

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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S.C. SUPREME COURT

\_\_\_\_\_  
Certiorari to Charleston County

Michael G. Nettles, Circuit Court Judge

\_\_\_\_\_  
DARRYL JERARD MUNGIN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000441

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

TAYLOR D GILLIAM  
Appellate Defender

ALAN WILSON  
Attorney General

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General  
Attorney General Office  
P. O. Box 11549  
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

**INDEX**

INDEX ..... i

GUILTY PLEA TRANSCRIPT DATED MAY 31, 2016 .....1

APPLICATION FOR POST-CONVICTION RELIEF .....23

AMENDED APPLICATION FOR POST-CONVICTION RELIEF .....30

RETURN.....32

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED DECEMBER 5, 2017 .....40

ORDER OF DISMISSAL AND GRANT OF APPELLATE REVIEW PURSUANT TO WHITE  
V. STATE .....107

INDICTMENTS .....119

STATE OF SOUTH CAROLINA )  
 )  
 )  
COUNTY OF CHARLESTON )  
----- )

2016-GS-10-0620;  
0622;0624

STATE OF SOUTH CAROLINA, )  
 PLAINTIFF )  
 vs. )  
 )  
DARRYL JERARD MUNGIN, )  
 DEFENDANT )  
----- )

GENERAL SESSIONS  
TRANSCRIPT OF RECORD

MAY 31, 2016  
CHARLESTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE THOMAS L. HUGHSTON, JR.

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

ANDREW C. EVANS, ESQUIRE  
ASSISTANT SOLICITOR

MICHAEL R. LOIGNON, ESQUIRE  
ASSISTANT PUBLIC DEFENDER

SHARON VIZER,  
CIRCUIT COURT REPORTER

I N D E X

PLEA HEARING . . . . . 2

1                                   \* \* \* TUESDAY, MAY 31, 2016 \* \* \*

2

3           MR. EVANS:   The State calls Darryl Mungin.

4           THE COURT:   Darryl Jerard Mungin, M-u-n-g-i-n; is  
5 that your name?

6           THE DEFENDANT:   Yes, sir.

7           THE COURT:   All right.   Three charges the State  
8 makes against you; the first one I'm looking at says  
9 that you did on or about July 21, 2015, obtain and have  
10 in your possession -- something from the Money Man Pawn  
11 Shop.   I guess it was money; is that right?

12           MR. EVANS:   Judge, he pawned some stolen tools to  
13 the Money Man Pawn Shop.

14           THE COURT:   Do you understand that charge, Mr.  
15 Mungin?

16           THE DEFENDANT:   Yes, sir.

17           THE COURT:   And as a third or subsequent property  
18 crime offense under the laws of this State, according  
19 to the charges, which means that I could sentence you  
20 up to ten years in the penitentiary if you plead guilty  
21 or if you were found guilty after a trial on that; do  
22 you understand that?

23           THE DEFENDANT:   Yes, sir.

24           THE COURT:   And then on July 27th, a few days  
25 later, the State claims that you did commit what is

1 called a burglary in the second degree, violent type.  
2 It started out as a charge of burglary first degree,  
3 but the State is willing to accept a plea of guilty to  
4 the charge of burglary in the second degree, violent  
5 type. They claim you entered the dwelling of Louise  
6 Rivers without consent, with the intent to commit a  
7 crime once you got in there -- and what does that carry  
8 as a possible penalty?

9 MR. EVANS: Zero to 15 years, Your Honor.

10 THE COURT: Up to 15 years in the penitentiary; do  
11 you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. And then the last one,  
14 domestic violence second degree, involving Clarissa  
15 Butler, a household member -- what does that carry?

16 MR. EVANS: Zero to three years, Your Honor.

17 THE COURT: Up to three years on that; do you  
18 understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Of course, you don't have to be guilty  
21 of any of these charges, Mr. Mungin, you have an  
22 absolute right to a jury trial. Would you like to have  
23 a jury trial on any or all of these charges?

24 THE DEFENDANT: No, no, sir.

25 THE COURT: How do you wish to plead then to the

1 charges, guilty or not guilty?

2 THE DEFENDANT: Guilty.

3 THE COURT: Are you really guilty?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Has anybody promised you anything or  
6 threatened you in any way to get you to plead guilty?

7 THE DEFENDANT: No, sir.

8 THE COURT: Are you pleading guilty then on your  
9 own free will?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: I ask you again, would you like to  
12 have a jury trial on any or all these charges?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: I ask you again, are you really guilty  
15 of the charges?

16 THE DEFENDANT: Yes, sir.

17 MR. LOIGNON: Your Honor, if I may, just briefly.  
18 I believe Mr. Mungin is just hesitant because he's  
19 unsure whether or not he'll be able to plea under North  
20 Carolina V. Alford --

21 THE COURT: Well, if he's pleading under that,  
22 it's still a guilty plea that subjects you -- it puts  
23 you in a position of being sentenced, but I could still  
24 sentence you to the maximum penalty; do you understand  
25 that, Mr. Mungin?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: It's a guilty plea -- I don't know  
3 why -- what -- what deal is he getting? What's he  
4 getting from the State, the reduction from first to  
5 second degree burglary?

6 MR. EVANS: Correct, Your Honor. And there's a  
7 criminal domestic violence of a high and aggravated  
8 nature charge that preceded the burglary incident that  
9 we would be agreeable to dismissing in consideration --

10 THE COURT: All right. So you're getting some  
11 reduced charges as a result of this; do you understand  
12 that, Mr. Mungin?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. I'll accept it. Go ahead.

15 MR. EVANS: Thank you, Your Honor. May it please  
16 the court. The first incident took place on July 21,  
17 2015, at 2097 Savannah Highway in Charleston County.  
18 The defendant entered the Money Man Pawn Shop at that  
19 address and exchanged approximately nine tools for \$105  
20 in cash. The defendant presented his South Carolina  
21 driver's license during the transaction.

22 The tools had previously been stolen from a Mr.  
23 Andre Wright's residence in Hollywood. Mr. Wright did  
24 not give the defendant permission to possess or pawn  
25 those tools.

1           Judge, the second incident took place on July  
2 27, 2015, at [REDACTED] [REDACTED] [REDACTED], also in Charleston  
3 County. The defendant and victim, Clarissa Butler, who  
4 were cohabitating at the time and were expecting a  
5 child together, got into a verbal altercation over the  
6 defendant destroying the victim's shoes.

7           The victim left their residence in an attempt to  
8 diffuse the situation, and went next door to her  
9 landlord's house. The defendant came over to the house  
10 still angry, and was confronted by the landlord, Louise  
11 Rivers, at the door.

12           The defendant forced his way inside, grabbed the  
13 victim by her hair, and threw her to the ground. He  
14 then dragged her out on the porch and started hitting  
15 her in the stomach. Ms. Butler was seven months  
16 pregnant at the time. Ms. Rivers, the -- the  
17 landlady's nephew, and his wife, arrived on scene and  
18 called 911, causing the defendant to flee.

19           THE COURT: Wait a minute. I'm confused a little  
20 bit about this.

21           MR. EVANS: Yes, sir.

22           THE COURT: Okay. So, on July 27th, he gets in an  
23 argument, dispute, whatever, with Clarissa Butler --

24           MR. EVANS: Yes, sir.

25           THE COURT: Who he's living with, and who's

1 expecting a child, his. And I understood he left that  
2 house and went next door?

3 MR. EVANS: Ms. Butler went next door.

4 THE COURT: Oh, she did.

5 MR. EVANS: And then he went into the house after  
6 her.

7 THE COURT: And then he went into that house after  
8 her.

9 MR. EVANS: That's why the victim of the burglary  
10 is different from --

11 THE COURT: I see. Okay. That's what I was  
12 trying to figure out. Okay. And he went in that  
13 house. And what happened after he went in there?

14 MR. EVANS: He basically physically assaulted her,  
15 Judge, and then dragged her on the porch and continued  
16 the assault on the porch.

17 THE COURT: I see. All right.

18 MR. EVANS: Judge, Ms. Butler, she's present  
19 actually on the defendant's behalf today. I believe  
20 she would like to address Your Honor --

21 THE COURT: I'll be glad to hear from you,  
22 anything you want to say, wherever she is. Tell me  
23 your name.

24 MS. BUTLER: Clarissa Butler.

25 THE COURT: Speak up.

1 MS. BUTLER: Clarissa Butler.

2 THE COURT: All right. What would you like to  
3 tell me?

4 MS. BUTLER: First of all, that day that the  
5 altercation took place, we were home in the house. I  
6 was pregnant at the time, postpartum depression. I  
7 started whining and crying about some shoes that was  
8 destroyed because he didn't clean the water out the  
9 closet.

10 THE COURT: Because what?

11 MS. BUTLER: Because he didn't clean some water  
12 out the closet.

13 THE COURT: Okay.

14 MS. BUTLER: So it caused my shoes to mold and  
15 mildew and I whined about that. And, you know, he was  
16 like, Clarissa, leave it alone. We got bigger things  
17 to worry about, you know. And I said, okay, fine. And  
18 I kept being a little gnat on the wall and he went in  
19 --

20 THE COURT: I'm sorry -- you kept what?

21 MS. BUTLER: Being a gnat on the wall. Just a  
22 gnat.

23 THE COURT: Okay.

24 MS. BUTLER: And I stepped outside to cool off. I  
25 went over to the landlord's house where we -- we always

1 are in between, and I sat on the porch as Ms. Louise  
2 was out in the yard doing some yard work.

3 So she handed me the phone and told me to put  
4 the phone on a charger in the house. I went in to put  
5 the phone on a charger, and Darryl was coming up as I  
6 was walking back out the door. And he said, you know,  
7 step back inside, let me talk to you. You know, we  
8 sort of communicated. I still wanted to argue a  
9 little.

10 There was a table that I leaned against, not  
11 knowing that it was broken, and Darryl grabbed me to  
12 keep me from falling back. And we stepped outside.  
13 You know, he was like, Rissa, come on home. Let's  
14 talk, you know. It's not that serious.

15 Well, anyways, I stepped outside. I don't know  
16 where the punching in the stomach, and this and that,  
17 you know, came from. Other than that, I would be  
18 bruised. I would have been in the hospital. There's  
19 no hospital records. But the landlord, I know,  
20 probably got a little to do with it because she felt  
21 like she wasn't ready for me to move. Darryl was a big  
22 provider, a helper for the family. We also helped Ms.  
23 Louise a lot.

24 She got a little upset that we were going to  
25 move, so she won't have, you know, nobody to do

1 anything for her for free. As far as I'm concerned,  
2 her nephew had already been out there -- like nobody  
3 arrived, everybody was already there.

4 But I been in that -- he's a great provider.  
5 You know, my son is missing him like crazy. You know,  
6 since Darryl got arrested, you know, I was having a  
7 little bit of issues with my son in school. And they  
8 are asking like, where is his father? Where is his  
9 father? And I can't really say what's going on because  
10 like --

11 THE COURT: Well, is he -- is he -- is he that  
12 child's father?

13 MS. BUTLER: You might as well just say he is.  
14 From the day that he stepped in -- I mean, that's who  
15 provides, that's who go back and forth to school,  
16 transport them, you know, doctors, whatever --

17 THE COURT: Okay. I get the picture. What else  
18 would you like to tell me?

19 MS. BUTLER: I would like for him to come home and  
20 be with his family. I'm sorry that all of this  
21 happened. But, Your Honor, we need him home.

22 THE COURT: All right.

23 MR. EVANS: And, Judge, for the record --

24 THE COURT: Tell me what -- go ahead.

25 MR. EVANS: As I stated earlier, Ms. Rivers, the

1 landlady, and her nephew and his wife, both -- they all  
2 gave statements. They would testify as to facts  
3 consistent with what I stated earlier, just for the  
4 record.

5 THE COURT: All right. And tell me what -- what  
6 his prior record is.

7 MR. EVANS: Judge, he's got a significant prior  
8 record. Beginning in '98, possession of stolen goods;  
9 1999 burg third; possession of a stolen motor vehicle;  
10 resisting arrest; and receiving stolen goods.

11 In 2003, strong armed robbery; resisting arrest;  
12 simple assault and battery; and a probation revocation.  
13 '07, possession of a stolen vehicle and possession of  
14 methamphetamine or cocaine base first.

15 In '08, probation revocation; 2010, assault and  
16 battery of a high and aggravated nature, and the use of  
17 vehicle without permission.

18 In 2011, conspiracy to pass a counterfeit check.  
19 I believe that's a federal charge, Judge; 2012, assault  
20 and battery third and malicious injury to personal  
21 property. And 2014, contributing to the delinquency of  
22 a minor.

23 THE COURT: A substantial prior record. All  
24 right. What would you like to tell me -- let me switch  
25 to the other side -- what would you like to tell me on

1 behalf of your client?

2 MR. LOIGNON: Thank you, Your Honor. May it  
3 please the court. Michael Loignon on behalf of Darryl  
4 Mungin. Mr. Mungin is 36 years old. He's lived in the  
5 Charleston area his entire life. He lives in Adams Run  
6 now. He has two children, ages five and ten.

7 He was working for U.S. Lawns doing landscaping  
8 prior to his arrest. He made it to the 11th grade, but  
9 he was actually enrolled in GED classes at Trident One  
10 Stop when he was arrested as well.

11 Mr. Mungin is an asset to his small community.  
12 He -- the people in his community know the Mungin  
13 family. They know Mr. Mungin. He attends a Bible  
14 study regularly. He helps out the community members on  
15 a regular basis. And as you heard from Ms. Butler, the  
16 alleged victim in this incident, there are two people  
17 that were involved here from the beginning, and both of  
18 them are telling the same story.

19 From the beginning of my representation of Mr.  
20 Mungin, he has maintained the whole time that this was  
21 not a physical fight. There was an argument that  
22 occurred, but this was not a physical fight.

23 Furthermore, the house that he's alleged to have  
24 broken into is his landlord's house that's right next  
25 door, that he has been in and out of many times to help

1 her with various things around the yard, around the  
2 house. So the -- you know, this is -- this is not some  
3 stranger breaking in to steal things.

4 So the -- Ms. Butler, the alleged victim here,  
5 has been trying to drop these charges from the  
6 beginning. She -- she went to the Solicitor's Office  
7 to fill out a drop charge form, and she was told to  
8 think about it for a while.

9 She filled out a statement at my office saying  
10 that this didn't happen. And as Your Honor heard here  
11 today, she's saying it didn't happen as well.

12 THE COURT: Well, I believe it did happen and he's  
13 pled guilty to it. Go ahead. Anything else you want  
14 to say?

15 MR. LOIGNON: Mr. Mungin's aunt is here. She --  
16 she would like to speak briefly.

17 THE COURT: I'll be glad to hear from anybody else  
18 who wants to say anything. Tell me your name.

19 MS. MACK: Barbara Mack -- Pastor Barbara Mack.

20 THE COURT: I'm sorry.

21 MS. MACK: Pastor Barbara Mack.

22 THE COURT: All right. Go right ahead.

23 MS. MACK: I came today just to support my nephew.  
24 He's been in and out of trouble almost all of his life.

25 THE COURT: That's true.

1 MS. MACK: And his momma would be down here  
2 fighting for him back and forth for a long time, so I  
3 let him sit in jail this time for a while, and I just  
4 went to see him this month, the beginning of this  
5 month. And he told me he was going to -- started going  
6 to church in the jailhouse --

7 THE COURT: Good.

8 MS. MACK: And the reason why I showed up is  
9 because God dealt with me about it. Like, you may not  
10 understand that, but God dealt with me about him and my  
11 daughter, and I went to see him. And he told me that  
12 if he get out this time, he's going to change his life  
13 because he got a little baby now.

14 THE COURT: Well, he's going to get out; it just  
15 might not be today.

16 MS. MACK: Yeah, I'm just saying. But anyway, we  
17 just came through this, sir, the Mungin family that was  
18 killed in Ravenel was a domestic violence situation, so  
19 --

20 THE COURT: I don't know anything about that.

21 MS. MACK: We lost five people in that domestic  
22 violence altercation. Darryl now realizes the  
23 circumstances of putting his hand on anybody. He  
24 really does. I talked to him about it and now he  
25 understands. We just buried five people on

1 Wednesday -- five -- as a result of domestic violence,  
2 and I would hope that he learn his lesson. I would  
3 hope that he would get himself straight, not only with  
4 the court system, but with God himself. Because that's  
5 what's going to cause him to change. It's nothing else  
6 but -- to make him change, except he change his heart  
7 and allow God to come in.

8           So now because of this, I believe that this  
9 touching -- because every time something happened, he's  
10 in this jail. Every time. When his brother died, he  
11 was in here. When his mother died, he was in here.  
12 Now, five more people die from our Mungin family, and  
13 he was in here.

14           Judge, I honestly believe that this has touched  
15 him where the system couldn't touch him. That's all I  
16 would say, sir.

17           THE COURT: Well, thank you very much for coming  
18 and saying that, and I'm sure he appreciates it, too.

19           MS. MACK: Thank you.

20           THE COURT: Anything else that you'd like to tell  
21 me, Mr. Mungin?

22           THE DEFENDANT: Yes, sir. I would like to say,  
23 first of all, I apologize for being here under these  
24 circumstances. But I ask that you please have leniency  
25 on sentencing me. And, sir, I mean, I come from a

1 struggle, and life where I made a lot of bad decisions  
2 in life. I was in and out of the system. And, again,  
3 I quite -- learned I was a great asset to the community  
4 where I sat and talk to the youth, help Bible studies  
5 or what not; help the elderly. I was in the process  
6 honestly about to open my own business. I mean, I was  
7 being a productive citizen, you know, I just got a  
8 little sidetracked. I got in an argument with my --  
9 with my baby mother, fiancee or whatever, wanting and  
10 hoping that you would please have leniency upon  
11 sentencing me, sir --

12 THE COURT: Well, you know what's the biggest  
13 thing against you Mr. Mungin?

14 THE DEFENDANT: What's that, sir? I -- what's  
15 that?

16 THE COURT: Your record.

17 THE DEFENDANT: I understand.

18 THE COURT: You can't afford to even stub your  
19 toe.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Because you're going to catch the  
22 maximum amount of time if you even stub your toe.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: With that record that you got.  
25 Anything else?

1 MR. LOIGNON: Yes, Your Honor. Just briefly. I  
2 wanted to point out that Mr. Mungin's brother, Lucas  
3 Brown, and his sister, Decolby Brown, are also here to  
4 support him.

5 Also, just to put -- give you a frame of  
6 reference, there was -- the shooting that Ms. Mack was  
7 referring to, the one that happened in that trailer  
8 park in Ravenel.

9 THE COURT: I don't know anything about that.

10 MR. LOIGNON: Well, Mr. Mungin's cousin, who he  
11 grew up with, who was pregnant with twins was -- was  
12 murdered along with his aunt. And he had to learn  
13 about that while he was in jail several weeks ago.

14 He's spent 302 days in jail thus far. Your  
15 Honor, I'm not here to deny -- Mr. Mungin is not  
16 denying that they had a tumultuous relationship and  
17 that there was an argument that took place, but I think  
18 that the State has definitely inflated the accusations  
19 beyond what actually occurred here. Because, I mean,  
20 this is this -- this is -- as I mentioned, these people  
21 all know each other. This is a house that Mr. Mungin  
22 was in and out of all the time.

23 This is a person that -- the victim, Ms. Butler,  
24 is saying that, you know, there was an argument, but it  
25 was not as serious as it was made out to be. And if

1 they were inside the house, and these other people were  
2 in the yard then, you know, they are not even really  
3 eyewitnesses as to what happened.

4 Your Honor, Mr. Mungin has spent nearly a year  
5 in jail already. We believe that based on everything  
6 that we've heard today, that a probationary sentence  
7 would be appropriate and a significant one. I mean, he  
8 deserves to have some significant time hung over his  
9 head. And if he messes up again, he knows what will  
10 happen.

11 Your Honor, Mr. Mungin is just ready to get back  
12 to his family, his family that's grieving right now.  
13 And they just need somebody to be there to support  
14 them. They want him home. So we would just ask for a  
15 probationary sentence, Judge.

16 THE COURT: All right.

17 MR. EVANS: Judge, can I clarify?

18 THE COURT: I've taken all that into consideration  
19 -- anything else you want to say?

20 MR. EVANS: May I make two points of  
21 clarification, Your Honor?

22 THE COURT: Sure.

23 MR. EVANS: Again, the three witnesses from the  
24 State would all testify that they witnessed portions of  
25 the physical assault -- what I would consider neutral

1 witnesses would testify that they witnessed a physical  
2 assault.

3           And regarding the offer, because I think we were  
4 kind of unclear about what the resolution is here  
5 today, he was charged with a burglary first and DV  
6 second, and a failure to stop for a blue light from  
7 this incident. He also had a CDV hand from the same  
8 victim from a prior incident in early 2015. That's the  
9 one that the State is dismissing, and we're also  
10 dismissing the failure to stop charge in consideration  
11 for the plea.

12           THE COURT: Well, of course, that goes into the  
13 plea that he's entered here today as far as it being an  
14 Alford plea, getting the benefit of all those things  
15 and I've taken all of that into consideration and all.

16           All right. The operative one is going to be the  
17 burglary second degree conviction, ten years in the  
18 penitentiary, but that's suspended on the service of  
19 five years with a five year probation to follow that;  
20 five years concurrent on the obtaining goods under  
21 false pretense; and one year on the domestic violence.  
22 All those are concurrent. You get credit for your jail  
23 time toward that. Good luck to you.

24           MR. EVANS: Thank you, Judge.

25           THE COURT: All right.

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(WHEREUPON, the hearing was concluded.)

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END OF TRANSCRIPT

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CERTIFICATE OF REPORTER

I, SHARON D. JONES, CERTIFIED COURT REPORTER, DO  
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND  
COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND  
EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE,  
RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS COURT  
FOR BERKELEY COUNTY ON THE 11TH, 12TH, 13TH, 14TH & 15TH  
OF JULY, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,  
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

2/17/17

***Sharon D. Jones***

---

SHARON D. JONES,  
CERTIFIED COURT REPORTER  
MY COMMISSION EXPIRES 9/22/2024

FORM 5

STATE OF SOUTH CAROLINA )  
County of Charleston )  
Darryl Gerard Mungin )  
Full name and prison number (if any) of Applicant )

2016-CP-10-6560  
IN THE COURT OF COMMON PLEAS

v.

APPLICATION FOR

POST-CONVICTION RELIEF

State of South Carolina )  
Charleston County )

FILED  
2016 DEC -7 PM 1:22  
JULIE M. HARRIS  
CLERK OF COURT

**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 South Carolina Department of Corrections  
Ridgeland Correctional Inst. 5 Correctional Road, Ridgeland SC
2. Name and location of Court which imposed sentence Charleston County 29936  
Courts 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) 2016-GS-10-00620
  - (b) 2016-GS-10-00624

(c) 2016-GS-10-00622

5. The date upon which sentence was imposed and the terms of the sentence:

(a) May 30, 2016

(b) 10 years suspended 5 years PRISON 5 years probation

(c) 302 day Jail time credit

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty

(c) after a plea of nolo contendere

7. Did you appeal from the judgment of conviction or the imposition of sentence?

NO

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. Charleston County courts of General Sessions

ii. South Carolina Courts of Appeal

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

(b) the result in each such Court to which you appealed:

i. ~~denied~~

ii. N/A

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

(c) the date of each such result:

i. N/A

ii. N/A

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

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. \_\_\_\_\_

ii. N/A

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

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) I had no Instruction or Idea of

(b) how to file an appeal

(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) Malicious and vindictive prosecution

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

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Violation of Sentencing guide lines

(b) Coerced into pleading guilty

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

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. \_\_\_\_\_

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

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

iv. \_\_\_\_\_

(b) the name and location of the Court in which each was filed:

i. \_\_\_\_\_

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

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

iv. \_\_\_\_\_

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. \_\_\_\_\_
- 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?

~~First Post Conviction Relief~~ NO

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

(a) which grounds have been presented:

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

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

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

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

- (a) \_\_\_\_\_ NO \_\_\_\_\_
- (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? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (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. Michael R Liagnon  
Charleston County Public defenders
  - ii. Office
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Plea and sentencing
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

Vacated of sentence

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

NO

STATE OF SOUTH CAROLINA )  
County of Charleston )

VERIFICATION

I, Darryl Mungin, 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.

Darryl Mungin  
Darryl Mungin

SWORN to and subscribed before me this 5 day of Dec., 2014.

Virginia Roberson (L.S.)  
Notary Public

My Commission Expires: May 29, 2021

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

I, Darryl Murgin, 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.

Darryl Murgin  
Applicant

SWORN or affirmed to and subscribed before me this  
5 day of Dec., 2016.

Virginia Robinson  
Notary Public

My Commission Expires: May 20, 2021

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) NINTH JUDICIAL CIRCUIT  
 COUNTY OF CHARLESTON )  
 ) CASE NO: 2016-CP-10-6560

DARRYL MUNGIN, )  
 )  
 Applicant, )  
 )  
 vs. )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

**AMENDED APPLICATION FOR  
 POST CONVICTION RELIEF**

2017 NOV 28 AM 8:56  
 JUDGE J. APSTROM  
 CLERK OF COURT  
 FILED

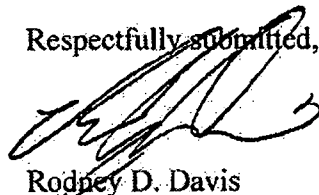
The Applicant, Darryl Mungin, now having the benefit of appointed counsel, alleges the following:

1. Darryl Mungin is detained at Ridgeland Correctional Institution under Inmate Number: 255562.
2. He was convicted and sentenced in Charleston County for Burglary 2<sup>nd</sup> Degree, Violent, Criminal Domestic Violence 2<sup>nd</sup> Degree (CDV 2<sup>nd</sup>), and Obtaining Goods by False Pretenses (P.O.E.) on May 31, 2016 under Indictment Numbers: 2016-GS-10-0620, 0622, & 0624.
3. The Honorable Thomas L. Hughston, Jr. sentenced the Applicant to ten (10) years suspended to the service of five (5) years with five (5) years probation for Burglary 2<sup>nd</sup>, one (1) year for CDV 2<sup>nd</sup>, and five (5) years for P.O.E., to be served concurrently.
4. He was represented by Michael Loignon and Megan Gentry on these charges (Applicant's attorneys).
5. The Applicant's attorneys advised the Applicant to plead guilty on the charges.
6. The Applicant's attorneys attempted to file an appeal but it was dismissed as not timely filed (Appellate Case #: 2016-001636).
7. The Applicant filed an *in forma pauperis* application for post conviction relief on December 7, 2016.

8. The undersigned counsel, Rodney D. Davis, was appointed to represent the Applicant on March 9, 2017.
9. The State filed a Return on or about June 21, 2017.
10. Applicant's attorneys provided ineffective assistance of counsel by advising the Applicant to forego his Constitutional Right to a jury trial and plead guilty.
11. Applicant's attorneys provided ineffective assistance of counsel by promising a sentence if the Applicant entered a guilty plea.
12. Applicant's attorneys provided ineffective assistance of counsel by failing to fully investigate the case prior to the guilty plea.
13. Applicant's attorneys provided ineffective assistance of counsel by failing to meet with the Applicant a sufficient amount to adequately advise the Applicant and prepare for a resolution.
14. Applicant's attorneys provided ineffective assistance of counsel by failing to discuss strategy for a trial including potential defenses.
15. Applicant's attorneys provided ineffective assistance of counsel by failing to withdraw the guilty plea after the Applicant's comments to the Court, the Applicant's prior comments to his attorneys, and the victim's recantation of the facts.
16. Applicant's attorneys provided ineffective assistance of counsel by failing to perfect the appeal of the conviction.

Wherefore, based on this Amended Application, the Applicant requests that a hearing on the merits scheduled.

Respectfully submitted,



Rodney D. Davis  
Attorney for Applicant  
4000 Faber Place Drive, Suite 300  
Charleston, SC 29405  
[Davis@LowcountryLawOffice.com](mailto:Davis@LowcountryLawOffice.com)  
(843) 323-4353

November 27, 2017

STATE OF SOUTH CAROLINA )  
 COUNTY OF CHARLESTON )  
 )  
 )  
 Darryl Jerrard Mungin, #255562, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2016-CP-10-6560

**RETURN**

Respondent (the "State"), making its Return to the application for post-conviction relief filed on December 7, 2016, would respectfully show this Court:

I.

Darryl Jerrard Mungin ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. In February 2016, the Charleston County Grand Jury indicted Applicant for burglary, first degree (2016-GS-10-0620), domestic violence, second degree (2016-GS-10-0622), and obtaining goods by false pretenses, third or subsequent property crime (2016-GS-10-0624). Assistant Public Defender Michael R. Loignon, Esquire, represented Applicant. Assistant Solicitor Andrew Evans, Esquire, prosecuted the case. On May 31, 2016, Applicant pled guilty to the lesser included offense of burglary, second degree and as indicted for domestic violence, second degree and obtaining goods by false pretenses, third or subsequent property offense before the Honorable Thomas L. Hughston, Jr. Judge Hughston sentenced Applicant to imprisonment for concurrent terms of ten years, suspended to service of five years with five years' probation for the burglary charge. Applicant was also sentenced to one year for domestic violence and five years for obtaining goods by false pretenses.

Applicant filed a notice of appeal. The South Carolina Court of Appeals dismissed Applicant's appeal on October 31, 2012, as it was not served upon the State timely. State v. Mungin, Appellate Case No. 2016-001636 (S.C. Ct. App. filed August 12, 2016). The remittitur was returned to the circuit court on August 31, 2016.

## II.

These convictions arise out of two separate incidents. On July 21, 2015, Applicant entered a Money Man Pawn Shop located in Charleston, South Carolina and sold tools he had previously stolen in exchange for \$105. (Tr. p. 6). Applicant had previously stolen the exchanged tools from a residence in Hollywood, South Carolina. (Tr. p. 6). During the sale, Applicant presented the store associate with a South Carolina driver's license. (Tr. p. 6).

On July 27, 2015, Applicant got into a verbal altercation with his live in girlfriend, who was seven months pregnant with his child. (Tr. p. 7). In an effort to end the altercation, Applicant's girlfriend left their residence and escaped to their landlord's house next door. (Tr. p. 7). Applicant followed after her into the neighbor's house where the verbal argument became physical with Applicant grabbing her by her hair and then throwing her onto the ground and dragging her out of the house to continue the assault on the porch. (Tr. pp. 7-8).

## III.

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

1. "Ineffective Assistance of Counsel"
  - a. "Violation of sentencing guidelines"
2. "Malicious and vindictive prosecution"
  - a. "Coerced into pleading guilty"

Attached to this Return and incorporated by reference are the records of the Charleston County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, Applicant's appellate records, and the post-conviction relief application. The State reserves the right to amend this Return upon receipt of any relevant materials.

#### IV.

The State submits Applicant's allegations of ineffective assistance of counsel are without merit. In a post-conviction relief 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, 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, 106 (1985).

The State 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, the State requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Applicant also asserts his plea was involuntary and that he was coerced into pleading guilty. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill, 474 U.S. 52, 56 (1985). Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of

guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases.” *Id.* at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. *Dalton v. State*, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Boykin v. Alabama*, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both.” *Roddy v. State*, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, “[a] guilty plea is a solemn, judicial admission of the truth of the charges” against the applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *Dalton*, at 137–38, 654 S.E.2d at 874 (citing *Blackledge v. Allison*, 431 U.S. 63 (1977)). Therefore, admissions “made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” *Id.* (citing *Crawford v. United States*, 519 F.2d 347 (4th Cir. 1975); *Edmonds v. Lewis*, 546 F.2d 566 (4th Cir. 1976)). “In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing.” *Id.* at 138–39, 654 S.E.2d at 874 (citing *Wolfe v. State*, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

The State submits the record fully supports the knowing and voluntary nature of Applicant’s plea. However, allegations regarding the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the State requests an evidentiary hearing to fully

resolve this issue. See Sharper, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### VI.

Additionally, Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in this post-conviction relief 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)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed 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.

#### VII.

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

[Signature block on following page]

VIII.

WHEREFORE, the State requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel and involuntary guilty plea.

Respectfully submitted,

ALAN WILSON  
Attorney General

ROBERT BOLCHOZ  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

By: *Megan Harrigan Jameson*  
ATTORNEYS FOR RESPONDENT

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


June 21, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2016-CP-10-6560
DARRYL JERRARD MUNGIN,	)	
S.C.D.C. No. 255562,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
<hr/>		

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

**Rodney Davis, Esquire**  
**Lowcountry Law Office**  
**4000 Faber Place Drive, Suite 300**  
**Charleston, SC 29405**

DATED this 21<sup>st</sup> day of June, 2017.

  
 Brianna Arnone, Legal Assistant  
 For Respondent



	I N D E X	PAGE
1		
2	POST-CONVICTION RELIEF HEARING	3
3		
4	<u>WITNESS</u>	
5	<u>DARRYL MUNGIN</u>	
6	DIRECT BY MR. DAVIS	13
7	CROSS BY MR. HUNTER	33
8	REDIRECT BY MR. DAVIS	38
9	<u>MICHAEL LOIGNON</u>	
10	DIRECT BY MR. DAVIS	39
11	CROSS BY MR. HUNTER	44
12	REDIRECT BY MR. DAVIS	50
13		
14		
15	CLOSING ARGUMENT:	
16	BY MR. DAVIS	53
17	BY MR. HUNTER	60
18		
19	CERTIFICATE OF REPORTER	67
20		
21		
22		
23	**NO EXHIBITS MARKED**	
24		
25		

1 (The following proceedings were held  
2 December 5, 2017, Charleston County, South  
3 Carolina, @ 9:33 a.m.)

4 THE COURT: Yes, sir, you are  
5 recognized.

6 MR. HUNTER: May it please the Court,  
7 Your Honor, the first case today is Darryl Mungin  
8 versus State of South Carolina, 2016-CP-10-6560.  
9 Your Honor, he was indicted February 2016 in  
10 Charleston County for First Degree Burglary, Second  
11 Degree Domestic Violence and Obtaining Goods by  
12 False Pretenses.

13 On May 31st, 2016, he pled guilty  
14 before Judge Hughston. He was sentenced to five  
15 years for property crime, one year for domestic  
16 violence, and for First Degree Burglary he pled to  
17 the lesser included of Second Degree Burglary,  
18 sentenced to ten years suspended upon the service  
19 of five years with five years probation to follow.

20 He filed this current action  
21 December 7th, 2016, alleging ineffective assistance  
22 of counsel. He is present today represented by Mr.  
23 Rodney Davis.

24 THE COURT: Mr. Davis, you are  
25 recognized.

1                   MR. DAVIS: Thank you very much, Your  
2 Honor. Judge, may it please the Court, I was  
3 appointed to Mr. Mungin's case after he filed his  
4 application on March 9th of this year. In  
5 preparation for his hearing which we determined on  
6 -- Halloween we had a status conference that was  
7 scheduled then. I have attempted to speak with him  
8 prior to that date and since that date. On one of  
9 those occasions he has indicated he did not want me  
10 to be his attorney any longer, on more than one  
11 occasion the phone calls have become contentious or  
12 been ended.

13                   The communication has been slim to  
14 none. I mentioned to Judge Jefferson at the status  
15 conference on the 31st of October about that issue.  
16 She was going to arrange a conference call to deal  
17 with that issue well ahead of this. In the  
18 meantime I spoke with him and he indicated he was  
19 fine, wanted me to stay on, but communications have  
20 broke down since then.

21                   I am showing him today a draft that I  
22 have of a motion, an order to be relieved that lays  
23 out some of what I am telling you right now. I  
24 have signed it. I have presented it to him. There  
25 is a place for him to sign to request that as he

1 has told me on at least three occasions. It's been  
2 difficult to prepare without my client's input. I  
3 have read his application, read the State's return,  
4 read the transcript, but without fully  
5 understanding what grounds he wishes to go forward  
6 on, I don't believe I can go forward certainly  
7 today. If you are inclined to leave me on the case  
8 I would ask to be moved to January and I will do my  
9 best to come up with arguments.

10 On the other hand, this has been more  
11 than one time Mr. Mungin has indicated to me he  
12 wished me to no longer be his attorney.

13 THE COURT: Mr. Mungin, I'm going to  
14 ask you to stand and raise your right hand so the  
15 clerk can administer the oath.

16 DARRYL MUNGIN

17 having been duly sworn, testifies as follows:

18 THE COURT: Mr. Mungin, how are you  
19 doing today?

20 THE APPLICANT: Okay, sir.

21 THE COURT: Good. Are you under the  
22 influence of any drugs or alcohol here today?

23 THE APPLICANT: No, sir.

24 THE COURT: Are you experiencing any  
25 kind of physical or mental problem that would

1 prevent you from understanding what's going on here  
2 today?

3 THE APPLICANT: No, sir.

4 THE COURT: How far did you go in  
5 school?

6 THE APPLICANT: Eleventh grade.

7 THE COURT: Can you read and write?

8 THE APPLICANT: Yes.

9 THE COURT: Do you understand what we  
10 are doing here today?

11 THE APPLICANT: Yes, sir, somewhat.

12 THE COURT: All right. And I  
13 understand that you entered a plea to a number of  
14 different offenses and you were sentenced to ten  
15 years suspended to a lesser amount. Is that the  
16 first time you have ever been in trouble?

17 THE APPLICANT: No, sir.

18 THE COURT: So you have been around the  
19 legal system, kind of understand what's going on;  
20 is that correct?

21 THE APPLICANT: Yes, sir.

22 THE COURT: All right. You know, one  
23 thing that's beautiful about the United States of  
24 America is that you can be accused of a crime and  
25 be brought before a forum and the way our

1 government is set up we aren't going to allow  
2 people to be -- have their liberty put at stake  
3 without a lawyer. Do you understand that?

4 THE APPLICANT: Yes, sir.

5 THE COURT: And when you -- I assume  
6 that when you entered your plea you probably had a  
7 public defender, didn't you?

8 THE APPLICANT: Yes, sir.

9 THE COURT: All right. And a lot of  
10 times people think that public defenders -- I hear  
11 clients and defendants say all the time they aren't  
12 real lawyers, but they are the ones who do criminal  
13 work all the time. Quite often they have more  
14 expertise than people in the private bar with  
15 regard to criminal matters. Do you understand  
16 that?

17 THE APPLICANT: Yes, sir.

18 THE COURT: All right. And in this  
19 instance the Court also afforded you the  
20 opportunity to bring a civil action to say that  
21 your lawyer didn't do a good job. And that's a  
22 good thing because we don't want people to be  
23 wrongly incarcerated. And in these instances I  
24 assume that you are the one who filled out the  
25 application of post-conviction relief, it was filed

1 with the court and then the court appointed a  
2 lawyer to help with you that?

3 THE APPLICANT: Yes, sir.

4 THE COURT: You don't have to take the  
5 lawyer that the court appoints to you. You have  
6 two different options beside that, one of which is  
7 you could hire your own lawyer. And the other is  
8 you can proceed forward pro se. As a general rule  
9 it is not a good idea to proceed forward pro se.  
10 Obviously in this instance you can't get any more  
11 time, but it involves your previous incarceration.  
12 As a general rule it's not a good idea to proceed  
13 forward without a lawyer. I assume you did not go  
14 to law school?

15 THE APPLICANT: No, sir.

16 THE COURT: You don't understand the  
17 rules of evidence?

18 THE APPLICANT: No, sir, not fully.

19 THE COURT: All right. And I doubt you  
20 have read the whole post-conviction relief statute,  
21 have you?

22 THE APPLICANT: No, sir.

23 THE COURT: So as a general rule you  
24 understand it is not a good idea to proceed forward  
25 without a lawyer. Your options here today are two.

1 You can go forward without a lawyer pro se or you  
2 can allow your appointed counsel to assist you.  
3 Which do you prefer?

4 THE APPLICANT: I have to go forward  
5 with him assisting.

6 THE COURT: I think that's the right  
7 choice to make, but you understand that this issue  
8 had come once before. There was discussion about  
9 having a conference to address any differences that  
10 y'all might have. And you said that wasn't  
11 necessary, the lawyer communicated that to the  
12 Court and now here we are today. We can't allow  
13 your not cooperating to hold up the system. Do you  
14 understand that?

15 THE APPLICANT: Yes, sir.

16 THE COURT: Do you understand we are  
17 going to go forward?

18 THE APPLICANT: Go forward.

19 THE COURT: We are indeed going forward  
20 and I encourage you to talk with your lawyer. He's  
21 read the transcript. He does a lot of these. I'm  
22 sure he can assist you in a very fine fashion. Do  
23 you have any questions of me?

24 THE APPLICANT: They have been  
25 answered.

1 THE COURT: Your lawyer is going to  
2 proceed forward and you can have a seat. Thank  
3 you, sir.

4 Yes, sir. I'm going to ask if you  
5 could sort of delineate each ground that you have  
6 been able to ascertain from his application that we  
7 are going to go forward on here today.

8 MR. DAVIS: Judge, here is what I will  
9 ask of the Court. I understand your ruling. I  
10 respect your ruling. You're right, I have done  
11 these for close to five years now. What I would  
12 ask is Mr. Mungin is here. I believe he's the only  
13 applicant that's in the building. I would ask for  
14 a five-minute recess with him just outside the  
15 courtroom in private.

16 THE COURT: We can certainly do that.  
17 We will stand at ease for five minutes.

18 MR. DAVIS: Thank you very much, Your  
19 Honor.

20 THE COURT: We will start in five  
21 minutes.

22 MR. DAVIS: Thank you, Judge.

23 (A recess transpired.)

24 THE COURT: Mr. Davis, you are  
25 recognized. You may delineate the grounds for

1 post-conviction relief.

2 MR. DAVIS: Thank you, Your Honor. May  
3 it please the Court, Judge, our overall argument is  
4 ineffective assistance of counsel. We would be  
5 focusing on several points though. We will focus  
6 on the fact that we believe his counsel and, Judge,  
7 for the record, he originally was represented by  
8 Meagan Gentry at the public defender's office. But  
9 she was not his attorney at the time of the  
10 conviction.

11 My client has some brief complaints  
12 about her. We also understand that she was not the  
13 attorney at the time of the conviction. But he was  
14 advised to forego his constitutional rights to a  
15 jury trial and plead guilty. I believe that was  
16 ineffective advice. We will argue that he was  
17 advised by his attorney that a specific guilty plea  
18 and sentence would occur. We will argue that his  
19 counsel did not fully investigate the case prior to  
20 the plea. We will argue that there was  
21 insufficient meeting and discussions about the case  
22 prior to the resolution of the case by guilty plea.  
23 Argue that his counsel failed to discuss trial  
24 strategy, including potential defenses that could  
25 have led to him going to trial rather than entering

1 a guilty plea. We are going to argue that the  
2 counsel was ineffective for failing to withdraw the  
3 plea during the victims's recantation during the  
4 guilty plea. If Your Honor will remember the  
5 record, Ms. Butler who was the alleged victim  
6 basically recanted the entire charge against him in  
7 open court during the plea and yet the plea went  
8 forward and counsel did not attempt to withdraw.  
9 We think that was ineffective. And finally there  
10 was a --

11 THE COURT: Say that again.

12 MR. DAVIS: We think that not  
13 withdrawing the plea at the time given the fact  
14 that the alleged victim recanted the elements of  
15 the offense that counsel should not have continued  
16 forward with the plea. And then finally, Your  
17 Honor, an appeal was attempted but was dismissed  
18 for not being filed timely. So that would be  
19 certainly an alternative argument. If you're not  
20 inclined to grant the PRC we would argue that a  
21 belated appeal -- he is entitled to a belated  
22 appeal.

23 THE COURT: Are you saying that he  
24 requested an appeal or it was not perfected?  
25 Which?

1 MR. DAVIS: It was filed and dismissed  
2 as not timely.

3 THE COURT: Who filed the appeal?

4 MR. DAVIS: His counsel, and I have the  
5 notice of appeal here, Judge. I will make it a  
6 part of the record at the appropriate time.

7 THE COURT: All right. You may call  
8 your first witness.

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

11 THE COURT: Please come around. I will  
12 remind you that you are still under oath. Mr.  
13 Mungin, I'm going to ask you to watch your step.  
14 Have a seat in that witness chair, pull real close  
15 to that microphone. I will ask you speak loudly  
16 and clearly and slowly in order that we can hear  
17 everything that you have to say. Let's start with  
18 your full name.

19 THE WITNESS: Darryl Jerrel Mungin.

20 THE COURT: Spell that last name.

21 THE WITNESS: M-U-N-G-I-N.

22 THE COURT: Very good.

23 DIRECT EXAMINATION

24 BY MR. DAVIS:

25 Q. Mr. Mungin, how old are you?

1 A. Thirty-seven.

2 Q. How far did you go in school?

3 A. To the 11th grade.

4 Q. Did you get your diploma or GED?

5 A. No, sir, I was working on it.

6 Q. Now, you have complaints about your  
7 convictions for Burglary in the Second Degree,  
8 Criminal Domestic Violence Second, Obtaining Goods  
9 by False Pretences. Those are the charges you are  
10 complaining about, correct?

11 A. Yes, sir.

12 Q. And who was your attorney at the time  
13 of the conviction?

14 A. At the time of conviction it was Mr.  
15 Michael Loignon.

16 Q. Do you see him here in the courtroom  
17 today?

18 A. As a matter of fact him sitting right  
19 there.

20 Q. Now, prior to him being your attorney  
21 did you have another PD appointed at first?

22 A. Yes, sir.

23 Q. Can you tell the judge who that was?

24 A. Meagan Gentry.

25 Q. And approximately how long was she your

1 attorney?

2 A. I can't remember, but it was like I  
3 want to say about six months, if that, probably a  
4 little bit more.

5 Q. And during those approximately six  
6 months how many times would you say you met with  
7 her?

8 A. I want to say like about three to four  
9 times, if anything, three to four times.

10 Q. And during that time were you  
11 incarcerated or were you out on bond?

12 A. Incarcerated at the county.

13 Q. So this would have been at the county  
14 jail?

15 A. Yes.

16 Q. During these three or four visits and  
17 chats with her would you say that she was focused  
18 on a trial of your charges or a guilty plea to your  
19 charges?

20 A. A guilty plea, certainly a guilty plea.

21 Q. Can you tell the judge briefly what  
22 communications she would have had to you about  
23 pleading guilty rather than going to trial?

24 A. Well, when I first meet her she told me  
25 that you got a good case, that we can stand up and

1 fight for a trial. Then was like she was like if  
2 you are sitting here I can go ahead and get you  
3 time served and you can go home. If I was sitting  
4 in the county a year get time served on all  
5 charges. That was the discussion.

6 Q. During the meetings with her was there  
7 ever a trial strategy discussed?

8 A. No, sir.

9 Q. Was there ever any defenses discussed?

10 A. No, sir.

11 Q. Now, at some point she is no longer  
12 your attorney. Do you recall why?

13 A. Because she failed to file the  
14 paperwork on my behalf such as speedy trial,  
15 evidence investigating, the case communication.

16 Q. At some point she was not your  
17 attorney. Why would she stop being your attorney,  
18 do you remember?

19 A. I got in contact with Mr. Ashley  
20 Pennington writing her up, well, writing her  
21 supervisor about her, what she was doing, the  
22 problems I was having with her.

23 Q. And so at some point she was replaced  
24 with another public defender?

25 A. Yes.

1           Q.    Now, following that -- well, do you  
2 recall the first time Mr. Loignon came to meet with  
3 you?

4           A.    First time Mr. Loignon came to meet  
5 with me we discussed the case briefly. We spoke  
6 somewhat, you know, try to get to know one another  
7 or whatnot, the feel for each other. He told me he  
8 going to go over the case, the paperwork and  
9 whatnot and then when he come again we can discuss  
10 it as to what's going on. As I was discussing it  
11 to him he was like he was going to go review the  
12 paperwork and if what I was telling him was fact in  
13 truth it is time for me to go home.

14          Q.    When he's talking about reviewing the  
15 paperwork did you already have the discovery packet  
16 or Rule 5 packet from Ms. Gentry?

17          A.    Yes.

18          Q.    And so he's new to the case and he's  
19 telling you he has to look at it, right?

20          A.    Yes, sir.

21          Q.    Do you recall when that would have  
22 been?

23          A.    I don't quite remember the exact date.  
24 Was like three years ago, sir, almost two years  
25 ago.

1 Q. Try it this way. How far ahead of when  
2 you went to court was it?

3 A. Roughly about I want to say about five  
4 months, four months, something in that nature.

5 Q. Okay. Following that meeting before  
6 you went to court how many times would you say  
7 y'all met?

8 A. I'd say like from him coming to the  
9 county jail?

10 Q. Any meeting y'all had.

11 A. We met at the county jail like twice,  
12 two or three times.

13 Q. Was there ever any meetings here at the  
14 courthouse?

15 A. Except when I go in front of the plea.

16 Q. So other than when you went in front of  
17 the judge to plea no meetings here at the  
18 courthouse?

19 A. No.

20 Q. So during these -- when we add in the  
21 first meeting, during three or four meetings were  
22 you ever told what the elements of your three  
23 different charges were?

24 A. The elements for like what they charge  
25 me carrying, something of that nature?

1 Q. Well, I will ask that. Were you ever  
2 told what the possible punishments were for the  
3 three charges?

4 A. Yes, sir. Well, not -- he told me that  
5 parts we were looking at life or whatnot on the  
6 charged offenses or whatnot, but we never really  
7 discussed as like our trial strategy or I asked for  
8 him to investigate the case.

9 Q. One thing at a time. Were you told the  
10 different possible sentences you could get for each  
11 three charges?

12 A. When he sent me a letter.

13 Q. Okay.

14 A. That we go to court soon. Well, this  
15 is what the solicitor supposedly had to offer.

16 Q. Okay. Were you told what the elements  
17 of each charge were by your attorney?

18 A. I don't recall that, sir.

19 Q. Did he ever discuss with you what the  
20 State would have to prove to convict you of each  
21 charge?

22 A. No, sir.

23 Q. Were your -- these three or four  
24 meetings mostly focused on trial or guilty plea?

25 A. It was supposed to -- he never even --

1 it was like asking him to investigate, constantly  
2 asking him to investigate. I told him I never  
3 wanted to take a guilty plea. I told him I want a  
4 trial, that's what I was stressing to him, but it  
5 was like stopped communications, stop this and I  
6 just like asked him -- started writing him what's  
7 going on with my case, if you make any  
8 communication with the solicitor or did you  
9 investigate this, this and that, like all  
10 communication had stopped at some point or whatnot.

11 Q. What was his advice about whether you  
12 should go to trial or not?

13 A. Never gave me advice if I should go to  
14 trial. It was almost like plea. The solicitor  
15 trying to give me time. That was his exact words.  
16 He was looking to give me time.

17 Q. So what was his advice about whether  
18 you should plead guilty or not?

19 A. He didn't give me no advice.

20 Q. He didn't tell you whether he thought  
21 you ought to plead guilty or not?

22 A. No, sir, he just became -- he sent me a  
23 paper indicating that -- about this offer that the  
24 solicitor had right here and that he would be going  
25 to court on such and such a date and then when I

1 came down here for the court he came to me saying  
2 that the solicitor put an offer on the table, an  
3 Alford plea, whatever that was. I don't know. I  
4 don't even know.

5 Q. Let's pause and talk about that for a  
6 second. When you were brought to court on May 31st  
7 of 2016 did you know why you were coming to court?

8 A. Yes, on a plea.

9 Q. Had you signed any paperwork before you  
10 got to court?

11 A. No, sir. Signed when I got down here.

12 Q. Did he meet you down in the basement?

13 A. He brought the papers to me. We had no  
14 discussion. I told him that I don't really want --  
15 I never wanted to plea and it's like almost like a  
16 forced hand right here because he waited until like  
17 a tragedy where five people got killed in Ravenel  
18 in my family and y'all just come with this offer to  
19 me and just came to me with this offer. Tell me I  
20 going to court to plea not knowing I was going to  
21 trial within another month or so that -- well,  
22 after I talked to you and saw what was going on,  
23 you know, a trial date was already scheduled.

24 Q. Let's break down a couple things there,  
25 okay? Prior to arriving to court on the day of

1 your plea had you ever heard the phrase Alford  
2 plea?

3 A. Never.

4 Q. How much discussion did you have about  
5 it before you came in the courtroom?

6 A. I would say about two minutes worth, if  
7 that.

8 Q. Can you tell Judge Nettles what you  
9 understand an Alford plea to be?

10 A. An Alford plea is meaning I am innocent  
11 and I'm being just saying like I'm tired like of  
12 sitting or I'm just ready to get it behind me and,  
13 you know, due to the fact, you know, I'm just  
14 innocent. That's all I know, I am innocent. I  
15 wanted to get this behind me. He never got into no  
16 details on it.

17 Q. How long were you given to make a  
18 decision whether to sign the sheets that you were  
19 going to plead guilty under Alford or not? How  
20 long did you have?

21 A. Well, I would say about 30 seconds, if  
22 that, but he was like he got to go and to see if  
23 the judge going to accept the Alford plea or  
24 whatnot first or whatnot, but everything else  
25 seemed like already been lined up, the sentencing

1 sheet was already arranged, but nothing -- probably  
2 about 30 seconds, sir.

3 Q. And so when he was presenting papers to  
4 sign is he advising you to sign them or not sign  
5 them?

6 A. I mean he tell me to sign this I can go  
7 forward today in front of the judge and, you know,  
8 the judge can make the decision or whatnot, but he  
9 wasn't really advising me nothing because we got in  
10 a little dispute as to the situation as what was  
11 going on and what we done discussed. I told him I  
12 went to trial and everything of that nature.

13 Q. What, if anything, was promised to you  
14 if you went forward on this Alford plea?

15 A. What if?

16 Q. What, if anything, was promised to you  
17 by your attorney if you went forward on this Alford  
18 guilty plea?

19 A. Well, the promise that he made to me  
20 when I first spoke with him, he told me whatever I  
21 was telling was fact in truth about my case it is  
22 time for me to go home. I am trying to figure out  
23 why I am sitting in prison doing ten years.

24 Q. At the time you were signing the sheets  
25 was there any promise made what was going to happen

1 to you on sentencing?

2 A. No, sir. He said he was going to try  
3 to go ask for probation and try to get me probation  
4 or whatnot, but no.

5 Q. In that 30 seconds to make this  
6 decision after the two-minute discussion about  
7 Alford were you -- how did you -- were you calm?  
8 Were you feeling pressured?

9 A. Pressured.

10 Q. Independent of what was going on here  
11 at the courthouse talking with your attorney, you  
12 mentioned a second ago, I think the judge should  
13 hear about it, can you tell the judge briefly what  
14 had happened, the family tragedy that happened just  
15 before the decision?

16 A. Well, I had five -- my aunt and well --  
17 five family members of mine were murdered in the  
18 trailer park in Ravenel off of 17. They got  
19 killed. It was a domestic dispute or whatnot and  
20 just happened like probably a week prior, a week  
21 prior. All of a sudden the plea came about. I was  
22 in the courtroom the next week taking this offer  
23 hoping I would get probation, go home with my  
24 family or whatnot prior to that situation.

25 Q. I'm going to go back to the meetings

1 that you had before being in the courthouse, okay?

2 A. Yes.

3 Q. Were there any discussions with your  
4 attorney about potential defenses to these charges?

5 A. No, sir. No, sir.

6 Q. I am not sure if the judge asked you  
7 this at the beginning, but had you ever gone  
8 through a jury trial on any charge prior?

9 A. No, sir.

10 Q. Was there any discussion by your  
11 attorney about how that process happens in South  
12 Carolina?

13 A. No, sir.

14 Q. In reviewing the discovery you were  
15 aware that basically there were three witnesses  
16 other than you that the State was relying on or  
17 talked to; is that fair?

18 A. Yes.

19 Q. Did you have any discussion with your  
20 attorney about those three witnesses and how they  
21 might testify?

22 A. Yes, sir.

23 Q. Can you tell the judge about those  
24 conversations?

25 A. I asked my attorney, I was like because

1 one of the witnesses supposed to be a witness never  
2 give a written statement, never gave any statement  
3 of that sort. I was like well, I should have the  
4 right to face my accusers and be able to  
5 cross-examine them. Maybe I should go to trial.  
6 He was like yeah. I said how can I cross-examine  
7 my accusers when I don't know what they are going  
8 to say or anything of that nature. I also asked  
9 for a statement, but she refused to give a  
10 statement. So how is it that this witness can come  
11 to trial and take the stand and testify under oath?  
12 And he was like she can do it, she can do that  
13 under oath. I was like so I can't prepare myself  
14 to cross-examine her because I don't know what to  
15 expect or what she already done said or basically  
16 she can get on the stand and just say anything. So  
17 I mean that was deal with one of the key witnesses.

18 Q. Just to make it clear for the judge, is  
19 that Ms. Jones you are talking about?

20 A. Ms. Jones?

21 Q. There was a Ms. Butler, correct? There  
22 was the landlord?

23 A. Ms. Rivers.

24 Q. Ms. Rivers and then the third witness  
25 was her -- was it Ms. Rivers' boyfriend, do you

1 recall?

2 A. They had Oliver Nelson as being a  
3 witness, but Oliver Nelson is in no way involved in  
4 this case period. He was involved in an accident  
5 down the road, down the street.

6 Q. So you told your attorney any testimony  
7 that he might have about what you are charged with,  
8 he couldn't have seen it?

9 A. I don't understand.

10 Q. You told your attorney any testimony he  
11 would have had about what you are charged with that  
12 he couldn't have seen it?

13 A. Yes, sir.

14 Q. Do you know if your attorney ever spoke  
15 with Mr. Nelson directly?

16 A. He never spoke with him.

17 Q. A moment ago you were complaining about  
18 lack of being able to review a statement by a  
19 female. That was Ms. Rivers, correct?

20 A. Yes, sir.

21 Q. Do you know whether your attorney ever  
22 spoke to Ms. Rivers?

23 A. No, sir, never.

24 Q. Finally there was Ms. Butler, correct?

25 A. Yes, sir.

1           Q.    Is it fair that she gave the  
2 information to the police -- that part of the  
3 information to police and got you originally  
4 charged; is that fair?

5           A.    Yes.

6           Q.    But following your arrest what was her  
7 position about what happened?

8           A.    I mean the whole situation was she was  
9 like seven months pregnant. She was dealing with  
10 bipolar depression or whatnot and, you know, I try  
11 to understand to be more on the lenient side where  
12 any time she gets upset I leave. You know what I  
13 mean? But whenever I leave it's like you want to  
14 control so it's a sense of control, but, you know,  
15 you are dealing with pregnancy and all of these  
16 other stuff that she got on with mental issues, I  
17 just tried to, you know.

18          Q.    Did her story change from what she told  
19 the police originally?

20          A.    Oh, yes, sir.

21          Q.    And the stuff you just mentioned about  
22 her physical and emotional state, did you share  
23 that with your attorney?

24          A.    Yes, sir.

25          Q.    Do you know whether he ever spoke with

1 Ms. Butler?

2 A. He sent an investigator out there and  
3 Ms. Butler made numerous attempts to contact him.  
4 He spoke with her if I ain't mistaken.

5 Q. She spoke in court?

6 A. Yes, sir.

7 Q. And were you surprised by what she said  
8 to Judge Hughston or did you expect to hear what  
9 she said?

10 A. I expected to hear because I mean.

11 Q. So prior to the plea you knew that what  
12 she told Judge Hughston was her current statement;  
13 is that fair?

14 A. What do you mean by that, sir?

15 Q. I'll ask you a different way. Before  
16 she spoke at the guilty plea you knew if she was  
17 given a chance to speak at the guilty plea that's  
18 what she was going to say? It didn't surprise you,  
19 did it?

20 A. Well, no, I mean I didn't know that she  
21 was going to come forth and tell the truth or  
22 whatnot, but I mean she was trying to get this  
23 resolved before it even went this far as far as  
24 trying to talk to the solicitor and making contact  
25 with the attorneys just trying to get the matter

1 resolved.

2 Q. Okay.

3 A. But --

4 Q. Did you have any discussions with your  
5 attorney that's not on the record in the courtroom?  
6 Did you talk with him after she told Judge  
7 Hughston, recanted, changed her story? Did you  
8 have any discussion with your attorney after she  
9 spoke?

10 A. No, sir.

11 Q. Just the plea continued on?

12 A. Yes, the plea went on.

13 Q. Was there any discussion about now that  
14 she has spoken and recanted everything whether you  
15 should stop the plea or not? Was there any  
16 discussion about that?

17 A. No, sir.

18 Q. At any time did he tell you that until  
19 the plea was completed that you could withdraw your  
20 plea?

21 A. No, sir.

22 Q. Just one moment. Mr. Mungin, I will  
23 end with this. Given the nature of our  
24 communication over the past several months, I have  
25 attempted to relay to the judge any complaints you

1 have about what led up to the plea and the plea,  
2 how it was handled by your attorney. Are there any  
3 other complaints you have about your attorney as it  
4 relates to this guilty plea you would like to tell  
5 Judge Nettles about?

6 A. Seemed like just he was -- just the  
7 solicitor the whole time, I mean everything was  
8 like what I was showing him was fact and true  
9 showing him I was innocent as to what I am being  
10 accused of. It is like okay, well, I see, but by  
11 the time situation unfolds it's like the solicitor  
12 wants this right here, just basically want -- all  
13 they was stressing the whole time like trial,  
14 trial, trial, trial and I never know how I end up  
15 in the courtroom in front of a plea judge in the  
16 first place when I was asking him numerous times  
17 please investigate, please investigate this case.  
18 I need you to just go out there like from the case  
19 where not the grand jury, it's the preliminary  
20 hearing, from the time of the preliminary hearing  
21 it was showing that I was innocent. I brought to  
22 the attorney's attention, I brought to the  
23 attention the transcripts I received. I told him  
24 about the victim coming to you indicating this  
25 never occurred and all of this whatnot never

1 happened. It's like they just was on the path just  
2 for conviction. Just conviction.

3 And I felt as if like if he is going  
4 with their side how am I to go to trial? I can't.  
5 I am looking at him to stand up for me and to seek  
6 justice of the law and make sure things go right.  
7 I am seeing you folding. I don't know what to do.  
8 I'm not a scholar in law. I don't study law.  
9 Common sense all I got. I am looking at him like  
10 at the point when it was brought to the attention  
11 where if you look at the transcripts of the guilty  
12 plea where the judge indicated, you know, that how  
13 would you plea and if wanted a trial and I told him  
14 yes, sir. And he never stopped it. And he just  
15 let it going forth with it like he was like --  
16 well, my attorney is a little bit confused here, my  
17 client is a little bit confused here. Let me, you  
18 know, Your Honor, I don't know what to say. But it  
19 wasn't right, sir. I mean he wasn't doing right on  
20 my behalf, sir.

21 Q. Just a couple more questions, Mr.  
22 Mungin. What, if anything, had you been told or  
23 seen to believe that your attorney was prepared to  
24 go to trial if you had asked for a trial? What had  
25 you been told or what had you seen, if anything,

1 from your attorney that he was prepared if you had  
2 asked for a trial?

3 A. Nothing. You mean what he would have  
4 presented or what showed me that showed the effort  
5 that I would want to go to trial with him? That's  
6 what you're trying to say.

7 Q. If you had asked him to go to trial do  
8 you think he was prepared to do that?

9 A. Yes, with everything that we had, yes,  
10 sir.

11 MR. DAVIS: Judge, the other matters  
12 are in the record. I think that's all the  
13 questions I have for Mr. Mungin.

14 THE COURT: Cross-examination.

15 CROSS-EXAMINATION

16 BY MR. HUNTER:

17 Q. Just a few things. Do you remember  
18 what went on during that plea hearing? Do you  
19 remember I guess that plea hearing?

20 A. Somewhat. Not quite everything.

21 Q. Okay. You told the judge that you  
22 didn't want a jury trial, correct?

23 A. You say I told him I didn't? Well, he  
24 was reading the caption at one point. He asked me  
25 numerous times like if I want a trial or not, you

1 know, however they do the trial thing, not trial by  
2 the plea arrangement. I indicated I was the thing  
3 with the plea because they had the Alford or  
4 whatnot to see if we were going to accept it. But  
5 as far as you mentioned that I wanted a jury trial.

6 Q. Well, sorry. You told the judge you  
7 didn't want a trial. Do you remember that? The  
8 judge asked you do you want a jury trial on any of  
9 these charges and you said no, no, sir. Do you  
10 recall that? Your Honor, that's page 4 of the  
11 transcript.

12 MR. DAVIS: Your Honor, I don't believe  
13 Mr. Mungin answered. If the State would like to  
14 refresh his memory.

15 MR. HUNTER: May I approach, Your  
16 Honor?

17 THE COURT: Yes.

18 BY MR. HUNTER:

19 Q. This is page 4 starting at line 20  
20 through 24 down there. Do you recall that taking  
21 place?

22 A. Yes.

23 Q. So you do recall that?

24 A. Yes, sir.

25 Q. So you never stopped the judge at any

1 point and told him I don't want a plea, I would  
2 rather go to trial? You never stopped the judge  
3 during that plea hearing, correct?

4 A. Sir, I mean, I don't know in and out of  
5 a plea hearing or whatnot. I'm not a scholar of  
6 law. But when we read page 5 I told you, I said  
7 yes, sir, I wanted a trial. That's when my lawyer  
8 should have stopped because he saw I was in a state  
9 of confusion and he should have stepped up and told  
10 the judge like withdraw the plea and we would like  
11 to have a trial.

12 Q. The judge asked you if you were guilty  
13 and you said you were guilty, correct?

14 A. Yes, sir, I did.

15 Q. He also asked you if any promises were  
16 made about sentencing and you said no; do you  
17 remember that?

18 A. Yes, sir.

19 Q. And as far as I guess your discussions  
20 with both counsel, did you all go over your version  
21 of facts or version of events?

22 A. No, sir.

23 Q. What did happen in those discussions  
24 then?

25 A. Talking about prior to me coming to the

1 plea?

2 Q. Yes.

3 A. I mean I just walked into the booth to  
4 see the attorney. He laid out on the table like  
5 this is what the solicitor is offering right here.  
6 This is the sentencing sheet. You can sign it.  
7 But this was going on under the Alford plea.  
8 Alford versus North Carolina or whatnot. I was  
9 like what is the Alford plea trying to ask him what  
10 was going on. I guess that was an intern who was  
11 with him. Someone else with him so we trying to  
12 discuss the situation trying to understand, but it  
13 was so brief like basically you are innocent, you  
14 are just saying that you're tired, that you just  
15 ready to get this over with and dealt with.

16 Q. He explained to you that you would be  
17 pleading guilty to a crime, correct?

18 A. Yes, sir.

19 Q. He told you -- I guess he was  
20 explaining to you that Alford meant you were  
21 maintaining your innocence but still pleading  
22 guilty; is that what you are saying?

23 A. Not quite in that detail, but yes, sir.

24 Q. Okay. So you knew what sentences you  
25 were facing on these charges, correct?

1           A.    Talking about the charges?

2           Q.    Right.  The potential sentence that you  
3 could receive or the sentencing range you could  
4 receive?

5           A.    Yes, sir.  Yes, sir.

6           Q.    Okay.  Just to go over, you said you  
7 met I guess two to three times with Mr. Loignon; is  
8 that correct?

9           A.    Um-hmm.

10          Q.    And did you all ever talk on the phone  
11 or was it just face-to-face meetings?

12          A.    Face to face and then every now and  
13 then probably over the telephone but was like, you  
14 know, when you receive some paperwork or whatnot or  
15 have you received this letter.  It was never like  
16 nothing to discuss.

17          Q.    You never told the judge you wanted to  
18 withdraw your plea; is that correct?

19          A.    No.

20          Q.    Did you ever tell your attorney that  
21 you wanted to withdraw the plea?

22          A.    I told him when he -- see, I didn't  
23 catch when the judge told me -- I told the judge I  
24 wanted a trial, but things was going on so I was  
25 like trying to get my attorney attention trying to

1 see what was going on, but he stepped away from me  
2 in the courtroom and like whispered to see what was  
3 going on and he just continued to proceed on.

4 MR. HUNTER: That's all. Thank you,  
5 sir.

6 THE COURT: Before you do that, I want  
7 to take a look at something in the transcript.  
8 Bear with me.

9 MR. DAVIS: Yes, sir.

10 (Brief pause.)

11 THE COURT: Yes, sir. Redirect.

12 REDIRECT EXAMINATION

13 BY MR. DAVIS:

14 Q. Couple of questions for you. I don't  
15 know if I made this clear on direct. But the  
16 attorney general asked you a couple of times  
17 whether you asked to stop the plea. Did you know  
18 you could do that?

19 A. No, sir.

20 Q. Given everything that you complained  
21 about today to Judge Nettles, things that you  
22 realize now, if you were back then making the  
23 decision on May 31st, 2016, given all the points  
24 you have made, would you have pled guilty or would  
25 you have pled not guilty and asked for a jury

1 trial?

2 A. I would have asked for a jury trial.

3 MR. DAVIS: Thank you. No other  
4 questions.

5 THE COURT: You may step down. Thank  
6 you, sir.

7 MR. DAVIS: Your Honor, we will call  
8 Michael Loignon.

9 THE COURT: Please come forward.

10 MICHAEL LOIGNON

11 having been duly sworn, testifies as follows:

12 THE CLERK: Please state your full name  
13 and spell your last name for the record.

14 THE WITNESS: Michael Ryan Loignon,  
15 L-O-I-G-N-O-N.

16 THE COURT: Mr. Davis, you are  
17 recognized.

18 DIRECT EXAMINATION

19 BY MR. DAVIS:

20 Q. Thank you, Your Honor. A few major  
21 points I want to go over with you. You had spoken  
22 with Ms. Butler, one of the witnesses, one of the  
23 accusers in this case, prior to the guilty plea?

24 A. Yes.

25 Q. Did you speak with her directly or in

1 addition -- did you speak with her in addition to  
2 an investigator from your office speaking with her?

3 A. Yes.

4 Q. And was a written statement provided or  
5 just conversation with her?

6 A. A written statement was provided.

7 Q. And have you reviewed the transcript of  
8 the guilty plea before the hearing today? Have you  
9 had a chance to do that?

10 A. Yes.

11 Q. Did her statement to your office mirror  
12 what she provided to Judge Hughston on May 31st,  
13 2016?

14 A. No.

15 Q. Was there a recantation prior to the  
16 guilty plea?

17 A. Not necessarily in that detail, no.

18 Q. Not in the detail provided to Judge  
19 Hughston. But there certainly was a change in  
20 information provided to law enforcement originally;  
21 is that fair?

22 A. Yes.

23 THE COURT: So the statement was  
24 inculpatory, the statement that you received, that  
25 was a written statement of Ms. Butler; is that

1 correct?

2 THE WITNESS: Yes, sir.

3 THE COURT: Okay. And what she said in  
4 that written statement was inculpatory; is that  
5 correct?

6 THE WITNESS: No, sir. It just did not  
7 -- she didn't completely recant the details of the  
8 incident. She basically said she didn't want Mr.  
9 Mungin to get in trouble and that the incident  
10 didn't really happen the way that she said it  
11 happened, but she didn't go into the detail about  
12 what actually did happen which she did in front of  
13 Judge Hughston.

14 BY MR. DAVIS:

15 Q. You were aware the State was relying on  
16 two other witnesses for these accusations as well,  
17 right?

18 A. Yes.

19 Q. Did you or any of your staff talk to  
20 either one of those witnesses?

21 A. No.

22 Q. It's accurate that Mr. Mungin refuted  
23 the entirety of the accusations; is that fair?

24 A. I believe as far as the domestic  
25 violence portion, yes he did, which would most

1 likely have negated the burglary charge if the jury  
2 were to find that he did not have intent to commit  
3 a crime by going into his landlord's house.

4 Q. Is it accurate that pleading under  
5 Alford was discussed for the first time at the  
6 courthouse the day of the plea?

7 A. That I can't remember. I know I  
8 videoed with him about the plea offer about four  
9 days prior to the court date. I can't remember if  
10 Alford was discussed then. It was my understanding  
11 that Mr. Mungin was prepared to reject the offer  
12 and that was my plan when he came to court that  
13 day. But Mr. Mungin told me that he wanted to then  
14 accept the offer when I met with him down in  
15 lockup. So most likely that would have been the  
16 time when I said well, from what you're telling me  
17 you are not guilty so I can't advise you to plead  
18 guilty. We can go to trial or here is another  
19 option if you really want to get this done today.

20 Q. Just so Judge Nettles understands, you  
21 mentioned this a second ago. You think you videoed  
22 with him before the guilty plea. Public defender's  
23 office has video access to inmates at the jail to  
24 speak with them privately by that means, correct?

25 A. Yes.

1 Q. That's what you meant by that?

2 A. Yes.

3 Q. Then you just hit on the fact that  
4 isn't it true Mr. Mungin throughout your  
5 representation indicated -- he wished a trial,  
6 indicated to you that he was not pleading guilty  
7 and indicated to you he was innocent of these  
8 charges?

9 A. At what point are you asking me?

10 Q. During your representation. I mean you  
11 just testified that was your understanding he was  
12 not going to plead guilty?

13 A. That day, but I mean Mr. Mungin changed  
14 his mind every day. It was one day it was file a  
15 speedy trial motion, the next day it's I want you  
16 to get me a better offer. The next day it's do  
17 this, get a statement from the victim. He was kind  
18 of -- he would change his mind every day how he  
19 wanted me to proceed with his case and I have notes  
20 to that in my file to refresh my memory about that.

21 Q. To your recollection were there any  
22 discussions with Mr. Mungin privately during the  
23 plea that would not be reflected in the plea  
24 transcript?

25 A. Not to my recollection.

1           Q.    One area that I want to focus on is a  
2 -- you did file a notice of intent to appeal,  
3 correct?

4           A.    Correct.

5           Q.    Were you aware -- did you receive the  
6 order from the Court of Appeals dismissing that  
7 appeal?

8           A.    Yes.

9           Q.    Judge, I believe both the remittitur of  
10 that order and the notice on proof of service are  
11 part of the record. Just a moment, Your Honor.

12                   (Attorney confers with client.)

13                   Thank you, Your Honor. No other  
14 questions.

15                                   CROSS-EXAMINATION

16           BY MR. HUNTER:

17           Q.    May it please the Court. So let's just  
18 go over the appeal. Can you explain I guess the  
19 timeline what happened surrounding the end of his  
20 plea to the filing of the notice of appeal?

21           A.    Sure. Mr. Mungin wasn't happy with the  
22 sentencing that he received. He asked me to -- I  
23 told him that we could file a motion to reconsider  
24 so he asked me to do that. I filed that motion to  
25 reconsider on June the 8th of 2016. Then I guess

1 it was almost a month and-a-half later that Judge  
2 Hughston signed the order denying that motion to  
3 reconsider. I was actually out of the office and  
4 protected during that period while I was attending  
5 the national criminal defense trial college. When  
6 I returned I had the order in the mail and I  
7 immediately filed the appeal and then obviously it  
8 was denied as being untimely.

9 Q. So no one else in your office would  
10 have been able to know that you had the order in  
11 your mail; is that correct?

12 A. No. Nobody would have seen it.

13 Q. Okay. And as far as the beginning of  
14 your representation, when did you take over the  
15 case from Ms. Gentry?

16 A. I think it was in March of 2016.

17 Q. How many times did you say you met with  
18 him prior to his plea?

19 A. Maybe about four or five.

20 Q. Those were in person meetings?

21 A. No. It was either video, video visit  
22 or in person.

23 Q. What did y'all discuss?

24 A. I always discuss the charges first,  
25 what they're charged with, what the potential

1 penalties are, and then generally the details, the  
2 facts of the case and then as we progress further  
3 into representation then we talk about potential  
4 resolution of the case, whether it be a plea or a  
5 trial.

6 Q. During those meetings did he give you  
7 his version of events?

8 A. He did.

9 Q. Had you already received discovery at  
10 this point?

11 A. Yes.

12 Q. Did you guys discuss I guess if you  
13 went to trial what trial strategy you would pursue?

14 A. Yes.

15 Q. What was that trial strategy?

16 A. We talked about several different  
17 defenses. I mean we probably talked -- I don't  
18 recall specifically, but I know that Mr. Mungin, he  
19 certainly indicated that on one day that he wanted  
20 a trial. We would talk extensively about what  
21 witnesses would say when they came to trial, the  
22 defense that we may have would be this event didn't  
23 actually happen, and that the witnesses at the time  
24 were misperceiving the situation. We likely  
25 discussed other defenses, but I can't remember at

1 this point.

2 Q. And I believe you testified earlier  
3 that you went over the witnesses that the State  
4 would produce at trial; is that correct?

5 A. Yes.

6 Q. And you had some sort of communication  
7 with the victim in this case?

8 A. Yes.

9 Q. And the two others, I believe the  
10 landlord and Mr. Nelson, did you ever investigate  
11 who they were and how they tied into this?

12 A. No. We just were never able to get  
13 ahold of them. I know my investigator went out  
14 there to the house I think more than once from my  
15 recollection and we could never get ahold them. We  
16 didn't have their contact information.

17 Q. But you sent your investigator out to  
18 the physical location?

19 A. Yes, because the victim -- the alleged  
20 victim and the landlord lived right next to each  
21 other.

22 Q. So you saw them, but were unsuccessful

23 --

24 A. Correct.

25 Q. If you had proceeded to trial do you

1 feel like you were ready for trial?

2 A. Yes.

3 Q. And I guess let's go back to right  
4 before he pled guilty. I think you testified you  
5 were under the impression that he was going to  
6 reject the plea that day; is that correct?

7 A. Correct.

8 Q. And when did you first realize that  
9 that's not what was going to happen?

10 A. When I met with him in lockup  
11 downstairs before the plea.

12 Q. And I believe you said that he wanted  
13 to plead, but also said he wasn't guilty?

14 A. Correct. From what we had talked about  
15 on numerous occasions, I mean his story hadn't  
16 really changed too much. So I advised him that  
17 from what you have told me I can't advise you to  
18 plead guilty, but I do believe that based on the  
19 allegations that there's -- that a jury trial could  
20 find you guilty. So if you believe that, you  
21 believe a jury could find you guilty then perhaps  
22 you should consider pleading under Alford if that's  
23 what you want to do.

24 Q. So it's fair to say that's the first  
25 time you discussed what an Alford plea was with

1 him?

2 A. It's most likely the first time. I  
3 couldn't say for sure because like I said, I did  
4 video him a few days before, but I think during the  
5 video conference he must have indicated that he was  
6 planning to reject the plea.

7 Q. And what was the exact plea offer from  
8 the State?

9 A. It was to reduce the Burglary First  
10 Degree to a Burglary Second nonviolent, plea  
11 straight up to the Domestic Violence Second and  
12 Obtaining Goods by False Pretenses property crime  
13 enhancement and then to dismiss two other charges,  
14 I believe CDV and I think there was a failure to  
15 stop. He may have pled to that one, but I can't  
16 remember.

17 Q. And just to go over one more thing, in  
18 your discussions did you explain to him his  
19 constitutional rights, his jury trial rights?

20 A. Of course. I do that with every  
21 client.

22 Q. Okay. So during this plea hearing did  
23 he indicate to you that he didn't want to go  
24 forward with that plea once it started?

25 A. No.

1 Q. Do you feel like you should have I  
2 guess asked the Court to withdraw the plea once you  
3 heard from the victim?

4 A. No.

5 Q. What exactly did the victim say, if you  
6 recall?

7 A. She said that they were having an  
8 argument. She went next door to the landlord's  
9 house. Darryl followed after her. They were still  
10 arguing. And then she fell over a table I think.

11 Q. And I believe you testified earlier you  
12 believe that under the facts the State would have  
13 presented that he would have been found guilty?

14 A. I did.

15 MR. HUNTER: That's all I have. Thank  
16 you, sir.

17 THE COURT: Any redirect?

18 MR. DAVIS: Yes, sir.

19 REDIRECT EXAMINATION

20 BY MR. DAVIS:

21 Q. I want to focus on some filings right  
22 here just to get some dates cleared up. There's a  
23 speedy trial motion filed on May 9th of 2016. Did  
24 you file that or was that Ms. Gentry?

25 A. I have to look back at my file. If

1 it's in May of 2016 then I would assume that it's  
2 me.

3 Q. Do you recall that prior to that Mr.  
4 Mungin had filed a speedy trial motion on his own  
5 October 21st, 2015?

6 A. I did not know that.

7 Q. Let's go back just to get some dates  
8 locked in for Judge Nettles. There was a motion to  
9 reconsider that you filed with Judge Hughston,  
10 correct?

11 A. Yes, sir.

12 Q. There was not a hearing on that, was  
13 there?

14 A. No.

15 Q. And then the order that he denied to  
16 reconsider by written order, do you recall the date  
17 of that being July 19th of 2016? If you said that  
18 I apologize. Was that the date?

19 A. Yes.

20 Q. And your notice of appeal is filed  
21 August 4th, 2016?

22 A. Correct.

23 Q. Did you -- and the Court of Appeals  
24 dismissed it as being untimely. Did you ever  
25 provide them with Judge Hughston's order to show

1 that it was within the time frame? I apologize. I  
2 apologize. It was not within the time frame is  
3 what you testified. That was because you were out  
4 of the office?

5 A. Right.

6 Q. Did you ever file a motion for a  
7 belated appeal based on what you testified today  
8 that you did not have the order until a much later  
9 date?

10 A. No, I did not.

11 MR. DAVIS: Thank you. No other  
12 questions.

13 THE COURT: Do you feel the appeal was  
14 meritorious?

15 THE WITNESS: No, sir, and I stated  
16 that in the appeal.

17 THE COURT: Okay. Did Ms. Butler say  
18 in her rendition of the facts that -- did she  
19 describe what transpired as an altercation or do  
20 you remember?

21 THE WITNESS: I don't recall, sir. I  
22 know she said they were arguing. I don't know if  
23 she said the word altercation.

24 THE COURT: Any further questions?

25 MR. HUNTER: No, Your Honor.

1 MR. DAVIS: Just a moment, Your Honor.

2 (Attorney confers with client.)

3 MR. DAVIS: No other questions, Your  
4 Honor.

5 THE COURT: You may step down. Any  
6 other witnesses by the applicant?

7 MR. DAVIS: No.

8 THE COURT: Anything from the State?

9 MR. HUNTER: No, Your Honor.

10 MR. DAVIS: Your Honor, if I can look  
11 at one thing before I summarize.

12 (Brief pause.)

13 MR. DAVIS: Your Honor, may it please  
14 the Court, again, we will -- we argue that the  
15 guilty plea was a result of ineffective assistance  
16 of counsel. We know we have a burden to prove  
17 ineffective assistance and the outcome would have  
18 been different. I will cut to the end. Mr. Mungin  
19 himself testified based on what was presented to  
20 you that he would have chosen to not plead guilty  
21 had he had effective assistance of counsel at the  
22 time. And so that is something that's only in the  
23 client's head and mind -- or heart and mind, only  
24 he can know what he would have done had he had  
25 effective assistance. He has testified under oath

1 that he would have forgone this guilty plea and  
2 moved forward on the trial to that.

3 Now, where is the blame in that  
4 decision? We would argue the blame for that  
5 decision is based upon the performance of his  
6 attorney. Without going over the entirety of our  
7 complaint again, I would like to point out a couple  
8 things, Your Honor. It is undisputed that he on  
9 more than one occasion spoke to the attorney and in  
10 filings was asking for his speedy trial. It is not  
11 in dispute that he fully doesn't understand what an  
12 Alford plea is. It is not in dispute that -- if  
13 you will note while it is not required, on the  
14 sentencing sheet you have there's no indication  
15 that it was an Alford plea. If you'll note in the  
16 record as the plea began Judge Hughston was  
17 treating it as a straight guilty plea, it's not  
18 until into it briefly Mr. Loignon corrects Judge  
19 Hughston and said we got to go under Alford on this  
20 plea. This was a rushed decision. And a very  
21 serious decision and emotional decision. You have  
22 heard not only what was going on in his head about  
23 his attorney's performance and lack of preparation,  
24 you also heard that the extra pressure of the  
25 family tragedy that happened just before this.

1                   With all those things considered this  
2 was an unusual guilty plea. Again, it begins as a  
3 straight guilty plea, but is changed to an Alford  
4 in the midst of the plea. It is a unique guilty  
5 plea because when one of the accusers is called  
6 upon you can read the entirety of her colloquy with  
7 the Court. She in great detail, more detail than  
8 previously provided to Mr. Mungin's attorney in  
9 detail recants the accusations.

10                   At that point we would argue that it is  
11 incumbent on the attorney to step in, to pause to  
12 ask, he has now received a recantation of one of  
13 the three major witnesses, in fact, we would argue  
14 the most important witness has recanted and instead  
15 of pausing to discuss with Mr. Mungin do you really  
16 want to do this plea or do you want a trial now,  
17 that's what her testimony is going to be or would  
18 you at least like to pause and think about whether  
19 you want to go forward.

20                   Mr. Mungin didn't know he could have  
21 stopped the plea until the judge accepted it. But  
22 an attorney does. And when that recantation comes  
23 out in great detail, it's incumbent on the attorney  
24 at that point to pause it. We can even show in the  
25 record, I did not ask Mr. Mungin about this

1 directly, the attorney general asked him about  
2 points where he told the attorney or told Judge  
3 Hughston he was pleading guilty, he was guilty, he  
4 did not want a trial. But I will point out the  
5 very next page after what was cited by the attorney  
6 general, page 5 line 11, the judge asked I ask you  
7 again would you like to have a jury trial on any or  
8 all of these charges. Yes, sir. So even Mr.  
9 Mungin's answers to the Court were contradictory.

10 It is a unique situation where an  
11 accuser victim recants in the courtroom. Did not  
12 surprise everybody, surprised some folks. We would  
13 argue that given the nature of all those complaints  
14 and the nature of how this plea process occurred  
15 that he was ineffectively advised leading up to the  
16 plea, ineffectively advised as to Alford,  
17 ineffectively advised during the plea. He has  
18 testified that if he could have stopped it and went  
19 to trial he would have, if he could have an option  
20 with an effective attorney going to trial rather  
21 than plead guilty he would have. We believe we  
22 have met our burden and would ask you to grant our  
23 PCR, vacate the convictions, remand him to the  
24 county.

25 If you are not inclined to do that we

1 certainly think that the record is clear on the  
2 attempt to file an appeal and we think that -- we  
3 believe the evidence shows that had the Court been  
4 aware of that notice must be served within ten days  
5 from receiving the order, Mr. Loignan certainly  
6 could have provided an affidavit to the Court of  
7 Appeals that while the order was filed outside the  
8 time limit that because he was out of office he  
9 just received it and request the court to accept  
10 the belated appeal. That was not done. So if you  
11 are not inclined to grant us relief from the PCR we  
12 would ask you to grant --

13 THE COURT: What do you feel are the  
14 legitimate grounds for appeal?

15 MR. DAVIS: Judge, I think from looking  
16 at the transcript I think there are two that I  
17 would argue if I were on appeal. I don't do  
18 appeals. But if I were to appeal, the fact that it  
19 was changed from a straight plea to an Alford  
20 without thoroughly insuring Mr. Mungin understood  
21 that. Don't believe he understood it then. He has  
22 testified -- I asked him to try to explain it to  
23 you. The thing he stays focused on is I'm  
24 innocent. We know there's three parts to that. So  
25 he clearly today still doesn't fully understand

1 that. I think it was incumbent upon Judge Hughston  
2 so that we are talking appeal, not PCR, it was  
3 incumbent upon Judge Hughston to be more thorough  
4 about that. Secondly, I will need you to review  
5 the record. There is a moment in the record that  
6 despite Ms. Butler's recantation which goes  
7 directly to the CDV as Mr. Loignon said and  
8 factually and to the burglary --

9 THE COURT: What do you think about the  
10 fact that she referred to it as an altercation?  
11 She also talked about a table being broken.

12 MR. DAVIS: Altercation is not an  
13 element of any of the offenses he's charged with.  
14 Altercation can encompass many different things.

15 THE COURT: She described it as an  
16 altercation.

17 MR. DAVIS: I would argue that a verbal  
18 debate could be an altercation.

19 THE COURT: I think criminal domestic  
20 violence can be a fear for --

21 MR. DAVIS: Depending on what is said.  
22 Depending on the content of what was said, but it  
23 also could be a heated debate where there was not  
24 treats made. So an altercation could cover factual  
25 circumstances that would not rise to the level of a

1 criminal offense.

2 THE COURT: She did talk about the fact  
3 they were fussing about the fact there was some  
4 shoes. Clearly there was a fuss going on about her  
5 shoes getting wet and really the recantation was  
6 really more about the fact that he was a good  
7 provider and his son was missing him and really  
8 that she needed him at home.

9 MR. DAVIS: There was certainly a  
10 compassion portion to her statement as well, yes,  
11 Your Honor.

12 THE COURT: In the plea colloquy the  
13 solicitor said that there was two other witnesses  
14 who could substantiate the allegations which he  
15 agreed were true; is that correct?

16 MR. DAVIS: I don't recall Mr. Mungin  
17 agreeing, but I will rely on the record that there  
18 were certainly two others.

19 THE COURT: He asked are you pleading  
20 guilty on your own free will? Yes. Are you indeed  
21 guilty? Are you really guilty? Yes. How do you  
22 wish to plead to these charges, guilty or not  
23 guilty? Guilty. Are you really guilty? Yes.

24 MR. DAVIS: What we would counter with  
25 that, Your Honor, is his testimony today is with

1 everything that was going on in his family and with  
2 Ms. Butler that he said on more than one occasion  
3 he was trying to get this over with, trying to get  
4 this behind him. Thank you, Your Honor.

5 THE COURT: Very good. Yes, sir.

6 MR. HUNTER: Yes, sir. Just to answer  
7 a little bit, the State would ask that relief be  
8 denied. Obviously as far as any discussion about  
9 jury trial versus plea, I think it is very clear  
10 from the record that the -- he understood what was  
11 going on that day during the plea hearing. I think  
12 it is very clear from Mr. Loignon here that he went  
13 over all of constitutional rights, went over the  
14 potential sentences, the discovery, the elements.

15 Your Honor, as far as any promises of a  
16 specific sentence, I think it's clear from the  
17 transcript he told the judge there was no promises  
18 made to him. As far as the investigation is  
19 concerned, it appears that he -- that Mr. Loignon  
20 did I guess communicate -- receive communication  
21 from the victim. As far as the other two  
22 witnesses, he made attempts and was successful to  
23 reach them even going to the physical location  
24 where the landlord was residing. Through no fault  
25 of his own he was just unable to get ahold of them.

1                   As far as the meetings go, I think his  
2 testimony speaks for itself, Mr. Loignon's  
3 testimony. He did say that they went over trial  
4 strategy, what the witnesses would testify to had  
5 they gone to trial. He did also testify that it  
6 was kind of back and forth whether or not Defendant  
7 even wanted a trial, wanted a plea, and I think  
8 it's pretty telling they were there that day to  
9 reject a plea, but it was the Defendant himself who  
10 then initiated a discussion about pleading guilty.  
11 And Mr. Loignon I would say offered Defendant  
12 assistance by saying well, if you say you are  
13 innocent then I can't tell you to plead guilty, but  
14 here's an Alford plea, here's what we can do there.

15                   As far as withdrawing the plea, I think  
16 it's -- recantations are inherently unreliable  
17 anyway. Seems like this was more just a further  
18 explanation rather than a recantation. The judge  
19 didn't seem to believe it. He seemed to believe  
20 that the Defendant had committed the offense based  
21 on what he heard. As far as him saying even though  
22 he said do you want a jury trial, no, and then on  
23 page 5 do you want a jury trial and he says yes, I  
24 would argue that it was clear -- I guess reading  
25 that line by itself one would say do you want a

1 jury trial, but given the record as a whole I think  
2 it is pretty clear the Defendant knew what he was  
3 doing that day and ready to plead guilty.

4 As far as the appeal goes, obviously  
5 the State cannot sit here and say the appeal was  
6 timely filed. And we would argue that it was  
7 through no fault of Mr. Loignon himself, but that  
8 is what happened.

9 THE COURT: What do you think the state  
10 of the law is with regard to post-conviction relief  
11 and failure to meet the time deadlines?

12 MR. HUNTER: For the appeal?

13 THE COURT: Yes.

14 MR. HUNTER: Your Honor, I believe that  
15 if he does not -- if the appeal deadline is not met  
16 he did not knowingly and voluntarily waive his  
17 right to an appeal.

18 THE COURT: So the State is essentially  
19 in a position to consent to a belated appeal.

20 MR. HUNTER: Yes, sir.

21 THE COURT: Anything further from  
22 anybody?

23 MR. HUNTER: No, Your Honor.

24 THE COURT: Bear with me just one  
25 moment. I want to review a few things.

1 (Brief pause.)

2 THE COURT: Mr. Hunter, I am going to  
3 ask you to prepare an order denying the  
4 post-conviction relief with regard to the plea  
5 itself. However, I am going to grant  
6 post-conviction relief and allow him to file a  
7 belated appeal.

8 With regards to the substance of the  
9 ineffective assistance of counsel with regards to  
10 the plea itself, I find that the Defendant  
11 voluntarily waived his jury trial rights. The  
12 transcript is dispositive in that regard, although  
13 there was some vacillation on the record. Taking  
14 the record as a whole he voluntarily waived his  
15 right to the jury trial. On a number of occasions  
16 he did indeed say he was guilty and I think taking  
17 into consideration the hearing transcript here  
18 today and the testimony of the trial counsel he did  
19 indeed investigate the case. He spoke with him a  
20 number of times in person and by video. He spoke  
21 with him in detail prior to the plea itself.

22 His lawyer testified and I believe and  
23 find that he was prepared to go to trial. As a  
24 matter of fact, on the day of the plea trial  
25 counsel was completely prepared to go to trial, he

1 anticipated going to trial that day. I think it is  
2 also telling when the question was asked by  
3 post-conviction relief counsel of the Defendant  
4 himself do you believe that the -- that your lawyer  
5 was prepared to go to trial and the Defendant  
6 himself said that he was.

7 I do find that he did discuss trial  
8 strategy. I think the record is replete with his  
9 understanding of what the sentences were. As far  
10 as his understanding of the Alford plea, he didn't  
11 recant exactly what the law is where it says that  
12 he believes there was overwhelming evidence to  
13 establish his guilt, is maintaining his innocence,  
14 he's receiving the benefit of a bargain. I think  
15 he did have a good understanding of the way he  
16 explained it on the stand, he understood that.

17 As far as the recantation of the  
18 victim, in my 20 years practicing law in doing  
19 criminal defense work, and as far as criminal  
20 domestic violence goes in the 12 years I have been  
21 on the bench, I would probably say 85, 90 percent  
22 of the victims in criminal domestic violence cases  
23 recant their testimony because there's a love  
24 relationship there. Usually the victim depends on  
25 the Defendant and I think it's -- she did describe

1 what transpired as an argument. They were arguing  
2 about the fact that he refused to clean out the  
3 moisture in the bottom of her closet. Her shoes  
4 got mildew. That's what they were fussing about.

5 She claimed that she was on him pretty  
6 had and described her activities as being a nag and  
7 being aggravating and she also described the  
8 altercation. Apparently there was a table that was  
9 broken in the altercation, but she described it as  
10 being broken ahead of the time there was some --  
11 she described some fumbling around a broken table.  
12 But she did describe it as an altercation.

13 And also it was very important that  
14 neither the Defendant or trial counsel withdrew the  
15 plea and probably more important than anything  
16 there were two other witnesses, independent  
17 witnesses who would have testified to the  
18 allegations for which he has admitted and nobody  
19 brought that up. And nobody questioned that, but  
20 the transcript indeed shows that he has admitted  
21 his guilt to what he's pleading to.

22 However, I am granting a belated appeal  
23 because there was an attempt to file the appeal,  
24 not timely done. It was not the applicant's fault  
25 and therefore I'm going to grant the belated

1 appeal. I will ask that you prepare that order.

2 MR. HUNTER: Yes, sir.

3 MR. DAVIS: Thank you, Your Honor.

4 (These proceedings were concluded at  
5 11:15 a.m., December 5, 2017, Charleston County,  
6 South Carolina.)

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3 CERTIFICATE OF REPORTER

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

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

11 Witness my hand, I have hereunto affixed my  
12 official seal this 6th day of April, 2018 at  
13 Charleston, Charleston County, South Carolina.

14 *Ruth C. Weese*

15 \_\_\_\_\_  
16 Ruth C. Weese  
17 Registered Diplomate  
18 Reporter  
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STATE OF SOUTH CAROLINA )  
 COUNTY OF CHARLESTON )  
 )  
 Darryl Jerrard Mungin, )  
 S.C.D.C. #255562 )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 )

IN THE COURT OF COMMON PLEAS  
OF THE NINTH JUDICIAL CIRCUIT

2016-CP-10-6560

**ORDER OF DISMISSAL AND  
GRANT OF APPELLATE REVIEW  
PURSUANT TO WHITE V. STATE<sup>1</sup>**

2016 FEB -1 11:10:21  
CLERK OF COURT  
CHARLESTON COUNTY

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed December 7, 2016. An evidentiary hearing into the matter was convened on Tuesday, December 5, 2017, at the Charleston County Courthouse in Charleston, South Carolina before the Honorable Michael G. Nettles. Applicant was present at the hearing and represented by Rodney Davis, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Michael R. Loignon, Esquire, also testified. This Court also had before it a copy of Applicant's PCR application and amendment, the records of the Charleston County Clerk of Court regarding the subject convictions, Applicant's appellate records, Respondent's Return, and the plea transcript.

At the outset of the trial, Applicant's counsel made a motion to be relieved as counsel, stating that communication with Applicant had broken down. This Court questioned Applicant about his relationship with Mr. Davis and whether he wished to proceed *pro se* or remain with Mr. Davis. Applicant informed the Court he wished to have Mr. Davis continue his representation and this Court denied the motion to relieve and motion to continue the case.

<sup>1</sup> 263 S.C. 110, 108 S.E.2d 35 (1974)

## I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Applicant was indicted at the February 2016 term of the Charleston County Grand Jury for first degree burglary (2016-GS-10-0620), second degree domestic violence (2016-GS-10-0622), and obtaining goods by false pretenses (third or subsequent property crime) (2016-GS-10-0624). Assistant Public Defender Michael R. Loignon, Esquire, represented Applicant. Assistant Solicitor Andrew Evans, Esquire, prosecuted the case.

On May 31, 2016, Applicant appeared with his counsel before the Honorable Thomas L. Hughston, Jr. and pled guilty to second degree burglary as a lesser included offense of first degree burglary, to second degree domestic violence as indicted, and to obtaining goods by false pretenses (third or subsequent property offense) as indicted. Judge Hughston sentenced Applicant to imprisonment for ten years, provided at upon the service of five years the balance would be suspended with five years' probation for the burglary charge. Applicant was sentenced to imprisonment for one year for domestic violence and five years for obtaining goods by false pretenses. All sentences were to run concurrently.

On August 4, 2016, Applicant's counsel filed a notice of appeal. The South Carolina Court of Appeals dismissed Applicant's appeal on October 31, 2012, as it was not timely served upon the State. The remittitur was sent on August 31, 2016.

### **Allegations**

In his application for post-conviction relief, and the amendment filed thereto, Applicant alleges he is being held unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
  - a. "Violation of sentencing guidelines"

2. "Malicious and vindictive prosecution"
  - a. "Coerced into pleading guilty"

Applicant filed an amendment, adding the following grounds for relief:

1. Applicant's attorneys provided ineffective assistance of counsel by advising the Applicant to forego his Constitutional Right to a jury trial and plead guilty.
2. Applicant's attorneys provided ineffective assistance of counsel by promising a sentence if the Applicant entered a guilty plea.
3. Applicant's attorneys provided ineffective assistance of counsel by failing to fully investigate the case prior to the guilty plea.
4. Applicant's attorneys provided ineffective assistance of counsel by failing to meet with the Applicant a sufficient amount to adequately advise the Applicant and prepare for a resolution.
5. Applicant's attorneys provided ineffective assistance of counsel by failing to discuss strategy for a trial including potential defenses.
6. Applicant's attorneys provided ineffective assistance of counsel by failing to withdraw the guilty plea after the Applicant's comments to the Court, the Applicant's prior comments to his attorneys, and the victim's recantation of the facts.
7. Applicant's attorneys provided ineffective assistance of counsel by failing to perfect the appeal of the conviction.

## II. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

### III. SUMMARY OF THE TESTIMONY AT PCR HEARING

#### Applicant's Testimony

Applicant testified he was originally represented by Megan Gentry before Michael Loignon. He testified Ms. Gentry met with him three to four times in jail and focused on a plea. He testified she did not discuss trial strategy or defenses with him.

Applicant testified he already had the State's discovery when Mr. Loignon (hereinafter "Counsel") met with him. He testified they met four to five months before his plea and met a total of two to three times but also spoke over the phone. He testified he is not sure if they discussed the elements of the charges Applicant was facing. Applicant testified he was told of the possibility of a life sentence and other punishments. He testified he told Counsel he did not want to plead guilty and Counsel did not give him trial advice or advice about a guilty plea. He also

testified Counsel did not discuss possible defenses.

Applicant testified he and Counsel discussed three witnesses in his case. He testified one never gave a statement and another refused to give a statement. He testified their last names were Butler, Rivers, and Nelson and Counsel should have investigated them. He also testified Counsel should have investigated the victim's mental issues. Applicant further testified the victim recanted and he did not withdraw his plea after her recantation.

Applicant testified he knew he was going to court to plead guilty but had never heard of an Alford<sup>2</sup> plea before that day. He testified everything seemed to already be lined up and he was told to just sign some papers. Applicant further testified promises were not made regarding his sentencing but Counsel said he would ask for a probationary sentence. Applicant testified he felt pressured to plead guilty and five of his family members were killed a week before the plea.

#### **Counsel Michael Loignon's Testimony**

Counsel testified he took the case in March 2016 and met with Applicant four or five times. He testified they discussed the charges, penalties, detail of the case, and possible resolutions. He testified they discussed trial strategy and what each witness would say. Counsel further testified he spoke with Applicant via video four days prior to the plea to discuss the State's offer.

Counsel testified he spoke with the victim, Ms. Clarissa Butler and his investigator did as well. He testified she gave a written statement. He further testified she did not completely recant during the guilty plea but simply said the incident did not happen exactly the way it was portrayed. He testified he did not talk to the two other witnesses in the case because he could not get in touch with them. Counsel testified he sent his investigator to their location but was unsuccessful.

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<sup>2</sup> 400 U.S. 25 (1970).

Counsel testified Applicant changed his mind every day on how he wanted to proceed with the case. He testified he told Applicant he was not guilty then they could go to trial or pursue an Alford plea, which he explained meant the jury could find Applicant guilty based on the State's facts but he would not be admitting guilt. Counsel testified he could not recall when the Alford plea was discussed but he discussed the offer with Applicant four days before the offer was made. He testified Applicant was ready to reject the offer but ultimately accepted it.

Counsel testified he filed a Motion to Reconsider which was denied a month and a half later. He testified he had protection from court during that period of time and filed the notice of appeal late. He testified any appeal would not be meritorious.

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief and amendment, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

##### **Ineffective Assistance of Counsel**

Applicant's attorneys provided ineffective assistance of counsel by advising the Applicant to forego his Constitutional Right to a jury trial and plead guilty.

Applicant alleged that Counsel was ineffective for advising him to forego his constitutional rights to a jury trial and plead guilty. This Court finds Counsel was not ineffective in his advice to Applicant about foregoing his trial rights. This Court finds the record as a whole shows Applicant voluntarily waived his jury trial rights. The plea judge informed Applicant he

had an absolute right to a jury trial and asked Applicant if he would like a jury trial on the charges. Transcript 4, ll. 21-23. Applicant replied that he did not want a jury trial and wished to plead guilty. Transcript 4-5. Applicant further informed the plea court he was really guilty, was not promised anything to plead guilty, and was pleading guilty of his own free will. Transcript 5. This Court finds Applicant understood the Alford plea and the sentences he was facing and finds Counsel advised Applicant of the possible options to resolve his charges including a jury trial, guilty plea, or Alford plea. This Court finds no deficiencies in Counsel's advice and finds Applicant has failed to prove the advice was deficient or that he pled guilty based on incorrect advice.

This Court further finds Applicant has failed to prove that he was prejudiced by Counsel's actions in this regard. Applicant has failed to prove that but for Counsel's advice, he would rather proceed to trial on his charges, including the original first-degree burglary charge for which he faces up to a life sentence. As Applicant has failed to provide credible evidence that he would have proceeded to trial but for Counsel's actions, this Court finds this allegation must be dismissed.

Applicant's attorneys provided ineffective assistance of counsel by promising a sentence if the Applicant entered a guilty plea.

Applicant alleged Counsel was ineffective for promising a certain sentence if he pled guilty. This Court finds Applicant has failed to prove that Counsel was deficient in this regard. Applicant testified he was told of the possibility of a life sentence and other punishments. Applicant further testified promises were not made regarding his sentencing but Counsel said he would ask for a probationary sentence. He failed to provide credible testimony that Counsel promised him a certain sentence. This Court finds Counsel testified he discussed the possible penalties with Applicant. The record reflects the trial judge informed Applicant of the possible

sentences he was facing on all charges. Transcript 3-4. Most importantly, the record reflects Applicant informed the Court that no one had promised him anything or threatened him in any way to get him to plead guilty. Transcript 5. See Wolfe v. State, 485 S.E.2d 367, 371, 326 S.C. 158, 165 (1997) (Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made).

This Court further finds Applicant has failed to prove he was prejudiced by Counsel's actions in this regard. This Court finds Applicant has failed to provide any evidence that but for Counsel's promise of a certain sentence, he would not have pled guilty but would have proceeded to trial. As Applicant has failed to prove that Counsel was ineffective, this Court finds the allegation must be dismissed.

Applicant's attorneys provided ineffective assistance of counsel by failing to fully investigate the case prior to the guilty plea.

Applicant alleges Counsel was ineffective for failing to fully investigate Applicant's case by fully investigating the witnesses and the victim's mental issues. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). "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)).

This Court finds Applicant has failed to prove that Counsel was ineffective for failing to investigate. This Court finds Counsel conducted a proper investigation utilizing a private

investigator. Counsel testified he spoke with the victim, Ms. Clarissa Butler and his investigator did as well. This Court finds Counsel actively pursued the other witnesses through his investigator but was unsuccessful in contacting them. This Court finds Counsel's actions were not deficient in this regard. This Court finds Applicant has failed to show how Counsel's investigation was deficient and he has further failed to show what further investigation would have revealed.

This Court further finds Applicant has failed to prove he was prejudiced by Counsel's actions in this regard. This Court finds Applicant has failed to provide any evidence that but for Counsel's investigation, he would not have pled guilty but would have proceeded to trial. As Applicant has failed to prove that Counsel was ineffective, this Court finds the allegation must be dismissed.

Applicant's attorneys provided ineffective assistance of counsel by failing to meet with the Applicant a sufficient amount to adequately advise the Applicant and prepare for a resolution.

This Court finds Applicant has failed to prove that Counsel was ineffective for failing to meet with Applicant. This Court finds Counsel met with Applicant many times in person and through video. Counsel testified he met with Applicant four or five times where they discussed the charges, penalties, details of the case, and possible resolutions. Counsel also testified they discussed trial strategy and what each witness would say. Counsel further testified he spoke with Applicant via video four days prior to the plea to discuss the State's offer. This Court finds Counsel adequately met with Applicant prior to the plea and fully informed Applicant of the charges he was facing, the allegations against him, and defense strategy. Applicant has failed to provide credible evidence to show that Counsel provided insufficient advice because they did not meet a sufficient amount of times and has failed to show how more meetings would have helped his case.

This Court further finds Applicant has failed to prove he was prejudiced by Counsel's actions in this regard. This Court finds Applicant has failed to provide any evidence that if he had met with Counsel more often, he would not have pled guilty but would have proceeded to trial. As Applicant has failed to prove that Counsel was ineffective, this Court finds the allegation must be dismissed.

Applicant's attorneys provided ineffective assistance of counsel by failing to discuss strategy for a trial including potential defenses.

Applicant alleged Counsel was ineffective for failing to discuss trial strategy and possible defenses. This Court finds Applicant has failed to prove that Counsel was deficient in this regard. Counsel testified he met with Applicant and discussed the charges, penalties, detail of the case, and possible resolutions. Counsel also testified they discussed trial strategy and what each witness would say. Counsel spoke with the victim and investigated the other witnesses. This Court finds Counsel did discuss trial strategy and Applicant has failed to show that his conduct was deficient. He has failed to show that Counsel's advice was deficient or that he pled guilty pursuant to deficient advice.

This Court further finds Applicant has failed to prove he was prejudiced by Counsel's actions in this regard. This Court finds Applicant has failed to provide any evidence that but for Counsel's advice concerning defense strategy, he would not have pled guilty but would have proceeded to trial. As Applicant has failed to prove that Counsel was ineffective, this Court finds the allegation must be dismissed.

Applicant's attorneys provided ineffective assistance of counsel by failing to withdraw the guilty plea after the Applicant's comments to the Court, the Applicant's prior comments to his attorneys, and the victim's recantation of the facts.

This Court finds Applicant has failed to prove that Counsel was ineffective for failing to withdraw the guilty plea. Applicant alleges the victim recanted her story and Counsel should

have withdrawn Applicant's guilty plea as a result thereof. This Court finds although it is common for victims of domestic violence to later recant their story, the victim in this case did not recant but simply described the argument that took place. This Court agrees with Counsel that the victim did not completely recant during the guilty plea hearing but simply said the incident did not happen exactly the way it was portrayed by the solicitor. Counsel was not deficient for failing to withdraw the plea, especially considering two other witnesses were available to testify about the allegations against Applicant.

This Court further finds Applicant has failed to prove he was prejudiced by Counsel's actions in this regard. This Court finds Applicant has failed to provide any evidence that Applicant wanted to withdraw his plea and proceed to a trial on all of his original charges. As Applicant has failed to prove that Counsel was ineffective, this Court finds the allegation must be dismissed.

Applicant's attorneys provided ineffective assistance of counsel by failing to perfect the appeal of the conviction.

Applicant alleged Counsel was ineffective for failing to perfect the appeal from his guilty plea. Counsel testified he filed a Motion to Reconsider which was denied a month and a half later. He testified he had protection from court during that period of time and filed the notice of appeal late. Respondent represented to the Court that it would agree Applicant did not knowingly and voluntarily waive his right to a direct appeal as the appeal was filed beyond the appropriate time.

This Court agrees that Applicant did not waive his right to a direct appeal. In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal if requested or comply with the procedure required by Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). Where the post-conviction relief judge

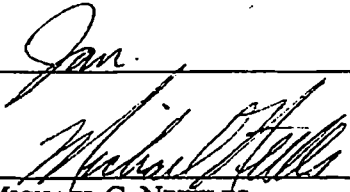
determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State, See Rule 227(g) (1), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).

This Court affirmatively finds Applicant did not knowingly and voluntarily waive his right to a direct appeal. The Court concludes that Applicant is entitled to a belated review of his convictions. A petition for belated review pursuant to White v. State can remedy Applicant's lack of a direct appeal opportunity.

**IT IS THEREFORE ORDERED:**

1. That this current Application for Post-Conviction Relief be dismissed with prejudice.
2. That the Applicant is granted a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Within thirty days of service of this Order, counsel for Applicant must file a Notice of Appeal to secure the appropriate review of the Applicants' convictions. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and South Carolina Appellate Court Rule 227(g) for the appropriate procedure for securing belated appellate review.
3. That Applicant be remanded to the custody of Respondent

AND IT IS SO ORDERED this 23 day of Jan., 2018.

  
 MICHAEL G. NETTLES  
 Presiding Judge  
 Ninth Judicial Circuit

Florence, South Carolina

ACE/0307275  
WITNESSES

Charleston County Sheriff Office

AGENCY CASE NUMBER  
2015-011799

ARREST WARRANT NUMBER  
2015A1010203213

DATE OF ARREST

07/28/2015

ACTION OF GRAND JURY

**TRUE BILL**

FEB 2016

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-10-00620

The State of South Carolina  
County of Charleston

COURT OF GENERAL SESSIONS  
FEBRUARY TERM 2016

THE STATE

VS.

DARRYL JERARD MUNGIN  
B/M DOB: [REDACTED]

Indictment for

BURGLARY FIRST DEGREE

SC Code: § 16-11-0311  
CDR Code: 0079

**FILED**

2/17/2016 10:50:40 AM  
JULIE J. ARMSTRONG  
CLERK OF COURT

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

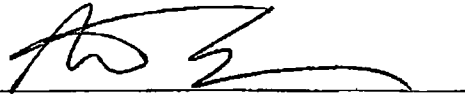
INDICTMENT

At a Court of General Sessions, convened February 2016, the Grand Jurors of Charleston County present upon their oath:

**BURGLARY FIRST DEGREE**

That in Charleston County, South Carolina on or about July 27, 2015, the Defendant Darryl Jerard Mungin, did enter the dwelling of Louise Rivers without consent and with the intent to commit a crime therein. That, in addition, the defendant caused physical injury to a person who was not a participant in the crime; in violation of Section 16-11-311 of the South Carolina Code of Laws (1976) as amended.

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



ANDREW EVANS  
ASSISTANT SOLICITOR

121

ACE/0307275  
WITNESSES

Charleston County Sheriff Office

AGENCY CASE NUMBER

2015-011799

ARREST WARRANT NUMBER

2015A1010203215

DATE OF ARREST

07/28/2015

ACTION OF GRAND JURY

**TRUE BILL**

FEB 8 2016

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-10-00622

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2016

THE STATE

VS.

DARRYL JERARD MUNGIN

B/M DOB: [REDACTED]

Indictment for

DOMESTIC VIOLENCE SECOND  
DEGREE

SC Code: § 16-25-20 (A) and (C)

CDR Code: 3812

FILED

2/17/2016 10:50:40 AM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

## INDICTMENT

At a Court of General Sessions, convened February 2016, the Grand Jurors of Charleston County present upon their oath:

**DOMESTIC VIOLENCE SECOND DEGREE**

That in Charleston County, South Carolina, on or about July 27, 2015, the Defendant, Darryl Jerard Mungin, did cause physical harm or injury to Clarissa Butler, a household member, or did offer or attempt to cause physical harm or injury to said household member with apparent present ability under circumstances reasonably creating fear of imminent peril. That, in addition, the defendant committed domestic violence in the third degree against a person the defendant knew, or reasonably should have known, was pregnant and/or the defendant committed domestic violence in the third degree during the commission of a robbery, burglary, kidnapping or theft and/or the defendant committed domestic violence in the third degree in the presence of, or while being perceived by, a minor. This is in violation of Section 16-25-20 (A) and (C) of the South Carolina Code of Laws (1976) as amended.

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



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ANDREW EVANS  
ASSISTANT SOLICITOR

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ACE/0308789  
WITNESSES

Charleston County Sheriff Office

AGENCY CASE NUMBER  
2015-011859

ARREST WARRANT NUMBER  
2015A1010900597

DATE OF ARREST  
09/09/2015

ACTION OF GRAND JURY

**TRUE BILL**

Foreperson of Grand Jury Date: FEB 8 2016

VERDICT

Foreperson of Petit Jury Date:

DOCKET NO. 2016-GS-10-00624

The State of South Carolina  
County of Charleston

COURT OF GENERAL SESSIONS  
FEBRUARY TERM 2016

THE STATE

VS.

DARRYL JERARD MUNGIN  
B/M DOB: [REDACTED]

Indictment for

OBTAINING GOODS UNDER FALSE  
PRETENSES, THIRD OR SUBSEQUENT  
PROPERTY CRIME

SC Code: § 16-13-0240  
CDR Code: 3613

**FILED**

2/17/2016 10:50:40 AM  
JULIE J. ARMSTRONG  
CLERK OF COURT

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

## INDICTMENT

At a Court of General Sessions, convened February 2016, the Grand Jurors of Charleston County present upon their oath:

**OBTAINING GOODS UNDER FALSE PRETENSES, THIRD OR SUBSEQUENT  
PROPERTY CRIME**

That in Charleston County, South Carolina, on or about July 21, 2015, the Defendant, Darryl Jerard Mungin, did by false pretense or representation (1) obtain the signature of the victim on a written instrument; or (2) obtain from the victim, chattels, monies, valuable security or other property, real or personal, with the intent to cheat and defraud the victim, Money Man Pawn, of such property. The value of the property involved was Two Thousand Dollars or less and the Defendant has previously been convicted of at least two (2) offenses for which the term of imprisonment was contingent upon the value of the property involved. This is in violation of Sections 16-13-240 and 16-1-57 of the South Carolina Code of Laws (1976) as amended.

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



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ANDREW EVANS  
ASSISTANT SOLICITOR

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