

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Michael G. Nettles, Circuit Court Judge

DEVOUN BENNETT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000409

APPENDIX

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RECEIVED

JUN 01 2018

S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
)
COUNTY OF CHARLESTON) (2012-GS-10-01304)
) (2012-GS-10-01312)

STATE)
)
)
VERSUS) TRANSCRIPT OF RECORD
)
)
DEVOUN DANIEL BENNETT) April 24, 2013
) Charleston, S. C.
)
)
)

B E F O R E:

HONORABLE ROGER W. YOUNG SR., Judge.

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

DOUGLAS BRUCE DuRANT, ESQ.
ASSISTANT SOLICITOR FOR CHARLESTON COUNTY
ATTORNEY FOR STATE

LESLIE THERESE SARJI, ESQ.
ATTORNEY FOR DEFENDANT

DIXIE COX EUBANK
CIRCUIT COURT REPORTER
FIFTEENTH JUDICIAL CIRCUIT

(THE FOLLOWING TAKES PLACE ON APRIL 24, 2013.)

MR. DURANT: This is State versus Devoun, D-E-V-O-U-N Bennett. He's indicted in (2012-GS-10-01304) for burglary in the first degree. He will be pleading guilty to burglary second violent on that indictment.

He's also indicated at (2012-GS-10-01312) for armed robbery. Will be pleading guilty to that indictment.

In consideration of this plea we are nolle prosequing a related indictment, (2012-GS-10-01320) for possession of a firearm during the commission of a violent crime.

He's represented by Ms. Leslie Sarji.

COURT REPORTER: And your name?

MR. DURANT: My name is Bruce Durant.

COURT REPORTER: Thank you.

THE COURT: All right. Devoun Daniel Bennett; is that you?

A. Yes sir.

THE COURT: All right. Mr. Bennett, you've just heard the Solicitor read out your indictment. You got indicted for armed robbery which carries ten to thirty years. Do you want to plead guilty to armed robbery, with a minimum sentence of ten years up to thirty?

A. Yes sir.

THE COURT: No?

A. I said yes sir.

1 **THE COURT:** Oh yes. All right.

2 Then you got indicted for burglary first degree. They
3 are going to let you plead guilty to burglary second degree
4 violent, which carries zero to fifteen years. Do you want to
5 plead guilty to burglary second degree violent, zero to
6 fifteen?

7 A. Yes sir.

8 **THE COURT:** All right. Now, you have the right to a
9 jury trial on both of these charges which you will be required
10 to give up if you want to enter this plea, but I want to go
11 over with you first a consequence of the armed robbery charge.
12 This is what's known as a strike offense. I don't know if
13 your lawyer has gone over with you that yet, but I want to go
14 over it with you on the record. Are you familiar with the
15 game of baseball?

16 A. Yes sir.

17 **THE COURT:** You've heard of the phrase three strikes
18 and you are out?

19 A. Right.

20 **THE COURT:** You've heard of the phrase three strikes
21 and you are out?

22 A. Yes sir.

23 **THE COURT:** All right. Well, that's what we call an
24 analogy; it's like that in this sense. If you get a certain
25 number of these strike offenses you are out, in other words,

1 you go to jail for the rest of your life, without the
2 possibility of ever getting out on parole; you die in prison;
3 that's the only way you will get out.

4 All right. In this State we have two types of strike
5 offense; we have two strikes and three strike offense. The
6 three-strike offenses are called serious offenses. You get
7 three of those you go to jail for the rest of your life. Two-
8 strike offenses are called most serious offense. You only get
9 two of those and you go to jail for the rest of your life.
10 This armed robbery, it's one of the two-strike types, or the
11 most serious types, so after today you will have one strike
12 against you of the two-strike types. If you ever get another
13 strike offense you then go to jail for the rest of your life
14 without the possibility of parole. Do you understand that?

15 A. Yes sir.

16 THE COURT: Do you still want to plead guilty?

17 A. Yes sir.

18 THE COURT: And you understand that on the armed
19 robbery charge it's a no-parole offense; no matter what
20 sentence I give you you are not going to be eligible for
21 parole; you have to do at least eighty-five percent of it. Do
22 you understand that?

23 A. Yes sir.

24 THE COURT: Do you still want to plead guilty?

25 A. Yes sir.

1 **THE COURT:** All right, now, you have a right to a jury
2 trial. If you want a trial all you have to do is stop me and
3 we'll arrange that for you. The State then has to present
4 enough evidence to convince twelve jurors that you are guilty
5 beyond a reasonable doubt; all twelve jurors have to agree
6 that you are guilty in order to convict you, and if convicted
7 you have the right to appeal. You can challenge the State's
8 evidence, put up evidence of your own, testify if you want,
9 and if you don't want to testify the Judge will instruct the
10 jury they are not to hold that against you while they are
11 deliberating. Do you understand all of those rights?

12 A. Yes sir.

13 **THE COURT:** Do you want to give those rights up today
14 and plead guilty?

15 A. Yes sir.

16 **THE COURT:** Are you pleading guilty to these charges
17 because you are guilty of them?

18 A. Yes sir.

19 **THE COURT:** Are you under the influence of drugs or
20 alcohol today?

21 A. No sir.

22 **THE COURT:** Do you have any mental, emotional or
23 physical conditions which keep you from understanding what you
24 are doing today?

25 A. No sir.

1 THE COURT: You are standing next to your lawyer, Ms.
2 Sarji. Are you satisfied with her representation?

3 A. Yes sir.

4 THE COURT: Do you need any more time with her?

5 A. No sir.

6 THE COURT: Has she gone over with you all of the
7 evidence that you know of, that the State has against you?

8 A. Yes sir.

9 THE COURT: Y'all talked about whether or not you
10 wanted to go to trial; is that correct?

11 A. Right. Yes sir.

12 THE COURT: You decided that you did not want to go to
13 trial after those discussions; is that correct?

14 A. Yes sir.

15 THE COURT: You don't want to call witnesses?

16 A. No sir.

17 THE COURT: You don't want to get up and tell the jury
18 your side of the story?

19 A. No sir.

20 THE COURT: You don't want to have her cross-examine
21 the witnesses that the State offers?

22 A. No sir.

23 THE COURT: You don't want her to challenge the
24 admissibility of any of the State's evidence?

25 A. No sir.

1 THE COURT: You don't have any alibi witnesses you want
2 her to call?

3 A. No sir.

4 THE COURT: Based on all of these discussions you made
5 a decision to go and plead guilty; is that correct?

6 A. Yes sir.

7 THE COURT: This is your decision, and your decision
8 alone?

9 A. Yes sir.

10 THE COURT: Did anyone promise you anything, or
11 threaten you to get you to plead guilty, other than the State
12 is dropping the burg first charge down to burglary second?

13 A. No sir.

14 THE COURT: All right, how old are you?

15 A. Nineteen.

16 THE COURT: How far did you get in school?

17 A. Tenth grade.

18 THE COURT: Did you work before you got arrested?

19 A. No sir.

20 THE COURT: Are you married?

21 A. No sir.

22 THE COURT: Do you have any children?

23 A. No sir.

24 THE COURT: All right, and these crimes that are
25 alleged in the indictments, you did these?

1 A. Yes sir.

2 THE COURT: Pardon?

3 A. Yes sir.

4 THE COURT: All right. Ms. Sarji, in your opinion does
5 this gentleman understand what he is doing when he waives his
6 right to a jury trial and pleads guilty?

7 MS. SARJI: Yes sir.

8 THE COURT: I find his plea is freely, voluntarily and
9 intelligently made.

10 What would the State like to tell me about the case?

11 MR. DURANT: Your Honor, on October the 25th of 2011
12 the victim in this case came forward and indicated that three
13 days previous, on October 22nd of 2011, he had been robbed at
14 his residence, an apartment on [REDACTED] in the apartment
15 complex at [REDACTED] in Charleston County, west of the
16 Ashley, by five black males, in a home invasion type of
17 robbery; four of the perpetrators had handguns, and one of
18 them had a shotgun.

19 The victim stated that there was a knock at the door and
20 when he answered the Defendants forced their way into his
21 residence and robbed him of his cash and some electronic
22 equipment.

23 He indicated he did not report it at first because he
24 was scared to come forward, but when he learned of the five-
25 year-old girl, Allison Griffor, being killed on the 25th he

1 came forward because it was very similar, in terms of a
2 shotgun was used to kill the little girl, and he was concerned
3 that these folks may have been the same ones.

4 THE COURT: I don't really know anything about the one
5 you just mentioned. Is that ---

6 MR. DuRANT: Allison Griffor was -- there was a little
7 girl that was -- there was a home invasion in West Ashley and
8 she was -- they shot through the door and it killed the little
9 five-year-old girl. The case has never been solved.

10 There's a -- we don't think -- and I'll tell you right
11 now, we don't believe Mr. Bennett has any knowledge of that,
12 but we believe that the people that he was with were probably
13 the perpetrators of that home invasion too ---

14 THE COURT: All right.

15 MR. DuRANT: ---Particularly Phillip Moses. Phillip
16 Moses was the one that, you know, that was indicated had the
17 shotgun in this case, but it also turned out that Phillip
18 Moses was stopped in a car like ten minutes away from where
19 this little girl had been shot three days after that, and so
20 we believe that -- that Mr. Moses was involved in the Griffor
21 case.

22 The victim in this case recognized this Defendant. He
23 had bought an Ipod from him earlier, for Fifty bucks. I think
24 he probably also sold weed. I think that's probably why he
25 was set up as a victim in this case. But he just knew the

1 Defendant as "Voun", and knew that "Voun" had gone to West
2 Ashley High School, and from that information they were able
3 to identify "Voun" as being Devoun Bennett.

4 He was picked up and questioned and confessed,
5 essentially, to setting up this whole robbery. He indicated
6 that he set the whole thing up, went there. He tried -- he
7 claims he did not go in with a gun.

8 THE COURT: Stop. When you say he, you are talking
9 about him?

10 MR. DuRANT: Yes.

11 THE COURT: Okay.

12 MR. DuRANT: He confessed to setting up this robbery.

13 THE COURT: Somebody named "Voun"?

14 MR. DuRANT: Yes.

15 THE COURT: Okay.

16 MR. DuRANT: His -- he goes by "Voun". "Voun" is his
17 nickname.

18 THE COURT: His nickname?

19 MR. DuRANT: His nickname.

20 THE COURT: Okay. Mr. Bennett's nickname.

21 MR. DuRANT: Okay. It's Devoun, or "Voun". He goes by
22 "Voun", and see, the victim recognized him as "Voun", because
23 the victim had bought an Ipod from him previous to this home
24 invasion.

25 THE COURT: Okay.

1 MR. DuRANT: As a matter of fact, he recognized him
2 when it went on. He -- and the victim said that Mr. Bennett
3 threatened to kill him if he went to the police with the
4 thing.

5 Mr. Bennett has basically confessed to everything. He's
6 tried to indicate he didn't have a gun; didn't go in. That is
7 disputed by the victim. The victim said they all had guns,
8 and they all came into the house.

9 He also implicated Phillip Moses who was a suspect in
10 the Griffer shooting, and Levelle Grant, as his accomplices in
11 this home invasion. It was our hope that he was going to
12 cooperate with us against those folks. He ended up recanting
13 that statement. He was sending letters to their attorneys
14 basically saying that they didn't have anything to do with it,
15 and has also not cooperated with the State in proffering to
16 try to get to Mr. Moses and Mr. Grant, which brings us to
17 where we are today.

18 He does not have any prior record, Your Honor.

19 The victim did not wish to attend, but did have a little
20 statement he wanted me to present to you.

21 THE COURT: Have you seen this?

22 MS. SARJI: Yes sir, I ---

23 MR. DuRANT: I have provided her with a copy.

24 THE COURT: All right.

25 (COURT VIEWS THE DOCUMENT.)

1 THE COURT: All right. I want to give that to the
2 Court Reporter and have her make it an exhibit.

3 (DOCUMENT MARKED STATE'S EXHIBIT NUMBER 1.)

4 MR. DuRANT: Thank you, Your Honor.

5 He doesn't have any record.

6 As I said, the victim does -- did not wish to attend,
7 and that's all I have.

8 THE COURT: All right. Ms. Sarji.

9 MS. SARJI: Thank you, Judge.

10 At the outset I think it's important to let the Court
11 know that Mr. Bennett has never been arrested before; this is
12 his first contact with the legal system, and granted it's a --
13 it's a -- and these are big charges, Judge, but I would ask
14 you to take that into account. I think that, just as he went
15 in and told the police about his involvement when he was
16 picked up, and cooperated with them in identifying the other
17 co-defendants he was also terrified by the fact that he had
18 done so, hence, the letters to the co-defendants' attorneys.

19 In discussing the proffer with Mr. Durant, throughout my
20 discussions with Mr. Bennett he was very, very scared about
21 what the repercussions would be to him. Again, he was fearful
22 that he would always be looking over his shoulder and he went
23 and talked to the State.

24 Very recently he had finally decided to go ahead and
25 talk to Mr. Durant but by that point it was too late, and the

1 damage had been done by the letters that he had written to the
2 co-defendants' attorneys.

3 But all of this, Judge, I think was stemming from Mr.
4 Bennett's history of a naive -- a naive character. I don't
5 think that he knew what was actually going to happen when they
6 went to this fellow's house. He has maintained throughout,
7 from the time that he did go in and talk to the police until
8 now that once he realized what was really going on he did not
9 go into the fellow's house; he went back and waited in the
10 car.

11 No one was hurt. He's been in jail for five hundred and
12 forty-seven days, Judge, and we would -- I would submit to
13 you, he's spent the last couple of Christmases in jail; he's
14 spent some birthdays in jail now. He understands that the
15 minimum amount of time that Your Honor could give him is ten
16 years, and that's what I'm asking you to do here today, is to
17 give him that ten years. I think that is a very, very harsh
18 punishment, especially given that he has absolutely no prior
19 record, no contact with the criminal justice system in the
20 past.

21 He had had -- he had been attending West Ashley High
22 School at the time that this incident happened, and had had
23 some dreams, he told me, of going and becoming a barber, and
24 going to school and developing a trade, and I would hope that
25 he would use whatever time that Your Honor imposes for his

1 sentence wisely, and perhaps pursues a GED while he is in the
2 Department of Corrections, Judge.

3 We do have some family members here today. I am not
4 sure whether or not they wish to speak on his behalf, but
5 Judge, we would just ask for your mercy in giving him the
6 minimum ten year sentence that he could get under the law.

7 THE COURT: Who would like to speak on his behalf?

8 Yes, you want to come up to the gate there?

9 DONTELLE BENNETT: I would just like to say that my
10 brother ---

11 THE COURT: I need you to state your name, please.
12 What's your name?

13 DONTELLE BENNETT: My name is Dontelle Bennett.

14 THE COURT: All right.

15 A. I would like to say that my brother is like, he's not
16 known for none of that. He's a very kind and respectful
17 person and everybody loves him, and if they will have -- I
18 just ask that if y'all just can look over this, and just
19 please give him another chance, because like, we really want
20 to see him come home, and like, listen, I don't want nothing
21 to happen to my brother like, so just please, I'm begging,
22 like just bring him home, man, I mean, y'all bring him home
23 and we start to take care of him, everything will be all
24 right. Just please, just do that.

25 THE COURT: All right. Anyone else?

1 Yes Ma'am. Your name.

2 MS. WHARTON: My name is Asalee Wharton, and I'm the
3 grandmother. He is my son which is deceased's son, and I have
4 been around Devoun since he was a baby, and you won't believe
5 how good now, he was a very mannerable child.

6 I was surprised to hear what happened. I don't know
7 what got into him but I just pray to the Lord that you all
8 will see to kind of be lenient on him, and if anything I can
9 do to guide him in the direction I will. On Sunday morning I
10 always would take him to Sunday School and to church, and try
11 to show him the have morals, and high morals, and I pray to
12 God that y'all will have leniency on him, and I would do the
13 best that I can to see that he walk a straight road. Thank
14 you.

15 THE COURT: Anyone else? Your name, please.

16 JENNY BENNETT; My name is Jenny Bennett. I am his
17 grandmother, mother's side. We were all surprised about what
18 happened with "Voun". "Voun" has never given us any problem.
19 He has always been humble, and always listened, but he has bad
20 tragedies in his life. His brother died and his father died
21 right after that, and so I think maybe that has something to
22 do with what went on in his life, but we have never had a
23 problem with him before. He is a kind and very respectful
24 person, and so we are asking you to have leniency on him.

25 Amen.

1 **THE COURT:** All right. Mr. Bennett, would you like to
2 say anything?

3 **MR. DEVOUN BENNETT:** Yes sir. I would like to say, if
4 the victim was here, I would like to apologize for the problem
5 that I caused, and I also would like to say I was with the
6 wrong people at the wrong time during this accident, and I
7 would like to say to you to just have mercy on me so I can
8 have a second change. I really appreciate it.

9 **THE COURT:** Well, you know, this whole business of just
10 going in and robbing people with shotguns and things like
11 that, I mean, it's just -- the community can't stand this any
12 more. You know, I don't know what you are thinking, I really
13 don't. No previous record. I don't know if that just means
14 you haven't gotten caught or what, but you know, if you go in
15 with shotguns robbing people, and hanging out with the wrong
16 crowd. Everybody says that, it's with a crowd. But I can
17 tell you, if you had gone to trial and gotten convicted I
18 wouldn't have hesitated to give you thirty years, probably
19 would have even considered running it consecutive. We've just
20 got to protect citizens.

21 I give you credit for, you know, some level of
22 cooperation. It doesn't sound like you've done a lot. Maybe
23 that will change. But there's still some other people out
24 there running around. You are the one that got caught. I'll
25 give you some credit for having come in and pled guilty, but

1 it's still twenty years for -- on the armed robbery, fifteen
2 on the burglary. They will run concurrent, and you will get
3 credit since what, October 25th.

4 Good luck to you.

5 MR. DuRANT: Thank you, Your Honor.

6 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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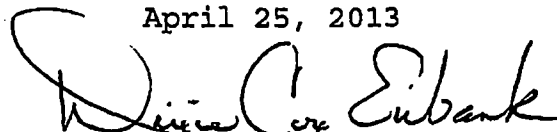
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C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the GUILTY PLEA of the captioned case, relative to appeal, in the COURT OF GENERAL SESSIONS for CHARLESTON COUNTY, SOUTH CAROLINA, on the 24th day of April, 2013.

I DO FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

April 25, 2013


DIXIE COX EUBANK

CIRCUIT COURT REPORTER

FIFTEENTH JUDICIAL CIRCUIT

FORM 5

STATE OF SOUTH CAROLINA

County of

Charleston

IN THE COURT OF COMMON PLEAS

2015-CP-10-1130

FILED
2015 FEB 23 PM 12:50
JULIE J. ARMSTRONG
CLERK OF COURTDennis R. Smith 855219

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

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 Lee Correctional Inst.
2. Name and location of Court which imposed sentence Charleston County Court of General Session
3. Name(s) of co-defendant(s) (if any) Luell Grant, Phillip Alston
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012-CS-110512; Armed Robbery

- (b) 2012-28-1101314; Burglary 2nd degree
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April 24, 2013; Twenty (20) years
- (b) April 24, 2013; Fifteen (15) years
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty Yes
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
~~Yes~~ Yes, Motion For Remission Denied in Charleston County Court House
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. ~~No Court of appeal~~ No Court of appeal and beyond
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. ~~No Court of appeal~~ No Court of appeal and beyond
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. ~~No Court of appeal~~ No Court of appeal and beyond
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. ~~No Court of appeal~~ No Court of appeal and beyond
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A

- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Excessive assistance of counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Evidentiary matters, Excessive Force and Statements
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A

iv.

N/A

(c) the disposition thereof:

i.

N/A

ii.

N/A

iii.

N/A

iv.

N/A

(d) the date of each such disposition:

i.

N/A

ii.

N/A

iii.

N/A

iv.

N/A

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

i.

N/A

ii.

N/A

iii.

N/A

iv.

N/A

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.

N/A

ii.

N/A

iii.

N/A

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

i.

N/A

ii.

N/A

iii.

N/A

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) N/A
 (b) N/A
 (c) N/A

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

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. Lester T. Saji, Saji Law Firm, LLC, 9000 S. Fisher
Place Drive, Ste. 300, Charleston, SC 29405

ii. N/A

iii. N/A

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

i. My attorney represented me at my plea
hearing.

ii. N/A

iii. N/A

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

New Trial, Sentence reconsideration

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

No I am not under sentence from any other court that I have not challenged

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Charleston)

VERIFICATION

I, Dennis Bennett, 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.

Dennis Bennett

SWORN to and subscribed before me this 19
day of Feb, 2015.

Dana Sines (L.S.)
Notary Public

My Commission Expires: 11-4-2015

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

I, Danica Bennett, 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.

Danica Bennett
Applicant

SWORN or affirmed to and subscribed before me this

19 day of Feb, 2015.

Debra Sines
Notary Public

My Commission Expires:

11-4-2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
	)	
Devoun Bennett, #355219,	)	2015-CP-10-1130
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for Post-Conviction relief (PCR) filed February 23, 2015, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the March 2012 term of the Charleston County grand jury for Burglary First Degree (2012-GS-10-1304) and Armed Robbery (2012-GS-10-1312), Leslie T. Sarji, Esquire, represented him. On April 24, 2013, the Applicant pled guilty to Armed Robbery and Burglary Second degree, as a lesser included offense, before the Honorable Roger m. Young, Sr. and was sentenced to imprisonment for twenty (20) years for Armed Robbery and fifteen (15) years for Burglary Second Degree. The Applicant then filed a Motion for Reconsideration of Sentence of May 3, 2013. While the Motion was pending, the Applicant filed his first application for PCR.¹

2013-CP-10-5991

The Applicant previously filed for Post-Conviction Relief on October 11, 2013 in which he raised the following claims for relief:

¹ The Motion has since been denied.

1. Ineffective Assistance of Counsel
 - a. Counsel failed to provide adequate assistance.
2. Involuntary Guilty Plea
 - a. Did not make informed decision to plea.
3. 6th Amendment Violation

The State, after making its Return, asked the court to dismiss the application due to the pending Motion for Reconsideration of Sentence. By Order filed May 22, 2014, the Honorable Deadra L. Jefferson dismissed the application without prejudice.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject conviction(s), the application and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective Assistance of counsel
 - a. Evidentiary Matters
 - b. Involuntary Statements

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCP(a).

III.

The Applicant alleges ineffective assistance of plea counsel. The Respondent submits plea counsel rendered effective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper

functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

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

V.

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

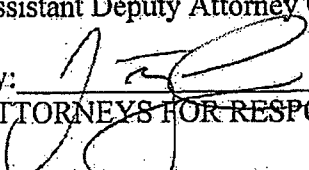
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

By: 
~~ATTORNEYS FOR RESPONDENT~~

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

July 28, 2015.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

DEVOUN BENNETT, #355219

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

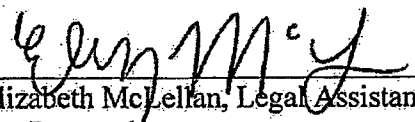
2015-CP-10-1130

AFFIDAVIT OF SERVICE BY MAIL

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

James K. Falk, Esq.
Falk Law Firm, LLC
PO Box 1058
Charleston, SC 29402

DATED this 28th day of July, 2015.


 Elizabeth McLellan, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON NINTH JUDICIAL CIRCUIT
2015-CP-10-01130

DEVOUN BENNETT,) TRANSCRIPT OF
APPLICANT,) RECORD
VS.)
DECEMBER 7, 2017
CHARLESTON, SC
THE STATE OF SOUTH
CAROLINA,
RESPONDENT.)

B E F O R E:

HONORABLE MICHAEL NETTLES

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

MEGAN JAMESON, ESQUIRE
Attorney for the Respondent

JAMES FALK, ESQUIRE
Attorney for the Applicant

* * * * *

Ruth C. Weese, RDR
Official Court Reporter
Ninth Judicial Circuit

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1 (The following proceedings were held
2 December 7, 2017, Charleston County, South
3 Carolina, @ 1:37 p.m.)

4 MS. JAMESON: The next matter will be
5 Devoun Bennett and the packet is on the bench for
6 Your Honor.

7 THE COURT: You are recognized.

8 MS. JAMESON: Your Honor, the next
9 matter is Bennett versus the State of South
10 Carolina, docket number 2015-CP-10-1130. During
11 the March 2012 term of the Charleston County grand
12 jury Mr. Bennett was indicted for First Degree
13 Burglary and Armed Robbery stemming from a home
14 invasion in which five armed men forced their way
15 into the victim's home and robbed him at gunpoint.
16 He was represented by Leslie Sarji.

17 On April 24th, 2013 Mr. Bennett
18 appeared before Judge Young and pled guilty to
19 robbery as indicted and Second Degree Burglary as a
20 lesser included offense. Judge Young sentenced Mr.
21 Bennett to imprisonment for 20 years for armed
22 robbery and 15 years for his Second Degree
23 Burglary. Applicant filled a motion to reconsider
24 his sentence on May 3rd, 2013. While this motion
25 was pending he filed his first application for

1 post-conviction relief. The State moved to dismiss
2 it due to the pending General Sessions motion to
3 reconsider and on May 22nd, 2014, Judge Jefferson
4 dismissed that application without prejudice with
5 leave to refile. He then -- subsequently Judge
6 Young denied the motion to reconsider and on
7 February 23rd of 2015 he filed this present
8 post-conviction relief application alleging he is
9 being held in custody unlawfully based on
10 allegations of ineffective assistance of counsel
11 regarding evidentiary matters and involuntary
12 statements. The State filed its return on
13 July 28th, 2015.

14 He's represented in this action by Mr.
15 Jim Falk and Mr. Falk has informed the State last
16 week that applicant is also alleging counsel was
17 ineffective for failing to object to prejudicial
18 comments made by the solicitor during his guilty
19 plea. I will turn it over to Mr. Falk.

20 THE COURT: Was the 20 and 15 to run
21 consecutive?

22 MS. JAMESON: Concurrently, Your Honor.

23 THE COURT: Mr. Falk, if you could
24 enumerate the allegations of ineffectiveness and
25 any other grounds that you might have for

1 post-conviction relief.

2 MR. FALK: Your Honor, his first two
3 claims that he put in his PCR application are
4 almost better spoken of as though it's an
5 involuntary guilty plea because he was forced to go
6 into a plea when he didn't think that his lawyer
7 that represented him was ready. He was having to
8 choose the lesser of two evils.

9 And then also I wanted to highlight the
10 point that we believe that there was some testimony
11 that was irrelevant testimony, highly prejudicial
12 to my client that plea counsel allowed to get in
13 before the sentencing judge and I think if you read
14 the transcript the sentencing judge dished out a
15 pretty harsh sentence and made a reference to this
16 testimony. So it's -- to be concise what I am
17 saying is it was prejudicial information during the
18 plea colloquy that should not have been before the
19 sentencing judge.

20 THE COURT: You may call your first
21 witness.

22 MR. FALK: I would like to call Ms.
23 Sarji to the stand.

24 LESLIE SARJI

25 having been duly sworn, testifies as follows:

1 THE CLERK: Please state your full name
2 and spell your last name.

3 THE COURT: Pull up real close to the
4 microphone. Speak loudly, clearly and slowly in
5 order that we can hear everything that you have to
6 say. Let's start with your full name, please.

7 THE WITNESS: Leslie Sarji, S-A-R-J-I.

8 THE COURT: Very good. Thank you. Mr.
9 Falk.

10 DIRECT EXAMINATION

11 BY MR. FALK:

12 Q. Do you recall, first of all, how did
13 you become my client's trial counsel?

14 A. I was appointed to represent him.

15 Q. Are you -- was this a 608 contract? Or
16 are you a public defender?

17 A. No, I was not a public defender at the
18 time. I don't know whether it was pursuant to a
19 Rule 608 contract or if it was while we were still
20 just --

21 Q. Got you. And so can you tell me what
22 you did to investigate this case?

23 A. I don't recall that there was a lot of
24 investigation done. Mr. Bennett actually confessed
25 and so he was not disputing -- there was never any

1 indication that I recall that we would be going to
2 trial or that he was asking me to do investigation
3 that I remember, but you have my files so...

4 Q. Do you recall the context of when he
5 made his confession?

6 A. It was shortly after he was arrested.
7 He confessed and I think implicated several
8 co-defendants.

9 Q. Was there a -- did you have any
10 concerns that possibly had you gone to trial you
11 could have had a Jackson v. Denno hearing and the
12 confession suppressed?

13 A. We certainly could have had the
14 hearing. Whether we could have had the confession
15 suppressed is another matter. I didn't have any
16 indication from Mr. Bennett that he didn't
17 understand his rights or voluntarily waive them,
18 but I mean we certainly could have had the hearing
19 if he wanted to go to trial.

20 Q. So what led -- what were the plea
21 negotiations in this case?

22 A. You know, I don't remember
23 specifically. I know that at one point, and I
24 don't remember whether it was before we did the
25 guilty plea or after, at one point that I know we

1 went in to talk to the solicitor's office or their
2 investigators so that Mr. Bennett could tell them
3 what he knew about what had happened in an effort
4 to get more favorable treatment. But then he ended
5 up sending a letter and again I can't remember the
6 sequence of events, but he sent a letter to his
7 co-defendants recanting and it impacted the State's
8 case against the co-defendants and so that also had
9 a negative impact then on what we had hoped in
10 terms of the negotiations.

11 Q. Do you recall how Allison Griffor,
12 G-R-I-F-F-O-R, comes into this?

13 A. That name does not mean anything to me.

14 Q. Can I hand you the transcript?

15 A. Sure.

16 Q. If you could look at page 8 of the plea
17 transcript starting at about line 23 and then sort
18 of carry over on to the next page.

19 A. Okay. Now that I'm looking at this,
20 this is what probably should have been objected to
21 during his sentencing.

22 Q. In the statements made by the solicitor
23 there he was referring to that this was somewhat of
24 a case that was in the news, Ms. Griffor's case?

25 A. Yes. So I actually wasn't living here

1 at the time that Ms. Griffor's case was in the
2 news, but I learned about it later. And my
3 recollection is that Mr. DuRant with the
4 solicitor's office really thought that Mr. Bennett
5 had some knowledge of who had shot into this
6 apartment and I think it was -- I don't know if it
7 was someone that shot from like a first floor
8 apartment into a second floor or if it was through
9 a door or window or something, but this five-year
10 old girl had been killed.

11 And they couldn't solve it and they
12 thought that Mr. Bennett might have some knowledge
13 of who had done that I think based just on the area
14 where it had occurred. And so Mr. DuRant brought
15 all that up during Mr. Bennett's sentencing even
16 though Mr. Bennett maintained throughout that he
17 didn't have any knowledge of that.

18 Q. And it is your understanding that the
19 death of Ms. Griffor, that was one of those matters
20 that was kind of in the news or there was some
21 possible interest in that case more than others?

22 A. Yeah, they wanted to solve that case
23 for sure.

24 Q. But there was no reason to believe that
25 Devoun Bennett had anything to do with Ms.

1 Griffor's case; is that correct?

2 A. Not to my knowledge.

3 Q. And when you look through the
4 transcript there it looks as though the solicitor
5 was maybe disappointed that he wasn't getting any
6 cooperation from Mr. Bennett on that case?

7 A. Well, he brought it up because he was
8 saying that he thought -- he indicates in here we
9 don't believe Mr. Bennett has any knowledge of
10 that, referring to the Allison Griffor case, but
11 that they believe that the people that Mr. Bennett
12 was with were probably the perpetrators of that
13 home invasion too. So I guess it was a home
14 invasion.

15 Q. And so it's -- the way I read the
16 statements by the solicitor there, he told the
17 sentencing judge, fair characterization -- I guess
18 the record speaks for itself, but it's -- was it
19 your impression that the solicitor was disappointed
20 that Mr. Bennett was not helping cooperate to solve
21 Ms. Griffor's case?

22 MS. JAMESON: Your Honor, I object. I
23 think that the record speaks for itself.

24 THE COURT: It does. He can ask Mr.
25 DuRant what he thought.

1 MR. FALK: Okay.

2 BY MR. FALK:

3 Q. You reviewed the discovery in this
4 case. There was no mention of Allison Griffor in
5 this case; is that correct?

6 A. No, not at all.

7 Q. Okay. And so why -- did you consider
8 maybe objecting to that testimony about -- not
9 testimony, those statements by the solicitor during
10 the sentencing?

11 A. I have always felt like I should have
12 objected to that, yes, from the day that we were
13 there. I should have objected to it. And I think
14 that I was kind of hoping that the judge would see
15 -- would recognize that Mr. Bennett didn't have any
16 knowledge of it, but in hindsight absolutely I wish
17 I had objected.

18 Q. If I can just point out one other thing
19 in the transcript to you. If I can call your
20 attention to page 16 lines 1 through 24. That was
21 before Judge Young?

22 A. Yes, sir.

23 Q. Roger Young?

24 A. Yes.

25 Q. Does it -- what does Roger Young say or

1 Judge Young say when he is discussing his 20-year
2 sentence?

3 A. He says I give you credit for, you
4 know, some level of cooperation. It doesn't sound
5 like you have done a lot, maybe that will change,
6 but there's still some people running around. You
7 are the one that got caught.

8 Q. Okay. Also, I'll show you the lines in
9 the transcript in a second, but during the
10 sentencing was there some other -- did -- Mr.
11 Bennett had no criminal record up to that time, did
12 he?

13 A. He didn't.

14 Q. Because you highlighted that point when
15 you were doing your discussion at the sentencing
16 that this was his first brush with the criminal
17 justice system?

18 A. Absolutely.

19 Q. But Mr. DuRant certainly told Judge
20 Young that -- mentioned that Mr. Bennett was
21 selling weed. I will show you.

22 A. I think that was part of how they
23 explained that the victim knew or I guess it is the
24 victim -- how the victim knew Mr. Bennett. I think
25 either the victim had sold Mr. Bennett marijuana or

1 vice versa, but there was -- that was the
2 connection there.

3 Q. There was also a reference that the
4 victim bought an iPod or iPad from Mr. Bennett for
5 \$50?

6 A. Yes.

7 Q. That was possibly a fair conclusion
8 that Mr. Bennett never had ownership of the iPod?
9 I am just saying that sounds like a very good price
10 for an iPod, possibly that's a stolen iPod?

11 MS. JAMESON: Your Honor, I think that
12 calls for speculation.

13 THE COURT: Sustained.

14 BY MR. FALK:

15 Q. But there's no dispute that Judge Young
16 knew that my client was somehow involved in either
17 buying or selling marijuana at that sentencing?

18 A. Certainly.

19 Q. And there was really -- was there proof
20 of that? I mean there was just statements made as
21 part of the arrest?

22 A. It's been a long time since I have
23 looked at the discovery in that case. I can tell
24 you that the victim was able to name Mr. Bennett by
25 name because of this past relationship that they

1 had had. They knew each other. And so that was
2 the context within which they knew each other was
3 one of them buying marijuana from the other, but I
4 don't know much more than that. I don't remember
5 much more than that.

6 Q. Do you think it would be necessary that
7 the explanation for this prior relationship had to
8 be they knew each other from selling weed? I mean
9 Judge Young could have been satisfied knowing there
10 was a just prior relationship there. The victim
11 knew Mr. Bennett, but he didn't have to know it was
12 for buying weed?

13 A. Sure. Maybe I should have objected to
14 that well.

15 MR. FALK: I have no further questions.

16 THE COURT: Cross-examination.

17 CROSS-EXAMINATION

18 BY MS. JAMESON:

19 Q. Good afternoon, Ms. Sarji. How long
20 have you been practicing law?

21 A. Nineteen years.

22 Q. And you're in private practice?

23 A. I am, yes.

24 Q. How much of your practice is criminal
25 defense work?

1 A. Probably at least right now about half
2 maybe.

3 Q. Was it the same at the time of this
4 representation?

5 A. Yeah. I mean at any given time my case
6 load varies. I do criminal and family law so, you
7 know, it might go from 80/20, 50/50, you know,
8 swinging either way.

9 Q. How many times did you -- hold on. How
10 far before the guilty plea were you appointed to
11 this case?

12 A. Mr. Falk has my files so I really don't
13 know, I am sorry. I just don't remember. It
14 wasn't -- we weren't rushing into court or
15 anything, but I don't have the order of
16 appointment. I don't have any of my notes. I
17 don't know.

18 Q. Do you recall how many times you met
19 with him?

20 A. More than once. I mean I know I went
21 out to the jail to see him more than once and there
22 was no -- we didn't have any -- it's not like we
23 were being pushed into court. And I didn't feel
24 like we weren't ready. I think that Mr. DuRant
25 would have given me ample time if I had needed more

1 time to go to prepare for a plea or to get on the
2 trial docket. I think Mr. DuRant would have given
3 that to me. He wasn't chomping at the bit to get
4 him in or anything.

5 MR. FALK: Your Honor, may I -- would
6 you like this?

7 THE WITNESS: I would love my file,
8 yes, that would be helpful.

9 MR. FALK: Do you mind?

10 MS. JAMESON: No, not at all. I was
11 actually going to ask if she would like her file.
12 BY MS. JAMESON:

13 Q. So to avoid you having to look through
14 it to see how many times you met with him, it was
15 more than once and you didn't feel rushed?

16 A. Certainly, yes.

17 Q. Did you file any Brady Rule 5 motions?

18 A. I did file a Rule 5, yes.

19 Q. And you received discovery materials
20 from the State?

21 A. Yes.

22 Q. Did you go over those with Mr. Bennett?

23 A. In detail, yes. Looks like I filed a
24 Rule 5 and was served on the solicitor on January
25 9th, 2012, and I had was -- it looks like they sent

1 the discovery initially over to the public
2 defender's office and then I got it shortly
3 thereafter. A letter to the PD's office is dated
4 January 19th, 2012.

5 Q. Were you his first attorney or was
6 there originally a public defender?

7 A. No, looks like there was a public
8 defender originally assigned. Alicia Penn was his
9 first attorney.

10 Q. Can you give the Court a general
11 overview of what the State alleged occurred here?

12 A. My recollection is that Mr. Bennett and
13 several other co-defendants went over to this guy's
14 apartment that Mr. Bennett knew and some or all of
15 them were armed depending on whose version of
16 events that you believe. And I believe that Mr. --
17 the allegations were that Mr. Bennett used his
18 relationship with the victim to get him to open the
19 door or whatever. And then they arm robbed him. I
20 can't remember what they took, like a wallet or it
21 wasn't anything hugely significant, but they did go
22 in armed.

23 Q. And he was identified by the victim?

24 A. Yes, by name. He knew his nickname and
25 I think that he knew that he went to Middleton High

1 School maybe. There was some -- I don't think that
2 he could tell them his full name, but there was a
3 connection with the school there if I remember
4 correctly.

5 Q. Did the applicant give any statements?

6 A. He did. He confessed shortly after
7 being arrested.

8 Q. Did he recall or did he admit to kind
9 of being the mastermind, the planner of this home
10 invasion?

11 A. I don't remember whether he admitted to
12 that or not. I think that was certainly an
13 allegation that was made. But I honestly don't
14 remember whether it was, you know, if that was in
15 his confession or if that was something that they
16 decided on later.

17 Q. Did he deny his involvement to you?

18 A. No. Well, yeah. Actually hang on.
19 Let me look at my notes because it looks like I met
20 with him December 27th, 2011. He says on that date
21 that he gave a statement to the police. He told
22 them that he didn't participate in the robbery. He
23 did indicate that he was confused when the police
24 read him his rights. He said he had a learning
25 disability and reading comprehension issues. He

1 says on June 21st, 2012, when I went to visit him
2 that they were going to get marijuana. When they
3 got over there the co-defendants said they were
4 going to rob him and that he wanted me to ask Mr.
5 DuRant if he could have any kind of an offer.

6 Q. And so the allegation is just he
7 testified or told you in his meetings that they
8 were just going over to get marijuana. The victim
9 said that all five people were armed, correct, four
10 weapons and then a sawed-off shotgun?

11 A. I remember something about a sawed-off
12 shotgun, but I don't remember -- honestly don't
13 remember whether the victim said that everybody was
14 armed or not. I don't have any recollection of
15 that.

16 Q. Based on your conversation with him
17 were there any possible defenses you started
18 looking into?

19 A. Certainly not at the point that he told
20 me he wanted to plead and --

21 Q. At what point in your representation
22 did he say he wanted to plead?

23 A. That was during my June 21st, 2012,
24 jail visit to him. Looks like I may have gone --
25 he told me again on September 6th, 2012, that we

1 need to work out a plea. But he kind of went back
2 and forth on that looks like because by -- at one
3 point he told me that he doesn't know why the
4 victim said he got -- went in, that he never got
5 out of the car, never had a gun, but I don't know
6 what date those notes are from.

7 Q. But he never said he wanted to go to
8 trial. He asked you twice, in June and September,
9 to work out a plea deal?

10 A. Yes.

11 Q. And he ultimately pled to a lesser
12 included of Second Degree Burglary and there was
13 the dismissal of the weapons charge, but was that
14 the best plea offer you ever got?

15 A. Yes. We wouldn't have taken a worse
16 plea offer.

17 Q. He didn't reject an earlier one that
18 was revoked by the State?

19 A. Not that I remember, no.

20 Q. Did you explain the process to him and
21 what rights he would be giving up by pleading
22 guilty?

23 A. Yes.

24 Q. Did he understand these conversations?

25 A. I think so. I didn't have any

1 indication that he didn't.

2 Q. Did he ever tell you he didn't
3 understand something?

4 A. I mean that first visit in
5 December 2011 he said that he didn't understand his
6 rights and that he was confused.

7 Q. At the time of his plea did he
8 understand that he was pleading guilty, what rights
9 he would be giving up by entering a guilty plea?

10 A. Yes, looks like he actually started
11 telling me even earlier than June 2012. He started
12 telling me in March 2012 that he wanted to plead
13 guilty.

14 Q. Did he ever tell you he wanted to go to
15 trial?

16 A. No.

17 Q. Whose decision was it for him to plead
18 guilty?

19 A. His.

20 Q. Did you feel rushed to get the guilty
21 plea done?

22 A. No. Again looks like the first time I
23 saw him was probably was in December 2011. I had
24 visited him at least every three months. In 2012
25 we did a bond hearing for him in the meantime. And

1 then I saw him again April 19th, 2013, which he
2 said he would accept the plea. He had been in jail
3 for 19 months. Admitted he had a part in it and
4 got caught up with the wrong people.

5 Q. So he did eventually admit to you he
6 was involved?

7 A. Yes.

8 Q. Do you have a copy of the transcript up
9 there?

10 A. I do.

11 Q. If you will turn to page 9. This is
12 during Solicitor DuRant's review of the facts with
13 the Court. Will you look at lines 10 through 13
14 and read them to yourself.

15 A. (Witness complies with request.)

16 Q. Does Solicitor DuRant tell the plea
17 court that they have any reason to believe Mr.
18 Bennett was involved with Allison Griffor's
19 killing?

20 A. No. He told him that we don't believe
21 Mr. Bennett has any knowledge of that.

22 Q. But he does think that the four other
23 co-defendants, at least some of them are involved,
24 correct?

25 A. Yes.

1 Q. And at this point your client, Mr.
2 Bennett, had written letters to the co-defendants'
3 attorneys recanting his statement?

4 A. Yes.

5 Q. Do you know if that impacted the
6 State's ability to proceed forward on those other
7 four cases?

8 A. I think -- I don't remember what their
9 outcomes were. I think that they may have gotten
10 better outcomes than Mr. Bennett because it created
11 more difficulty for them to prosecute them as
12 effectively as they could have before he had done
13 that.

14 Q. Did you explain that to your client
15 ever, the implications of his recantation and
16 sending those letters?

17 A. I don't remember. I can look back
18 through my notes if you want to wait for an answer
19 on that, but offhand I don't remember.

20 Q. In testimony there has been some
21 discrepancy about how many guns were involved, but
22 consistently all discovery showed that there were
23 multiple weapons involved including a sawed-off
24 shotgun, correct?

25 A. What it showed consistently is that the

1 victim reported that there were multiple guns
2 involved.

3 Q. You filed a motion to reconsider,
4 correct?

5 A. I did, yes.

6 Q. Why did you file that?

7 A. Because I think that Mr. Bennett got a
8 very harsh sentence for someone of his age with no
9 prior record, that he was in my impression probably
10 sort of swept up with these other Defendants.

11 Q. Did you set forth those reasons to
12 Judge Young in your motion to reconsider?

13 A. I did my best.

14 Q. And the ultimate outcome was Judge
15 Young declined to amend his sentence?

16 A. Yes.

17 MS. JAMESON: No further questions.

18 THE COURT: Redirect?

19 REDIRECT EXAMINATION

20 BY MR. FALK:

21 Q. You will admit that your client did not
22 have an understanding of what was going on when he
23 was read his Miranda rights because of some type of
24 learning disability, what have you, that would be a
25 defense to use in a Jackson v. Denno hearing?

1 A. I would admit that he told me that,
2 yes, he did not understand.

3 Q. That something that you could use -- if
4 it were true that is something that you could use
5 in a Jackson v. Denno hearing?

6 A. Absolutely if we had gone to trial I
7 would have -- we would have fully explored that and
8 hired experts and everything else.

9 Q. You have had a couple minutes. Is
10 there -- do you now see any notes in there about
11 Allison Griffor?

12 A. No. I don't. I don't know if I -- I
13 don't. I remember it coming up during the plea,
14 but I don't remember if Mr. DuRant had previously
15 asked me about it or I don't remember. So looks
16 like Bruce offered him armed robbery and burglary
17 second without cooperation. So I don't know that
18 -- I feel like we went in and talked to him, but it
19 may have been after the plea because he was trying
20 to help himself out at that point, but that
21 wouldn't come in before. I don't remember.

22 Q. But when you went to plea he was going
23 to plead to the lesser charge with no
24 recommendation put in front of the judge for
25 sentencing?

1 A. Yes.

2 MR. FALK: No further questions.

3 THE COURT: You may step down. Thank
4 you. You are free to leave.

5 MR. FALK: Call Mr. Bennett to the
6 stand.

7 THE COURT: Mr. Bennett, please come
8 forward.

9 DEVOUN BENNETT

10 having been duly sworn, testifies as follows:

11 THE CLERK: Please spell your first and
12 last name.

13 THE WITNESS: Devoun Bennett,
14 D-E-V-O-U-N B-E-N-N-E-T-T.

15 THE COURT: Mr. Bennett, pull up real
16 close to the microphone. Speak loudly, clearly and
17 slowly in order that we can hear everything that
18 you have to say. Mr. Falk.

19 DIRECT EXAMINATION

20 BY MR. FALK:

21 Q. Mr. Bennett, did you want to take a
22 plea in this case or did you want to go to trial?

23 A. At the time I wanted to take a plea in
24 the case being that what evidence being presented
25 and what was being held against me was the reason I

1 wanted to take a guilty plea.

2 Q. And you had made a statement of some
3 sort to the police; is that correct?

4 A. Yes, sir.

5 Q. Did you understand your -- did they --
6 did you understand any Miranda rights that you were
7 given?

8 A. No, I actually didn't at the time. I
9 really didn't know what I was saying or what I even
10 was getting myself into or was already in, but
11 after a while just sitting there ready to go home
12 and just ready to leave there I really just start
13 anything to try to get my way out of the building,
14 you know what I'm saying, out the facility.

15 Q. Sure. What type of -- how far did you
16 go in high school?

17 A. Eleventh grade.

18 Q. Did you get a GED?

19 A. No, sir.

20 Q. What high school were you at?

21 A. West Ashley High.

22 Q. Were you surprised -- can you explain
23 what Allison Griffor's case has to do with the case
24 that you were tried for?

25 A. In all actuality it don't have nothing

1 actually to do with my case, but being that the
2 solicitor and whoever else feel as if my
3 co-defendants or me may have something to do with
4 it, when they say that they really believe that's
5 my co-defendants, they just believe that I know
6 which one of them did it. So being that I won't
7 come out and actually give up any information it
8 was told to me by my lawyer a while back when I was
9 in the county that the solicitor feel like being
10 that I don't want to help him out that he is not
11 going to help me out and give me a plea deal, you
12 see what I'm saying?

13 Q. Sure.

14 A. But in all actuality I don't know what
15 the Griffor case have to do with my case, but every
16 court appearance I went to or wasn't at every time
17 I had a court appearance, bond hearing, preliminary
18 hearing, the mention of the Griffor case always get
19 mentioned. Every time I got a court appearance on
20 First Degree Burglary the Griffor case still
21 getting mentioned even though it had nothing to do
22 with me. I feel like it prejudiced me and it made
23 my character look bad being behind the fact that it
24 is an unsolved homicide of a five-year old white
25 girl.

1 Q. Now, was it ever arranged for you to
2 leave the detention center and meet with the police
3 officer and tell what you knew about the Griffor
4 case?

5 A. Yes, it was.

6 Q. Police officers come to the detention
7 center to talk to you about the case?

8 A. Yes, it was the detectives come like
9 that plenty of times. The story was always the
10 same, that I didn't know nothing. It done been
11 like that since I after got convicted of the Strong
12 Armed Robbery and Second Degree Burglary. I have
13 detectives up come the road while I been in prison
14 and came to see me two or three times numerous
15 still asking and still popping up in my mom's house
16 telling her to tell them if I know anything that go
17 ahead and let them know. Years later after I
18 already been convicted and the case still wasn't
19 solved I'm still having detectives coming to see me
20 questioning me about it.

21 Q. So you have Charleston County
22 detectives coming -- where were you housed?

23 A. At the county correction.

24 Q. So they came there and talked to you?

25 A. Yes, twice.

1 Q. Did you know about this visit prior to
2 that?

3 A. No. No, sir, I didn't.

4 Q. And was that an arrangement with your
5 attorney?

6 A. No. It was just a pop-up visit by two
7 detectives.

8 Q. And so if you were at Lee County you
9 had already been through A&E so it was probably
10 quite a bit after you went up the road?

11 A. Yes.

12 Q. Six months later?

13 A. Six months, yeah, later.

14 Q. And you have talked to your lawyer
15 about the fact that you didn't really understand
16 what you said when you were making your statement;
17 is that correct?

18 A. Yes, sir.

19 Q. That you were confused?

20 A. Yes, sir.

21 Q. You were here when she testified to
22 that?

23 A. Yes, sir.

24 Q. And so why did you plead?

25 A. I pled honestly because like I said I

1 played a part by taking them to the house even
2 though I wasn't the mastermind or I didn't have any
3 like hand action involvement. But I still feel as
4 if I played a part so as a man I able to accept the
5 responsibility that come behind that, you see what
6 I'm saying, but I just feel like the time was just
7 too harsh. You know what I'm saying?

8 But at the end of the day I decided to
9 plead out, wanted to plea out under the simple fact
10 that I played a part in the whole incident, see
11 what I'm saying?

12 Q. Had you ever had any prior arrests for
13 marijuana possession or --

14 A. No, sir.

15 Q. And can you explain a little bit about
16 the -- did you sell an iPod to somebody?

17 A. I sold it to the victim.

18 Q. Okay. Was that one of the small ones?

19 A. It was -- at the time was like 2011 so
20 it was like a newer version one.

21 Q. You sold it for fifty bucks?

22 A. I sold it for fifty bucks. I got the
23 iPad for like 50 bucks or less than that, you know
24 what I'm saying, had it for a little minute and
25 sold it.

1 Q. Okay. And was there some relationship
2 between you and the victim as far as you buying
3 weed from him or him from you?

4 A. No, that really was the only -- we had
5 talked like every time we see each other once in a
6 while in the neighborhood, but other than that it
7 was just, you know, how are you doing, get on
8 through, hey, bye.

9 MR. FALK: I have no further questions.

10 THE COURT: Cross-examination.

11 CROSS-EXAMINATION

12 BY MS. JAMESON:

13 Q. Mr. Bennett, how many times did you
14 meet with Ms. Sarji before your guilty plea?

15 A. We actually met a number of times. I
16 can't really recall how many times, but if I ain't
17 mistaken I know it was more than five times if I am
18 not mistaken.

19 Q. Did you review the discovery with her?

20 A. I mean we talked about it together, but
21 actually sitting down going through it like
22 together trying to study it, now we talked about
23 what was in the discovery.

24 Q. And the victim knew you I think you
25 said from around the neighborhood, you guys would

1 talk when you saw each other?

2 A. Yeah.

3 Q. In your statement you gave to law
4 enforcement you implicated yourself as being
5 involved, right?

6 A. Yes, ma'am.

7 Q. Did you tell law enforcement that you
8 planned the whole robbery?

9 A. No, ma'am.

10 Q. Did you tell them that you picked out
11 that victim because you knew him?

12 A. No, ma'am.

13 Q. What did you tell law enforcement?
14 What did you admit to them?

15 A. When I did tell them something I just
16 told them the names of my co-defendants and I told
17 them that I had the involvement and played my part,
18 but that's all actually that I told them. Anything
19 else that was told from them was told from the
20 victim.

21 Q. When you say you told them you were
22 involved, what did you tell them you were involved
23 with?

24 A. I told them I was involved with the
25 simple fact that I was there and I was in the car

1 when it was happening. I knew what was going on so
2 therefore I play my involvement and I played my
3 part.

4 Q. So after you cooperated with law
5 enforcement so -- for a while in the beginning you
6 were cooperating with law enforcement, correct?

7 A. Yes, ma'am.

8 Q. How long were you cooperating with law
9 enforcement?

10 A. I mean to the end I still cooperated
11 with them. The only thing I told them that was in
12 cooperation with them was the names of my
13 co-defendants. Anything else I ain't told them,
14 you know what I'm saying, and at the end I never
15 changed my statement until I changed the statement
16 saying in the letter to my victims trying to get
17 them off the case.

18 Q. You mean co-defendants, not victims?

19 A. Yes, ma'am, my co-defendants.

20 Q. So your cooperation with law
21 enforcement was giving the names of your
22 co-defendants?

23 A. Yes.

24 Q. And then you turned around and wrote
25 letters to all those co-defendants and their

1 attorneys saying they weren't involved?

2 A. Yes, ma'am.

3 Q. So were you lying when you talked to
4 law enforcement or when you wrote those letters?

5 A. When I wrote those letters.

6 Q. So your co-defendants were involved?

7 A. They pled their involvement.

8 Q. But they were involved? I need a yes
9 or no.

10 A. Yes, ma'am.

11 Q. Why did you send those letters then?

12 A. For the simple fact that I felt I was
13 the reason they have locked up anyway so I tried to
14 get them from -- so they don't have to be locked
15 up.

16 Q. You pled guilty to the lesser included
17 offense of Second Degree Burglary, right?

18 A. Yes, ma'am.

19 Q. Did you discuss with Ms. Sarji the
20 benefits of that lesser included offense?

21 A. No, ma'am. We did not really talk
22 about it. We didn't.

23 Q. Did she ever tell you that First Degree
24 Burglary carries 15 years to life?

25 A. Not that I recall. I remember hearing

1 that it carries 15 to life, but I don't recall her
2 telling me.

3 Q. Who did you hear it from?

4 A. I can't tell you. I just recall
5 hearing it, probably hearing it around in the
6 jailhouse.

7 Q. And the State dismissed a weapons
8 charge, right?

9 A. Yes, sir.

10 Q. And I believe you testified before you
11 pled guilty because you were involved and played a
12 part, right?

13 A. Yes, ma'am.

14 Q. But your complaint now is your sentence
15 was too harsh?

16 A. Yes, ma'am.

17 Q. So all you are looking for is a time
18 cut?

19 A. Yes, ma'am. My whole issue is the
20 sentence was too harsh and I feel as I was
21 sentenced because of my character because of the
22 character that the media or the solicitor brought
23 upon me and I felt like I was prejudiced behind
24 that Griffor case. Every court appearance I went
25 to keep on brought about the unsolved homicide so I

1 feel like my name is on that, I am getting looked
2 at behind that and I will get judged behind the
3 murder case. And I feel like if my lawyer had
4 object and been saying something and step up to the
5 plate and let them know that Griffor case has
6 nothing to do with my case that maybe it would have
7 been a different outcome.

8 Q. But the outcome still would have been
9 you pled guilty. You didn't want to go to trial?

10 A. No, ma'am. The outcome would have been
11 me pleading different, it would still been me
12 pleading guilty, but the outcome could have been
13 different if maybe my lawyer stepped up and said
14 something about the unsolved homicide has nothing
15 to do with me, if she say something it was being
16 took off the record from were then maybe the
17 outcome would have probably been different on my
18 behalf, maybe I wouldn't have been looked at as
19 somebody who possibly know something about the
20 Griffor case.

21 Q. So that's your only complaint against
22 Ms. Sarji, that she didn't object when this
23 solicitor made those comments?

24 A. Yes, ma'am. I feel like she was
25 ineffective.

1 Q. Your Honor, I would move for a directed
2 verdict as to the other issues because we have had
3 testimony from the applicant that that's the only
4 issue he is taking issue with of Ms. Sarji's
5 representation.

6 THE COURT: I overrule your motion. We
7 will move forward.

8 MS. JAMESON: Thank you, Your Honor.
9 No further questions.

10 REDIRECT EXAMINATION

11 BY MR. FALK:

12 Q. You had said you looked for a time cut,
13 but you would be satisfied if you can get
14 resentenced without the judge knowing anything
15 about the Griffor case, would you not?

16 A. Yes, sir. I will be willing to take a
17 new trial, a time cut.

18 Q. But you would be satisfied if you could
19 plead possibly with new counsel and the solicitor
20 would be directed not to talk about the Griffor
21 case during your sentencing?

22 A. Of course, yes, sir.

23 Q. And I just want to make sure that
24 there's an understanding here. There is really two
25 cases that we are talking about cooperation on.

1 You cooperated regarding your co-defendants in the
2 charge that you pled guilty to; is that correct?

3 A. Yes.

4 Q. And then there was also they were
5 looking for cooperation in another case, that being
6 the Griffor case; is that correct?

7 A. Yes, sir.

8 MR. FALK: No further questions.

9 THE COURT: You may step down. Thank
10 you, sir. You may call your next witness.

11 MR. FALK: We would call Mr. DuRant to
12 the stand.

13 THE COURT: Mr. DuRant, please come
14 forward.

15 BRUCE DURANT

16 having been duly sworn, testifies as follows:

17 THE COURT: I will ask you please state
18 your full name and spell your last name.

19 THE WITNESS: My name is Douglas Bruce
20 DuRant, last name is D-U-R-A-N-T.

21 DIRECT EXAMINATION

22 BY MR. FALK:

23 Q. Mr. DuRant, can you tell me something
24 about the Griffor case? It might have been before
25 my time. Was that sort of a --

1 A. The Griffor case, the only reason it
2 got mentioned, and I think it's pretty clear from
3 the plea transcript, was that the victim in Mr.
4 Bennett's case did not come forward about this home
5 invasion until two to three days after it happened.
6 And the reason he came forward was because of the
7 Griffor case. The Griffor case occurred in the
8 same general vicinity neighborhood. It was a home
9 invasion involving a shotgun during which the
10 perpetrator shot through the front door of the
11 residence killing a five-year old girl. Three days
12 -- two to three days before that the victim in this
13 case had been the victim of the home invasion
14 involving four -- five black males, one with a
15 shotgun, four with pistols. And he only came
16 forward on that case because of the Griffor case
17 because he believed that it might have been the
18 same people involved.

19 So when I brought that out in the plea
20 I was only bringing that out to explain to the
21 judge how the victim came forward in this case and
22 specifically told the judge on the record at the
23 plea that we had no reason to believe that this
24 Defendant was involved in the Griffor shooting, but
25 we did have reason to believe that his

1 co-defendants were perhaps involved in the Griffor
2 shooting.

3 Q. There was testimony that he had a bond
4 hearing. Did you go to the bond hearing?

5 A. I'm sure I probably did. I usually do
6 my own bond hearings.

7 Q. Was there a discussion with the bond
8 court judge as far as the Griffor case?

9 A. It was probably brought up, but once
10 again, it was never claimed that this Defendant was
11 involved in the Griffor case. I wanted to talk to
12 him about the Griffor cause. I made it known to
13 Leslie Sarji that I wanted to talk to him about the
14 Griffor case. But more importantly I wanted his
15 cooperation against his two co-defendants in this
16 home invasion which were Philip Moses and I believe
17 the other one was Lavelle Grant. We had every
18 reason to believe they were involved in the Griffor
19 case because they had been stopped in a car in the
20 area maybe ten minutes after the actual shooting.
21 And he was not in that car, but those two were in
22 the car. So we had reason to believe that they had
23 some knowledge of the Griffor shooting.

24 I wanted to talk to him about his
25 knowledge of the Griffor shooting. I wanted to

1 talk to him to get his cooperation against his two
2 co-defendants Philip Moses and Lavelle Grant and I
3 repeatedly got in touch with Ms. Sarji seeking
4 cooperation and he blew me off. And then not only
5 did he blow me off, he writes these letters
6 recanting his statements against Lavelle Grant and
7 Philip Moses which pretty much completely destroyed
8 his value to me as a witness and therefore I had no
9 reason to negotiate with him in anything. He is
10 lucky I gave him what I did. I mean the plea was
11 basically I was dropping a burg one and burg two
12 violent to plead to the armed robbery and I will
13 drop the firearm charge and you get what you get.

14 Q. I can appreciate that all murder cases
15 aren't the same, but again this was before I came
16 to Charleston. Did the Griffor case have public
17 attention here like the Marley Lion case?

18 A. It still remains unsolved and I think
19 it's still an active investigation by the
20 Charleston County Sheriff's Office, but yes, it got
21 a lot of press at the time that it happened. Like
22 I said, it happened with I think about two days --
23 two or three days around the same time as this one.

24 Q. Were you aware that Charleston County
25 detectives went up to meet with him at Lee to talk

1 about the Griffor case?

2 MS. JAMESON: Your Honor, I believe
3 that's beyond the scope of what we are here for
4 today. It has not been alleged in the application.

5 THE COURT: I will allow some leeway,
6 but I understand the complete nature of the Griffor
7 case and how it applies. You can ask whatever you
8 want to ask.

9 THE WITNESS: They did not go at my
10 direction. I think after his guilty plea and he
11 got -- did get a sentence, then he indicated he
12 wanted to talk to me and we did bring him in and
13 talk to him and he basically said that he had no
14 knowledge of the Griffor case. That was pretty
15 much it.

16 BY MR. FALK:

17 Q. During the plea hearing what was your
18 purpose between -- about mentioning the iPod for
19 \$50?

20 A. That's how the \$50 -- my theory of the
21 case was that I believe the reason that he got the
22 sentence that he got was he set up this whole
23 thing. He was the only one that knew the victim.
24 The victim was at some little nondescript apartment
25 West of the Ashley. The reason the whole case got

1 solved was because the victim knew him and bought
2 that iPod from him. He knew that he went to West
3 Ashley High School. He did not know his real name.
4 He knew him as Vaun, but he knew his street name
5 was Vaun and he went to West Ashley High School.
6 And it was based upon that information that they
7 developed Devaun Bennett as a suspect. He was
8 identified, arrested and then gave a videotape
9 confession. In the videotaped confession he
10 admitted knowing two of the four guys that were
11 with him and -- but denied any kind of really
12 active involvement in the case which was completely
13 disputed by the victim that said all five of them
14 were involved, all five of them were armed, that
15 this guy basically had a pistol and this guy
16 threatened to kill him if he told the police what
17 happened.

18 Q. By discussing the sale price of the
19 iPod obviously the transaction and purchase of the
20 iPod can certainly make that your goal there as far
21 as explaining how Devaun may have known the victim.
22 By telling it was for 50 bucks were you not trying
23 to create an impression that he was selling a
24 stolen iPod since it was so much less?

25 A. No. I mean that's what the victim said

1 and I was just repeating what the victim said. For
2 all I knew, the victim could have been selling him
3 dope.

4 Q. Why did you talk about the fact that
5 there was a dope transaction or marijuana
6 transaction between the two?

7 A. I think he mentioned something about
8 going over there to steal marijuana if I'm not
9 mistaken, but I'm not -- I never vouch for the
10 credibility of the victim because, you know, I
11 don't know what he's doing. All I know is that he
12 said that he had this iPod for \$50.

13 Q. But by talking about the possible
14 marijuana transaction was it not your purpose to
15 let Judge Young know that he had some -- that he
16 wasn't the choirboy that Ms. Sarji was portraying
17 him as?

18 A. Who, Mr. Bennett? I think he knew he
19 was not a choirboy because he just committed a home
20 invasion.

21 MR. FALK: Thank you, Your Honor. No
22 further questions.

23 THE COURT: Anything from the State?

24 CROSS-EXAMINATION

25 BY MS. JAMESON:

1 Q. Yes, briefly, Your Honor. Mr. DuRant,
2 at the time of Mr. Bennett's plea had his
3 codefendants cases been solved?

4 A. They had been arrested, but ended up
5 after his lack of cooperation against them having
6 to give it away pretty much. I think they pled to
7 -- took a plea to strong armed robbery and burglary
8 for like eight years a piece which was basically a
9 turnaround.

10 Q. And I believe you testified the victim
11 identified him as knowing him in high school and
12 also just like around the neighborhood?

13 A. Well, my recollection was because of
14 the iPod sale and from West Ashley High School.

15 Q. And the victim identified Mr. Bennett
16 by name?

17 A. He did not know his name. He knew him
18 as Vaun and knew that he -- his connection to West
19 Ashley High School and that's how Mr. Bennett was
20 developed as a suspect.

21 Q. And the victim informed law enforcement
22 and your office that all five co-defendants had
23 come in and all five were armed?

24 A. Yes.

25 Q. Since the victim ID'd him, obviously

1 the victim -- the victim saying Mr. Bennett went
2 into the home, he wasn't waiting in the car?

3 A. No. That was specifically disputed by
4 the victim that, quite frankly, if Mr. Bennett was
5 in the car it wouldn't have been solved because
6 that was the only link to how the case got solved.

7 Q. So the evidence you would have
8 presented at trial was that Mr. Bennett was the
9 mastermind?

10 A. That's how we got there. That was my
11 theory of the case. I don't think there was ever
12 any relationship between the victim and the other
13 four people involved.

14 Q. This was a pretty violent home
15 invasion, correct?

16 A. Well, it was -- all of them are pretty
17 violent when somebody comes in your house with four
18 pistols and a shotgun.

19 Q. Were there threats made on the victim's
20 life?

21 A. Yes. There were specifically threats
22 made on the victim's life by Mr. Bennett.

23 Q. Moment's indulgence. I think you
24 testified the reason you brought up the Griffor
25 case was to explain the delay of the victim

1 reporting?

2 A. The delay in reporting, absolutely.

3 Q. And the record -- have you had an
4 opportunity to review the transcript of this case?

5 A. I think I read it yesterday.

6 Q. Do you recall whether the transcript
7 indicates that?

8 A. I believe, yes, it does indicate that.
9 And I believe it also indicates that I had no
10 reason to believe this Defendant was involved in
11 the Griffor case.

12 Q. And you told Judge Young that?

13 A. Yes, I did.

14 Q. Do you recall Ms. Sarji filing a motion
15 to reconsider?

16 A. Yes.

17 Q. Did you file a response?

18 A. I did.

19 Q. What were the reasons why you were
20 saying Judge Young shouldn't reconsider his
21 sentence?

22 A. I was saying Judge Young shouldn't
23 reconsider his sentence because it was appropriate
24 under the circumstances due to the fact this was a
25 violent crime, he was intimately involved, in my

1 opinion he was the one that set the whole thing up.

2 Q. Do you have a copy of that up there
3 with you?

4 A. I do.

5 Q. May I? Your Honor, I move to introduce
6 a copy of the State's response to defense motion to
7 reconsider into evidence as defense one or
8 Respondent 1.

9 THE COURT: Any objection from the
10 Applicant?

11 MR. FALK: No, Your Honor.

12 THE COURT: It's into evidence.

13 THE WITNESS: And to further answer
14 your question, more importantly was that his
15 failure to cooperate with us in the prosecution of
16 his co-defendants Grant and Moses destroyed any
17 leverage I had over them in this case. Chances are
18 if I could have tried them on this case and
19 convicted them of Burglary First Degree and Armed
20 Robbery, then we may have made some headway into
21 solving the Griffor case.

22 MS. JAMESON: Your Honor, would you
23 like a copy of Respondent's 1?

24 THE COURT: Yes.

25 (RESPONDENT'S EXH. MARKED 1 for

1 identification.)

2 MS. JAMESON: No further questions.

3 THE COURT: Redirect?

4 REDIRECT EXAMINATION

5 BY MR. FALK:

6 Q. Would you have -- if you were going to
7 try this case would you contemplate putting in any
8 evidence about the Griffor case?

9 A. If I was going to try the case I would
10 have tried this case.

11 Q. I know. So would evidence of the
12 Griffor case, would that have been relevant to this
13 trial?

14 A. No, it wasn't relevant to your guys's
15 trial.

16 Q. That's what I meant. If you were going
17 to try Mr. Bennett you would not have contemplated
18 trying to talk about the Griffor case?

19 A. No.

20 Q. Because that is not relevant?

21 A. It wasn't relevant and I didn't need
22 it.

23 THE COURT: You may step down. Mr.
24 Falk, anything further?

25 MR. FALK: No further witnesses.

1 THE COURT: Anything from the State?

2 MS. JAMESON: No, Your Honor.

3 THE COURT: Be glad to hear from you,
4 Mr. Falk.

5 MR. FALK: Your Honor, I believe that
6 Defendants are entitled to competent counsel at all
7 steps of the process which would include a
8 sentencing hearing. And a remedy in this
9 situation, my client certainly acknowledges that a
10 remedy in this situation would be to allow him to
11 be resentenced under Burglary Second for a
12 different judge with the prescription that there be
13 no mention of the Griffor case as part of the
14 sentencing hearing, in this case in a resentencing.

15 My client testified from the stand that
16 he was looking for a sentence cut which I believe
17 is beyond your jurisdiction, but I do believe you
18 would have the authority to order a new sentencing
19 under different circumstances.

20 I do believe that it is fair to say
21 that the discussion about the Griffor case should
22 have been objected to during the sentencing. I
23 think Ms. Sarji acknowledged that. She thought it
24 possibly prejudicial. It was a notorious case in
25 Charleston apparently like the Marley Lion's case.

1 And I believe if you can look at that sentencing
2 transcript it looks like Mr. DuRant was trying to
3 paint Mr. Bennett here with some kind of
4 involvement in a highly notorious case. I don't
5 think that was appropriate. I think that Ms. Sarji
6 should have objected to -- I think it was
7 inappropriate to talk about the drug transaction.
8 And I still maintain that the reason why he
9 mentioned selling the iPod for \$50 was to draw
10 further question on my client's character that he
11 had possibly been selling iPods that were stolen.

12 But certainly he goes in there with no
13 criminal record and it was an effort on the
14 solicitor's part to sort of give other facts that I
15 don't believe is relevant and I believe Ms. Sarji
16 should have fought to keep them from the sentencing
17 judge.

18 THE COURT: Yes, ma'am.

19 MS. JAMESON: Briefly, Your Honor. The
20 record is clear that Judge Young -- that Solicitor
21 DuRant only informed Judge Young of this to explain
22 the delay. If you look on page 8 it explains the
23 victim only came forward, the reasons the victim
24 didn't come forward and then on page 9 Mr. DuRant
25 informed the Court we don't think -- I will tell

1 you right now we don't believe Mr. Bennett has any
2 knowledge of it, but we believe that people that he
3 was with were probably the perpetrators. He makes
4 it clear to Judge Young as soon as it is mentioned
5 that they have no reason to believe that Mr.
6 Bennett was involved in the Griffor case.

7 So the State would submit there's no
8 deficiency from Ms. Sarji not objecting to that.
9 Moreover, there's no prejudice because even if the
10 Court were to find that those were objectionable
11 comments, Ms. Sarji filed a motion to reconsider.
12 The State responded to the motion to reconsider and
13 ultimately Judge Young denied it.

14 The motion doesn't have any reference
15 to Mr. Bennett being involved in the Griffor case.
16 And then as to all other allegations, the State
17 would move for dismissal of those because we had
18 testimony on the stand from applicant that he did
19 not have any issues with Ms. Sarji's involvement
20 other than that one limited issue regarding Mr.
21 DuRant's comments on the Griffor case. We would
22 ask that the application be denied.

23 MR. FALK: Your Honor, just if I could,
24 my point would be that the fact that the victim
25 delayed in coming forward was really not relevant

1 to the sentencing hearing. And the only reason why
2 he tried to make it relevant is to talk about the
3 Griffor case.

4 THE COURT: One of the things that has
5 become clear over the past hour or two hours is
6 that Mr. Bennett never wanted a trial. He always
7 wanted to plea. As a matter of fact, here today he
8 still wants a plea. Never wanted a trial. And
9 that given his choice here today he wouldn't elect
10 to go to a trial. I give him credit for being
11 forthright and honest saying that he was involved
12 in it. He needed to accept responsibility for it.

13 As far as the mention of the Griffor
14 case, I agree with you, Mr. Falk, that would be
15 inadmissible in a trial, but just about in every
16 plea presentation there are things they come before
17 the Court on behalf of the State they are not
18 inadmissible. And just about every plea for
19 mitigation is stuff that's not admissible.

20 And if you look at the transcript, and
21 I have read the transcript, and it's clear from
22 what Mr. DuRant said that he was not involved, it
23 was just a mere explanation as to a background
24 about the plea. The mention of marijuana sale
25 certainly was not what drove the sentencing in this

1 case. Marijuana is legal in a number of states now
2 and probably there are people in this courtroom
3 that have not been a stranger to a marijuana
4 cigarette. So I don't think that's what drove the
5 plea. The plea had -- the sentencing was driven by
6 the fact it was a home invasion with weapons and if
7 there is anything in a civilized society we can't
8 tolerate it is that. And one could argue that
9 maybe he should not have gotten that much time
10 being his first brush with the law, but certainly a
11 reasonable person could say that he didn't get
12 enough. He didn't get as much as he could have
13 gotten. He could have ultimately got life.

14 So that has absolutely nothing to do
15 with the sentence and I think it's important, I
16 have read the entire plea transcript, and it speaks
17 for itself. The plea was freely and voluntarily
18 entered into. He understood what was going on. He
19 was satisfied with his lawyer. He accepted
20 responsibility and agreed with the facts as it was
21 presented and pled guilty.

22 Based on the evidence that's been
23 presented here today I'm going to deny the
24 post-conviction relief and ask that Ms. Jameson
25 prepare the order.

1 (These proceedings were concluded at
2 2:46 p.m., November 17, 2015, Charleston County,
3 South Carolina.)
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3 CERTIFICATE OF REPORTER

4 I, Ruth C. Weese, Registered Diplomate
5 Reporter for the State of South Carolina at Large,
6 do hereby certify that the foregoing transcript is
7 a true, accurate, and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 30th day of March, 2018 at
13 Charleston, Charleston County, South Carolina.

14 *Ruth C. Weese*

15
16 _____
17 Ruth C. Weese

18 Registered Diplomate

19 Reporter
20
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22
23
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25

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Devoun Bennett, SCDC # 355219,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2015-CP-10-1130

ORDER OF DISMISSAL

FILED
2018 JAN 24 AM 10:13
JULIE A. HARRISON
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed February 23, 2015, by Devoun Bennett (Applicant). Respondent made its Return on July 28, 2015, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened December 7, 2017, at the Charleston County Courthouse. Applicant was present at the hearing and represented by James K. Falk, Esquire. Senior Assistant Deputy Attorney General Megan Harrigan Jameson from the South Carolina Attorney General's Office appeared on behalf of the State. Following the evidentiary hearing, this Court denied the application from the bench. This order follows.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. During its March 2012 term, the Charleston County Grand Jury indicted Applicant for first-degree burglary (2012-GS-10-1304), armed robbery (2013-GS-10-1312), and possession of a firearm during the commission of a violent crime (2013-GS-10-1320) stemming from a home invasion in which five armed men forced their way into the victim's home and

robbed him at gunpoint. Leslie Sarji, Esquire, represented him. Chief Deputy Solicitor D. Bruce DuRant of the Ninth Circuit Solicitor's Office prosecuted the case. On April 24, 2013, Applicant appeared in the Charleston County Court of General Sessions before the Honorable Roger M. Young, Sr., circuit court judge, where he pled guilty to armed robbery as indicted and second-degree burglary as a lesser-included offense. Judge Young sentenced him to twenty years imprisonment for twenty years for armed robbery and to fifteen years imprisonment for second-degree burglary, with both sentences to be served concurrently. Pursuant to the plea agreement, the State dismissed the accompanying weapons indictment.

Thereafter, on May 3, 2013, Applicant filed a motion to reconsider his sentence. On May 22, 2013, the State filed its response to this motion. On October 11, 2013, while the motion to reconsider the sentence was still pending, Applicant filed an initial application for post-conviction relief. Respondent moved to dismiss this application, arguing his convictions had not become final based on the pending General Sessions motion. On May 22, 2014, the Honorable Deadra L. Jefferson, circuit court judge, acting in her capacity as Chief Administrative Judge, dismissed the application without prejudice with leave for Applicant to file another application for post-conviction relief once his General Sessions motion was ruled upon. Thereafter, Judge Young denied Applicant's motion to reconsider his sentence. Applicant filed his current post-conviction relief application on February 23, 2015.

FACTS GIVING RISE TO THE CONVICTIONS

On October 22, 2011, Applicant and four other men armed with handguns and a sawed-off shotgun entered an apartment complex in West Ashley and robbed a victim a gunpoint. (Plea Tr. 8). The five men took cash and electronic equipment. (Plea Tr. 8). The victim recognized

Applicant, whom he had previously bought an iPod and knew from West Ashley High School as "Voun." (Plea Tr. 9-10). Law enforcement questioned Applicant, who confessed to setting up the entire robbery; however, he denied entering the home with a firearm. (Plea Tr. 10).

After initially cooperating with law enforcement and implicating two of his co-defendants as accomplices, Applicant recanted his statement and refused to assist. (Plea Tr. 11). Applicant then wrote letters to the co-defendants' attorneys stating the co-defendants were not involved and that he would refuse to cooperate with the State's case. (Plea Tr. 11).

ALLEGATIONS RAISED

In his application, Applicant alleged counsel was ineffective based on "evidentiary matters" and "involuntary statements." At the evidentiary hearing, Applicant's sole allegation was counsel was ineffective for failing to object to prejudicial comments made by the prosecutor during the plea proceeding pertaining to an unrelated homicide of a five-year-old child killed in a similar home invasion in the same area three days after the crime. See Plea Tr. 8-9.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant called plea counsel to testify first. Counsel testified she has been practicing law for nineteen years and approximately half of her practice is criminal defense work. She testified she was appointed to represent Applicant and met with him an ample amount of times. She testified she received discovery materials from the State and reviewed this material with Applicant. She testified the discovery included Applicant's statement to law enforcement and the victim's identification of Applicant. She testified the State's theory of the case was that Applicant knew the victim and used their prior relationship to gain access into the

victim's home with his co-defendants. She testified she explained the elements of the charges offense with Applicant, as well as the potential sentences.

She testified she did not do a lot of investigation because one was not necessary, as Applicant had confessed to the crime, did not dispute the allegations against him, and wanted to pursue a plea deal. She elaborated Applicant had confessed to law enforcement shortly after his arrest and implicated several of his co-defendants. She testified she could have challenged the statement in a pre-trial Jackson v. Denno hearing, but there was no indication Applicant did not understand his rights or voluntarily waive his rights. She testified the victim identified Applicant by name and previously knew him.

She testified Applicant consistently stated he wanted her to secure a favorable plea on his behalf during their numerous meetings. Counsel testified was in plea negotiations with the Solicitor's office in an attempt to secure a plea offer for Applicant, but these efforts were thwarted by Applicant sending letters to co-defendants' counsels recanting his statement and cooperation with law enforcement. Counsel testified Applicant's actions significantly hampered the State's ability to prosecute the co-defendants. She testified the best offer was for Applicant to plead to the lesser-included offense of second-degree burglary rather than first-degree burglary and the dismissal of the accompanying weapons charge. She testified she communicated this offer to Applicant and it was his decision to accept this offer and enter a guilty plea.

Counsel testified that during the plea proceeding, Chief Deputy Solicitor DuRant brought up the unrelated and unsolved murder of a five-year-old girl during a home invasion that took place in the same general area of this crime and informed the plea court that at least one of Applicant's co-defendants was likely involved in this homicide. Counsel testified Chief Deputy

Solicitor DuRant brought this up because he believed Applicant likely had information about this homicide and was refusing to cooperate with law enforcement. She testified she probably should have objected to these comments by Chief Deputy Solicitor DuRant. She acknowledged Chief Deputy Solicitor DuRant informed the plea court that the State did not believe Applicant was involved in the homicide and she hoped the plea court realized Applicant was not involved in the unrelated homicide.

Counsel testified she filed a motion to reconsider Applicant's sentence following the plea, which was ultimately denied by the plea court. She testified she filed this motion because she thought the plea court's sentence was too harsh. However, she acknowledged Applicant pled guilty without any negotiation or recommendation to a violent home invasion in which he was the alleged mastermind and later recanted, significantly impairing the State's ability to prosecute his co-defendants.

Applicant testified next on his own behalf. He testified counsel was appointed to represent him and they met more than five times. He testified he reviewed discovery with counsel, including his statements implicating himself and his co-defendants and the victim's identification of him. He testified he had talked the victim before. He testified he wanted to plead guilty based on the evidence the State had, including his statement to law enforcement. He testified he was involved in the crime because he brought his co-defendants to the victim's house, but that his sentence was too harsh because he did not enter the house. He testified he ultimately wants a reduction in his sentence.

Applicant testified he discussed the elements of the offense and potential sentences with counsel. He testified he asked plea counsel to secure a favorable plea offer for him and it was his

decision to plead guilty. He testified he told the plea court he was satisfied with counsel's performance, that she had reviewed all discovery with him, and he did not want the opportunity to present witnesses and a defense in a trial. He acknowledged he did not want to proceed to trial.

Applicant testified he initially cooperated with law enforcement, but then wrote letters to his co-defendants' attorneys recanting his prior statements. He testified he ended up cooperating with law enforcement in the end. He testified the unsolved homicide of the five-year-old girl was not related to his case and his attorney should have objected to these comments made by Chief Deputy Solicitor DuRant. He testified these comments made him look bad to the plea court. He testified he has been questioned about this homicide both before and after his plea, but he has consistently told law enforcement that he has no knowledge about the homicide. He testified his only allegation is that counsel should have objected to these comments by Chief Deputy Solicitor DuRant because he thinks he would have received a more lenient sentence.

Chief Deputy Solicitor DuRant testified next. He testified he only mentioned the homicide during Applicant's guilty plea to explain why the victim did not come forward immediately and why he ultimately did—because his home invasion was factually similar to the home invasion in which the five-year-old girl was killed. He elaborated he had reason to believe Applicant's co-defendant was involved in the homicide, but did not believe Applicant was involved. He testified he made this clear to the plea court. He testified this homicide got a lot of media attention but still remains unsolved. He testified Applicant initially cooperate with law enforcement, but later recanted and assisted his co-defendants, therefore diminishing any value he might have had as a State's witnesses. He testified Applicant's actions significantly hampered

his ability to prosecute the co-defendants. He testified Applicant was questioned by law enforcement about the homicide but did not provide any information on it.

He testified the victim reported Applicant had entered his home armed with a gun along with four other men. He testified Applicant was the mastermind who planned the entire home invasion. He testified Applicant and the other invaders threatened to kill the victim. He testified these are the reasons Applicant got the sentence he did and Applicant easily could have received a harsher sentence. He testified he filed a written response to Applicant's motion for reconsideration, which was introduced as Respondent's Exhibit No. 1.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all

significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action in regards to his allegation that counsel was ineffective for failing to object to comments about the unrelated homicide by Chief Deputy Solicitor DuRant.

Initially, this Court finds there is no reasonable probability Applicant would have proceeded to trial but for counsel's alleged deficiency for failing to object to these comments, as Applicant testified numerous times that he never wanted to proceed to trial. See Hill, 474 U.S. 52 (finding an 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).

Applicant testified he was involved with this violent home invasion and merely wanted a reduced sentence. This Court finds Applicant's sentence was reasonable based on the severity of the crime—a violent home invasion that Applicant planned against a victim whom he knew. Applicant testified at the plea hearing and the evidentiary hearing that he understood the potential sentences he could have received, including up to a life sentence for first-degree burglary had the State not allowed him to plead to the lesser-included offense of second-degree burglary. Therefore, this Court finds Applicant cannot establish any requisite prejudice from counsel's action or inaction.

Moreover, this Court also finds Applicant cannot establish any deficiency of counsel. Chief Deputy Solicitor DuRant testified and the record reveals that the plea court was informed Applicant was not involved in the homicide of the minor and the comment was made merely to explain the victim's delay and hesitancy to report the crime. Although counsel testified she likely should have objected to this testimony, this Court finds these comments are unrelated to the sentence given by the plea court. Additionally, Counsel timely filed a motion for reconsideration of Applicant's sentence, which was ultimately denied by the plea court. This Court finds Applicant has failed to meet his requisite burden of establishing any deficiency of counsel. Therefore, this allegation must be denied and dismissed with prejudice.

CONCLUSION

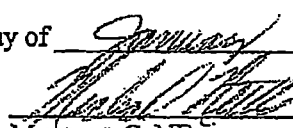
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for is denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief must be denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 16 day of January, 2018.


 MICHAEL G. NETTLES
 Presiding Judge
 Ninth Judicial Circuit

, South Carolina

98

DBD20111007318

WITNESSES

Charleston County Sheriff's Office

AGENCY CASE NUMBER

2011017524B

ARREST WARRANT NUMBER

M614465

DATE OF ARREST

October 26, 2011

ACTION OF GRAND JURY

Letitia J. [Signature]
Foreperson of Grand Jury

Date:

MAR 05 2012

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

DOCKET NO. 2012GS1001312

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March 2012 Term

THE STATE

vs.

DEVOUN DANIEL BENNETT

DOB: 1993- [REDACTED]

B/M

Indictment for

ARMED ROBBERY

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

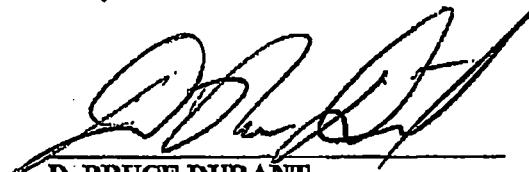
INDICTMENT

At a Court of General Sessions, convened on March 5, 2012, the Grand Jurors of Charleston County present upon their oath:

ARMED ROBBERY

That while acting in concert with others on or about October 22, 2011, in Charleston County, South Carolina, at [REDACTED], Charleston, South Carolina, by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a firearm, the Defendant, **DEVOUN DANIEL BENNETT**, did take and carry away goods and/or monies from the person or immediate presence of Justin LeBoeuf with the intent to permanently deprive him of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

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


D. BRUCE DURANT
CHIEF DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
 STATE VS.
Devoun Daniel Bennett
 AKA:
 Race: BLACK Sex: M Age: 19
 DOB: 1993 SS#: [REDACTED]
 Address: Ashley Hall Plantation Apt
 City, State, Zip: Charleston, SC 29407
 DL#: [REDACTED] SID#: SC02023934

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: Armed Robbery

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS1001312
 A/W#: M614465
 Date of Offense: 10/22/2011
 S.C. Code § : 16-11-0330(A)
 CDR Code #: 0139

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
 ATTEST: [Signature] 1801 [Signature] [Signature] 15612
DuRant, D. Brice SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 70 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Credit begins 10/25/11
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____
 *Fine: \$ _____
 § 14-1-206 (Assessments 107.5 %) \$ _____
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
 § 56-5-2995 (DUI Assessment) \$12 \$ _____
 § 56-1-286 (DUI Breath Test) \$25 \$ _____
 Proviso 47.9 (Public Def/Prob) \$500 \$ _____
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 § 14-1-213 (Drug Court Surcharge) \$150 \$ _____
 § 50-21-114(BUI Breath Test Fee) \$50 \$ _____
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
 Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.00
 3% to County (if paid in installments) \$ 3.90
 TOTAL \$ 133.90

_____ days/hours Public Service Employment
 Obtain GED ☐
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/B beginning _____
 Substance Abuse Counseling ☐
 Random Drug/Alcohol testing ☐
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk [Signature]
 Court Reporter: DIXIE EUBANK
 SCCA/217 (03/2011)

Presiding Judge [Signature]
 Judge Code: 2134
 Sentence Date: 4/24/13

DBD20111007318

DOCKET NO. 2012GS1001304

WITNESSES

Charleston County Sheriff's Office

AGENCY CASE NUMBER

2011017524B

ARREST WARRANT NUMBER

M614464

DATE OF ARREST

October 26, 2011

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

MAR 05 2012

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March 2012 Term

THE STATE

vs.

DEVOUN DANIEL BENNETT

DOB: 1993

B/M

Indictment for

BURGLARY - FIRST DEGREE

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on March 5, 2012, the Grand Jurors of Charleston County present upon their oath:

BURGLARY - FIRST DEGREE

That while acting in concert with others in Charleston County, South Carolina, on or about October 22, 2011, the Defendant, **DEVOUN DANIEL BENNETT**, did enter the dwelling of Justin LeBoeuf, located at [REDACTED], Charleston, South Carolina, without consent and with the intent to commit a crime therein. That, in addition, entry occurred during the nighttime, and/or the defendant was armed with a deadly weapon, and/or the defendant used or threatened to use a dangerous instrument, and/or the defendant displayed what was or appeared to be a pistol, revolver, shotgun or other firearm; in violation of Section 16-11-311 of the South Carolina Code of Laws (1976) as amended.

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


D. BRUCE DURANT
CHIEF DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATECharleston
VS.

Devoun Daniel Bennett

AKA:

Race: BLACK Sex: M Age: 19

DOB: 1993 SS#: [REDACTED]

Address: Ashley Hall Plantation Apt [REDACTED]

City, State, Zip: Charleston, SC 29407

DL#: [REDACTED] SID#: SC02023934

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

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

INDICTMENT/CASE#: 2012GS1001304

A/W#: M614464

Date of Offense: 10/22/2011

S.C. Code § : 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-11-0312(B) of the S.C. Code of Laws, bearing CDR Code # 0086

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45

w/minor 1st or Lawd Act)

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Dufant, B. Bruce

SC Bar# 1801

Defendant

Attorney for Defendant

SC Bar# 15672

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

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

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

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code by the State Department of Corrections.

§ 24-13-40 to be calculated and applied

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code

§17-25-135.

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

SPECIAL CONDITIONS:

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

PTUP

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

_____ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPSObtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

\$ _____ paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$	
\$	
\$	100.00
\$	
\$	
\$	
\$	
\$	25.00
\$	
\$	
\$	
\$	5.00
\$	3.90
\$	133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2134

Sentence Date: 4/24/13