9 A. I, I can assure you that there were cases pending for
10 longer than 180 days in Sumter County.

11 Q. But -- so, so, everybody just...

12 MR. DUREN: Your Honor, this is Supreme Court of South
13 Carolina, Article 5, Section 4 of the South Carolina
14 Constitution:

15 It is ordered that all criminal cases in the
16 State of South Carolina shall be disposed of
17 within 180 day from the date of the defendant
18 arrest. Provided, however, the circuit court may
19 continue a case beyond 180 days by written order
20 if the court determine that exceptional
21 circumstances exist in the case. This order does
22 not create or deprive the defendant right to a
23 speedy trial.

24 THE COURT: Well, listen, David.

25 MR. DUREN: This case should have been disposed of.

1 THE COURT: David, again, I am happy for you to ask
2 Mr. Smith about what he did or didn't do. Did he file a
3 motion ---

4 MR. DUREN: Did he?

5 THE COURT: --- or not? You can ask him things like
6 that, but if you want to talk about the law, then I'm going
7 to let Mr. Smith go and you can talk to me about the law.
8 That's for me to decide whether some law was violated. But
9 you ask him about the facts of what he did or didn't do
10 while he was representing you.

11 BY MR. DUREN:

12 Q. Did you, did you file an order to dismiss the case?

13 A. A motion to dismiss? No, I did not.

14 Q. Did not. Okay.

15 THE COURT: Do you have any more questions for Mr.
16 Smith about what he did or didn't do?

17 MR. DUREN: No, ma'am.

18 THE COURT: Okay. Any redirect?

19 MS. COLEMAN: Nothing further for this witness.

20 THE COURT: Thank you, sir.

21 WITNESS: Thank you.

22 (THE WITNESS EXITS THE STAND.)

23 THE COURT: Ms. Coleman, you can call your next
24 witness.

25 MS. COLEMAN: Thank you. Yes, Your Honor. I would

1 like to make part of the record the testimony by Mr. Tim
2 Murphy. Mr. Smith testified that he was also -- Mr. Duren
3 was also represented for a short time by Timothy Murphy,
4 and he testified at the trial starting on page 321 of the
5 transcript, and I believe it goes through 325. And that's
6 already part of the record, but it's actually -- I just
7 wanted to point that out and any use that testimony as it
8 applies to today's case as well because he spoke a little
9 bit about his representation of Mr. Duren and, I believe,
10 the discovery that was reviewed in this case.

11 THE COURT: Okay.

12 MS. COLEMAN: But Mr. Murphy is not here today to
13 testify, and so the state has no further witnesses.

14 THE COURT: Okay.

15 Mr. David, do you have any witnesses?

16 MR. DUREN: Ma'am, I, I sent twelve subpoenas to the
17 clerk of court to get time stamped and sent back to me so I
18 could serve them, right?

19 THE COURT: Okay.

20 MR. DUREN: They sent all my -- just recently I have
21 here -- they sent all my subpoenas back.

22 THE COURT: Okay.

23 MR. DUREN: Saying they don't serve subpoena. I say I
24 sent a letter asking for you to time stamp them, put the
25 court date on it and the time so I can have somebody to

1 serve them for me. I have, I have -- I even asked Mr.
2 Griffith when he was my attorney to subpoena witnesses. It
3 didn't happen. I asked Mr. Griffith to get the transcript
4 of my prior -- transcript and stuff. He, he never got it.
5 I wrote the court. They never sent it to me. I wrote the
6 court and asked for the trial, for the trial evidence and
7 the court evidence that was placed in evidence. They never
8 sent it to me.

9 THE COURT: So, do you have any witnesses here today
10 to testify?

11 MR. DUREN: I don't have any witnesses here today to
12 testify.

13 THE COURT: Okay.

14 MR. DUREN: Because I have no way of getting them.
15 They was impeding my progress to court.

16 THE COURT: Okay. Who were those witness that you
17 wanted to come?

18 (A PAUSE.)

19 MR. DUREN: I have to go back to the witness list.

20 THE COURT: You don't remember any of their names?

21 MR. DUREN: Detective John Milton, Detective Callum
22 [phonetic] from the South Carolina Department of -- I mean,
23 from SLED. I was -- subpoenaed the chief of police. I was
24 subpoenaing Mr. John Davis. I was subpoenaing Mr. Scott --
25 Detective Scott Bowman, Detective Alex.

1 THE COURT: And what were those people going to tell
2 me, you think?

3 MR. DUREN: Ma'am?

4 THE COURT: What kind of questions were you going to
5 ask them? What were they going to tell me?

6 MR. DUREN: Well, well, challenge Mr., challenge Mr.
7 John Milton on chain of custody and violation of the
8 Fourth, of my Fourth Amendment, illegal search and seizure
9 for that -- the swab, the swab.

10 THE COURT: Okay. I thought your post-conviction
11 relief application was saying that you didn't have proper
12 counsel.

13 MR. DUREN: Up until a point.

14 THE COURT: Well, what does the chain of custody have
15 to do with any of that?

16 MR. DUREN: Ma'am?

17 THE COURT: What does the chain of custody have to do
18 with that?

19 MR. DUREN: That was the only evidence they had to
20 convict me, ma'am.

21 THE COURT: Okay. So, are you saying that somebody
22 should have ---

23 MR. DUREN: The chain, the chain of custody was
24 defective. The swab was taken illegally because I
25 consented for a medical doctor or nurse to take my swab,

1 and Detective Milton under threat coerced to take my PR
2 bond made me give them a swab. And the rule of contract
3 say -- the plain language of the consent form say this was
4 to be taken by a medial doctor or nurse.

5 THE COURT: Well, but let me interrupt you because all
6 that stuff is what you talk about at trial or before the
7 trial happens.

8 MR. DUREN: I object to it in trial, ma'am.

9 THE COURT: Well, the judge there made a ruling. I
10 can't change that judge's ruling. That's in the past; I
11 can't change that. I mean, if you were here saying that
12 someone should have made a motion to suppress that evidence
13 or that a lawyer failed to object to it, that's the kind of
14 thing I'm here about, but not just the judge made the wrong
15 decision. You would file an appeal for that, not a PCR
16 alleging ineffective assistance of counsel. In fact, you
17 were your own counsel at trial. So, are you telling me you
18 didn't do a good enough job?

19 MR. DUREN: Ma'am?

20 THE COURT: You're trying to tell me that you didn't
21 do a good job representing yourself at trial?

22 MR. DUREN: Apparently not.

23 THE COURT: Well, but who can we blame for that? You
24 wanted to represent yourself, right?

25 MR. DUREN: Well, Your Honor, when I asked -- when I

1 had counsel, I kept asking Mr., Mr., Mr. Smith motion for
2 the dismissal, he wouldn't do it. I, I kept asking for
3 investigation. Matter of fact, twice he had to come back
4 and ask me, well, who do you say you want to get, you know,
5 for your alibi defense. I had to give it to him over and
6 over.

7 THE COURT: Well, at the point that you fired him as
8 your lawyer, why didn't you do all that stuff yourself
9 after that?

10 MR. DUREN: Ma'am?

11 THE COURT: Why didn't you file those motions
12 yourself?

13 MR. DUREN: Ma'am, I filed those motion. Those motion
14 kept, kept getting nowhere. In order for me to get a
15 motion to this court, ma'am, I have to send it to my mother
16 and have her hand deliver it now.

17 THE COURT: Okay.

18 MR. DUREN: Other than that, they say we never get it.

19 THE COURT: Okay.

20 MR. DUREN: The court say we never got it. I filed
21 those motion. I had to start filing through my mother; I
22 had to send it to her address and get her to hand file it.
23 Just recently I had her file a motion. They told her they
24 wasn't going to file it. They told her that your son must
25 think he's smarter than the judge. That's how the court

1 is, is, is treating my mother because she has filed a
2 motion for me.

3 THE COURT: But she was able to file the motions,
4 right?

5 MR. DUREN: Yeah, after, after that, but I didn't get
6 those motion in time enough. They didn't get in.

7 THE COURT: Okay. So, why didn't you argue those
8 issues when you showed up for trial? There was a judge
9 there then, and you were standing right there in the
10 courtroom.

11 MR. DUREN: I made, I made all the motion. I made a
12 motion to suppress the DNA evidence. He didn't do it. I
13 made a motion to dismiss the indictment because of
14 indictment ambush two days before trial; they reindicted me
15 two days before trial.

16 Four years, four years they had me indicted for
17 first-degree burglary in 2012. They didn't take me for
18 life, give me life, decide to give me life without parole
19 until July of 2014, okay? My lawyer made no motion at, at
20 that hearing. Then I came, I came back and filed the other
21 motion and asked him to file motion for dismissal to the
22 180 day rule. He told me he wasn't going to do it. So, I
23 started to do it. They act like they don't -- they told me
24 they never got my motion. What, what can I do if the court
25 is impeding me to file my motion, and then I have to start

1 filing it through my mother. That's the only way I got it.

2 THE COURT: So, you did file them through your mother,
3 and then when you came to court, a judge heard those
4 motions and denied them. And what I'm telling you is
5 that's not the subject of a PCR. If you think the judge
6 was wrong because the law says the judge should not have
7 denied those motions, that's for the appellate court to
8 decide, but you're here in front of me talking about
9 ineffective assistance of counsel. That's what I need to
10 hear about. How was your counsel ineffective?

11 MR. DUREN: He didn't know all the law.

12 THE COURT: All right.

13 MR. DUREN: But also my Fourth Amendment was violated.
14 My Fifth Amendment was violated.

15 THE COURT: All right. I know you don't have any
16 witnesses here. You want to tell me everything you want me
17 to know about your PCR application, and when I say
18 everything, I mean excluding those 2002 convictions.
19 Everything you want me to know about the 2015 conviction
20 and why you want me to grant your application.

21 MR. DUREN: Subject-matter jurisdiction.

22 THE COURT: I want you tell me all about it,
23 everything you want me to know.

24 MR. DUREN: Okay, subject matter. I was originally
25 indicted for burglary first degree. After I wouldn't take

1 a plea of fifteen years, a plea of ten years, a plea of
2 zero to fifteen years because I didn't do the crime -- I
3 had an alibi defense. I was 600 miles away at the time.

4 I was waiting to go, I was waiting to go to court in
5 Columbus, Georgia. I had to report to, to a bondsman every
6 day of the week down there and she could, and she could
7 verify that I had to report to her every morning at 9
8 o'clock. I even, I even wrote her and asked her to send me
9 that notarized statement, certified statement when I was at
10 the Sumter County jail. She, she said she sent it. They,
11 they can't -- Sumter County said they never received the
12 letter. I, I had the investigator talk to Mr. Greg Carter
13 from Columbus, Georgia. I painted his house there for week
14 I was there. I painted the house for him. I was staying
15 with my sister. My sister, Fay, she dropped me off on her
16 way going to Texas. I was nowhere around when this crime
17 took place. I had a alibi defense.

18 I've never got that investigation. He said -- that
19 man, that man spent \$1200 of the state money and didn't do
20 no investigation because I kept calling Mr. Davis asking
21 him about the investigation from the Sumter County jail.
22 He saw me one time.

23 Now, I was indicted for burglary first degree because.
24 I wouldn't plead -- and the, and the solicitor knew the
25 whole time. She knew she didn't have for -- conviction for

1 first degree. That's why I had my attorney, try to get him
2 to put in for a motion of dismiss, which I did after that,
3 but they said they don't receive it. Two days before
4 trial, they come back and amended the indictment on May the
5 7, 2015, brought me before Judge Cothran May the 13, 2015,
6 and tell me I'm going to court two business days later on
7 the 18th.

8 I said -- I asked him in the courtroom at that -- I
9 was trying to get the transcript. I asked them in the
10 courtroom on the record for a discovery hearing because at
11 that time, I didn't have no witness list that they was
12 going to use. I had no witness statements that they was
13 going to use. I had no, I had no chain of custody that
14 they was going to use. I had no, I had no DNA forensic
15 report, nothing. I had no discovery. Mr. Smith said that
16 he gave -- Mr. Smith did not give me no discovery.

17 Matter of fact, Judge, if you was to take a walk out
18 there in Sumter County jail, you would see all the
19 defendant out there that doesn't have discovery, and you
20 have defendants out there that have indictments that -- not
21 even signed. I'm just letting you know what's going on out
22 there.

23 Now, does, does first-degree burglary and
24 second-degree burglary have their various difference? Yes,
25 it does. It changes the nature of the original indictment.

1 They cannot be proved by the same element, first and
2 second-degree burglary. First degree is enter into a
3 dwelling. Second degree is enter into a building. A
4 dwelling is where anybody sleeps or a guard or anything, or
5 any guard shack that's within 100 yards. Second-degree
6 burglary just requires the entry of a building without
7 consent. Therefore, the nature of, the nature of the
8 indictment is changed. Court loses subject-matter
9 jurisdiction of indictment.

10 THE COURT: So, you're saying you should have been
11 indicted for burglary second but it was a burglary first?

12 MR. DUREN: The warrant specifically state -- I have
13 here the warrant specifically state burg -- I was charged
14 with burglary second degree nonviolent on the warrant. I
15 have the warrant, second burglary degree nonviolent. Now,
16 you can, you can three strike me if it's a violent or
17 serious offense, but I was tried with a nonviolent offense.

18 THE COURT: So, what you're saying is you don't think
19 that they could have charged you with burglary first
20 because it started out as a burglary second nonviolent?

21 MR. DUREN: Yes, ma'am.

22 THE COURT: What's the basis of you believing that?

23 MR. DUREN: I have, I have the code and statute right
24 here.

25 THE COURT: What code?

1 MR. DUREN: For, for burglary first and second.

2 THE COURT: Right. You know that that code says that
3 burglary first degree can be charged if a burglary is
4 committed by a person with a prior record of two or more
5 convictions for burglary?

6 MR. DUREN: Burglary first degree?

7 THE COURT: Yes, sir.

8 MR. DUREN: But the, but the controlling nature of
9 that, the controlling nature that, and we must look to the
10 nature of the indictment, is, one, entering into a
11 dwelling. That's what we must look to in the indictment,
12 the controlling nature of the indictment.

13 THE COURT: Okay.

14 MR. DUREN: Even though they are both close, second
15 degree has the, has the same statute in it for burglary
16 first -- I mean second, but the controlling nature is --
17 burglary second is into a, into a building without consent
18 to deprive the owner of something.

19 THE COURT: Okay.

20 MR. DUREN: Burglary first is entering into a
21 dwelling.

22 THE COURT: Okay.

23 MR. DUREN: The nature, the nature of both has been
24 changed. They are two different, they are two different
25 statutes. One is, one is, one 311. The other is 312.

1 THE COURT: Okay. What else do you want me to know?

2 MR. DUREN: Huh?

3 THE COURT: What else do you want me to know about
4 your case?

5 MR. DUREN: Your Honor, believe it or not, I, I, I
6 told, I told Mr., Mr., Mr. Smith that I was going to plead
7 to, what -- that I was -- motion for dismissal because they
8 didn't have the elements for burglary first, and they
9 didn't. He was the only one that knew it, that know that.
10 After three and a half, after four and a half years, the
11 solicitor going to come back and say we made a mistake? We
12 know what was going on. She was trying to force a
13 conviction. We know that. It happens all the time.

14 THE COURT: Did you make that motion to dismiss ---

15 MR. DUREN: Yes, ma'am.

16 THE COURT: --- for that reason?

17 MR. DUREN: I made that motion to dismiss.

18 THE COURT: Okay. So, I'm back to where I'm saying if
19 you believe that the trial judge made the wrong decision,
20 that's for you to appeal to the Court of Appeals.

21 MR. DUREN: Ma'am, I had ten days to appeal. When I,
22 when I got sentenced, they took me back to Sumter County
23 jail and put me in isolation. My mother tried to come
24 visit. They told my mother they'd already shipped me.
25 They held me in isolation. When I went Kirkland, they held

1 me in isolation. There was no way that I could get to make
2 an appeal. I had no writing materials; I had no envelope.
3 I couldn't get to the legal kiosk. Kirkland do not let you
4 use the legal kiosk. They do not let you use the legal --
5 I had no way to write, to put my appeal in. And when I
6 tried to put in my appeal after that, it was too late.

7 THE COURT: Okay.

8 MR. DUREN: If this, if this is a violation of the
9 constitution, this is the most fundamental violation of,
10 of, of a defendant due process to law, most fundamental.
11 Unless that, unless that defendant or whoever it is is
12 given that right of due process, which the -- your
13 constitution guarantee that defendant, there can be no
14 justice, Your Honor.

15 THE COURT: How were you denied due process?

16 MR. DUREN: Huh?

17 THE COURT: What is the due process violation?

18 MR. DUREN: Due process? My right to a fair trial, my
19 right to a fair trial, not giving the evidence I want.
20 Even at this time, I have witness upon witness. Asked Mr.
21 Jack Howell right there for my complete case file, the
22 client complete case. He sent me something said this is
23 all the solicitor give them for discovery. I look at it.
24 It has, it has no motion to relieve counsel in it. It has
25 no motion to seek life, life without parole, parole in it,

1 nothing. It has no -- none of the lawyers', none of the
2 lawyers' notes or nothing in it, and the client has that
3 right to that file. I asked. I asked and I saw when I
4 went pro se -- when I went pro se, I filed a motion before
5 the court for discovery. Ms. McElveen never gave me any
6 discovery. It's a violation of due process.

7 THE COURT: Did you ever get the discovery?

8 MR. DUREN: No, ma'am. I still haven't got any
9 discovery. What I got, I got piece by piece from the clerk
10 of court. He would send me a piece here, send me a piece
11 here, send me a piece here, send me a piece here. Just
12 recently he sent me my sentencing sheet time not time
13 stamped with the court reporter signature on it, forged,
14 but I, I got a copy of, of the, of the sentencing sheet,
15 true copy, with no signature on it. So, they are
16 committing fraud all the way around, Your Honor.

17 THE COURT: Which sentencing sheet are we talking
18 about?

19 MR. DUREN: This one, the life without -- I mean, this
20 one where Judge James sentenced me to life without parole.
21 One sheet is not, one sheet is not certified true copy with
22 the, with the court reporter signature and everything on
23 it. The one I have, though, it doesn't have no court
24 reporter signature on it, and it's true copy and it's not
25 even time stamped.

1 THE COURT: Well, all that stuff happened after you
2 had been convicted. The sentencing sheet is not filled out
3 until you're actually sentenced. That's ---

4 MR. DUREN: Yeah, yeah.

5 THE COURT: That's not ---

6 MR. DUREN: What I'm saying, due process before when I
7 was trying to get all these things in order to, in order to
8 fight my, my case. My due process violated, was violated.
9 I wasn't, I wasn't given, I wasn't given the DNA
10 application because Ms., Ms. McElveen two times -- if I
11 could get the transcript -- told Judge Cothran, she lied in
12 court and said that they didn't have the DNA forensic
13 testing. Now when she comes up to trial she put the test,
14 she put it into exhibit. It's dated way back in 2012, and
15 she told Judge Cothran twice on the record that she didn't
16 have it, and I've been, I've been asking for it in
17 discovery. I, I, I didn't get the chain of custody until
18 the day of trial. I didn't get the witness list until the
19 day of trial. I didn't -- I still haven't got no
20 statements that the witness made. I have no affidavit for
21 the, for the expert witness. These are all due process
22 violation.

23 If you would go back and look at the record, Your
24 Honor, from March 25th, January 2nd, you would see Ms.
25 McElveen has been lying through her teeth. I hate to say

1 it, but she has. She withhold -- she withheld evidence.
2 Whether confirmed my guilt or confirmed my innocence, it
3 was a *Brady* violation. I am entitled to that evidence and
4 it's a due process violation, and all we have to do is look
5 at the court record. She lied, said she gave me all my
6 discovery on, on May, on May the, May the 13th. You go
7 back and look at the transcript. She didn't.

8 THE COURT: Do you have a copy of that transcript for
9 me to look at?

10 MR. DUREN: I, I asked, I asked Ms. -- I asked Mr.
11 Griffith to please make available that transcript to me.
12 It was never made available to me. I have the, I have the
13 letters right here where I asked him for -- everything I
14 asked him that I'm telling you. She didn't make it
15 available.

16 THE COURT: Well, that's probably why he's not your
17 lawyer anymore, but you don't have it here for me to look
18 at?

19 MR. DUREN: No. No, ma'am, I don't. So, so, I, I
20 understand that. So, how am I -- like when I'd asked --
21 shoot. I know Mr. Griffith is no longer my lawyer.

22 THE COURT: Sure.

23 MR. DUREN: I asked him, I called him Friday and asked
24 him when are we going to PCR hearing. He didn't even know
25 who I was. After I told him, he said oh, yeah. We got --

1 he had -- was scheduled for Monday, but we got it Tuesday.
2 I said so what are we arguing? He said, well, we're
3 arguing ineffective assistance of counsel. I said how can
4 we argue ineffective assistance of counsel when I
5 represented myself at trial? He said oh yeah. You do have
6 a point. I said so what we are arguing? Well, I have to
7 look over the transcript again. I said so you don't even
8 have a brief? He said no, I don't have a brief. So, how,
9 how -- what am I supposed to come in here today with, Your
10 Honor?

11 THE COURT: Well, that's why I asked you if you were
12 ready to proceed today. We could have done your case on a
13 different day if you weren't ready.

14 MR. DUREN: I prefer my case before you.

15 THE COURT: All right.

16 MR. DUREN: I prefer my case before you.

17 THE COURT: Okay.

18 MR. DUREN: But, but, Your Honor, you know, there is,
19 there is more, there is more here than meet the eyes today,
20 Your Honor. There's a lot that's untold here today, you
21 know, and I know that the state is not going to go -- even
22 if I had a lawyer, I know that the state is not going to go
23 against a public defender because he works for the state,
24 too. I, I know that. I know that. I know that. And I
25 know that forty to thirty-five percent of the people that

1 are in prison, a lot of them are innocent. I know that,
2 too. I'm sitting down there at Lieber. I'm looking at
3 people that shouldn't even be in prison, including me. I
4 know where I was at when this crime took place.

5 And that ain't the first time law enforcement tried to
6 pin a trial -- pin a charge on me. They tried it in
7 Clarendon County. I had to go back and forth to court for
8 a whole year, take a jury trial when the police tried to
9 plant evidence in my booking report and take a jury trial.
10 You know, you know, my record in the past, yes, I did those
11 charge. I did. I admit to it, but this one I didn't do.
12 I didn't.

13 Now, now, my blood got there they say. I don't know
14 because I'm looking at the chain of custody. The, the
15 officer -- forensic expert that took the original test,
16 that took the test for the blood, that actually did the
17 swab, he didn't even sign the initial chain of custody.
18 He's nowhere in the chain of custody, so how can that be?
19 Who knows what happened. That could never -- that could
20 not have been my blood. I don't know that. And the chain
21 of custody, they, they say they had it. There's not even a
22 chain of custody. There's no Form A. There's no Form B.
23 There's no Form C. There's no initial chain of custody
24 signed nowhere. These are all due process violations, Your
25 Honor, constitutional violations.

1 Was I duly convicted? No. And legally convicted?
2 No. I never had that chance. The Thirteenth Amendment
3 said unless a person is duly and legally convicted -- bear
4 with me one second, Your Honor.

5 (A PAUSE.)

6 MR. DUREN: Our court -- the Honorable Justice McIver
7 of the South Carolina Supreme Court state, he say: The law
8 casts its protection over all person alike. Hence,
9 therefore, any person can be made to suffer for a crime.
10 He, he said before any person can be made to suffer for a
11 crime, he must be caught and held in the exact method for
12 which the law has provided or, in other words, he must
13 proceed against step-by-step according to the rules of
14 practice which the law has ordained. It is to no avail to
15 proceed against him according to other or better rules.
16 The law rules must be pursued or the law -- or he said the
17 law rules must be pursued or the law penalty cannot be
18 imposed upon -- on him for his crime.

19 If the court, if the prosecutor, or anybody violates
20 the defendant due process right, the sentence can't be
21 imposed on him. His constitutional rights has been
22 violated, Your Honor. And we're not having the transcript
23 today, that makes a big difference when I ask for these
24 transcripts, and to me it would seem like it was never
25 meant for me to have because if I was an attorney and my

1 client asked me for the transcript, I would give it to him.
2 I would make every available effort to get it to him. So,
3 how can I prove -- you know, I can sit up here and talk in
4 the wind, but if I get it later and I look, everything I
5 say is true. My due process has been violated.

6 We could listen to the audio. They have audio. They
7 have audio. We don't have to wait 'til they transcript.
8 We can go get the audio; we can request the audio. You
9 didn't have to wait for a transcript.

10 THE COURT: But you don't have that audio here today,
11 do you?

12 MR. DUREN: They don't give it -- they not going to
13 give it to me. I know they not and you know that, Your
14 Honor.

15 THE COURT: I just had to ask the question.

16 MR. DUREN: You know that.

17 THE COURT: But unfortunately -- and I don't want to
18 cut you off if you've got more to say, but unfortunately it
19 sounds like a lot of the stuff that you're talking about is
20 your disagreement with what the trial judge did, the
21 decisions that the trial judge made about the motion to
22 dismiss, whether it's regarding the indictment, chain of
23 custody, DNA evidence, things like that, and those are the
24 kinds of things that should have been brought in an appeal.
25 A PCR application isn't a substitute for an appeal.

1 MR. DUREN: Like I say, I'll tell you. To get an
2 appeal -- because they put you in isolation and don't give
3 me something. How can I, how can I do it?

4 THE COURT: Look, I don't know the exact circumstances
5 of that, but I'm not sitting here as an appellate judge is
6 what I'm saying.

7 MR. DUREN: I understand that, Your Honor.

8 THE COURT: It's not my job as we sit here today to
9 decide those issues that could have, should have been
10 decided by the Court of Appeals. That's not my job, so I
11 can't rule on those things. If you think the trial judge
12 got it wrong, it's not my job to decide that the trial
13 judge got it wrong or right or whatever. I'm sorry, but I
14 did cut you off. Anything else you want to tell me about
15 your PCR application?

16 MR. DUREN: I do, I do. First violation,
17 subject-matter jurisdiction, we already discussed that.
18 Violation of my Fourth, Thirteen Amendment. I was not duly
19 and legally convicted.

20 THE COURT: Okay, anything else?

21 MR. DUREN: Nothing else. I have some papers for the,
22 the...

23 THE COURT: You have papers for me?

24 MR. DUREN: No. For the attorney general.

25 THE COURT: Okay.

1 MR. DUREN: May I give them to them?

2 THE COURT: Yes, sir.

3 MR. DUREN: I'm serving you these papers in open
4 court.

5 MS. COLEMAN: Thank you.

6 MR. DUREN: One of them is a notice of intent to claim
7 the right. The other is an international notice of
8 affidavit of truth. They were, they were time stamped with
9 the clerk of the Sumter County courthouse in May and April
10 of last year.

11 THE COURT: Okay.

12 MR. DUREN: Okay.

13 THE COURT: Now, I don't, you know, I don't know the
14 substance of what those are. Now, if they are some kind of
15 things that need to be filed still -- I know you said some
16 of them are time stamped, but ---

17 MR. DUREN: Those already been ---

18 THE COURT: --- if there's anything else ---

19 MR. DUREN: They already been filed.

20 THE COURT: Okay.

21 MS. COLEMAN: These have all been filed.

22 THE COURT: All right. So, she has copies of them
23 now.

24 MR. DUREN: And your name, ma'am?

25 MS. COLEMAN: Julie Coleman.

1 MR. DUREN: Julie Coleman, okay.

2 THE COURT: All right, Ms. Coleman, before we wrap
3 this up, do you want to ask David any questions?

4 MS. COLEMAN: I have no cross-examination, Your Honor,
5 just a brief closing argument.

6 THE COURT: Okay. Absolutely. I'll hear from you
7 now.

8 MS. COLEMAN: Thanks. Starting with the issue of
9 discovery, just looking at page 39 of the transcript, the
10 solicitor went through the dates and times when he was
11 served with discovery. So, I believe he was given copies
12 of the file on the record in open court as far as that
13 goes.

14 As you've stated already, the state would argue that
15 many of these are direct appeal issues and are not able to
16 be raised on post-conviction. He hasn't met the burden of
17 proof really for any of these allegations.

18 I would say ineffective assistance of counsel, Mr.
19 Duren has done -- he did a fantastic job at trial, and you
20 can see by reading the transcript he vigorously
21 cross-examined all the witnesses. He made every objection
22 and every motion to suppress that he could. You can tell
23 that he's very organized and prepared, and he chose to
24 represent himself again today. And I would say that he was
25 -- Judge Cothran determined that he was able to go pro se

1 at trial and you did again today, and I would say that he
2 was not, not...

3 THE COURT: Deficient.

4 MS. COLEMAN: Deficient, yes, and not denied -- or
5 effective assistance of counsel in this. We would ask you
6 to dismisses his application. Thank you.

7 THE COURT: Thank you, ma'am.

8 I'm going to give you the final word, David, briefly
9 if you want. You don't have to say anything else ---

10 MR. DUREN: Yes, ma'am.

11 THE COURT: --- if you don't ---

12 MR. DUREN: Your Honor, I'd ask, I'd ask the court to
13 grant me my, my PCR application on the grounds that my due
14 process rights has been violated under the state
15 constitution and the federal constitution. State
16 constitution state that unless a person is legally and duly
17 convicted, and I do -- if -- even though I don't have
18 transcript, Your Honor, to prove, to prove, I'm telling you
19 the truth, you know, and I would the state -- ask the state
20 to provide this transcript.

21 THE COURT: Well, it's only Ms. Coleman's job in this
22 case to give me the trial transcript of whatever you are
23 appealing. Make sure that we have that. I'm not going to
24 make her hunt down a court reporter for some date in some
25 proceeding that she wasn't involved in.

1 MR. DUREN: Okay. All right. The trial transcript is
2 supposed to be complete transcript of all evidence and
3 everything placed into evidence.

4 THE COURT: It is a transcript of what happened at the
5 trial, yes, sir.

6 MR. DUREN: Yes.

7 THE COURT: Not any other hearings.

8 MR. DUREN: I mean, and anything that was placed into
9 evidence is supposed to be in the transcript.

10 THE COURT: Not -- no, not necessarily. Not
11 necessarily. I mean, it depends on what it is. I don't
12 know.

13 MR. DUREN: I'm talking about all intangible objects
14 is supposed to be in the transcript.

15 THE COURT: Sometimes there are copies of some
16 documents, but sometimes not. Those go in an evidence
17 room, and they are held by the clerk's office in
18 safekeeping. The court reporter doesn't keep those.

19 MR. DUREN: Okay.

20 THE COURT: So, they can't put them with the
21 transcript.

22 MR. DUREN: I wrote the, I wrote the clerk of court
23 and asked for those evidence and asked for all my motion
24 that are placed in evidence. I have the letter right here.
25 Clerk of court wrote me back and told me -- wrote the court

1 back -- wrote me back and told me they don't keep them. I
2 was -- normally like they don't keep -- that they never
3 have those.

4 THE COURT: It depends on what it is. Some stuff they
5 keep; some stuff is returned to the state. I just -- it
6 depends on ---

7 MR. DUREN: I'm talking about all my ---

8 THE COURT: --- what it is and what the circumstances
9 are.

10 MR. DUREN: I'm talking the motion, DNA, papers, all
11 that.

12 THE COURT: They might have copies of the motions in
13 the file if you filed them, but if they were never filed,
14 then they don't have them.

15 MR. DUREN: They don't, they don't have no evidence
16 that the state put into exhibit or nothing. I asked for
17 all of it.

18 THE COURT: I don't know where it is. I don't keep
19 the evidence. I really honestly don't know. Some things
20 should remain in the clerk's office. Some things may have
21 gone back to the police department's evidence room or the
22 sheriff's department evidence room.

23 MR. DUREN: Before you make a, a, a ruling on this,
24 Your Honor, I have something I'd like to pass up to Your
25 Honor. It's a certificate of service before you make a

1 ruling on this.

2 THE COURT: A certificate of service for what?

3 MR. DUREN: Affidavit that I've given judicial notice
4 to give motion to relieve. Oh, no, that's not that.
5 Brought one.

6 MS. COLEMAN: Your Honor, I'm sorry to interrupt. I
7 forgot to mention one thing in my closing argument.

8 THE COURT: Sure.

9 MS. COLEMAN: If it's not -- okay.

10 THE COURT: Sure.

11 MS. COLEMAN: I meant to argue. If you should find it
12 necessary to deny this application, the state would request
13 that you include a finding of overwhelming evidence, and
14 this is all in the transcript of the trial. The evidence
15 in the case was -- there was blood found on the -- on a
16 cooler from the building that was broken into by the pool.
17 That person who broke in smeared their blood on a cooler
18 and they matched it. It was CODIS hit to Mr. Duren, and
19 the state argues that this is overwhelming evidence which
20 would preclude him from an argument of ineffective
21 assistance of counsel.

22 THE COURT: Thank you, ma'am.

23 What kind of paper are you looking for, David?

24 MR. DUREN: This -- oh, here it is. No. One second,
25 Your Honor.

1 (A PAUSE.)

2 MR. DUREN: Okay, this is a certificate of service for
3 petition of removal, Your Honor.

4 THE COURT: Petition of removal?

5 MR. DUREN: Yes.

6 THE COURT: Okay.

7 MR. DUREN: It was also served on my attorney, and it
8 was also served on the attorney general, and it has been
9 filed with the Sumter County clerk of court. A copy was
10 sent to the Sumter County clerk of court.

11 THE COURT: Okay.

12 MR. DUREN: It's a petition of removal. Before you
13 make a final judgment, the case is being removed to the
14 federal jurisdiction.

15 THE COURT: Okay. Well, I've got my copy. You say
16 you filed it with the court, too, right?

17 MR. DUREN: Yes, ma'am.

18 THE COURT: All righty, anything else I need?

19 MR. DUREN: No, ma'am.

20 THE COURT: All right, I'm not going to make a
21 decision today. I'm going to think about everything that
22 you've told me, and I will let you know something in the
23 mail. You'll get something in the mail, okay, with my
24 decision. Okay, thank you, sir.

25 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR SUMTER COUNTY, SOUTH CAROLINA, ON THE 26TH DAY OF JULY, 2016.

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

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

COLUMBIA, SOUTH CAROLINA

JUNE 17TH, 2017

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER) THIRD JUDICIAL CIRCUIT

RECORDED

2017 FEB 28 AM 9:19

David A. Duren, #181965,

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

2015-CP-43-2134

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Applicant,)

v.)

State of South Carolina,)

Respondent.)

[Signature]
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on September 14, 2015. Respondent submitted its Return and Partial Motion to Dismiss on December 3, 2015. An evidentiary hearing into the matter was convened on July 25, 2016, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Timothy Griffith, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

I. PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was true bill indicted at the May 2015 term of the Sumter County Grand Jury for Burglary- Second Degree (2012-GS-43-1149). Applicant proceeded pro-se at trial before the Honorable George C. James, Jr. Applicant was found guilty as indicted on May 20, 2015. Judge James sentenced Applicant to life without parole. Applicant did not appeal his conviction or sentence.

[Signature]

Additionally, Applicant was true bill indicted at the February 2002 term of the Sumter County Grand Jury for three counts Burglary – Second Degree and Arson Second Degree (2002-GS43-109).¹ Jack Howle, esquire represented Applicant. On April 4, 2002, Applicant pled guilty as indicted before the Honorable Clifton Newman. Judge Newman sentenced Applicant to seven year term of imprisonment for burglary – second degree for two counts of burglary-second degree and six year term of imprisonment for arson – second degree with those charges running concurrent to each other. Applicant did not appeal his guilty plea or sentence.

Applicant filed a timely application for post-conviction relief on September 14, 2015.

II. ALLEGATIONS

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

1. "4th, 5th, 6th, 8th, 13th, 14th, amend. Violation."
2. Due process violation.
3. Fraud upon the court.
4. Subject matter jurisdiction
5. Ineffective Assistance of Counsel

At the evidentiary hearing, Respondent moved to dismiss any allegations pertaining to Applicant's Burglary and Arson charges from 2002 as untimely. This Court granted Respondent's motion and dismissed those allegations accordingly for Applicant's lack of due diligence in raising them. Applicant proceeded only on the allegations regarding his 2015 convictions.

III. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must

¹ Applicant listed this indictment on his current PCR application.

prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible and persuasive. These credibility findings have been applied to the Court's findings and conclusions set forth below.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant has asserted several allegations of ineffective assistance of counsel. This Court finds these claims to be meritless and they should be denied and dismissed with prejudice.

Based on the testimony at the evidentiary hearing as well as the trial transcript, it is clear that Applicant wished to represent himself at trial, and he relieved his prior attorney in order to represent himself. The record indicates that Applicant was deemed able to represent himself at trial after being given all proper warnings at a pre-trial hearing with Judge Cothran.

At the evidentiary hearing, prior counsel Jacob Smith testified that he met with Applicant ten to fifteen times during the brief course of his representation. He stated that he filed discovery motions, reviewed the materials with Applicant, discussed the elements of the charges, relayed the State's plea offers, and investigated possible alibi defenses. Mr. Smith stated that Applicant decided to go *pro se* and he had him relieved as counsel. Based on this testimony, this Court finds that the representation of Applicant's prior counsel did not fall below standards of professional norms. Applicant has failed to meet his burden in proving that any of the attorneys who previously represented him were ineffective, and that any alleged ineffectiveness prejudiced him in any way. Therefore, this allegation is denied and dismissed with prejudice.

DUE PROCESS

Applicant alleges that he was denied due process of law. Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However,



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).

This Court finds that Applicant did not present any meritorious evidence of a due process violation and thus has failed to meet his burden of proof, and this allegation is denied and dismissed with prejudice.

SUBJECT MATTER JURISDICTION

Applicant has claimed that the trial court lacked subject matter jurisdiction. Defects in the indictment do not affect subject matter jurisdiction. Subject matter jurisdiction is the power of a court to hear a particular class of cases. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

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

FAILURE TO STATE A CLAIM

Applicant further alleges various constitutional violations as well as fraud upon the court. This Court finds these allegations to be meritless; as Applicant has failed to state a claim that is cognizable under the Uniform Post-Conviction Relief Act, S.C. Code Ann. § 17-27-10 to -160.

An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The allegations presented by Applicant raises direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d

501 (1973). Therefore, this allegation is denied and dismissed as it is not proper in a post-conviction relief action.

ALL OTHER ALLEGATIONS

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

V. CONCLUSION

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

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

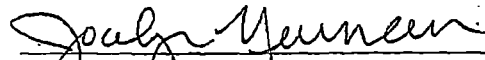
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IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 22nd day of February, 2018¹⁷.



JOCELYN NEWMAN
Presiding Judge
Third Judicial Circuit

Columbia, South Carolina

WITNESSES

John Melton Sumter Police Dept.

T. Sims Sumter Police Dept.

ARREST WARRANT NUMBER

M936326

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: 5-7-15

VERDICT

Foreperson of Petit Jury

Date:

AMENDED DOCKET NO. 2012-GS-43-1149

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

MAY TERM 2015

THE STATE

vs.

DAVID ABRAHAM DUREN JR.

Indictment for

Burglary / Burglary (Violent) (After 06/20/85) - Second degree

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

INDICTMENT FOR

Burglary / Burglary (Violent) (After 06/20/85) - Second degree

At a Court of General Sessions, convened on May 7, 2015 the Grand Jurors of SUMTER County present upon their oath:

COUNT ONE
BURGLARY 2ND DEGREE, VIOLENT

That in Sumter County, on or about June 8, 2011, the Defendant, David Abraham Duren Jr., did enter the building of Thomas & Howard Company, located at South Harvin Street, Sumter, South Carolina, without consent and with the intent to commit a crime therein; and that, in addition, defendant has a record for two or more burglaries, or housebreakings, or both; in violation of Section 16-11-312(B) of the South Carolina Code of Laws (1976, as amended).

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

Solicitor

