

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable John C. Hayes

Appellate Number 2017-00157

William L. Bright, Jr.,

Appellant,

v.

The State of South Carolina,

Respondent.

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF GENERAL SESSIONS
2014-GS-23-6960
2014-GS-23-6962

STATE OF SOUTH CAROLINA,
PLAINTIFF,

vs.

TRANSCRIPT OF RECORD

WILLIAM LEE BRIGHT, JR.,
DEFENDANT.

February 8, 2016
Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, JUDGE

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

LUCAS CRAIG MARCHANT, ESQ.
Attorney for the Plaintiff

RODNEY WADE RICHEY, ESQ.
Attorney for the Defendant

CHERYL A. SMITH
Circuit Court Reporter

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
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There were no exhibits introduced.

P R O C E E D I N G S

1
2 THE CLERK: Your Honor, this is Case Number
3 2014-GS-23-6960, William Lee Bright, Junior, indictment for
4 burglary first degree, pleading to burglary second degree,
5 dwelling. It is a true bill. And 2014-GS-23-6962 for
6 armed robbery and possession of a weapon during the
7 commission of a violent crime, pleading to robbery,
8 attempted robbery. It is also a true bill.

9 Would you raise your right hand.

10 WHEREUPON,

11 WILLIAM LEE BRIGHT, JUNIOR

12 After having been duly sworn, testified as follows:

13 THE COURT: Does he get any jail days?

14 MR. MARCHANT: 51, Your Honor.

15 THE COURT: All right. In the last 24 hours, have you
16 had any drugs, alcohol or medication?

17 DEFENDANT BRIGHT: No, sir.

18 THE COURT: I'm sorry?

19 DEFENDANT BRIGHT: No, sir.

20 THE COURT: Have you ever been treated for substance
21 abuse or mental illness?

22 DEFENDANT BRIGHT: No, sir.

23 THE COURT: You're up here on two indictments. The
24 first one alleges you did, Count 1, Greenville County,
25 May 14, 2014, while armed with a deadly weapon or alleging

1 you were using a representation of a deadly weapon, you
2 took by force or intimidation jewelry, debit or credit
3 cards, cell phones, pistol, money, other items from Jami
4 Brothers. Pleading to attempted armed robbery. Carries
5 20 years.

6 This is a violent offense which impacts parole
7 eligibility. It's a most serious offense, and if you get
8 convictions for two or more most serious offenses, you're
9 eligible for life in prison without parole; do you
10 understand that?

11 DEFENDANT BRIGHT: Yes, sir.

12 THE COURT: The next one alleges you did, Greenville
13 County, May 14, 2014, unlawfully enter the dwelling of Jami
14 Brothers on Welcome Avenue, Greenville, South Carolina,
15 pleading to a violent burglary second. Carries up to
16 15 years.

17 This is a serious offense. You get convictions for
18 three or more serious offenses, you're eligible for life in
19 prison without parole; do you understand that?

20 DEFENDANT BRIGHT: Yes, sir.

21 THE COURT: How do you want to plead to them?

22 DEFENDANT BRIGHT: Guilty.

23 THE COURT: Is that your free and voluntary decision?

24 DEFENDANT BRIGHT: Yes, sir.

25 THE COURT: You understand you have an absolute right

1 to a trial by jury where you'd be presumed innocent unless
2 and until the State could prove you guilty beyond any
3 reasonable doubt of each and every element of each offense
4 that you are charged with, you have a right to confront and
5 cross-examine the witnesses and the evidence put up against
6 you by the State, you'd have a right to compel in court all
7 relevant and competent evidence in your own defense or you
8 can remain silent. Your silence cannot be held against you
9 and you can never be compelled to incriminate yourself. Do
10 you understand all those rights?

11 DEFENDANT BRIGHT: Yes, sir.

12 THE COURT: You want to give them all up to enter this
13 plea?

14 DEFENDANT BRIGHT: Yes, sir.

15 THE COURT: Are you guilty?

16 DEFENDANT BRIGHT: Yes, sir.

17 THE COURT: Are you totally and completely satisfied
18 with your attorney?

19 DEFENDANT BRIGHT: Yes, sir.

20 THE COURT: And do you know what the evidence is the
21 State has against you?

22 DEFENDANT BRIGHT: Yes, sir.

23 THE COURT: All right. Listen while they tell me
24 about it.

25 MR. MARCHANT: May it please the Court. On

1 May 14, 2014, at [REDACTED] Welcome Avenue here in Greenville
2 County, the homeowner was taking her dog outside when she
3 opened the door and was confronted by this defendant as
4 well as the codefendant, Ricky Gilstrap. Gilstrap was
5 armed with a shotgun and demanded the victim put her hands
6 up. The defendants then made their way into the home and
7 forced that victim as well as other victims into the
8 homeowner's bedroom.

9 Once inside the bedroom and while holding all victims
10 at gunpoint, the defendants demanded personal belongings
11 and effects from all the victims to include a .38 caliber
12 pistol, which was handed over to this defendant.

13 The codefendant was positively identified from a
14 lineup by one of the victims at the home that evening,
15 Ms. Abdalla. Approximately a week later, law enforcement
16 had a pretty firm identification of this defendant. They
17 went to his home on an unrelated call. He was in his
18 vehicle. At that time, Master Deputy Sexton with the
19 Sheriff's Office located the .38 caliber gun that was
20 stolen from Ms. Brothers in this defendant's possession at
21 the time.

22 The defendant did come down and give a statement that
23 day basically saying, "I was just over there with the
24 codefendant and I didn't really do anything," so he was not
25 arrested at that time. The codefendant was arrested and

1 has identified this defendant as being the other
2 participant in the crime with him that evening.

3 Those are essentially the facts as they would be
4 presented at trial.

5 THE COURT: Okay. Who is Ms. Abdalla?

6 MR. MARCHANT: Ms. Abdalla is one of the victims that
7 was inside the home that night.

8 THE COURT: Okay.

9 MR. MARCHANT: Ms. Brothers is another victim.

10 THE COURT: Okay. Is it Maureen Abdalla?

11 MR. MARCHANT: It's Deborah Abdalla.

12 THE COURT: Okay. I don't know her.

13 All right. Okay. Is that true?

14 DEFENDANT BRIGHT: Yes, sir.

15 THE COURT: What's his criminal history?

16 MR. MARCHANT: He has a 2000 CDV, 2012 receiving
17 stolen goods less than \$2,000, and a 2014 petit larceny.

18 THE COURT: All right. What happened to the
19 codefendant?

20 MR. MARCHANT: The codefendant pled guilty to armed
21 robbery, burg. second, violent. He had another incident he
22 pled guilty to, as well. The State recommended the minimum
23 on him of 10 years. Other charges were dismissed of the
24 codefendant at that time with the understanding he
25 cooperate at trial. So I have a transcript of his plea

1 implicating this defendant as the other participant.

2 THE COURT: All right.

3 MR. RICHEY: Thank you, Your Honor. May it please the
4 Court. My client is 35 years old. He resides in
5 Greenville.

6 I will tell the Court essentially what the facts will
7 be from our standpoint is that there was a debt owed to the
8 codefendant. My client went over there with the guy, and
9 when they got in there, all this stuff happened.

10 I will tell the Court he is the least culpable of the
11 two because he did not have the shotgun. There would have
12 been testimony at trial from one of the witnesses that the
13 other guy was doing most of the stuff with the gun.

14 Now, we went over there with him. We didn't take
15 ourself [sic] out of the conspiracy. We ran off with the
16 guy and all that stuff.

17 What I will tell the Court, he's got some drug cases
18 that he has pending. I think this gentleman has a drug
19 problem, and the problem is that it gets him into all this
20 stuff, you know. He's in the middle of it, but he's not
21 like the ringleader, but he's in the middle of it. And
22 some of the issues with this case involved drugs. And I
23 think he has a drug problem. I'm pretty much sure of it.

24 And so I'd ask the Court to consider giving him a
25 substantial less sentence than the codefendant, because I

1 think he didn't have the gun, I think the testimony, that
2 the other guy rounded everybody up. He stayed out in the
3 front room because -- essentially, went in the house. The
4 codefendant with the gun told all the people to go into the
5 back. He actually stayed outside in the living room. But
6 he did get the stuff from the people that was given to him.

7 THE COURT: Okay. What's the victim input on it?

8 MR. MARCHANT: The victims are here. I don't believe
9 that they want to address the Court. I'm looking back at
10 them now. Actually, Ms. Brothers does, so she's going to
11 come forward.

12 And I do have to respond to Mr. Ritchie. I understand
13 what their position is about a debt being owed and some
14 drugs being involved. Myself and the investigators on this
15 case have addressed that issue with all the victims on
16 multiple times. They have continued to insist that none of
17 that was what was going on. Ms. Brothers insists that she
18 did not know the codefendant or really this man, and that,
19 in fact, their testimony would be that this defendant,
20 while though he was not armed, was the one that was
21 directing what was going on inside the home, and he was, in
22 fact, in the bedroom telling them to hand over certain
23 personal effects.

24 MS. BROTHERS: Correct.

25 THE COURT: All right. Yes, ma'am. Your name?

1 MS. BROTHERS: Jami Brothers.

2 THE COURT: All right.

3 MS. BROTHERS: He was not the one holding the gun.
4 The one holding the gun, Ricky Gilstrap, did not say a
5 thing. He did all the commands: Take your cell phones
6 off, get your wallets out, I want that, that, that, all
7 over my room. He did give the commands. I promise you he
8 was the one that spoke, not Ricky. Ricky was terrified.
9 He couldn't hardly hold the gun. Excuse me.

10 THE COURT: Okay. All right. What do you want to
11 tell me?

12 DEFENDANT BRIGHT: I did get involved in this because
13 of one of the victims back there, Joshua Lowery, asked me
14 to go over there with him, with Ricky, because he needed to
15 collect his money.

16 And it was a drug issue. I was a drug addict. I'm
17 recovering. I've been recovering. I've been clean for
18 nine months now.

19 And not -- I did not go in the room. I don't know
20 where they -- they even got drug charges. The same night
21 they was charged with drug offenses.

22 So that's all this is is a big -- I was hooked on
23 meth. I ain't going to lie. That's -- that was the drug.
24 And you can see in the testimonies and the statements of
25 the other people that they did go purchase drugs from this

1 lady back here. She was involved in it. She still is.
2 But that's neither here or there. I am guilty of going and
3 being at the wrong place at the wrong time, and I should
4 have never, and I'm sorry. I apologize to her for her
5 inconvenience with this, too, and I just -- I plead your
6 mercy.

7 THE COURT: Well, you've already gotten quite a bit of
8 mercy.

9 DEFENDANT BRIGHT: Because I have a disabled mother
10 that I've been living with.

11 SENTENCE

12 THE COURT: Okay. I don't see any reason to treat him
13 any different than the other one. 10 on each of them.

14 Good luck.

15 MR. RICHEY: Thank you, Your Honor.

16 MR. MARCHANT: Thank you, Your Honor.

17 *****END OF TRANSCRIPT OF RECORD*****
18
19
20
21
22
23
24
25

1
2
3 CERTIFICATE OF REPORTER

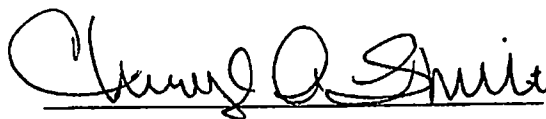
4 STATE OF SOUTH CAROLINA)

5 COUNTY OF GREENVILLE)
6

7 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South Carolina,
9 do hereby certify that the foregoing is a true, accurate
10 and complete Transcript of Record of the proceedings had
11 and evidence introduced in the trial of the captioned case,
12 relative to appeal, in the Court of General Sessions for
13 Greenville County, South Carolina, on the 8th day of
14 February, 2016.

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

17
18 July 18, 2016
19

20
21 
22

23 Cheryl A. Smith, CVR-M

24 Court Reporter
25

STATE OF SOUTH CAROLINA

County of

Greenville
Marlboro

IN THE COURT OF COMMON PLEAS

William L. Bright Jr.

Full name and prison number (if any) of Applicant

366975

v.

State of South Carolina

2016-CP-23-

APPLICATION FOR

POST-CONVICTION RELIEF

ENTERED COMPUTER

FILED-CLERK OF COURT
GREENVILLE, S.C.
PAUL B. WILKINSON
2016 DEC 17 PM 1:11**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention Evans Correction Institution
2. Name and location of Court which imposed sentence Greenville County Circuit Court, Greenville, South Carolina
- ✓ 3. Name(s) of co-defendant(s) (if any) Ricky Dale Gilstrap
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) ~~2014 A 233020467~~ 2014 GS2306960
 - (b) 2014 GS2306962

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 2-8-16 10 yrs. Concurrent
- (b) 2-8-16 10 yrs. Concurrent
- (c) _____
6. Check whether a finding of guilty was made:
- ✓ (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. NA
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. NA
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. NA
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NA
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) PCR First Ineffective Assistance of Counsel
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective 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) See Supplement
- (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? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. NA
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. NA
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. NA
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. NA
- ii. _____
- iii. _____
- iv. _____

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

- i. NA
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

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

(a) which grounds have been presented:

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

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

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

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

(a) PCR first
 (b) _____
 (c) _____

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

(a) your arraignment and plea? Yes
 (b) your trial, if any? _____
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NA
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

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. Rodney W. Richey
P.O. Box 10916, Greenville, S.C. 29603
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Plea hearing
 ii. _____
 iii. _____

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

Vacation of sentence

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

No

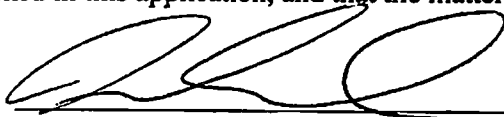
STATE OF SOUTH CAROLINA)

County of

Marlboro)

VERIFICATION

I, William L. Bright JR, 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.



SWORN to and subscribed before me this 10 day of June, 2016.

S. S. S. S. (L.S.)
Notary Public

My Commission Expires: 2/17/24

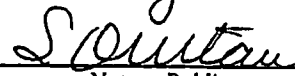
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, William Lee Bright (JR), 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.



Applicant

SWORN or affirmed to and subscribed before me this
16 day of June, 2016.


Notary Public

My Commission Expires: 2/17/24

Supplement

Applicant is asserting his guilty plea was induced by ineffective assistance of counsel on (7) issues.

"With respect to the guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have plead guilty and would have insisted on going to trial. In PCR cases, a defendant who pleads guilty and asserts a constitutional violation, must frame the issue as one of ineffective assistance of counsel." *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E. 2d. 742 (1992).

"A defendant who pleads guilty on advise of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have plead guilty and would have insisted on going to trial." *Roscoe v. State*, 354 S.C. 16, 546 S.E. 2d. 417 (2001).

"A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advise was not within the competence demanded of attorneys' in criminal cases." *Hill v. Lockhart*, 474 U.S. 52, 56, 106 S.Ct. 366, 369, 88 L.Ed 203.

Issue One: Applicant asserts appointed counsel of plea record coerced him into a plea of guilt by defending the State's case, and thereby took advantage of Applicant's lack of ability to fully comprehend the totality of the consequences of the plea.

A). Applicant did not know he would be serving an 85% sentence status from a 10 year sentence, as Applicant was led to believe counsel of plea was going to represent a three year precatory plea bargain, based on a different criminal statute.

(a.) Applicant was assured he would be pleading to a 3 year sentence, instead, he was ushered into a hurriedly, unprepared plea hearing where Applicant plead guilty to the 10 year, two charge concurrency at 85% sentence status, whereas, Applicant asserts that he plead on the 'moment' without justicable preparedness under duress, being not properly advised and informed by plea counsel.

(b.) even though the record may reflect Applicant acknowledged in open court his understanding, further scrutiny finds that Applicant was in fact confused over the proceeding because he was in fact misled by the preceding facts

(c.) plea counsel failed to advise Applicant on all extenuating premises of the plea

(i) court failed to advise Applicant he could not withdrawl his plea after hearing the sentence; "On Nov. 3, 2014 Judge Griffith failed to inform Applicant that he could not withdrawl his plea of guilt after hearing the sentence, thereby, denied Applicant of a substantial right to justify an appeal being granted," See Rule 11 (e), (1) of Fed. Rules of Criminal Procedure.

(ii). "The Court's failure to advise the defendant that he or she will be unable to withdrawl a plea even if the court rejects the governments sentencing recommendation may constitute reversible error." See e.g. U. S. v. Livorsi, 180 F. 3d 76, 79-80 (2d Cir. 1996) (failure to warn defendant at plea hearing he would be unable to withdrawl plea if sentence imposed exceeded recommended range in plea agreement constituted reversible error.) 'U.S. v. Debusk,' 976 F. 2d 300, 306 (6th Cir. 1992) (failure to warn defendant of inability to withdrawl plea in face of considerable confusion constituted reversible error); 'U.S. v. Kennell,' 15 F. 2d 134, 136 (9th Cir. 1992) 'U.S. v. Zickest,' 995 F. 2d 665, 668 (11th Cir. 1992) (per curiam) (failure to warn defendant of inability to

withdrawal plea when he was led to believe otherwise constituted reversible error.) 'U.S. v. Payton,' 168 F.3d 1103, 1105 (8th Cir. 1999) (if court rejects plea agreement, Rule 11 (c) (5) (B) guarantees right to withdraw plea).

B). "In 'Blackburn v. Alabama,' Courts still hold to the view that defendants are subjective to various measures of psychological duress when their liberty is on the line and they are not generally prepared for that science of law which overwhelms them without having privilege of necessary assistance of counsel to assure the confident understanding of the finality."

(a.) plea was induced, by ineffective knowing and lack of intelligent decision: "A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant, statement made during plea should be considered conclusive unless defendant presents reasons why he should be allowed to depart from the truth of those statements." 'Crawford v. U.S.,' 519 F.2d 347 (4th Cir. 1975); 'Edmunds v. Lewis,' 546 F.2d 566 (4th Cir. 1976). 'Bell v. Taylor,' Slip Copy 2013 WL 5603929 D.S.C. 2013.

(b.) Applicant signed a plea that he was led to believe was not for a violent 85% status. Applicant was led to believe he was signing a conditional plea for three years. "Conditional plea is not a practice recognized in South Carolina." 'State v. Truesdale,' 278 S.C. 368, 296 S.E. 2d 528 1982, 'In re Johnny Lee W.' 371 S.C. 217, 638 S.E. 2d 682 S.C. 2006.

(c.) "A defendant must have full awareness of pleas direct consequences," see 'Brady v. U.S.,' 397 U.S. 742, 756-757 (1970). "A defendant is entitled to relief only upon showing that his or her plea would have changed after a more precise explanation of the charge," see e.g. 'U.S. v. Cefaratti,' 221 F.3d 502, 508-09 (3d Cir. 2000). "Holden v. State,' 393 S.C. 565, 713 S.E. 2d 611 S.C. 2011"

"The test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternate courses of action open to defendant." 'Burnett V. State,' 352 S.C. 589, 576 S.E. 2d. 144 S.C. 2003. A plea made in ignorance of its direct consequences is entered in ignorance and is invalid." "A guilty plea is voluntary if a defendant is fully aware of the direct consequences of his plea." 'Booker V. Bodinson,' Not reported in F. Supp. 2d 2011 WL 1769841 D.S.C. 2011

(d.) "To knowingly and voluntarily enter a plea of guilty a defendant must have a full understanding of the charges against him and the consequences of the plea." 'State V. Tucker,' 412, 656 S.E. 2d 403 S.C. App. 2008

Issue Two: Counsel failed to adequately investigate the State's case and advise Applicant on the appropriation of the evidence, the charges, and his substantive and due process rights: failing to challenge the indictments, and thereby, failed to give adequate legal advice for Applicant to be fully apprised of the State's case against him for an informed decision.

A). Indictments were problematic with questionable facts of materiality in relation to the State's acclaimed evidences for supporting the specific elements of the offense which must be proved by the State.

(a.) Applicant was advised to plead guilty to a charge of armed robbery whereby, the State had no material evidence to sustain the charge.

(b.) Indictment number 2014GS2306962, the charge of 'Armed Robbery,' was used to elicit a plea deal by the 'overbroad construction,' by use of the Statute 16-11-0330 which continues to

to assert Applicant was in violation of the statute's explicit language which implied the use of a weapon by Applicant, yet the charged offense could not be substantiated by the State, and Applicant was led to believe he was pleading guilty to a lesser statute offense than the '16-11-330 (B) which continues to imply, according to (B), 'alleging he was armed'.

(i.) Counsel failed to object to the overbroad / overreaching indictment which did not contain the necessary elements for the offense according to the State's assertion by the indictment: 'State v. Muldrow,' 340 S.C. 450. " State may prove armed robbery by establishing the commission of a robbery and either one of two additional elements: (1) that the robber was armed with a deadly weapon, or (2) that the robber alleged he was armed with a deadly weapon, either by action or words, while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. Code 1976 § 16-11-330 (A)

Under the general rules of construction, the words of a statute must be given their plain meaning without resort to subtle or forced construction to limit or expand statute's operation.

Words alone are not sufficient to establish a representation of a deadly weapon, for purposes of the armed robbery statute, which allows a finding of armed robbery when the robber alleged he was armed with a deadly weapon, either by action or words while using a representation of a deadly weapon, to establish armed robbery offense under that provision, State had to show evidence corroborating allegation of being armed, or in other words, the use of a physical representation of a deadly weapon. Code 1976 § 16-11-330 (A).

When the evidence is insufficient to sustain a conviction on the greater offense but is legally sufficient to support a conviction on the lesser, an appellate court on appeal may direct the entry of judgment on the lesser offense."

(ii.) Applicant was never informed of these decisive facts.

(c). on the second offense Applicant was induced to plead guilty to, indictment number 2014-GS2306960, on the charge of Burglary First Degree, whereas, Applicant plead guilty to Burglary Second, statute number 16-11-312 (B), the State did not have substantial evidence to support the necessary element for the material facts of the charge.

B). Wherefore, due to plea counsel's ineffective representation, Applicant would not have been, therefore, informed enough to waive any presentment of indictments before the Grand Jury as asserted by the State.

(a.) Indictments were also problematic with the contrariness of the filing dates, whereas, it is asserted by the State that the 'True Billed' Burglary First statute 16-11-311, was filed with the Greenville County Clerk of Court on Aug. 4, 2014 previous to the True Bill date of April 2015 Term, See Exhibit 'BFG'.

C). First Degree Burglary requires that, at the time the offender entered the dwelling, he intended to commit a crime once inside. Code 1976 16-11-311 (A)

(i.) Code 1976 § 16-11-311 Burglary First Degree has been ruled unconstitutional, 'Graham v. Florida'. This overbroad charge was also used to elicit a plea bargain through coercion to a lesser offense.

D). Indictments failed to contain the necessary elements for Armed Robbery and Burglary First, thereby, Circuit Court lacked jurisdiction to accept

guilty pleas on the statutes. 'Browning v. State'; 350 S.C. 465 S.E. 2d 358 S.C. 1995

(a.) Greenville County did not have subject matter jurisdiction to accept guilty plea unless there is an indictment which sufficiently states the offense. 'Browning v. State'; 465 S.E. 2d 358

(b.) Furthermore, according to rule (3) (E), Record of Proceedings, any action taken pursuant to (A) (B) and (C) shall be entered into record by the Clerk of Court

(c.) Question of law: Did Greenville County Grand Jury in fact True Bill the indictments pursuant to sections 16-11-330 and 16-11-311? And were the indictments rubber stamped without a true Grand Jury hearing for probable cause for the offenses?

Issue Three: No defense evidence was discussed by defense counsel for assuring a justifiable choice for Applicant.

A). Plea counsel failed to investigate the case or any witnesses for the purpose of counseling Applicant on a fair assessment from an objective adversarial contest against the State, nor did he perview Discovery for evaluation in Applicant's favor, as a duty of loyalty to assure due process for the protection of the presumption of innocence. Instead, Applicant was presumed guilty according to the State's assertions even though the State did not have the evidence to corroborate the charges.

(a.) Applicant was mislead into believing the State had 'overwhelming' odds against Applicant, from which Applicant was confused by, and could not have made a reasonable decision. Applicant failed to have a comprehensive understanding by the lack of plea counsel's investigation into the case.

B). "The Court agreed that the Sixth

Amendment imposes a duty to investigate, because reasonably effective assistance must be based on professional decisions and informed legal choices can be made only after investigation of options." *Strickland v. Washington*, 466 U.S. 668 (1984) 104 S.Ct. 2052, 80 L.Ed 674.

(a.) "Furthermore, a criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." *McKnight v. State*, 378 S.C. 33, 46, 661 S.E. 2d 354, 360, (2008).

(b.) "While the scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." *Lounds*, 380 S.C. at 460, 670 S.C. at 649 (quoting *Ard*, 372 at 331-32, 642 1348, 1353 (4th cir. 1982)) " (To meet this standard, an attorney must at a minimum, 'conduct appropriate investigations, both factual and legal, to determine if matters of defense can be developed,' quoting *Coles v. Peyton*, 389 F.2d 224, 226 (4th cir. 1968).

Issue Four: Plea counsel failed to challenge the sufficiency of evidence.

A). Specific intent is an element the State must prove.

(a.). Specific intent: "the crime requires that the actor's conscious object, or purpose, is to cause the social harm in the definition of the offense." *United States v. Blair*, 54 F3d 639, 642 (10th cir. 1983) *Harris v. State*, 728 A. 2d 180, 183 (Md. 1999).

(b.) Plea Counsel failed to advise Applicant that he did not have to rebut the State's presumption, as Applicant was left to believe that the State's ability to

prove presumption by inferences alone, was sufficient showing of counsel's failure to challenge the sufficiency of evidence, and allowed the State to exercise procedural device against Applicant (being prejudicially arbitrary), shifted the burden unto Applicant to shift for himself, from which plea Counsel led him to believe he had no defense for rebuttal.

(i.) Applicant did not have the requisite proficient knowing for an intelligent plea because of the lack of plea counsel's resources of his duty of the profession of ethics because plea counsel acted as an 'Amicus curiae', i.e., 'Friend of the State.'

Issue Five: Plea Counsel acted as Amicus Curiae i.e., Friend of the State, friend of the court.

A). "South Carolina Const. Art., § 14. This provision guarantees a defendant the right to be heard on all questions of law and fact which may arise at any time during the prosecution, and it implies that he shall have full opportunity and time as justice and the necessities of the case may require." 'State v. McIntire', (S.C. 1952) 221 S.C. 504, 71 S.E. 2d 410.

B). Applicant was deprived of his rights to due process and effective assistance of Counsel, Sixth and Fourteenth Amendments through his Amicus Curiae.

(a.) "To satisfy the Constitution, counsel must function as an advocate for the defendant, as opposed to a friend of the court.": 'Ferri v. Ackerman', 444 U.S. 193, 204, 100 S.Ct. 402, 409, 62 L.Ed. 355 (1979). ("indeed, an indispensable element of the effective performance of [defense counsel's] responsibilities is the ability to act independently of the government and to oppose it in adversary litigation").

(b.). Constitutional requirements of substantial equality and fair process can only be attained where counsel acts in role of active advocate

in behalf of client, as opposed to that of 'amicus curiae'. 'Anders v. State of California,' 386 U.S. 738, 87 S.Ct. 1396 U.S. Cal. 1967.

C). 'Strickland v. Washington,' 466 U.S. 668, 692 (1984) (right to effective assistance of counsel when defense counsel breaches the duty of loyalty; perhaps the most basic of counsel's duties) " (counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on reasonable information supplied by the defendant.... ("what investigation decisions are reasonable depends critically on such information."))

D.) "In 'Ake v. Oklahoma,' 470 U.S. 68 (1985). "The Court said, "When a State brings its judicial powers to bear on an indigent defendant in a criminal proceeding, it must take steps to assure that the defendant has a fair opportunity to present his defense --- justice cannot be equal when, simply as a result of his poverty, a defendant is denied the opportunity to participate meaningfully in a judicial proceeding which his liberty is at stake."

Issue Six: Plea counsel failed to advise on the lawfulness of police interrogation interviews:

A). "Test of voluntariness is whether suspect's will was overborne by the circumstances surrounding the given statements." 'State v. Breeze,' 379 S.C. 538, 665 S.E. 2d 247 S.C. App. 2008

Issue Seven: Counsel failed to inform Applicant that if he went to trial he could request a charge or lesser included offense.

A). "A defendant was denied effective assistance of counsel who failed to inform him that if he went to trial on a charge he could request a charge on the lesser included offense." 'Kerrington v.

WITNESSES

Matthew Owens

Greenville County Sheriffs Office

6/3/2014

ARREST WARRANT NUMBER
2014A2330204673

ACTION OF GRAND JURY

TRUE BILL

Wayne Spurgeon

FOREMAN GRAND JURY
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014-GS-23-
LCM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April

TERM 2014

THE STATE

vs.

WILLIAM LEE BRIGHT, JR.

006960

Exhibit 'BFG'

Indictment for

BURGLARY FIRST DEGREE

VIOLATION § 16-11-0311

ENTERED
AUG 04 2014

FILED

AUG 04 2014

Clerk of Court
Greenville County

30

State,' (S.C. 1991) 304 S.C. 561, 406 S.E. 2d 160.

Ineffective assistance of counsel is not a question of basic primary or historic fact, but, rather a mixed question of law and fact.

The allegations of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute." 'Sharper v. State,' 279 S.C. 264, 305 S.E. 2d 247 (1983).

South Carolina Constitutional Article I § 3, "The privileges and immunities of citizens of this State and of the United States under this constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the law." 'State v. Brown,' 317 S.C. 55, 451 S.E. 2d 888 (Sup. Ct. 1994).

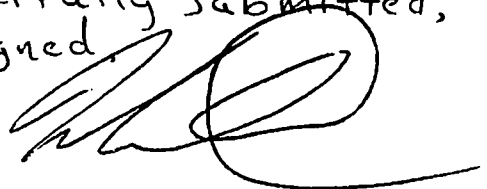
Applicant further request 'Specific Findings of fact and conclusions of law; on all issues.' In accordance with the right provided by S.C. Code Ann. 17-27-80. And request appointed attorney to file a Rule 59(e) motion.

↓ request the State to appoint an attorney to represent this PER Application.

↓ reserve the right to Amend and Addendum this supplemental complaint

enclosed Exhibit 'BFG'

Respectfully Submitted,
Signed



STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

William L. Bright, Jr., #366975,

2016-CP-23-03669

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSCHIER
2016 NOV 18 PM 4 17

In response to the post-conviction relief application filed on June 17, 2016, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. Applicant was indicted by the April 2015 term of the Greenville County Grand Jury for first degree burglary (2014-GS-23-6960). Applicant was subsequently indicted by the December 2015 term for armed robbery and possession of a weapon during the commission of a violent crime (2014-GS-23-6962). Rodney Wade Richey, Esquire, represented him. On February 8, 2016, Applicant pled guilty to the lesser included offense of second degree burglary and attempted armed robbery. The weapons charge was dismissed. The Honorable Edward W. Miller sentenced Applicant, pursuant to recommendation by the State, to concurrent terms of ten (10) years.

II.

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

1. "Ineffective Assistance of Counsel"

- a. "...counsel of plea record coerced him into a plea of guilt by defending the State's case, and thereby took advantage of Applicant's lack of ability to fully comprehend the totality of the consequences of the plea."
- b. "Counsel failed to adequately investigate the State's case and advise Applicant on the appropriation of the evidence, the charges, and his substantive and due process rights: failing to challenge the indictments, and thereby, failed to give adequate legal advise (sic) for Applicant to be fully apprised of the State's case against him for an informed decision."
- c. "No defense evidence was discussed by defense counsel for assuring a justifiable (sic) choice for Applicant."
- d. "Plea counsel failed to challenge the sufficiency of evidence."
- e. "Plea counsel acted as amicus curiae, i.e., friend of the State, friend of the court."
- f. "Plea counsel failed to advise on the lawfulness of police interrogation interview..."

Respondent denies Applicant is entitled to relief on any of these claims and demands strict proof thereof. Applicant must specify any claims he intends to raise at the PCR trial. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 *et seq*; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing. For the purpose of this Return, Respondent incorporates herein by reference the records of the Greenville County Clerk of Court regarding the subject conviction, and the South Carolina Department of Corrections' records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent construes Applicant's allegations as alleging ineffective assistance of counsel. Respondent asserts that Applicant's allegation of ineffective assistance of trial counsel is without merit. Respondent also asserts that Applicant's attorney rendered effective assistance well

within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used 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 v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). 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 v. Washington. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

IV.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, [an Applicant's] right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621 (1977). Statements made during a guilty plea should be considered conclusively, unless an [Applicant] presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975) overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985). This Court finds that the Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given the Applicant's burden of proof and the analysis to be applied to this claim, the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

V.

Petitioner also claims that counsel was not prepared or failed to investigate his case. To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648, 104 S.Ct. 2039 (1984); U. S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990). This Court finds that the Applicant has failed to establish that trial counsel was ineffective with investigating and preparing for this matter. Therefore, this allegation is denied and Respondent requests that it be dismissed.

VI.

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

VII.

WHEREFORE, the Respondent requests that an evidentiary hearing be held solely for the purpose of determining whether the Applicant's trial counsel was ineffective.

{Signature Block on Following Page}

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

PATRICK SCHMECKPEPER
Assistant Attorney General

By: PLC
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

Nov. 4, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
)
)
WILLIAM L. BRIGHT, JR., 366975)
)
Applicant,)
)
vs)
)
STATE OF SOUTH CAROLINA,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

2016-CP-23-3669

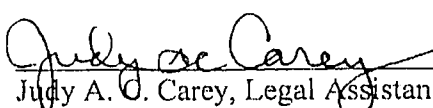
AFFIDAVIT OF SERVICE BY MAIL

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2016 NOV 18 PM 4 17

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:

William G. Yarborough, III, Esquire
522 North Church Street
Greenville SC 29601

DATED this 4th day of November, 2016.


Judy A. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

WILLIAM L. BRIGHT, JR.,)
)
 APPLICANT.)
)
 -VS-)
)
 STATE OF SOUTH CAROLINA,)
)
 RESPONDENT.)
 -----)

2016-CP-23-03669

TRANSCRIPT OF RECORD

DECEMBER 8, 2016
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JOHN C. HAYES, III

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

ATTORNEY FOR APPLICANT:

WILLIAM G. YARBOROUGH, III, ESQ.

ATTORNEY FOR RESPONDENT:

PATRICK SCHMECKPEPER
ASSISTANT ATTORNEY GENERAL

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
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(No Exhibits Were Presented During This Hearing)

WILLIAM BRIGHT, JR. - DIRECT EXAMINATION BY MR. YARBOROUGH

4

1 **MR. SCHMECKPEPER:** Your Honor, this is William Bright
2 versus the State of South Carolina, 2016-CP-23-3669. The
3 Applicant was indicted in Greenville for first degree
4 burglary. He was subsequently indicted for -- indicted for
5 armed robbery and possession of a weapon during the
6 commission of a violent crime. He was represented by Roney
7 Richey.

8 On February 8th, 2016 he pled guilty to the lesser
9 included offense of second degree burglary and attempted
10 armed robbery. The weapons charge was dismissed. Judge
11 Miller sentenced him to ten years. At this time I'd turn
12 the matters over to opposing counsel.

13 **THE COURT:** All right.

14 **MR. YARBOROUGH:** Your Honor, I think Mr. Richey's
15 coming in a little while. So I'm going to go ahead ---

16 **THE COURT:** Okay.

17 **MR. YARBOROUGH:** --- and start with Mr. Bright if
18 that's okay.

19 **THE COURT:** That's fine.

20 **MADAME CLERK:** Mr. Bright, please place your left hand
21 on the Bible and raise your right hand.

22 William Bright, Jr.,
23 being duly sworn testified as follows;

24 **MADAME CLERK:** Thank you. You may be seated. Please
25 state your full name for the record.

WILLIAM BRIGHT, JR. - DIRECT EXAMINATION BY MR. YARBOROUGH

1 MR. BRIGHT: William Lee Bright, Jr.

2 MADAME CLERK: Thank you.

3 Direct Examination by Mr. Yarborough:

4 Q. Mr. Bright, how long have you been incarcerated?

5 A. Right at a year now. Well, it was February. Ten
6 months.

7 Q. Okay. And who -- who was your lawyer?

8 A. Mr. Rodney Richey.

9 (Whereupon Rodney Richey entered the courtroom.)

10 Q. Okay. As he arrives on cue. And how long did Mr.
11 Richey represent you?

12 A. I believe a little over a year and a half.

13 Q. Okay.

14 A. Round about.

15 Q. All right. And did you end up entering a plea in this
16 case?

17 A. Yes, sir.

18 Q. Okay. And how much time did you receive?

19 A. I received ten, but I ---

20 Q. Okay. Just how much time did you receive?

21 A. Ten.

22 Q. Ten. And let me ask you this. Did -- the day that you
23 pled were you prepared to go to trial?

24 A. Yes, sir.

25 Q. Okay. Now, let's -- let's talk about that trial. How

WILLIAM BRIGHT, JR. - DIRECT EXAMINATION BY MR. YARBOROUGH

- 1 -- what was the trial preparation like?
- 2 A. Far as?
- 3 Q. Your interaction with Mr. Richey, going over discovery.
- 4 A. Well, we went over the discovery one time at his
- 5 office. And ---
- 6 Q. And what was the case against you?
- 7 A. The case of first degree burglary?
- 8 Q. Yeah. But what was the -- what did they talk about in
- 9 the discovery?
- 10 A. That I allegedly robbed a lady at gunpoint and
- 11 allegedly took her belongings, but there was no credible
- 12 evidence in the motion.
- 13 Q. Right. Did you do that?
- 14 A. No, sir.
- 15 Q. Okay. Would you do that?
- 16 A. No ---
- 17 Q. Would you do ---
- 18 A. No, sir. I have children. I don't ---
- 19 Q. And did you tell Mr. Richey you didn't do it?
- 20 A. Yes, sir. I -- I sure did. And even at the day of
- 21 trial he said -- he told the judge that I presumed innocent.
- 22 Q. Well, you -- he told the judge at the trial that he'd
- 23 always told you he [sic] was innocent, right?
- 24 A. Yes, sir.
- 25 Q. Okay. And did -- did y'all -- how many times you talk

WILLIAM BRIGHT, JR. - DIRECT EXAMINATION BY MR. YARBOROUGH

7

1 y'all met before the -- before the trial?

2 A. Actual outside the courthouse, one time. And that was
3 that brief time at his office when he told ---

4 Q. Tell me about that time at his office.

5 A. He more or less said that you know it's not looking
6 good for you, you need some witnesses. And ---

7 Q. Okay. He said you needed some witnesses. And what did
8 you do?

9 A. I went out and found Mr. Brett Carter, one of the guys
10 that was -- individual that was in the case, and I got him
11 to call Mr. Richey on the telephone. And he stated to him
12 that I ---

13 MR. SCHMECKPEPER: Your Honor, I'd object to hearsay.

14 Q. But you -- you got ---

15 THE COURT: Sustained.

16 MR. YARBOROUGH: Sorry, Your Honor.

17 Q. Did you -- you got him to call Mr. Richey?

18 A. Yes, sir.

19 Q. Did Mr. Richey tell you that he had talked to him?

20 A. Yes, sir.

21 Q. Okay. And were you with -- now you said it was Brett
22 Carpenter?

23 A. Carter.

24 Q. Carter. Were you with Mr. Carter on -- when this
25 alleged robbery took place?

WILLIAM BRIGHT, JR. - DIRECT EXAMINATION BY MR. YARBOROUGH

- 1 A. No. He was in the house when the alleged robbery was
2 -- took place.
- 3 Q. Mr. Carter was?
- 4 A. Yes.
- 5 Q. And were you in the house?
- 6 A. Yes, sir.
- 7 Q. You were in the house ---
- 8 A. I was -- I was let into the house.
- 9 Q. You were let in the house?
- 10 A. Yes, sir.
- 11 Q. Okay. Well, tell us -- tell us what happened.
- 12 A. The night that it happened, went over there, there was
13 a -- I was on drugs. And I said that from the get-go.
14 was all about the drugs. And ---
- 15 Q. When you went over where?
- 16 A. To Ms. Brothers' house, the lady that was allegedly a
17 victim.
- 18 Q. Okay. But were you invited in the house?
- 19 A. Yes, sir. I was -- the door was open and I was let in.
- 20 Q. Okay. And you were let in to do what?
- 21 A. To hang out.
- 22 Q. Hanging out and do drugs?
- 23 A. Yes, sir.
- 24 Q. Okay. And at that point did you have a drug problem?
- 25 A. Yes, sir, at that point.

WILLIAM BRIGHT, JR. - DIRECT EXAMINATION BY MR. YARBOROUGH

1 Q. Okay. But when you were there did you -- did you rob
2 the place or break into the place?

3 A. No, sir.

4 Q. Okay. Was she there?

5 A. Yes, sir.

6 Q. She was there.

7 A. Yes, sir.

8 Q. And Brett Carter ---

9 A. Yes, sir.

10 Q. --- was there.

11 A. He was there as well.

12 Q. And you wanted Brett Carter to be called as a witness
13 in this case?

14 A. Yes, sir.

15 Q. Okay. And was Brett Carter at the courthouse the day
16 you came over to go -- to go to trial?

17 A. No, sir.

18 Q. And how did that make you feel?

19 A. Let down.

20 Q. Let down? Well, let down by who?

21 A. Him and my counsel.

22 Q. Okay. Do you know if your counsel had subpoenaed Brett
23 Carter?

24 A. I do not know.

25 Q. But he wasn't there?

WILLIAM BRIGHT, JR. - DIRECT EXAMINATION BY MR. YARBOROUGH

10

1 A. He wasn't there.

2 Q. Okay. And did -- what did Mr. Richey tell you about
3 your chances at trial?

4 A. He was throwing big numbers around in the little
5 conference room, like, you know you facing twenty to twenty-
6 five. And it got me nervous and scared and got my mother
7 upset and crying. And he said, but I -- let me go talk to
8 -- I think -- I guess he -- he left the room and went and
9 talked to somebody.

10 Q. He left the room. And who was in the room?

11 A. Me and my mother.

12 Q. Okay. And you [sic] went to talk to who?

13 A. He went to talk to -- I guess he went to talk to the
14 solicitor.

15 Q. Okay. So he walked out of the room and left you and
16 your mom there. Did you and your mom talk?

17 A. Yeah. And I was telling her I don't know what to do.
18 She was -- and she was upset. And I was trying to console
19 her and all. And really at the time I was ---

20 Q. Did you feel like you were prepared for a trial?

21 A. No, sir.

22 Q. Okay. And why didn't you feel like you were prepared
23 for trial?

24 A. Because I haven't been questioned or, I mean, he told
25 -- this is what he told me. He said I ---

WILLIAM BRIGHT, JR. - DIRECT EXAMINATION BY MR. YARBOROUGH

- 1 Q. Well, now wait a minute. Say who told you.
- 2 A. Mr. Richey told me, I can prepare this case in twenty
- 3 minutes if you want to go to trial. This is what he said
- 4 when he came back.
- 5 Q. Okay.
- 6 A. And he said, but I got a deal, a zero to three plea.
- 7 Q. Okay. So he said I can get this case ready in twenty
- 8 minutes, but I've got a plea for zero to three?
- 9 A. Yes, sir.
- 10 Q. Okay. And what happened?
- 11 A. I told him I would take it because I was scared. I told
- 12 I said, I was scared of them big numbers of twenty-five
- 13 years. That was -- I was looking at -- that's the rest of
- 14 my life.
- 15 Q. All right.
- 16 A. So I took the plea. I signed the plea and ...
- 17 Q. You signed the plea. And at that point you were
- 18 signing a plea for ---
- 19 A. Zero to three.
- 20 Q. --- zero to three?
- 21 A. That's what I ---
- 22 Q. And was anybody there with you when you signed the
- 23 plea?
- 24 A. My mother.
- 25 Q. Okay. And your mother was there and you were there.

WILLIAM BRIGHT, JR. - DIRECT EXAMINATION BY MR. YARBOROUGH

1 And at that point you believed you were going in front of
2 Judge Miller.

3 A. Yes, sir.

4 Q. And at that point did you have a relationship with
5 Judge Miller? Did you know anything about Judge Miller?

6 A. No, sir.

7 Q. Okay. And -- but did you -- you expected he was going
8 to take the three year deal?

9 A. Yes, sir. I was -- I was led to assume.

10 Q. Okay. And who led you to assume that?

11 A. My counsel, Mr. Richey.

12 Q. Okay. And did you want to take that deal?

13 A. Not at first. I wanted to go to trial. I thought I
14 had a better chance with a jury, but I was -- it had done
15 been a year and a half. I was ready to get this over with
16 you know? I was ---

17 Q. Yeah, how long had it been going on?

18 A. Over a year and a half. It had been on, and on, and on
19 and on, roll call, in and out, you know. And we had -- we
20 had come for jury selection like back in December. And then
21 he said that we wasn't going to pick a jury today. So I
22 guess they recessed til whatever and he would call me. He
23 told me to go home and he would call me.

24 Q. Okay. Did he call you?

25 A. A month went on before I received any -- a call about

WILLIAM BRIGHT, JR. - DIRECT EXAMINATION BY MR. YARBOROUGH

- 1 that -- and it was like a couple of days before I had to be
2 in the court.
- 3 Q. Okay. And when you came back to the courthouse ---
- 4 A. I assumed ---
- 5 Q. --- had you --- had you met with Mr. Richey that day?
- 6 A. No, sir, not until I got to the courthouse.
- 7 Q. Okay. And you were ready for trial?
- 8 A. I was ready to go to the jury, yes, pick a jury.
- 9 Q. And you were expecting him to bring Brett Carter ---
- 10 A. Yes, sir.
- 11 Q. --- to the courthouse. Were you expecting him to bring
12 anybody else to the courthouse as well?
- 13 A. I -- I don't know how a court -- because I didn't --
14 I've never been in any trouble like that. I've never been
15 accused of anything like that. So I didn't know really how
16 it went, but I assumed, I guess, speculating off of a TV
17 series or whatever that you would call the arresting
18 officers and you would subpoena them in because they was --
19 saying it was all over the place, the case was all over the
20 place anyways.
- 21 Q. Right. Are you getting that from your personal
22 meetings with the law enforcement or were you getting that
23 from Mr. Richey?
- 24 A. I was getting that from my personal meeting with the
25 officers.

WILLIAM BRIGHT, JR. - DIRECT EXAMINATION BY MR. YARBOROUGH

- 1 Q. Okay.
- 2 A. Not from Mr. Richey.
- 3 Q. All right. So you were meeting with the police?
- 4 A. Yes, sir. I was cooperating.
- 5 Q. You were cooperating in another case, right?
- 6 A. Yes, sir.
- 7 Q. Okay. And what case were you cooperating in?
- 8 A. The case that they was -- no, it was the case that
- 9 was going on, but I -- they was trying to find my co-
- 10 defendant is what it was. And I was helping them out to
- 11 find him.
- 12 Q. And who was your co-defendant?
- 13 A. Mr. Ricky Gilstrap.
- 14 Q. Okay. And did they find Mr. Gilstrap?
- 15 A. Yes, sir.
- 16 Q. Okay. And do you know -- did he go to trial?
- 17 A. No. He took a plea.
- 18 Q. Okay. And did you want Mr. Gilstrap to testify in your
- 19 case?
- 20 A. I -- it was never brought up. If I had of met with Mr.
- 21 Richey on more than one occasion, maybe it could have been
- 22 brought up.
- 23 Q. Okay. So you think you met with him once at his office
- 24 and you talked with him on the telephone how many times?
- 25 A. Maybe twice.

WILLIAM BRIGHT, JR. - DIRECT EXAMINATION BY MR. YARBOROUGH

15

1 Q. And you think you met with him up here at the
2 courthouse how many times?

3 A. Maybe twice. The first time was in that December or --
4 it was either November or December. And then the following
5 time was the February that -- that morning when I come in
6 for trial, which I thought was for ---

7 Q. Now, ---

8 A. --- to pick a jury.

9 Q. Okay. Now, this is important. So after you decide
10 you're not going to pick a jury did you -- did you want to
11 plea?

12 A. When I -- when I was offered the zero to three, yeah.
13 When I was led to believe that's what it was going to be.

14 Q. Okay. Now, if you -- you need to make -- help me make
15 the record clear on -- on how were you offered this zero to
16 three?

17 A. He left the room, ---

18 Q. He left the room and you and your mother were in there.

19 A. We was in there. And I was like, I don't know what
20 do. When he came back he said, I got them to -- I got you
21 deal, zero to three, but you got to sign it now. You got to
22 agree to it now and we'll -- we'll go.

23 Q. Okay. So did you sign it?

24 A. I signed it.

25 Q. All right. And did you go into the courtroom?

WILLIAM BRIGHT, JR. - DIRECT EXAMINATION BY MR. YARBOROUGH

16

- 1 A. Yes, sir.
- 2 Q. And which judge did you go in front of?
- 3 A. Judge Miller.
- 4 Q. Okay. And what happened when you got in the courtroom?
- 5 A. I come in, they asked me my name, I stood at the
- 6 podium. Mr. Marchant, I think, is the solicitor's name. He
- 7 introduced my case and everything. And Mr. -- really I
- 8 would -- I would expect that Mr. Richey would have said more
- 9 about the thing -- the case than what he did because ---
- 10 Q. Well, let's -- let's -- we'll get to that in a minute.
- 11 Let's -- they called the case.
- 12 A. Yes, sir.
- 13 Q. Did the judge tell you how much time you were facing?
- 14 A. Never. He asked -- the judge asked me this. He --
- 15 after they -- back and forth a little bit, he said how much
- 16 time did your co-defendant receive? I said, ten years, sir.
- 17 He said, well, that's what you got. And that was the point
- 18 blank brunt of it.
- 19 Q. Okay. And did -- did Mr. Richey try to stop it?
- 20 A. No. He just looked at me and was like, you know, just
- 21 motioned like -- he didn't know what to say, I guess. I
- 22 don't know.
- 23 Q. Did he seem surprised?
- 24 A. Yeah.
- 25 Q. Okay. And what did -- what were you told your sentence

WILLIAM BRIGHT, JR. - DIRECT EXAMINATION BY MR. YARBOROUGH

17

1 was going to be?

2 A. Zero to three.

3 Q. Well, did you try to stop Judge Miller at that point
4 and say, hey, look, you got the wrong man?

5 A. No, sir. I was shocked at the time. I didn't know
6 what to do. I thought having a counsel, that's what the
7 job is.

8 Q. Right. Now have you looked at the record? Have you
9 looked at the transcript in this case?

10 A. My motion of discovery?

11 Q. Yeah.

12 A. Yes.

13 Q. All right.

14 A. And it was terrible.

15 Q. All right. When you say it's terrible, what do you
16 mean?

17 A. The officer is saying even then that he knew that the
18 people was lying.

19 Q. Okay.

20 A. That they was too many ---

21 MR. SCHMECKPEPER: I apologize. I object to hearsay.

22 THE COURT: I sustain the objection.

23 MR. YARBOROUGH: Okay.

24 Q. Just what did you do? Without saying what the officer
25 said, what did you think of the discovery when you were

WILLIAM BRIGHT, JR. - DIRECT EXAMINATION BY MR. YARBOROUGH

18

1 looking at it?

2 A. Garbage.

3 Q. Okay. And so why did you plead guilty?

4 A. Because I was scared into it. When somebody's pushing
5 twenty-five years at you the whole time, saying these big
6 numbers, I mean, it gets you to look. Like I said, I
7 never been through that before. So it got me a little
8 nervous.

9 Q. All right. And did -- did he continue to represent you
10 in another case?

11 A. Yes, sir.

12 MR. SCHMECKPEPER: Your Honor, I'd just object to
13 relevance. I don't see ---

14 MR. YARBOROUGH: Okay. I'll just move on. Just a
15 second, Your Honor.

16 Q. Did you at any time try to withdraw your plea?

17 A. I -- my mother asked him about an appeal right after
18 they sentenced me.

19 Q. Right.

20 A. And he said it wouldn't do any good.

21 Q. Okay.

22 A. So that's when my mother started going to seek other
23 counsel.

24 Q. Okay. And did -- did you feel like your plea was made
25 knowingly and voluntarily?

WILLIAM BRIGHT, JR. - DIRECT EXAMINATION BY MR. YARBOROUGH

15

- 1 A. Explain.
- 2 Q. Well, did you feel like you understood what was going
- 3 on that day?
- 4 A. Not really. It was a rushed thing.
- 5 Q. Okay. But the biggest -- the biggest complaint you got
- 6 is not about the rush or about the plea, it's that you were
- 7 told one sentence and you got another, right?
- 8 A. Yes, sir.
- 9 Q. All right. And did you not listen to Judge Miller when
- 10 he was talking about how much time you could get?
- 11 A. I was all over the place that day. I was nervous. I
- 12 was expecting the zero to three like I said.
- 13 Q. And you were basing that on your -- your counsel?
- 14 A. Yes, sir.
- 15 Q. You weren't basing it on anything else ---
- 16 A. On my trust in him, yes.
- 17 Q. Okay. And would you like to -- would you like to
- 18 withdraw that plea?
- 19 A. Yes, sir.
- 20 Q. Okay. And that's what you're asking the Court to do in
- 21 this post conviction relief application?
- 22 A. Yes, sir.
- 23 Q. And you're asking to withdraw it because you feel like
- 24 you -- you were led to believe you were going to get three
- 25 years and you got ten years?

WILLIAM BRIGHT, JR. - DIRECT EXAMINATION BY MR. YARBOROUGH

26

1 A. Yes, sir.

2 Q. Okay. And I think you alleged in one of your issues
3 that you felt like that Mr. Richey didn't interview the
4 witnesses you wanted him to. And that's what you're talking
5 about Mr. Carter and ---

6 A. Yes, sir.

7 Q. --- that kind of stuff? Do you know of any other work
8 that Mr. Richey did on the case that ---

9 A. No, sir.

10 Q. Okay. Did you feel like his investigation of your case
11 was reasonable?

12 A. No, sir.

13 Q. What else would you have liked him to do?

14 A. Cross examine witnesses, you know, alleged victims,
15 actually just what a regular trial would have been or
16 regular preparation for a trial would be. I'm no lawyer
17 but I -- I don't think that's the way you do it.

18 Q. All right. With all that set aside, you don't --
19 you're not trying to tell Judge Hayes you didn't plead
20 guilty? You pled guilty.

21 A. Yes, sir, to the lesser.

22 Q. But you thought that you were going to receive a three
23 year sentence because that's what you were assured by Mr.
24 Richey?

25 A. Yes, sir.

WILLIAM BRIGHT, JR. - CROSS EXAMINATION BY MR. SCHMECKPEPER

1 Q. Okay. And so the rest of your allegations are what
2 caused you to get there, but your real complaint is that
3 sentence?

4 A. Yes, sir.

5 Q. Okay. I don't have any further questions. I told you
6 is there anything else you want to tell the Court?

7 A. No, sir.

8 Cross Examination by Mr. Schmeckpeper:

9 Q. Good afternoon, Mr. Bright. I've just got a couple of
10 questions. Do you have a copy of the transcript with you?

11 A. No, sir.

12 MR. SCHMECKPEPER: Your Honor, may I approach?

13 THE COURT: You may.

14 Q. I'm just handing you a copy of your guilty plea
15 transcript. I'm just going to ask you a couple of
16 questions. Now I think you testified that you didn't think
17 the judge advised you of the maximum sentences, is that
18 correct? You just said, what did your co-defendant get?
19 You get ten?

20 A. Yes, sir.

21 Q. If I could turn your attention to page 3 and to page 4.
22 I guess, line 25 on page 3 going into page 4. Looking at
23 line 4 on page 4 would you agree that the judge said that
24 pleading to attempted armed robbery carries twenty years?

25 A. I don't recall.

LED

WILLIAM BRIGHT, JR. - CROSS EXAMINATION BY MR. SCHMECKPEPER

22

1 Q. So I understand you don't recall, but you would agree
2 that the transcript reads that that's what happened at the
3 guilty plea?

4 A. Yes, sir.

5 Q. And that -- turn to line 15 still on page 4. Pleading
6 to a violent burglary, second, carries up to fifteen years.

7 A. Yes, sir. That says it.

8 Q. So whether or not you remember that you'd agree that
9 that's reflected in the transcript?

10 A. Yes, sir.

11 Q. Now turning to page -- turning back to page 3, looking
12 around line 3, do you know what you were -- do you remember
13 what you were indicted for originally in this case?

14 A. First degree burglary.

15 Q. Do you know what the sentence of first degree burglary
16 is?

17 A. (Negative nod).

18 Q. Does fifteen to life sound fair?

19 A. I don't -- (negative nod).

20 Q. Now would you turn your attention to page 7, please.

21 MR. SCHMECKPEPER: I beg the Court's indulgence.

22 (Pause)

23 Q. So your testimony is that your attorney told you you
24 would get zero to three?

25 A. Sir?

41

WILLIAM BRIGHT, JR. - CROSS EXAMINATION BY MR. SCHMECKPEPER

13

1 Q. Your testimony is that your attorney told you you'd --
2 zero to three?

3 A. That is exactly what he said.

4 Q. Did anybody at any point in the entire trial -- guil-
5 plea transcript of your entire hearing say anything about
6 zero to three years?

7 A. Only him.

8 Q. No, during the actual guilty plea proceeding?

9 A. No.

10 Q. Did the judge ever say anything about zero to three?

11 A. I didn't -- I didn't hear any of that. But I'm not sure
12 you what he told me in the counsel room.

13 Q. But the only thing the judge said was twenty and
14 twenty-five, correct?

15 A. As far as I ...

16 Q. Do you remember saying you were satisfied with your
17 attorney?

18 A. I don't remember anything, honestly, like that.

19 Q. So you don't remember anything that happened at the
20 actual guilty plea hearing, all you remember is your
21 attorney telling you before the guilty plea hearing zero to
22 three?

23 A. I went blank after the judge told me ten years.
24 don't remember -- recall any of that afterwards.

25 MR. SCHMECKPEPER: Your Honor, I have no further

WILLIAM BRIGHT, JR. - REDIRECT EXAMINATION BY MR. YARBOROUGH

24

1 questions.

2 Redirect Examination by Mr. Yarborough:

3 Q. Were you -- throughout that guilty plea were you
4 relying on Mr. Richey?

5 A. I was relying on him entirely.

6 Q. Okay. Do you -- did you understand how the court
7 proceeding worked?

8 A. No, sir, because he never explained it.

9 Q. Okay. And you would have gone to trial having ---

10 A. Yes, sir.

11 Q. --- know what you know now?

12 A. Yes, sir.

13 Q. I know he showed you that transcript, but did you ever
14 like you could stop the judge at any point?

15 A. No, sir. I, I mean, I was -- I didn't at all.

16 Q. When he says in there I'm going -- what did your own
17 defendant get and you said -- or said ten years, were you
18 shocked?

19 A. Yes, sir.

20 Q. Okay. And had that been anything that you had thought
21 was going to happen in court?

22 A. No, sir.

23 Q. And you feel like you gave Mr. Richey enough
24 information to prepare the case?

25 A. Yes, sir.

ANNETTE BRIGHT - DIRECT EXAMINATION BY MR. YARBOROUGH

25

1 Q. And then you relied on him at the guilty plea?

2 A. Yes, sir.

3 Q. And you'd like the Judge to -- ask the Court to find
4 that he was ineffective and you'd like to start this over?

5 A. Yes, sir.

6 Q. Okay.

7 MR. YARBOROUGH: I don't think I have any further
8 questions.

9 THE COURT: Okay.

10 MR. SCHMECKPEPER: Nothing from the State, Your Honor.

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

13 A. Thank you, sir.

14 MR. YARBOROUGH: I'd call Ms. Bright.

15 THE COURT: You can stop right here.

16 MADAME CLERK: Please place your left hand on the Bible
17 and raise your right hand.

18 Annette Bright, being
19 duly sworn testified as follows;

20 MADAME CLERK: Please state your full name for the
21 record.

22 MS. BRIGHT: Annette Bright.

23 MADAME CLERK: Thank you very much.

24 Direct Examination by Mr. Yarborough:

25 Q. Ms. Bright, will you tell us where you're from.

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ANNETTE BRIGHT - DIRECT EXAMINATION BY MR. YARBOROUGH

26

- 1 A. I'm from Greenville.
- 2 Q. Okay. And do you have a son?
- 3 A. Yes, I do.
- 4 Q. Do you have any other children?
- 5 A. Yes, I do.
- 6 Q. Okay. And is your son in the courtroom today?
- 7 A. Yes, he is.
- 8 Q. And what is his name?
- 9 A. William Bright.
- 10 Q. Okay. And did you kind of go through this experience
- 11 with him with the -- with the lawyer and everything?
- 12 A. Yes, sir.
- 13 Q. Okay. Was -- was he living with you at the time or
- 14 A. I was just living with my father taking care of my
- 15 father. I was caregiver for my father. He had cancer. My
- 16 son lived directly across the street from me.
- 17 Q. Okay. So you'd see him on a regular basis?
- 18 A. Every day.
- 19 Q. Okay. And did -- did you know that he had a trial
- 20 coming up?
- 21 A. When he received a card in the mail.
- 22 Q. Okay. Did you get the mail?
- 23 A. He got the mail at his house.
- 24 Q. Would he ---
- 25 A. He would inform me.

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ANNETTE BRIGHT - DIRECT EXAMINATION BY MR. YARBOROUGH

- 1 Q. Yeah, he'd inform you.
- 2 A. And the first one he got was back in December or 2015?
- 3 Q. And did you -- 2015?
- 4 A. Yes.
- 5 Q. And did you go to court with him that day?
- 6 A. Yes, I did.
- 7 Q. And did y'all meet with Mr. Richey at the courthouse?
- 8 A. Yes, we did.
- 9 Q. And were you -- what did you think was going to happen?
- 10 A. I really thought that we were going to pick a jury and
- 11 go to trial that day.
- 12 Q. Okay. And did you?
- 13 A. No.
- 14 Q. Okay. And then did you happen to go with your son to
- 15 meet with Mr. Richey again?
- 16 A. Not at his office, no.
- 17 Q. Okay. Were you -- did you get your -- did you know
- 18 where your son was going most days?
- 19 A. Yes, sir.
- 20 Q. Okay. And did there come a time that y'all came to the
- 21 courthouse again?
- 22 A. Yes, sir.
- 23 Q. Okay. And is that the day we've been talking about?
- 24 A. Yes, sir, February 8th, 2016.
- 25 Q. And this is the past February?

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ANNETTE BRIGHT - DIRECT EXAMINATION BY MR. YARBOROUGH

28

- 1 A. Yes, sir.
- 2 Q. Okay. And on that day were you with your son?
- 3 A. Yes, sir.
- 4 Q. And did -- were y'all up here for a trial or for a
- 5 plea?
- 6 A. For a trial.
- 7 Q. Okay. And did that trial happen?
- 8 A. No, sir.
- 9 Q. Okay. Well, tell us what happened.
- 10 A. Okay. We entered the courthouse and we sat outside in
- 11 the hallway. Mr. Richey came in and he came over and talked
- 12 to us a little bit. And he did tell us that he was waiting
- 13 to go pick a jury because it was going to trial.
- 14 Q. Right.
- 15 A. So we assumed that, you know, that's what -- we're
- 16 here, we're waiting to pick a jury, we'll go to trial today.
- 17 Q. Okay. Did ---
- 18 A. Mr. ---
- 19 Q. --- y'all go into a room?
- 20 A. That was on the outside in the hallway.
- 21 Q. Oh, that was on the outside ---
- 22 A. Yes, sir.
- 23 Q. --- in the hallway?
- 24 A. So Mr. Richey left. Then he -- he came into the
- 25 courtroom. Then he came back and called us into a

ANNETTE BRIGHT - DIRECT EXAMINATION BY MR. YARBOROUGH

26

1 conference room. We went into a conference room. Mr.
2 Richey said, I'm going to go and talk to these guys one more
3 time and see if I can make a deal. So Mr. Richey left a --
4 and left me and my son sitting in the conference room.

5 Q. Was your son nervous?

6 A. Yes. He was nervous and I was very nervous 'cause
7 Richey had told us prior to that if we went to trial that we
8 could receive a extensive amount of time.

9 Q. Okay.

10 A. And I was very upset.

11 Q. All right. And so did he come back from going looking
12 for a deal?

13 A. Yes, sir. He came back and he said, I couldn't get
14 them to move, but I've done this on my own. I pretty much
15 stuck my neck out for you. And he offered my son a zero to
16 three years plea.

17 Q. Okay. Now, when you say he offered it to you, can you
18 explain that to me?

19 A. Well, he had a paper that he laid down in front of
20 and said, you know, you can plea -- if you plead guilty
21 today, I can probably get it -- you to a -- zero to three.
22 If you go to trial and you're found guilty, you're going to
23 receive a lot of time.

24 Q. Okay. Now, you just said probably. Did he say
25 probably or did he say he would get you zero to three?

ANNETTE BRIGHT - DIRECT EXAMINATION BY MR. YARBOROUGH

30

- 1 A. He -- he said I have a plea of zero to three.
- 2 Q. Okay. And what did you think that meant?
- 3 A. My son would receive a minimum of zero years and a
- 4 maximum of three. I even asked Mr. Richey by my son being
- 5 first time offender if possible there might be probation,
- 6 house arrest. He said, no.
- 7 Q. Okay. And so did y'all go in -- did your son sign it?
- 8 A. He signed the plea. And then ---
- 9 Q. Did you advise your son to sign the plea?
- 10 A. Well, Mr. Richey left the room again and said for me
- 11 and my son to talk it over. And my son, I mean, he was
- 12 really scared and didn't know what to do. And he says, "
- 13 just want to get it over with. I'm tired of back and forth
- 14 to the court.
- 15 Q. Right.
- 16 A. And I had spoken to Mr. Richey on several, several
- 17 occasions before.
- 18 Q. Okay.
- 19 A. I mean, my son gave him permission to talk to me.
- 20 Q. Okay. And did you go see him?
- 21 A. I never went to see him, no.
- 22 Q. You just talked to him on the phone?
- 23 A. Yes, sir.
- 24 Q. Okay. And so were you convinced when y'all left that
- 25 room that your son was going to get zero to three?

ANNETTE BRIGHT - DIRECT EXAMINATION BY MR. YARBOROUGH

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1 A. Well, Mr. Richey had left the room and then he came
2 back. And Mr. Richey had said after my son signed the plea
3 that he was going to put -- he said, I don't need to put
4 in front of Judge Miller, but I don't know what I'm going to
5 do. I don't really want to put you in front of Judge Miller.
6 And he left the room again.

7 And then when he came back again he said, I'm going to
8 put you in front of Judge Miller anyway. It doesn't matter
9 that his son worked on your case.

10 Q. Okay. And what was that about? Do you know?

11 A. Mr. Miller's son, I guess, was ---

12 **MR. SCHMECKPEPER:** Your Honor, I'd object. I
13 apologize. I'd object to this testimony, any sort of
14 conflict of interest on the judge's part wasn't pled. And
15 the State doesn't have any ability to really respond.

16 **THE COURT:** Well, I'll let her testify to what this
17 played into. It's not being offered as a conflict of
18 interest. It's being offered as to what was conveyed by
19 trial counsel, what she's testifying he conveyed to her and
20 Mr. Bright.

21 Q. What did you think?

22 A. Mr. -- Judge Miller's son had worked a little bit on my
23 son's case with the other prosecutor.

24 Q. Okay.

25 A. So to me I felt like that, you know, he shouldn't go

ANNETTE BRIGHT - DIRECT EXAMINATION BY MR. YARBOROUGH

1 front of the judge ---

2 Q. I know you felt like that, but did Mr. Richey tell

3 ---

4 A. No. He still took him in front of Mr. Miller knowing
5 that ---

6 Q. Originally he told you that he wasn't and then he

7 A. He originally said he -- he couldn't, but he did.

8 Q. Okay. And did that ever come out at the plea?

9 A. No.

10 Q. Okay. Did you ever -- what did you think was going to
11 happen when your son got up there and pled guilty?

12 A. I thought the judge would maybe give him a zero, maybe
13 probation or at the most three years.

14 Q. And that's based on your conversation -- yours and your
15 son's conversation with Mr. Richey?

16 A. Yes.

17 Q. And I'm guessing your son was nervous and he was
18 relying on you for advice?

19 A. Yes.

20 Q. And did you advise him to do that?

21 A. No.

22 Q. What did you advise him to do?

23 A. I told him it was up to him because I -- you couldn't
24 make that decision for him.

25 Q. Okay. Is there anything else you want the Court to

ANNETTE BRIGHT - DIRECT EXAMINATION BY MR. YARBOROUGH

25

1 know about that day?

2 A. I was in the courtroom and when Mr. Miller had asked
3 the prosecutors, had said what they said, and then Mr.
4 Richey had a chance to talk for my son. All I can remember
5 him saying is, Your Honor, Mr. Bright said he didn't do it.
6 He never mentioned my son had children or a family. And he
7 never mentioned that, you know, tried to help him in any way
8 in my opinion.

9 Q. Did you have a chance to speak?

10 A. No.

11 Q. Did you want to speak?

12 A. Mr. Richey let the court know that his mother was there
13 supporting him.

14 Q. Okay. And did you think that there was more -- I don't
15 know the word. There was more that Judge Miller should have
16 known about your son?

17 A. Yes, sir.

18 Q. Okay. And did you think that day when you walked in
19 that the worst thing that was going to happen is your son
20 would get three years?

21 A. After the plea?

22 Q. That was it.

23 A. (Affirmative nod).

24 Q. And no question that's what you heard?

25 A. That's what I heard.

ANNETTE BRIGHT - DIRECT EXAMINATION BY MR. YARBOROUGH

1 Q. Okay.

2 A. And then when we left the courtroom I asked Mr. Richey
3 on the way out what did that mean. I mean, I heard the
4 judge say -- asked about the co-defendant. I heard that
5 And I heard the judge give my son ten years. He said he
6 could not give him less time than he gave the co-defendant
7 -- than the co-defendant got.

8 And I couldn't understand that because my son's charges
9 were lesser charges than the co-defendant. The co-defendant
10 actually pled to a gun charge. My son's -- and the judge
11 later amended that my son did not have the gun.

12 Q. All right. He amended ---

13 A. It amended -- it was amended in March after the trial.

14 Q. Okay. And that was after y'all got involved with me
15 and ---

16 A. Yes. And on the way out to the -- to the elevator
17 asked Mr. Richey, how much did my son get? And he said
18 years. And I said what does that mean? How much will he
19 serve? And he said eight. And I said, are you kidding?
20 And he said, no. He said, he should have never talked to
21 those guys. Not knowing what that meant, I don't know.

22 Q. Okay. And, I mean, I just want to be perfectly clear.
23 You're saying that you heard him say three years?

24 A. The plea in the conference room was zero to three.

25 THE COURT: Mr. Yarborough, remember what the last

ANNETTE BRIGHT - CROSS EXAMINATION BY MR. SCHMECKPEPER

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1 witness talked about on pronouns?

2 MR. YARBOROUGH: Yes, sir.

3 THE COURT: Give us some ---

4 Q. When I say he, no question you heard Mr. Richey say
5 that it was three years?

6 A. Zero to three plea.

7 Q. And all those conversations that I've probably been
8 asking you about, those are conversations you had with Mr.
9 Richey?

10 A. Mr. Richey and my son.

11 Q. And your son. And Mr. Richey was the lawyer?

12 A. He was the lawyer. And I spoke -- I also spoke with
13 Mr. Richey after my son was sentenced ---

14 Q. Yes, ma'am.

15 A. --- on the telephone about an appeal. And he said,
16 yeah, I can appeal it, but I doubt if it does any good.

17 Q. All right.

18 A. And I even asked about a post conviction with him.

19 Q. Okay. All right. I don't think I have any further
20 questions.

21 Cross Examination by Mr. Schmeckpeper:

22 Q. Now you were there for the actual guilty plea, right?
23 Were you in the courtroom?

24 A. Yes.

25 Q. And did you hear the court -- did you hear the judge

RODNEY RICHEY - DIRECT EXAMINATION BY MR. YARBOROUGH

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1 say zero to twenty? Or the maximum was twenty to twenty-
2 five years?

3 A. No.

4 Q. So you just didn't hear the judge say that?

5 A. (No response).

6 Q. And you said the Applicant or you said your son said
7 something that said zero to three?

8 A. Yes.

9 Q. Do you have that with you?

10 A. No. He handed it to the judge.

11 MR. SCHMECKPEPER: Your Honor, may I approach?

12 THE COURT: Yes.

13 Q. Did it look something like one of these?

14 A. I don't really know.

15 MR. SCHMECKPEPER: I have no further questions, Your
16 Honor.

17 THE COURT: All right. You can step down. We
18 appreciate your time. Thank you. Call your next witness.

19 MR. YARBOROUGH: I'd call Mr. Richey.

20 THE COURT: All right.

21 MADAME CLERK: Mr. Richey, please raise your right
22 hand.

23 Rodney Richey, being duly sworn,
24 sworn testified as follows;

25 MADAME CLERK: Thank you. Please state your full name.

RODNEY RICHEY - DIRECT EXAMINATION BY MR. YARBOROUGH

1 for the record.

2 MR. RICHEY: Rodney Wade Richey.

3 Direct Examination by Mr. Yarborough:

4 Q. Mr. Richey, you practice law here in Greenville?

5 A. Yes, sir, I do.

6 Q. And as part of that practice did -- were you appointed
7 to represent Mr. Bright?

8 A. Yes, sir, I was.

9 Q. And that was in the State case?

10 A. Yes, sir.

11 Q. Okay. And can you tell us about that representation?

12 A. Mr. Bright, I represented him on the burglary and the
13 armed robbery charges.

14 Q. Okay. And were you -- I guess it doesn't matter, but
15 were you later appointed to represent him on some other
16 cases?

17 A. State grand jury case, drug case.

18 Q. Okay. And so did he -- did you talk to him about this
19 case?

20 A. Yeah, plenty of times.

21 Q. And did he tell you he wanted to go to trial?

22 A. He initially was very uncooperative and would not be
23 responsive to the interviews. And so he missed a couple of
24 appointments. And I really stressed on him he needed to get
25 to the office. And he came to the office one day, but I

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RODNEY RICHEY - DIRECT EXAMINATION BY MR. YARBOROUGH

1 just -- he just -- he never saw the seriousness of the case
2 until later.

3 Q. Okay. And did you go over -- did you get the
4 discovery?

5 A. Yes.

6 Q. Okay. And was there a statement from Mr. Carter in
7 there, do you recall?

8 A. I don't recall. Whatever witness he wanted me to
9 contact, I contacted that witness, but this just was a case
10 that kind of snowballed.

11 Q. When you say that, what do you mean?

12 A. Well, he thought it was all going to go away because
13 this was where they were going to collect a debt, the
14 victims. He alleged that the lady sold prescription drugs
15 and pills and that they went there only to collect the
16 money.

17 And once they got there it was, you know, all the stuff
18 happened, got a shotgun and all that. But he believed
19 because he said all these people were drug addicts that the
20 case would go nowhere.

21 Q. Right. And so did he get you to prepare the case for
22 trial?

23 A. Yes. Well, yes, sir, he did. It was, you know, he was
24 real uncooperative, but when I stressed upon him to get to
25 the office, he came to the office, we went over discovery.

RODNEY RICHEY - DIRECT EXAMINATION BY MR. YARBOROUGH

1 And he's right, I told him, hey, man, we've got to get
2 some witnesses. You want to go to trial? We need to get
3 some witnesses. So we went through the stuff.

4 Q. Is that your standard practice?

5 A. Yes. Yeah, my standard practice is I like to have them
6 come as much as they can, but, you know, I'll take what I
7 get. And that's what I did on this one.

8 Q. And did you meet with him and his mother in December
9 before the ...

10 A. At the courthouse?

11 Q. Yeah.

12 A. Yes, I did.

13 Q. And that day you didn't pick a jury?

14 A. No. What happened was I thought we got kind of a break
15 that day because he had come one time before, we didn't get
16 reached. On this particular day we were not going to get
17 reached either. Okay.

18 We found out -- but he came to the courthouse that day
19 and said, hey, I'm guilty, I'm guilty, I'm guilty, I want to
20 plead guilty, I want to plead guilty, real adamant about it.
21 When I found we were not going to get reached, Lucas
22 Marchant was really, for lack of a phrase, tired of the whole
23 and tired of the stuff ---

24 Q. Would you tell Judge Hayes who Lucas ---

25 A. Lucas Marchant was the assistant solicitor that handled

RODNEY RICHEY - DIRECT EXAMINATION BY MR. YARBOROUGH

1 the case. And Lucas was -- so what I did because it was not
2 going to get reached, okay, I went to Lucas and said, Lucas,
3 look, this gentleman is telling me he's guilty, he's guilty,
4 he's guilty. We're not going to get reached.

5 And I can't remember whether Judge Hill was the trial
6 judge or not. I said, hey, can we plead him in front of
7 Judge Miller if he's going to plea? Can we get some
8 reduction in charge? Can we plead him in front of Judge
9 Miller?

10 And I think, you know, in Greenville County, it's just
11 a feeling that Judge Miller is a more favorable judge to a
12 defendant. That's -- that's just the way it is here.

13 Q. All right. Well, on that day did it turn out that way
14 for him?

15 A. What? Favorable?

16 Q. Yeah.

17 A. Yeah, very favorable. We were very, very fortunate.
18 mean, we were ---

19 Q. You felt like a ten year sentence was fortunate?

20 A. Very fortunate. Because if we had of went to trial,
21 think the transcript would reflect these victims came in and
22 they were fired up and they were really, really -- their
23 story was completely the opposite of Mr. Bright, completely.
24 They -- they denied the drug part of the allegation. They
25 said, no, we didn't -- they were really, really adamant

RODNEY RICHEY - DIRECT EXAMINATION BY MR. YARBOROUGH

1 about this thing.

2 And in talking to him and looking at the evidence, the
3 evidence, you know, it was pretty -- pretty good against --
4 Very good against us. There was ---

5 Q. When you say that, though, what was -- was it just
6 testimony or was there something else?

7 A. There was testimony of the witnesses. And there was
8 Mr. Bright, he never denied I was there. He never denied
9 went there with the guy. He never denied any of it.

10 His whole thing was these were a bunch of pill-heads
11 and that, you know, they just making this stuff up and all
12 that stuff. So when I say I don't think he took the
13 seriousness of it, I think he thought these were the kind of
14 people that wouldn't show up for court.

15 Q. All right. Well, would you agree that he was --
16 thought he was coming there for a trial?

17 A. Yeah, we were on the docket. We were on the docket.
18 We were on the trial docket.

19 Q. And so when you say y'all didn't get reached, that
20 when y'all -- did you have a conversation with Mr. Bright
21 and his -- and his mother in this room that she's described
22 they've both described?

23 A. And I never told them it's a three year deal. Never
24 said it. Never happened. Never happened. Zero to three
25 never happened.

RODNEY RICHEY - DIRECT EXAMINATION BY MR. YARBOROUGH

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1 Q. Was there -- did anything happen that could have led
2 them to believe that it was zero to three?

3 A. Nothing. Not even close. We just got a reduction and
4 we were just so thrilled that at that point -- 'cause --
5 'cause in this town when you plead off the trial docket,
6 think everybody's aware, there's no offers. That once you
7 plead off that docket, you've got to accept all the cases
8 is and plea. That's the standard practice in Greenville
9 County through the solicitor's office.

10 Q. Right.

11 A. So to be able to have them reduce the charge and get a
12 favorable judge, that was a tremendous benefit for us.
13 Tremendous.

14 Q. But he was a first time offender, right?

15 A. First time?

16 Q. Yes. He didn't have a prior record?

17 A. I ---

18 THE COURT: I hate to interrupt, but I thought in the
19 transcript he had some record. CDV, petty larceny and ---

20 MR. YARBOROUGH: I don't think it was anything
21 significant. I don't -- maybe there were some magistrates.

22 THE COURT: I'm just saying twice I've heard he had no
23 record. And unless the transcript's wrong, and I hate to
24 interject myself in it, but I just want to make sure it's
25 right. CDV, receiving stolen goods and petty larceny.

RODNEY RICHEY - DIRECT EXAMINATION BY MR. YARBOROUGH

1 property offenses and a domestic violence.

2 Q. Do you remember that, Mr. Richey, or not?

3 A. Well, I can't say exactly, but I know he wasn't like
4 squeaky clean.

5 Q. Okay.

6 A. I'll use that phrase.

7 Q. I guess the question is how do you think things went
8 from his mother and Mr. Bright, let's just say his mother,
9 thinking that they're going to receive this three year deal
10 and then it was an open plea?

11 A. I don't think that's -- I don't think they ever
12 believed it was going to -- three years because it was not
13 -- the three years were never offered to him. The plea --
14 the plea was without negotiations. That's the sentencing
15 sheet. He signed the sentencing sheet.

16 There was -- I didn't one time say in front of the
17 judge a zero to three, the judge never said it, there was no
18 such offer. What we got was, like I said, I thought was
19 pretty good.

20 Q. All right. Would your standard of practice have --
21 what would you have done, I mean, you've done this for a
22 while. What would you have done on the zero to three plea?

23 A. I would have told the judge, hey, judge, they're
24 recommending zero to three, give him probation. I would
25 have said probation. If we had a zero to three offer, I

RODNEY RICHEY - DIRECT EXAMINATION BY MR. YARBOROUGH

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1 would have went in front of the judge and said, judge, it's
2 a three to zero -- zero to three plea offer in the case,
3 we're eligible for probation, would the court consider
4 probation? That's what I would have said to the judge. I
5 would have asked for probation.

6 Q. So when you talked to Marchant you're saying -- had
7 y'all worked out a deal or was it just a reduction of
8 sentence?

9 A. It was just a reduction -- it was a reduction of
10 sentence because at that point, you know, we wasn't going to
11 get reached. I went to Lucas Marchant and said, hey, if
12 there's anything you can do for us because we're not going
13 to get reached, Mr. Bright's saying he's guilty, you know, I
14 don't want to see this man go to trial and get all these
15 years, these tons and tons of years.

16 Q. And did you feel like you investigated the case enough?

17 A. Absolutely. Yes. Because I had to do that with a very
18 uncooperative client. I did what I had to do with a client
19 that was very uncooperative.

20 Q. Okay.

21 **MR. YARBOROUGH:** Give us a second, Your Honor.

22 (Pause)

23 **MR. YARBOROUGH:** I don't have anything further, Your
24 Honor.

25 **THE COURT:** All right. Cross.

RODNEY RICHEY - CROSS EXAMINATION BY MR. SCHMECKPEPER

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1 MR. SCHMECKPEPER: Briefly, Your Honor.

2 Cross Examination by Mr. Schmeckpeper:

3 Q. Mr. Richey, if you could, just for the record, go over
4 your background in criminal law.

5 A. I started practicing in 1995 at the public defender's
6 office. I spent a year there. I've tried tons of felonies,
7 involved in four death penalty cases, just a lot over the
8 last twenty-one years.

9 Q. So you had a substantial amount of experience even
10 before representing the Applicant?

11 A. Yeah, a lot.

12 Q. And you did file for discovery in this case?

13 A. Yes, sir.

14 Q. And even though the Applicant hadn't been cooperating
15 and missed some meetings you were able to review discovery
16 with him?

17 A. We went over the case fully.

18 Q. And he was aware of the State's case against him?

19 A. He was aware of it.

20 Q. And I think you said by the time he actually ended up
21 pleading guilty he wanted to plead guilty?

22 A. Yes, sir, without a doubt.

23 Q. And your testimony is you never at any point told him
24 or his mother a zero to three year offer?

25 A. Never.

RODNEY RICHEY - CROSS EXAMINATION BY MR. SCHMECKPEPER

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1 Q. And that that would be very unlikely in Greenville
2 County off the trial docket?

3 A. That ---

4 Q. From a burglary, first degree?

5 A. That'd been unlikely. And I would have asked for
6 probation with a zero to three.

7 Q. Now have you looked at the sentencing sheet in this
8 case?

9 A. I saw the sentencing sheet while I was sitting over
10 there.

11 Q. And did you see the Applicant sign the sentencing
12 sheet?

13 A. Yes, he signed them.

14 Q. Is it fair to say that the sentencing sheets each
15 reflect, I think, the robbery, attempted armed robbery
16 reflects in the top right corner, it says zero to twenty.

17 A. Yes, zero to twenty.

18 Q. And the burglary, second degree, sentencing sheet,
19 which also has his signature, says in the top right hand
20 corner zero to fifteen?

21 A. Yes.

22 Q. So just thinking back is there anything you could
23 remember or anything you might have said to lead the
24 Applicant and his mother, even though the judge said ten to
25 fifteen, said what the range was, anything that you could

RODNEY RICHEY - CROSS EXAMINATION BY MR. SCHMECKPEPER

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1 think of that would lead them to believe there was a zero to
2 three offer?

3 A. Nothing. Like I said, if it was zero to three I would
4 have asked for probation. But I -- I was -- I felt very
5 fortunate to get that reduction when the case was in the
6 posture it was in. I mean, it was in a bad posture for us
7 at that point.

8 Q. And I think there's been some testimony that the
9 Applicant's mother asked you to file an appeal. Did the
10 Applicant ever ask you to file an appeal?

11 A. No, but his mother called me. She actually called me
12 and she said, what do you think about an appeal? And I
13 said, I don't believe there's any appealable issues that the
14 court would reverse or I would do it.

15 And at -- and see, at the time she called me, he has a
16 statewide grand jury case going, okay, that he's in the
17 middle of it. And the feeling was, as she said, leave this
18 alone and maybe we can get all this stuff ran in together
19 and kind of hold this as the top for the statewide grand
20 jury case. See, 'cause we entered a plea of guilty in that
21 case, the statewide grand jury case.

22 And so as I -- it was the feeling that we would go to
23 the AG's office and say, hey, we already got ten years. Can
24 we just cap everything at that?

25 Q. If the Applicant had asked you to file an appeal, what

RODNEY RICHEY - CROSS EXAMINATION BY MR. SCHMECKPEPER

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1 would you have done?

2 A. I would have filed one.

3 Q. If his mother asked you to file an appeal, what would
4 you have done?

5 A. I would have filed one.

6 Q. Did either of them ever concretely, affirmatively say,
7 Mr. Richey, I want you to file an appeal in this case?

8 A. No, but she did call and ask about it. And I talked to
9 her about it. But, like I said, we had a lot more stuff
10 going on too.

11 **MR. SCHMECKPEPER:** I beg the Court's indulgence.

12 (Pause)

13 Q. I think you mentioned the Applicant was difficult to
14 meet with and sometimes uncooperative. Did you investigate
15 everything he asked you to investigate?

16 A. Yes.

17 Q. And were you prepared to go to trial taking into
18 account his lack of cooperation?

19 A. Yes, I was prepared. I thought we could -- these
20 victims, I mean, they were adamant that they were not -- I
21 believed the way the state with Mr. Bright -- Mr. Bright was
22 in his life, these folks did, they were using a lot of
23 drugs. And I think Mr. Bright -- I just think that I
24 thought that we'd have some opportunity with them in cross
25 examination.

RODNEY RICHEY - REDIRECT EXAMINATION BY MR. YARBOROUGH

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1 Q. Now turning to the actual guilty plea, following the
2 Applicant's plea of guilty and prior to sentencing did you
3 argue that the Applicant was less culpable in this crime
4 than his co-defendant?

5 A. Yeah. He didn't have the gun. I think he kind of went
6 as the intimidator kind of thing. I don't think -- because
7 of his size.

8 Q. I know the Applicant has testified that he doesn't
9 remember, I think, other witness also testified they don't
10 remember the judge saying the maximum sentence that the
11 Applicant was facing. Do you remember the judge saying
12 that?

13 A. Yeah. The transcript, that's kind of standard.

14 MR. SCHMECKPEPER: I have no further questions, Your
15 Honor.

16 THE COURT: All right.

17 **Redirect Examination by Mr. Yarborough:**

18 Q. You mentioned -- did you represent him later in that
19 statewide grand jury case? I think y'all brought it up.

20 A. Yeah. I represented him in the state grand jury case.
21 And I believe that was going on at the time -- toward the
22 tail end of this. And this -- it's still going on.

23 Q. Yeah. Were you prepared -- was Mr. Carter present for
24 trial that day if you needed to call him?

25 A. See, that I don't know. I know he gave the -- the

RODNEY RICHEY - REDIRECT EXAMINATION BY MR. YARBOROUGH

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1 witness that he gave me would testify that he went there and
2 he was involved in it. He -- he -- he would testify that he
3 didn't pull the gun and all this stuff, but he ---

4 Q. The other -- the other -- when you say he ---

5 A. I mean the witness that I ---

6 Q. Let's work on Judge Hayes' pronouns.

7 A. The witness that was provided by me would not have
8 exonerated us for the charge. He would have placed us at
9 the scene of the crime involved in it, but after it was over
10 there was some issue with this witness about whether, you
11 know, my client was forced to leave and all this stuff. But
12 he would never would have exonerated us from the trial --
13 from the case.

14 Q. Okay. But Mr. Bright was telling you he was just
15 there, right? He was there because he -- for the drugs, I
16 mean, basically. That was the long and the short of it.

17 A. Well, ---

18 Q. He didn't go there to rob -- he didn't tell you he went
19 there to rob anybody?

20 A. He -- initially, like I said, he was so uncooperative
21 getting his full story. But then his story was we went
22 there, these people sell drugs, they're pill-heads, they're
23 not going to come to court, all this stuff, okay? And so I
24 stressed to him that these people -- this is going to be a
25 trial and you really can't be that dismissive in the case.

RODNEY RICHEY - REDIRECT EXAMINATION BY MR. YARBOROUGH

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1 Q. Did you feel like there was anything that he wanted you
2 to do that you didn't do?

3 A. No, 'cause he didn't -- he didn't think he -- the only
4 time that he really ever thought he would get convicted, I
5 believe, is when he came to court and these folks were
6 actually here, okay? They were actually present. And
7 that's when he said, hey, I'm guilty, I'm guilty, I'm
8 guilty. And I would have never made that deal or ask Lucas
9 to consider something if he said he wanted to go to trial.
10 Never.

11 **MR. YARBOROUGH:** Just a second, Your Honor.

12 (Pause)

13 Q. Since it's come up, were you -- were you more concerned
14 about the evidence in the statewide grand jury case than you
15 were in this case?

16 A. No.

17 **MR. SCHMECKPEPER:** And I would ---

18 **MR. YARBOROUGH:** And you brought it up. Never mind.

19 Go ahead and make the objection. I apologize.

20 **THE COURT:** He said he was not. Go ahead.

21 Q. Okay. You weren't?

22 A. No.

23 Q. Okay. But you were -- that was all going on at the
24 same time?

25 A. Yes. That -- that happened at the tail end of my case.

RODNEY RICHEY - REDIRECT EXAMINATION BY MR. YARBOROUGH

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1 He got arrested for some drug trafficking and state grand
2 jury and all this stuff. And so it happened kind of at the
3 end.

4 Q. Okay. And you were appointed?

5 A. Yes.

6 Q. Okay. Thank you.

7 **MR. SCHMECKPEPER:** Nothing from the State, Your Honor.

8 **THE COURT:** All right. You can step down and be
9 excused. We appreciate your time.

10 A. Thank you.

11 **THE COURT:** Any further witnesses?

12 **MR. YARBOROUGH:** No, sir, Your Honor.

13 **THE COURT:** Any from the State?

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

15 **THE COURT:** All right. Well, I'll take this one under
16 advisement. And that concludes for the day. And we'll
17 start back at 9:30 in the morning.

18 **MR. SCHMECKPEPER:** Thank you, Judge.

19 **THE COURT:** All right. Thank you.

20 (Hearing Ended at 5:01 pm)

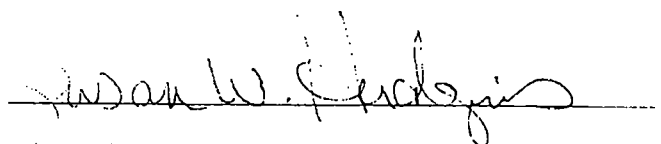
21 (End of Requested Transcript of Record)

Certificate of Reporter

I, The undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth 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 trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 8th day of December 2016..

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

February 26, 2017

A handwritten signature in cursive script, appearing to read "Susan W. Hudgins", is written over a horizontal line.

Circuit Court Reporter

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

William L. Bright, Jr.,
#366975,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2016-CP-23-03669

ORDER

2016 DEC 21 AM 9 20

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

Applicant filed this application for Post-Conviction Relief June 17, 2016. This matter was heard December 8, 2016. Applicant was represented by William G. Yarborough, III, Esquire. The State was represented by Patrick Schmeckpeper, Esquire.

Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the April 2015 term for first degree burglary (2014-GS-23-6960) and at the December 2015 term for armed robbery and possession of a weapon during the commission of a violent crime (2014-GS-23-6962). Rodney W. Richey, Esquire, represented Applicant.

On February 8, 2016, Applicant pled guilty to the lesser included offense of second degree burglary and attempted armed robbery. The weapons charge was dismissed. The Honorable Edward W. Miller sentenced Applicant, pursuant to recommendation by the State, to concurrent terms of 10 years.

DC 11/1

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

1. "Ineffective Assistance of Counsel"

- a. "...counsel of plea record coerced him into a plea of guilt by defending the State's case, and thereby took advantage of Applicant's lack of ability to fully comprehend the totality of the consequences of the plea."
- b. "Counsel failed to adequately investigate the State's case and advise Applicant on the appropriation of the evidence, the charges, and his substantive due process rights: failing to challenge the indictments, and thereby, failed to give adequate legal advise [sic] for Applicant to be fully apprised of the State's case against him for an informed decision."
- c. "No defense evidence was discussed by defense counsel for assuring a justifiable [sic] choice for Applicant."
- d. "Plea counsel failed to challenge the sufficiency of evidence."
- e. "Plea counsel acted as amicus curiae, i.e., friend of the State, friend of the Court."
- f. "Plea counsel failed to advise on the lawfulness of police interrogation interview..."

At the post-conviction relief hearing, Applicant's argument centered on an alleged 0-3 year plea agreement. Applicant also raised issues concerning trial counsel's preparation for trial and the failure of trial counsel to file an appeal. Any issues not raised during the post-conviction relief hearing are deemed abandoned.

Applicant alleges ineffective assistance of counsel as a ground for relief. In a post-conviction relief action, 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 ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

9c 11/2

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Strickland*, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. *See Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 688, 104 S. Ct. at 2065). 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing *Strickland*, 466 U.S. at 688, 104 S. Ct. at 2052). With respect to guilty plea counsel, 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, 59, 106 S. Ct. 366, 370 (1985).

Applicant also alleges his plea was involuntarily given. To find a plea is voluntarily and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of his plea and the charges against him. *Boykin v. Alabama*, 395 U.S. 238, 89 S. Ct. 1709 (1969); *Dover v. State*, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea

issues, it is proper to consider the guilty plea transcript as well as evidence presented during the PCR hearing. *Harris v. Leeke*, 282 S.C. 131, 318 S.E.2d 360 (1984).

As to the underlying facts, Applicant testified that he was invited into the house that he was accused of burglarizing on the night the alleged burglary took place. Applicant testified that he was invited into the house to "hang out." He also testified that he was under the influence of drugs on the night in questions and that he had a drug problem at the time.

Applicant testified at trial that he was represented by trial counsel for a little over a year and a half while the charges at issue were pending. Applicant stated that he only went over discovery once with trial counsel, at trial counsel's office, prior to trial. Applicant testified that trial counsel told him "it wasn't looking good for him" and that Applicant needed witnesses to testify on his behalf. Applicant further testified that he provided a witness to trial counsel, a Brett Carter, who was supposedly in the house when the alleged burglary took place. Applicant testified that he wanted Mr. Carter to be called as a witness in his trial but that he was not at the courthouse on the day of trial. Applicant stated that he was not aware whether or not Mr. Carter was subpoenaed for trial.

The second time the case was called for trial, Applicant stated that he was ready to go to trial, but felt as though he had not been adequately prepared by trial counsel. Applicant stated that he had not met with trial counsel until he arrived at the courthouse on the date of his trial. Applicant testified that trial counsel was "throwing around big numbers" in the conference room outside the courtroom. Applicant testified that trial counsel said he could "get the case ready in twenty minutes," but that he had received an offer from the Solicitor for a 0-3 year sentence. Applicant's mother testified that she was a witness to trial counsel relaying this offer to Applicant. Applicant's mother testified that she was not given a copy of the plea deal.

Applicant's mother testified about a potential conflict of interest concerning Judge Miller. Applicant's mother testified that the plea judge's son had worked on Applicant's case as a solicitor, and that this fact was not mentioned at the plea hearing. Applicant's mother testified that trial counsel was aware of this potential conflict and, initially, did not want to take Applicant in front of that particular judge. Applicant's mother testified that, in spite of the above, trial counsel had Applicant enter his guilty plea in front of Judge Miller.

Applicant testified that he was under the impression that Judge Miller would accept the 0-3 year plea deal. Applicant further testified that he did not understand what was going on during the guilty plea and that he solely relied on trial counsel to keep him informed during the proceedings. Applicant testified that he was never advised by the judge as to how much time he was facing, and that the judge based his ten year sentence on the sentence received by Applicant's co-defendant. Applicant testified that the ten year sentence seemed to surprise trial counsel, but that trial counsel did not intervene to "stop it" from happening. Applicant also testified that he did not believe he was allowed to stop the judge during the plea himself.

During cross examination, Applicant acknowledged that the plea transcript shows that he was advised of the potential sentences he faced. Applicant further acknowledged that nobody during the guilty plea proceeding mentioned a 0-3 year plea offer to the judge. Applicant testified that he does not remember anything about the plea proceeding after he was told he had received the 10 year sentence.

Trial counsel testified that he was appointed to represent Applicant and that he met with Applicant "plenty of times" prior to trial. Trial counsel testified that Applicant was initially uncooperative and missed several appointments where he and counsel would have discussed Applicant's case. Trial counsel testified that he received discovery on the case, and wished that he

had been more able to go over the discovery with Applicant. Trial counsel testified that when Applicant did come into the office, he made Applicant aware that he needed witnesses to testify on his behalf. Trial counsel further testified that his impression was that Applicant felt as though the case would simply "go away" because those who would testify against him were drug addicts and would not show up to court. Trial counsel testified that he investigated and prepared the case as best he could with an uncooperative client.

Trial counsel testified that he never told Applicant that there was a plea deal available for a 0-3 year sentence. Trial counsel further testified that he cannot recall any action on his part that would give Applicant or his mother the impression that such a deal was available. Trial counsel stated that the standard practice when "pleading off the trial docket" is to plead without a specific recommendation from the state. Trial counsel additionally testified that there was no "plea deal," per se, simply an agreement for a reduced sentence. Trial counsel testified that, had Applicant really had a plea offer for 0-3 years on the table, he would have argued for a probationary sentence. Trial counsel testified that the sentencing sheets for Applicant's plea stated the correct maximum sentences for the charges Applicant was facing.

Applicant and his mother each testified as to trial counsel's failure to file an appeal on Applicant's behalf. Applicant's mother testified that she spoke with trial counsel concerning an appeal in Applicant's case. She testified that trial counsel told her that filing an appeal would not do any good, and that an appeal was never filed. Applicant echoed this argument. Applicant stated that his mother sought other representation for Applicant after this conversation.

Trial counsel testified that he did, in fact, speak the Applicant's mother about the possibility of filing an appeal. Trial counsel further testified that he spoke about the presence, or lack thereof, of appealable issues in Applicant's case. Trial counsel also testified that neither Applicant nor his

JCH #6

mother directly asked him to file an appeal. Trial counsel testified that, had Applicant or his mother so requested, that an appeal would have been filed.

As to the alleged 0-3 year plea agreement, this Court finds this argument without merit. This Court finds both Applicant and Applicant's mother's testimony not credible for two reasons. First, trial counsel testified that he never relayed such an offer and this Court finds trial counsel's testimony credible. Second, this Court would find it incredible if any attorney were to tell a client facing these charges that the sentence would be in a 0-3 year range. Further, this Court finds it unlikely that a Solicitor's office would offer such a deal to a defendant facing these charges.

Applicant's claim that he was not aware of the sentences he was facing during his guilty plea is without merit. Despite the argument presented by Applicant at the post-conviction relief hearing, the plea record clearly indicates that Applicant was informed of his rights as required by *Boykin* as well as the potential sentences he was facing. (Plea Record p. 4, ll. 4-5; p. 4, ll. 15-16; p. 4, l. 25 though p. 5, l. 10).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, [an Applicant's] right to contest the validity of such a plea is usually, but not invariably, foreclosed. *Blackledge v. Allison*, 431 U.S. 63, 97 S. Ct. 1621 (1977). Statements made during guilty plea should be considered conclusive unless an Applicant presents a valid reason as to why he should be allowed to depart from the truth of his statements. *Crawford v. U.S.*, 519 F.2d 347 (4th Cir. 1975) (overruled on other grounds in *U.S. v. Whitely*, 759 F.2d 327 (4th Cir. 1985)).

At the post-conviction relief hearing, Applicant's explained that he was stunned at hearing of his 10 year sentence and that he did not comprehend any of information relayed to him by the court as a result. However, Applicant responded affirmatively when the plea judge asked Applicant

JH#7

if he understood his rights (Plea Record p. 5, l. 11), if he understood the penalties he was facing (Plea Record p. 4, l. 11; p. 4, l. 20), and if he pled guilty to the charges (Plea Record p. 4, ll. 21-24). Applicant presented no additional evidence at the hearing for this Court to determine why his statements during his guilty plea should not be considered conclusive. As such, this Court must accept Applicant's statements during the guilty plea as conclusive and find that Applicant's guilty plea was entered knowingly, intelligently, and voluntarily.

Additionally, application of the *Strickland* and *Cherry* tests makes it clear that trial counsel's representation of Applicant passes these tests and that Applicant has failed to carry his burden of proof. The greater weight or preponderance of the evidence shows that trial counsel's representation of Applicant was within the range of competence required of counsel in criminal cases. Further, trial counsel's representation of Applicant was within the standard of reasonableness under professional norms.

Therefore, Applicant's Application for Post-Conviction Relief is denied and dismissed with prejudice.

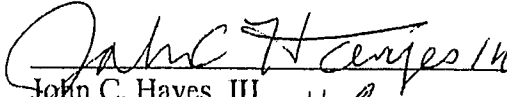
This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. *See* Rules 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243,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

IT IS SO ORDERED.

YCA/HG

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December 12th, 2016
Greenville, South Carolina


John C. Hayes, III
Presiding Judge #0

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.
William Lee Bright Jr

AKA:

Race: WHITE Sex: M Age: 34

DOB: 02-24-1980 SS#: 040-48-6884

Address:

City, State, Zip: Greenville, SC 29617-2823

DL#: SID#:

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

In disposition of the said indictment comes now the Defendant who was
TO: Burglary, Second Degree (building)

IN THE COURT OF GENERAL SESSIONS

0-15

INDICTMENT/CASE#: 2014GS2306960

A/W#: 2014A2330204673

Date of Offense: 5/14/2014

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 w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☒ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST

Marchant, Lucas

72742
SC Bar#

Defendant

Attorney for Defendant

9506
SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 10 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. 51 DAYS

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 1339.00

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

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

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: C. Smith

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2130

Sentence Date: 2-8-2016

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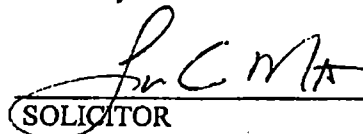
STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
BURGLARY FIRST DEGREE

At a Court of General Sessions, convened on **APR 21 2015** the Grand Jurors of Greenville
County present upon their oath:

That WILLIAM LEE BRIGHT, JR. did in Greenville County, on or about the 14th day of May 2014, willfully and unlawfully enter the dwelling of JAMI BROTHER located at [REDACTED] Welcome Ave., Greenville, South Carolina, without consent and with the intent to commit a crime therein, and the burglary was accompanied by circumstances of aggravation, to wit: the entering or remaining occurred during the nighttime hours. This is in violation of §16-11-0311 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

BAR # 72742

WITNESSES

Matthew Owens

Greenville County Sheriffs Office

6/3/2014

ARREST WARRANT NUMBER

2014A2330204673

ACTION OF GRAND JURY

TRUE BILL

Wayne E. Anderson

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-23-
LCM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April

TERM 2014

THE STATE

vs.

WILLIAM LEE BRIGHT, JR.

Indictment for

BURGLARY FIRST DEGREE

VIOLATION § 16-11-0311

ENTERED
ACCT

006960

FILED

AUG 04 2014

Clerk of Court
Greenville County

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ARREST WARRANT

2014A2330204673

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

THE STATE

against

1-14-73555

William Lee Bright, Jr

Address:

Greenville, SC 29617-2823

Phone:

SSN:

Sex: M Race: W Height: 6 5 Weight: 285

DL State: SC DL #:

DOB: 1/1980 Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: Matthew Owens - 0871

Offense: Burglary / Burglary (After June 20, 1985) - First degree

Offense Code: 0079

Code/Ordinance Sec: 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

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

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

William Bright Jr

6-3-14

C. Hankins * 434 (544)
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Greenville General Sessions
305 E. North Street
Greenville County Courthouse
Greenville, SC 29601-2120

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

I solemnly appeared before me the affiant Matthew Owens

being duly sworn deposes and says that defendant William Lee Bright, Jr

in this county and state on or about 5/14/2014

in the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville)

in the following particulars:

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

The affiant, a Greenville County Sheriff's Office Investigator, has a report of an armed robbery/burglary (night time hours) that occurred on May 14, 2014 at Welcome Ave. During this incident, multiple victims were robbed at gun point of the personal belongings and placed into a bedroom where their movements were controlled by this defendant and a co-defendant. The affiant has statements from victims and this defendant implicating himself as one of the perpetrators in this incident. This offense did occur in Greenville County, SC.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Affiant's Address 4 McGee Street
Greenville, SC 29601-

Affiant's Telephone

COMPUTER ENTERED

(L.S.)

MAY 28 2014

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
GREENVILLE COUNTY SHERIFF'S OFFICE

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 5/14/2014 defendant William Lee Bright, Jr

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

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

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.
Sworn to and subscribed before me
on 5/28/2014

Signature of Issuing Judge

Letonya T. Simmons

Judge Code: 5077

Judge's Address

Simpsonville, SC 29680-

Judge's Telephone

(864)963-3457

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE)
STATE OF SOUTH CAROLINA) INDICTMENT NO'S:
2014-GS-23-06962
WARRANT NO's:
2014A2330204675
vs)
William Lee Bright, Jr.) ORDER CLARIFYING SENTENCE
Defendant,)
DOB [REDACTED]-1980)
SSN [REDACTED])

FILED-CLERK OF COURT
PAUL B. WICKENS
GREENVILLE CO. SC
2016 MAR 10 AM 9:10

This matter, that came before me on this 4th day of March, 2016.

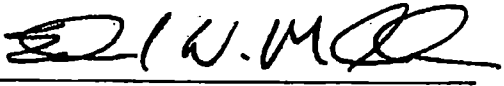
Upon presentation of the evidence, I find that the following Sentencing Sheet should be clarified.

1. William Lee Bright Jr was charged and arrested on June 3, 2014 for Armed Robbery. The Warrant number associated with this incident is 2014A2330204675. The Indictment prepared on this incident is 2014-GS-23-6962.
2. William Lee Bright Jr pled guilty on February 8, 2016 in front of the Honorable Edward W. Miller.
3. The Sentencing Sheet is labeled with title Robbery / Attempted Robbery and the Statute number and CDR code of C/L / 0025 are listed.
4. It was the intent of all parties that William Lee Bright Jr plead guilty to Attempted Armed Robbery with Statute and CDR codes of 16-11-330(B) / 0026, which is a Violent and Most Serious Offense, of which is properly reflected on the Sentencing Sheet.

After a review of the evidence, I now find that the following should be corrected:

1. Indictment Number 2014-GS-23-6962 and Warrant Number 2014A2330204675 are correct on the Sentencing Sheet that was executed on February 8, 2016, however the title and accompanying Statute and CDR should have been listed as Attempted Armed Robbery with Statute and CDR codes of 16-11-330(B) / 0026.
2. Therefore the Sentencing Sheet is hereby changed to reflect Attempted Armed Robbery with Statute and CDR codes of 16-11-330(B) / 0026.

IT IS SO ORDERED!



EDWARD W. MILLER

JUDGE, THIRTEENTH JUDICIAL CIRCUIT

Greenville, South Carolina
March 4, 2016

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STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.
William Lee Bright Jr

AKA:

Race: WHITE Sex: M Age: 34

DOB: -1980 SS#: 010-50-6001

Address:

City, State, Zip: Greenville, SC 29617-2823

DL#: SID#:

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

In disposition of the said indictment comes now the Defendant who was
TO: Robbery / Attempted Robbery

IN THE COURT OF GENERAL SESSIONS 0-20

INDICTMENT/CASE#: 2014GS2306962

A/W#: 2014A2330204675

Date of Offense: 5/14/2014

S.C. Code § : 16-11-0330(A)

CDR Code #: 0135

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-11-330(B) of the S.C. Code of Laws, bearing CDR Code # 0025 0026 0026
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45

The charge is: ☒ As Indicted, ☒ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Marchant, Lucas 72742 SC Bar# Defendant Attorney for Defendant 9506 SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 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. 510AB

☐ 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

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 \$ 2500
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
Proviso 90.5 (SCCJA Surcharge) \$5 \$ 500
3% to County (if paid in installments) \$ 390
TOTAL \$ 133.90

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: C. Smith

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 230

Sentence Date: 2-8-2016

General Sessions Tracking Sheet
Indictment # 0000GS23

Name: Bright, William Lee Jr
AKA:
Addr: ██████████
Greenville, SC 29617-2823

Warrant/Ticket #: 2014A2330204682
Date of Arrest: 06/03/2014
Date of Offense: 05/14/2014
Date Rcv by Clerk 06/10/2014
Magistrate: Cagle, Diane Day
Counts: Code: 0549/Weapons / Possession of weapon during violent crime, if not also sentenced to life without parole or death

SSN# ██████████
Sex: M Race: W
DOB: ████████/1980
DL# SC/████████

Indictment # 0000GS23
2014 6962

- Disposition Information
1. Transmitted to SOL & SCCA:
 2. Disp Received by Clerk:
 3. Date of Disposition:

FILED
FEB - 9 2016

Clerk of Court
Greenville County

- Disposition
1. Guilty plea
 2. Trial -- guilty
 3. Trial -- not guilty
 4. ☒ Dismiss/Not Pros/Pros Ended
 5. Judicial Commitment
 6. Judicial Dismissal
 7. Remanded
 8. Dismissed at Prelim
 8. No Bill
 9. Failure to Appear
 10. Other

Explain: PG TO OTHER CHARGES
Explain:
Explain:
Explain:
Explain:
Explain:

Judge: _____
Defense Atty: R. Roney
Counts: _____ Code: _____
Sentence: _____

Court Reporter: _____
Solicitor: LCM 72742

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

AMENDED INDICTMENT FOR
ARMED ROBBERY AND POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME

DEC. 15 2015

At a Court of General Sessions, convened on
County present upon their oath:

the Grand Jurors of Greenville

COUNT ONE

ARMED ROBBERY

That WILLIAM LEE BRIGHT, JR. did in Greenville County, on or about the 14th day of May, 2014, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: Jewelry, debit/credit cards, cell phones, pistol, money, and other miscellaneous items from the person or presence of Jami Brothers. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That WILLIAM LEE BRIGHT, JR. did in Greenville County, on or about the 14th day of May, 2014, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: Armed Robbery and Burglary. This is in violation of §16-23-0490 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

BAR # 72742

WITNESSES

Matthew Owens

Greenville County Sheriffs Office

DOA: 6/3/2014 WM DOB: [REDACTED] /1980

SSN [REDACTED]

ARREST WARRANT NUMBER

2014A2330204675, 2014A2330204682

**ACTION OF GRAND JURY
TRUE BILL**

Wayne Shepherdson
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

**AMENDED INDICTMENT
DOCKET NO. 2014-GS-23-006962**

LCM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

December

TERM 2015

THE STATE

vs.

WILLIAM LEE BRIGHT, JR.

0023
0439, 0549

Amended Indictment for

**ARMED ROBBERY AND POSSESSION OF A
WEAPON DURING THE COMMISSION OF A
VIOLENT CRIME**

VIOLATION OF § 16-11-0330 and § 16-23-0490

ENTERED
ACCUSED

110

ARREST WARRANT

2014A2330204675

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

THE STATE

1-14-73556

against

William Lee Bright, Jr

Address: Palmetto Ave

Greenville, SC 29617-2823

Phone: SSN:

Sex: M Race: W Height: 6 5 Weight: 285

DL State: SC DL #:

DOB: 1980 Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: Matthew Owens - 0871

Offense: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Offense Code: 0139

Code/Ordinance Sec: 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

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

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant on William Lee Bright Jr 6-3-14

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Greenville General Sessions
305 E. North Street
Greenville County Courthouse
Greenville, SC 29601-2120

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Personally appeared before me the affiant Matthew Owens

who

being duly sworn deposes and says that defendant William Lee Bright, Jr

did within this county and state on or about 5/14/2014

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville)

In the following particulars:

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

The affiant, a Greenville County Sheriff's Office Investigator, has a report of an armed robbery/burglary (night time hours) that occurred on May 14, 2014 at Welcome Ave. During this incident, multiple victims were robbed at gun point of the personal belongings and placed into a bedroom where their movements were controlled by this defendant and a co-defendant. The affiant has statements from victims and this defendant implicating himself as one of the perpetrators in this incident. This offense did occur in Greenville County, SC.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Affiant's Address 4 Mcgee Street
Greenville, SC 29601-

Affiant's Telephone

COMPUTER ENTERED

(L.S.)

MAY 28 2014

ARREST WARRANT

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

GREENVILLE COUNTY
SHERIFF'S OFFICE

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 5/14/2014 defendant William Lee Bright, Jr

did violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville) as set forth below:

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Sworn to and subscribed before me on 5/28/2014

Signature of Issuing Judge

Letonya T. Simmons

Judge Code: 5077

Judge's Address

Simpsonville, SC 29680-

Judge's Telephone

(864)963-3457

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2016CP2303669

112
FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2016 DEC 21 AM 1:20

William L Bright Jr vs. South Carolina State Of

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy: ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:
Dated at Greenville, South Carolina, this .

Court Reporter: _____

PRESIDING JUDGE - John C Hayes, III

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

William G. Yarborough III 522 North Church
Street Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

Patrick Lowell Schmeckpeper PO Box 11549
Columbia, SC 29211

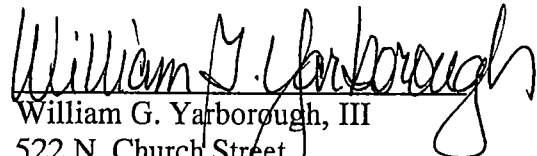
ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Appendix contains all material proposed to be included by the Petitioner and not any other material.

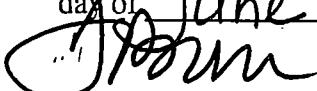
June 15, 2017


William G. Yarborough, III
522 N. Church Street
Greenville, South Carolina 29601
(84) 331-1612
Attorney for Appellant

The Honorable Daniel E. Shearouse
Clerk of Court-SC Supreme Court
Post Office Box 11330
Columbia, SC 29211

DeShawn Mitchell
Attorney General's Office
Post Office Box 11549
Columbia, SC 29211

Sworn to before me this 15
day of June, 2017



Notary Public for South Carolina

My commission expires: 3/20/24