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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. SUPREME COURT

Certiorari to Dorchester County

Honorable Robert E. Hood, Circuit Court Judge

BRYAN MICHAEL HOWELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002022

APPENDIX

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1 STATE OF SOUTH CAROLINA

2 COUNTY OF DORCHESTER

CIRCUIT COURT

2012-GS-18-00687-00690,

2012-GS-18-00692, -694, -696 & -697

4 STATE OF SOUTH CAROLINA,

5 -vs-

TRANSCRIPT OF RECORD

6 BRYAN MICHAEL HOWELL,
7 Defendant.

9 Heard on Wednesday, December 5, 2012

11 Saint George, South Carolina

13 BEFORE:

14 THE HONORABLE DIANE S. GOODSTEIN

16 APPEARANCES:

17 Counsel on Behalf of the State:
18 Russell D. Hilton, Esq.

19 Counsel on Behalf of the Defendant:
20 Mitchell E. Farley, Esq.

22 Cheri L. Young, RPR
23 Circuit Court Reporter
24 P O Box 5232
25 Aiken, SC 29804-5232

EXHIBIT INDEX

(NO EXHIBITS IDENTIFIED/INTRODUCED.)

1 ON WEDNESDAY, DECEMBER 5, 2012 AT 11:03 A.M.:

2 (Defendant placed under oath.)

3 THE CLERK: State your full name for the record.

4 THE DEFENDANT: I'm Bryan Michael Howell.

5 THE COURT: All right.

6 MR. HILTON: Just a second.

7 THE COURT: I interrupted you, Mr. Hilton. I know
8 that's why you don't have your paperwork here.

9 You are Bryan Michael Howell?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: All right. And you are represented by
12 Mr. Mitch Farley?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Mr. Farley, have you advised Mr. Howell
15 regarding the nature of these offenses, the maximum
16 possible penalty and consequences and his constitutional
17 rights including his right to a jury trial?

18 MR. FARLEY: I have, Your Honor.

19 THE COURT: In your opinion does he understand the
20 nature of these offenses, the maximum possible penalty and
21 his rights?

22 MR. FARLEY: Yes, Your Honor.

23 THE COURT: Tell me how he wishes to plead.

24 MR. FARLEY: Guilty.

25 THE COURT: To each one of these indictments?

1 MR. FARLEY: Yes, Your Honor.

2 THE COURT: Do you concur with his decisions?

3 MR. FARLEY: I do.

4 THE COURT: From your investigation of the facts and
5 circumstances of your client's case, do you believe that
6 the State could produce sufficient evidence to convict and
7 establish your client's guilt beyond a reasonable doubt?

8 MR. FARLEY: Yes, Your Honor.

9 THE COURT: And if he was to stand trial, do you
10 believe that his conviction would be probable?

11 MR. FARLEY: Yes, Your Honor.

12 THE COURT: All right. And do you have any questions
13 regarding his competency?

14 MR. FARLEY: No, Your Honor.

15 THE COURT: All right. Now, Mr. Howell, I have many
16 questions to ask of you. And the first thing I'm going to
17 ask you is that if you do not understand my question
18 please do not answer it.

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Do you understand that?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And -- but do let me know that you don't
23 understand my question. That's perfectly fine. Okay?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Do not answer a question you do not

1 understand. All right?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: If you need to stop and talk to Mr. Farley
4 at any time during these proceedings, I want you to do
5 that too. Okay?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: This is not a forced march. These are
8 important matters. And I want to be sure that you have
9 the benefit of his advice throughout these proceedings.
10 And I also want to be sure that you don't answer a
11 question that you don't understand. Okay?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Tell me how old you are.

14 THE DEFENDANT: Nineteen.

15 THE COURT: Tell me how far you went in school.

16 THE DEFENDANT: Tenth grade.

17 THE COURT: Do you have your GED?

18 THE DEFENDANT: No, ma'am. I was trying to obtain it.

19 THE COURT: Okay. And how long have you been locked
20 up?

21 THE DEFENDANT: Eight months.

22 THE COURT: Before you were locked up, Mr. Howell,
23 were you working?

24 THE DEFENDANT: No, ma'am.

25 THE COURT: Have you ever worked?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Tell me where.

3 THE DEFENDANT: For a car wash in Summerville.

4 THE COURT: Okay. Do you remember when that was?

5 THE DEFENDANT: No. No, ma'am.

6 THE COURT: Okay. Was it years ago?

7 THE DEFENDANT: No, ma'am.

8 THE COURT: Months ago?

9 THE DEFENDANT: Uh, like, I think sometime last year.

10 THE COURT: Okay. A few months before you were locked
11 up?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Okay. Are you married?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: Do you have children?

16 THE DEFENDANT: No, ma'am.

17 THE COURT: Okay. And before you were locked up,

18 Mr. Howell, where were you living?

19 THE DEFENDANT: On the streets.

20 THE COURT: Do you have any relatives or parents in
21 our area?

22 THE DEFENDANT: Yes, ma'am. My parents are here.

23 THE COURT: Okay. And where do they live?

24 THE DEFENDANT: Pigeon Bay.

25 THE COURT: Pigeon Bay?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: When you were in school -- you said you
3 left in the tenth grade?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: But when you left school, were you in
6 regular classes?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Were you in any resource classes?

9 THE DEFENDANT: No, ma'am.

10 THE COURT: Tell me why you left school.

11 THE DEFENDANT: I can't -- I have no explanation for
12 it.

13 THE COURT: Okay. You weren't expelled, you just
14 chose to drop out?

15 THE DEFENDANT: I think I was expelled, if I'm not
16 mistaken.

17 THE COURT: Okay. Now, have you ever received any
18 kind of treatment for alcohol abuse?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: Or drug abuse?

21 THE DEFENDANT: No, ma'am, but I would like it.

22 THE COURT: Okay. Have you ever received any sort of
23 treatment for any mental health challenges?

24 THE DEFENDANT: No, not that I know of.

25 THE COURT: Did you ever see the counselor at your

1 school, for example?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And when did you see the counselor at your
4 school?

5 THE DEFENDANT: Like, when I was younger?

6 THE COURT: Yeah. Was it middle school or high
7 school?

8 THE DEFENDANT: Like, middle school.

9 THE COURT: Like, middle school. Okay. And did you
10 do that often or did you do that sporadically? How was
11 that?

12 THE DEFENDANT: It had depend on my mood.

13 THE COURT: It depended on your mood. Okay. In other
14 words, if you felt like you needed to go you would go?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Okay. And have you ever -- did your
17 parents ever take you or did the school or anyone ever
18 take you to any other kind of counseling?

19 THE DEFENDANT: I don't know but my parents are here.
20 You can ask them, but I don't know.

21 THE COURT: You don't know?

22 THE DEFENDANT: I don't know. Not to my knowledge.

23 THE COURT: Not to your knowledge?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: In other words, you don't remember going

1 to Dorchester County Mental Health or going down to the
2 medical university or anything like that?

3 THE DEFENDANT: Not to my knowledge.

4 THE COURT: Okay. Not that you have any memory?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Did you go through the SKIP program in
7 school? Do you know what that is?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Have you ever heard of SKIP?

10 THE DEFENDANT: Yes, ma'am. I went there.

11 THE COURT: Did you go through the SKIP program?

12 THE DEFENDANT: No, because I didn't have the money to
13 pay for it.

14 THE COURT: Okay. Okay. All right. Now, so other
15 than the counseling that you had in middle school with the
16 guidance counselor at your school, you don't remember
17 having any other treatment for any mental health issues?

18 THE DEFENDANT: I know I used to take Ritalin for
19 ADHD.

20 THE COURT: Okay. Do you remember when you took
21 Ritalin?

22 THE DEFENDANT: Basically all my life.

23 THE COURT: Okay.

24 THE DEFENDANT: But I stopped when I was, like,
25 probably about 15, 16.

1 THE COURT: Okay. And do you remember the doctor that
2 prescribed that medicine?

3 THE DEFENDANT: No, ma'am.

4 THE COURT: Okay. Do you remember how many times a
5 day you would take that medicine?

6 THE DEFENDANT: About two times a day.

7 THE COURT: Okay. And when you stopped taking it when
8 you were 15 or 16, did the doctor stop you or did you just
9 stop taking it?

10 THE DEFENDANT: I stopped taking it myself.

11 THE COURT: And since you stopped taking the Ritalin
12 when you were 15 or 16, have you started taking any other
13 medications for ADHD?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: Or any other health-care issue?

16 THE DEFENDANT: No, ma'am.

17 THE COURT: In the last 72 hours, have you had any
18 kind of medicine at all?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: Any drugs?

21 THE DEFENDANT: No, ma'am.

22 THE COURT: Or alcohol?

23 THE DEFENDANT: No, ma'am.

24 THE COURT: And, Mr. Howell, are you aware of any
25 problems or issues such as a physical problem or a mental

1 problem, a nervous problem, a drug or alcohol problem,
2 really any problem that you can think of that might or
3 that could interfere with or keep you from knowing what
4 you're doing here today?

5 THE DEFENDANT: I have a drug problem.

6 THE COURT: Okay.

7 THE DEFENDANT: A cocaine problem.

8 THE COURT: Okay. And how long has it been since you
9 had any cocaine?

10 THE DEFENDANT: Since I've been locked up.

11 THE COURT: Okay. So you haven't had any cocaine in
12 eight months?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: That's a long -- you're not addicted
15 physically now to cocaine. You went through withdrawal in
16 the jail?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Do you remember that?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Okay. And so the fact that you now have
21 withdrawn from cocaine, do you believe that that would in
22 any way interfere with your ability to know what you're
23 doing here today?

24 THE DEFENDANT: No, ma'am. It has cleared my mind a
25 little bit.

1 THE COURT: Okay. In other words, not being on
2 cocaine has helped you?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Okay. So you think not being on cocaine
5 will help you understand today's proceedings better?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: All right. And do you think that there's
8 anything else in your history that could keep you or
9 interfere with your ability to know exactly what you're
10 doing here today?

11 THE DEFENDANT: No, ma'am.

12 THE COURT: Okay. I'm going to ask you some questions
13 and they are going to be so simple. Don't over complicate
14 them. Don't over think them, okay, because they're real,
15 real simple. Real simple.

16 Tell me what you understand today's proceeding is.
17 Just in general terms, what are we doing here today?

18 THE DEFENDANT: Here for me to plea up.

19 THE COURT: And do you know what your charges are?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Okay. And do you know how many there are?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: How many?

24 THE DEFENDANT: I think like 14.

25 THE COURT: All right.

1 MR. FARLEY: That's the total charges and he's going
2 to plead to -- do you remember how many?

3 THE DEFENDANT: Nine.

4 THE COURT: And some of them are going to be
5 dismissed, is that right, pursuant to your plea? In other
6 words, you're not pleading to all 14.

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Okay. How many are you going to plead to?

9 THE DEFENDANT: Nine.

10 THE COURT: The gentleman that just spoke to you, what
11 is his name?

12 THE DEFENDANT: Mitchell Farley.

13 THE COURT: And what is his job?

14 THE DEFENDANT: To defend me to the best of his
15 ability.

16 THE COURT: Exactly. And do you know what my role
17 is?

18 THE DEFENDANT: To --

19 THE COURT: What am I called?

20 THE DEFENDANT: A judge.

21 THE COURT: Yes. Very well. And this gentleman. You
22 may not have met Mr. Hilton, but do you know what his role
23 is?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: What is his role?

1 THE DEFENDANT: To prosecute me.

2 THE COURT: Very well. Now, Mr. Howell, I want to --
3 we're going to talk about your charges. And what I'm --
4 the way that we're going to go through this is I am going
5 to address each one. Okay?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Now if I go too fast or you lose track or
8 anything, please feel free to let me know. Okay?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Okay. Mr. Howell, you have been charged
11 with Indictment 2012-GS-18-0688 which is the offense of
12 car jacking. Do you understand that?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Do you know that car jacking carries a
15 penalty of up to 20 years in prison?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Do you understand, Mr. Howell, that car
18 jacking has additional classifications under our law? And
19 I want to talk about those with you. One of them is that
20 car jacking has the classification as a violent offense.
21 Do you understand that?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Do you understand because car jacking has
24 the classification of being a violent offense that that
25 really, it really is pervasive in a number of ways.

1 For example, when -- it will dictate the kind of
2 facility in which you would be housed at the Department of
3 Corrections. You would be housed in a facility that
4 houses people who have been convicted of violent
5 offenses. Do you understand that?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Do you understand that it will have an
8 affect on your ability or rather your lack of ability to
9 earn both work and educational credits?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Do you know that you -- when you've been
12 convicted of a violent offense, there's a prohibition
13 against you ever receiving things such as work release?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: All right. That you're not eligible to
16 participate in any shock incarceration programs. Do you
17 understand that?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: In other words, when a person is being
20 convicted of a violent crime, that both within the
21 Department of Corrections and outside the Department of
22 Corrections when you are released the fact that you will
23 have been convicted of a violent offense will have many
24 affects on your life. Do you understand that?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: All right. For example, even when you are
2 released you may not work in any capacity for a local
3 school district. Do you understand things such as that --

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: -- will come into play? All right.

6 Do you know that car jacking is also, has the
7 classification of being a most-serious offense? And I
8 want to talk to you about that.

9 Now under South Carolina law -- and there's a statute
10 for it, it's 17-25-45. And what 17-25-45 says is that if
11 over the course of someone's life they are convicted of
12 three serious offenses or two most-serious offenses, then
13 they may spend the rest of their life in prison without
14 the possibility of parole.

15 The way that that works is that if you are, if you are
16 a person who is convicted of one most-serious offense, and
17 you stand charged with a second most-serious offense, or
18 if you have been convicted of one most-serious offense and
19 you've been convicted of a serious offense and you stand
20 charged with a second serious offense and the State under
21 either of those scenarios sends notice to you that the
22 State intends to seek a sentence of life without the
23 possibility of parole, and you are then convicted of that
24 second most-serious offense or you're going to have a
25 most-serious offense, two additional serious offenses

1 which would be the three strikes, most serious, serious,
2 and serious, or the two strikes, most serious and most
3 serious, and you're then convicted giving you two most-
4 serious offenses or one most-serious offense and two most-
5 serious offenses, in that instance you will spend the rest
6 of your life in prison without the possibility of parole.
7 Do you understand that?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Mr. Howell, do you understand that life
10 without the possibility of parole means that you will die
11 in prison?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: All right. Do you understand that car
14 jacking is a most-serious offense?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Do you understand that after today you
17 will have for this offense, this offense, a most-serious
18 conviction?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: As I look through the other charges,
21 unfortunately there are other most-serious offenses. Do
22 you understand that?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: All right. Do you have any questions
25 regarding the fact that car jacking is both a violent

1 offense and a most-serious offense?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Tell me what your question is.

4 MR. FARLEY: Do you have any questions?

5 THE DEFENDANT: Oh. No, ma'am.

6 THE COURT: Are you absolutely certain that you have
7 no questions?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Okay. Now, Mr. Howell, Indictment Number
10 2012-GS-18-687 is an indictment for armed robbery. Do you
11 understand that?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Do you understand that armed robbery
14 carries a minimum sentence of 10 years in prison?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Do you understand that armed robbery
17 carries a maximum possible sentence of 30 years in prison?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Do you understand that armed robbery is a
20 most-serious offense?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Pursuant to the statute we talked about
23 earlier, 17-25-45?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Do you understand that after today you

1 will have two convictions for most-serious offense?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: All right. Do you understand -- I should
4 have mentioned it with regards to the car jacking -- that
5 these are no-parole offenses. Do you understand that?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Meaning you will not be eligible for
8 parole --

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: -- either for the car jacking or the armed
11 robbery?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: In other words, I understand that there is
14 a negotiated sentence. If I accept the negotiated
15 sentence, do you understand that you need to count on
16 serving every day of your sentence? Do you understand
17 that?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Do you have any questions about that?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: All right. Do you also understand that
22 there is a request for restitution in the amount of
23 \$12,200 as a result of this charge of armed robbery?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Is that an appropriate sum or do we need

1 to have a restitution hearing?

2 THE DEFENDANT: No. His car got messed up.

3 THE COURT: You believe that's the correct --

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: -- amount? All right.

6 Now, the next offense that I'm going to speak with you
7 about is burglary second degree violent. It is my
8 understanding that you intend to plead to one, two, three,
9 four charges of burglary in the second degree violent. Do
10 you understand that?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: All right. And do you understand that
13 each one of these offenses carries up to 15 years in
14 prison?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: All right. So, with regard to these four
17 charges for burglary in the second degree violent offense
18 your exposure just on these four charges is 60 years in
19 prison.

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Do you understand just based upon the
22 offenses that we have talked about to this point that your
23 exposure is 110 years in prison?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: And we're not finished yet?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: All right. Do you understand that each of
3 these sentences, each of these offenses, these four
4 offenses for burglary in the second degree violent are,
5 number one, they have a classification just as the car
6 jacking and the armed robbery did. These are violent
7 offenses. Do you understand that?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: So they carry the same consequences that
10 we went over earlier. Do you understand?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Do you have any questions about that?

13 THE DEFENDANT: No, ma'am.

14 THE COURT: All right. Do you understand that, if you
15 will remember when we talked about 17-25-45 we talked
16 about most serious and serious offenses. Do you remember
17 that?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: We talked about the fact that car jacking
20 and armed robbery are both most-serious offenses. Do you
21 remember that?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: But I also talked to you about serious
24 offenses.

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: All right. Do you understand that each of
2 these burglaries in the second degrees, each one of these,
3 and there are four of them, each one of these offenses is
4 a serious offense with regards to 17-25-45? Do you
5 understand?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Do you understand that after today if you
8 are convicted of a most serious or a serious offense, that
9 you probably will spend the rest of your life in prison
10 without the possibility of parole?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Because I cannot imagine with this record
13 that a solicitor's office is not going to serve you with
14 that notice. Do you understand that?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: All right. Now, do you also understand
17 that Indictment 2012-GS-18-687, which is one of the four
18 burglary in the second degree violent charges, that there
19 is a request for restitution in the amount of \$6,569?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Is that -- do you believe that is the
22 appropriate sum, or do we need a restitution hearing with
23 regards to this indictment?

24 THE DEFENDANT: It's appropriate.

25 THE COURT: All right. The next charge that we're

1 going to talk about is burglary in the second degree non
2 violent. Burglary in the second degree non violent.

3 Do you understand that this offense carries a maximum
4 possible penalty of 10 years in prison?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: So I think we're now up to 120 years in
7 prison. Do you understand that?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Do you understand that there is a request
10 for restitution with regards to this charge in the amount
11 of \$3,000. Do you understand that?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: All right. Is that the appropriate sum or
14 do we need a restitution hearing?

15 THE DEFENDANT: It's appropriate.

16 THE COURT: All right. And then there is another
17 charge, Mr. Howell, of failure to stop for a blue light or
18 siren where there is no injury or death first offense.

19 Do you understand that this offense carries a penalty
20 of between 90 days to three years and a fine of not less
21 -- or a fine, I should say, of not less than \$500. Do you
22 understand that?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Do you understand that this is actually a
25 graduated offense? And what that means is if you are

1 convicted of a failure to stop for a blue light and siren
2 in the future, that the penalties and the consequences
3 will be worse because it will not be a first offense.

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Do you understand that this particular
6 offense has a very negative effect on your driver's
7 license?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: All right. Now, do you understand that
10 you are also charged with Indictment 2012-GS-18-690 which
11 is an indictment for hit and run with minor personal
12 injury. And do you understand that this offense carries a
13 penalty of from 30 days in jail up to a year in prison?
14 Do you understand?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: And a fine of from 1,000 to \$5,000. Do
17 you understand that?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Do you understand that with regards to --
20 I don't know which indictment is the \$400 restitution.

21 MR. HILTON: That would be --

22 THE COURT: I thought it might be the hit and run with
23 minor damage but I don't see -- that's someone else.

24 MR. HILTON: No. It's Indictment 694. 2012-GS-
25 18-694.

1 THE COURT: Okay. Oh, here it is. All right. Thank
2 you. I see that now.

3 Mr. Howell, I need to go back to one of the burglary
4 in the second degree violent, Indictment 2012-GS-18-694.
5 Do you understand that there is a request for restitution
6 in the amount of \$400?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Do you believe that is an appropriate sum
9 or do we need to have a restitution hearing?

10 THE DEFENDANT: It's appropriate.

11 THE COURT: All right. Do you understand that your
12 exposure to prison time today is 124 years in prison?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: All right. Mr. Howell, are you on
15 probation or parole at this time?

16 THE DEFENDANT: No, ma'am.

17 THE COURT: All right. Very well.

18 MR. HILTON: Judge, can we stop you for a second and
19 approach?

20 THE COURT: Sure, sure.

21 (Off-the-record discussion.)

22 MR. FARLEY: Judge, if I may, for the record. Some
23 changes were made to his forms. Three of the charges were
24 actually supposed to be, the burglaries were actually
25 supposed to be non violent. I've explained to Mr. Howell

1 what happened, and he has initialed on the title of each
2 of those charges that he has reviewed those sentencing
3 sheets.

4 THE COURT: Thank you. And let's just go over it so
5 our record is absolutely clear. Okay, Mr. Howell?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: You stop if you have any questions or
8 concerns even a little bit. Okay?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: All right. Now when we were speaking
11 earlier we went over 2012-GS-18-694 and I told you that
12 that was burglary in the second degree violent. Remember?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And that it was a serious offense.
15 Remember?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Well, I want to amend. May I amend in
18 your mind?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Because I'm going to tell you, it's not
21 punishable now for 15 years because it's now, this charge
22 is now non violent. Burglary in the second degree non
23 violent.

24 And now, Mr. Howell, I want you to know that this
25 offense doesn't carry 15 years. It carries 10 years in

1 prison. Okay?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: All right. And it's non violent and it's
4 not serious. Okay?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: So that's positive.

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Right?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Do you understand that?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Do you have any questions about that?

13 THE DEFENDANT: No, ma'am.

14 THE COURT: Okay. Now, there's still a request for
15 restitution on this charge though for \$400. Do you
16 understand that?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Okay. To 2012-GS-18-696, we talked about
19 that a little bit ago. And I told you that this was a
20 charge for burglary in the second degree violent.
21 Remember?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And I told you that it was a violent
24 offense and a serious offense. Remember?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: And it was punishable by 15 years.

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: It's now been changed. It is now -- well,
4 it's the same Indictment Number 2012-GS-18-696, it now is
5 a non violent burglary in the second degree. Do you
6 understand?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: What that means is, Mr. Howell, is that
9 this now is -- it's not a violent offense.

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: And it's not a serious offense --

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: -- under the classification that we talked
14 about earlier. So that's also very much in your favor;
15 isn't it?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: And you understand that?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Do you have any questions about that?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: Are you sure?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Mr. Howell, 2012-GS-18-697, a little bit
24 ago when we talked about this offense I told you that this
25 was burglary in the second degree violent, and that it was

1 punishable by 15 years in prison. Do you remember that?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And I told you that it was violent and
4 serious.

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: It's now been amended and now Indictment
7 2012-GS-18-697 is now burglary in the second degree non
8 violent. Do you understand that?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: I want to tell you that now this offense
11 carries a maximum possible penalty of 10 years in prison.
12 Do you understand?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And now it's not a violent offense. Do
15 you understand?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: And it is not a serious offense under the
18 classifications that we talked about under 17-25-45. Do
19 you understand that?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: So now I got to go back and redo the
22 math. Okay?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: All right. Just in abundance of
25 precaution, I want to remind you that 2012-GS-18-692, this

1 is -- we talked about this one earlier, that this was
2 burglary in the second degree violent. We did talk about
3 this one earlier.

4 I want to remind you that this offense still is
5 burglary in the second degree violent. All right?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: And that this offense carries up to 15
8 years in prison. Yes?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: And it is violent. Okay?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: And it is a serious offense under
13 17-25-45. Okay?

14 THE DEFENDANT: Yes, ma'am. Yes, ma'am.

15 THE COURT: All right. So here's what I want to do.
16 I want to go over the time. Now your maximum exposure is
17 109 years. I think it was 124 years earlier but now it's
18 109 years. Do you understand that?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Let's talk about, again, 17-25-45.

21 Remember, we talked about that car jacking is a most-
22 serious offense?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: And that the armed robbery is a most-
25 serious offense.

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: That hasn't changed. All right?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: But instead of having the serious offenses
5 that we talked about earlier and I think that there were,
6 that there were four of those. I'm going to amend that
7 and I want you to know that if we get through the plea
8 today and I accept the negotiation, that you will be
9 convicted of one serious offense. Do you understand?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Okay. So, to review. After the plea
12 today, if I accept your plea and the negotiations, you
13 will be convicted of two most-serious offenses and one
14 serious offense. Do you understand that?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: All right. Now I want to talk about your
17 record for a moment because I don't know what your record
18 is. And I'm going to ask Mr. Hilton to take a review of
19 your record because I want the record to be clear whether
20 or not you have any existing serious offenses or most-
21 serious offenses. Okay?

22 THE DEFENDANT: Yes, ma'am.

23 MR. HILTON: Your Honor, I'm looking at his adult rap
24 sheet. He doesn't have any convictions on his rap sheet.
25 So certainly none of a serious and most serious nature.

1 I am not sure what he has or may have as a juvenile
2 record or if that even counts against him in strikes. I'm
3 not sure about that.

4 THE COURT: Okay. Very well.

5 Now let me explain what we're going to be doing,
6 Mr. Howell, I'm pulling your juvenile record and --
7 because you don't have any adult record of serious or
8 most-serious offenses. Okay?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: But I'm going to pull your juvenile record
11 because I want you to know exactly where you are with
12 regards to serious and most-serious offenses when you
13 leave here today. Okay?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Because I don't want you to be surprised.
16 Do you understand?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Okay. Let me ask you this question.
19 Based upon your knowledge of your juvenile record and your
20 discussions with your lawyer, do you believe that your
21 juvenile record has any offenses which would be serious or
22 most serious?

23 THE DEFENDANT: (Conferring with counsel.)

24 MR. FARLEY: He tells me he has an unlawful carrying
25 as a juvenile. And I told him that would not fall into

1 that category if it were an adult charge.

2 THE COURT: Very well. I want to ask you this
3 question. And I'm going to ask Mr. Farley and then I'll
4 ask you.

5 Mr. Farley, based upon your review of your client's
6 record and your negotiations here today, is it your
7 understanding that if Mr. Howell continues through his
8 plea today and I accept it and I accept the negotiations,
9 is it your understanding that he will have two most-
10 serious convictions or convictions for offenses which are
11 most serious and he will have two of those, and that he
12 will have a conviction for a serious offense as defined by
13 17-25-45?

14 MR. FARLEY: Yes, Your Honor.

15 THE COURT: All right. Most importantly, Mr. Howell,
16 is it your understanding that if you continue through your
17 plea today and I accept your plea and the negotiations, is
18 it your understanding that after today that you will have
19 convictions for two offenses defined as most serious by
20 17-25-45, and one offense and a conviction for that
21 offense which is a serious classified offense under
22 17-25-45?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Do you have any questions about that at
25 all?

1 THE DEFENDANT: No, ma'am.

2 THE COURT: Very well. Now, here's what you have told
3 me, Mr. Howell. You have told me that you understand the
4 nature of these offenses, the maximum possible penalty,
5 the consequences of your plea here today, and keeping -- I
6 want you to keep these matters in the absolute forefront
7 of your mind. And I want to ask you these questions.

8 How do you plead to 2012-GS-18-687 which is an
9 indictment for armed robbery?

10 THE DEFENDANT: Guilty.

11 THE COURT: How do you plead to Indictment 2012-GS-
12 18-688 which is an indictment for car jacking?

13 THE DEFENDANT: Guilty.

14 THE COURT: How do you plead to Indictment 2012-GS-
15 18-692 which is an indictment for burglary in the second
16 degree violent?

17 THE DEFENDANT: Guilty.

18 THE COURT: How do you plead to Indictment 2012-GS-
19 18-697 which is an indictment for burglary in the second
20 degree non violent?

21 THE DEFENDANT: Guilty.

22 THE COURT: How do you plead to Indictment 2012-GS-
23 18-694 which is an indictment for burglary in the second
24 degree non violent?

25 THE DEFENDANT: Guilty.

1 THE COURT: And how do you plead to Indictment Number
2 2012-GS-18-696 which is an indictment for burglary in the
3 second degree non violent?

4 THE DEFENDANT: Guilty.

5 THE COURT: And how do you plead to Indictment
6 2012-GS-18-1082 which is an indictment for the charge of
7 burglary in the second degree non violent?

8 THE DEFENDANT: Guilty.

9 THE COURT: How do you plead to Indictment 2012-GS-
10 18-689 which is an indictment for failure to stop for blue
11 light and siren where there is no injury or death
12 resulting first offense?

13 THE DEFENDANT: Guilty.

14 THE COURT: And finally how do you plead to Indictment
15 2012-GS-18-690 which is an indictment for hit and run with
16 minor personal injury?

17 THE DEFENDANT: Guilty.

18 THE COURT: Do you understand, Mr. Howell, that when
19 you plead guilty that you give up certain very important
20 constitutional rights?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: We're going to talk about some of them.
23 We will not talk about them all. If you have any
24 questions, I want you to stop me and speak with me and ask
25 me questions or ask Mr. Farley. Okay?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: First of all, you give up your right to,
3 fifth amendment right to be silent because when you tell
4 me you are guilty you are no longer silent. Right?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Makes sense; doesn't it?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: You give up your right against self-
9 incrimination which means that you say things that are not
10 in your best interests. Obviously when you tell me that
11 you're guilty, what is more incriminating than that? You
12 tell me you're guilty; right?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: So that's a constitutional right that you
15 give up; don't you?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: All right. You give up your right to
18 require the State to prove you guilty of each of these
19 offenses beyond a reasonable doubt if they can.

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Do you understand you give that right up?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: You give up your right to have Mr. Farley
24 cross-examine witnesses who would testify against you. Do
25 you understand?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: You give up your right to have him
3 subpoena witnesses to come testify in your defense. Do
4 you understand?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: You give up your right to present
7 defenses. Do you understand?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: You give up your right to have your
10 attorney challenge any incriminating statements that you
11 may have made to law enforcement or other government
12 people. Do you understand that?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Incriminating statements means statements
15 that are not in your best interests. Do you understand
16 that?

17 THE DEFENDANT: Yes, ma'am. Can I talk to my attorney
18 for a second, privately?

19 THE COURT: Sure, you can.

20 THE DEFENDANT: (Conferring with attorney.)

21 MR. FARLEY: Your Honor, may -- if I may? My client
22 had some questions about the suppression hearing.

23 THE COURT: Sure.

24 MR. FARLEY: And I reminded him about what we had gone
25 over before.

1 THE COURT: Absolutely. Now let me ask you this
2 question. Do you need some more time to talk to him?
3 Because, you know what, this is not a forced march. I'll
4 take whatever time you need.

5 MR. FARLEY: I asked him that question. And I'll let
6 him answer for you.

7 THE COURT: Here's the thing. As you know, this is
8 very important. And there is no forced march. You are
9 driving this train. If you want to stop and talk to
10 Mr. Farley more, I want you to do that.

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Because it's important. And you are so
13 bright to understand that that is certainly one of the
14 constitutional rights that you give up. Only you can give
15 that up. Now you know that; right?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Do you want to talk to Mr. Farley a little
18 bit more about that?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: Are you positive?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Are you certain?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Okay. Now I want you to understand this,
25 Mr. Howell. At any time before I accept the plea you can

1 change your mind. Okay?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Is that fair enough?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: You can say, you know, Judge, that's been
6 percolating in my mind. I think I want to stop and talk
7 to my lawyer a little bit more.

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Do you understand that?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Okay. Very well. Now, I'm going to start
12 back over just because your mind probably started thinking
13 about that and then you stopped and talked to Mr. Farley.
14 So I'm going to start back with when we were talking about
15 your constitutional rights, with the one against self-
16 incrimination. Okay.

17 And I'll ask again. Do you understand that one of the
18 rights that you give up when you plead guilty is you give
19 up your right to have your lawyer challenge any
20 incriminating statements that you may have made. You
21 know, it's to the government. And the reason it's
22 general, it might be law enforcement. It might be an
23 informant for the government. That's why I say the
24 government. But you give up your right to have your
25 lawyer challenge any incriminating statements that you may

1 have made. Do you understand that?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Do you know what an incriminating
4 statement means? Statements not in your best interests.

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Okay. Now, do you understand -- and this
7 is where I really want you to pause and think about. Do
8 you understand that when you plead guilty that you give up
9 your right to have your lawyer challenge any stops --
10 yes? Do you understand that?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Any searches. Do you understand that?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And of course that's pursuant to the
15 fourth amendment, searches pursuant to the fourth
16 amendment. And, any seizures pursuant to the fourth
17 amendment. Do you understand that?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: And those you give up when you choose to
20 plead guilty. Do you understand that?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: In other words, you take a look at
23 everything. You take a look at your whole case. You
24 know, maybe I can challenge that, maybe I can challenge
25 this. And when you plead guilty you take a look at all of

1 your facts and circumstances, knowing that those are
2 rights that you necessarily give up when you plead
3 guilty. Do you understand?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Okay. Now, do you understand that you
6 when you plead guilty, that you also give up your right to
7 a jury trial?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: In other words, you give up your right to
10 have a jury determine if you're guilty or not guilty. Do
11 you understand that?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Now do you know, Mr. Howell, that only you
14 can waive your right to a jury trial?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Do you understand that if you chose to go
17 to a trial, do you understand that you would go to trial
18 and you would still have all of the rights that we've
19 talked about? They would be in place.

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Do you understand that if you went to
22 trial, that it would be completely up to you whether or
23 not you wanted to testify or not testify?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Do you understand that if you went to

1 trial and you decided that you didn't want to testify, do
2 you understand that the judge would tell the jury that
3 they could not consider your decision not to testify on
4 the issue of whether you were guilty or not guilty?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: In fact, do you know that the judge would
7 tell the jury that they could not even discuss the fact
8 that you didn't testify in the jury room, that that was
9 something they couldn't even discuss. Do you understand
10 that?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: And the reason that the judge would tell
13 the jury that is because that would be exercising your
14 fifth amendment right and the judge would tell the jury
15 that.

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: And the judge would tell the jury that you
18 wouldn't have to prove anything, that the burden was on
19 the State to prove guilt beyond a reasonable doubt and
20 would remain on the State to prove guilt beyond a
21 reasonable doubt. Do you understand that?

22 THE DEFENDANT: Yes, ma'am. Yes, ma'am.

23 THE COURT: Very well. Now, Mr. Howell, we've talked
24 about many of the constitutional rights that you, a
25 person, you, give up when you plead guilty. Have you

1 understood those rights?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Have you understood that there's some we
4 have not talked about?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: And do you understand that these are the
7 rights that are preserved for you at trial and you waive
8 when you plead guilty?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Now, is that what you want to do?

11 THE DEFENDANT: I need to ask my attorney -- I want to
12 tell him something real quick again.

13 THE COURT: You bet. You take your time.

14 THE DEFENDANT: (Conferring with counsel.)

15 MR. FARLEY: Your Honor, may we take about three-
16 minute break?

17 THE COURT: You can take as long as you need,
18 Mr. Farley.

19 MR. FARLEY: I need him up here but I need a little bit
20 of a private area to talk.

21 THE COURT: Why don't you all -- have you got people
22 in lockup up here?

23 THE BAILIFF: Uh-huh.

24 THE COURT: We do. Are they in lockup?

25 THE BAILIFF: I have one.

1 THE COURT: You have one. All right.

2 MR. FARLEY: We could just step back there for a
3 minute.

4 THE COURT: There was a place that was actually
5 designed for that purpose. I want -- obviously, attorney-
6 client privilege needs to be protected so you either need
7 to go near the elevator and just be sure you're away from
8 the person who's in lockup. Be aware of the attorney-
9 client privileges. And you may stand posted at the door,
10 but I want them to have space to talk. Okay?

11 THE BAILIFF: Yes, ma'am.

12 THE COURT: Thank you.

13 MR. FARLEY: Thank you, Judge.

14 (Proceedings recessed at 12:05 p.m. Other matters
15 were heard by the Court. The hearing of this cause
16 resumed at 12:27 P.M.:)

17 THE COURT: All right.

18 MR. FARLEY: Your Honor, we thank the Court for the
19 time to talk. We had a few issues that we went over and
20 we're prepared to go forward now.

21 THE COURT: And, Mr. Howell, y'all have had a break of
22 probably about 30 minutes or so to continue your
23 conversations. I want to commend you for doing exactly
24 what I asked you to do, to know that your lawyer was here,
25 to know that your lawyer was here to assist you through

1 this process. You have availed yourself of his continuing
2 counsel.

3 And I guess what I want to be absolutely certain is
4 that you do not need any more time to talk to him right
5 now but you are ready to proceed?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: And do you need any more time to talk to
8 him right now?

9 THE DEFENDANT: No, ma'am.

10 THE COURT: However, if that should change and you
11 need to stop and talk to him, you know that you can do
12 that. Right?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Okay. Very well. Now, I think we had
15 reached the point where we were talking about your
16 constitutional rights.

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And we had talked about the jury and that,
19 what the judge would tell the jury. And that the judge
20 would tell the jury that if you went to trial and you
21 exercised your fifth amendment right, that the judge would
22 tell the jury that the jury could not consider that on the
23 issue of whether you were guilty or not guilty.

24 And in fact, the judge would tell the jury that they
25 could not discuss that in the jury room because that would

1 be the exercise of your fifth amendment right, that you
2 don't need to prove anything, that the burden was and
3 would remain on the State of South Carolina to prove you
4 guilty of each element of each of these offenses beyond a
5 reasonable doubt before you could be convicted of an
6 offense.

7 In other words, each element of each offense a person
8 has to be proven guilty beyond a reasonable doubt by the
9 State before a person can be found guilty of that
10 offense. Do you understand that?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Do you understand that the judge would
13 tell the jury that?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Very well. Now, do you understand that
16 when you plead guilty that you give up your right to have
17 a jury determine if you're guilty or not guilty?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Do you understand that if I accept your
20 plea that I will sentence you?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Very well. Now, I want to stop for a
23 second and I want to recap where we are now. I want to
24 summarize where we are now.

25 You have told me that you understand each one of these

1 offenses, the maximum possible penalty, the consequences
2 of your plea here today. Now, you have told me that you
3 understand your constitutional rights, and that you
4 understand that you waive certain important constitutional
5 rights when you plead guilty.

6 Keeping all of these matters in the forefront of your
7 mind, do you still wish to continue with your plea of
8 guilty to each of these nine charges?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Very well. Let me tell you what happens
11 next and tell you why. Every plea must be supported by a
12 factual basis. I have to hear that factual basis. And
13 the way that we're going to go through this process is,
14 Mr. Hilton is going to give me the factual basis which is
15 coming from his investigation and that of law
16 enforcement.

17 He obviously wasn't there. So after he's given me the
18 facts I'm going to ask you, is that what happened.

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: I need you to correct anything that I am
21 told that needs to be corrected to be sure that I have an
22 accurate and a precise picture of what occurred. So it's
23 very important that you listen carefully.

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: All right. Mr. Hilton, tell me which one

1 you're starting with.

2 MR. HILTON: Thank you, Your Honor. I'll try to go in
3 time order beginning back in November 21st, 2011. This
4 would be 2011-GS-18-1082, burglary in the second degree
5 non violent. That was the first charge that kind of
6 started --

7 THE COURT: I don't have any 2011.

8 MR. HILTON: Well --

9 THE COURT: Do I?

10 MR. HILTON: -- it's probably 2012-GS-18-1082.

11 THE COURT: Got it.

12 MR. HILTON: I'm sorry. This was the first charge
13 that kind of started it from a string of burglaries and it
14 progressed up to the armed robbery and the car jacking.

15 But this first offense was on November 21st, 2011, at
16 South Laurel Street in the Town of Summerville in
17 Dorchester County, where the victim in that case came
18 home, noticed that her screen door had been shattered, her
19 glass sliding door in the back had been shattered and
20 several thousand dollars worth of property was missing
21 from her house, electronics and other items.

22 Of course, the police department responded out and got
23 some fingerprints that were subsequently matched back to
24 the Defendant.

25 I don't know if you want me to pause between each one

1 of these or --

2 THE COURT: I think so. Is that what happened?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Okay.

5 MR. HILTON: The second one occurred on February 2nd,
6 2012. This is another burglary in the second degree non
7 violent. This one was at North Laurel Street and is
8 the subject of 2012-GS-18-697.

9 On that date the Defendant, Mr. Howell, with a
10 co-defendant went into the home at that location owned by
11 a Mr. Brian Morton. Again, went into the house and stole
12 various electronics.

13 Mr. Morton came home to find his stuff missing, called
14 police and told police that about two weeks prior, and he
15 didn't know the name of Mr. Howell but he ended up
16 discovering that it was Mr. Howell and another individual
17 came there asking to do yard work. That was a little
18 strange in that he had just done his yard work and his
19 yard was in order and he thought that was out of the
20 ordinary.

21 Come to find out he did a little research on Facebook
22 and was able to find Mr. Howell's photograph and
23 identified Mr. Howell to police as the guy that had come
24 two weeks prior.

25 Later on in this investigation, and we'll get to that

1 point, when they apprehended Mr. Howell he ended up giving
2 a statement implicating himself and the co-defendants in
3 this burglary as well.

4 THE COURT: Is that correct?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Okay.

7 MR. HILTON: The next one is 2012-GS-18-696. It
8 occurred on February 6, 2012.

9 This one at West Doty Avenue where he went into a
10 residence located at that address. Again went in and
11 stole several electronic items. And it was this burglary,
12 the previous one and the ones in the next two to come that
13 he ended up -- when police finally apprehend him, he gave
14 a statement saying this is the stuff that I've done and he
15 implicated himself in these several burglaries.

16 So the next couple that I go over, the evidence of the
17 burglaries is of course that it happened and he admitted
18 to the burglaries happening.

19 THE COURT: Okay. And this is 2012-GS-18-696 --

20 MR. HILTON: That's correct.

21 THE COURT: -- that you're talking about? This is a
22 dwelling belonging to Ms. McConnell and this is the one on
23 Doty?

24 MR. HILTON: West Doty Avenue in Summerville, in
25 Dorchester County.

1 THE COURT: Is that correct?

2 THE DEFENDANT: Yes, ma'am.

3 MR. HILTON: The next one is 2012-GS-18-694, would be
4 a burglary in the second degree non violent. Occurred
5 also on February 6, 2012, at South Laurel Street.
6 Again, the victim came home to find that the rear door had
7 been busted out by someone throwing a rock through it.
8 The Defendant went inside and removed a flat screen
9 television. Again, once they apprehended him he ended up
10 implicating himself in that burglary.

11 THE COURT: Is that correct?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: All right.

14 MR. HILTON: The next one is 2012-GS-18-692. This
15 occurred on April 6, 2012. It's actually a burglary
16 second degree violent. This occurred at Bacons Bridge
17 Road which is the Galleria Wine and Spirits. There he
18 went into that business during the nighttime hours. He
19 went in by shattering the glass on two of the business
20 doors causing about \$1,000 worth of damage there. They
21 went inside and stole about \$1,000 worth of liquor. He
22 ended up admitting to that once he was apprehended.

23 THE COURT: Is that correct?

24 THE DEFENDANT: Yes, ma'am.

25 MR. HILTON: And the last three charges that he --

1 actually the last four charges that he's pleading to, all
2 occurred as a continuous course of conduct on October
3 23rd, 2012. It began at Bacons Bridge Road which is
4 the Bi-Lo Galleria there. And there's also the Dorchester
5 County Library. There's, I think, an Applebee's next
6 door.

7 There was an individual there by the name of Blake
8 Kafka, K-A-F-K-A, was the victim's name. He parked in the
9 Bi-Lo parking lot and walked over to the Dorchester County
10 Library. I think he was preparing to study for some sort
11 of college exam. When he got out of his car there he
12 noticed two black individuals kind of eyeing him in the
13 parking lot. He didn't know these individuals or anything
14 like that.

15 He went on in the library and stayed for about 30
16 minutes. He did what he had to do in the library and came
17 out. He got back in his car. He noticed the two
18 individuals approaching his car. And they knocked on the
19 window. He downed the window at which point in time
20 Mr. Howell produced a pistol and put it to his chest and
21 said, you know, get out of the car and give me your money.

22 Which also becomes the -- well, that's the robbery and
23 the car jacking together. Mr. Kafka got out of his car.
24 Mr. Howell got in the car along with the co-defendant.
25 The co-defendant was in the passenger side. Mr. Howell

1 was driving. Mr. Kafka didn't have any money to give
2 him. He told him, I don't have any money. They ended up
3 taking the car. They took the car from there and fled.

4 Of course, Mr. Kafka then called police. The police
5 put out a BOLO of the vehicle that was taken which was a
6 2003 Infiniti G35, black, and that he gave the license
7 plate number to police.

8 They put out a BOLO and ended up finding that car at
9 the intersection of Trolley and Miles Road. It was at
10 that intersection where Trooper Chris Cooper from the
11 Highway Patrol tried to execute a traffic stop. Of course
12 the probable cause being this was the vehicle that was
13 just reported stolen.

14 From there the vehicle fled, ended up striking the
15 individual by the name of Earnest Barwick. That was the
16 elderly gentleman seated on the front row of the
17 courtroom --

18 THE COURT: Yes.

19 MR. HILTON: -- that was here previously. He ended up
20 striking that vehicle and then getting out of the car and
21 fleeing from the police. That would be the nature of the
22 leaving the scene of an accident which should be the last
23 one.

24 Ultimately they apprehended Mr. Howell. He came up
25 and ended up giving a statement implicating himself, his

1 co-defendants in the burglaries as well as the car jacking
2 and the armed robbery and leaving the scene of an injury
3 (sic) and failure to stop for a blue light.

4 THE COURT: All right. Is that what happened?

5 THE DEFENDANT: No.

6 THE COURT: Okay.

7 THE DEFENDANT: No, ma'am.

8 THE COURT: Okay.

9 THE DEFENDANT: Number one, I never pulled -- I had
10 it. Yes, I did have a pistol. I never pulled it out. I
11 never pulled my pistol out. Ever. I did show him. I
12 never put it to his chest.

13 THE COURT: Okay.

14 THE DEFENDANT: Two --

15 THE COURT: You say you showed it. In other words --

16 THE DEFENDANT: I just -- I had on my waist and I lift
17 up my shirt (indicating).

18 THE COURT: That's okay.

19 MR. FARLEY: Hold on.

20 THE COURT: Go ahead. How else?

21 THE DEFENDANT: And the second, I never asked him for
22 no money. I told him, I told him to get out the car. I
23 never asked him for no money. So I didn't -- yes, I took
24 his car but I never arm robbed him for money or his cell
25 phone like they tried to say I did. I never did that. I

1 -- get out your car. Let me get your car. And I did.

2 And I left. I say, I left. That all that happened.

3 THE COURT: Okay.

4 THE DEFENDANT: And I am guilty of these charges but
5 they, they trying to make it seem like it's worse than
6 what it really was. Yes, it's a bad crime, but they
7 trying to put more on me than what I really did.

8 THE COURT: Okay. I'm with you. Now I still think
9 the elements are there.

10 MR. HILTON: Even going by the Defendant's rendition
11 of the facts, I think it's still an armed robbery and car
12 jacking.

13 THE COURT: I think it's armed robbery and car
14 jacking.

15 THE DEFENDANT: I understand.

16 THE COURT: Very well. I thank you, Mr. Howell. You
17 did exactly what I asked you to do. Is, from your
18 perspective I want you to tell me what happened. So thank
19 you for that.

20 The elements are still met. And you understand that
21 the elements are met because at the point in time when you
22 showed the weapon that somebody's going to do what you
23 want them to do because you have the weapon. Right?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: So, and obviously whether it's money

1 that's taken or a car, you're obviously taking something
2 of value. You understand that as well; right?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: And obviously understand the car jacking
5 part of this; yes?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Okay. Great. I'm with you completely.
8 You did what you were asked to do and that's give me your
9 rendition of the facts. And I thank you for that as well.
10 All right. Now, and with regards to the striking the
11 car. You remember that that's what caused you to, I
12 gather, to bail and run is when the car was struck?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Okay. Very well. Now, and you remember
15 the highway patrolman coming after you?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Now has -- and I want to stop a second
18 because one of the things that Mr. Hilton said is that
19 there was some point when you came and turned yourself
20 in. Yes?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And you just said, I need to tell you that
23 I have -- I am here. These are the things that I have
24 done?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Okay. Very well. Now, I know that this
2 is a negotiated plea. So it's a thumbs up or a thumbs
3 down for me. So my question isn't asking you about the
4 plea negotiations. It's asking you a different question.

5 And it's this. Obviously if you have any questions or
6 you don't understand, you let me know. Has anyone
7 promised you anything or held out any hope of any sort of
8 a reward to get you to plead guilty?

9 THE DEFENDANT: No -- in a way. The detectives tell
10 me that if I told on myself and gave them what they needed
11 that I would see my 20s on the street again.

12 THE COURT: You would see what?

13 THE DEFENDANT: I would see some of my 20s on the
14 street. I would be free for some of my 20s.

15 THE COURT: For some of your 20s?

16 THE DEFENDANT: For some of my 20s.

17 THE COURT: And you feel like law enforcement promised
18 you that?

19 THE DEFENDANT: They did promise me that.

20 THE COURT: They did promise you that.

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: In other words, they said if you come
23 clean --

24 THE DEFENDANT: Come clean, I'll make sure you see
25 your 20s on the street.

1 THE COURT: I'll make sure that you see your 20s?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: You understand that that didn't happen?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Now did you give statements in reliance on
6 that?

7 THE DEFENDANT: How do you mean?

8 THE COURT: In other words -- in other words, was that
9 the motivation -- well, as I understand it, and you tell
10 me if I'm wrong -- let me sort of set, if you will, set
11 the table here. My understanding is that these events
12 occurred and that when you fled you got away. And that at
13 some point after that, and of course I don't know why
14 because I haven't heard from Mr. Farley yet so I don't
15 know why. I don't know what your motivation was, but at
16 some point you show up --

17 THE DEFENDANT: The next day.

18 THE COURT: The next day?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Where did you go? Did you go to Demming
21 Way?

22 THE DEFENDANT: Summerville.

23 THE COURT: You went to Summerville Police?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Who did you talk to?

1 THE DEFENDANT: Detective Hawk and Detective Santana

2 THE COURT: Detective Hawk and Santana?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: You show up. You say, I want to talk to
5 y'all?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: And they say okay. You say, I got some
8 things I want to tell you?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: And then how did that go after that? What
11 did you say to them once you said I want to talk to
12 y'all?

13 THE DEFENDANT: I tell them that, when I tell y'all
14 this I just want help for certain things.

15 THE COURT: Okay.

16 THE DEFENDANT: And they say they'll do their best to
17 get me help for that. And then, while I was talking I was
18 like, man, I'm not going to see my 20s on the street any
19 more and I probably won't see my 30s and they was like,
20 no, I can guarantee you're going to see your 20s on the
21 street.

22 THE COURT: Okay. Now when you said when I tell, but
23 you hadn't told them anything yet, right, is what you're
24 saying?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Okay. What was the help that -- you say
2 you need some help. What was the help you were looking
3 for?

4 THE DEFENDANT: For my cocaine addiction because I'm
5 scared of my life if I don't get help with it.

6 THE COURT: I understand. I understand. So the help
7 you were looking for when you went and started having a
8 conversation was, was for your cocaine addiction?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Okay. Now, I want to be absolutely clear
11 with you. One of the rights that you give up when you
12 plead guilty is you give up your right to challenge any
13 incriminating statements that you may have made. Because
14 one of the things that Mr. Farley can do, and I'm sure
15 he's been over that with you, is that he can challenge the
16 statements that you made to law enforcement if you were
17 promised certain things. Then, then those statements
18 stand the potentiality to be knocked out of your case.

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Doesn't mean they can't prove it some
21 other way. There's no way to know what the judge would
22 do, but if you gave statements with promises from law
23 enforcement, that can render those statements
24 inadmissible.

25 Now I can't tell you what a judge is going to. You

1 understand that?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Because, I can't. It's impossible. It
4 might come in, they might not come in. Do you understand
5 that?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: All right. Do you understand that one of
8 the rights that you give up is your right to have
9 Mr. Farley challenge those statements?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Okay. Do you want to think about that?

12 THE DEFENDANT: No, ma'am.

13 THE COURT: Okay. Do you want to go forward knowing
14 that?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Very well. Because what you're telling me
17 is that you made certain statements and you relied on
18 certain things. You understand that that hasn't
19 happened?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Okay. And that, that that might -- a
22 promise such as you have described might render those
23 statements inadmissible?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Knowing that, you still want to go

1 forward?

2 THE DEFENDANT: Yes, ma'am, because I'm ready to get
3 this part of my life over with.

4 THE COURT: I understand that. But still in all, you
5 know, 15 years is a very long time. You know that?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Okay. And you know that if you want to
8 back away from this you can do that. I'm certainly going
9 to let you do that. You know that; right?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: You want to go forward?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: You're positive?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: You don't want to talk to Mr. Farley about
16 that?

17 THE DEFENDANT: No, ma'am.

18 THE COURT: Okay. Very well.

19 Anyone else have any conversations with you that you
20 could consider to be a promise or an offer of a reward if
21 you pled guilty?

22 THE DEFENDANT: Not -- the sergeant, the sergeant or
23 the detective or the detective department?

24 THE COURT: Yeah.

25 THE DEFENDANT: It was, it was a certain, it was a

1 certain burglary --

2 THE COURT: Uh-huh.

3 THE DEFENDANT: -- that I told on myself about. And
4 she was, like, if for sure you did this and if you're
5 willing to write this statement, I can get all of your
6 charges dropped except this one.

7 THE COURT: Okay.

8 THE DEFENDANT: And that's the Brian Morton case.

9 THE COURT: It is?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: And who was that?

12 THE DEFENDANT: It's a female.

13 THE COURT: Okay. All right. And you understand,
14 again, that Mr. Farley can contest that on that basis? Do
15 you know that?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Here's what we're going to do. I want to
18 be absolutely certain that you are not being motivated by
19 your conversations with law enforcement. We're going to
20 finish this after lunch if you choose. You're in control.

21 But what I want you to do is I want you to take each
22 and every statement that Mr. Farley has or Mr. Hilton, and
23 I want y'all just to spend just a couple minutes and be
24 sure that Mr. Farley has all of Mr. Howell's statements
25 and let him go over those statements to be absolutely

1 certain this is what he wants to do. Okay?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And then if he wishes, then we will
4 conclude this matter after lunch. Just, I want to be
5 absolutely certain that, that Mr. Howell understands his
6 right to challenge his, any incriminating statements that
7 he has made in this case.

8 All right, Mr. Hilton? All right, Mr. Farley?

9 MR. FARLEY: Thank you, Judge.

10 THE COURT: Y'all got anything we can do quickly
11 before lunch?

12 MR. HILTON: We might as well break for lunch right
13 now, but I can go check with them if you'd like.

14 THE COURT: That's fine. That's fine.

15 (Lunch break taken at 12:51 p.m. After lunch at
16 2:25 p.m., the hearing of this cause continued:)

17 THE COURT: Back on the case with Mr. Howell.
18 Mr. Farley, did you have an opportunity to meet again with
19 Mr. Howell?

20 MR. FARLEY: I did. We had discussed the -- we took
21 awhile and discussed the statements that he had concern
22 about. And I also reminded him that there were other
23 statements that even if we were able to have those
24 statements suppressed, there were other statements, mainly
25 writings, directly to the solicitor's office after

1 notification from me not to make such writings that would
2 be able to be introduced, so...

3 THE COURT: I understand. And you understand all of
4 that, Mr. Howell?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Okay. Very well. All right.

7 Now and understanding that, do you wish to continue
8 with your plea?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: All right. Now, we've talked about --
11 you've shared with me what you have considered to be
12 conversations that you had with law enforcement at the
13 time that you gave certain statements.

14 And so I ask this question. Has anyone promised you
15 anything or held out any hope of a reward to get you to
16 plead guilty today?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Talked about the statements. But those,
19 as I understand what you were telling me earlier that had
20 to do with obtaining statements from you. In other words,
21 you had certain conversations with law enforcement folks.
22 And based on those law enforcement folks you gave
23 statements?

24 MR. FARLEY: She's asking you about, did somebody
25 bribe you to do this? Did somebody beat you up or --

1 THE DEFENDANT: Oh. No, ma'am.

2 THE COURT: In other words, nobody has promised you
3 anything or held out any hope of a reward to get you to
4 plead guilty?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: Okay. Has anybody tried to force you or
7 threaten you to get you to plead guilty?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: Has anybody tried to intimidate you to
10 make you plead guilty?

11 THE DEFENDANT: No, ma'am.

12 THE COURT: Has anyone done anything to overcome your
13 will to have you plead guilty?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: All right. Now, are you satisfied with
16 the services of Mr. Farley?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Have you and Mr. Farley talked about your
19 case enough times and for as long a period on each of
20 those occasions as you believe appropriate for him to
21 properly represent you?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Okay. And has Mr. Farley shared with you
24 evidence that the State has?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: All right. And I don't know that you
2 asked for copies of it, but if you did -- if you asked for
3 copies of that information, did he provide it for you?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: And did he talk -- I don't know that you
6 asked him to talk to certain people but if you did ask him
7 to talk to certain people, did he do that?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: And did Mr. Farley investigate your case?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: All right. And has he done everything for
12 you in your case that you believe he should have done or
13 could have done to properly represent you?

14 THE DEFENDANT: To the best of his ability.

15 THE COURT: All right. And has he done anything in
16 his representation of you that you believe he should not
17 have done?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: All right. And are you completely
20 satisfied with his services?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: All right. Very well.

23 Now, has anyone associated with your case mistreated
24 you in any way?

25 THE DEFENDANT: No, ma'am.

1 THE COURT: Have you understood my questions here
2 today?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Is there anything that you would like to
5 ask me about what we have just been over?

6 THE DEFENDANT: No, ma'am.

7 THE COURT: All right. Do you understand that you
8 have a right to appeal your guilty plea? Do you
9 understand that?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: You have a right also to appeal any
12 sentences that I impose. Do you understand that?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Do you understand though if you wish to
15 appeal, you or an attorney on your behalf must appeal
16 within 10 days. Do you understand?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: If you want Mr. Farley to appeal for you,
19 you need to let him know in enough time obviously so that
20 he can get that done. Do you understand?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And you really if you can, you should do
23 that in writing and keep a copy if you can as well.

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Now with respect to each and every answer

1 that you have given me here today, Mr. Howell, have you
2 been absolutely candid and truthful with me?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: And have your answers been your answers?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Has anybody told you how to answer my
7 questions?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: And if I ask you this question, whose
10 answers have you given me here today?

11 THE DEFENDANT: Mine.

12 THE COURT: Very well. Now, Mr. Howell, I'm about to
13 accept your plea. Is there anything that you want to tell
14 me that you haven't told me up to this point?

15 THE DEFENDANT: I'd just like to apologize to my
16 victims, Your Honor. Even though they're not here, I'd
17 still like to apologize to them.

18 Also I'd like to apologize to my family for bringing
19 them and putting them through something like this that I
20 know they raised me better than what I'm doing and I
21 should have been a better person than what I am. I just
22 hope that you show leniency on me, Your Honor. And that's
23 all I'd like to say.

24 THE COURT: Thank you.

25 Now, very well. I find that there is a substantial

1 factual basis for this plea. I find that the decision of
2 Mr. Howell to plead guilty is freely and voluntarily,
3 knowingly and intelligently made, that he has had the
4 advice of counsel with whom he says he's satisfied and
5 I'll accept the plea. All right. And --

6 MR. HILTON: We've gone over his record. He is
7 correct with his juvenile record, he had an unlawful
8 carrying of a weapon, 2010, determinate sentence. And I
9 think that's all been taken care of. No other adult
10 record.

11 And I will say that Mr. Ernest Barwick was here
12 earlier today. I think the Court indicated that he stood
13 up at one time. I went and spoke to him and he said that
14 he had to leave, that he had to take his wife to a
15 doctor's appointment. He wanted me to convey to the Court
16 that he was here.

17 And of course he was the victim of leaving the scene
18 of an accident. He said the day of they took him to the
19 hospital and his arm was a little bummed up. And they
20 patched that up. He went home and it wasn't until a day
21 or two later that they learned that he had ruptured some
22 blood vessels in his neck that caused some blood to go up
23 into his brain. He ended up having brain surgery and
24 almost died from this accident.

25 And he's okay with the negotiations by the State,

1 thinks that that's an appropriate amount of time. Just
2 wanted me to convey to the Court that he almost died from
3 this accident. It wasn't just a --

4 THE COURT: It was not minor injury. It was a major
5 injury.

6 MR. HILTON: Right. And so I did tell him that I
7 would convey that to the Court.

8 THE COURT: Thank you. Thank you, Mr. Hilton.

9 Yes, sir, Mr. Farley?

10 MR. FARLEY: And, Your Honor, really, what can I say.
11 We're faced with a 19-year-old child that's addicted to
12 crack cocaine, that had every opportunity in the world but
13 kept running into roadblocks.

14 What is our society coming to that we are here today
15 with a child who's 19 years old? He may be a grown man in
16 the eyes of law but he has the mentality of a juvenile.
17 What are we coming to?

18 He didn't have any help or services going through
19 school. I can't blame this all on society. He knows that
20 this is his fault.

21 But I just hope that in my career, in my job I can do
22 something to prevent this from happening. It's
23 heartbreaking. He's a good person. He's not one of those
24 evil people that I have come across in my career.

25 He just got addicted to drugs at a very young age,

1 dropped out of school. All of the stereotypical things
2 that, you know, once those dominoes start to fall.

3 Someone should have gotten him back into school or not
4 let him drop out at all. He obviously has ADD. You know,
5 cocaine and Ritalin, they kind of substitute for each
6 other.

7 You know, there's just all these things and it just
8 starts to spiral out of control. And I just feel horrible
9 that this happened. And, you know, that's why we're here
10 today. The mistakes that he made just compounded and
11 compounded and compounded.

12 He's told me from the beginning, he's written letters
13 to the solicitor about how sorry he is. About once he,
14 you know, got clean he realized everything that he had
15 done and kind of came into perspective. He realized what
16 it was for what it was.

17 You know, I'm rambling here because it's just so
18 frustrating to have -- when I was 19 years old I was a
19 freshman, sophomore in college. This kind of stuff was
20 not even on my radar screen, you know. Just to put myself
21 in his shoes at that age, I couldn't imagine what he's
22 going through.

23 But then again, I couldn't imagine what those victims
24 are going through. You know, the kid at the library
25 studying for the SAT this happens to.

1 And when I talked to him about it, when I asked, why
2 did you do that, he just did not -- the drugs were
3 controlling him. You know, voluntary intoxication, I've
4 explained all of that to him. But just if we could have
5 caught him earlier we could be somewhere else but we're
6 here today. And he's here to face the music. He knows
7 about the negotiations and just ask for the mercy that the
8 Court can show.

9 THE COURT: Very well. All right. And Mr. Howell,
10 you understand that this is a negotiated sentence?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: It's a thumbs up or thumbs down. You know
13 that; right?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Very well. Now, any of the other victims
16 present?

17 MR. HILTON: None of the other victims were present.
18 We notified all of the victims in the case. Some of them
19 responded back saying, you know, they had restitution in
20 the amounts that I've provided to the Court. And some of
21 them just wouldn't call us back, wouldn't respond to the
22 victim-impact statements or what have you. Of course we
23 didn't go out to their residence or anything. We do
24 believe they're still in town, but they made no effort to
25 get in touch with us whatsoever, you know, despite

1 mailings and phone calls and so forth.

2 And so the State's certainly prepared to go forward.

3 THE COURT: Okay. Very well.

4 And, Mr. Farley, I think it's eight months that your
5 client has been in the county jail; is that right?

6 MR. FARLEY: That's correct, Your Honor.

7 THE COURT: Okay.

8 Mr. Hilton, let me hear from you with regards to
9 restitution.

10 MR. HILTON: With regard to restitution, total amount
11 of \$22,169. We've conveyed to the victims the unrealistic
12 likelihood of them getting any restitution and indicated
13 that we would ask for a civil judgment in that amount.
14 And they understand that and were more concerned with
15 prison time versus restitution.

16 And the restitution is spread out. I will say most of
17 the restitution came, that we have indicated is to Blake
18 Kafka. That's the victim on the armed robbery and the car
19 jacking.

20 Although I don't know for sure but I feel sure there
21 was some insurance there that would have taken care of
22 some of that.

23 As for Mr. Ernest Barwick, he is seeking or pursuing a
24 civil case, I think, against some insurance companies and
25 so he will hopefully be made whole with regard to his

1 medical expenses and so forth that way. So that's the
2 State's position in regard to restitution.

3 THE COURT: Does anyone know any reason why at this
4 time I should not pass sentence on Mr. Howell? If so,
5 please let me hear from you.

6 All right. Hearing nothing then, Mr. Howell, with
7 regard to 2012-GS-18-687 which is the indictment for armed
8 robbery, I'm going to commit you to the State Department
9 of Corrections for a period of 15 years.

10 As a special -- well, I'm going to ask that the
11 Department of Corrections place you when space is
12 available in the ATU unit and give you an opportunity to
13 get some alcohol and drug treatment.

14 With regards to the restitution to Mr. Blake Kafka of
15 \$12,200, I'm going to enter a civil judgment. I'm going
16 to order that you're responsible for it but order a civil
17 judgment in that amount.

18 With regards to 2012-GS-18-688 which is the indictment
19 for car jacking, I am going to commit you to the State
20 Department of Corrections for a period of 15 months
21 (verbatim).

22 With regard to 2012-GS-18-692 which is the indictment
23 for burglary in the second degree violent I'm going to
24 commit you to the State Department of Corrections for a
25 period of 15 years.

1 With regards to 2012-GS-18-697 which is the indictment
2 for burglary in the second degree non violent, I'm going
3 to commit you to the State Department of Corrections for a
4 period of 10 years.

5 With regards to the restitution owed Mr. Morton of
6 \$6,569, I'm going to order that a civil judgment be
7 entered in that amount.

8 With regard to 2012-GS-18-1082 which is an indictment
9 for burglary in the second degree non violent, I'm going
10 to commit you to the State Department of Corrections for a
11 period of 10 years.

12 With regards to the restitution regarding and due
13 Ms. Ocuda (phonetically) I'm going to order that you be
14 responsible for \$3,000 of restitution and there be a civil
15 judgment entered in that amount.

16 With regard to 2012-GS-18-696 which is an indictment
17 for burglary in the second degree non violent, I'm going
18 to commit you to the State Department of Corrections for a
19 period of 10 years.

20 With regards to Indictment 2012-GS-18-694 which is an
21 indictment for burglary in the second degree non violent,
22 I'm going to commit you to the State Department of
23 Corrections for a period of 10 years.

24 With regards with the restitution due Ms. Mitchell in
25 the amount of \$400, I'm going to find, A, that that amount

1 is due, that you concur that it is due, and enter a civil
2 judgment in that amount in her favor.

3 With regards to 2012-GS-18-690 which is an indictment
4 for hit and run with minor personal injury, I'm going to
5 commit you to the county detention center for 30 days.

6 With regards to 2012-GS-18-689 which is an indictment
7 for failure to stop for blue light, no injury or death,
8 first offense, I'm going to commit you to the county
9 detention center for a period of 90 days.

10 These sentences will run concurrent. You are to be
11 given credit for the time that you have served which is
12 eight months. That causes the hit and run as well as the
13 failure to stop for blue light and siren to be time-served
14 sentences.

15 I've asked that you -- have you placed in the ATU unit
16 and the restitution amounts which have been indicated and
17 agreed to by you, I'm going to order that they be entered
18 as a civil judgment.

19 MR. FARLEY: Your Honor, on the second sentence you
20 gave you said 15 months. I'm not sure --

21 THE COURT: I wondered if I said that. Fifteen years.

22 MR. FARLEY: Yeah.

23 THE COURT: You know, as I was moving on, did I say 15
24 months or 15 years. Fifteen years.

25 MR. HILTON: That was in reference to the car jacking.

1 THE COURT: That's the car jacking. 2012-GS-18-688
2 car jacking, 15 years. In other words, it's a 15-year
3 sentence for the armed robbery, the car jacking, and the
4 burglary in the second degree violent. They are all 15
5 years, not 15 month but 15-year sentences.

6 MR. FARLEY: And they all run concurrent.

7 THE COURT: They all run concurrent and he is to be
8 given credit for the eight months that he has served.

9 MR. FARLEY: Thank you very much, Judge.

10 MR. HILTON: Thank you, Your Honor.

11 END OF PROCEEDINGS: 2:50 P.M.

12 ***

13 CERTIFICATE OF REPORTER

14
15 STATE OF SOUTH CAROLINA)

16 COUNTY OF AIKEN)

17
18 I, Cheri L. Young, Registered Professional Reporter
19 and Official Court Reporter for the State of South
20 Carolina, Second Circuit-At Large, do hereby certify that
21 the foregoing proceedings were written stenographically by
22 me using computer-aided translation; further, that the
23 foregoing is a true, accurate and complete record, to the
24 best of my skill and ability, of all the proceedings had
25 and evidence introduced in the hearing of the captioned

1 case, relative to appeal, in the Court of General Sessions
2 for Dorchester County, on the 5th day of December, 2012.

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

5 I have hereunder set my hand this 30th day of January,
6 2014.

A handwritten signature in black ink, appearing to read 'Cheri L. Young', is written over a horizontal line.

Cheri L. Young, RPR
Official Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of Dorchester)Bryan M. Howell 333433)

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

v.)

~~Bryan M. Howell~~)
State of South Carolina)

IN THE COURT OF COMMON PLEAS

2013-CP-18-

2123

APPLICATION FOR

POST-CONVICTION RELIEF

CLERK OF COURT
DORCHESTER COUNTY

2013 NOV 27 PM 3:30

CERTIFIED COPY

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 Dorchester County Detention Center
2. Name and location of Court which imposed sentence General Sessions
3. Name(s) of co-defendant(s) (if any) Khalis Jackson
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012GS18-0688 - Carjacking; 2012GS18-0687 - Armed Robbery
 - (b) 2012GS18-0697 - Burglary 2nd degree; 2012GS18-0696 Burglary 2nd

- (c) 2012 GS18-0694 Burglary 2nd degree; 2012 GS18-1088 Burglary 2nd
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 12-5-2012 15 years (Vio); 12-5-2012 15 years (Vio)
- (b) 12-5-2012 10 years (Non-Vio); 10 years (Non-Vio)
- (c) 12-5-2012 10 years Non-Vio; 12-5-2012 10 years (Non-Vio)
6. Check whether a finding of guilty was made: all ran concurrent.
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. N/A
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. N/A
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. N/A
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. N/A
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Ineffective counsel-Mitchell Farley did
- (b) not let me know about reserving the right

- (c) to appeal the judgement.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective counsel - Violation of my Sixth Amendment
- (b) Violation of my 4th Amendment - Not enough probable cause
- (c) for an arrest warrant to be obtained.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Mitchell Farley did not advise me about all the rights containing
- (b) Officers obtained an arrest warrant with little to
- (c) no probable cause.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. N/A
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. N/A
- iii. _____
- iv. N/A

(c) the disposition thereof:

- i. _____
- ii. N/A
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. N/A
- iii. _____
- iv. _____

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

- i. _____
- ii. N/A
- 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?

N/A

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

(a) which grounds have been presented:

- i. _____
- ii. N/A
- iii. _____

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

- i. _____
- ii. N/A
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) This is the first step into my PCR
 (b) process.
 (c) _____

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

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

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. Mitchell E. Farley
107 W. 6th North Street
 ii. Suite 100
Summerville, SC, 29483
 iii. _____

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

i. My arraignment
 ii. My plea
 iii. My sentencing

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

time reduction

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

No

STATE OF SOUTH CAROLINA)

County of Dorchester)

VERIFICATION

I, Bryan Howell, 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.

Bryan Howell

SWORN to and subscribed before me this 25
day of Nov, 2013.

Debra Sines (L.S.)
Notary Public BH

My Commission Expires: ~~12-5-13~~ 11-4-2015

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

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

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Bryan Howell
Applicant

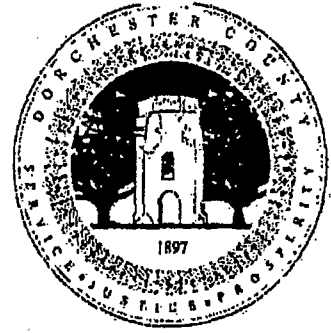
SWORN or affirmed to and subscribed before me this

25 day of Nov., 2013.

Dena Jones
Notary Public

My Commission Expires: 12-5-13 ^{BM} DE 11/4/2015

DORCHESTER COUNTY CLERK OF COURT
Cheryl Graham, Clerk of Court
5200 East Jim Bilton Blvd.
St. George, SC 29477



Date: 11/27/2013

Megan Harrigan
Assistant Attorney General
PCR Section
P.O. Box 11549
Columbia, S.C. 29211

Re: Bayon Michael Howell Vs. State of S.C.

Case No. 2013-CP-18-2123

Please find enclosed the following on the above captioned PCR.

1. *Certified Copy of the PCR Application, filed 11/27/2013*
2. *Certified copy of the General Sessions File., (indictment and sentencing sheet)*

If you need anything further, please contact Carolyn Ayer, Civil Court Coordinator at cayer@dorchestercounty.net/843-832-0108

Thank You,

M. Berry
Clerk of Courts Office
Dorchester County

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Bryan M. Howell, #353433,
Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

2013-CP-18-2123

RETURN

Respondent, making its Return to the Application for post-conviction relief filed November 27, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. Applicant was indicted during the November 5, 2012 term of the Dorchester County Grand Jury for Contributing to the Delinquency of a Minor, Possession of a Weapon During a Violent Crime, Armed Robbery, Carjacking, Failure to Stop for a Blue Light, Leaving the Scene of an Accident with Injury, Child Endangerment, five counts of Burglary in the Second Degree (Violent), and Attempted Burglary in the Second Degree (2012-GS-18-0685 to -0697) Applicant was represented by Mitchell D. Farley, Esquire. On December 5, 2012, Applicant appeared before the Honorable Diane S. Goodstein, where he pled guilty to Armed Robbery, Carjacking, Failure to Stop for a Blue Light, Leaving the Scene of an Accident with Injury, Burglary in the Second Degree (Violent), and three counts of Burglary in the Second Degree (Non-Violent); the remaining indictments were dismissed pursuant to the plea. In accordance with negotiations between the State and Applicant, Judge Goodstein sentenced Applicant to fifteen years for Armed Robbery, fifteen years for Carjacking, ninety days for Failure to Stop for a Blue Light, thirty days for Leaving the Scene of

an Accident with Injury, fifteen years for Burglary in the Second Degree (Violent), and ten years for each count of Burglary in the Second Degree (Non-Violent), with all sentences to be served concurrently. Applicant did not appeal his guilty pleas or sentences.

Attached herewith and incorporated herein are the records of the Dorchester County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the transcript from Applicant's guilty plea proceeding. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, Applicant alleges that he is being held in custody based on a claim of ineffective assistance of counsel, asserting that:

1. "Mitchell Farley did not let me know about reserving the right [to an appeal]."
2. "Not enough probable cause for an arrest warrant to be obtained."
3. "Mitchell Farley did not advise me about all the rights."
4. "Officers obtained an arrest warrant [sic] with little to no probable cause."

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

III.

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

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel raises questions of fact that 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.

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

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: Megan E. Harrigan
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

March 4, 2014.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

2013-CP-18-2123

BRYAN MICHAEL HOWELL, #353433

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,

Respondent.

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

Rodney D. Davis, Esquire
Lowcountry Law Office
4000 Faber Place Drive, Suite 300
Charleston, South Carolina 29405

DATED this 4th day of March, 2014.


Kelly Oppenheimer, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF DORCHESTER) COURT OF COMMON PLEAS
 No. 2013 CP 18 02123

3
 4 BRYAN MICHAEL HOWELL)
 5 Applicant)
 6 versus) TRANSCRIPT OF RECORD

7
 8 STATE OF SOUTH CAROLINA)

9 St. George, South Carolina
 10 May 24, 2017

11
 12 B E F O R E :

13 HONORABLE ROBERT E. HOOD, Judge Presiding

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

15 For the Applicant: R. DAVIS, Esq.

16
 17 For the State: R. NEELY, Esq.
 18 Assistant Attorney General

19 Reporter Present: HEATHER LANDRY

20
 21 HARRIET P. BENNETT
 Reporter, S. C. Court Administration
 22 46 Regency Oaks Drive
 23 Summerville, S. C. 29485
 24
 25

I N D E X

1			
2		Direct-Redirect	Cross-Recross
3	Questions by the Court	5	
4	APPLICANT		
5	By Mr. Davis	9-29	
6	By Mr. Neely		25
7	Mitchell Farley		
8	By Mr. Neely	31	
9	By Mr. Davis		36
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E X H I B I T S

NO EXHIBITS WERE PROFFERED OR MARKED

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1 (The within matter came before the Court for hearing
2 on May 24, 2017)

3 THE COURT: Are you Mr. Howell?

4 APPLICANT: Yes, sir.

5 THE COURT: All right. We're on the record in 2013 CP
6 18 2123, Bryan Michael Howell against the State of South
7 Carolina.

8 The State is present and represented by Mr. Neely.
9 Mr. Howell is present. Good afternoon, and he is repre-
10 sented by Mr. Davis.

11 Are you ready to go forward, Mr. Davis?

12 MR. DAVIS: Yes, Your Honor.

13 THE COURT: Are you ready to go forward, Mr. Neely?

14 MR. NEELY: Yes, sir, Your Honor.

15 THE COURT: All right. Tell us what we're here on
16 and we'll begin with a witness.

17 You can sit down. Thank you.

18 MR. NEELY: This is the case of Bryan Michael Howell
19 versus the State of South Carolina. It is Number 2013 CP
20 18 2123.

21 Applicant is presently confined in the South Carolina
22 Department of Corrections pursuant to Orders retained by the
23 the Dorchester County Clerk of Court.

24 The Applicant was indicted in the November fifth, 2012,
25 Term by the Dorchester County Grand Jury for mistreatment

1 as relating to a minor, possession of a weapon during a vio-
2 lent crime, armed robbery, carjacking, failure to stop for a
3 bluelight, leaving the scene of an accident with injury,
4 child endangerment, five counts of burglary in the second
5 degree, violent, and attempted burglary in the second de-
6 gree.

7 Those Indictments involved Numbers 18 067 to 069. The
8 Applicant was represented by Mr. Farley. He pled guilty on
9 December fifth of 2012 to armed robbery, carjacking, fail-
10 ure to stop for a bluelight, leaving the scene of an acci-
11 dent with injury, burglary in the second degree, violent,
12 and three counts of burglary in the second degree, non-vio-
13 lent, a lesser included charge.

14 The remaining Indictments were dismissed as far as
15 plea negotiations, and Judge Goodstein sentenced the Appli-
16 cant to fifteen years.

17 THE COURT: Now, Mr. Howell, stand up and raise your
18 right hand.

19 (Whereupon, the Applicant was sworn by the Court)

20 THE COURT: You made a plea back in 2012. Is that
21 right?

22 APPLICANT: Yes, sir.

23 THE COURT: Okay, and you got a sentence of fifteen
24 years. Is that right?

25 APPLICANT: Yes, sir.

1 THE COURT: And you got violent time and most serious
2 time, no parole time -- all that good stuff. Right?

3 APPLICANT: Yes, sir.

4 THE COURT: Okay, and you pled to an armed robbery and
5 you also pled to one count of -- let's see -- carjacking
6 which would carry up to twenty years in prison. Do you un-
7 derstand that?

8 APPLICANT: Yes, sir.

9 THE COURT: And leaving the scene and that's without
10 bodily injury, and then you pled to failure to stop for a
11 bluelight. That's three years.

12 You pled to hit and run with personal injury which is
13 one year . .

14 MR. NEELY: Judge, if it will make us get this -- there
15 was a bunch of them. Armed robbery, which is ten to thirty;
16 carjacking, zero to twenty; failure to stop for a bluelight,
17 ninety days to three years.

18 Leaving the scene with injury, zero to ten.

19 THE COURT: Okay, and then you had a bunch of burglar-
20 ies in the second degree, violent, which would carry a
21 maximum of fifteen, violent and serious time. Do you under-
22 stand that?

23 APPLICANT: Yes, sir.

24 THE COURT: And then you have a bunch of other burglar-
25 ies -- it seems you pled to a burglary, non-violent, which

1 would be ten years. Is that right?

2 APPLICANT: Yes, sir.

3 THE COURT: You pled to three of those?

4 APPLICANT: Yes.

5 THE COURT: But there were more burglaries that existed?

6 APPLICANT: Another burg second, violent, that was dis-
7 missed and an attempted burg second, violent, that was dis-
8 missed.

9 MR. NEELY: Zero to fifteen.

10 THE COURT: Okay, so do you understand that if you -- I
11 don't know anything about your case other than what we just
12 have discussed here.

13 So do you understand that if I grant your PCR -- I'm
14 not saying I will, but if I do then your whole case starts
15 over and you go back to face all of those original charges,
16 and you go back to facing them all being run consecutively
17 to each other? It would create close to a -- it wouldn't be
18 a life sentence but it could be an equivalent of a life sen-
19 tence by giving you somewhere around sixty years in prison.
20 Maybe more than seventy or eighty years in prison if they
21 ran them consecutive to each other and you were convicted.
22 Do you understand that?

23 APPLICANT: Yes, sir.

24 THE COURT: So do you understand that is a risk that
25 you run if you go forward with this post conviction relief

1 application?

2 APPLICANT: Yes, sir.

3 THE COURT: Do you understand that risk?

4 APPLICANT: Yes, sir.

5 THE COURT: For the armed robberies alone it could get
6 you fifty years, violent, most serious, no parole, and
7 eighty-five percent.

8 Even if you won every single burglary charge you could
9 have every one of those charges run consecutively, and do
10 you understand that's what you would be facing if you won
11 this PCR?

12 APPLICANT: Yes, sir.

13 THE COURT: And no one is promising that if you do win
14 that you would get fifteen years or any better. The Judge
15 could be a very different Judge and could give you more of
16 that time. You understand all that?

17 APPLICANT: Yes, sir.

18 THE COURT: And you still want to go forward?

19 APPLICANT: Yes, sir.

20 THE COURT: Okay, no problem. Go ahead.

21 MR. NEELY: As best I can figure, I had it up to one
22 twenty-eight.

23 THE COURT: Okay.

24 MR. NEELY: I honestly wasn't sure about the child en-
25 dangerment statute but it is at least one twenty-eight as I

1 total them.

2 THE COURT: Yes, sir. More than a hundred years that
3 you are potentially facing if you win your PCR. A fair
4 statement?

5 APPLICANT: Yes, sir.

6 THE COURT: You understand that?

7 APPLICANT: Yes, sir.

8 THE COURT: All right. Go ahead.

9 MR. DAVIS: We would call Mr. Howell to the stand.

10 THE COURT: Come on up.

11 BRYAN MICHAEL HOWELL, being
12 duly sworn, testified as follows:

13 CLERK: State your full name for the record.

14 WITNESS: Bryan Michael Howell.

15 DIRECT EXAMINATION

16 BY MR. DAVIS:

17 Q. Mr. Howell, how old are you today?

18 A. Twenty-three.

19 Q. And so how old were you back when you did this guilty
20 plea?

21 A. Eighteen -- nineteen.

22 Just turned nineteen.

23 Q. Tell the Judge how far did you go in school?

24 A. Ninth or tenth grade.

25 Q. Where was that?

1 A. (inaudible) Alternative.

2 Q. And can you tell the Judge about why there? Tell the
3 Judge what that place is?

4 A. Well, it's a place I guess for adolescents with behav-
5 ioral problems, I'd say, in a regular school.

6 THE COURT: What years did you go to that?

7 APPLICANT: It was 2009.

8 THE COURT: What year of school?

9 APPLICANT: Tenth, I think, was the last I went.

10 THE COURT: Okay.

11 BY MR. DAVIS:

12 Q. You did not graduate?

13 A. No, sir.

14 Q. Do you have your GED?

15 A. Yes, sir.

16 Q. You got that when?

17 A. In 2013 at Lee Correctional.

18 Q. While you've been incarcerated. Right?

19 A. Yes, sir.

20 Q. Okay. Now, you heard the Judge just go over with you
21 not only all the charges you were originally arrested for,
22 right, but . .

23 A. Yes, sir.

24 Q. . . you just talked about those, and you heard the
25 Attorney General talk about the ones you pled to. Do you

APPLICANT ON DIRECT

1 recall that?

2 A. Yes, sir.

3 Q. Okay. Now, on that case with all of those charges who
4 was your attorney?

5 A. Mr. Farley.

6 Q. Is he in the Courtroom today?

7 A. Yes, I guess so.

8 Q. Now, was he hired or was he appointed to you?

9 A. Appointed.

10 Q. Okay. Now, between the time that you were arrested and
11 when you went to Court for the plea, do you recall
12 how long it was?

13 A. Can you repeat the question?

14 Q. Sure. From the time you were arrested until you went
15 to Court to plead guilty, do you recall how long that was?

16 A. Like seven or eight months. Something like that.

17 Q. Okay, would May second, 2012, for arrest sound about
18 right?

19 A. Yes, sir.

20 Q. Okay, and then December 5th of 2012 was your guilty
21 plea?

22 A. Yes, sir.

23 Q. Now, during that seven, eight months were you in jail
24 or out of jail on bond?

25 A. Inside.

1 Q. Couldn't make bond?

2 A. No, sir.

3 Q. Okay. During that seven or eight months, how many times
4 would you say you met with Mr. Farley?

5 A. About three times.

6 Q. Okay, and were those in person over at the County Jail?

7 A. Two of them were and one was here.

8 Q. Here at the Courthouse?

9 A. Yes.

10 Q. Would that have been the day that you pled guilty?

11 A. Yeah, I guess. Yes, sir.

12 Q. Okay. Now, you remember some specifics about those
13 three meetings, don't you?

14 A. Yes, sir.

15 Q. Can you tell the Judge what happened the first time Mr.
16 Farley came to see you?

17 A. He came to let me know he was my attorney and that he
18 was appointed to represent me. He didn't have the discovery
19 yet.

20 Q. Didn't have the discovery but wanted to come by and say
21 hi to you?

22 A. Yes, sir.

23 Q. Okay, and then what happened on the second visit?

24 A. On the second visit he really didn't discuss it but he
25 also said something about a ten year plea. He had my motion.

- 1 Q. Okay. Let's break that down a little bit. Okay?
- 2 You said he had your motion so did he give you a copy
- 3 of it?
- 4 A. Not that day. It was supposed to be coming and was on
- 5 the way.
- 6 Q. Okay, so that day he visited he didn't bring a copy with
- 7 him but he told you it was on the way?
- 8 A.. Yes, sir.
- 9 Q. Did you get it?
- 10 A. Yes, sir.
- 11 Q. Okay. Obviously he didn't have it that day so you did-
- 12 n't review it with him that day?
- 13 A. No, sir.
- 14 Q. Okay, and now tell the Judge what you said -- you men-
- 15 tioned something about a ten year plea. What was that all
- 16 about?
- 17 A. Well, he just said like between him and the State they
- 18 were having talks about a ten year plea but none of it was
- 19 in writing.
- 20 Q. Did he ask you to make a decision on that offer that
- 21 day?
- 22 A. Somewhat, but I had already said no.
- 23 Q. Okay, and what he told you wasn't in writing yet?
- 24 Right?
- 25 A. Yes, sir.

1 Q. Okay. Now, there was a third meeting, and that third
2 meeting -- where do you think that happened?

3 A. Here.

4 Q. Here at the Courthouse?

5 A. Yes, sir.

6 Q. Okay, and what was discussed in that third meeting?

7 A. A fifteen year plea deal.

8 Q. Did you talk about anything else, other than the offer?

9 A. No, sir. It was just -- I was just told that it was
10 in my best interest to take fifteen.

11 Q. Okay. Now, Mr. Farley told you that?

12 A. Yes, sir.

13 Q. Okay. So when did you all have a chance to go over what
14 the State's evidence was against you on all of these charges?

15 A. I'd say about the second visit.

16 Q. Okay.

17 A. Because he did bring his copy of the motion on the sec-
18 ond visit.

19 Q. Okay, so you think he probably -- the way you recall it
20 now is he did bring the paperwork with him?

21 A. If I'm not mistaken I think he did bring his copy of
22 the motions the second visit.

23 Q. That would have been at the jail?

24 A. Right. Yes, sir.

25 Q. And so you had a chance to look at it and he was there

1 then to talk to you about it?

2 A. Yes, sir, somewhat.

3 Q. How long do you think that lasted?

4 A. Not too long.

5 Q. Do you think you went through all the pages of all
6 these different charges?

7 A. No, sir.

8 Q. On any of these meetings did he ever discuss with you
9 what he was doing, if anything, to prepare any of these cases
10 for trial?

11 A. No, sir.

12 Q. Did he ever send you a letter talking about what he was
13 doing to prepare for trial?

14 A. No, sir.

15 Q. Did he ever talk to you about how a trial happens in
16 South Carolina State Court?

17 A. No, sir.

18 Q. On the other side, did he talk to you about pleading
19 guilty rather than going to trial?

20 A. Yes, sir.

21 Q. What did he say about that?

22 A. He said that they ---he said basically that based on my
23 statement it was best for me to plea up.

24 Q. Did he ever talk to you about what would happen if
25 you didn't plead out?

APPLICANT ON DIRECT

1 A. . .

2 Q. What was going to happen to you if you fought it?

3 A. It sound like he did say that I could get a hundred
4 and twenty years in prison.

5 Q. Did that stick in your head?

6 A. Yes, sir.

7 Q. That worry you?

8 A. Very much so.

9 Q. I'm going to skip ahead because you mentioned just a
10 second ago -- there was a statement. You gave a statement
11 to the police. Right?

12 A. Yes, sir.

13 Q. Okay, was there any discussions about your statement
14 with Mr. Farley? Meaning -- I'm sorry. Let me rephrase
15 that.

16 Did you and Mr. Farley ever talk about your statement
17 to the police?

18 A. Would you repeat that again?

19 Q. Did you and Mr. Farley ever talk about your statement
20 to the police?

21 A. Not really. Kind of but not really.

22 Q. Tell the Judge what you mean by kind of but not really.

23 A. What I mean is, it just was, man, why did you give a
24 statement and I told him why I give a statement, and he was
25 like you shouldn't have did that.

1 Q. Did he ever talk about how he might try to block that
2 in a trial?

3 A. No, sir.

4 Q. Did he ever talk about any pre-trial motions to try to
5 prevent the jury from hearing it?

6 A. No, sir.

7 Q. Did he ever use the term Deno or a Deno Motion or a
8 Deno hearing?

9 A. No, sir.

10 Q. Along that line did he ever talk to you about any fact-
11 ual or legal defenses you might have to these charges?

12 A. No, sir.

13 Q. Now, you talked to the Judge a little bit about Givhans
14 and why you were there, but had you ever been to trial on
15 any charge before?

16 A. No, sir.

17 Q. Now, you've got a bunch of these charges here, and some
18 of them went away with your plea. Right? You had a bunch
19 of them, and did your attorney ever talk to you about the
20 elements or what the State would have to prove to convict
21 you of each of the charges?

22 A. No, sir.

23 Q. Let me get this for the record, okay. Did he ever talk
24 to you about what the State had to prove to convict you of
25 armed robbery?

- 1 A. No, sir.
- 2 Q. What about what they'd have to prove for carjacking?
- 3 A. No, sir.
- 4 Q. How about failure to stop for a blue light?
- 5 A. No, sir.
- 6 Q. Leaving the scene of an accident with injuries?
- 7 A. No, sir.
- 8 Q. Burglary in the second degree, violent?
- 9 A. No, sir.
- 10 Q. How about burglary in the second degree, non-violent?
- 11 A. No, sir.
- 12 Q. Contributing to the delinquency of a minor?
- 13 A. No, sir.
- 14 Q. Possession of a weapon during the commission of a vio-
- 15 lent crime?
- 16 A. No, sir.
- 17 Q. Child endangerment?
- 18 A. No, sir.
- 19 Q. Attempted burglary, second?
- 20 A. No, sir.
- 21 Q. Did he ever send you the statutes or show you the laws
- 22 for those different crimes?
- 23 A. No, sir.
- 24 Q. You did have copies of the warrants on all of those
- 25 charges. Right?

1 A. Yes, sir.

2 Q. Okay. Now, we need to talk -- there is one issue about
3 a warrant being served. Do you want to tell the Judge about
4 that?

5 A. Yes, sir.

6 Q. Why don't you explain your problem with that? Tell the
7 Judge.

8 A. Well, as I was doing basic searching myself for my case
9 I came across subsection 22 dash 5 dash one A, where it is
10 clearly states that a Magistrate or Judge/^{or deputy}cannot swear up a
11 warrant and serve me the same warrant.

12 On the basis of my arrest warrants it could be shown
13 he's the one that served me my arrest warrant which is a
14 clear violation of the law because right there in that sub-
15 section it says that he is not allowed to serve me my ar-
16 rest warrant and be the affiant to get the warrant.

17 That is basically all I'm making an issue, that that
18 was wrong because that officer obstruct justice because he
19 had some bias or opinion against me because he automatic-
20 ally feel like I'm in the wrong, all along, and make me feel
21 like he want to put me in prison on a filing and serving my
22 arrest warrant.

23 That automatically violate the law. Whether that is
24 right or wrong I don't know but that's what I feel like,
25 like there is something in that subsection, and I just wanted

1 to put that on the record.

2 Q. All right. Now, there is a Codefendant who was arrested
3 as well, and, just very quickly, he has passed since this
4 happened? He has died. Right?

5 A. Yes, sir.

6 Q. But he gave a statement back when he was arrested as
7 well. Right?

8 A. Yes, sir.

9 Q. You were aware of that because you had to pay for it.
10 Correct?

11 A. Yes, sir.

12 Q. Did you and Mr. Farley ever discuss your Codefendant's
13 statement and whether it would help your case or hurt you?

14 A. Not really.

15 Q. Okay. Well, tell the Judge what you do remember dis-
16 cussing about him?

17 A. Well, that it wasn't really him discussing it with me.
18 It was the fact that I felt his statement clearly states that
19 -- I told him that he signed a statement where it clearly
20 says a name of Brandon Howell which is not my name.

21 So on his statement they come and lock me up and on
22 his statement how could they come and lock me up.

23 Q. And just for the record, give me your full name, first,
24 middle and last name.

25 A. Bryan Michael Howell.

1 Q. Okay, so you are not Brandon Howell?

2 A. No way.

3 Q. But in your CoDefendant's statement he said a Brandon

4 Howell committed the crimes with him. Right?

5 A. Yes, sir.

6 Q. And you told your attorney that. Right?

7 A. Yes, sir.

8 Q. Do you remember what his response was? Your attorney's

9 response?

10 A. That's just -- he say it was a typo.

11 Q. Well, did he use the word typo or did he use another

12 word?

13 A. He say it wasn't important.

14 Q. Okay. So was there any -- so did that -- obviously the

15 name given -- tell me if that's how it was ran by you?

16 A. Yes, sir.

17 Q. Were there other parts of the statement though that

18 hurt you in any way?

19 A. Not according to his statement, no.

20 Q. Okay.

21 A. Because if they was to use his statement -- if they

22 was to use his statement against me it's not against me,

23 period.

24 Q. So did you and your attorney ever talk about how he

25 might use the CoDefendant's statement back against him to

APPLICANT ON DIRECT

1 help you at trial?

2 A. No, sir.

3 Q. There is also a description given of not your CoDefen-
4 dant -- for the record, his name?

5 A. Colese Jackson.

6 Q. In addition to his statement, the accuser described the
7 second person -- they accuse you of being the second person
8 -- the accuser described that person. Right?

9 A. Yes, sir.

10 Q. Do you recall the description?

11 A. Six foot two, ~~dark~~ skin with afro.

12 Q. Okay. Back when this supposedly happened, did you have
13 an afro?

14 A. No, sir.

15 Q. And in your opinion are you dark skinned or light
16 skinned?

17 A. Light skinned.

18 Q. I think the Court can take judicial notice of that,
19 but for the record, and how tall are you?

20 A. Five seven. About five seven.

21 Q. Did you and your attorney ever discuss how you could
22 use the description which does not match you in front of a
23 jury at the trial?

24 A. No, sir.

25 Q. Now, you didn't go to trial. You pled guilty. Right?

1 A. Yes, sir.

2 Q. Why?

3 A. Because I felt like my back was against the wall.

4 Q. Tell the Judge what you mean by that?.

5 A. Well, I had told my attorney and by the police offi-
6 cer also, the arresting officer, that all I wanted was help
7 for my drug problem, and that's the reason why I gave my
8 statement.

9 Because they almost--- the police officer said they
10 would give me help for my drug problem, so I told them what
11 they wanted to hear. I told them the truth because my daddy
12 always told me to tell the truth; it keeps you out of trou-
13 ble, you know. If you lie, you're going to get in more
14 trouble.

15 I didn't know that . .

16 Q. Let me pause you there. Did you tell your attorney
17 that?

18 A. That I wanted help with my drug problem?

19 Q. Yes.

20 A. Yes, sir.

21 Q. Okay. You recognized issues with the State's evidence
22 against you when you went through your paperwork? Right?

23 A. Yes, sir.

24 Q. You shared that information with the attorney?

25 A. Yes, sir.

1 Q: Did he advise you to go to trial or to accept this plea
2 offer?

3 A. Plead. He never even talked about a trial.

4 Q. So did you feel confident or not confident working with
5 your attorney if you had chosen to go to trial?

6 A. What did you say?

7 Q. Confident or not confident?

8 A.. Not confident.

9 Q. Okay. Did he advise about pleading guilty versus fac-
10 ing a hundred and twenty years -- did that influence your
11 decision?

12 A. Yes, sir.

13 Q. How worried were you about what he predicted actually
14 happening? The hundred and twenty years?

15 A. I was very concerned about everything he said.

16 Q. So can you explain to Judge Hood what, if anything,
17 you knew that your lawyer had done to prepare to defend you
18 at trial versus your taking this deal?

19 A. I didn't know -- I didn't have no knowledge of what he
20 did. No, sir.

21 Q. If you had been -- if it had been discussed with you,
22 things your attorney was doing behind the scenes to prepare
23 for trial; if he had talked with you about how your state-
24 ment, the CoDefendant's statement and description of the
25 accuser -- if that had happened back then, would you have

1 taken this plea or would you have gone on to trial?

2 A. I would have taken the trial.

3 Q. What was the biggest influence against your not going
4 to trial and pleading guilty?

5 A. My statement would hurt me.

6 MR. DAVIS: If I could have one second, Your Honor,

7 (Brief pause)

8 BY MR. DAVIS:

9 Q. Thank you, Mr. Howell. That's all the questions I
10 have.

11 CROSS EXAMINATION

12 BY MR. NEELY:

13 Q. Mr. Howell, do you remember your guilty plea?

14 A. Yes, sir.

15 Q. Do you remember swearing to tell the truth?

16 A. Yes, sir.

17 Q. Do you remember what Judge you had?

18 A. Ms. Goodstein.

19 Q. Do you remember Judge Goodstein going over a number of
20 issues with you?

21 A. What kind of issues, sir?

22 Q. Well, for instance, when you're talking about incrim-
23 inating statements that you made, your statement you gave to
24 law enforcement?

25 Do you remember what Judge Goodstein told you, that

APPLICANT ON CROSS

1 you were giving up that right to challenge that statement by
2 pleading guilty?

3 A. Yes, sir.

4 Q. And you said you understood?

5 A. Yes, sir.

6 Q. You understood you were giving up that right, and in
7 fact you said you understood and then you even had a minute
8 where you spoke with Mr. Farley about it?

9 Do you recall that?

10 A. Yes, sir.

11 Q. And Judge Goodstein gave you some time to talk some
12 more about that to make sure you understood everything that
13 was going on?

14 A. Yes, sir.

15 Q. Remember Judge Goodstein going over that stuff with you?

16 A. Yes, sir.

17 Q. And whenever Judge Goodstein asked you if you were sat-
18 isfied with Mr. Farley's representation you said you were?

19 A. Yes, sir.

20 Q. Let's take one step back. From the very beginning in
21 your statement to law enforcement you say you told the truth.
22 You've always said you were guilty, right?

23 A. Yes, sir.

24 Q. And you said you were doing the right thing by telling
25 law enforcement the truth. Right?

1 A. Yes, sir.

2 Q. And during the guilty plea it was very fearful on both
3 sides, on all sides?

4 A. . .

5 Q. And you worked your way on until you were sentenced, is
6 that right?

7 A. Yes, sir.

8 Q. And you were on drugs?

9 A. Yes, sir.

10 Q. And let's talk about the plea a little bit. Judge
11 Christine Orlega with the ATU, the Addiction Treatment
12 Unit at SCDC -- you remember that?

13 A. Yes, sir.

14 Q. And when you said -- well, more than just telling law
15 enforcement what you did, you wrote several letters to the
16 Solicitor's Office. Right?

17 A. Yes, sir.

18 Q. And in those letters, you know, you never challenged
19 that you weren't guilty but you said you wanted to get help?

20 A. Yes, sir.

21 Q. And so really you've never challenged your guilt of
22 these crimes but you just challenge the fact that you were
23 on drugs?

24 A. Yes, sir.

25 Q. And that you wanted help?

27

1 A. Yes, sir.

2 Q. And that's what you told Mr. Farley. Right?

3 A. Yes, sir.

4 Q. So when the Judge asked you if you were guilty of doing
5 these things, after going through a number of things, you
6 didn't challenge that you were guilty? You said you were
7 guilty. Right?

8 A. Yes, sir.

9 Q. That was the truth. Right?

10 A. Yes, sir.

11 Q. And I understand you have some problems with technical-
12 ities relating to the statements, but you've waived all of
13 those challenges when you pled guilty. Right?

14 A. Yes, sir.

15 Q. Judge Goodstein tried her very best to go over each
16 and every one of those. Right?

17 A. Yes, sir.

18 Q. She told you about your rights to appeal within ten
19 days if you wanted to appeal. Do you remember that?

20 A. Yes, sir.

21 Q. She -- this is one of the longest plea transcripts I
22 have ever seen, some seventy pages of plea transcript.

23 She wanted to be very sure you understood what you were
24 doing. Right?

25 A. Yes.

1 Q. She asked you a number of questions about your rights?

2 A. Yes, sir

3 Q. And you said you understood and you did understand the
4 rights?

5 A. Yes, sir.

6 Q. Because you were not on drugs right then. Right?

7 A. Yes, sir.

8 Q.. If you're not on drugs then you understand what's going
9 on?

10 A. Very well what's going on.

11 Q. Right. Exactly, but when you were on drugs you did
12 things you would never have done without the drugs, is that
13 right?

14 A. Yes, sir.

15 Q. I have no further questions.

16 THE COURT: Mr. Davis.

17 REDIRECT EXAMINATION

18 BY MR. DAVIS:

19 Q. Are there things you have learned since your guilty
20 plea about your attorney's performance that would change
21 your answer about whether you are satisfied with him or not?

22 A. How do you mean?

23 Q. The Attorney General just asked you if you remember
24 telling Judge Goodstein you were satisfied with Mr. Farley
25 at the plea.

APPLICANT ON REDIRECT

1 Is that right?

2 A. Yes, sir.

3 Q. You believed you were, right?

4 A. Yes, sir.

5 Q. Have you learned anything since that date that would
6 change that answer?

7 A. Yeah. Like the real definition of things and the fact
8 of intimidation with him telling me I will receive a hundred
9 and twenty years in prison.

10 Him telling me that amount of time basically scared me
11 into I don't want a trial, I don't want a trial. Not if
12 you get that many years basically.

13 Q. Just like the issue about the statutes and the deputiz-
14 ing of the affiant -- you've done some legal research since
15 your incarceration. Right?

16 A. Yes, sir.

17 Q. All right, is there a legal library in the Dorchester
18 County Jail?

19 A. No, sir.

20 Q. Is there one where you've been incarcerated?

21 A. Yes, sir.

22 Q. And so was your answer back then to Judge Goodstein a
23 truthful answer?

24 A. Yes, sir.

25 Q. And has that changed?

30

1 A. Yes, sir.

2 MR. DAVIS: No further questions, Your Honor.

3 MR. NEELY: None from the State, Your Honor.

4 THE COURT: You can step down. Thank you.

5 (Applicant excused from stand)

6 THE COURT: You may call your next witness.

7 MR. DAVIS: Judge, that would be the Applicant's pre-
8 sentation.

9 THE COURT: Okay. Mr. Neely.

10 MR. NEELY: The State would call Mr. Farley to the
11 stand.

12 MITCHELL. FARLEY, being duly sworn,
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MR. NEELY:

16 Q. Mr. Farley, did you represent Mr. Howell?

17 A. I did.

18 Q. And were you appointed?

19 A. Yes.

20 Q. From the very beginning, what was Mr. Howell's posi-
21 tion on whether he was innocent or guilty?

22 A. Guilty. He readily admitted his guilt.

23 Q. And from that point what was your focus in the case?

24 A. Damage control. The less possible time for a plea, and
25 we had to go around overwhelming evidence against him.

M. FARLEY ON DIRECT

1 Q. Just briefly, what was that evidence?

2 A. He was accused of burglaries that culminated where a
3 kid was coming out of the public library from studying there,
4 and there was an armed robbery and kidnapping him.

5 The strongest evidence comes from the carjacking and
6 then after that arrest he goes and elaborates into some of
7 the other burglaries.

8 There was fingerprint evidence, and the crux of the
9 case as far as the Solicitor was concerned and where the
10 evidence was most damaging was the carjacking.

11 He wrote a statement admitting whatever were the facts
12 of what happened. I can't remember the facts exactly.

13 But with the victim's statement -- the victim wrote a
14 statement where it says that the person who had the gun and
15 pointed it to my chest was a light skinned African black man
16 in a black zip-up jacket.

17 There was also a photo lineup in which he was identi-
18 fied. So we had his statement, the photo lineup and then
19 the statement of the victim, not to mention the fingerprints
20 and so forth in the burglaries. In the statements it was
21 word for word discussed.

22 Q. And do you recall when he pled guilty what he said?

23 A. I do not know exactly and would not be sure of the
24 number of things he said but I will say it was the policy
25 of the Public Defender's Office to meet with clients who were

1 in jail once a month.

2 I know that I had several discussions with him. I also
3 had several -- I responded to several letters

4 Q. Were you aware of letters that he sent to the Solicitor's Office?
5

6 A. I was.

7 Q. Did the Solicitor's Office give you a copy of those?

8 A. Yes,

9 Q. Did you discuss trial preparation with him at all?

10 A. We went over what the charges were, the separate charges.
11 We went over the statements. He was concerned with a state-
12 ment of -- probably more concerned with the statements and
13 what they had to do to get them in and what we had to do to
14 keep them out.

15 So, yes, we went over the basic trial prep.

16 Q. And can you give us your opinion about whether the
17 statements would have come in?

18 A. Despite what we could do they would have come in.

19 Q. Did you give advice on whether he should plead or go
20 to trial?

21 A. I am sure I said that he should plead.

22 Q. Okay.

23 A. I wrote him a letter one of the times and I think this
24 basically sums it up.

25 Q. Did you tell him in the letter that there was

1 absolutely no chance that he would be acquitted?

2 A. Yes.

3 (Witness reading from letter)

4 You must remember that the charges are extremely ser-
5 ious charges, as I told you before. Please remember you do
6 not have to plead to every charge.

7 Q. So you thought from the evidence against him that the
8 best thing would be for him to plead?

9 A. Absolutely. I told him that from what I'd heard the
10 Solicitor had said he was not going to reduce the charges,
11 and I told him the very least that you could possibly get if
12 the Solicitor doesn't reduce charges, as I remember.

13 Q. Okay. That was basically armed robbery . .

14 A. That correct.

15 Q. And even though you did not believe the statements
16 could be kept out, did you intend to argue that they be kept
17 out?

18 A. I believe so, and what I do recall ---I remember Mr.
19 Howell and I like Mr. Howell. I felt terrible for him being
20 in that situation he was in.

21 I remember him bringing up issues and me going into the
22 why and why not. I remember that.

23 Q. Do you recall doing the plea with him?

24 A. Yes. It was a long plea.

25 Q. Do you recall different conversations you had when you

1 spoke with him?

2 Q. I remember the long plea. I remember it taking over an
3 hour probably, but I think he would just ask me questions
4 and I would answer.

5 Q. Do you recall the Defendant being concerned about the
6 statement he made to law enforcement and why he made the
7 statement?

8 A. Why he talked to law enforcement?

9 Q. Yes.

10 A. He talked about law enforcement promising him something
11 and I am sure they felt sorry for him.

12 Q. And Judge Goodstein went over that fairly in fairly
13 intricate detail and took a lunch break just so you could
14 discuss it with him?

15 A. And we talked about suppression hearings and other
16 things to ensure his understanding.

17 MR. NEELY: Judge, I believe that's on page 39. Judge
18 Goodstein took a break.

19 BY MR. NEELY:

20 Q. Isn't that correct?

21 A. Yes.

22 Q. Just to make sure he knew what he was doing?

23 A. Correct.

24 MR. NEELY: That's all I have at this time, Your
25 Honor.

1 THE COURT: All right.

2 CROSS EXAMINATION

3 BY MR. DAVIS:

4 Q. Just to be clear, you worked for the Public Defender's
5 Office at the time you were appointed to represent Mr.
6 Howell?

7 A. That's correct.

8 Q. And at that time did you have an on-staff investigator
9 who worked on a case by case basis?

10 A. What year was this?

11 Q. In 2012.

12 A. I can't remember that. I know at some point they
13 had an investigator.

14 Q. But in this case you were concentrating on Mr. Howell
15 entering a plea?

16 A. Yes.

17 Q. So is it fair to say that it was only seven months or
18 so from the arrest to guilty plea, and is it fair to say
19 that in cases of this sort, meaning cases where the charges
20 -- where there were a number of charges, that it was a fairly
21 quick disposition?

22 A. That's a hard question to answer. We handled cases
23 with overwhelming evidence and we get a plea offer from the
24 Solicitor that we take rather than go to trial. We can say
25 we're going to take this off the table.

1 At that time that is what was done, but every case is
2 different.

3 Q. Well, was it usual to get an offer that was acceptable
4 in this short time?

5 A. I don't know.

6 Q. With this number of charges and the seriousness of the
7 charges?

8 A. The Solicitor's Office apparently took that into ac-
9 count in this case.

10 Q. Well, the case was not given the investigation it would
11 have if you had been preparing for trial?

12 A. That's correct.

13 Q. You mentioned earlier about the description given by
14 the victim but that victim did not pick Mr. Howell out of
15 the line-up. Is it right?

16 A. I can't say for a fact. I can't recall. I thought
17 that it did, but this is years later.

18 Q. Okay. You don't recall but if it had been a right wit-
19 ness identification you would have discussed that?

20 A. We would have but I know for a fact there wouldn't have
21 been a suppression because basically we'd have to suppress
22 everything in order to stand a chance.

23 Q. Was there a discussion about a defense if the case had
24 gone to trial?

25 A. I don't recall.

1 Q. Do you remember the plea?

2 A. Yes.

3 Q. And there were questions by Mr. Howell during that
4 process?

5 A. Yes.

6 Q. Thank you. I don't have any further questions.

7 THE COURT: Redirect?

8 MR. NEELY: Nothing on Redirect.

9 THE COURT: Thank you. You may be excused.

10 (Witness excused from stand)

11 THE COURT: Anything further from the State?

12 MR. NEELY: The State rests, Your Honor

13 THE COURT: All right, thank you.

14 MR. NEELY: Nothing further from the State.

15 THE COURT: Anything further from the Applicant?

16 MR. DAVIS: May I have a moment?

17 THE COURT: Sure.

18 (Brief pause)

19 MR. DAVIS: May it please the Court? Judge, I will
20 start at the very end. You have many documents in front of
21 you. As I pointed out, this was . . .

22 THE COURT: Yes, sir.

23 MR. DAVIS: We would argue that the Applicant was in a
24 place where he had never been and in a situation that was
25 very insidious.

1 I could go on and talk about that, and I understand
2 the Attorney General did not object to my going into actual
3 guilt or innocence. Of course, on PCR it's a collateral
4 attack.

5 He had a right to have a trial even if there was an
6 admission by him of guilt. That's why we argue that here
7 there was talk about mitigation and so on. I understand
8 that and we argued and presented Mr. Howell's testimony that
9 because of lack of discussion about trial and what could be
10 presented at trial he didn't know what would occur in any
11 trial.

12 So he chose a guilty plea, and now that he has done
13 some research he understands the full nature of it and that
14 he had a right to a trial no matter what.

15 He testified to you that there are things he knows now
16 that he didn't know then. That is because there was the
17 satisfaction question about his attorney. He is more en-
18 lightened now.

19 We would argue that he has met his burden of showing
20 inaction by his original counsel in allowing him to plead
21 guilty rather than discussing with him his right to a trial.

22 He said he was satisfied with him but had he known all
23 about it he would have felt differently. He said he would
24 have wanted a trial had he known all that he now knows
25 about it.

1 THE COURT: Mr. Neely.

2 MR. NEELY: The Applicant was very insistent up until
3 the plea that he was guilty; that he wanted to plead guilty
4 in the case.

5 He was questioned extensively by Judge Goodstein who
6 was incredibly thorough in her instructions and explana-
7 tions to him as far as what is going on, what he could do,
8 and it was fairly obvious that there was evidence against
9 him which was all prejudicial.

10 THE COURT: All right. Thank you very much.

11 I will let you all know by the end of the week my de-
12 cision.

13 MR. DAVIS: Thank you, Your Honor.

14 MR. NEELY: Thank you, Your Honor.

15 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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1
2 CERTIFICATE

3 I, HARRIET P. BENNETT, Court Reporter for South Carolina
4 Court Administration, hereby certify that the foregoing
5 Transcript was prepared from the records of Heather Landry, to
6 the best of my ability, having been heard in the Court of
7 Common Pleas for Dorchester County on May 24, 2017.

8 FURTHER, I certify that I am neither of kin nor counsel
9 to any party to this matter, nor do I have any interest in the
10 same.

11 March 21, 2018



STATE OF SOUTH CAROLINA)
 COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2013-CP-18-2123

Bryan M. Howell, #353433,
 Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

FILED - RECORDED
 2017 AUG 30 AM 10:41
 CHERYL GRAHAM
 CLERK OF COURT
 DORCHESTER COUNTY

This Court convened an evidentiary hearing into this post-conviction relief (PCR) matter on February 27, 2017 at the Dorchester County Courthouse. Applicant was present at the hearing and represented by Rodney Davis, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Respondent. Applicant's plea counsel was Mitchell Farley, Esquire, (Counsel), who was present and testified. This Court had the opportunity to listen to the testimony of Applicant and Counsel. This Court had before it the records of the Dorchester County Clerk of Court regarding the subject conviction, the guilty plea transcript, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter. This Court finds as follows:

I. PROCEDURAL HISTORY

Applicant was indicted during the November 5, 2012 term of the Dorchester County Grand Jury for Contributing to the Delinquency of a Minor, Possession of a Weapon During a Violent Crime, Armed Robbery, Carjacking, Failure to Stop for a Blue Light, Leaving the Scene of an Accident with Injury, Child Endangerment, five counts of Burglary in the Second Degree (Violent), and Attempted Burglary in the Second Degree (2012-GS-18-0685 to -0697). Applicant was represented by Mitchell D. Farley, Esquire. On December 5, 2012, Applicant appeared

before the Honorable Diane S. Goodstein, where he pled guilty to Armed Robbery, Carjacking, Failure to Stop for a Blue Light, Leaving the Scene of an Accident with Injury, Burglary in the Second Degree (Violent), and three counts of Burglary in the Second Degree (Non-Violent); the remaining indictments were dismissed pursuant to the plea. In accordance with negotiations between the State and Applicant, Judge Goodstein sentenced Applicant to fifteen years for Armed Robbery, fifteen years for Carjacking, ninety days for Failure to Stop for a Blue Light, thirty days for Leaving the Scene of an Accident with Injury, fifteen years for Burglary in the Second Degree (Violent), and ten years for each count of Burglary in the Second Degree (Non-Violent), with all sentences to be served concurrently. Applicant did not appeal his guilty pleas or sentences.

II. ALLEGATIONS

In his post-conviction relief application, Applicant alleged he is being held unlawfully for the following reasons:

1. "Mitchell Farley did not let me know about reserving the right [to an appeal]."
2. "Not enough probable cause for an arrest warrant to be obtained."
 - a. "Officers obtained an arrest warrant [sic] with little to no probable cause."
3. "Mitchell Farley did not advise me about all the rights."

III. SUMMARY OF TESTIMONY

Applicant claimed Counsel spoke with him about a potential ten year plea deal. Counsel testified he told Applicant he would attempt to obtain ten year plea deal, but was only able to obtain a fifteen year offer from the State. Applicant claimed Counsel never spoke with him about trial preparation or explained the process, elements, or defenses. Applicant claimed he told Counsel he wanted help for his drug problem and didn't feel confident going to trial.

On cross-examination, Applicant admitted he was guilty and committed the crimes, but claimed he wouldn't have committed the crimes if he wasn't on drugs. Applicant admitted he told the truth when he said he was guilty. Applicant also admitted that Judge Goodstein went over all of his rights with him at his guilty plea and the Judge took the time to go over each of his objections to make sure he knew what he was doing, including his right to appeal. Applicant admitted that he understood what he was doing at the guilty plea.

Counsel testified Applicant maintained his guilt from their very first meeting and his focus was mitigation and negotiation. Counsel testified they went over all the charges, their elements, and possible defenses. Counsel spoke with Applicant concerning his statement to law enforcement and his belief it would not be suppressed.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety, listened to the testimony given, and heard the arguments presented at the evidentiary hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. This Court finds counsel's testimony was credible and persuasive and Applicant's testimony lacked credibility. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Therefore, this Court dismisses Applicant's application for the reasons set out below:

A. Ineffective Assistance of Plea Counsel

This Court finds the record fully supports the knowing and voluntary nature of Applicant's guilty plea. Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to

contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the 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. Thus, an applicant must show both error and prejudice to win relief in a PCR proceeding." Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001). To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238 (1969). For the reasons set out below, this Court finds the record and credible testimony support Applicant had a full understanding of the charges and consequences of his guilty plea:

1. Counsel did not inform Applicant of his right to an appeal

Applicant testified and the record reflects the plea judge went over Applicant's appellate rights in detail. Tr. 68. Counsel testified Applicant never inquired about his right to an appeal. In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997).

While trial counsel is required to make certain the defendant is made fully aware of the right to appeal, the standard for a guilty plea differs. Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Id. at 225, 670 S.E.2d at 374. "Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver." Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981). "Instead, there must be proof that extraordinary circumstances exist, such as where a defendant inquires about an appeal, in order for counsel to be required to advise a defendant on the right to appeal." Rolen v. State, 384 S.C. 409, 415, 683 S.E.2d 471, 474-75 (2009).

This Court finds there were no extraordinary circumstances to require Counsel to inform Applicant of his right to an appeal and perfect an appeal. Further, any error by Counsel in failing to inform Applicant was cured by the plea judge's instructions on the record. Therefore, this allegation is denied and dismissed

2. There was not enough probable cause for arrest warrant

Applicant presented no credible evidence at the hearing regarding this allegation. Further, this Court finds the record does not support this allegation nor is it appropriate for PCR.

"Applicant bears the burden of proving the allegations in his application." Butler, 286 S.C. at 442, 334 S.E. at 814. A defendant who pleads guilty on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing (1) that counsel's representation fell below an objective standard of reasonableness and (2) that there is a reasonable probability that but for counsel's errors, the defendant would not have pleaded guilty but would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 56-57, 106 S.Ct. 366, 369, 88 L.Ed.2d 203, 208-09 (1985).

Therefore, this Court denies and dismisses this allegation.

3. Counsel did not inform me of my rights

Counsel credibly testified he informed Applicant of his rights. Applicant testified, and the record supports, he was informed of his rights by the plea judge. Applicant also testified he understood the plea judge's colloquy and what he was doing. In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. See Wolfe, 326 S.C. at 165, 485 S.E.2d at 370.

This Court finds Applicant was properly informed of his rights by Counsel and the plea court. This Court also finds Applicant's plea was knowingly and voluntarily made. Therefore, this Court denies and dismisses this allegation.

IV. CONCLUSION

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

This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 22 day of Aug, 2017.

Re Hood

ROBERT E. HOOD
Presiding Judge
1st Judicial Circuit

Columbia, South Carolina

141
WITNESSES

John Hoff

Summerville Police Department

12-027572

ARREST WARRANT NUMBER
K203873

Arrested: April 24, 2012

ACTION OF GRAND JURY

TRUE BILL

Charles P. Shirley
Foreperson of Grand Jury
Date: November 1, 2012

VERDICT

Foreperson of Petit Jury

DOCKET NO. 2012GS18-0687

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS

November 5, 2012 TERM

THE STATE
vs.

Bryan Michael Howell

Indictment for
ARMED ROBBERY

SC Code: 16-11-330(A)

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED - RECORDED
2012 NOV -2 AM 8:45
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

INDICTMENT
2012GS18-0687

At a Court of General Sessions, convened on November 5, 2012 the Grand Jurors of
Dorchester County present upon their oath:

ARMED ROBBERY

That on or about April 23, 2012, in Dorchester County, the defendant, Bryan
Michael Howell did by use of force, threats or intimidation and while armed with a
deadly weapon or while alleging either by words or action that he was armed
while using a representation of a deadly weapon or any object which a person
present during the commission of the robbery reasonably believed to be a deadly
weapon, take and carry away goods and/or monies from the person or presence
of the victim, Blake Kafka, with the intent to permanently deprive the victim of
possession of the goods or monies. Such weapon or alleged weapon described
as a revolver. This offense in violation of Section 16-11-330 of the South
Carolina Code of Laws, as amended.

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



Russell D. Hilton, Solicitor

WITNESSES

John Hoff

Summerville Police Department

12-027572

ARREST WARRANT NUMBER
K203874

Arrested: April 24, 2012

ACTION OF GRAND JURY**TRUE BILL**
Foreperson of Grand Jury
Date: November 1, 2012**VERDICT**

Foreperson of Petit Jury

DOCKET NO. 2012GS18-0688**The State of South Carolina**
County of DORCHESTER**COURT OF GENERAL SESSIONS****November 5, 2012 TERM****THE STATE**
vs.

Bryan Michael Howell

Indictment for
CARJACKING

SC Code: 16-3-1075(B)

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED - RECORD
2012 NOV -2 AM 8:45
CHERYL GRAMM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

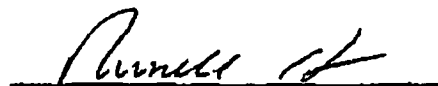
INDICTMENT
2012GS18-0688

At a Court of General Sessions, convened on November 5, 2012 the Grand Jurors of
Dorchester County present upon their oath:

CARJACKING

That in Dorchester County, South Carolina, on or about April 23, 2012, the
Defendant, Bryan Michael Howell did willfully and unlawfully did take or attempt
to take, a motor vehicle from Blake Kafka by using force, violence or intimidation
while Blake Kafka was operating the vehicle or inside of the vehicle. This offense
in violation of Section 16-3-1075 of the South Carolina Code of Laws, as
amended.

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



Russell D. Hilton, Solicitor

WITNESSES

John Hoff

Summerville Police Department

12-009443

ARREST WARRANT NUMBER

M920472

Arrested: May 10, 2012

ACTION OF GRAND JURY**TRUE BILL**

Charleen P. Shusley
 Foreperson of Grand Jury
 Date: November 1, 2012

VERDICT

Foreperson of Petit Jury

DOCKET NO. 2012GS18-0694

The State of South Carolina

County of DORCHESTER

COURT OF GENERAL SESSIONS

November 5, 2012 TERM

THE STATE
 vs.

Bryan Michael Howell

Indictment for

BURGLARY 2ND DEGREE (VIOLENT)

SC Code: 16-11-312(B)

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED - RECORDED
 2012 NOV -2 AM 8:45
 CHERYL GRAHAM
 CLERK OF COURT
 DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

INDICTMENT
2012GS18-0694

At a Court of General Sessions, convened on November 5, 2012 the Grand Jurors of
Dorchester County present upon their oath:

BURGLARY 2ND DEGREE (VIOLENT)

That in Dorchester County, South Carolina, on or about 2012-02-06, the
Defendant, Bryan Michael Howell, did willfully and unlawfully enter a building
belonging to Sarah Mitchell, without consent and with the intent to commit a
crime therein and that the defendant did so in the nighttime. This offense being a
violation of Section 16-11-312, of the South Carolina Code of Laws, as amended

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



Russell D. Hilton, Solicitor

WITNESSES

Robert Shingler

Summerville Police Department

12-009239

ARREST WARRANT NUMBER
M920478

Arrested: May 10, 2012

ACTION OF GRAND JURY

TRUE BILL

Donna P. Shuster
Foreperson of Grand Jury
Date: November 1, 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS18-0696

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS

November 5, 2012 TERM

THE STATE
vs.

Bryan Michael Howell

Indictment for
BURGLARY 2ND DEGREE (NON-
VIOLENT)

SC Code: 16-11-312(B)

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED - RECORDED
2012 NOV -2 AM 8:44
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

INDICTMENT
2012GS18-0696

At a Court of General Sessions, convened on November 5, 2012 the Grand Jurors of
Dorchester County present upon their oath:

BURGLARY 2ND DEGREE (NON-VIOLENT)

That in Dorchester County, South Carolina, on or about February 6, 2012, the
Defendant, Bryan Michael Howell, did willfully and unlawfully enter a dwelling
belonging to Melissa McConnell, without consent and with the intent to commit a
crime therein. This offense in violation of Section 16-11-312 of the South
Carolina Code of Laws, as amended.

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



Russell D. Hilton, Solicitor

WITNESSES

C. Williams

Summerville Police Department

12-008283

ARREST WARRANT NUMBER
M920487

Arrested: May 10, 2012

ACTION OF GRAND JURY**TRUE BILL**
Foreperson of Grand Jury
Date: November 1, 2012**VERDICT**

Foreperson of Petit Jury

DOCKET NO. 2012GS18-0697**The State of South Carolina**
County of DORCHESTER**COURT OF GENERAL SESSIONS****November 5, 2012 TERM****THE STATE**
vs.

Bryan Michael Howell

Indictment for
BURGLARY 2ND DEGREE (NON-
VIOLENT)

SC Code: 16-11-312(B)

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED - RECORDED
2012 NOV -2 AM 8:44
CHERYL GRAYDAK
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

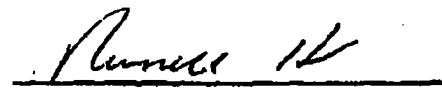
INDICTMENT
2012GS18-0697

At a Court of General Sessions, convened on November 5, 2012 the Grand Jurors of
Dorchester County present upon their oath:

BURGLARY 2ND DEGREE (NON-VIOLENT)

That in Dorchester County, South Carolina, on or about February 2, 2010, the
Defendant, Bryan Michael Howell, did willfully and unlawfully enter a dwelling
belonging to Brian Morton, without consent and with the intent to commit a crime
therein. This offense in violation of Section 16-11-312 of the South Carolina
Code of Laws, as amended.

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



Russell D. Hilton, Solicitor