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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Appeal from Lexington County

Honorable D. Craig Brown, Circuit Court Judge

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ALBERT OWENS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000649

---

APPENDIX

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON	)	2013-GS-32-1513

STATE OF SOUTH CAROLINA	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
ALBERT SHANE OWENS	)	
_____ DEFENDANT	)	

October 31, 2013  
 Lexington, South Carolina

**B E F O R E:**

THE HONORABLE STEVEN H. JOHN, JUDGE.

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

KATE WHETSTONE USRY, ASSISTANT SOLICITOR  
 Attorney for the State

ERIK J. DRYLIE, ASSISTANT PUBLIC DEFENDER  
 Attorney for the Defendant

CAROL M. THUEME, RPR  
 Official Court Reporter

I N D E X

DEFENDANT:	PAGE
ALBERT SHANE OWENS	3

EXHIBITS

(There were no exhibits marked.)

1 THE CLERK: 2013-GS-32-1513, State versus Albert  
2 Shane Owens, indicted for burglary 2nd degree/non-violent;  
3 he is pleading to burglary 3rd degree/2nd degree (sic).

4 2013-GS-32-1516, State versus Albert Shane  
5 Owens, indicted for burglary 2nd degree violent, he is  
6 pleading as charged. He is waiving presentment to the  
7 Grand Jury and is represented by Mr. Drylie.

8 ALBERT SHANE OWENS, after being duly sworn,  
9 testified as follows:

10 THE PROBATION AGENT: Your Honor, Mr. Owens is  
11 on probation. This plea will be a violation and we have  
12 also issued a citation and violation report.

13 THE COURT: You served it on him?

14 THE PROBATION AGENT: Yes, sir.

15 THE COURT: Very good.

16 MS. USRY: Your Honor, just for clarification,  
17 the burglary 2nd non-violent was indicted as that.  
18 However, the plea to burglary 2nd violent -- the defense  
19 attorney and I have discussed that -- he's waiving -- on  
20 that indictment, we corrected that, and the defendant has  
21 reviewed that and waived that to go forward today.

22 THE COURT: Waived presentment to the Grand  
23 Jury?

24 MS. USRY: Yes, sir, to the violent because he  
25 did -- that was my understanding, got put before the Grand

1 Jury for non-violent and should have been before it as  
2 violent.

3 THE COURT: All right. Mr. Owens, give me your  
4 attention, sir. You come before the Court pleading guilty  
5 to the crimes of burglary 2nd degree/violent and burglary  
6 3rd degree/second offense; is that correct?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand the potential  
9 sentence regarding burglary 2nd degree/violent is up to 15  
10 years? Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And burglary 3rd degree/second  
13 offense is up to ten years. Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand that neither one  
16 of these have been presented to the Lexington County Grand  
17 Jury? Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And you've talked about that with  
20 your attorney, correct?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And you've indicated with your  
23 initials on the sentencing sheets and with your signature  
24 on the two indictments that you want to waive or give up  
25 that presentation to the Grand Jury; is that correct?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You understand the matter's come  
3 before the Court without negotiations or recommendations  
4 as to the sentences by the State of South Carolina?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right, sir. That was your  
7 understanding, correct?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. Understanding this, do  
10 you want to go forward with your two guilty pleas at this  
11 time?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. Are you currently under  
14 the influence of any drugs or intoxicants of any kind or  
15 currently have it in your system?

16 THE DEFENDANT: No, sir.

17 THE COURT: Are you suffering from any kind of  
18 physical or mental, emotional problem that would keep you  
19 from understanding what you're doing here today?

20 THE DEFENDANT: No, sir.

21 THE COURT: You also understand by pleading  
22 guilty here today that is a violation of your probation.  
23 Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You were on probation for the crime

1 of safecracking. Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And you could have been doing  
4 perfectly on probation, I'll hear from the agent, but just  
5 for the purposes of argument, if you've been doing  
6 perfectly on probation, when you plead guilty here today,  
7 that in and of itself violates your probation. Do you  
8 understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right, sir. And understanding  
11 all that you still want to continue to go forward with the  
12 guilty pleas; is that correct?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: When you plead guilty you give up  
15 certain constitutional rights, among those, the right to  
16 remain silent. If you talk to me you give those rights  
17 up. Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Other rights are the presumption of  
20 innocence, right against self-incrimination, at trial the  
21 State has to prove you guilty beyond a reasonable doubt.  
22 If you plead guilty, you give up those rights. Do you  
23 understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You're entitled to a jury trial.

1 Twelve men and women sitting in the box over there and  
2 listening to the facts and evidence as presented by the  
3 State to see if there are indeed enough facts and evidence  
4 to prove you guilty beyond a reasonable doubt. If you  
5 plead guilty, you give up those rights up. Do you  
6 understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Now, in your jury trial with your  
9 attorney you can question the witnesses and the evidence  
10 presented by the State. If you wanted to, you could  
11 present a defense and testify, call witnesses on your own  
12 behalf. When you plead guilty, you give up all those  
13 rights. Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Now you come before the Court and  
16 you're pleading guilty to burglary 2nd degree/violent and  
17 the burglary 3rd degree/2nd offense. Are you pleading  
18 guilty to both those crimes freely and voluntarily?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Of your own free will and accord?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Are you pleading guilty because you  
23 are indeed guilty of those crimes?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Anybody promise you anything or

1 threaten you or force you in any way to get you to plead  
2 guilty?

3 THE DEFENDANT: No, sir.

4 THE COURT: And you understand that the burglary  
5 2nd degree/violent is classified as a violent and a  
6 serious offense by the State of South Carolina. Do you  
7 understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: So you understand that that would  
10 then, if the Court accepts that plea, that gives you at  
11 least one strike under the state's three-strike law. Do  
12 you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And if you accumulate three serious  
15 offenses or two most serious offenses, you understand the  
16 State can be asking for life in prison without the  
17 possibility of parole no matter what your potential  
18 sentence could be. Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. And you talked about  
21 that with your attorney, correct?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: In fact, it's a violent offense,  
24 you've spoken with your attorney about that, correct?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right, sir.

2 Now, Counsel, your name is?

3 MR. DRYLIE: Erik Drylie.

4 THE COURT: All right, sir.

5 So, Mr. Owens, you're here with your attorney,  
6 Mr. Drylie, correct?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Did you tell him everything you need  
9 to tell him about all these matters, including the  
10 probation matter?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Have you had enough time to talk to  
13 him?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you need any more time to talk to  
16 him?

17 THE DEFENDANT: No, sir.

18 THE COURT: Are you satisfied with his help and  
19 representation?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Any complaints about his help or  
22 representation?

23 THE DEFENDANT: No, sir.

24 THE COURT: All right, Mr. Drylie, you're here  
25 representing the interest of your client, Mr. Owens; is

1 that correct?

2 MR. DRYLIE: Yes, Your Honor.

3 THE COURT: And he comes before the Court to  
4 tender his pleas of guilty to the two offenses named. Do  
5 you concur?

6 MR. DRYLIE: I do, Your Honor.

7 THE COURT: And he claims he comes before the  
8 Court of his own free will and accord?

9 MR. DRYLIE: Yes, Your Honor.

10 THE COURT: And have you explained to him his  
11 constitutional rights, any defenses he might have as well  
12 as the information, the evidence in the possession of the  
13 State?

14 MR. DRYLIE: Yes, Your Honor.

15 THE COURT: Thank you very much.

16 All right, Solicitor, the facts of the two  
17 cases, please.

18 MS. USRY: Thank you, Your Honor.

19 This incident occurred on March 11th, 2012, and  
20 March 12th of 2012. March 12th is when the owner of the  
21 business actually returned to his business and saw that it  
22 had been broken into over the nighttime period while he  
23 was away.

24 The owner of the business that originally made  
25 the 911 call, Your Honor, is Chapman's Auto. Mr. Chapman

1 is present here in the courtroom today.

2 On the date of this incident he returned to work  
3 and saw that his building had been broken into. Among  
4 other things that were taken from his place of business  
5 were a chainsaw, two fire pits, various handheld tools,  
6 outdoor lighting, and a number of copper wire and  
7 different types of wiring within his building, Your Honor,  
8 that were taken.

9 Officers responded to the scene and they did an  
10 investigation and looked through on the scene of this  
11 business and they determined that the siding on the side  
12 of the building appeared to have been cut and pulled back  
13 away to allow entry into the building. In addition, when  
14 they went they observed that glass window panes that were  
15 part of a third bay roll-up door had been broken in that  
16 door to get into this area and to remove the items.

17 In addition when they started looking outside  
18 the building, it's surrounded by a fence, Your Honor, so  
19 you have to go through the fence to get to the building.  
20 They found a place where the wire on the fence was  
21 actually cut and a hold made into the fence to get into  
22 this area.

23 During the course of the investigation, they  
24 determined that other businesses next to this business had  
25 been broken into. There was a Dove Machine shop nearby.

1 An air dryer had been removed from the building, but they  
2 actually hadn't been able to carry it away. I believe  
3 they recovered that item, but it had been moved out of the  
4 building and attempted to take away.

5 Additionally, there was a truck outside the  
6 building, a Ford Ranger, that had been broken into, the  
7 side window had been broken, and items had been gone  
8 through in that truck and removed from the truck.

9 And finally, there's a West Columbia Collision,  
10 and that's a business in that same area, Your Honor, that  
11 was hit during the same time. Three radiators were taken  
12 from that business. They were able to obtain two back.  
13 In addition, there was damage to that store.

14 Your Honor, I've handed up a restitution sheet  
15 in this case that indicates what the different parties  
16 have requested. Now, Mr. Chapman's I just rounded. He  
17 actually -- his business, because the siding was pulled  
18 back and the fence gone into in addition to the copper  
19 wiring that was taken, he estimates it was over \$20,000  
20 total and I put a small amount because ultimately these  
21 parties understand that they're not going to see any of  
22 this money when you hear this defendant's prior record,  
23 Your Honor.

24 But Mr. Chapman actually is the one that  
25 found -- that kind of got investigators from West Columbia

1 looking into this case and on the trail of the defendant.  
2 He determined that -- he went to CMC Recycling later that  
3 same morning, Your Honor, and determined that the  
4 defendant had been to that business and sold the copper  
5 wiring from his shop to that area, and so the defendant  
6 received, I think, about \$1,400 about.

7 He has the exact amount, Your Honor.

8 THE COURT: All right.

9 MS. USRY: He received \$1,194.95 from selling  
10 that cooper wire, and that's ultimately what got  
11 investigators on the trail of this defendant, following  
12 him. He was later arrested on -- this happened on March  
13 12th. The defendant was ultimately arrested on March  
14 22nd, 2012. Officers were able to get in touch with the  
15 defendant's girlfriend and they made multiple different  
16 contacts in trying to track this guy down, but they  
17 ultimately found his girlfriend and got her to call him  
18 and say let's meet at the Dollar General. They met at the  
19 Dollar -- the defendant met his girlfriend at the Dollar  
20 General and that's when officers were able to ultimately  
21 arrest him. He did not come willingly.

22 He bonded -- excuse me, Your Honor. He's been  
23 in jail since that time or he bonded out and he's in on a  
24 bench warrant -- beg the Court's indulgence -- he's in on  
25 a bench warrant right now.

1           But I do want to bring to the Court's attention  
2 that I'm dismissing as part of this plea today a prior  
3 burglary on September 8th of 2012, where the defendant is  
4 connected to a robbery of a Beach Bingo location. During  
5 the month of September last year that building was broken  
6 into three separate times. They found the defendant by  
7 they had some blood at the scene one of the times the  
8 building was broken into and they found that by giving  
9 that blood to SLED and they had a CODIS hit at SLED, Your  
10 Honor. We have not received the full DNA results back  
11 from that SLED hit, Your Honor, so we're dismissing that  
12 case today based on the charges that he's pleading to, the  
13 violent charge.

14           Additionally, as part of the charge he pleads to  
15 we're dismissing a number of charges. There were other  
16 burglaries, safecracking, grand larceny, and enhanced  
17 property offenses just from this incident alone, but we  
18 whittled it down to two primary charges.

19           I've got the defendant's prior record I can also  
20 give you at this time if you're ready for that, Your  
21 Honor.

22           THE COURT: Please, ma'am.

23           MS. USRY: In 1988 he's got a burglary 3rd  
24 degree. In 1990, a larceny and a B&E auto. In 1991, a  
25 grand larceny. The sentencing sheet just said multiple

1 counts of grand larceny and it was listed multiple times.  
2 I'm not exactly sure of the exact number of those, but I  
3 would say more than three or four. A larceny of motor  
4 vehicle, that's two counts of that. It looks like he  
5 received about ten years for those offenses, Your Honor,  
6 the grand larcenies of motor vehicle in '91.

7 His next offense is 1999, possession of  
8 marijuana. In 2002, attempted burglary and another  
9 possession of marijuana. In 2003, a DUS 3rd offense. I'm  
10 not sure where the two priors come from, Your Honor. In  
11 2007, possession of marijuana, possession of drug  
12 paraphernalia, criminal domestic violence, and the  
13 safecracking. I believe that's what he's on probation for  
14 now.

15 In 2008, grand larceny greater than \$5,000. And  
16 then he currently also has from 2012 pending Richland  
17 County charges for burglary 2nd/violent and safecracking.  
18 Those have not been resolved yet, Your Honor.

19 The victim would like to briefly address the  
20 Court.

21 I will tell Your Honor that I've spoken with the  
22 victim of the bingo parlor and we reached out and received  
23 victim impact statements from all of the other victims in  
24 this case and that's how we came to the figures we've  
25 presented to you. They pretty much all across the board

1 recognize they're not going to see their money from this  
2 defendant and they're looking for jail time, Your Honor.

3 THE COURT: All right. Thank you, ma'am.

4 MS. USRY: Yes, sir.

5 THE COURT: All right. Yes, sir, if you want to  
6 come forward. Tell me your name and I'll be glad to hear  
7 from you, sir.

8 MR. CHAPMAN: Thank you, Your Honor. Robert  
9 Chapman.

10 THE COURT: Yes, sir.

11 MR. CHAPMAN: I would like to ask the Court to  
12 look at the defendant's past. If he's released, to be  
13 monitored fully for the full length of probation because  
14 with his past, when he broke into my business he was on  
15 probation, bond, and a warrant for his arrest, so he has  
16 no care for the citizens of Lexington. So with that, you  
17 know, if he doesn't serve time, which I hope he does, I  
18 would ask for him to be monitored at his cost. We all  
19 know restitution's not going to be made.

20 THE COURT: Thank you very much. I appreciate  
21 it.

22 MR. CHAPMAN: Thank you.

23 THE COURT: All right. Mr. Owens, regarding the  
24 facts of this particular case, I know we've heard some  
25 other matters, but regarding the facts of these two cases

1 that you're here about today, the burglary 2nd  
2 degree/violent and the burglary 3rd degree/second offense,  
3 the Solicitor went over those facts and a brief summary of  
4 those facts are set forth in your two indictments. My  
5 question to you is, are those facts true and correct?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And you understood when you engaged  
8 in those activities you were committing crimes? You  
9 understood that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Have you understood my questions  
12 here today?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Have all your answers to me been the  
15 truth?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Anybody tell you how to answer my  
18 questions?

19 THE DEFENDANT: No, sir.

20 THE COURT: And you understand you have the  
21 right to appeal your guilty plea within ten days?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: I find there's been a substantial  
24 factual basis for the plea. I find the defendant's  
25 decision to plead guilty to be done freely, voluntarily,

1 knowingly, and intelligently made. He's had the advice of  
2 competent counsel with whom he's satisfied; therefore, Mr.  
3 Owens' decision to plead guilty to burglary 2nd  
4 degree/violent and burglar 3rd degree/2nd is accepted.

5 All right, Counsel, let me hear from you.

6 MR. DRYLIE: Thank you, Your Honor.

7 Mr. Owens is 43 years old. When I first met him  
8 he was 42. He only has an eighth-grade education. He did  
9 eventually obtain his GED. He's mostly done construction  
10 work throughout his life. He does have a 16-year-old  
11 daughter who one day he would like to be able to see, not  
12 in a correction center or prison.

13 Your Honor, as you heard, he does have a lengthy  
14 prior record. He knows full well that he's not walking  
15 out of this courtroom today. He has no expectations of  
16 that. He knows he's going to get some time, probably some  
17 serious time. He's here today to take responsibility,  
18 Your Honor.

19 He's had some pretty serious mental issues for  
20 most of his life. He's also had a rather bad substance  
21 abuse problem. You could probably tell that by his  
22 record. He got hooked on crack cocaine at a very young  
23 age and I think most everything that was stolen usually  
24 went to feed his habit, Your Honor.

25 His goal would be one day to be able to have a

1 relationship with his daughter where he's outside of  
2 prison and he can stay off drugs and to be able to live  
3 life. We realize that, you know, his prior record is  
4 probably very disconcerting, Your Honor, as well as the  
5 fact that he was on probation when these crimes were  
6 committed.

7 Your Honor, all we're simply asking for in this  
8 case is as much mercy as the Court is able to show. He  
9 knows that he's going to get some time today. He's  
10 prepared for that. He wants to take responsibility and  
11 apologize to the victims, Your Honor.

12 THE COURT: All right. Thank you.

13 Agent, do you want to proceed on the  
14 safecracking matter?

15 THE PROBATION AGENT: Yes, sir.

16 THE COURT: Just tell me very briefly what the  
17 circumstances are.

18 THE PROBATION AGENT: Judge, very briefly, he  
19 was sentenced to ten years suspended to five years  
20 probation. He was ordered to pay \$128,814 in restitution.  
21 He has paid \$1,086. Our citation -- we actually served a  
22 citation to address the charges today.

23 I did speak with the victim this morning. He  
24 realizes he's not going to receive any more monies and  
25 he's asking for jail time -- that was his words -- no

1 specific amount of time. The agent is asking for a full  
2 revocation and convert the monies to a civil judgment.

3 MR. DRYLIE: Your Honor, I do want to add one  
4 thing real quick.

5 THE COURT: Yes, sir.

6 MR. DRYLIE: He's been in the detention center  
7 for around 220 days.

8 THE COURT: You have an idea of how long he's  
9 been in, Solicitor?

10 MS. USRY: Your Honor, I don't.

11 THE COURT: What was the day that he was  
12 incarcerated then?

13 MR. DRYLIE: He was incarcerated on March 22nd.  
14 He bonded out very briefly, Your Honor, but he never did  
15 bond out after the 22nd. He's been in since the 22nd.

16 MS. USRY: That's my mistake on the bench  
17 warrant. He never made bond.

18 THE COURT: So since March 22nd of this year  
19 he's been incarcerated then?

20 MR. DRYLIE: Yes, Your Honor.

21 MS. USRY: Yes, sir.

22 MR. DRYLIE: And, Your Honor, I would like to  
23 add one more fact. I'm sorry.

24 THE COURT: Yes, sir.

25 MR. DRYLIE: He did fully cooperate with the

1 police in these two charges. When they began asking him  
2 about it he confessed to everything, told them exactly  
3 where he went in and what was taken, Your Honor. And from  
4 the moment I met him he wanted to come here and accept  
5 responsibility. The only reason it's taken us this long  
6 is there's a mixup at the jail where they had told me  
7 several times that he was not there anymore, when in  
8 actuality he was.

9 THE COURT: Thank you very much.

10 All right. Regarding the probation matter, I do  
11 find there's a willful violation of the terms and  
12 conditions of probation. Regarding that matter, I'm  
13 revoking the sentence, terminating the case, turning the  
14 amount owed to a civil judgment and run it concurrent to  
15 2013-GS-32-3374.

16 2013-GS-32-3374, burglary 2nd degree/violent,  
17 sentence of the Court is the defendant's committed to the  
18 State Department of Corrections for a determinate term of  
19 ten years and given credit since March 22, 2013. And the  
20 sentence in 2013-GS-32-1513 is the same.

21 I've ordered a judgment in the three matters  
22 that there presented as an order of restitution, I've  
23 changed it to an order of judgment to those three victims,  
24 and that shall be reflected in the office of the Clerk of  
25 Court as judgments as of this date in those matters.

1 Thank you very much.

2 MS. USRY: Thank you, Your Honor.

3 (The proceedings were concluded.)

4 \*\*\* END OF REQUESTED TRANSCRIPT OF RECORD \*\*\*

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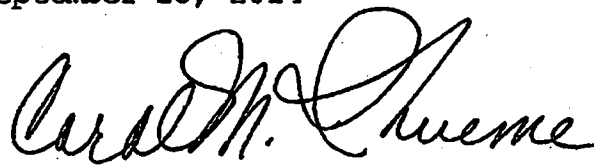
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA        )  
  )  
COUNTY OF LEXINGTON            )

I, CAROL M. THUEME, RPR, Official Court Reporter for the 11th Judicial Circuit of 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 General Sessions for Lexington County, South Carolina, on the 31st day of October, 2013.

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

September 25, 2014



CAROL M. THUEME, RPR  
Circuit Court Reporter

FORM 5

ORIGINAL  
FILED

IN THE COURT OF COMMON PLEAS

2014 MAY -5 PM 3:40

SETH A. CARRIES  
CLERK OF COURT  
LEXINGTON SC

STATE OF SOUTH CAROLINA )

COUNTY OF Lexington )

Albert Shane Owens )

Full name and prison number (if any) of Applicant. )

v. )

State of South Carolina )

APPLICATION FOR

POST-CONVICTION RELIEF

2014CP3201687

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Evans Correctional
2. Name and location of Court which imposed sentence Lexington County
3. Name(s) of co-defendant(s) (if any) NA
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) \_\_\_\_\_
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) Oct. 31, 2013
  - (b) \_\_\_\_\_

A TRUE COPY

Revised 3/2003

Lex. Co. C.C.C.P., G.S. & P.C.

FILED

JUN 11 10 51 AM '00

BETH A. GARRIGS  
CLERK OF COURT  
WASHINGTON SC

- (c) \_\_\_\_\_
- 6. Check whether a finding of guilty was made:
  - (a) after a plea of guilty
  - (b) after a plea of not guilty \_\_\_\_\_
  - (c) after a plea of nolo contendere \_\_\_\_\_

7. Did you appeal from the judgment of conviction or the imposition of sentence?  
No Not informed by attorney of right to appeal

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) \_\_\_\_\_ Was not informed by attorney of right to appeal

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

(a) See attached Memorandum

(b) \_\_\_\_\_

(c) \_\_\_\_\_

**FILED**

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

2014 MAY -5 A. 9 40

in (10): See attachment

BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON SC

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_

12. Prior to this application have you filed with respect to this conviction: No

(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)? NA

(d) any other petitions, motions or applications in this or any other Court? NA

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. \_\_\_\_\_

(c) the disposition thereof:

i. NA

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_  
(d) the date of each such disposition:

- i. NA
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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2019 MAY -5 A 9 40

DEBRA A. CARRIGS  
CLERK OF COURT  
LEXINGTON SC

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?

NO

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

(a) which grounds have been presented:

- i. NA
- ii. NA
- iii. NA

(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) NA
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

(a) your arraignment and plea? \_\_\_\_\_

(b) your trial, if any? \_\_\_\_\_

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_

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2014 MAY -5 A 9:40

JENNIFER BARRISS  
CLERK OF COURT  
LEXINGTON SC

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

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

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

i. Public Defenders Office Lexington County

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. Plea

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

sentence modification

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

NO

STATE OF SOUTH CAROLINA

County of Lexington

2014CP320

ORIGINAL FILED

VERIFICATION

MAY - 6 A 9 10

I, \_\_\_\_\_, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for ~~vacating, setting aside or correcting the conviction and sentence attacked in this application and that the matters and allegations therein set forth are true.~~ <sup>COURT</sup>

Altt ayes

SWORN to and subscribed before me this May day of 1st, 2014.

S. Outlaw (L.S.)  
Notary Public

My Commission Expires: 2/24

**ORIGINAL  
FILED**

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

2014 MAY -5 A. 9:40

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

W. BRIGGS  
CLERK OF COURT  
LEXINGTON SC

- (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.

Ally Owen  
Applicant

SWORN or affirmed to and subscribed before me this  
1st day of May, 2014

S. Cullin  
Notary Public

My Commission Expires: 2/24

State of South Carolina  
 County of Lexington  
 v.  
 Albert Shane Owens

Pg. 1 of ORIGINAL  
 FILED

Reference: Post Conviction  
 Relief Memorandum  
 W. CARRISS  
 CLERK OF COURT  
 LEXINGTON SC

### Statement of Facts

#### Ground(ones) supporting Facts

The defendant Albert Shane Owens appeared before the Circuit Court of Lexington County Oct. 31 2013 where he pleaded by way of coercion and being misled to believe that he had committed a burglary 2<sup>nd</sup> degree, a violent crime. The Circuit Court Judge on Oct. 31, 2013 failed to issue its final order of judgment pertaining to a 0 to 10 year non-violent, and not a 10 year minimum mandatory violent. These actions by the Circuit Court is not justifiable but is a show of prejudice.

This fact remains; that the building (of burglary) in question had already been damaged by way of a "previous hole" in the building where the defendant entered the building during day light hours. A vital element regarding the difference in the charge involved whether or not the hole pre existed, whereas, counsel failed to validate and explore as an investigation.

According to S.C. Code and Section 16-11-312, defendant Owens does not meet the requirement nor the elements for a charge and conviction of 2<sup>nd</sup> burglary as alleged.

The attorney of record in fact only spoke to defendant once when appointed to represent defendant, and the second time was on Oct. 31, 2013 on the day of the hearing when the

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attorney told defendant Owens he that he was going to plead to burglary 2<sup>nd</sup> with a range of 3 to 10 recommended. Defendant was never informed by an attorney that said charge was a 'considered violent,' nor did the defendant fully understand the process or the language of the legal terminology.

The attorney on record failed to represent defendant adequately. Counsel failed to investigate and pursue all available defense on the behalf of the defendant. Counsel failed to put relevant facts before the court, to obtain relevant documentation to support Owen's invariable state of mind (mental illness) history as well as a long term substance addiction.

If it had not been for counsel's misinforming the defendant pertaining to the charge, and conviction, he would have insisted on going to trial by jury.

The state could not prove that the building was damaged by the defendant, nor could the state prove that the incident occurred during the night.

Although, the defendant has a prior record of burglary, the conviction burglary 2<sup>nd</sup> degree violent prejudiced the defendant. The burglary alleged here under S.C. law meets the requirement of a non violent crime.

Counsel further failed to have an investigator visit the crime scene, nor did he himself visit the crime scene.

Counsel failed to file for a preliminary hearing, to file a motion to have defendant Owens undergo a psychological examination, including Jackson v. Deno 378 U.S. 368 (1964) to determine the voluntariness of Applicant's statement that he made to law enforcement.

pg. 3 of 6

The number one element that the state must prove is intent. The state must prove criminal intent beyond a reasonable doubt, just as the state must prove every element beyond a reasonable doubt. The attorney failed to contest the state's subjectivity to reasonable doubt.

In Hopt v. Utah, Supreme Court ruled that a confession is not admissible if it is obtained by operating on the hopes or fears of the accused, and in doing so, deprived him or her of the freedom of will or self control necessary to make a voluntary statement.

The court in Brem v. United States, said that a statement must be free and voluntary, not extracted by any sort of threats or violence, or "promises!"

Combined with the fact that defendant is a layman with no knowledge of the law and although he stated for the record that he understood the charges and the consequences, and what he was in fact pleading to, he in fact, did not understand fully. Counsel indeed coerced defendant Owens to achieve an inevitable plea of guilty without due consideration of defendant's invariable state of mind, (mental state) in question.

In 1960 in Blackburn v. Alabama, the court said "Coercion" can be mental as well as physical."

Owens was under mental health medication at the time of the plea, the records will reflect this fact.

The defendant was never given the opportunity for an adequate preparation for defense compatible with his state of mind at the time. They failed to take into consideration such relevant factors. Failure to investigate and pursue all available

defense.

And in Aike v. Oklahoma, the court said, "when a state brings its judicial powers to bear on an indigent defendant in a criminal proceeding, it must take steps to assure that the defendant has a fair opportunity to present his defense. . . . Justice cannot be equal when, simply as a result of his poverty, a defendant is denied the opportunity to participate meaningfully in a judicial proceeding which his liberty is at stake.

Ground (two) supporting facts:

Counsel refused to obtain the relevant documentation that shows defendant Owens has a substantial amount of documentation, showing his invariable state of mind through the Lexington Mental Health Facility.

Here, Defendant Owens's invariable state of mind during the commission of the crime and during the incarceration of pre-trial defense, and plea hearing, is in fact relevant.

Defendant Owens has a long history of addiction to crack cocaine, combined with the very fact that the defendant suffers from a mental illness. He has been diagnosed with major depression disorder, schizophrenia, severe anxiety, and bi-polar disorder.

Mental illness: is one that has caused significant disruption in a person's everyday life and which prevents his functioning in society without disturbing or endangering others, or self.

In 1956 U.S. Supreme Court in a case known as Bishop v. United States ruled that the conviction of a mentally incompetent

pg. 5 of 6

person would be a denial of due process. Where doubt exist as to a person's mental competency. The failure to conduct a proper inquiry is a deprivation of his constitutional right.

Furthermore, the attorney knew defendant Owens suffered from mental defect, and Owens was relying on counsel's professional advise pertaining to legal charges.

### Ground (three) supporting facts

Intoxication and temporary insanity.

When a defendant is intoxicated at the time of the alleged criminal conduct, a lawyer must consider at least three questions.

First, how did the defendant become intoxicated? Second, in what way does the defendant claim that his intoxication affected his culpability? In most cases, the actor claims that he did not form the requisite state of mind to be convicted of the offense. Third, of what type of offense is the defendant charged - general intent, specific intent, or strict liability? The common law rules differ considerably depending on the nature of the mens rea, if any, that must be proved.

Suppose that a person becomes so intoxicated that, at the time he commits an offense, he is out of touch with reality that he does not appreciate the wrongfulness of his conduct, or he cannot conform his conduct to the law. Assume further that if his state of mind were caused by mental disease, rather than intoxication, he could raise the excuse of insanity. However, the defendant may wish to claim that because of his voluntary ingestion of drugs or alcohol, he experienced something like "temporary insanity," or what Hale called "Temporary phrenzy."

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(1 Hale, Note 22, supra, at \*32) (Roberts v. People, 19 Mich. 401, 422 (1870)); see Evans v. State, 645 P.2d. 155, 158-60 (Alaska 1982); State v. Wicks, 657 P.2d 781, 782 (Wash. 1983).

Habitual use of intoxicants can result in substance-induced mental disorder that persists, i.e., the disorder remains even when the actor is not under the influence of intoxicants.

The traditional rule is that voluntary intoxication is a defense to specific intent crimes. Defendant Owens is not guilty as the result of his intoxication at the time of the crime, he was incapable of forming, or did not in fact form, the specific intent required in the definition of the offense.

Counsel failed to file for a preliminary hearing, also to file a motion pertaining to Jackson v. Dennis 378 U.S. 368 (1964) to determine the voluntariness of applicants statement that he made to law enforcement.

Allt over

Sworn and subscribed

before me this day of

17<sup>th</sup>, April

2014

S. Oulter

Notary Public

2/24

My Commission expires



Attached herewith and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject convictions and Applicant's application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

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

1. "Involuntary Guilty Plea"
  - a. "[Pled] by way of coercion [sic] and being misled [sic]"
2. Ineffective Assistance of Counsel
  - a. "Counsel refused to obtain the relevant documentation that shows defendant Owens has a substantial amount of documentation, showing his invariable state of mind through the Lexington Mental Health Facility"
3. "Intoxication and temporary insanity"

## III.

Respondent submits Applicant's allegation his guilty plea was involuntary is without merit. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's

advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding the voluntariness of the plea may raise questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper, 279 S.C. 264, 305 S.E.2d 247.

#### IV.

Respondent submits Applicant's allegation of ineffective assistance of plea counsel is without merit. In a PCR action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at

687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes plea counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show 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, 59 (1985).

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

## V.

Respondent submits that Applicant's allegations regarding Intoxication and Temporary Insanity should be dismissed. PCR "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction." S.C. Code Ann. § 17-27-20(b); see also Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("It is uniformly held that an application for post-conviction relief is not a substitute for an appeal."). Applicant could have raised these issues at trial or on appeal. His failure to do so has waived these allegations as grounds for relief. Therefore, Respondent requests this allegations be dismissed pursuant to Rule 12(b)(6), SCRCP.

## VI.

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

## VII.

WHEREFORE, Respondent moves to summarily dismiss the application because it was filed after the statute of limitations had expired. In the alternative, Respondent requests that an evidentiary hearing be held.

(SIGNATURE BLOCK ON NEXT PAGE)

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

WALT WHITMIRE  
Assistant Attorney General

By:   
\_\_\_\_\_  
ATTORNEYS FOR RESPONDENT

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

June 25<sup>th</sup>, 2015

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

ALBERT S. OWENS, #178478,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS


2014-CP-32-1687

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ms. Aimee Zmroczek, Esquire  
 A.J.Z. Law Firm, LLC.  
 PO Box 11961  
 Columbia, SC 29211

DATED this 25<sup>th</sup> day of June, 2015.

  
 Ashley Haworth, Legal Assistant  
 For Respondent

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State of South Carolina  
County of Lexington

Court of Common Pleas

Albert S. Owens,	)	Transcript of Record
	)	
Applicant,	)	
vs.	)	2014-CP-32-01687
	)	
<u>The State of South Carolina.</u>	)	

December 7, 2015  
Lexington, South Carolina

B E F O R E:

The Honorable D. Craig Brown, Judge

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

Patrick L. Schmeckpeper, Assistant Attorney General  
Attorney for the State

Aimee J. Zmroczek, Esquire  
Attorney for Defendant

Stacy S. Johnson, RPR  
Circuit Court Reporter

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I N D E X

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E X H I B I T S

NO.

DESCRIPTION

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EVD.

\*\*\*NO EXHIBITS MARKED\*\*\*

## P R O C E E D I N G S

1  
2 (The following proceedings were held on December 7,  
3 2015.)

4 **THE COURT:** All right, Ms. Zmroćzek.

5 **MS. ZMROCZEK:** Thank you. Your Honor, Mr. Owens  
6 has filed an application and I've spoke with him and he  
7 contends that he would like to go forward this morning.  
8 We would have only one witness and that would be Mr. Owens.

9 **THE COURT:** All right. Mr. Owens, if you would stand  
10 for a minute, please, sir, and I'll just talk to you.

11 Would you swear him, Madam Clerk?

12 **THE CLERK:** Yes, sir.

13 (Whereupon, Albert Shane Owens was duly sworn by the  
14 Clerk of Court.)

15 **THE COURT:** Mr. Owens, you are Albert Shane Owens?

16 **THE APPLICANT:** Yes, sir.

17 **THE COURT:** How are you doing this morning?

18 **THE APPLICANT:** Okay.

19 **THE COURT:** It's my understanding that -- from what  
20 your attorney's told me that you wish to go forward with  
21 this post-conviction relief action; is that correct?

22 **THE APPLICANT:** Yes, sir.

23 **THE COURT:** Do you understand it appears based upon  
24 my review of the file that you were indicted for burglary  
25 second degree, as well as a burglary third degree second

1 offense; is that correct?

2 **THE APPLICANT:** Yes, sir.

3 **THE COURT:** And you understand that the burglary third  
4 degree second offense carried ten years; is that right?

5 **THE APPLICANT:** Yes, sir.

6 **THE COURT:** And the burglary second degree violent  
7 carried fifteen years?

8 **THE APPLICANT:** Yes, sir.

9 **THE COURT:** And the Court, Judge John, on October 31,  
10 2013, imposed a ten-year sentence upon you; is that  
11 correct?

12 **THE APPLICANT:** Yes, sir.

13 **THE COURT:** And you understand that if I were to grant  
14 the relief that you are requesting here today that would  
15 subject you to twenty-five years again? Do you understand  
16 that?

17 **THE APPLICANT:** Yes, sir.

18 **THE COURT:** And you still want to go forward here  
19 today?

20 **THE APPLICANT:** Yes, sir.

21 **THE COURT:** All right. Let's go, Ms. Zmroczek.

22 **MS. ZMROCZEK:** Thank you. Have a seat.

23 **BAILIFF:** State your full name clear for the court  
24 reporter, okay?

25 **THE APPLICANT:** Albert Shane Owens.

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ALBERT SHANE OWENS,

having been previously sworn, testified as follows:

DIRECT EXAMINATION

BY MS. ZMROCZEK:

Q. Mr. Owens, how old are you?

A. Forty-five.

Q. How many? I'm sorry.

A. Forty-five.

Q. How far did you go in school?

A. Eighth grade.

Q. Did you ever get your GED?

A. Yes, in '92 through SCDC.

Q. '92?

A. (Nods head.)

Q. What kind of employment have you had throughout your life?

A. Construction.

Q. Where are you currently located?

A. At Walden Correctional Institution.

Q. Okay. And why are you at Walden?

A. For second degree burglary.

Q. Okay. Did you also receive -- did you also have charges in Richland County?

A. Yes.

Q. And did those --

1 A. They were run concurrent.

2 Q. Those sentences ran concurrent. Did you file a PCR in  
3 Richland County as well?

4 A. No.

5 Q. Okay. Who was your public defender there?

6 A. I don't remember.

7 Q. Okay. You understand that even if this PCR gets  
8 granted that you still have to serve your sentence for your  
9 Richland County charges, right?

10 A. Yes, ma'am.

11 Q. Okay. And that none of that gets credited if this  
12 gets granted, right?

13 A. Yes, ma'am.

14 Q. I just wanted to make sure. You filed a PCR saying  
15 that your attorney didn't investigate your mental health  
16 issues?

17 A. Yes, ma'am.

18 Q. Okay. And tell the Court -- what mental health issues  
19 are you talking about?

20 A. Major depression disorder, anxiety, and I can't  
21 remember the other ones. I was on like ten different  
22 medications through Lexington County Mental Health.

23 Q. Are you still on those medications?

24 A. Not through SCDC, no.

25 Q. So you're not -- are you on any mental health

1 medications now?

2 A. No.

3 Q. When did you stop taking those?

4 A. When I went to SCDC.

5 Q. Okay. And you don't remember what those medications  
6 were?

7 A. Not right off, no, ma'am.

8 Q. Okay. You also stated that -- that your attorney  
9 didn't have an investigator go visit the scene nor did he  
10 visit the scene?

11 A. Yes.

12 Q. Okay. Tell -- tell the Court why you think that that  
13 would have changed whether or not you pled guilty.

14 A. I don't really understand.

15 Q. Okay. Tell -- what are the reasons that you felt like  
16 -- so you felt like -- was your plea knowingly and  
17 voluntarily given? It's a yes or no.

18 A. Yes.

19 Q. You do feel like it was? Here's my question. Why do  
20 you think that you need your charges to go back to the  
21 state court?

22 A. I don't feel my lawyer done what he was supposed to  
23 do.

24 Q. Okay. And so you feel like if -- one of the things  
25 that he was supposed to do was to go and look at the scene?

1 A. Uh-huh.

2 Q. And how would that change whether or not you pled?

3 A. I don't -- I don't understand.

4 Q. What is it that you wanted him to go look at at the  
5 scene that he didn't do?

6 A. I still don't understand what you're --

7 Q. Okay. You complained that one of the things that he  
8 didn't do was go look at the scene.

9 A. Uh-huh. Yes.

10 Q. Why did you complain about that?

11 A. Because I -- I don't -- I don't understand.

12 Q. Okay. You went through your discovery with your  
13 attorney, right, when you got it?

14 A. Yes.

15 Q. And what did you tell him was wrong with the discovery  
16 when you went through it?

17 A. Um --

18 Q. What did you ask him to do that he didn't do?

19 A. Um -- I don't remember.

20 Q. Did you ask him to go look at the scene?

21 A. Yes.

22 Q. And he didn't do that?

23 A. No.

24 Q. Okay. And did you ask him to get your mental health  
25 records?

1 A. Yes.

2 Q. And he didn't do that?

3 A. No.

4 Q. Okay. Did y'all talk about the events that happened  
5 that night?

6 A. I saw him a total of two times and each time was  
7 probably twenty minutes.

8 Q. Okay. So you feel like those two times that you saw  
9 him for twenty minutes he didn't get a full understanding  
10 of your case?

11 A. Yes, ma'am.

12 Q. And then when you went -- do you remember when you  
13 went in front of the judge?

14 A. Yes.

15 Q. Okay. And he asked you if you had any complaints?

16 A. Yes.

17 Q. Why didn't you complain at that time?

18 A. Because my lawyer told me not to say nothing.

19 Q. Okay. So you felt threatened?

20 A. Well -- yes.

21 Q. Okay. What other things do you feel like your lawyer  
22 didn't do that he should have done so you -- to make you  
23 not plea?

24 A. He didn't take -- my drug use, he didn't discuss that.

25 Q. What kind of drugs were you using?

1 A. Crack and marijuana.

2 Q. Okay. And when did you stop using those?

3 A. When I got locked up.

4 Q. Okay. And how long were you in jail before you pled  
5 guilty?

6 A. Seven months.

7 Q. Okay. And are there any other reasons that -- any  
8 other things that you think that he should have done that  
9 he didn't do?

10 A. Not that I can think of.

11 Q. Okay. Had he done all of these, would you have gone  
12 to trial or would you still have taken a plea?

13 A. I think I would have gone to trial.

14 Q. Okay. Mr. Schmeckpeper from the attorney general's  
15 office is gonna ask you some questions. Make sure you  
16 answer those correctly, okay?

17 A. Okay.

18 Q. And honestly.

19 **MS. ZMROCZEK:** Thank you.

20 **MR. SCHMECKPEPER:** May it please the Court?

21 **THE COURT:** Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. SCHMECKPEPER:

24 Q. Good morning, Mr. Owens.

25 A. Good morning.

1 Q. Do you remember meeting with your attorney?

2 A. Yes.

3 Q. Do you remember discussing these crimes with your  
4 attorney?

5 A. Somewhat.

6 Q. What did you talk about when you spoke with your  
7 attorney?

8 A. He had asked me what happened and I told him.

9 Q. Did you talk about anything else?

10 A. Not that I'm aware of, no.

11 **MS. ZMROCZEK:** Make sure you speak up so I can hear  
12 you.

13 A. No.

14 Q. Did you ever talk to him about your mental -- any  
15 mental issues?

16 A. About my drug use and my mental health, yes.

17 Q. What did you -- and what did you tell him?

18 A. I told him that I was going Lexington Mental Health  
19 for mental health issues and that I had an extensive drug  
20 habit.

21 Q. Do you remember your guilty plea --

22 A. Yes.

23 Q. -- when you pled guilty?

24 A. Yes.

25 Q. Do you remember the judge asking you questions?

1 A. Yes.

2 Q. Do you remember the judge asking you whether or not  
3 you were intoxicated at the time?

4 A. Yes.

5 Q. Do you remember him asking you whether or not you  
6 understood what was going on during the guilty plea?

7 A. Yes.

8 Q. What were your answers?

9 A. Yes.

10 Q. To both questions?

11 A. Yes.

12 Q. Do you remember the judge asking you whether or not  
13 you were pleading guilty freely and voluntarily?

14 A. Yes.

15 Q. Do you remember him asking you whether or not you  
16 waived your rights?

17 A. What's that mean?

18 Q. Whether or not you waived your right to a trial?

19 A. Oh, yes.

20 Q. To present a defense?

21 A. Yes.

22 Q. What were your answers?

23 A. Yes.

24 Q. Do you remember the solicitor talking?

25 A. Yes.

1 Q. Do you remember the solicitor going over the facts of  
2 the burglaries?

3 A. Yes.

4 Q. Now do you remember the judge asking you -- I beg  
5 the Court's indulgence. Do you remember when -- do you  
6 remember the judge asking you whether or not when you  
7 committed these burglaries you understood that you were  
8 committing crimes?

9 A. I think so, yes.

10 Q. So just to rephrase, do you remember when the judge  
11 asked you when you were committing these burglaries did you  
12 understand that you were committing crimes your answer was  
13 yes; is that correct?

14 A. I think so, yes.

15 **MR. SCHMECKPEPER:** I beg the Court's indulgence. I  
16 have no further questions.

17 **THE COURT:** Ms. Zmroczek, anything further?

18 REDIRECT EXAMINATION

19 BY MS. ZMROCZEK:

20 Q. Mr. Owens, as you sit here today, can you think of  
21 anything else that you can think of that your attorney  
22 should have done that he didn't do?

23 A. Not that I can think of, no.

24 Q. Okay. And you wrote your -- your six-page  
25 application, you wrote that yourself, right?

1 A. Yes.

2 **MS. ZMROCZEK:** Thank you. I have no further  
3 questions.

4 **THE COURT:** Anything further?

5 **MR. SCHMECKPEPER:** No, Your Honor.

6 **THE COURT:** Sir, you may step down. Thank you.

7 (Witness excused.)

8 **THE COURT:** Anything further, Ms. Zmroczek?

9 **MS. ZMROCZEK:** That's all we have, Your Honor.

10 **THE COURT:** All right.

11 **MR. SCHMECKPEPER:** All right. The State calls Erik  
12 Drylie, his attorney.

13 **THE COURT:** Stand and be sworn, please.

14 **ERIK DRYLIE,**

15 having been duly sworn, testified as follows:

16 **MR. SCHMECKPEPER:** May it please the Court?

17 **THE COURT:** Yes, sir.

18 **DIRECT EXAMINATION**

19 **BY MR. SCHMECKPEPER:**

20 Q. Good morning, Mr. Drylie.

21 A. Good morning.

22 Q. Can you tell me a little bit about the background of  
23 this case? When were you appointed to represent Mr. Owens?

24 A. I can't tell you the exact date that I was appointed,  
25 but I can tell you it was fairly shortly after he was

1 arrested and incarcerated in the Lexington Detention Center  
2 in March of 2013.

3 Q. And what was his original -- what was he originally  
4 charged with?

5 A. He had, I believe, it was two burg seconds, two safe  
6 crackings and a grand larceny.

7 Q. And was the State prepared to go forward on those?

8 A. They were.

9 Q. Now when you first got this case, what was your first  
10 -- what was your first action in representing Mr. Owens?

11 A. Once -- usually I get the file before I have  
12 discovery, so I go to the detention center, and that's  
13 what I did in this case. I met with Mr. Owens, I reviewed  
14 his constitutional rights with him, got some background  
15 information about him and background information about the  
16 case.

17 Q. Now when you first met with -- met with Mr. Owens,  
18 did you have any reason to believe that he was mentally  
19 incompetent at the time?

20 A. No, I did not.

21 Q. Now how many times did you end up meeting with  
22 Mr. Owens?

23 A. I would say three to four.

24 Q. Now in those subsequent two to three meetings, did you  
25 have -- were there any other indications that Mr. Owens was

1 mentally incompetent?

2 A. There were not.

3 Q. Did he ever tell you counsel, I have significant  
4 mental problems and I have significant impairments?

5 A. One of my questions that I would go over with people  
6 when I first meet them is a background as far as substance  
7 abuse, as well as mental health questions, and he did have  
8 some mental health issues, but as far as being incompetent  
9 or not criminally responsible there was nothing that I saw.

10 Q. How long have you been practicing law?

11 A. I got sworn in in November of 2011 and I took a job  
12 with the public defender's office in June of 2012.

13 Q. So since June of 2012 your practice has been entirely  
14 criminal law?

15 A. That's correct. And before that I was at a clerkship  
16 working for the South Carolina Commission on Indigent  
17 Defense with the capital trials division, so it's been  
18 entirely criminal.

19 Q. Have you ever dealt with indigent defendants -- or I'm  
20 sorry. Have you ever dealt with incompetent defendants or  
21 defendants who you felt were incompetent?

22 A. I have.

23 Q. And what did do you when you felt they were  
24 incompetent?

25 A. I'd get them evaluated.

1 Q. And how does that work?

2 A. There's -- there's two orders that we can fill out.  
3 One is for criminal responsibility and the other is for  
4 incompetence. We fill those out, we get their mental  
5 health records and then we make an appointment for them to  
6 be seen in Columbia. They usually set the appointment.

7 Q. Now when you send somebody, is it because you have a  
8 slight guess that they might be incompetent or you have to  
9 be totally sure they're incompetent? What's the standard  
10 that you use for sending somebody to get evaluated?

11 A. Well, you're never totally sure. You know, it's when  
12 -- usually it's fairly apparent, but, you know, even if  
13 there's something -- if it's leaning that way at all, then  
14 I would err on the side of caution and get them evaluated.

15 Q. And in your multiple meetings with Mr. Owens, you  
16 never -- there were never any mental incompetency bells  
17 rung?

18 A. No incompetence. There was definitely a long history  
19 of substance abuse and some effects from that, but I don't  
20 think that there was anything where he didn't understand  
21 anything that I had ever gone over with him.

22 Q. Now as far as your preparation for this case goes, how  
23 much preparation did you spend getting ready for this plea?

24 A. Once we got the discovery, I reviewed the discovery.  
25 The State made a plea offer and I went and I reviewed that

1 with him, you know, and we went through the discovery  
2 together. Unfortunately, like I said, I don't have the  
3 file in front of me, so I can't tell you exactly how long.

4 Q. But just from your recollection Mr. Owens seemed to  
5 understand the plea deal; is that correct?

6 A. Oh, he did. And, in fact, before we went up to plea  
7 we had talked about possible sentences because of the ten  
8 years he had hanging over his head on the probation  
9 violation for safecracking and we were prepared in case  
10 the judge ran that concurrent. As I recall, Mr. Owens  
11 was actually -- actually fairly happy with the ten-year  
12 sentence compared to what could have happened at that plea.

13 Q. Did you ever have any worry that Mr. Owens didn't  
14 understand the difference between right and wrong when he  
15 committed the crime?

16 A. No.

17 **MR. SCHMECKPEPER:** I beg the Court's indulgence. I  
18 have no further questions, Your Honor.

19 **MS. ZMROCZEK:** Just briefly, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. ZMROCZEK:

22 Q. You said you didn't have the file in front of you?

23 A. I don't.

24 Q. Okay. Have I requested the file?

25 A. You have.

1 Q. Okay. Were they unable to find it?

2 A. Unable to find it.

3 Q. Okay. But -- but you went through all of the  
4 discovery with Mr. Owens?

5 A. I did. The only thing he did not -- the only thing  
6 that he did not hear was his audio confession, but we went  
7 through all the paper discovery.

8 Q. Okay. But he told you that he had confessed?

9 A. They recorded it.

10 Q. Okay. And he had told you that -- he knew that they  
11 had --

12 A. Yes.

13 Q. Okay. And did you actually do any negotiations with  
14 the Richland County charges as well?

15 A. I did not.

16 **MR. SCHMECKPEPER:** Objection. Oh.

17 Q. When you went to go see him, did he write you letters  
18 in addition to speaking with you?

19 A. I don't remember.

20 Q. Okay. Did -- my question is did you ever have any  
21 trouble communicating with him?

22 A. There was a period, and I think it's -- if you look in  
23 the transcript, where I went to the jail to visit him and  
24 was told he wasn't there, that he was at Just Care, but  
25 that was incorrect. He was actually never at Just Care.

1 There were two Albert Owens in the jail at the time and it  
2 was the other one, not the one that I was trying to see.

3 Q. Okay.

4 A. So some of my visits were delayed longer than they  
5 normally would have been.

6 Q. So -- and when he talked to you about the crimes and  
7 what happened, did you ever feel like that he suffered any  
8 lasting effects from his substance abuse?

9 A. Not lasting effects that would have made him  
10 incompetent or not criminally responsible, but I think when  
11 you've been on drugs for a long time it's going to start to  
12 show at some point.

13 Q. And those were the -- those were the concerns that you  
14 had?

15 A. Yes.

16 Q. And did you let the judge know that?

17 A. I did.

18 Q. And do you think that that had anything to do with the  
19 sentence that he received?

20 A. I can't answer what the judge thought.

21 Q. Okay. Did you provide it as mitigation, I guess?

22 A. I did.

23 **MS. ZMROCZEK:** Okay. Thank you.

24 **MR. SCHMECKPEPER:** Nothing further.

25 **THE COURT:** Sir, you may step down. Thank you.

1 (Witness excused.)

2 **THE COURT:** Anything further from the State?

3 **MR. SCHMECKPEPER:** Nothing, Your Honor. I do have  
4 argument if you want to hear it.

5 **THE COURT:** Let me hear from Ms. Zmroczek first.

6 **MS. ZMROCZEK:** Thank you. Your Honor, Mr. Owens  
7 contends that -- that he didn't understand what was going  
8 on. Despite his ability to communicate today, he -- he  
9 states that he felt like he would have gotten a trial had  
10 his attorney really researched into his background. And,  
11 Your Honor, I -- I requested the file and so because they  
12 didn't provide it I'm kind of at a -- at a disadvantage  
13 to be able to know what discovery was actually in there.  
14 I've heard that there's an audio confession and he stated  
15 that there was an audio confession, but I've never been  
16 able to hear that. But for those reasons, Your Honor,  
17 Mr. Owens contends that his counsel fell below his duties  
18 in representing him. Thank you.

19 **THE COURT:** Yes, sir.

20 **MR. SCHMECKPEPER:** Thank you, Judge. May it please  
21 the Court? As far as Mr. Owens' allegation that counsel  
22 failed to request any sort of competency hearing or that  
23 he was insane at the time of the crime, I would submit that  
24 he's failed to meet his burden here. Strickland requires  
25 showing -- to show ineffective assistance of counsel

1 he's got to show deficient performance. I'd argue that  
2 Mr. Drylie's credible testimony here that Mr. Owens never  
3 gave any indication of incompetency precludes a finding  
4 of deficiency here. As far as prejudice, Mr. Owens was  
5 also -- showed reasonable probability that he was either  
6 insane at the time the crime was committed or incompetent  
7 at the time of the plea, none of those have been shown.  
8 There's been no medical records presented today to show  
9 he's even incompetent at all. As far as intoxication,  
10 the rule in South Carolina is voluntary intoxication is  
11 never an excuse or a defense to a crime unless it --  
12 unless it has produced permanent insanity and there's  
13 been no evidence of that produced today and so the State  
14 would rest on those arguments.

15 **THE COURT:** All right. I'll be with you in just a  
16 minute.

17 (Pause in the proceedings.)

18 **THE COURT:** All right. Based upon what I've heard  
19 today, the law is quite clear that the Defendant -- or  
20 the Applicant bears the burden of proving ineffective  
21 assistance of counsel. Applicant must show pursuant to  
22 Strickland v. Washington counsel's performance was  
23 deficient and that deficient performance prejudiced the  
24 Applicant. Based upon the testimony as stated here today  
25 or elicited from the witness stand, this Court finds the

1 Defendant has filed to show that counsel was deficient  
2 and furthermore failed to show such performance prejudiced  
3 the Applicant. Therefore, I am respectfully denying such  
4 application. If the State would get me an order reflecting  
5 such. Thank you very much.

6 Anything further, Ms. Zmroczek?

7 **MS. ZMROCZEK:** That's all. Thank you, Your Honor.

8 **THE COURT:** Anything further from the State?

9 **MR. SCHMECKPEPER:** Judge, that's all. We'll get you  
10 a proposed order as soon as possible.

11 (Whereupon, the proceedings were concluded at  
12 10:47 AM.)

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## C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh 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 the evidence introduced in the hearing of the captioned case in Circuit Court on the 7th day of December, 2015.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

June 2, 2016

*s/ Stacy S. Johnson*  
Stacy S. Johnson, RPR  
Circuit Court Reporter

**ORIGINAL**

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

FILED IN THE COURT OF COMMON PLEAS  
ELEVANTH JUDICIAL CIRCUIT  
2015 JAN 22 AM 10:51  
DEBRA S. GIBBS  
CLERK OF COURT  
LEXINGTON, SC

**RECEIVED**  
MAR 25 2016  
SC Court of Appeals

Albert Owens  
S.C.D.C. No. 178478

Applicant,

v.

State of South Carolina,

Respondent.

**ORDER OF DISMISSAL**

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed May 6, 2014. Respondent made its Return on or about June 25, 2015. An evidentiary hearing into the matter was convened on December 7, 2015, at the Lexington County Courthouse. Applicant was present and was represented by Aimee Zmroczek, Esquire. Respondent was represented by Patrick Schmeckpeper, Esquire, of the South Carolina Attorney General's Office.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Erik Drylie, Esquire, also testified. This Court had before it a copy of Applicant's guilty plea transcript, the records of the Lexington County Clerk of Court regarding the subject guilty pleas, Applicant's records from the South Carolina Department of Corrections, and the pleadings. The Court finds as follows:

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the

June 2013 term of the Lexington County Grand Jury for two counts of Burglary Second Degree (2013-GS-32-1513; -1515). Erik Drylie, Esquire, represented him. On October 31, 2013, Applicant appeared before the Honorable Steven H. John and pled guilty to Burglary Second Degree/ Violent and Burglary Third Degree (Second Offense). Judge John sentenced him to a term of (10) years imprisonment for Burglary Second Degree/ Violent and to a term of (10) years imprisonment for Burglary Third Degree (Second Offense), to be served concurrently. Applicant did not appeal his pleas or sentences.

#### **Allegations**

In his application for post-conviction relief, Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Involuntary guilty plea:
  - a. Pled by way of coercion and being misled;
2. Ineffective assistance of counsel:
  - a. "Counsel refused to obtain the relevant documentation that shows defendant Owen has a substantial amount of documentation, showing his invariable state of mind through the Lexington Mental Health Facility";
3. Intoxication and temporary insanity.

#### **Summary of Testimony Presented**

Applicant testified that he was forty-five (45) years old, and that while he only had a fifth grade education, he obtained his GED at the Department of Corrections in or around 1992. He said he had worked in construction prior to being incarcerated. Applicant testified that he believed counsel was ineffective for failing to go into his mental health issues. Applicant stated he suffered from major depressive disorder and anxiety, and that he has been on ten (10) different medications through Lexington County Mental Health. He said that he was not currently on any medication. Applicant testified he met with counsel only two times, with each meeting lasting twenty minutes. He stated counsel did not go over discovery with him, look at

the crime scene, or obtain his medical records. He further stated counsel did not talk about his drug abuse – specifically “crack and marijuana.” On cross examination, Applicant acknowledged that during his meetings with counsel he discussed the crimes, but stated there were no further discussions. Applicant stated he talked to counsel about drug use and went through his mental health issues. When asked why he did not raise any of the above information or complaints about counsel’s performance when prompted by the plea judge, Applicant responded that counsel had told him “not to say anything.”

Counsel testified that he was appointed shortly after Applicant was arrested, and that he was original charged with three second-degree burglaries, safecracking, and grand larceny. Counsel said he met with Applicant three to four times, and went over his discovery and his background with him at the detention center during those meetings. Counsel testified that Applicant had some mental health issues. However, he stated he never had any concerns about Applicant’s competency to stand trial or plead guilty. Further, counsel testified that in his practice and experience as a criminal defense attorney, he had worked with a number of clients he felt had competency issues. Counsel testified that if he ever had a question regarding competency, he would request an evaluation. He stated there were no such concerns in the present case, and that he did not have any question about Applicant’s mental competency. Counsel testified that Applicant wanted the plea deal, and was happy with the sentence.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject guilty plea, Applicant’s records from the South Carolina Department of Corrections, the application for

post-conviction relief, the transcripts and documents from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2015), this Court makes the following findings of fact based upon all of the probative evidence presented.

**Ineffective Assistance of Counsel**

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

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

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

show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

#### Failure to Investigate

This Court finds Applicant has failed to meet his burden to show counsel's investigation and preparation of his case violated his Sixth Amendment right to effective assistance of counsel. Without a doubt, "[a] criminal defense attorney has a duty to investigate, but this duty is limited to a reasonable investigation. Ard v. Catoe, 372 S.C. 318, 331-32, 642 S.E.2d 590, 597 (2007). Accordingly, the controlling standard for counsel's duty to investigate is *reasonableness*. Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 64 (2011). So long as a defendant's attorney conducts a reasonable investigation, including interviewing potential witnesses when it is reasonable to do so, his performance will not be deficient. Id. at 457, 710 S.E.2d at 65. Moreover, failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result. Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998).

This Court finds Applicant has failed to meet his burden to prove counsel's investigation in this case was deficient. Counsel testified credibly to the effect that he received discovery in this case and reviewed it with Applicant. It is apparent from the record and testimony presented at the evidentiary hearing that Counsel had a firm grasp of the strength of the State's case against Applicant – particularly in light of the potential DNA evidence<sup>1</sup> and Applicant's apparent desire to plead – and strategically focused his efforts on trying to secure a favorable plea deal. This Court finds such a focus was reasonable.

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<sup>1</sup> The plea transcript indicates Applicant was identified by a CODIS hit from some of his blood discovered at the crime scene. (PL Tr. p. 14).

Moreover, Applicant has failed to show any prejudice resulting from counsel's purported failure to investigate or prepare a defense. In order to show prejudice, Applicant must present some evidence that but for counsel's purported failure to properly investigate he would have refused to plead guilty and instead exercised his right to trial. See, e.g., Porter v. State, 368 S.C. 378, 386, 629 S.E.2d 353, 358 (2006) (no prejudice where Applicant failed to produce evidence at the PCR hearing that further investigation would have led to a different result); Moorehead at 334, 496 S.E.2d at 417 (1998) ("Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result."). Applicant has failed to produce any such evidence. Accordingly, this Court finds Applicant has failed to meet his burden with regard to this allegation. As a result, it is denied and dismissed.

#### **Failure to Raise Mental Health Issues**

This Court further finds Applicant's allegation that counsel was ineffective in failing to raise his mental health issues is without merit, and that Applicant has failed to show he was insane at the time he committed the charged offenses, or incompetent at the time of his plea.

#### **Insanity or Intoxication**

For an insanity defense, a defendant must show a reasonable probability that he was either insane at the time the crime was committed or incompetent at the time of the plea. Jeter v. State, 308 S.C. 230, 417 S.E.2d 230 (1992). To prevail on an insanity defense, the accused must be unable to distinguish moral or legal right from wrong and to recognize the particular act charged as morally or legally wrong. Voluntary intoxication, where it has not produced permanent insanity, is never an excuse for a defense to a crime. State v. Hartfield, 300 S.C. 469,

388 S.E.2d 802 (1990). Such insanity must be permanent and destroy the defendant's ability to know right from wrong. Id.

Applicant has not presented any evidence that he was insane at the time of he committed the crimes he is currently challenging. There were no medical records or competency evaluations entered into evidence during the evidentiary hearing. In addition, during his plea hearing Applicant acknowledged that he understood, at the time he was committing the burglaries he was pleading to, that he was committing crimes. (Pl. Tr. p. 17). Accordingly, even if counsel had further pursued a defense of insanity, Applicant has failed to show prejudice where – by his own admission – he was aware that his actions were legally wrong. This allegation is therefore denied and dismissed.

#### Competency to Plead Guilty

Due process prohibits the conviction of a person who is mentally incompetent. Jeter at 232, 417 S.E.2d at 595 (citing Bishop v. United State, 350 U.S. 961, 76 S.Ct. 440, 100 L.Ed 835 (1956)). This right cannot be waived by a guilty plea. Jeter at 232, 417 S.E.2d at 595 (citing Pate v. Robinson, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed.2d 815 (1966)). The test of competency to enter a plea is the same as required to stand trial. State v. Lambert, 266 S.C. 574, 225 S.E.2d 340 (1976). The accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as a factual understanding of the proceedings against him. Carnes v. State, 275 S.C. 353, 271 S.E.2d 121 (1980).

In determining whether a competency hearing is warranted, an attorney is permitted to reasonably rely on his own perceptions of their client. See Jeter at 233, 417 S.E.2d at 596; Lee v. State, 396 S.C. 314, 322, 721 S.E.2d 442, 447 (Ct. App. 2011) (finding plea counsel could not be deficient if she had no indication of client's mental state). In the present case, while counsel

acknowledged Applicant had a history of mental illness, he credibly testified that he had no reason to suspect Applicant was not competent to stand trial. Compare Ramirez v. State, 413 S.C. 351, 776 S.E.2d 101 (Ct. App. 2015) (Counsel's performance deficient where was aware of client's substantial mental limitations, including IQ of 31 to 44 and intellectual functioning of a four-to seven-year-old child, and did not seek independent competency evaluation). This Court also finds credible counsel's testimony that he has recommended clients to be evaluated in the past, as well as his statement that he requests evaluations if there is any question of competency. While lawyers are certainly not, by virtue of passing the bar alone, experts in the field of mental health, counsel was no doubt in the best position to make the initial determination on whether to pursue any sort of evaluation. Taking care to avoid the pitfalls of hindsight in post-conviction relief proceedings, this Court finds counsel's decision was reasonable under the circumstances.

Applicant has further failed to meet his burden to show prejudice. To show prejudice arising from failure to request a competency hearing, the applicant bears the burden of proof to show by a preponderance of the evidence he was incompetent at the time of his plea." Jeter at 232, 417 S.E.2d at 596. Applicant presented no such evidence at the PCR evidentiary hearing. Accordingly, this allegation is denied and dismissed.

#### Involuntary Guilty Plea

This Court also finds Applicant's allegation that his guilty plea was involuntary is without merit. A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to

trial. Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011) (citing Rolen v. State, 3841 S.C. 409, 413, 683 S.E.2d 471, 474 (2009)).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000). A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both. Holden at 573, 713 S.E.2d at 615 (citing Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 625 (1999)). The longstanding test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant. Id.

In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 84, 886 (2007). Specifically, the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the guilty plea, and also from the record of the PCR hearing. Roddy, 339 S.C. at 33, 528 S.E.2d at 420.

Based on the guilty plea transcript as well as evidence at the PCR hearing, this Court finds Applicant has not met his burden to show he was coerced or misled into pleading guilty. This allegation is, in fact, directly refuted by the plea transcript. During his guilty plea proceedings, Applicant stated that no one had promised him anything, or threatened or forced him in any way to get him to plead guilty. (Pl. Tr., p. 7-8). Applicant's explanation, per his testimony at the evidentiary hearing, appears to be simply that his lawyer told him "not to say

anything" regarding coercion to the plea judge. This Court find such an assertion is highly suspect, and in any event not credible. Regardless, such erroneous advice would not have been sufficient justification for Applicant to lie to the plea judge. See, e.g., Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370-71 (1997) (defendant's claim he understood from counsel that the trial judge's questions at the guilty plea were only a "polite fiction" held not an invitation to answer untruthfully). Nor would this advice, if given, warrant relief. See Moorehead v. State, 329 S.C. 329, 333, 496 S.E.2d 415, 417 (1998) (Applicant's explanation that he answered the trial judge affirmatively on counsel's alleged advice that the questions were meaningless does not support the grant of PCR). Accordingly, this Court finds Applicant has failed to meet his burden to show either deficiency or prejudice with regard to this allegation. It is therefore denied and dismissed.

#### ALL OTHER ALLEGATIONS

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

[Signature follows]

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CLERK OF COURT  
LEXINGTON, SC

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**CONCLUSION**


Based on the foregoing, this Court finds that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. 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 intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

**IT IS THEREFORE ORDERED**

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

AND IT IS SO ORDERED this 15 day of Jan, 2016.

  
 D. CRAIG BROWN  
 Presiding Judge  
 Eleventh Judicial Circuit

Florence, South Carolina

FILED  
 2016 JAN 22 A 13:57  
 BETTIE A. CARRIGG  
 CLERK OF COURT  
 LEXINGTON, SC

**WITNESSES**

West Columbia Police Department

P. Moore

Law Enforcement Case #: 1304904

KWU

ARREST WARRANT NUMBER

2013A3221100613

ACTION OF GRAND JURY

**TRUE BILL**

*Donald Beale*

Foreperson of Grand Jury

Date: 6/3/13

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-32-01513

**The State of South Carolina**

County of Lexington

COURT OF GENERAL SESSIONS

JUNE TERM 2013

THE STATE

vs.

Albert Shane Owens

CDR #: 0080

Indictment for

Burglary 2nd Degree (Non-Violent)

§ 16-11-0312

**DONALD V. MYERS, SOLICITOR**

*Plea to Burg 3rd,  
2nd offense*

I DO HEREBY WAIVE MY RIGHT  
TO GRAND JURY PRESENTMENT

*ASA Owens*  
DEFENDANT

10-31-13  
DATE

*S. V.*  
WITNESS

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
 )

INDICTMENT FOR  
Burglary 2nd Degree (Non-Violent)  
§ 16-11-0312

At a Court of General Sessions, convened on June 2013, the Grand Jurors of Lexington County present upon their oath:

That Albert Shane Owens did in Lexington County, South Carolina on or about March 11, 2013 and March 12, 2013 knowingly and willfully enter a building, without consent, with the intent to commit a crime therein, to wit: West Columbia Collision, located at 2217 Platt Springs Road in West Columbia, and the entering occurred at nighttime in violation of § 16-11-312 (A) of the 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.

*Handwritten signature*  
ASSISTANT SOLICITOR

A TRUE COPY  
*Handwritten initials*  
Lex. Co. C.C.C.P., G.S. & EC.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
 )

INDICTMENT FOR  
Burglary 2nd Degree (~~Non-Violent~~)  
~~Violent~~  
§ 16-11-0312

At a Court of General Sessions, convened on June 2013, the Grand Jurors of Lexington County present upon their oath:

That Albert Shane Owens did Lexington County, South Carolina on or about March 11, 2013 and March 12, 2013 knowingly and willfully enter a building , Chapman's Auto Tech, located at 2219 Platts Spring Road in West Columbia without consent and with the intent to commit a crime therein, and the entering or remaining occurred in the nighttime, in violation of § 16-11-312 (B) of the Code of Laws of South Carolina, 1976, as amended.

A TRUE COPY

*[Signature]*  
Lex. Co. C.C.C.P., G.S. & E.O.

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

*[Signature]*  
ASSISTANT SOLICITOR