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JUL 27 2018  
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Cherokee County

Honorable G. Thomas Cooper, Circuit Court Judge

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MARCELLOUS R. CLARK,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000078

\_\_\_\_\_

APPENDIX

\_\_\_\_\_

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**INDEX**

INDEX ..... i

GUILTY PLEA HEARING TRANSCRIPT DATED OCTOBER 16, 2016 .....1

APPLICATION FOR POST-CONVICTION RELIEF FILED FEBRUARY 13, 2017 .....33

RETURN FILED AUGUST 17, 2017 .....42

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED NOVEMBER 13, 2017 ...49

ORDER OF DISMISSAL FILED JANUARY 9, 2018.....63

INDICTMENTS AND SENTENCING SHEETS .....72

17/114

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF SOUTH CAROLINA )  
COUNTY OF CHEROKEE ) IN THE COURT OF GENERAL SESSIONS

THE STATE )  
-vs- ) TRANSCRIPT OF RECORD  
MARCELLOUS R. CLARK, ) 2016-GS-11-00398  
 ) 2016-GS-11-00399  
 ) OCTOBER 11, 2016  
DEFENDANT. ) GAFFNEY, SOUTH CAROLINA

**B E F O R E:**

THE HONORABLE ROGER L. COUCH, JUDGE.

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.  
2017 AUG 17 | A 11:43 |  
BRANDY W. MCBEE

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

KIMBERLY LESKANIC, ASSISTANT SOLICITOR  
ATTORNEY FOR THE STATE

DON THOMPSON, PUBLIC DEFENDER  
ATTORNEY FOR THE DEFENDANT

MICHAEL R. WATTS  
CIRCUIT COURT REPORTER

INDEX

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

WITNESSES

PAGE

(NO WITNESSES CALLED)

EXHIBITS

|    | NO. | DESCRIPTION                       | ID. | EV. |
|----|-----|-----------------------------------|-----|-----|
| 1  |     |                                   |     |     |
| 2  |     |                                   |     |     |
| 3  | S-1 | CD                                |     | 19  |
| 4  | S-2 | PHOTOGRAPHS                       |     | 22  |
| 5  | S-3 | PHOTOGRAPHS                       |     | 22  |
| 6  | S-4 | SENTENCING SHEETS                 |     | 22  |
| 7  | S-5 | WAIVER FORM AND WRITTEN STATEMENT |     | 22  |
| 8  |     |                                   |     |     |
| 9  |     |                                   |     |     |
| 10 |     |                                   |     |     |
| 11 |     |                                   |     |     |
| 12 |     |                                   |     |     |
| 13 |     |                                   |     |     |
| 14 |     |                                   |     |     |
| 15 |     |                                   |     |     |
| 16 |     |                                   |     |     |
| 17 |     |                                   |     |     |
| 18 |     |                                   |     |     |
| 19 |     |                                   |     |     |
| 20 |     |                                   |     |     |
| 21 |     |                                   |     |     |
| 22 |     |                                   |     |     |
| 23 |     |                                   |     |     |
| 24 |     |                                   |     |     |
| 25 |     |                                   |     |     |

1 (PROCEEDINGS, OCTOBER 11, 2016)

2 (CD marked as State's Exhibit No. 1 for  
3 identification)

4 (Photographs marked as State's Exhibit No. 2 for  
5 identification)

6 (Photographs marked as State's Exhibit No. 3 for  
7 identification)

8 (Sentencing Sheets marked as State's Exhibit No. 4  
9 for identification)

10 (Waiver Form and Written Statement marked as  
11 State's Exhibit No. 5 for identification)

12 MS. LESKANIC: May it please the court?

13 THE COURT: Yes.

14 MS. LESKANIC: Your Honor, before you is  
15 Marcellous Rashawn Clark. He is pleading guilty on two  
16 indictments: 2016-GS-11-398 is a True Billed indictment for  
17 burglary in the first degree; and 2016-GS-11-399 is also a  
18 True Billed indictment for burglary, first degree.

19 On Indictment 399 the defendant is entering his  
20 plea under Alford.

21 And under 398 that is a straight-up plea to the  
22 burglary first degree.

23 He is represented by Don Thompson on those  
24 charges.

25 The defendant has also signed an order of

1 restitution in the total amount of \$898. He has signed that  
2 waiving his right to a restitution hearing.

3 THE COURT: Thank you.

4 You can place him under oath.

5 THE CLERK: Please raise your right hand.

6 MARCELLOUS R. CLARK, having been first duly sworn,  
7 testified as follows:

8 THE COURT: Sir, your name is Marcellous Clark, am  
9 I correct?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Mr. Clark, you're in front of me today  
12 on two cases. I'm going to go over the charges with you so  
13 I'm sure that you understand what these charges are.

14 The case numbers are 2016-GS-11-398 and 399. They  
15 both are for the offense of burglary in the first degree.

16 Burglary in the first degree is classified as a  
17 violent and most-serious offense. As such it will qualify  
18 as one of your strikes under the law.

19 In the future if you were to be convicted of any  
20 other crimes that are similarly classified, such as violent,  
21 serious, or most-serious offenses, if you were to be found  
22 guilty or plead guilty to those future offenses, your pleas  
23 in these cases could be used in connection with those future  
24 convictions to make those sentences more severe. That could  
25 result in a possible sentence -- the most severe sentence

1 would be life imprisonment without ever having the  
2 possibility of being paroled.

3 Do you understand that that would be a possible  
4 sentence, should you commit similar crimes?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right, sir.

7 Now, this particular offense has been indicted by  
8 the Grand Jury, so it's properly in front of the court.  
9 Both of them have been.

10 I will tell you that burglary in the first degree  
11 carries a possible sentence of fifteen years up to life. Do  
12 you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: So that means the maximum sentence I  
15 could give you would be life.

16 The maximum minimum sentence I could give you  
17 would be a total of thirty years. Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. Now, sir, it's been  
20 presented to me without any negotiations or recommendations  
21 on sentencing. That means I have the authority to sentence  
22 you anywhere within that range. That would be fifteen years  
23 up to life. Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. Now, you are here today

1 with your attorney Mr. Thompson. Have you discussed these  
2 cases with him?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Are you satisfied with his services?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Is there anything else that you feel  
7 that you need to discuss with him?

8 THE DEFENDANT: No, sir.

9 THE COURT: And is there anything else you feel  
10 that he ought to do for you before we proceed?

11 THE DEFENDANT: No, sir.

12 THE COURT: Now, I will tell you also that this  
13 particular charge that you are pleading to is what we refer  
14 to as a no-parole offense. What that means is that once I  
15 establish your sentence or give you a sentence, that means  
16 that you would be required to serve the majority of that  
17 sentence in prison. You would not be eligible for parole  
18 until after you had served eighty-five percent of your  
19 sentence.

20 Is that your understanding, Mr. Thompson?

21 MR. THOMPSON: Yes, sir, it is, Your Honor.

22 THE COURT: Now, parole is something that is  
23 regulated by the legislature. It's governed by parole  
24 boards and I make no representations to you as to when, or  
25 if, you would ever be paroled. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. Now, sir, I have also received  
3 a restitution order. The restitution order indicates that  
4 you have agreed to pay to Natasha Douglas the sum of \$498  
5 and to Misty Collins the sum of \$400.

6 Have you agreed to that restitution?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Now, do you suffer from  
9 any conditions, any conditions -- mental, physical, nervous  
10 problems - anything that would affect your reasoning  
11 abilities today?

12 THE DEFENDANT: No, sir.

13 THE COURT: Have you taken or used any medicines,  
14 drugs, or any other substances that might affect your  
15 reasoning abilities today?

16 THE DEFENDANT: No, sir.

17 THE COURT: So do you understand what this hearing  
18 is about?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Are you able to handle this plea  
21 today?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Now, I understand that you are  
24 offering two different kinds of pleas. Is that your  
25 understanding as well?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Let's discuss both of those pleas.

3 The first case I will discuss is case number  
4 2016-GS-11-398. That particular charge -- my understanding  
5 is that you are offering a guilty plea to that charge. In  
6 fact, are you pleading guilty to that charge?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: The other case that I am aware of is  
9 case number 2016-GS-11-399, and my understanding is that you  
10 are offering a plea of no-contest to that charge. Is that,  
11 in fact, how you are pleading to that charge?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Now, let me explain to you my  
14 understanding of that plea. You tell me if this is where  
15 you are in your case.

16 My understanding of an Alford Plea is that you and  
17 your lawyer have reviewed the evidence that's in the  
18 possession of the State. And after having reviewed that  
19 evidence, you and your attorney have come to the conclusion  
20 that if that evidence were presented to a jury during a  
21 trial, that you would more than likely suffer a conviction  
22 for this crime. And, therefore, you have decided the best  
23 way to handle your case, while not admitting guilt to the  
24 charge, you have decided not to contest the charge; in other  
25 words, a plea of no contest.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Now, is that where you are in your  
3 case?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And have I correctly stated your  
6 position?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Mr. Thompson, I'm sure that you have  
9 gone over both of these pleas with Mr. Clark, is that  
10 correct?

11 MR. THOMPSON: That's correct, Your Honor.

12 THE COURT: And I'm sure you went over whatever  
13 negotiations went on with the State, if any?

14 MR. THOMPSON: Yes.

15 THE COURT: And you have explained to him the  
16 nature of these charges, the possible defenses that he may  
17 have had to the charges, how his Constitutional Rights would  
18 be impacted by this situation. Am I correct about the  
19 things that you have talked about?

20 MR. THOMPSON: You are, judge.

21 THE COURT: All right. Now, are you satisfied  
22 that Mr. Clark understood your discussions?

23 MR. THOMPSON: Yes, sir.

24 THE COURT: He tells me he's reached a decision in  
25 one case to plead guilty and the other to plead no-contest.

1 Do you agree with that decision?

2 MR. THOMPSON: I do.

3 THE COURT: And as to the no-contest charge, I  
4 believe you and he went over the evidence and you came to  
5 the conclusion, along with him, that if that were presented  
6 to a jury, that it would more than likely result in a  
7 conviction?

8 MR. THOMPSON: Yes, sir.

9 THE COURT: And so do you agree with his decision  
10 in both cases to plead guilty and no contest?

11 MR. THOMPSON: Yes, sir.

12 THE COURT: Now, Mr. Clark, my understanding is --  
13 or I don't have an understanding. It doesn't say how old  
14 you are on this paper. How old are you?

15 THE DEFENDANT: Twenty-eight.

16 THE COURT: Twenty-eight years of age.

17 THE DEFENDANT: Yes.

18 THE COURT: Do you mind if I put that on here?

19 THE DEFENDANT: I don't mind.

20 THE COURT: Okay. Now, how far did you go with  
21 your education, sir?

22 THE DEFENDANT: I graduated high school.

23 THE COURT: Okay. Now, are you married?

24 THE DEFENDANT: No, sir.

25 THE COURT: Do you have any children?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: How many children do you have?

3 THE DEFENDANT: Three.

4 THE COURT: And what ages are your children?

5 THE DEFENDANT: Eight, five, and one.

6 THE COURT: Now, do those children, if you are not  
7 incarcerated, do they live in your house, or do they live  
8 with someone else?

9 THE DEFENDANT: They stay with my girlfriend.

10 THE COURT: They live with your girlfriend?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Now, when you were on the  
13 outside did you have a job?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: How were you working?

16 THE DEFENDANT: I was working at a place called  
17 Core Molding in Gaffney.

18 THE COURT: All right. And what did you do there?

19 THE DEFENDANT: Press and make bolts.

20 THE COURT: Okay. Now, Mr. Clark, did anybody in  
21 any way threaten you, put pressure on you, try to intimidate  
22 you, in other words, taken any action at all to try to force  
23 you or make you offer these pleas?

24 THE DEFENDANT: No, sir.

25 THE COURT: Are you offering those pleas of your

1 own free will?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Now, that means to me that you and  
4 your attorney have looked at the charges, you have thought  
5 about your options and you have decided this is the best way  
6 to proceed in your case. Is that your decision?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Now, have you had sufficient time to  
9 talk to your lawyer?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Did anybody offer you anything of  
12 value to try to get you to plead?

13 THE DEFENDANT: No, sir.

14 THE COURT: Did anybody promise you any results  
15 about such matters as pardon, parole, probation, early  
16 release, length of sentence? Anyone promise you anything  
17 about those matters?

18 THE DEFENDANT: No, sir.

19 THE COURT: You also are giving up your  
20 Constitutional Rights by entering these pleas. In the case  
21 of the guilty plea, that's always the case, and it's true  
22 about a no-contest plea.

23 I'll tell you about a no-contest plea. It also  
24 will be on your record as a conviction, just like a guilty  
25 plea would be, and it will also carry the same sentencing

1 possibilities as a guilty plea. Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Now, as to these two  
4 charges you are giving up your Constitutional Rights. One  
5 of my jobs during this plea is to be sure that you  
6 understand those rights before I finally accept your plea,  
7 so I'm going to go over the rights with you now. If you  
8 have any questions you can ask me or discuss it with Mr.  
9 Thompson, to be sure to see that you understand these rights  
10 before we finish. Do you understand what we are doing?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Now, you have a Constitutional Right  
13 to have your cases presented to a Grand Jury for their  
14 consideration. In this case that happened in both of the  
15 cases.

16 You have a Constitutional Right to have a lawyer  
17 represent you. Your lawyer is present. He's available, if  
18 you need him.

19 You have a right to have these cases tried in  
20 front of a jury and at a jury trial you would be presumed to  
21 be innocent. That presumption would continue until the  
22 State proved your guilt.

23 And what the State would have to do to prove your  
24 guilt, they would have to prove every element of the crime  
25 that you are charged with, in this case burglary in the

1 first degree, to the jury by proof beyond a reasonable  
2 doubt.

3 You don't have to prove anything at a trial as a  
4 defendant. You are presumed to be innocent. So do you  
5 understand how that would work?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And did your lawyer go over with you  
8 the elements of this crime, what the State would have to  
9 prove in order for you to be found guilty?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: So you already understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. Now, also you would have  
14 the right to have witnesses subpoenaed so that they could  
15 come forward and be at the trial.

16 You would have the right to question or confront  
17 anyone who testified at your trial.

18 You would have the right to present any defense  
19 that you have at that time.

20 You would be given the right to try to suppress  
21 the State's evidence against you, and that includes any  
22 statements that you may have previously made.

23 At all times you have the right to remain silent.  
24 And at a trial, if you decided to remain silent, the judge  
25 who is handling that trial is required to instruct the jury

1 that your silence could not be used against you in any  
2 manner whatsoever.

3 Now, did you understand the rights I just went  
4 over?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you have any questions about any of  
7 them?

8 THE DEFENDANT: No, sir.

9 THE COURT: Do you realize that if I later accept  
10 your plea, you will be giving up those rights as they relate  
11 to these two charges?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Now, does the fact that you have to  
14 give up those rights in order to enter the plea, does that  
15 cause you to want to change your plea in any way?

16 THE DEFENDANT: No, sir.

17 THE COURT: You are pleading guilty still, is that  
18 right?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And are you doing that because you are  
21 guilty?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. Ms. Leskanic is going to  
24 go over with me the facts the State is alleging. Listen to  
25 what she says because I'm going to ask you about those facts

1 in just a minute.

2 Yes, ma'am.

3 MS. LESKANIC: May it please the court?

4 THE COURT: Yes, ma'am.

5 MS. LESKANIC: Thank you, Your Honor.

6 Taking this chronologically, the first burglary  
7 occurred between January 17th, 2016 and January 18th, 2016.  
8 The victim in that case is Misty Collins and she lived in  
9 apartment [REDACTED], which  
10 is here in Cherokee County.

11 She called the police when she returned home and  
12 found numerous items missing from her home.

13 THE COURT: Uh-huh.

14 MS. LESKANIC: Police came in and began an  
15 investigation, but at that time they did not have any  
16 suspects, so that was just an open burglary case pending in  
17 Blacksburg.

18 Then on January 23rd, 2016, there was a 9-1-1 call  
19 made by Ms. Collins. She had a neighbor in apartment [REDACTED]  
20 When she walks out of her door, there is another door right  
21 in front of her apartment.

22 THE COURT: Right.

23 MS. LESKANIC: And a little before six a.m. she  
24 heard movement inside the apartment. She knew that her  
25 neighbor was not home. She looked out the window and she

1 saw Mr. Clark, who she recognized, wearing a camouflage coat  
2 with fur on it carrying a TV out of her neighbor's home, so  
3 Ms. Collins called 9-1-1 immediately. She identified the  
4 defendant on the 9-1-1 call, stated that she had heard that  
5 noise and the police came out immediately.

6 Detective Tracy Fowler with Blacksburg is standing  
7 to my right and he responded on that 9-1-1 call.

8 When police arrived -- this was at a time when we  
9 had had a snow and they were able to see some footprints  
10 outside of a window where he had gained access to the  
11 apartment and then could also follow his footprints leaving  
12 the apartment and that is what Detective Fowler did. He  
13 just walked and he followed those footprints until he came  
14 upon Mr. Clark. At that point he had already disposed of  
15 the TV, but he had on a pair of Fila shoes that matched the  
16 footprints that they had seen.

17 THE COURT: What kind of shoes?

18 MS. LESKANIC: Fila.

19 THE DEFENDANT: Fila.

20 MS. LESKANIC: F-I-L-A.

21 THE COURT: Oh, it's A type of tennis shoe?

22 MS. LESKANIC: Yes, sir.

23 And what he was wearing matched the description of  
24 the footprints that they had seen outside the window. It  
25 was also the person that Ms. Collins had identified.

1           His girlfriend lived in apartment [REDACTED], so he lived  
2 right next door or stayed often with his girlfriend who  
3 lived right next door, so Ms. Collins was familiar with him.  
4 She recognized him, had given the description, and then when  
5 Officer Fowler saw him everything matched up.

6           There was also jewelry that had been stolen from  
7 Ms. Douglas' home during that break-in.

8           So Detective Fowler brought him into the police  
9 department and began an interview with him. He initially  
10 denied knowing anything about the burglary or having  
11 anything to do with it, but when they checked his property  
12 he had a ring in his pocket. That ring belonged to Ms.  
13 Douglas. That had been taken from her home. He had dropped  
14 off numerous watches and other things at his apartment, but  
15 maybe he had inadvertently, or intentionally, left that  
16 right in there, but that also placed him at the scene of the  
17 burglary.

18           I would like to turn in, Your Honor, State's  
19 Exhibit 1 is a copy of a 9-1-1 call where Ms. Collins  
20 reports this.

21           THE COURT: Any objection to those?

22           MR. THOMPSON: No objection.

23           THE COURT: That will be admitted.

24           (Whereupon, State's Exhibit No. 1 was entered into  
25 the record as evidence)

1 MS. LESKANIC: And also identifies him.

2 State's Exhibit 2 contains six photographs of the  
3 footwear impressions in this case. Not only were there  
4 footwear impressions outside of the window, but also there  
5 was a footwear impression that police were able to gain  
6 inside of her apartment that matches the shoe of the  
7 defendant and I have included those charts.

8 State's Exhibit 3 are the photographs of the  
9 victim's phone that was stolen, as well as numerous watches  
10 that were taken and some cleaner that he stole from the  
11 home.

12 Police did a search warrant or a consent to search  
13 at his girlfriend's apartment.

14 THE COURT: Uh-huh.

15 MS. LESKANIC: She told them that he did not have  
16 a job, but he had been coming home with different types of  
17 items. She showed the police what he had brought home and  
18 that included the cell phone that had been stolen from Ms.  
19 Douglas and her jewelry that had been taken, so thankfully  
20 that was able to be recovered and returned to her.

21 He does have two prior convictions for burglary  
22 that also upgrades this to a burglary in the first degree,  
23 Your Honor. I have included that as State's Exhibit 4 as an  
24 aggravating circumstance.

25 And Mr. Clark was reinterviewed later on at the

1 detention center and at that time he did give a confession  
2 admitting that he had gone into Ms. Douglas' apartment  
3 without her consent and that he had stolen the jewelry and  
4 the television.

5 And at that time police also asked him about the  
6 theft at Ms. Collins house and he also gave a confession to  
7 that theft and they were able to find some detergent and  
8 other items inside his girlfriend's home that had been taken  
9 from Ms. Collins residence, so that brings us back to that  
10 burglary, Your Honor, and he provided a confession in that  
11 case as well.

12 The rest of his criminal history includes a 2005  
13 possession of stolen vehicle.

14 2008, shoplifting.

15 2012, possession of marijuana and burglary in the  
16 second degree.

17 And 2013, burglary, second degree violent, and I  
18 have handed up a copy of those sentencing sheets for the  
19 court.

20 Out of state, Your Honor, in 2015, he had  
21 obtaining a controlled substance by fraud.

22 And those are the convictions, Your Honor.

23 THE COURT: Any objections to these exhibits being  
24 made a part of the record of the plea?

25 MR. THOMPSON: No, sir.

1 THE COURT: All right. Then exhibits, let's see,  
2 2, 3, 4, and 5 are all being made part of the record.

3 1 is already in.

4 No objection to that, I believe.

5 MR. THOMPSON: That's correct.

6 (Whereupon, State's Exhibit No. 2 was entered into  
7 the record as evidence)

8 (Whereupon, State's Exhibit No. 3 was entered into  
9 the record as evidence)

10 (Whereupon, State's Exhibit No. 4 was entered into  
11 the record as evidence)

12 (Whereupon, State's Exhibit No. 5 was entered into  
13 the record as evidence)

14 THE COURT: Mr. Clark, you were present in the  
15 courtroom when Ms. Leskanic went over with me the facts the  
16 State expects to prove in the case. Did you hear what she  
17 said?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Did you understand what she said?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Is what she told me true?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Now, have you been truthful with me  
24 today?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Did anyone tell you how to respond to  
2 any of my questions?

3 THE DEFENDANT: No, sir.

4 THE COURT: The answers that you have given me  
5 then were your own answers, is that right?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Is there any part of what you and I  
8 have discussed thus far that you want to change, anything  
9 that you told me?

10 THE DEFENDANT: No, sir.

11 THE COURT: You are still pleading guilty, is that  
12 correct?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Then I'm going to go accept -- excuse  
15 me, guilty and no-contest, is that right?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. I'm going to accept the  
18 pleas then as having been freely and voluntarily given; you  
19 are aware of the charges, the possible penalties; you are  
20 aware of the facts and you have admitted to sufficient facts  
21 to justify the plea; and you are satisfied with the advice  
22 of the legal services that you have received; so I find that  
23 the plea should be accepted.

24 I will consider sentencing.

25 Mr. Thompson?

1 MR. THOMPSON: Thank you, judge.

2 I started representing Mr. Clark early this year  
3 back in -- well, since February. He was arrested at the end  
4 of January, January 23rd, and Mr. Clark, from the very  
5 beginning, as to the second incident told me he was guilty.  
6 No question about it.

7 As to the first incident, though, he said he was  
8 not guilty, and I asked him "well, you gave a statement  
9 indicating that you had done that. Why?"

10 He said that the police at the time they  
11 questioned him told him that if he wanted them to help him,  
12 that they had -- that he had to confess to that one too, and  
13 so he did. He gave the written confession to that one.

14 We sat down and we beat our heads on this one for  
15 a long time, judge. Mr. Clark is -- he's intelligent. He  
16 understands what's going on. There has been no question  
17 whatever as far as communication or understanding. The  
18 problem is is the potential sentence he's facing. I mean,  
19 it's a long time for somebody that's twenty-eight years old,  
20 and he's been hoping that that would -- that it would get  
21 better and it hasn't. We haven't been able to. We did  
22 negotiate something with the State, but Mr. Clark chose to  
23 plead straight up on it rather than take the negotiations  
24 because he was hoping he will come out better than the  
25 negotiation.

1           He has been essentially a cooperative client. He,  
2 as I say, is very intelligent. Why he did this -- and I  
3 asked him, I said, "you know, why did you commit the  
4 burglary?" He told me at the time he was out of work, had  
5 the three children and he did that for that reason. I don't  
6 think he realized the consequences of what he was doing, as  
7 far as -- I know he has two prior burglary convictions, but  
8 I don't think he realized the life sentence he was facing on  
9 this.

10           One of the reasons we are going forward with the  
11 second, the Alford Plea, or which was the first incident, is  
12 the State has told me, and I told Mr. Clark this several  
13 months ago, that it could be a possibility that -- the State  
14 has told me he was up for trial today on the second  
15 incident --

16           THE COURT: Right.

17           MR. THOMPSON: -- the one he's admitted to, the  
18 one he says he's guilty of, but they told me they would then  
19 bring him back and try him and do a -- serve notice of life  
20 after that conviction and bring him back and try him on the  
21 second one and if he was convicted, which I think he  
22 probably would be, given his confession --

23           THE COURT: Uh-huh.

24           MR. THOMPSON: -- then he would be facing a  
25 mandatory life without parole.

1 THE COURT: Uh-huh.

2 MR. THOMPSON: So given that we've decided it's  
3 best to try to put them together at this time and deal with  
4 them that way.

5 THE COURT: I understand.

6 MR. THOMPSON: Judge, he -- basically you got his  
7 background, his age, and he's had three children. He's a  
8 high school graduate, worked -- last worked at Core Molding.

9 He did -- at the time of his arrest he did  
10 thirty-seven days in jail. That was on January the 23rd  
11 through February 29th. At that point in time he had a  
12 probation violation and I represented him on that and he was  
13 violated and sent to prison.

14 THE COURT: Uh-huh.

15 MR. THOMPSON: He did 149 days in prison before he  
16 was sent back here. Since coming back here he has done  
17 seventy-six days. So I know that he's entitled 113 days,  
18 being the time prior to the violation and the time after.  
19 We would also ask to consider, since he never made bond, to  
20 consider the 149 days. I know that sometimes there is  
21 issues as to that, but we would ask for that. If you would  
22 consider that, it would be 262 days he would get credit for.  
23 If not, he would only be entitled to a 113.

24 I'm going to ask you, judge, on his behalf to  
25 consider the minimum sentence on these, concurrently,

1 fifteen years. That's what he's asked me to ask the court  
2 to consider. However, I have also explained to him that  
3 there is a possibility that you might not do that. And if  
4 not, I would ask you to consider a sentence, run them  
5 concurrent, but a sentence that would be suspended down to  
6 the fifteen years. And I have explained to him the fifteen  
7 years is as low as you can go. You can't go below that.  
8 You have to give him at least fifteen years.

9 THE COURT: Correct.

10 MR. THOMPSON: And he understands that, but I  
11 would ask you on his behalf to consider fifteen years  
12 concurrent on both of them, but if not to suspend his  
13 sentence down to fifteen concurrent.

14 THE COURT: All right. Mr. Clark, your  
15 opportunity to speak to me. Anything that you want to say  
16 to me about the case?

17 THE DEFENDANT: I just want to apologize to the  
18 victims. Your Honor, I never meant to do it.

19 I have a son who is five. He has epilepsy and  
20 seizures and when he has a seizure we have to give him a  
21 pill in his rectum and I always asked was there an alternate  
22 to that and they told me it was nasal spray and Medicaid  
23 doesn't cover the nasal spray, so we have to pay out of  
24 pocket and I didn't have a job at the time and when  
25 situations get rough, I turned kicking in somebody's door,

1 taking somebody's TV and it just went all wrong. I would  
2 just like to apologize. I hate I'm in here wasting your  
3 time.

4 THE COURT: You are not wasting my time. That's  
5 what I'm here for.

6 Does the police officer wish to speak?

7 OFFICER TRACY FOWLER: No, sir.

8 THE COURT: Okay. Anything further from the  
9 State?

10 MS. LESKANIC: No, Your Honor.

11 I did meet with both victims this morning in  
12 anticipation of trial.

13 THE COURT: All right.

14 MS. LESKANIC: They were given an opportunity to  
15 be here. They understand the sentencing range, but they did  
16 not wish to be present in court for the plea.

17 THE COURT: Thank you, ma'am.

18 All right, Mr. Clark, your record is troubling to  
19 this court to have been involved in burglaries, two  
20 burglaries in the past, and then to commit these two  
21 burglaries, at least plead guilty or no-contest to them.  
22 That's troubling to me. And the fact that you offer as your  
23 explanation the fact that you didn't have a job and you felt  
24 like that you could help your children in this action. I'm  
25 not sure how someone helps their children by committing

1 crimes and going to prison. Maybe I don't understand it.  
2 Of course, maybe you didn't expect to get caught, I don't  
3 know, but it's troubling to me that people speak in those  
4 terms, because obviously it's landed you in the position  
5 wherein you are in jeopardy of going to jail for the rest of  
6 your life today. And in the future you are still in that  
7 same jeopardy.

8           You know, it would be tragic for someone to be  
9 twenty-eight years old and go off in that bus down to  
10 whatever location that you are going to be incarcerated and  
11 know that you would never ride back, that you would be there  
12 until you die, that every day they will tell you what to  
13 wear, what time to get up, what to eat, what you can watch  
14 on television. Twenty-eight years old and that's the future  
15 someone would be looking at. That would be tragic, would it  
16 not?

17           THE DEFENDANT: Yes, sir.

18           THE COURT: You put yourself in that spot and here  
19 we are.

20           So it's -- you know, so it's something that I  
21 don't take lightly, but I also don't take lightly the fact  
22 that people kicking people's doors down and going in their  
23 houses and take what they worked hard to earn. I don't take  
24 that lightly either. Do you understand where I am?

25           THE DEFENDANT: Yes, sir.

1 THE COURT: Okay.

2 You see, I don't think in terms like you do that  
3 that might help your children. I think that harms society  
4 and I think it hurts your children. I have never put  
5 anybody in jail for a single day for doing an honest day's  
6 work, and haven't yet. It's not going to happen.

7 All right, I'm through talking.

8 In the case 2016-GS-11-398, the sentence is that  
9 you be confined to the State Department of Corrections for a  
10 period of twenty years.

11 I have given you a 113 days of credit.

12 In the other case, which is case number  
13 2016-GS-11-399, the sentence is that you be confined in the  
14 State Department of Corrections for a period of twenty-five  
15 years. I have suspended that to the service of twenty with  
16 five years of probation.

17 I am ordering that the restitution be paid in that  
18 case according to my order.

19 I'm ordering random alcohol and drug testing while  
20 you are on probation, and I'm ordering that you pay your  
21 public defender's fees during that probation as well.

22 I have signed the restitution order.

23 Mr. Clark, I wish you luck. Thank you.

24 MR. THOMPSON: Your Honor, on the second one --

25 THE COURT: Uh-huh.

1 MR. THOMPSON: -- is that concurrent with the  
2 first one?

3 THE COURT: Those are run concurrent.

4 MR. THOMPSON: And does he get credit for 113 days  
5 on the second also?

6 THE COURT: On both cases, yes, sir.

7 MS. LESKANIC: Your Honor, may I only request a no  
8 contact provision with Ms. Collins and Ms. Douglas?

9 THE COURT: Any objection to that?

10 MR. THOMPSON: No, sir.

11 THE COURT: All right. It will have a no contact  
12 provision.

13 I'm sure that you can explain to him, Mr.  
14 Thompson, what this judge means by that.

15 MR. THOMPSON: Yes, sir.

16 THE COURT: Thank you.

17 MR. THOMPSON: Thank you.

18 MS. LESKANIC: Thank you, Your Honor.

19 (END OF REQUESTED TRANSCRIPT OF RECORD)  
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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Cherokee County, South Carolina, on the 11th day of October, 2016.

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

May 23, 2017

Michael R. Watts

Michael R. Watts  
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

County of Cherokee County

Marcellous Rashawn Clark, 354227  
Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

**017 CP-110114**

APPLICATION FOR

POST-CONVICTION RELIEF

FILED IN THE OFFICE  
CLERK OF COURT  
2011 FEB 13 P 1:09  
RANDY WINCREE  
CHEROKEE COUNTY, SC

**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 Kirkland Institution; 4344 Broad River Rd  
Columbia, South Carolina 29210
2. Name and location of Court which imposed sentence Cherokee County  
Court of General Sessions
3. Name(s) of co-defendant(s) (if any) (None)
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2010-GS-11-398 Burglary 1st degree
  - (b) 2010-GS-11-399 Burglary 1st degree

017CP-110114

- (c) \_\_\_\_\_
- 5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) On October 11, 2016, Applicant was sentenced to 20 years imprisonment.
  - (b) On October 11, 2016, Applicant was sentenced to 25 years suspended to
  - (c) 20 years with 5 years probation run concurrent.

- 6. Check whether a finding of guilty was made:
  - (a) after a plea of guilty (x) guilty plea / Alford
  - (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. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

- (b) the result in each such Court to which you appealed:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

- (c) the date of each such result:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

- (d) if known, citations of any written opinion or orders entered pursuant to such results:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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 CLERK OF COURT  
 2011 FEB 13 P 11:09  
 BRADY W. HOEBE  
 CHEROKEE COUNTY, ST.

- 9. If you answered "no" to (7), state your reasons for not so appealing:
  - (a) Applicant accepted a plea / My lawyer never informed me of an appeal or how to go about filing for one.
  - (b) Applicant accepted a plea / My lawyer failed to tell me about an appeal and how to file for one.

017CP-110114

(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) Counsel failed to properly advise me. Rule 1.4, Rule 2.1.
- (b) Counsel was ineffective for unprofessional errors.
- (c) Counsel was ineffective for not investigating into case. (See back ->)

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. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

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 CLERK OF COURT  
 2011 FEB 13 P 1:09  
 BILLY V. HOBE  
 CHESTER COUNTY, SC

---

11. (d) counsel failed to inform me that Z could conclude to a lesser offense under the Alford plea.

(e) counsel prejudice to case.

---

017CP-110114

(c) the disposition thereof:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. N/A
- 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. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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 CLERK OF COURT  
 2011 FEB 18 PM 11 09  
 BRANDY H. HOBBS  
 CHEROKEE COUNTY, SC

017CP-110114

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

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

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

- (a) the name and address of each attorney who represented you:
  - i. Don Thompson - Public Defenders Office  
100 Willis St. Greer, S.C. 29341
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. arraignment and plea, Sentencing
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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 CLERK OF COURT  
 2011 FEB 13 P 1:07  
 BRADLEY W. HOOPER  
 SHEROKE COUNTY, SC

017CP-110114

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

Remained and Reduced sentence.

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

(No)

STATE OF SOUTH CAROLINA )

County of Richland )

VERIFICATION

I, Marcellous Rashawn Clark, 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.

[Signature]

SWORN to and subscribed before me this 10 day of Feb, 2017.

[Signature] (L.S.)  
Notary Public

My Commission Expires:

**DEVERLE ALBERT**  
Notary Public, State of South Carolina  
My Commission Expires May 3, 2023

FILED IN THE OFFICE  
CLERK OF COURT  
2017 FEB 13 P 1:07  
BRADLEY W. MOBBE  
CHEROKEE COUNTY, SC

017CP-110114

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

I, Marcellous Rashawn Clark, 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.

Marcellous Clark  
Applicant

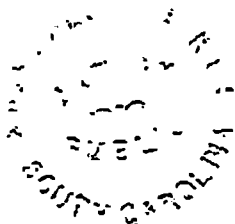
SWORN or affirmed to and subscribed before me this 10 day of Feb, 2017.

[Signature]  
Notary Public

My Commission Expires:

DEVERLE ALBERT  
Notary Public, State of South Carolina  
Commission Expires May 3, 2023

FILED IN THE OFFICE  
CLERK OF COURT  
2017 FEB 13 P 1:09  
BRADY W. HEBBEE  
CHEROKEE COUNTY, SC



41

Office Of Attorney General  
P. O. Box 11549  
Columbia, SC 29211  
Attention: Ashley Haworth

FILED IN THE OFFICE  
CLERK OF COURT  
24:1 P 13 FEB 1107  
BRANDY W. MCBEE  
CHEROKEE COUNTY, SC

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\$00.88<sup>0</sup>  
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Mrs. Brandy W. McBee  
Clerk Of Court, Cherokee County  
Post Office Drawer 2289  
Gaffney, S.C. 29342



After 5 Days Return To:  
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Clerk Of Court, Cherokee County  
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ZIP 29340  
041L11245001

Marcellous R. Clark #356227  
Kirkland Inst. R&E, B2-44  
4344 Broad River Rd  
Columbia, SC 29210

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHEROKEE )  
 )  
 Marcellous R. Clark, #356227, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 IN THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2017-CP-11-0114

RETURN

FILED IN OFFICE OF  
 CLERK OF COURT  
 CHEROKEE COUNTY, S.C.  
 2017 AUG 17 11 A 11:43  
 BRANDY W. MOBEE

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on February 13, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. In April 2016, the Cherokee County Grand Jury indicted Applicant for two counts of burglary, first degree (2016-GS-11-0398, -0399). Don A. Thompson, Esquire, represented Applicant. Assistant Solicitor, Kimberly Leskanic, prosecuted the case. On October 11, 2016, Applicant pleaded guilty as indicted to one count of burglary, first degree (-0398) and *nolo contendere* pursuant to Alford<sup>1</sup> as indicted to the second count of burglary, first degree (-0399) before the Honorable Roger L. Couch. Judge Couch sentenced Applicant to imprisonment for concurrent terms of twenty years for one count of burglary, first degree and twenty-five years, suspended upon the service of twenty years and probation for five years for the second count of burglary, first degree. Applicant did not appeal his conviction or sentence.

1. North Carolina v. Alford, 400 U.S. 25 (1970).

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

## II.

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

- I. "Ineffective Assistance of Counsel," in that:
  - a. "Counsel failed to properly advise me;"
  - b. "Counsel was ineffective for unprofessional errors;"
  - c. "Counsel was ineffective for not investigating the case;"
  - d. "Counsel failed to inform me that I could conclude to a lesser offense under the Alford plea;"
  - e. "Counsel prejudice to case."

## III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness

under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### IV.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a), SCRPC. All claims should be made well in advance of the evidentiary hearing. If Applicant has is represented by an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to

this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits, witnesses, and materials used to produce potential expert witness testimony be provided to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

V.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

*[Remainder of page left blank intentionally]*

VI.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of counsel.

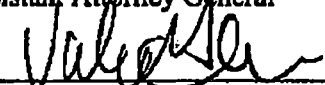
Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

VALERIE GARCIA GIOVANOLI  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

August 15, 2017

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHEROKEE )  
 )  
 MARCELLOUS CLARK, # 356227 )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent, )

IN THE COURT OF COMMON PLEAS  
 2017-CP-11-0114

AFFIDAVIT OF SERVICE BY MAIL

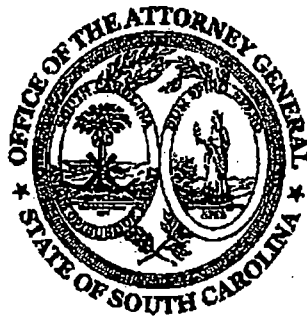
1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following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

Rodney Wade Richey, Esquire  
 Richey & Richey, PA  
 PO Box 10916  
 Greenville, SC 29603-0916

DATED this the 15<sup>th</sup> day of August 2017.

*Jennifer Jennison*  
 \_\_\_\_\_  
 Jennifer Jennison, Legal Assistant  
 For Respondent

FILED IN OFFICE OF  
 CLERK OF COURT  
 CHEROKEE COUNTY, S.C.  
 2017 AUG 17 11 A 11:43  
 BRANDY W. NCREE



ALAN WILSON  
ATTORNEY GENERAL

August 15, 2017

Brandy W. McBee  
Clerk of Court - Cherokee County  
PO Drawer 2289  
Gaffney, SC 29342-2289

**Re: Marcellous Clark, # 356227 v. State of South Carolina**  
**2017-CP-11-0114**

Dear Ms. McBee:

Enclosed please find the original Return of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,

Valerie Garcia Giovanoli  
Assistant Attorney General

VGG/jaj  
Enclosure

cc: Rodney W. Richey, Esquire

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.  
2017 AUG 17 11 A 11:42  
BRANDY W. MCBEE

1 STATE OF SOUTH CAROLINA )  
 2 COUNTY OF CHEROKEE ) IN THE COMMON PLEAS COURT  
 3  
 4 Marcellous R. Clark, )  
 Applicant, ) TRANSCRIPT OF RECORD  
 5 ) 2017-CP-11-0114  
 -vs- )  
 6 ) November 13, 2017  
 The State, ) Spartanburg, South Carolina  
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B E F O R E:

HONORABLE G. THOMAS COOPER, JR., JUDGE

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

RODNEY W. RICHEY, ESQUIRE  
 Attorney for the Applicant  
 VALERIE GIOVANOLI, ESQUIRE  
 Attorney for the State

Linda D. Moffitt  
 Circuit Court Reporter

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INDEX

WITNESSES

PAGE

MARCELLOUS R. CLARK (AW)

Direct examination by Mr. Richey

4

Cross-examination by Ms. Giovanoli

6

DON A. THOMPSON (AW)

Direct examination by Mr. Richey

7

Cross-examination by Ms. Giovanoli

9

No exhibits entered into evidence.

1 THE COURT: All right. Ms. Giovanoli.

2 MS. GIOVANOLI: Thank you, Your Honor. May it please  
3 the Court.

4 Valerie Giovanoli on behalf of the state. This is  
5 case of Marcellous Clark vs. the State of South Carolina,  
6 Docket No. 2017-CP-11-0114.

7 We're before the Court on an application for post  
8 conviction relief that was filed February 13th of 2017.

9 In April of 2016 applicant was indicted for two counts  
10 of first degree burglary. Don A. Thompson represented the  
11 applicant. And on October 11th of 2016 applicant pled  
12 guilty as indicted to one count of first degree burglary  
13 and no contest pursuant to Alford as indicted to the second  
14 count of first degree burglary.

15 The Honorable Roger L. Couch sentenced applicant to  
16 imprisonment for concurrent terms of 20 years for one count  
17 of burglary first and 25 years suspended upon the service  
18 of five years -- 20 years and five years probation for the  
19 other count of burglary.

20 Applicant did not appeal his conviction or his  
21 sentence. The state is present and ready to proceed. The  
22 applicant is also present. He's represented by Mr. Rodney  
23 Richey to whom I will hand it over.

24 THE COURT: Mr. Richey.

25 MR. RICHEY: Thank you, Your Honor. We'd call

Marcellous R. Clark  
Direct examination by Mr. Richey

1 Mr. Clark to the stand.

2 MARCELLOUS R. CLARK, having  
3 been first duly sworn, testified as follows:

4 THE COURT: State your full name for the record.

5 THE WITNESS: Marcellous Rashawn Clark.

6 DIRECT EXAMINATION BY MR. RICHEY

7 Q Mr. Clark, are you currently in the Department of  
8 Corrections?

9 A Yes, sir.

10 Q And where are you being housed at right now?

11 A Kirkland Correctional.

12 Q Okay. And what are you in Kirkland for -- charges?

13 A Two first degree burglaries.

14 Q Okay. And were you convicted in Cherokee County?

15 A Yes, sir.

16 Q And who represented you on those charges?

17 A Donnie Thompson.

18 Q And you filed an application for post conviction relief  
19 because you feel like that he did not effectively represent  
20 you, is that correct?

21 A That's correct.

22 Q And one of -- the thing that you felt like that -- that  
23 the advice you got from him was not proper.

24 A Correct.

25 Q And why is that?

Marcellous R. Clark  
Direct examination by Mr. Richey

1 A Mr. Don Thompson didn't investigate my case because  
2 one of the detectives that arrested me told me that if I  
3 comply that they will make sure that I --

4 MS. GIOVANOLI: Objection to hearsay.

5 THE COURT: I'll hear it. There's no jury here.

6 A I'm sorry. Said that if I complied that I could plead  
7 to a lesser charge.

8 Q Okay. And so you believe that counsel did not  
9 investigate and fully develop your case.

10 A Correct.

11 Q Okay. And so you did an Alford plea, correct?

12 A Yes, sir.

13 Q And during that Alford plea it was your position if you  
14 pled under Alford that you would get a lesser sentence?

15 A Yes, sir.

16 Q Did you discuss that with Mr. Thompson?

17 A On the Alford plea, yes, sir.

18 Q Okay. And so did -- so if he -- is it your position if  
19 he had investigated the case the outcome would have been  
20 different?

21 A Right.

22 Q Okay. That's the issue you have with Mr. Thompson, is  
23 that correct?

24 A Right.

25 Q Thank you. Answer any questions the attorney general

Marcellous R. Clark  
Cross-examination by Ms. Giovanoli

1 will have for you.

2 THE COURT: Let me ask him something.

3 What do you mean by investigate your case? What do  
4 you mean? What did he not do or what did he do?

5 THE WITNESS: He didn't talk to the detective to see  
6 if he said that or not, about me being able to plead to a  
7 lesser charge by cooperating with the department.

8 THE COURT: All right. Any other investigation that  
9 you wanted him to do about your case?

10 THE WITNESS: No, sir.

11 THE COURT: Did you have codefendants or were you by  
12 yourself?

13 THE WITNESS: By myself.

14 THE COURT: That's all.

15 MR. RICHEY: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. GIOVANOLI

18 Q Good morning.

19 A Good morning.

20 Q You testified under oath at your guilty-plea hearing,  
21 correct?

22 A Yes, ma'am.

23 Q Okay. And do you recall whenever the judge asked you  
24 if you thought about your option and decided that pleading  
25 was the best way to proceed? And you told him, "Yes, sir."

Don A. Thompson  
Direct examination by Ms. Richey

1 Do you remember that?

2 A That's correct.

3 Q Okay. And that was your decision.

4 A Yes, ma'am.

5 Q That wasn't Mr. Thompson's decision.

6 A I tried to fight it. I tried to fight Mr. Don  
7 Thompson once before. And once we got back in the  
8 courtroom, again, I just agreed to everything because I  
9 felt like that was just the best way to do it, because he  
10 started talking negative about the situation, talking about  
11 he don't have a defense. So I just went ahead and plea on  
12 out.

13 Q Okay. But did you have a defense?

14 A I wouldn't know because we never talked about it.

15 Q But you, in fact, committed the burglaries.

16 A Right.

17 Q Okay.

18 MS. GIOVANOLI: Nothing further.

19 MR. RICHEY: No other questions.

20 THE COURT: Come on down. Thank you very much.

21 MR. RICHEY: We call Mr. Thompson.

22 DON A. THOMPSON, having been  
23 first duly sworn, testified as follows:

24 THE COURT: State your name for the record.

25 THE WITNESS: Don Anthony Thompson.

Don A. Thompson  
Direct examination by Ms. Richey

1 DIRECT EXAMINATION BY MR. RICHEY

2 Q Mr. Thompson, where do you practice law at?

3 A In Cherokee County. I'm the chief public defender.

4 Q And what is -- who do you work for?

5 A I'm the Cherokee County Chief Public Defender. But  
6 when they combined the things, I'm an employee of  
7 Spartanburg County now.

8 Q So you're the public defender, correct?

9 A Right, correct.

10 Q Do you recall representing Mr. Clark?

11 A I do.

12 Q And this case was a couple of burglaries, correct?

13 A It was. Two burglary firsts.

14 Q And you heard the testimony about your level of  
15 investigation. Did you talk to the investigators about  
16 reducing the charge for Mr. Clark?

17 A I talked to the solicitor, the prosecutor, about  
18 reducing the charge. I told the prosecutor what Mr. Clark  
19 had told me about the officer saying that they would try to  
20 help him if he would give a confession.

21 The solicitor didn't really care about that, and the  
22 officer really didn't have any control over what happened  
23 to the case. It was the prosecutor, not the officer.

24 Q Okay. So it's your testimony that you actually did  
25 talk to the solicitor.

Don A. Thompson  
Cross-examination by Ms. Giovanoli

1 A I did.

2 Q Okay. Thank you, sir. Answer any questions the  
3 attorney general has for you.

4 MS. GIOVANOLI: Thank you.

5 CROSS-EXAMINATION

6 BY MS. GIOVANOLI

7 Q Good morning, Mr. Thompson.

8 A Good morning.

9 Q How long have you been practicing criminal law?

10 A Criminal law?

11 Q Yes.

12 A I started in 1990.

13 Q Okay. And how about law in general?

14 A I was sworn in in 1980.

15 Q Okay. And you stated that you are the chief public  
16 defender in Cherokee County.

17 A That's correct, since 1999.

18 Q You were appointed to this case?

19 A Yes, I was.

20 Q And do you recall how many times you met with the  
21 applicant?

22 A I don't recall how many times. I've got notes in my  
23 file that indicate at least five or six, and probably more  
24 than that. But I don't always make notes when I meet with  
25 somebody.

Don A. Thompson  
Cross-examination by Ms. Giovanoli

1 Q Okay. And did you receive discovery in this case?

2 A I did.

3 Q Did you review it with the applicant?

4 A I did.

5 Q Did y'all discuss any potential defenses to the two  
6 charges of burglary?

7 A One of the charges of burglary, the one that he pled  
8 guilty to, he admits he did that, and he gave a statement  
9 admitting to that.

10 The count of burglary first that he entered an Alford  
11 plea to, there was evidence found actually on him that came  
12 from that burglary, along with either it's his apartment or  
13 girlfriend's apartment. But he also gave a statement as to  
14 that.

15 This is the count though where he talked about the  
16 fact that the officer told him if he would go ahead and  
17 give a statement to it, he would help him out. So we did  
18 try to take a look at that and see if there was anything we  
19 could do, but there really wasn't any defense there.

20 Q Did you see the need for a Jackson vs. Denno hearing?

21 A No. And I can tell you why.

22 Q And why is that?

23 A The state -- he pled when this case was being ready to  
24 be called for trial. The state had indicated to me that  
25 they were going to try him on the one that he says he was

Don A. Thompson  
Cross-examination by Ms. Giovanoli

1 guilty of first. They were going to then serve notice of  
2 life without parole and come back and try him on the second  
3 one.

4 Q And in your opinion there was a strang likelihood of  
5 conviction on both burglaries?

6 A Well, I think there's a hundred percent on the one he  
7 says he's guilty of, and I think it's probably close to a  
8 hundred percent on the other one.

9 Q And you stated earlier that there was -- there was  
10 evidence from the victim's apartment that was found in the  
11 applicant's possession, is that correct?

12 A Yes. There was a ring found in his pocket, and there  
13 was some other jewelry that was found. I can't remember  
14 whether it was in his apartment or his girlfriend's  
15 apartment.

16 Q Okay. And was there some of the victim's laundry  
17 detergent found in his girlfriend's apartment as well?

18 A I think there was, yes.

19 Q So was it your advice to him to plead guilty to both  
20 charges and maybe have a global resolution?

21 A Yes.

22 Q And aside from reviewing the discovery with him, did  
23 you do any further investigation -- independent?

24 A Other than talking with him and reviewing the  
25 discovery and finding out what -- what he agreed to and

Don A. Thompson  
Cross-examination by Ms. Giovanoli

1 what he disagreed to, no.

2 Q Okay.

3 A I mean, I didn't go out and talk to the officers and  
4 see if -- you know.

5 Q Yeah. Did he ever express a desire to you to go to  
6 trial on these charges?

7 A He never expressed a desire to go to trial. The state  
8 made an offer to him, which he declined, and they basically  
9 left it open until it was called for trial. while he  
10 didn't say he wanted to go to trial, he said he was going  
11 to wait until it was called to trial to decide what he was  
12 going to do.

13 Q Okay. Did you force him to plead guilty?

14 A No,, I did not.

15 Q Did you promise him anything?

16 A I did not.

17 Q I have no other questions. Thank you, Mr. Thompson.

18 THE COURT: Mr. Richey.

19 MR. RICHEY: No other questions.

20 THE COURT: You may come down, Mr. Thompson.

21 MR. RICHEY: No other witnesses, Your Honor.

22 THE COURT: The state?

23 MS. GIOVANOLI: The state has no witnesses.

24 THE COURT: All right. Thank you very much, counsel.

25 Proposed orders in, what, 30?

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MS. GIOVANOLI: Thirty days, please.

THE COURT: Thirty days.

Satisfactory?

MR. RICHEY: Yes, Your Honor.

THE COURT: All right. Thank you very much.

END OF REQUESTED TRANSCRIPT OF RECORD

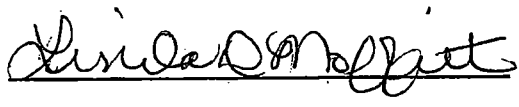
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh 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 of the captioned cause, relative to appeal, in the Common Pleas Court for Cherokee County, South Carolina, on the 13th day of November 2017.

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

February 15, 2018



Linda D. Moffitt  
Circuit Court Reporter

STATE OF SOUTH CAROLINA  
COUNTY OF CHEROKEE

Marcellous R. Clark, #278949,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

2017-CP-41-0114

ORDER OF DISMISSAL  
WITH PREJUDICE

BRANDY W. MCBEE

2018 JAN -9 PM 2:00

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Marcellous R. Clark (Applicant) on February 13, 2017. The State (Respondent) made its return requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on November 13, 2017 at the Spartanburg County Courthouse. Applicant was present and represented by Rodney W. Richey, Esquire. Valerie Garcia Giovanoli, Esquire, of the Office of the Attorney General represented Respondent.

At the hearing, Applicant testified on his own behalf. Don Thompson, Esquire, (Counsel) also testified. This Court had before it a copy of the Cherokee County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the plea transcript, the PCR application, and Respondent's return.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. In April 2016, the Cherokee County Grand Jury indicted Applicant for two counts of burglary, first degree (2016-GS-11-0398, -0399). Don A. Thompson, Esquire, represented Applicant. Assistant Solicitor, Kimberly Leskanic, represented the State. On October 11, 2016, Applicant pleaded guilty as indicted to

one count of burglary, first degree (-0398) and *nolo contendere* pursuant to Alford<sup>1</sup> as indicted to the second count of burglary, first degree (-0399) before the Honorable Roger L. Couch. Judge Couch sentenced Applicant to imprisonment for concurrent terms of twenty years for one count of burglary, first degree and twenty-five years, suspended upon the service of twenty years and probation for five years for the second count of burglary, first degree. Applicant did not appeal his conviction or sentence.

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, in that:
  - a. "Counsel failed to properly advise me;"
  - b. "Counsel was ineffective for unprofessional errors;"
  - c. "Counsel was ineffective for not investigating the case;"
  - d. "Counsel failed to inform me that I could conclude to a lesser offense under the Alford plea;"
  - e. "Counsel prejudice to case."

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and has weighed their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). Applicant has failed to prove by a preponderance of the evidence that Counsel was deficient or that he was prejudiced by any deficiency.

#### I. Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC).

<sup>1</sup> North Carolina v. Alford, 400 U.S. 25 (1970).



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).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18. 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, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

*Failure to properly advise*

Applicant alleged in his PCR application that Counsel failed to properly advise him. However, Applicant presented no evidence to support this allegation or show how Counsel's advice was improper. Applicant testified law enforcement told him if he cooperated with them, he could plead to a lesser charge. Counsel's testimony on the issue was credible. Counsel



testified he talked to the Solicitor about reducing the charges and he discussed the alleged conversation Applicant had with law enforcement. It was in the Solicitor's discretion to decide to reduce the charges and he would not. Applicant admitted guilt to one burglary, but the evidence tying him to both was very strong. Based on the evidence, and the potential of receiving a life without parole sentence, Counsel advised Applicant to plead guilty to both burglaries. This Court fails to see how this advice was improper and finds the advice to be sound. Therefore, Applicant's has failed to prove by a preponderance of the evidence that Counsel was deficient in this regard or that Applicant was prejudiced by any such deficiency, such that he would have insisted on trial rather than pleading guilty. This allegation is denied and dismissed.

*Failure to investigate*

Applicant failed to present any evidence in support of this allegation, other than self-serving testimony that he believe Counsel should have investigated the burglary to which he pled pursuant to Alford more. To show ineffective assistance in this regard, Applicant must present evidence to show what counsel could have discovered had he more fully investigated. Jackson v. State, 329 S.C. 345, 354, 495 S.E.2d 768, 772 (1998) ("Respondent failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial."). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). The record shows Counsel discussed the case with Applicant. (Tr. p. 7, ll. 1-3; p. 11, ll. 3-8). Counsel also testified credibly that he reviewed the State's evidence against

Applicant and he reviewed it with Applicant. He recalled meeting Applicant approximately 5 or 6 times to discuss the case. Applicant has failed to show how further investigation would have benefitted him. This Court notes, Applicant admitted guilt to one burglary and was sentenced to concurrent time for the burglary for which he did not admit guilt. Because Applicant admitted guilt to one burglary and decided to plead guilty, it would be a great risk to try the other burglary with plenty of damning evidence against Applicant and face a life without parole sentence, instead of disposing of the charge with the other for concurrent sentences. Therefore, having failed to meet his burden of proof, this allegation is denied and dismissed.

*Failure inform Applicant he could plead to lesser offense*

Applicant alleges Counsel failed to inform him he could plead to a lesser offense. This Court finds Counsel's testimony more credible on this issue. Counsel testified he requested a reduction in the charge, but the Solicitor would not agree to reduce the charge. The decision to reduce charges is in the sound discretion of the Solicitor. The record supports Counsel's testimony with regard to serious thought and consideration given to the burglary Applicant denied. However, risking a life without parole sentence going to trial on that burglary was not reasonable in light of the fact he was pleading guilty to the other burglary and could most likely (and did) receive concurrent time. As such, counsel was not deficient in this regard nor was Applicant prejudiced by any alleged deficiency. Therefore, this allegation is denied and dismissed.

**CONCLUSION**

Based on all the foregoing, this Court finds and concludes Applicant has not established any violations that would require this Court to grant his application. This Court finds Applicant has failed to prove any deficiencies on the part of Counsel and further, Applicant has failed to




prove prejudice from any alleged deficiencies in Counsel's representation of him. Therefore, as Applicant has failed to meet his burden of proof in this post-conviction relief action, his application is denied and dismissed with prejudice.

This Court notifies Applicant he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 5<sup>th</sup> day of January, 2018.

  
 G. THOMAS COOPER, JR.  
 Presiding Judge  
 Seventh Judicial Circuit

CAUDEN, South Carolina



**State of South Carolina**  
**The Circuit Court of the Fifth Judicial Circuit**

**G. Thomas Cooper, Jr.**  
 Active/Retired Judge

Post Office Box 1557  
 1121 Broad Street, Room 313  
 Camden, SC 29021  
 Phone: (803) 425-7182  
 gcooperj@sccourts.org

January 5, 2018

The Honorable Brandy W. McBee  
 Cherokee County Clerk of Court  
 P.O. Box 2289  
 Gaffney, SC 29342

RE: Marcellous R. Clark, #278949 v. State of South Carolina  
 C/A No.: 2017-CP-~~11~~-00114

Ms. McBee:

Enclosed please find the Order of Dismissal in regards to the aforementioned case. Please file this Order with the court. If you have any questions or concerns, please feel free to contact me.

Thank you,

Jamie Rutkoski  
 Law Clerk to the Honorable G. Thomas Cooper, Jr.

FILED IN OFFICE OF  
 CLERK OF COURT  
 CHEROKEE COUNTY, S.C.  
 2018 JAN -9 PM 2:00  
 BRANDY W. MCBEE



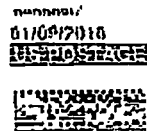
After 5 Days Return To:  
Mrs. Brandy W. McBee  
Clerk Of Court, Cherokee County  
Post Office Drawer 2289  
Gaffney, S.C. 29342

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.

2018 JAN -9 PH 3:43

BRANDY W. MCBEE

Marcellous R. Clark, #356227  
Kirkland Inst. R&E, B2-44  
4344 Broad River Rd.  
Columbia, SC 29210

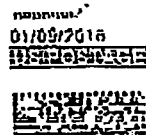


\$00.67<sup>0</sup>

ZIP 29340  
0411124501



After 5 Days Return To:  
Mrs. Brandy W. McBee  
Clerk Of Court, Cherokee County  
Post Office Drawer 2289  
Gaffney, S.C. 29342



\$00.67<sup>0</sup>

ZIP 29340  
0411124501

SC Attorney General's Office  
ATTN: PCR Division  
PO Box 11549  
Columbia, SC 29211-1549



After 5 Days Return To:  
Mrs. Brandy W. McBee  
Clerk of Court, Cherokee County  
Post Office Drawer 2289  
Gaffney, SC 29342

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.

2018 JAN -9 PM 3:43

BRANDY W. MCBEE

Rodney W. Richey  
PO Box 10916  
Greenville, SC 29603-0916

01/09/2018  
15:26:43

\$00.67<sup>00</sup>



ZIP 29340  
0916120500

WITNESSES

Blacksburg Police Dept.

*Marcello Clark*

ARREST WARRANT NUMBER

2016A1110200017

ACTION OF GRAND JURY

TRUE BILL

*Charlotte R Petty*

Foreperson of Grand Jury

Date: 4-7-16

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 16-GS-11-00398

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

APR 07 2016

TERM

THE STATE

vs.

MARCELLOUS RASHAWN CLARK

Indictment for

BURGLARY, FIRST DEGREE  
(Dwelling)

SC Code: 16-11-0311  
CDR Code: 0079  
Class: FEL/EXM (V)

FILED IN THE OFFICE  
CLERK OF COURT

2016 APR -7 A 10:46

BRANDY W. MCBEE  
CHEROKEE COUNTY, SC



STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

STATE VS. Marcellous Rashawn Clark

AKA: Race: black Sex: mal Age: 28 DOB: /88 SS#: Address: City, State, Zip: Blacksburg, S.C. 29702 DL# \* SID#

\*CDL Yes No CMV Yes No Hazmat Yes No

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016-GS-11-398

AW#: 2016A1110200017

Date of Offense: 01/23/16

S.C. Code §: 16-11-311

CDR Code #: 0079

SENTENCE SHEET

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

CONVICTED OF or PLEADS

TO: Burglary 1st degree (15 yr - LIFE)

In violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0079

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS \$17-25-45

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

Solicitor SC Bar # Defendant Don A. Thompson - Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections or County Detention Center, for a determinate term of 20 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: 10/11/16 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. 113 days

The Defendant is to be placed on 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 18-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

PTUP days/hours Public Service Employment

Total: \$ plus 20% fee: \$

Obtain GED

Payment Terms:

Attend Voc. Rehab. Or Job Corp.

Set by SCDPPPS

May serve W/E beginning Substance Abuse Counseling

Recipient: 16-GS-11-399

Random Drug/Alcohol Testing Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ Beginning \$ Paid to Public Defender Fund

Table with 2 columns: Description and Amount. Includes items like §14-1-206 (Assessments 107.5%), §14-1-211 (A)(1)(Conv. Surcharge) \$100, §14-1-211 (A)(2)(DUI Surcharge) \$100, §58-5-2995 (DUI Assessment) \$12, §58-1-286 (DUI Breath Test) \$25, Proviso 61.6 (Public Def/Probation) \$500, §14-1-212 (Law Enforce. Funding) \$25, §14-1-213 (Drug Court Surcharge) \$150, §50-21-114 (BUI Breath Test Fee) \$50, §58-5-2942(J) (Vehicle Assessment) \$40/ea, 3% to County (if paid in Installments) \$375.

Other:

TOTAL \$ 1287.75

Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/Deputy Clerk Court Reporter: Brandon McBean, Mike Galt

Presiding Judge Judge Code: 3135 Sentence Date: 10/11/16

County of Cherokee                      Seventh Judicial Circuit                      Total Restitution:  
 State of South Carolina                      Order of Restitution                      \$898.00  
 v.

**Marcellous Clark,  
 DEFENDANT**

Upon Motion of the Solicitor of the Seventh Judicial Circuit, it appears South Carolina Code of Laws Section 17-25-322 requires the Court to hold a hearing to determine the amount of restitution due to the victim(s) of the defendant's criminal acts which have resulted in pecuniary damage or loss. Further, South Carolina Code of Laws Section 16-3-1530(D) (3) provides that the Court "shall order restitution at every sentencing for a crime against person or property" unless the Court finds a substantial and compelling reason not to order restitution.

The Court upon conducting a restitution hearing, or upon waiver and consent of the defendant, hereby finds:

Restitution should be paid by the defendant as a condition of his/her sentence to the designated victim(s) in the following court-ordered amounts:

Restitution should be joint and several to the named co-defendant(s):

Restitution should NOT be ordered for the following substantial and compelling reasons:

1. Indictment # 2016GA1100398-99  
 Warrant: 2016A1110200017-18  
 VICTIM: TI'Nisha Douglas  
 Address: [REDACTED]  
                   Blacksburg, SC 29702  
 Phone: [REDACTED]-7721  
 RESTITUTION: \$498.00

2. Indictment # 2016GA1100398-99  
 Warrant: 2016A1110200017-18  
 VICTIM: Misty Collins  
 Address: [REDACTED]  
                   Blacksburg, SC 29702  
 Phone:  
 RESTITUTION: \$400.00

AND IT IS SO ORDERED THIS 11<sup>th</sup> DAY OF October, 2016, Gaffney, South Carolina

I SO MOVE:  
 Barry Bannette  
 Solicitor, Seventh Judicial Circuit

  
 PRESIDING JUDGE  
 Seventh Judicial Circuit

By:  \_\_\_\_\_

I WAIVE MY RIGHT TO A RESTITUTION HEARING AND CONSENT TO THE ABOVE:

  
 DEFENDANT

WITNESSES

Blacksburg Police Dept.

*Mark Jones*

ARREST WARRANT NUMBER

2016A1110200018

ACTION OF GRAND JURY

TRUE BILL

*Dorothy R. Rody*  
Foreperson of Grand Jury

Date: 4-7-16

VERDICT

Foreperson of Petit Jury  
Date:

DOCKETS  
**16-GS-11-00399**

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

APR 07 2016

TERM

THE STATE

vs.

MARCELLOUS RASHAWN CLARK

Indictment for

BURGLARY, FIRST DEGREE  
(Dwelling)

SC Code: 16-11-0311  
CDR Code: 0079  
Class: FEL/EXM (V)

FILED IN THE OFFICE  
CLERK OF COURT

2016 APR -7 A 10:46

DRANDY W. MCBEE  
CHEROKEE COUNTY, SC

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHEROKEE )

INDICTMENT

At a Court of General Sessions, convened on APR 07 2016, the Grand Jurors of Cherokee County present upon their oath:

**BURGLARY, FIRST DEGREE**

**(DWELLING)**

That the Defendant, Marcellous Rashawn Clark did in Cherokee County between January 17, 2016, and January 18, 2016, enter the dwelling belonging to Misty Collins, located at [REDACTED], Blacksburg, South Carolina without consent and with the intent to commit a crime therein, and either:

- (1) when, in effecting entry or while in the dwelling or in immediate flight, she/he or another participant in the crime:
  - (a) was armed with a deadly weapon or explosive; or
  - (b) caused physical injury to any person who was not a participant in the crime; or
  - (c) used or threatened the use of a dangerous instrument; or
  - (d) displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; or
- (2) the burglary was committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or
- (3) the entering or remaining occurred in the nighttime,

in violation of §16-11-311, Code of Laws of South Carolina (1976) as amended.

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

Kimberly S. Kame  
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHEROKEE

STATE

INDICTMENT/CASE#: 2016 -GS- 11 - 399

VS.

Marcellous Rashawn Clark

AW#: 2016A1110200018

AKA:

Date of Offense: 01/18/16

Race: black Sex: mal Age: 38

S.C. Code §: 16-11-311

DOB: /88 SS#: [REDACTED]

CDR Code #: 0079

Address: [REDACTED]

City, State, Zip: Blacksburg, S.C. 29702

SENTENCE SHEET

DL# SID#

\*CDL Yes No CMV Yes No Hazmat Yes No

CONVICTED OF or PLEADS (ALFORD)

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

TO: Burglary 1st degree (15yr - LIFE)

In violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0079

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS \$17-25-45

The charge is: As indicted, Lesser included Offense, Defendant Waives Presentment to Grand Jury, Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Solicitor SC Bar # Defendant Don A. Thompson - Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center, for a determinate term of 25 days/months/years or under the Youthful Offender Act not to exceed years end/or to pay a fine of \$ 20 provided that upon the service of 20 days/months/years and or payment of \$ plus costs and assessments as applicable; the balance is suspended with probation for 5 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. 113 days

The Defendant is to be placed on 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 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

PTUP

Total: \$ 898.00 plus 20% fee: \$

days/hours Public Service Employment

Payment Terms:

Obtain GED

Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp.

Recipient: per order of same date

May serve W/E beginning Substance Abuse Counseling

Table with 2 columns: Description and Amount. Includes items like §14-1-208 (Assessments 107.5%), §14-1-211 (A)(1)(Conv. Surcharge) \$100, §14-1-211 (A)(2)(DUI Surcharge) \$100, §56-5-2995 (DUI Assessment) \$12, §56-1-286 (DUI Breath Test) \$25, Proviso 61.6 (Public Def/Probation) \$500, §14-1-212 (Law Enforce. Funding) \$25, §14-1-213 (Drug Court Surcharge) \$150, §50-21-114 (BUI Breath Test Fee) \$50, §58-6-2942(J) (Vehicle Assessment) \$40/ea, 3% to County (if paid in installments) \$18.75.

Random Drug/Alcohol Testing Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ Beginning \$ Paid to Public Defender Fund

Other: No contact with the victim

Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

TOTAL \$ 1437.5

Presiding Judge Judge Code: 2135 Sentence Date: October 11, 2016

Clerk of Court/Deputy Clerk Court Reporter: [Signature]