

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Pickens County

Honorable Daniel D. Hall, Circuit Court Judge

MICHAEL BROWNING,

RECEIVED

SEP 21 2018

S.C. SUPREME COURT

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000483

APPENDIX

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INDEX

INDEX	i
PLEA HEARING TRANSCRIPT DATED JUNE 18, 2015.....	1
APPLICATION FOR POST-CONVICTION RELIEF	38
RETURN.....	45
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	50
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JUNE 28, 2017	56
ORDER OF DISMISSAL.....	81
INDICTMENTS	88
SENTENCE SHEETS	93

State of South Carolina

In the Court of General Sessions

County of Pickens

State of South Carolina,	)	
	)	2013-GS-39-2581
Plaintiff,	)	2014-GS-39-773, 1263
	)	
-vs-	)	
	)	June 18, 2015
Michael Dale Browning,	)	
	)	
Defendant.	)	Transcript of Record
_____	)	

B E F O R E:

The Honorable Edward Miller, Judge

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

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 Circuit Court Reporter

INDEX

	PAGE
Guilty Plea Hearing	3
Certificate of Reporter	37

EXHIBITS

No	DESCRIPTION	ID	EV
	<i>No exhibits were presented during the hearing</i>		

1 **June 18, 2015**

2 (WHEREUPON, court convened with all parties present
3 and the following proceedings were had in the guilty
4 pleas of Brennan Lee Owens, Jeremy Renard Webb,
5 Michael Dale Browning, Hershel Eugene Good, Jr.,
6 Betty Jean Shirley, and James Edgar Hopkins
7 commencing at approximately 12:06 p.m.)

8 THE CLERK: 2015-GS-39-158, the State versus
9 Brandon Owens, pleading to resisting arrest; 2015-GS-39-
10 157, pleading to reckless driving.

11 2014-GS-39-1885, the State versus Jeremy Webb,
12 pleading to breaking into a motor vehicle; 2014-GS-39-
13 1884, pleading to breaking into a motor vehicle; 2014-GS-
14 39-1862, pleading to breaking and entering a motor
15 vehicle; 2015-GS-39-923, pleading to breaking and
16 entering a motor vehicle; 2015-GS-39-922, pleading to
17 breaking and entering a motor vehicle.

18 2014-GS-39-1263, the State versus Michael Browning,
19 pleading to burglary second-degree; 2013-GS-39-2581,
20 pleading to possession of methamphetamine; 2014-GS-39-
21 773, pleading to petit larceny.

22 2014-GS-39-1868, the State versus Hershel Good,
23 pleading to assault and battery in the first degree;
24 2014-GS-39-1869, pleading to assault and battery in the
25 first degree.

1 2014-GS-39-1951, the State versus Betty Shirley
2 pleading to possession of methamphetamine; 2015-GS-39-22,
3 pleading to possession of methamphetamine.

4 2014-GS-39-1355, the State versus James Hopkins
5 pleading to manufacturing methamphetamine.

6 (WHEREUPON, Brennan Lee Owens, Jeremy Renard Webb,
7 Michael Dale Browning, Hershel Eugene Good, Jr.,
8 Betty Jean Shirley, and James Edgar Hopkins were
9 duly sworn.)

10 THE COURT: All right. In the last twenty-four
11 hours, have you had any drugs, alcohol or medication?

12 Owens?

13 DEFENDANT OWENS: No, sir.

14 THE COURT: Webb?

15 DEFENDANT WEBB: No, sir.

16 THE COURT: Browning?

17 DEFENDANT BROWNING: No, sir.

18 THE COURT: Good?

19 DEFENDANT GOOD: No, sir.

20 THE COURT: Shirley?

21 DEFENDANT SHIRLEY: No, sir.

22 THE COURT: Hopkins?

23 DEFENDANT HOPKINS: Just prescription
24 medication, sir.

25 THE COURT: What did you have?

1 DEFENDANT HOPKINS: Oxycodine.

2 THE COURT: Who prescribes it for you?

3 DEFENDANT HOPKINS: My pain doctor, Dr.
4 Whatley.

5 THE COURT: Well, in the last three days, have
6 you had the prescribed dosage?

7 DEFENDANT HOPKINS: Yes.

8 THE COURT: Does it limit your ability to
9 understand what you're doing?

10 DEFENDANT HOPKINS: No, sir, not at all.

11 THE COURT: All right. Have you ever been
12 treated for substance abuse or mental illness?

13 Owens?

14 DEFENDANT OWENS: No, sir.

15 THE COURT: Webb?

16 DEFENDANT WEBB: No, sir.

17 THE COURT: Browning?

18 DEFENDANT BROWNING: No, sir.

19 THE COURT: Good?

20 DEFENDANT GOOD: No.

21 THE COURT: Shirley?

22 DEFENDANT SHIRLEY: Yes. I'm going through IOP
23 right now.

24 THE COURT: Going through IOP? Are you sober?

25 DEFENDANT SHIRLEY: Yes, sir.

1 THE COURT: All right.

2 How about you, Hopkins? Treatment?

3 DEFENDANT HOPKINS: No, sir, but I am going to
4 behavioral health next week for an evaluation.

5 THE COURT: All right.

6 Let's see. Webb, Good and Shirley, you each have an
7 indictment that has not been presented to the grand jury.
8 You have an absolute right to require the State to
9 present those cases to the grand jury where they would
10 have to prove more probably than not that a crime was
11 committed and you're the one that did it. Do you want to
12 give that right up, which would let it go forward today?
13 Webb?

14 DEFENDANT WEBB: Yes, sir.

15 THE COURT: Good?

16 DEFENDANT GOOD: Yes, sir.

17 THE COURT: Shirley?

18 DEFENDANT SHIRLEY: Yes, sir.

19 THE COURT: All right.

20 Owens, your first indictment alleges you did in
21 Pickens County, November 16, 2014, resist arrest made by
22 Officer Roberts with the Clemson Police Department. It
23 carries a year. Do you understand?

24 DEFENDANT OWENS: Yes, sir.

25 THE COURT: The next one alleges you did in

1 Pickens County, November 16, 2014, drive a motor vehicle
2 under the influence of alcohol, drugs, or any combination
3 thereof which materially and appreciably impaired your
4 ability to drive. You're pleading to a thirty-day
5 reckless. Do you understand?

6 DEFENDANT OWENS: Yes, sir.

7 THE COURT: Webb, your indictment alleges, the
8 first one, in Pickens County May 19th, 2014, you broke
9 into an '09 Honda Odyssey belonging to Karen Edwards.
10 Five years. Do you understand?

11 DEFENDANT WEBB: Yes, sir.

12 THE COURT: Next one, Pickens County, May 19th,
13 2014, you broke into an '07 Jeep belonging to Haley Hunt.
14 And that's five. Do you understand?

15 DEFENDANT WEBB: Yes, sir.

16 THE COURT: The next one alleges you did in
17 Pickens County, June 30, 2014, break into a Buick LeSabre
18 belonging to James Oakley. That's five. Do you
19 understand?

20 DEFENDANT WEBB: Yes, sir.

21 THE COURT: The next one alleges you did in
22 Pickens County, October 19, 2014, break into a 2000 BMW
23 belonging to Greg Sosebee. That's five. Do you
24 understand?

25 DEFENDANT WEBB: Yes, sir.

1 THE COURT: The next one alleges you did in
2 Pickens County between October 19 and 20, 2014, break
3 into a Nissan Xterra belonging to Burns Shaver. Five on
4 that. Do you understand?

5 DEFENDANT WEBB: Yes, sir.

6 THE COURT: Browning, your indictment alleges
7 you did in Pickens County March 18th, 2014, unlawfully
8 enter the dwelling of Richard Kelly in Central leading to
9 a ten-year burglary. Do you understand?

10 DEFENDANT BROWNING: Yes, sir.

11 THE COURT: The next one alleges you did in
12 Pickens County August 17th, 2013, unlawfully possess
13 meth, third offense. I think it's more than five. Ten
14 years, twelve thousand five hundred dollars. Do you
15 understand?

16 DEFENDANT BROWNING: Yes, sir.

17 THE COURT: Okay. And then your last
18 indictment alleges you did in Pickens County March 6th,
19 2014, steal metal belonging to Glenn Julian. You must
20 have two prior property offense convictions because that
21 carries ten years. Do you understand?

22 DEFENDANT BROWNING: Yes, sir.

23 THE COURT: All right. Good, your indictment
24 alleges you did in Pickens County July 3, 2014,
25 unlawfully with malice aforethought attempt to kill Ricky

1 Gambrell leading to a ten-year assault and battery. Do
2 you understand?

3 DEFENDANT GOOD: Yes, sir.

4 THE COURT: The next one alleges you did in
5 Pickens County July 3, 2014, attempt to kill Raymond
6 Blassingame, pleading to another ten-year offense. Do
7 you understand?

8 DEFENDANT GOOD: Yes, sir.

9 THE COURT: Shirley, your indictment alleges
10 you did in Pickens County May 2, 2014, unlawfully possess
11 meth, second offense, five years, seventy-five hundred
12 dollars. Do you understand?

13 DEFENDANT SHIRLEY: Yes, sir.

14 THE COURT: The next one alleges you did in
15 Pickens County April 24th, 2014, unlawfully possess meth.
16 They're letting you plead to a first on that. Three
17 years, five thousand dollars. Do you understand?

18 DEFENDANT SHIRLEY: Yes, sir.

19 THE COURT: Hopkins, your indictment alleges
20 you did in Pickens County on January 5, 2014, manufacture
21 methamphetamine. It carries fifteen years, twenty-five
22 thousand dollars. Do you understand?

23 DEFENDANT HOPKINS: Yes, sir.

24 THE COURT: Each of you, understanding the
25 nature of the charges and the maximum possible

1 punishment, how do you want to plead?
2 Owens?
3 DEFENDANT OWENS: Guilty.
4 THE COURT: Webb?
5 DEFENDANT WEBB: Guilty.
6 THE COURT: Browning?
7 DEFENDANT BROWNING: Guilty.
8 THE COURT: Good?
9 DEFENDANT GOOD: Guilty.
10 THE COURT: Shirley?
11 DEFENDANT SHIRLEY: Guilty.
12 THE COURT: Hopkins?
13 DEFENDANT HOPKINS: Guilty.
14 THE COURT: Is that your free and voluntary
15 decision?
16 Owens?
17 DEFENDANT OWENS: Yes, sir.
18 THE COURT: Webb?
19 DEFENDANT WEBB: Yes, sir.
20 THE COURT: Browning?
21 DEFENDANT BROWNING: Yes, sir.
22 THE COURT: Good?
23 DEFENDANT GOOD: Yes, sir.
24 THE COURT: Shirley?
25 DEFENDANT SHIRLEY: Yes, sir.

1 THE COURT: Hopkins?

2 DEFENDANT HOPKINS: Yes, sir.

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

16 Owens?

17 DEFENDANT OWENS: Yes, sir.

18 THE COURT: Webb?

19 DEFENDANT WEBB: Yes, sir.

20 THE COURT: Browning?

21 DEFENDANT BROWNING: Yes, sir.

22 THE COURT: Good?

23 DEFENDANT GOOD: Yes, sir.

24 THE COURT: Shirley?

25 DEFENDANT SHIRLEY: Yes, sir.

1 THE COURT: Hopkins?
2 DEFENDANT HOPKINS: Yes, sir.
3 THE COURT: Are you guilty?
4 Owens?
5 DEFENDANT OWENS: Yes, sir.
6 THE COURT: Webb?
7 DEFENDANT WEBB: Yes, sir.
8 THE COURT: Browning?
9 DEFENDANT BROWNING: Yes, sir.
10 THE COURT: Good?
11 DEFENDANT GOOD: Yes, sir.
12 THE COURT: Shirley?
13 DEFENDANT SHIRLEY: Yes, sir.
14 THE COURT: Hopkins?
15 DEFENDANT HOPKINS: Yes, sir.
16 THE COURT: Are you totally satisfied with your
17 lawyer?
18 Owens?
19 DEFENDANT OWENS: Yes, sir.
20 THE COURT: Webb?
21 DEFENDANT WEBB: Yes, sir.
22 THE COURT: Browning?
23 DEFENDANT BROWNING: Yes, sir.
24 THE COURT: Good?
25 DEFENDANT GOOD: Yes, sir.

1 THE COURT: Shirley?

2 DEFENDANT SHIRLEY: Yes, sir.

3 THE COURT: Hopkins?

4 DEFENDANT HOPKINS: Yes, sir.

5 THE COURT: Do you know what the evidence is
6 the State has against you?

7 Owens?

8 DEFENDANT OWENS: Yes, sir.

9 THE COURT: Webb?

10 DEFENDANT WEBB: Yes, sir.

11 THE COURT: Browning?

12 DEFENDANT BROWNING: Yes, sir.

13 THE COURT: Good?

14 DEFENDANT GOOD: Yes, sir.

15 THE COURT: Shirley?

16 DEFENDANT SHIRLEY: Yes, sir.

17 THE COURT: Hopkins?

18 DEFENDANT HOPKINS: Yes, sir?

19 MR. BUCKNER: Thank you, Judge. As to Mr.
20 Owens, on November 16th of last year an officer observed
21 a vehicle driven by the defendant turn left into a
22 parking lot at a high rate of speed through the exit
23 access. The vehicle circled the parking lot, driving
24 over a curb, and the officer activated his lights. The
25 defendant immediately exited and took off running. The

1 officer had to run after him, eventually apprehended him.
2 A minor physical struggle took place where the officer
3 had to pull out his pepper spray at one point, but he
4 eventually was apprehended.

5 Those are the facts, Judge, and this did occur in
6 Pickens County.

7 THE COURT: True?

8 DEFENDANT OWENS: Yes, sir.

9 THE COURT: Does he have a record?

10 MR. BUCKNER: Judge, he's got a 2008 public
11 disorderly conduct and a 2012 DUAC.

12 THE COURT: Are you hung over today?

13 DEFENDANT OWENS: No, sir.

14 THE COURT: What would you test for if I had
15 you tested?

16 DEFENDANT OWENS: Zero, I would assume. Maybe
17 mouthwash this morning. I know I've heard that sets off
18 ---

19 THE COURT: I'm talking about you been smoking
20 some dope or anything?

21 DEFENDANT OWENS: Oh, no, sir.

22 THE COURT: Well, what's your recommendation?

23 MR. BUCKNER: Time served, Your Honor.

24 THE COURT: You've got a problem, don't you?

25 DEFENDANT OWENS: No, sir. I believe I've

1 addressed the issue, and I ---

2 THE COURT: How have you addressed the issue?

3 DEFENDANT OWENS: I no longer drink anywhere
4 near the frequency that I used to, and I have taken ADSAP
5 as well.

6 THE COURT: Did you pass it?

7 DEFENDANT OWENS: Yes, sir.

8 THE COURT: What do you do?

9 DEFENDANT OWENS: What did I do in ADSAP?

10 MR. ANGEL: For a living.

11 DEFENDANT OWENS: Oh, for a living. I'm a
12 manager at the Southern Connection, downtown Greenville.
13 We sell Verizon products and services.

14 THE COURT: Well, do you like that job?

15 DEFENDANT OWENS: Yes, sir.

16 THE COURT: You keep drinking, you're not going
17 to have it.

18 Okay. Anything?

19 MR. ANGEL: I ask you go along with the
20 recommendation, Your Honor.

21 THE COURT: That's very generous.

22 DEFENDANT OWENS: Yes, sir. I understand.

23 THE COURT: All right. Good luck.

24 MR. ANGEL: Thank you, Your Honor.

25 MR. BUCKNER: Thank you, Judge.

1 DEFENDANT OWENS: Thank you.

2 MR. BUCKNER: Judge, as to Mr. Webb, on June
3 30th of last year, this defendant broke into a 2001 Buick
4 LeSabre belonging to the victim James Oakley. The victim
5 caught the defendant in the act and held him at gunpoint
6 until the police arrived.

7 Also, on May 19th of last year, the defendant
8 entered a 2009 Honda Odyssey van belonging to Karen
9 Edwards. The victim's husband caught the defendant
10 during the act causing him to flee the scene. He was
11 later ID'd by video.

12 Also, on that same day, this defendant entered a
13 2007 silver Jeep belonging to Haley Hunt and took fifty
14 dollars cash from a wallet located inside the vehicle.
15 Additionally, Your Honor, on October 19th of last year,
16 this defendant entered a blue Nissan Xterra belonging to
17 Vern Shaver and took Clonazepam prescribed to the victim
18 and a pair of sunglasses from the vehicle.

19 And finally, Your Honor, on October 21st of last
20 year, this defendant attempted to enter a 2000 BMW owned
21 by Gregory Sosebee. The defendant was captured on video
22 at the owner's home during the act.

23 All of these incidents occurred in Pickens County,
24 Judge. The State is recommending a sentence suspended to
25 three years active with probation to follow and

1 restitution. And PTUP that probation.

2 THE COURT: What's his record?

3 MR. BUCKNER: Judge, 1997 burg second, two
4 counts of that, two counts of petit larceny and a
5 malicious injury to personal property; 1998 conspiracy,
6 failure to obey an officer; 2005 petit larceny; 2007
7 driving under suspension; 2008 three counts of auto
8 breaking and two counts of burg second; 2011 two counts
9 of auto breaking, escape and malicious injury to personal
10 property; and another auto breaking from 2013.

11 MR. DEJONG: And, Your Honor, I would -- not to
12 interrupt you, he is currently on probation. We have
13 talked with probation. He has five years minus three
14 hundred and twenty-five days hanging over his head on the
15 probation. My client is asking that you revoke that
16 probation in full, Your Honor. I don't know that we
17 would have had to ask you that, but that's what we're
18 asking you to do. He does get another 217 days credit on
19 that. He's been in jail, both on the probation and these
20 charges, for 217 days, Your Honor. I would ask you to
21 follow that recommendation.

22 THE COURT: Well, anything you want to tell me?
23 Thirty-four, still breaking into cars like you're
24 eighteen years old?

25 DEFENDANT WEBB: Yes, sir.

1 THE COURT: What? Anything? Nothing?

2 DEFENDANT WEBB: I just want to say sorry. You
3 know what I'm saying?

4 THE COURT: Sorry?

5 DEFENDANT WEBB: Yes, sir.

6 THE COURT: Yeah, sorry you got caught. I like
7 to give people a chance, but you keep coming back. I'm
8 giving you five on indictments 1885, 1862 -- those are
9 2014 indictments -- 2015-923 and 922. And indictment
10 2014-1884 -- and those were all concurrent -- five years
11 consecutive suspended with probation for three years,
12 restitution pursuant to the order, random drug and
13 alcohol testing, five hundred dollars to the public
14 defender fund. Revoke in full. Run it concurrent.

15 All right.

16 MR. DEJONG: Your Honor?

17 THE COURT: Yeah.

18 MR. DEJONG: Did you mark on the sentencing
19 sheet 217 days?

20 THE COURT: Yeah, I gave him his credit.

21 MR. DEJONG: Thank you.

22 MS. LANDSVERK: Your Honor, I'm just going to
23 step in briefly on Mr. Browning.

24 THE COURT: You did what?

25 MS. LANDSVERK: I'm just going to step in

1 briefly on Mr. Browning to tell you the facts.

2 THE COURT: Uh-oh. The heavy-hitter's coming
3 in.

4 MS. LANDSVERK: The facts are a little crazy,
5 and I ended up dismissing a number of charges, so I
6 wanted to make sure I gave you the facts that are correct
7 with the indictments.

8 THE COURT: Okay.

9 MS. LANDSVERK: Your Honor, on August 17th,
10 2013, officers were on patrol in Pickens County
11 attempting to locate a suspicious vehicle. After
12 initiating a traffic stop on the vehicle, officers
13 detained a passenger, Mr. Browning, and conducted a
14 vehicle inventory. During the search, they found two
15 small plastic baggies with a crystal-like substance that
16 came out to be meth. They also found a number of
17 unmarked pills. At that time, Browning was arrested and
18 taken to LEC.

19 Also, on March 6, 2014, Deputy Bold responded to a
20 trespassing report in Pickens County. He located
21 Browning with two other people on the property with
22 several piles of metal. Browning claimed the owner gave
23 him permission to take the scrap metal off of the
24 property, which the property owner denied.

25 Also, Your Honor, on March 18th, of '14, Deputy Nix

1 responded to a burglary at a property in Pickens County.
2 The victim stated that he owned the property containing
3 an old farm house and three outbuildings and that when he
4 came to check the property, he discovered forced entry
5 into the home and open doors in two of the three barns.
6 The victim gave the deputy copies of the video
7 surveillance which revealed the defendant on the
8 surveillance.

9 Those are the facts, Your Honor. And he has a very
10 large criminal record, so I can go through it or I can
11 start maybe in the 2000s, whatever you would prefer.

12 THE COURT: How much of it do you want to hear?

13 DEFENDANT BROWNING: Well, I mean, to be honest
14 with you, it's bad. That's all I can tell you.

15 THE COURT: Yeah.

16 Tell me what your recommendation is.

17 MS. LANDSVERK: Your Honor, our recommendation
18 is three years active time.

19 THE COURT: Tell me his record.

20 MS. LANDSVERK: Okay. And this is also to run
21 concurrent. He's on probation, and he's in violation of
22 ---

23 THE COURT: Tell me his record.

24 MS. LANDSVERK: Okay. '86 burglary second
25 degree, grand larceny, another burglary, petit larceny;

1 '88 burg third, petit larceny, burg second; 1990
2 attempted burglary, petit larceny, a second petit
3 larceny, burg third, grand larceny; 1992 public drunk;
4 '93 malicious injury to personal property, burglary
5 second, petit larceny, grand larceny, possession of tools
6 of a crime; 1999 open container, petit larceny, burglary
7 second, burglary second violent; 2000 grand larceny, burg
8 second times two, shoplifting, receiving stolen goods;
9 '08 receiving stolen goods; '09 possession of meth,
10 shoplifting, burglary second, shoplifting third, another
11 possession of meth; 2010 shoplifting.

12 THE COURT: What's he on probation for?

13 PROBATION AGENT: Enhancement of third or
14 subsequent -- property offense third or subsequent, and
15 then a malicious injury, willful injury to courthouse or
16 jail.

17 THE COURT: When did he get that?

18 PROBATION AGENT: He was sentenced on this in
19 2012, January of 2012.

20 THE COURT: All right. Is all that true and
21 accurate?

22 DEFENDANT BROWNING: Yes, sir.

23 THE COURT: Okay.

24 And the recommendation was three years?

25 MS. LANDSVERK: Three years active, Your Honor,

1 followed by probation and restitution.

2 THE COURT: I'm going to give you more time
3 than that. What do you want to tell me?

4 MS. MANIGAULT: Are you going forward?

5 DEFENDANT BROWNING: Well, I'd like to withdraw
6 my plea, I reckon.

7 THE COURT: You want to withdraw your plea?
8 Let's see. How many burglaries does he have? One, two,
9 three, four, five, six, seven, eight, nine. And I don't
10 think I got them all.

11 DEFENDANT BROWNING: I received a fifteen-year
12 sentence for those burglaries, though, and I only have
13 one second-degree burglary since '89.

14 THE COURT: That's not what I heard. I heard
15 you had one in '98, one in '99, and then you had one in
16 '09, I believe.

17 MS. LANDSVERK: That's correct, Your Honor.

18 THE COURT: You got a fifteen-year sentence for
19 it, and you still go back and do the same thing.

20 What do you want to tell me, Ms. Manigault? I'm not
21 sure I'm going to let him withdraw. What good is that
22 going to do? Put it off on somebody else?

23 MS. MANIGAULT: Your Honor, the probation
24 office was recommending three years with substance abuse
25 also. That's not something I negotiated. That's what

1 they came up with on their own.

2 THE COURT: Yeah, okay.

3 MS. MANIGAULT: And I asked the solicitor would
4 she consider running this sentence concurrent with the
5 probation sentence. And that's what Mr. Browning and I
6 had discussed.

7 THE COURT: Your lawyer is very persuasive and
8 very good.

9 DEFENDANT BROWNING: Yes, sir.

10 THE COURT: Yeah.

11 MS. MANIGAULT: Your Honor, he is forty-seven
12 years old. He has had a drug problem. And the Court has
13 heard his record, which he does not ever deny. He was on
14 disability for mental issues and receiving some income
15 there. He's single with no children. He has a brother
16 in Pickens County.

17 Your Honor, we realize that he has a horrible
18 record. There's just no getting around it. It's a
19 horrible record.

20 THE COURT: Yeah.

21 MS. MANIGAULT: It's between ten and twelve
22 burglaries and receiving stolen good and other things,
23 but we would ask the Court if you would seriously
24 consider ---

25 THE COURT: I know what you want. I'm not

1 going to do that.

2 You've earned more than that. What can you tell me?

3 DEFENDANT BROWNING: I am ready to turn my life
4 around.

5 THE COURT: Well, that's good news.

6 MS. MANIGAULT: And we would tell the Court
7 that he did apply to Well of Hope Ministries, and they
8 were willing to work with him with in-patient treatment
9 if he got through this issue with the three years.

10 DEFENDANT BROWNING: Would you consider that,
11 Your Honor?

12 MS. MANIGAULT: And we do have a letter from
13 Well of Hope.

14 THE COURT: I absolutely take your word for
15 that.

16 Ten years. Provided upon the service of six years,
17 the balance is suspended, three years of probation,
18 restitution pursuant to the order, substance abuse
19 counseling, random drug and alcohol testing, in-patient
20 treatment. Hold for a bed. Five hundred dollars public
21 defender fund. Ten suspended during probation, and
22 there's five concurrent from the other one. They both
23 can run it together.

24 I tell you what. Your lawyer talked me down. I was
25 going to hit you a lot harder than that.

1 DEFENDANT BROWNING: Thank you, Your Honor.

2 THE COURT: Well, you're going to be an old man
3 when you get out the way you're going. Good luck.

4 MS. MANIGAULT: Thank you, Your Honor.

5 THE COURT: Okay.

6 MR. BUCKNER: Thank you, Judge. I'm going to
7 tag back in for the remainder of the group.

8 THE COURT: Okay.

9 MR. BUCKNER: Judge, as to Mr. Good, on July
10 3rd of last year, the defendant and co-defendant, Austin
11 Chapman, went over to Raymond Blassingame's residence
12 located at [REDACTED] Wilbur Street in Pickens County. When the
13 defendants pulled into the driveway, one defendant fired
14 two shots out of the vehicle, and another got out of the
15 truck and yelled for Ricky Gambrell and Raymond
16 Blassingame to give their wallets to them. The
17 defendants decided to go after the victims, fighting both
18 of them and chasing them around the yard. After the
19 defendants fled the scene, they were pulled over, and
20 pursuant to a legal search of the vehicle, a handgun was
21 found behind the passenger seat, and Mr. Gambrell's
22 wallet was found in the center of the front seat.

23 This incident occurred in Pickens County, Judge.
24 There is a recommendation.

25 THE COURT: What's that?

1 MR. BUCKNER: Two years active time.

2 THE COURT: You went over there and arm rob
3 somebody? Is that what it was?

4 DEFENDANT GOOD: It wasn't like that, Your
5 Honor, but that's the way it got wrote up.

6 THE COURT: Yeah? What happened? Feuding a
7 little bit.

8 DEFENDANT GOOD: Feuding. That's all it was.

9 THE COURT: About what?

10 DEFENDANT GOOD: I was over there the night
11 before drinking, and a couple of them jumped on me and
12 tried to take my stuff away from me and took something
13 from me, and I went back.

14 THE COURT: What did they take?

15 DEFENDANT GOOD: They took about a hundred
16 dollars from me out of my pocket.

17 THE COURT: Where did all of this happen?

18 DEFENDANT GOOD: Right there on Wilbur Street
19 in Easley.

20 THE COURT: Wilbur Street in Easley?

21 DEFENDANT GOOD: Right behind the Bi-Lo store,
22 the old Bi-Lo. It's a Goodwill Store now.

23 THE COURT: I was thinking you were going to
24 tell me this happened somewhere up off of 178 or
25 something.

1 DEFENDANT GOOD: No, sir.

2 THE COURT: No? What were you drinking?

3 DEFENDANT GOOD: I was drinking liquor. Wild
4 Turkey.

5 THE COURT: Wild Turkey?

6 DEFENDANT GOOD: Yes, sir.

7 THE COURT: What do you recommend?

8 MR. BUCKNER: It's two years active time.

9 Judge, I think there are some problems with the case, and
10 that's the basis of the recommendation. Nobody has
11 really been forthcoming with information.

12 THE COURT: Yeah, yeah. That's because when he
13 gets out, they're going to go back drinking again.

14 Aren't you? Are they your drinking buddies?

15 DEFENDANT GOOD: I'm not going to go back to
16 Easley to drink. I ain't going to lie to you, now, Your
17 Honor.

18 THE COURT: Huh?

19 DEFENDANT GOOD: I'm not going back to Easley
20 to drink.

21 THE COURT: Where are you going to go?

22 DEFENDANT GOOD: I'll stay at my house like
23 I've done. You know, that's what I try to do if I do
24 drink. My old lady don't let me drink that much, and
25 when I do, this usually happens.

1 THE COURT: Yeah?

2 DEFENDANT GOOD: Yes, sir.

3 THE COURT: You ever go up there to -- what do
4 they call it -- Bob's Place? What do they call that
5 place? Scatter Brains?

6 MR. BUCKNER: Scatter Brains.

7 DEFENDANT GOOD: Yes, sir. I used to be a
8 pretty regular horseshoe thrower up there back in the
9 day.

10 THE COURT: Yeah. At the Road Kill Grill?

11 DEFENDANT GOOD: Yes, sir.

12 THE COURT: Have you ever eaten anything in
13 there?

14 DEFENDANT GOOD: No, sir. I cook my own food
15 when I go up there.

16 THE COURT: And your wife wanted a little
17 vacation from you, so she didn't get you out jail, is
18 that right?

19 DEFENDANT GOOD: She got it. She's ready for
20 me to come home now. Her and my daughter and my son.
21 I've been in the county jail for almost a year over
22 there. And it's -- I tell you what. It's broke me.

23 THE COURT: Aw, you ain't broke.

24 DEFENDANT GOOD: And they ain't got no air
25 conditioning neither. It's really breaking me these last

1 couple weeks.

2 THE COURT: Yeah, it's hot.

3 DEFENDANT GOOD: Yes, sir.

4 THE COURT: All right. Time served to you.

5 Good luck.

6 DEFENDANT GOOD: Thank you, sir. Thank you.

7 MR. BUCKNER: Thank you, Judge.

8 THE COURT: Settle down or we'll lock you up
9 for public disorderly conduct.

10 (Laughter)

11 MR. BUCKNER: Judge, as to Ms. Shirley, on
12 April 24th of last year, this defendant was stopped by
13 Liberty PD within the city limits of Liberty for driving
14 with an improper tag. Once pulled over, the defendant
15 gave consent to search, and officers located what later
16 analysis revealed to be .05 grams of methamphetamine.

17 Additionally, on May 2nd of last year, this
18 defendant was again stopped by Liberty PD within the city
19 limits of Liberty for driving without a taillight. Once
20 pulled over, the defendant admitted to having drugs on
21 her person and handed over to the officer less than one
22 gram of meth.

23 Those are the facts, Your Honor. The State is
24 recommending a probation sentence with the requirement
25 that she enroll in in-patient drug treatment at some

1 point in time here in the near future.

2 THE COURT: True?

3 DEFENDANT SHIRLEY: Yes, sir.

4 THE COURT: How bad you -- how long you been on
5 it?

6 DEFENDANT SHIRLEY: A couple years.

7 THE COURT: How often you doing it?

8 DEFENDANT SHIRLEY: Once or twice a month.

9 THE COURT: Oh, come on.

10 DEFENDANT SHIRLEY: Maybe every day then.

11 THE COURT: Maybe every day? It's really got a
12 hold of you, doesn't it?

13 DEFENDANT SHIRLEY: Yes, sir. But I'm trying
14 to turn my life around. I'm going to IOP now, and I
15 moved back with my family.

16 THE COURT: She needs in-patient.

17 MS. MANIGAULT: Your Honor ---

18 THE COURT: Let me ask you this. If I make you
19 go get tested -- and those tests will tell me -- what's
20 going to show up?

21 DEFENDANT SHIRLEY: Probably meth.

22 THE COURT: When did you do it?

23 DEFENDANT SHIRLEY: The last two or three days
24 ago.

25 THE COURT: Do you want to change your life?

1 DEFENDANT SHIRLEY: Yes, sir.

2 THE COURT: Do you want to save your life?

3 DEFENDANT SHIRLEY: Yes, sir.

4 THE COURT: Do you work anywhere?

5 DEFENDANT SHIRLEY: I'm on disability.

6 MS. MANIGAULT: And she's on probation.

7 THE COURT: Oh. ***

8 AGENT WAHLGREN: She's currently got a case
9 that she's in violation of the probation. She actually
10 absconded, and we finally got her back in. And that's a
11 pending violation right now.

12 THE COURT: Was it meth? What was it for?

13 MR. BUCKNER: She's got a 2010 possession of
14 meth charge, but that's the only prior record I have,
15 Your Honor.

16 MS. MANIGAULT: It's meth.

17 AGENT WAHLGREN: It's possession of meth that
18 she's actually on for now.

19 MS. MANIGAULT: Your Honor, her agent was going
20 to, I believe, try to work with her to get her into in-
21 patient treatment for the violation. So if she could get
22 the probation for these and go to in-patient later.

23 THE COURT: We're doing so much of this I need
24 to come up with a -- what do you call it? The initials,
25 what do you call it? A little abbreviation.

1 MR. BUCKNER: Acronym, Your Honor.

2 THE COURT: An acronym. An acronym. It will
3 be ITHFB. So three years. Provided upon ninety days,
4 balance is suspended, probation for three years,
5 substance abuse counseling, random drug and alcohol
6 testing.

7 ITHFB. You know what that means?

8 DEFENDANT SHIRLEY: No, sir.

9 THE COURT: In-patient treatment, hold for bed.

10 DEFENDANT SHIRLEY: Okay.

11 THE COURT: Three years suspended during
12 probation on the other one. Terminate her other
13 probation.

14 MS. MANIGAULT: Thank you, Your Honor.

15 MR. BUCKNER: Thank you, Judge.

16 THE COURT: You go get fixed up.

17 DEFENDANT SHIRLEY: Yes, sir.

18 THE COURT: You need help. You can't do it on
19 your own.

20 DEFENDANT SHIRLEY: Yes, sir.

21 THE COURT: All right. Good luck to you.

22 DEFENDANT SHIRLEY: Thank you.

23 MR. BUCKNER: Judge, as to Mr. Hopkins, on
24 January the 5th of last year, the defendant was stopped
25 riding in a car in Pickens County. He was in the right-

1 rear passenger seat. Inside there were the ingredients
2 found for an active meth lab and a cooking lab in a 20-
3 ounce soda bottle. The car was driven by Travis Kinnanon
4 (phonic), and Justin Thorntin (phonic) and Amy Moore were
5 passengers along with the defendant.

6 Those are the facts, Your Honor. The recommendation
7 is straight-up with a cap of six years.

8 MS. MANIGAULT: Uh-uh (negative). This is a
9 straight-up plea.

10 MR. BUCKNER: Okay. Just straight-up period?

11 MS. MANIGAULT: A straight-up plea.

12 THE COURT: Y'all, we're not negotiating here
13 on the record. If y'all want to step aside and talk
14 about it ...

15 MS. MANIGAULT: No, sir. No. It's straight-
16 up.

17 THE COURT: What's his criminal history?

18 MR. BUCKNER: Judge, he's got a 1996 possession
19 of marijuana and possession of mushrooms, and then a 2011
20 distribution of marijuana and a drug paraphernalia
21 charge.

22 DEFENDANT HOPKINS: I've never had a
23 distribution of marijuana charge.

24 MR. BUCKNER: It may be a PWID. I don't know.
25 I didn't ...

1 MS. MANIGAULT: Is there a PWID?

2 DEFENDANT HOPKINS: No.

3 THE COURT: It wasn't marijuana?

4 DEFENDANT HOPKINS: No.

5 THE COURT: What was it?

6 DEFENDANT HOPKINS: I didn't have any charges
7 in 2011.

8 MS. MANIGAULT: Your Honor, you sentenced him
9 in February of this year to manufacturing.

10 THE COURT: I did?

11 MS. MANIGAULT: I think so.

12 DEFENDANT HOPKINS: In Greenville County, yes,
13 sir.

14 MS. MANIGAULT: Greenville.

15 THE COURT: And what did I give him?

16 MS. MANIGAULT: He got eighteen months house
17 arrest with three years probation to follow.

18 THE DEFENDANT: Fifteen years suspended.

19 MS. MANIGAULT: I'm sorry. Fifteen years
20 suspended to eighteen months house arrest with three
21 years probation to follow. And that's what we're asking
22 the Court to consider today.

23 THE COURT: Was that a recommendation?

24 MS. MANIGAULT: That's not the recommendation.

25 THE COURT: In Greenville.

1 MS. MANIGAULT: In Greenville?

2 Was that a recommendation?

3 DEFENDANT HOPKINS: It was an open plea.

4 MS. MANIGAULT: It was an open plea.

5 THE COURT: And when was that?

6 MS. MANIGAULT: February of this year. Two of
7 the co-defendants in this case, the passengers, also had
8 cases in Greenville. They got HIP in Pickens and
9 Greenville to run concurrent.

10 THE COURT: So that's why I did it.

11 Who's the cooker? Who's the chef?

12 DEFENDANT HOPKINS: Travis.

13 THE COURT: And what did he get?

14 MS. MANIGAULT: Has he pled yet?

15 DEFENDANT HOPKINS: He went to trial, as far as
16 I know.

17 MR. BUCKNER: He pled straight-up last term of
18 court and was sentenced to a period of house arrest
19 followed by probation.

20 THE COURT: When did you last use it?

21 DEFENDANT HOPKINS: Over a year. I spent five
22 months in Greenville County. I've been on house arrest
23 six months now.

24 THE COURT: Okay.

25 MS. MANIGAULT: Should I keep talking?

1 THE COURT: I love to hear you talk. Did I
2 know about this case when I did -- I must have.

3 MS. MANIGAULT: Yes, you did. We informed you.

4 DEFENDANT HOPKINS: I was also ordered to
5 comply with DSS.

6 THE COURT: All right. Well, good.

7 Fifteen years suspended during your probation.
8 You've got to pay another five hundred to the public
9 defender fund. All right.

10 DEFENDANT HOPKINS: Thank you, Your Honor.

11 MS. MANIGAULT: Thank you, Your Honor.

12 MR. BUCKNER: Thank you, Judge.

13 (WHEREUPON, the hearing concluded at approximately
14 12:44 p.m.)

15 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

1

CERTIFICATE OF REPORTER

2

I, the undersigned Renee H. Tollison, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Pickens County, South Carolina, on the 18th day of June 2015.

10

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

12

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

14

February 7, 2017

15

16

S/ *Renee H. Tollison*

17

Circuit Court Reporter

2014GS39 - 1263
 2013GS39 - 2581
 2014GS39 - 0773

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF

Michael Dale Brooming #266329

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2015-CP-39-

1101

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Kirkland Correctional Institution
2. Name and location of Court which imposed sentence General Session Pickens County SC.
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which

sentence was imposed:

(a) 2013 GS 3902581(b) 2014 GS 3900773(c) NO

2013A3910600326

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

(a) 8/15/15(b) NO

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
no
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) negotiated & plea-deal with Solicitor
- (b) Left my options open for this P.C.R.
- (c) no
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) I Accepted first Plea Deal
- (c)

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

- (a) Counsel should have objected to judge denying withdrawal of plea
- (b) I signed a negotiated plea before appearing before the court
- (c) NO

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

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

NO

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

(a) which grounds have been presented

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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

(a) First PCB Application

(b) NO

(c) NO

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? N/A
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? no

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

- (a) the name and address of each attorney who represented you:
 - i. Dorothy Manigault P.O. Box 3924 Greenville, SC 29602
 - ii. no
 - iii. no
- (b) the proceedings at which each such attorney represented you:
 - i. Arraignment and plea
 - ii. no
 - iii. no

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

I want the sentence I agreed to and signed for Jipeno Running concurrent with my probation violation.

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

no

STATE OF SOUTH CAROLINA)

County of Pickens)

VERIFICATION)

I, Michael Dale Browning, 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.

Michael Browning

SWORN to and subscribed before me this 1st
day of September 2015

[Signature] (L.S.)
Notary Public

My Commission Expires: Apr. 12, 2023

2015 SEP 10 AM 11 43
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

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

Michael Dale Browning

I, , 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.

Michael Browning
Applicant

SWORN or affirmed to and subscribed before me this

1st day of September, 2015

Shirley D. Allen - Notary
Notary Public

My Commission Expires: Apr. 12, 2023

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2015 SEP 10 AM 11 43

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
	)	
Michael Browning, #364266,	)	2015-CP-39-1101
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed on September 10, 2015¹, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Pickens County Clerk of Court's orders of commitment. Applicant was indicted by the April 2014 term of the Pickens County Grand Jury for possession of methamphetamine (2013-GS-39-2581). He was subsequently indicted in December of 2014 for Petit Larceny (2014-GS-39-0773); and burglary, 2nd degree (2014-GS-39-1263). Dorothy Manigault, Esquire, represented him. On June 18, 2015, Applicant pled guilty to both charges as indicted. The Honorable Edward W. Miller sentenced Applicant to a sentence of ten years for burglary, provided that upon the service of six years, the balance to be suspended with three years probation; ten years for larceny, provided that upon the service of . Applicant did not appeal.

II.

In his application for post conviction relief Applicant alleges that he is being held in

¹ Respondent did not receive a copy of the application until September 21, 2016.

custody unlawfully for the following reasons:

1. Ineffective assistance of counsel;
2. I accepted first plea deal;
3. Counsel should have objected to judge denying withdrawal of plea;
4. I signed negotiated plea before appearing before the court.

Respondent denies Applicant is entitled to relief on any of these claims and demands strict proof thereof. Applicant must specify any claims he intends to raise at the PCR trial. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 *et seq*; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing. For the purpose of this Return, Respondent incorporates the Clerk of Court records, and the South Carolina Department of Corrections' records.² The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent construes Applicant's allegations as alleging ineffective assistance of counsel. Respondent asserts that Applicant's allegation of ineffective assistance of trial counsel is without merit. Respondent also asserts that Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

² Respondent has ordered the lower court transcript and will forward it upon receipt.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

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

VI.

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

VII.

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

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

PATRICK SCHMECKPEPER
Assistant Attorney General

By


ATTORNEYS FOR RESPONDENT

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

12 Jan., 2017

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

MICHAEL BROWNING, #266329)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent,)

IN THE COURT OF COMMON PLEAS

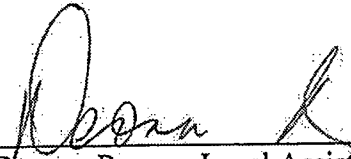
2015-CP-39-1101

AFFIDAVIT OF SERVICE BY MAIL

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

Mr. Michael Browning, #266329
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

DATED this the 12th day of January, 2016.


 Deonna Rogers, Legal Assistant
 For Respondent

2017 JAN 31 PM 3 C

State of South Carolina County of Pickens

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

Michael D. Browning, 266329, 7/9/16 2015-CP-59-1101-PCR.

Pro Se Petitioner, 504/ADA; 1) A Supplemental Amend. to PCR

-VS-

The State - A.M. Wilson

Defendants;

2) TO support reliefs sought, & for Appointed

Counsel to be given Indigent 504/ADA

3) Pro Se by motion for one:

1). Pro Se seeks supplemental amend. by motion for Counsel to be appointed by Court, are the State - Atty. Gen. office, by Def. P. Schneck paper - A.A. 6, moved for hearing in reply (Jan. 12, 17 gotten Jan. 17, 17 at 2 P.M.), ms merchant mail Dir.; by Pro Se's Indigent 504/ADA to say he has to have Heart operation, & doesn't have the funds, ask Court to waive costs..

see: Beal, 401 U.S. 321 (1971) State has to appoint Indigent free Counsel; i

see: Larson, 3 F.3d 743 (4th Cir. 1993) 3rd circuit, 4, 6th Amend. Counsel to be given; i

Pro Se prays Court will do so, are Clerk, are Atty. General S.P., Speedy to argue reliefs. Pro Se seeks - released.

Respectfully Submitted;

Dated Jan. 17, 2017 x Michael Browning #266329

Per My Gt. Atty. Allen 113 A/430 Oaklawn Rd / Ridge SC 29668

Certificate of Services

2). Pro Se Certifies he served Def. P. Schneck paper, A.A. 6, at P.O. Box 11549, Clay St. Car. 29211, & Clerk Pickens Co. P.O. Box 215, Pickens, S.C. 29671, on Jan. 18, 17, copy of supplemental amend. to PCR-15-1101 of 6 pgs. & Motion for Counsel & discovery, by ms merchant mail Dir., from above address & sworn to under penalty of perjury as true & correct.

Respectfully Submitted;

Dated Jan. 17, 2017, x Michael Browning #266329

State of South Carolina County of Pickens

Michael D. Browning, 266329, 7/10/2015 CP-39-1101-PCR.

Please Petitioner, 204/ADA;) A Supplemental Amendment to PCR to Support

-US-

) relief sought & raises below grounds also

The State - M.M. Wilson;) For release & dismissal of charges with

Defendant.;

) prejudiced & Bar to retrial.

- 1. Please seeks to Suppl. Amend. his grounds for relief & release & dismissal of charges & any others with prejudiced & bar to any attempts to retry Please, by facts & constitutional violations below;

see: Johnson, 218 F.3d 349 (4th Cir. 2000) Ct. can correct plain error that cause miscarriage of Justice, (Atty. Gen., 507 U.S. 725 (1993) same)), ;

- 2. Please states, he signed plea agreements before he pled for Atty. D. manigault; which Pleas are void by Court never allowed Please to plead properly before it, see

see: Andrade, 169 F.3d 731 (2d. Cir. 1999) Plea invalid where only response elicited from Please was (yes-sir);

- 3. Court look subject matter Jurisdiction, by lack of indictment by grand jury, because Please did not break in nor enter dwelling, he entered a building, & pictures & camera will prove this; "accused lied," nor did Please take \$4,500.00 in old pipes, valued at \$3 or \$4 dollars; if at all, -- accused pulling off insurance scam; & no evidence put up any time of value of items, & Please seeks discovery of those pictures & films, for Ind. 1263; & any Ins. Claim accused turned in;

see: Cantrell, 329 S.E.2d 528 (S.C. 2000) Courts have the power to correct errors of law, both in law & equity actions);

- 4. & Please states Ind. 14-GS-39-1263-is Void For Burglary second degree (1-187)

of Dwelling); it had to be a house; not a Building, & For Lack of \$5000.00 are more value of items old papers, see No # 3 above;

The 10 yrs. prior services of 6 yrs. & 3 yrs. on Probation For The 4 yrs. is also void & successive; because Court never counted credits, & the way the Court did sentences, Prob would build 12 yrs. 11 months For The 6 yrs., & (6 yrs. 5 1/2 months For The (4 yrs. = 3 yrs. probation), total of 18 yrs. 19 dis. = successive For The 10 yrs. sentence;

see; Swearingen, 273 S.E. 2d 334 (S.C. 1980) No Vacate excessive sentence);;

5) & Prob states Ind. 14-05-39-2581 is void, by said charge was only the 2nd offense, not 3rd offense, by Court-state could only go back to 10 yrs (Aug. 17, 2013), & state went back (Oct. 7, 00), & but, there's no other drug convictions back to (5-2, 88) in Prob's whole record; & no Ind. exist for 2nd. offense & Court lack Juris'di.;

see; Hooks, 977 S.E. 2d 211 (S.C. 2003) Ind. fail to contain necessary elements of charge & Juris'di. of Ct can't be affirmed);;

6) & Prob states Ind. 14-05-39-00773, Petit or Simple Larceny \$2,000.00 or less & (enhancement per 16-1-057) 10 yrs. suspended; is void, because state could only go back 10 yrs. from (March 6, 2014 to 3-6, 2004), & there is another same charge back to (May 2, 1985) as this one; & there's no Ind. for Petit Larceny, so Court lack Juris'di.;

see; Hooks, 577 S.E. 2d 211 (S.C. 2003) Ct. lack Juris'di. & not right to act & Juris'di. can't be confirmed);;

7). & Prob states, Ind. 14-05-39-00773 - was void, for lack of proof items costed \$2,000.00 value put up by accuser, not state Sol., not (1000.00 as order of the Restitution sheet shows), but Ind. before Grand Jury showed \$2,000.00 or less, Solicitor with hold said \$100,000 value; Prob says value less than \$3 1/2 dollars, which is "Petit Larceny", of a del-tore-taken-demon-house pile over 30 yrs. back before (3-6, 2014); (they were no crime committed), or

If any, its was 15 to 30 days are fine only; ; Schieter used this Aug. 00/73 to force Piro to plead guilty to other void illegal drugs, & states old items layed there over 25 to 30 yrs. then accuses says. Oh, its worth 2 years; if it was, why didn't he collect it up & sell it?

See: Small, 518 S.E. 2d 783 (5th Cir. 1988) Ct. Lock Jurisdiction can be raised at any time & supercedes 17-18, 90);

- 8) & Piro states, Court entered on his old (Oct. 13, 09) sentences 10 yrs. suspended to 1 year house arrests & 5 yrs. probation would max it out, which Schieter so, & I'm to get credits for one year, equals 1 year 7 mos. 25 days credits (same as full) or probation;

See: Lomax, 144 F.3d 308, 318 (4th Cir. 1999) supervised release is punishment & must be credited to Piro's sentence by below facts;

- 9) 1 yr 0 mos 0 days (From (Oct. 13, 09 to Aug. 19, 13) date re-arrested 8/19/13);
+ 1 yr. 7 mos. 25 days. (SGT-20 days & G.C.I.-15 days & WCC-15 days per month, 50 days.
- 2 yrs. 7 mos. 25 days (total built toward 1 yr. 7 mos. 25 days off)

- 10) 4 yrs. 11 mos. 30 days = 5 yrs. probation;

= 2 yrs. 7 mos. 25 days - built

- 2 yrs. 4 mos. 5 days left & I only have to built 10 mos. 20 days, & get 1 yr. 4 mos. 8 days credits, equals 5 yrs. probation, & maxed out (Oct. 13, 14); & if Court doesn't give me the 1 year off, I still get my credits & only have to built (4 months 20 days), to equal that one year; maxed me out the (Feb. 1, 2015) with 7 months 13 days credits, equals 5 yrs. probation maxed out 10 yrs. original sentence;

See: Frankson, 511 U.S. 39, 43 n. 3 (1994) Probation is a sentence in & of itself, same as supervised release follows imprisonment);

- 11) & Piro had already maxed out either (Oct. 13, 14) or (Feb. 1, 15) before the (June 18, 2015) trial, & Court could not revoke it; & give Piro 3 yrs. -

probation & disallowed his 1 year house arrest & never gave the above credits, & Prose seeks those (house arrest - same as fail & credits) off any sentence, because they were used to enhance; (If I face any time at all) Prose says (not mine);

see; Porter, 546 S.E.2d 673 (S.C.App. 2001) time served on probation is to be given off Prose's sentence);

see; McCord, 362 S.E.2d 689 (S.C.App. 2002) all credits to be given ^{to} Prose;

• 12) & Prose seeks to set aside the 10 yrs. Ind. 14-2273 - its a petit larceny only carries, only 15 to 30 yrs. with credits are fine \$250 to \$30 dollars; see; Primus, 564 S.E.2d 103 (S.C. 2002) (it has no Jurisd. unless there's an Ind.);

• 13) & Prose seeks to set aside the 5 yrs. Ind. 14-2581 - its only his 2nd offense, not 3rd; (page 2 of 6 case summary report Att. Gen. P.S. sent Prose) there's no Ind. for 2nd, & its a successive sentence by Card Ford, got unknown sentence, by Prose's can't get more than statute allows. see; Hooks, 577 S.E.2d 211 (S.C. 2003) Ind. fail to contain element code for charge);

• 14) & Prose seeks to set aside the 10 yrs. & some yrs. & probation for the 4 yrs. Ind. 14-1263, its a illegal successive sentencing; & lack Ind. by grand jury; see above no. 11's 3 & 4 facts; success wasn't living in said Building & pyres were del most low value for scrap; see; Swearingen, 273 S.E.2d 339 (S.C. 1980) we vacate excessive sentence);

• 15) & Prose seeks to set aside all Judge's, by magistrates issued warrants on falsified evidence & values; & 4th amended indictments & Sel. mislead grand jury. violated 5th & 6th Amends. & never corrected falsified values & evidence; see; Missouri, 524 S.E.2d 394 (S.C. 1999) Entitled to Franks hearing); see; Cogg, 275 S.E.2d 872 (S.C. 1981) grand jury Cts. of S.C. stand gained to see its not reduced to a mere play thing of solicitors); see; Dawkins, 377 S.E.2d 298 (S.C. 1989) At. Borge, 75 U.S. 28 (1985) Sel. must refrain from improper acts to produce wrongful convictions);

2017 JAN 31 PM 3 02

CLERK OF COURT

PICKENS COUNTY
SOUTH CAROLINA

- 16) & Pese seeks discovery of Scott Kelly's pictures & camera film, & Fed. 518, 26, 37, Brady, 378 U.S. 83 (1963) case has to turn over over, that shows Pese);
- 17) & Pese seeks & does with draws his coerced-mislead uneducated guilty pleas, because they are a miscarriage of justice & bar retrials. -
see; Lewis, 546 F.2d 566 (4th Cir. 1976) one has right to withdraw their plea);
see; Bousley, 523 U.S. 614, 619-20 (1998) guilty not voluntarily & intelligent upon Court, lawyer, not Pese understood his charge);
see; Lominac, 144 F.3d 308, 318 (4th Cir. 1998) because supervised release is punishment, it must be fully credited against Pese's now sentence or del one where not given);
see; Burks, 437 U.S. 1 (1978) properly forbids 2nd trial, when state fail to do what it was to do at 1st trial);
- 18) & Pese seeks for his appointed counsel to advise these & any others issues & -constab. violations on Pese's behalf & to come see Pese to & any reliefs Court sees needed.

Respectfully Submitted;

Dated Jan. 18, 2017, x Michael Browning, #266329

Perry Court Chat/Alk-113 A/1490 Oklahoma Rd/Peters, So. Car. 29668.

Dear Clerk ? & A.Aben. B. Schumaker;

Jan 18, 17

YA 2015-CR-39-1101-BCR-

1) Please File & send me a stamped Filed copy & reserwer Pese.
Thanks, my suppl-amount, to get counsel & added to grounds
& place motion before Ct. for counsel if needed; &
God's blessings to all, For 2017 new year days.

Sincerely;

x Michael Browning, #266329

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	2015-CP-39-01101
COUNTY OF PICKENS	)	
	)	
	)	
	)	
	)	
MICHAEL BROWNING,	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
THE STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	
_____	)	

June 28, 2017
Greenville, South Carolina

B E F O R E:

THE HONORABLE DANIEL DEWITT HALL, JUDGE

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

R. MILLS ARIAIL, JR., ESQ.
Attorney for the Applicant

DeSHAWN MITCHELL, ESQ.
Attorney for the Respondent

CHERYL A. SMITH
Circuit Court Reporter

INDEXPAGEAPPLICANT'S WITNESS

MICHAEL BROWNING:

Direct Examination by Mr. Ariail 4

Cross-Examination by Mr. Mitchell 11

Applicant Rests 14

RESPONDENT'S WITNESS

DOROTHY MANIGAULT:

Direct Examination by Mr. Mitchell 15

Cross-Examination by Mr. Ariail 21

Respondent Rests 24

Ruling by the Court 24

Certificate of Reporter 25

EXHIBITS

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

P R O C E E D I N G S

(WHEREUPON, proceedings commenced at 10:05 a.m.)

MR. MITCHELL: Your Honor, this next one is 2015-CP-39-1101, Michael Browning. The applicant is presently incarcerated in the South Carolina Department of Corrections pursuant to Pickens County clerk of court orders of commitment.

The applicant was indicted by the April 2014 term of the Pickens County grand jury for possession of methamphetamine. He was subsequently indicted in December of 2014 for petit larceny. Ms. Dorothy Manigault represented him.

On June 18, 2015, applicant pled guilty to both charges as indicted. The Honorable Edward W. Miller sentenced applicant to a sentence of ten years for burglary, provided that upon the service of six years, the balance to be suspended with three years probation; and ten years for larceny, with the balance of that suspended as well. Applicant did not appeal. He is present today in the courtroom and represented by Mr. Ariail.

THE COURT: Mr. Ariail, you represent Mr. Michael Browning in this matter?

MR. ARIAIL: I do, Your Honor.

THE COURT: And what is your client's position this

1 morning?

2 MR. ARIAIL: He's ready to proceed with this, and I'll
3 be glad to call him as my first witness.

4 THE COURT: All right. Call your witness.

5 MR. ARIAIL: Thank you. Mr. Mike Browning.

6 THE CLERK: Mr. Browning, please place your left hand
7 on the Bible and raise your right hand.

8 WHEREUPON,

9 MICHAEL BROWNING

10 After having been duly sworn, testified as follows:

11 THE CLERK: Thank you. You may be seated.

12 THE WITNESS: Where?

13 THE CLERK: Right there. Yes, sir.

14 Please state your full name for the record.

15 THE WITNESS: Michael Dale Browning.

16 THE COURT: Thank you.

17 DIRECT EXAMINATION

18 BY MR. ARIAIL:

19 Q Mr. Browning, how are you doing today?

20 A All right.

21 Q Good. You were represented by Dorothy Manigault in
22 regards to the petit larceny and burglary second degree
23 charges you pled to; is that correct?

24 A Yes, sir.

25 Q Those are the only charges she represented you on?

1 A Yes, sir.

2 Q Okay. Now, as part of that and her representation, did
3 you discuss the case with her and go over the evidence that
4 was presented against you?

5 A We didn't go over no evidence before I pled guilty.

6 Q Okay. But I'm saying is before you pled guilty, did
7 you discuss your case with her?

8 A Yes, I did.

9 Q Did you understand the evidence that they were going to
10 submit against you?

11 A Yes, sir.

12 Q Do you believe that she adequately informed you of what
13 the information was that they could use at trial against
14 you?

15 A No, sir. She didn't go over none of that with me.

16 Q Okay. So when you say she didn't go over that, did she
17 tell you what they were going to present or how they were
18 going to potentially argue at trial?

19 A No, sir. She didn't. She just -- just basically told
20 me that the Solicitor's Office was in agreement to give me
21 three years to run concurrent with the probation violation.
22 And I explained to her that I was not guilty of the burglary
23 charge. I only went in the building. I didn't go in the
24 house. But I went ahead and pled guilty with the knowledge
25 that I was going to receive a three-year sentence.

1 So when I went in front of the judge, the judge said he
2 wasn't going to go along with that recommendation, so I
3 asked him could I withdraw my plea. And he said he wasn't
4 going to allow me to. So I believe my lawyer was
5 inefficient by not objecting to that, because I felt like I
6 should have been able to withdraw my plea.

7 Q Okay.

8 A I signed the papers before I even went in front the
9 judge to receive a three-year -- I signed my indictments and
10 all before I even went in front of the judge.

11 Q Okay. And the reason you wanted to withdraw is because
12 the judge was not going to accept the -- I guess the
13 recommendation?

14 A Yes, sir.

15 Q Were you aware during the plea what the recommendation
16 was?

17 A Did I know what it was?

18 Q Yes.

19 A Yes, sir. I know what it was.

20 Q Tell me what your understanding of what the
21 recommendation was going into trial -- or going into the
22 plea.

23 A Three years active time to be run concurrent with the
24 violation of probation.

25 Q Okay. So when you -- I mean, I guess you got in there

1 and you heard something different; is that correct?

2 A Yes, sir. The judge told me that -- he said,
3 Mr. Browning, I want you to understand that I am not going
4 to go along with that -- with -- with that. I'm going to
5 give you more time.

6 And I said, Well, Your Honor, can I withdraw my plea?

7 And he said, No.

8 Q Okay. Did you discuss anything with Ms. Manigault
9 about what would happen if the judge didn't accept the
10 recommendation?

11 A What would happen?

12 Q Yeah. I mean, did she explain to you that, hey, if he
13 didn't accept the recommendation, you can get more time?

14 A No.

15 Q She didn't say anything like that?

16 A No.

17 Q Did she tell you the recommendation is only a
18 recommendation, and it's not a guarantee that you're going
19 to get that sentence?

20 A No.

21 Q Okay. So you felt that she should have done something
22 more when he wasn't going to accept that recommendation.

23 A Right. I feel like she should have objected to it or
24 something.

25 Q Okay. But she also, you're saying, did not advise you

1 of what would happen if he didn't accept the recommendation.

2 A True. She didn't.

3 Q Okay. Now, there was also -- I'm trying to go back
4 through my notes as to what we discussed. That was the main
5 item.

6 You had also told her you were not guilty of the
7 burglary; is that correct?

8 A I -- I -- yes, sir. I explained her that. My
9 motion -- my motion for discovery simply shows that I did
10 not go in there. I did not go in the house. I went into a
11 building. And when they arrested me, they arrested me for
12 simple larceny. I did not go into the house.

13 Q Tell me, did you explain -- you told her that?

14 A Yes, I did.

15 Q Why, again, did you plead to it if you weren't guilty?

16 A Well, I had other -- I had other charges, too.

17 Q Okay. I understand you had other charges, but you
18 didn't tell her, Well, I'm not pleading to the burglary
19 charge because I'm not guilty.

20 A No. Because I was 75 with a three-year sentence.

21 Q Okay. So you're saying you weren't aware that your
22 three-year recommendation was only a recommendation, and the
23 judge could give you more time if he wanted to?

24 A No. That's why I tried to withdraw my plea when he
25 told me he was going to give me more time.

1 Q Those are the items we had discussed in regard to your
2 PCR. Are there other things that I have left out?

3 A Well, about my -- about my ankle -- my year.

4 Q Home incarceration?

5 A Yeah. My home incarceration that I had served on the
6 sentence. And I briefly talked to Greg Congree [phonetic],
7 the other man that's over Eagle Eye Monitoring, and he said
8 that he sent the paperwork to Columbia to give me that time,
9 and Fletcher Cashes [phonetic] said the only way that I
10 could receive that time, if it's on the indictment that I
11 got sentenced on.

12 Q Okay. So I guess what you're asking for that is, I
13 mean, Judge Miller didn't give you -- I guess he gave you
14 credit for the home incarceration under the probation
15 violation, but he did not give it to you in regards to the
16 burglary charge; is that correct?

17 A Right. He didn't put it on -- it's run concurrent ---

18 Q Okay.

19 A --- so therefore, I don't get it because it's run
20 concurrent with the other sentence, so I don't get the year.

21 Q Do you know if -- are you saying there's something in
22 the transcript or something that was done that was not
23 included on the -- I guess the sentencing sheet that should
24 be done?

25 A All I know is they said that I'm entitled to it. The

1 judge give it to me. It's on the indictment. It says that
2 the defendant had previously served one year on home
3 incarceration and is to be given to me a credit by the South
4 Carolina Department of Corrections. So they're telling me
5 that they can't give it to me on account of that sentence is
6 run concurrent with the -- with the ten-year sentence. The
7 violation is run concurrent, but it's still a part of the
8 sentence.

9 Q Right.

10 A It's still part of the sentence because the judge said
11 that he wanted me to do the remainder of the -- of the three
12 year left on the sentence. So they're saying I don't max
13 out that sentence on the violation of probation until
14 September of this year ---

15 Q Okay.

16 A --- is when I max out that sentence. So that sentence
17 is still going on.

18 Q Okay. So there was some type of -- what your
19 understanding, that you would get that one-year home
20 incarceration, credit for time served, whatever it is?

21 A That was my understanding, because when I -- when I --
22 when I come out from in front of the judge, I simply asked
23 my probation officer, she was standing there with me, she
24 said, Yes, sir, they did give you credit for the one-year
25 home incarceration you done. So I was assuming that, you

1 know, when I went down the road, it would be put on my
2 indictment. But it's not.

3 MR. ARIAIL: Okay. Your Honor, I have no further
4 questions.

5 THE COURT: All right. Thank you.

6 Mr. Mitchell?

7 MR. MITCHELL: Thank you, judge.

8 CROSS EXAMINATION

9 BY MR. MITCHELL:

10 Q Good morning, Mr. Browning.

11 A Good morning.

12 Q I just have a few questions for you.

13 How many times did you meet with Ms. Manigault before
14 you pled guilty?

15 A Before I pled guilty, one time.

16 Q Just one time.

17 How long had she represented you leading up to the
18 guilty plea?

19 A How long had she ---

20 Q Do you recall how long she represented you before you
21 pled guilty?

22 A I don't really understand what you're asking me.

23 Q So I asked you how many times you met with her. And
24 then I know when you pled guilty. Do you know the span of
25 time that she represented? A year? a couple months?

1 A Oh, six months. I'd been to jail six months.

2 Q Okay. During that time, did she go over discovery with
3 you at all? Did she talk about discovery?

4 A No. Sure didn't. I don't even know nothing about a
5 discovery. I have not got a copy of it or anything.

6 Q So when you met with her, what did you talk about?

7 A She just come -- she come to jail saying that -- she
8 said that -- that she was going to talk with the solicitor
9 and -- and see if they would do a concurrent sentence with
10 the probation violation. So when -- that's the time I seen
11 her at the jail. I didn't see her any more until I went to
12 the courthouse.

13 When I went to the courthouse, she come and sat back in
14 the back with me and she told me that the Solicitor's Office
15 had agreed to give me an active three-year sentence to run
16 concurrent with the violation of probation. So I signed
17 the -- she had me sign the indictments right back there what
18 I was pleading guilty to, write that down with the three
19 years -- with the three year. So I signed them indictments.

20 So when I went in front of the judge, he said he was
21 not going to go along with that plea, and I tried to
22 withdraw it.

23 Q Let me ask you, you were there at the hearing, correct?
24 You pled guilty at the hearing?

25 A I sure did.

1 Q And did you not hear when the judge said that it was a
2 recommendation and not a negotiated plea?

3 A I don't know what's the difference in them.

4 Q So you don't know the difference between a
5 recommendation as opposed to a negotiated plea?

6 A No, sir.

7 Q Okay. Your lawyer didn't tell you that your plea was
8 going to be a recommendation, that the judge could give you
9 more than three years?

10 A No, sir.

11 Q Okay. All right. And when the judge asked you how did
12 you wish to plea, did you respond yes or no?

13 A Yes, sir.

14 Q Okay. Did the judge go over your constitutional rights
15 with you?

16 A Yes, sir.

17 Q So he told you you could have went to trial, you didn't
18 have to plead guilty, correct?

19 A Yes, sir.

20 Q Okay. And then when the judge asked you were you
21 satisfied with your attorney, what was your answer?

22 A Yes, sir.

23 Q Okay. And when he asked you if you were pleading
24 freely and voluntarily ---

25 A Yes, sir.

1 Q --- you said yes, correct?

2 A Yes.

3 Q All right. And the solicitor stated the facts on the
4 record, correct?

5 A Yes, sir.

6 Q Okay. And you agreed with those facts, didn't you?

7 A Yes, sir. Three years to run concurrent. That's what
8 he's saying. That's what he -- that's what he told the
9 judge. And, yes, sir, and I agreed with all the facts that
10 he said that happened and everything.

11 Q And let me ask you this. You said you didn't enter a
12 home but you entered a building, correct?

13 A Correct.

14 Q And you pled guilty to burglary second degree, correct?

15 A Right. But I had two other charges which -- which
16 carry ten years, too, so it really didn't make any
17 difference.

18 MR. MITCHELL: I've got you.

19 That's all the questions I have, Judge.

20 THE COURT: All right. Thank you.

21 Anything further, Mr. Ariail?

22 MR. ARIAIL: No redirect, Your Honor.

23 THE COURT: Mr. Browning, you can step down.

24 MR. ARIAIL: Your Honor, that is our case.

25 THE COURT: All right. Thank you.

1 Mr. Mitchell?

2 MR. MITCHELL: Your Honor, at this time, the State
3 would call Ms. Dorothy Manigault to the stand.

4 WHEREUPON,

5 DOROTHY MANIGAULT

6 After having been duly sworn, testified as follows:

7 THE CLERK: Please state your full name for the record.

8 THE WITNESS: Dorothy Ann Manigault.

9 DIRECT EXAMINATION

10 BY MR. MITCHELL:

11 Q Good morning, Ms. Manigault. How are you?

12 A I'm doing good.

13 Q Good. How long have you been practicing criminal law
14 here in South Carolina?

15 A Probably more than 25 years. 30, actually.

16 Q Is it fair to say you're experienced in criminal law?

17 A Yes.

18 Q Were you retained or were you appointed to this case?

19 A I was appointed, 608, through the Pickens County
20 Clerk's Office.

21 Q And what do you recall about the charges and how this
22 case took shape?

23 A Mr. Browning, I was assigned -- I was assigned eight
24 new charges and one probation violation, so I had nine cases
25 with him.

1 Q Nine ---

2 A Yes.

3 Q --- involving him?

4 A Yes.

5 Q Do you recall how many times you met with him or when
6 you met with him?

7 A I met with him approximately four times. I was
8 assigned the case on March 2, 2015. I went to see him at
9 Pickens County Detention Center on March 3, 2015. I went
10 back to see him on April 17, 2015, April 23, 2015. And the
11 last time I saw him was May 1, 2015.

12 Q And do you recall what you guys discussed in this
13 meeting?

14 A We discussed -- when I first went to see him, of
15 course, I get personal history and background and who can I
16 contact and what kind of -- how does he want me to proceed
17 with this case.

18 The probation violation he was concerned with he hadn't
19 gotten a recommendation from them yet. He had done one year
20 HIP according to him on the probation, and he had done the
21 probation, approximately two to two and a half years. His
22 agent was Travis Smith, so he wanted me to contact Mr. Smith
23 to see when the hearing was going to be held, and I did
24 that. He gave me instructions.

25 When he said if -- when he pled guilty, he would accept

1 three to five years. He did not want ten years on the
2 violation or the new charges. He said that he would plead
3 guilty to the two possessions of meth, he would plead guilty
4 to the burglary second, nonviolent. And so that's what we
5 eventually worked out, that he entered a plea to the burg
6 second nonviolent, the possession of meth, only one of them,
7 and petit larceny enhanced:

8 Q And the burg second, there's two different categories
9 of burg second, correct?

10 A Yes.

11 Q One where you go into a dwelling and one where you go
12 into a building, correct?

13 A Correct.

14 Q All right. And during your discussions with him, is it
15 fair to say that he understood your conversations?

16 A Yes. He appeared to understand the conversation. We
17 did -- when I did get the discovery, we went over the
18 discovery, and he, as he indicated in a portion of his
19 testimony, he said the discovery revealed where he went in,
20 what he broke into. So we did review his discovery.

21 Q All right. And did you discuss his constitutional
22 rights with him? I guess I should back up. Did you discuss
23 about pleading guilty or going to trial eventually?

24 A Yes. He was not interested in going to trial.

25 Q Okay.

1 A He was interested in, like I said, those three charges
2 he would plead to and try to get something worked out
3 concurrent with the probation violation sentence, a
4 recommendation.

5 Q And is it fair to say that you discussed the possible
6 punishments with him for these particular crimes?

7 A Yes, yes.

8 Q Okay. After doing that, did you enter into plea
9 negotiations with the Solicitor's Office?

10 A Yes, I did. The Solicitor's Office eventually, I
11 think, April or May agreed to recommend the three years.
12 She was hesitant about it, but she agreed to recommend it.
13 I notified my client by two subsequent visits that the
14 recommendation had been agreed on, however, the judge did
15 not have to accept it.

16 Q And I guess let me back up just a little bit, just ask
17 this one question. During your conversations with him, were
18 there ever any issues of competency? Do you believe that he
19 was not competent or understanding what you were saying?

20 A No. There were no issues. He was adamant about what
21 he wanted. He doesn't want -- like he said, he didn't want
22 the ten years. He was adamant about that. He wanted three
23 to five. So he was trying to write his own sentence, as
24 most of the clients do. But he was adamant.

25 Q And with this information, once you talked to the

1 solicitor, you went back and talked to him about it,
2 correct?

3 A Yes.

4 Q Okay. And did you indicate that the offer was a
5 recommendation, not a negotiation?

6 A Yes. I indicated to him that the solicitor's
7 recommending it. We actually had to beg for it, but she
8 finally relented. She was recommending it. I told him that
9 the judge did not have to accept it. The judge could give
10 him any sentence that the judge desired to and even
11 including consecutive sentences.

12 Q And he understood this, correct?

13 A Yes.

14 Q Okay. Do you feel that the plea was in the best
15 interest of Mr. Browning?

16 A Yes. He felt it was in the best interest also because
17 he has a history of burglaries dating back from 1986. And
18 so when the Solicitor's Office read the record, Judge Miller
19 says he was not accepting that recommendation. There was no
20 way.

21 Q By this time -- well, I guess I should back up. Did
22 Mr. Browning ever decide that he wanted to withdraw his
23 plea?

24 A Not before the plea was accepted. Once the plea was
25 accepted and the judge heard the record, he said that he was

1 not going to follow the recommendation. Mr. Browning
2 himself asked the Court to withdraw, and the judge said that
3 he would not allow him to withdraw.

4 Q And you've been practicing law for quite some time.
5 It's your understanding that once the plea's been accepted,
6 it's up to the judge whether he wants to ---

7 A That's correct. It's in the judge's discretion.

8 Q Okay. Did you offer any mitigation in the case during
9 the guilty plea ---

10 A Mitigation?

11 Q --- if you recall?

12 Any -- when the judge gave you an opportunity to speak.

13 A We spoke on behalf of the defendant. I don't know. I
14 think his record was killing him.

15 MR. MITCHELL: Judge, I would reference for the record
16 page 23 in which Mr. Browning's attorney, Ms. Manigault,
17 offered mitigation on behalf of the defendant in regards to
18 the charges.

19 BY MR. MITCHELL:

20 Q And as you sit here today, it's your opinion that
21 Mr. Browning fully knowingly accepted the plea, and he was
22 well aware of all of the terms?

23 A Yes.

24 Q Okay. And then just to point, circle back onto the
25 probation violation, you explained to him about the

1 probation violation going forward and how it would impact
2 his potential sentence as well.

3 A Correct. Yeah.

4 MR. MITCHELL: Your Honor, that's all the questions I
5 have for Ms. Manigault.

6 THE COURT: All right. Thank you.

7 Mr. Ariail?

8 MR. ARIAIL: May it please the Court.

9 CROSS EXAMINATION

10 BY MR. ARIAIL:

11 Q Ms. Manigault, how are you doing today?

12 A Doing great.

13 Q Now, first, the discussions with Mr. Browning in
14 regards to the case, did you go over the discovery with him?

15 A Yes.

16 Q And based on your information, did you give him a copy
17 of that discovery or let him have it?

18 A I'm not sure. I generally give copies to all my
19 clients in Pickens county. I'm not sure. But I know I went
20 over it with him at the jail.

21 Q When you went over it with him, do you remember having
22 notes of explaining to him exactly what was against him,
23 what the evidence was?

24 A Yes.

25 Q What they were going to prove? All that?

1 A Yeah. We even had pictures in the discovery. So we
2 went through all of that, what was taken. Went through the
3 lab report on the drug cases. Went through the police
4 incident reports on all the cases.

5 Q Okay. And then do you have anything in your notes or
6 anything showing that he understood that and I guess that he
7 was fine or ---

8 A What I remember vividly about him, he wanted me to
9 guarantee a sentence. And I told him that I could not
10 guarantee a sentence, that the judge -- it's in the judge's
11 discretion whether he took the recommendation or not.

12 Q But you were -- and I know you testified to that you
13 explained to him what a recommendation was. Did you discuss
14 with him what a negotiated plea was or try to get anything
15 along those lines?

16 A No. We never discussed a negotiated plea.

17 Q Okay.

18 A We only discussed a recommendation because that's what
19 he wanted me to ask for is a recommendation concurrent with
20 his probation violation.

21 Q Okay. Did you -- I guess did you discuss that or try
22 to do anything with the solicitor about a negotiated plea?

23 A No, I did not.

24 Q Okay. Were they -- I guess the next question, in your
25 view, would they be willing to have done a negotiated plea

1 in that situation?

2 A No.

3 Q Okay. After the plea was accepted during the hearing,
4 did you object? I don't think the -- there was no objection
5 to that. He was the one that was objecting. Did you feel
6 that there was anything you could do to be able to, I guess,
7 withdraw that plea at that time?

8 A No. There was nothing I could do. Like I said, he
9 asked -- he asked himself to withdraw, and the judge made it
10 clear that he was not going to allow him to withdraw. So
11 any argument that I would have made would have been futile
12 because Judge Miller had already made his decision.

13 Q Okay. And this HIP issue that he had discussed, is
14 there something that you remember or recall about one-year
15 HIP being applied to the burglary charge or if that was done
16 incorrectly on the sentencing sheets?

17 A I don't have any notes of that. The only notes I have
18 regarding the HIP information time was from him, and that
19 was the one-year HIP that was served on the probation
20 violation on the probation sentence.

21 Q Was there anything else you think you could have done
22 to be able to keep that recommendation or to get him the
23 three to five that he wanted?

24 A No, no. You know, I even talked to him about his
25 record, that it was extensive ---

1 Q Right.

2 A --- and that the solicitor acquiesced to the three
3 years, but I really don't believe that she felt that the
4 judge would accept it, you know, would even accept it. But
5 she agreed to it.

6 MR. ARIAIL: Okay. I have no further questions, Your
7 Honor.

8 THE COURT: All right. Thank you.

9 Anything further for Ms. Manigault?

10 MR. MITCHELL: Nothing further, Your Honor.

11 THE COURT: Thank you. Ms. Manigault, you can step
12 down.

13 THE WITNESS: Thank you, Your Honor.

14 THE COURT: Anything further, Mr. Mitchell?

15 MR. MITCHELL: That's all the State's witnesses.

16 THE COURT: Anything further, Mr. Ariail?

17 MR. ARIAIL: No, Your Honor.

18 THE COURT: All right. Thank you.

19 RULING BY THE COURT

20 THE COURT: I find that the petitioner, Mr. Browning,
21 has not met his burden to prove ineffective assistance of
22 counsel, and I'm going to deny his application for relief.
23 Thank you.

24 Mr. Mitchell, if you will prepare an order.

25 (WHEREUPON, proceedings concluded at 10:33 p.m.)

1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)

4 COUNTY OF GREENVILLE)

5
6
7 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South Carolina,
9 do hereby certify that the foregoing is a true, accurate and
10 complete Transcript of Record of the proceedings had and
11 evidence introduced in the trial of the captioned case,
12 relative to appeal, in the Court of Common Pleas for
13 Greenville County, South Carolina, on the 28th day of June,
14 2017.

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

17
18 April 19, 2018

19
20
21 Cheryl A. Smith

22 Cheryl A. Smith, CVR-M

23 Court Reporter
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2018 MAR -6 A 9:50

Michael Browning, #364266,)

2015-CP-39-1101

CLERK OF COURT)
Applicant,)
COUNTY)
SOUTH CAROLINA)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

FILED
Date: 3-6-18
GREENVILLE
CLOCK IN TIME CANCELLED
Init. GW

This matter comes before the Court by way of an application for Post-Conviction Relief filed on September 10, 2015¹. Respondent made its Return on or about January 12, 2017. An evidentiary hearing into the matter was convened on June 28, 2017 at the Greenville County Courthouse in Greenville, SC at which time the Applicant was present in court and represented by R. Mills Ariail Jr., Esquire. The Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's plea counsel, Dorothy A. Manigault, Esquire also testified. This Court had before it a copy of the records of the Greenville County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's guilty plea, the PCR application, Respondent's Return, and Applicant's records for the Department of Corrections.

PROCEDURAL HISTORY

Applicant is presently confined with the South Carolina Department of Corrections pursuant to the Pickens County Clerk of Court's orders of commitment. Applicant was indicted by the April 2014 term of the Pickens County Grand Jury for possession of methamphetamine

¹ Respondent did not receive a copy of the application until September 21, 2016.

(2013-GS-39-2581). He was subsequently indicted in December of 2014 for Petit Larceny (2014-GS-39-0773); and burglary, 2nd degree (2014-GS-39-1263). Dorothy Manigault, Esquire, represented him. On June 18, 2015, Applicant pled guilty to the charges as indicted. The Honorable Edward W. Miller sentenced Applicant to a sentence of ten years for burglary, provided that upon the service of six years, the balance to be suspended with three years' probation; ten years suspended for petit larceny and five years concurrent for possession of methamphetamine.

ALLEGATIONS

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

1. Ineffective assistance of counsel;
2. I accepted first plea deal;
3. Counsel should have objected to judge denying withdrawal of plea;
4. I signed negotiated plea before appearing before the court.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

Applicable Law

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the

adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. 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. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel’s performance was deficient. Id. Under this prong, the court measures an attorney’s performance by its “reasonableness under professional norms.” Id. (quoting Strickland v. Washington, 466 at 688). 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).

Applicant testified he was represented by Counsel for these charges. He testified he discussed the case with Counsel but, however Counsel did not go over the discovery with him. Applicant testified he was not guilty and believed he should have been able to withdraw his guilty plea. Applicant also testified Counsel did not advise him about his plea recommendation.

Counsel testified she has been a licensed attorney for more than thirty years. She testified she advised Applicant of all the charges and the potential sentences the charges carried. Counsel

also testified she reviewed all of the discovery with Applicant. Counsel advised Applicant of all of his Constitutional rights, including his right to a jury trial, to remain silent, to confront accusers, and so forth. Counsel testified that it was ultimately Applicant's decision to plead guilty, based on their discussions. Counsel testified she met with Applicant on four occasions of which included March 3, 2015, April 17, 2015, April 23, 2015 and May 1, 2015. Counsel testified she explained to the Applicant the differences between the levels of burglary.

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegation of ineffective assistance of counsel. Applicant also failed to prove he was prejudiced by the alleged deficiencies. Below are this Court's specific finding regarding Applicant's allegation of ineffective assistance of counsel:

As an initial matter this Court finds the testimony of Counsel to be credible. This Court further finds the testimony by Applicant to not be credible. This Court finds Counsel provided effective assistance in this case. Counsel is a trial practitioner who has extensive experience in the trial of criminal offenses. Counsel conferred with Applicant on multiple occasions, during which Counsel discussed the pending charges, the State's evidence, possible defenses and courses of action, and answered all of Applicant's questions. It is evident from the record that the questions asked by the plea court and the responses given by Applicant that he made the decision to plead guilty freely and voluntarily. This Court further finds that Applicant was fully aware of his rights and those rights that he was waiving. Additionally, the guilty plea transcript and the signed sentencing sheets indicate the guilty plea was with a recommendation and not negotiated. Moreover, this court finds that Counsel was not deficient in failing to object to the withdrawal of the guilty plea as the plea judge would not allow the Applicant to do so. "The

withdrawal of a guilty plea is generally within the sound discretion of the trial judge. An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." State v. Bickham 381 S.C. 143,147 672 S.E. 2d 105,107 (2009).

Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegation is denied and dismissed.

CONCLUSION

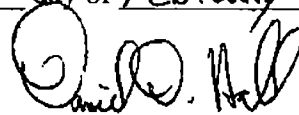
Based on all the foregoing, this Court finds and concludes that Applicant has not established any violations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED THAT:

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

AND IT IS SO ORDERED this 13th day of February, 2018.



DANIEL D. HALL
Presiding Judge
Thirteenth Judicial Circuit

York, South Carolina

CLERK OF COURT
SOUTH CAROLINA
YORK COUNTY

2018 MAR -6 A 9:50

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
POSSESSION OF METHAMPHETAMINE

At a Court of General Sessions, convened on **APR 15 2014** the Grand Jurors of Pickens
County present upon their oath:

That MICHAEL DALE BROWNING did in Pickens County, on or about the 17th day of August, 2013, willfully
and unlawfully have in his possession a quantity of Methamphetamine, a schedule II controlled substance. This is
in violation of §44-53-0375 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.

Courtney C. Jambouk
SOLICITOR

WITNESSES

Matthew Ryan Kirby

Pickens County Sheriff's Office

8/18/2013

ARREST WARRANT NUMBER

2013A3910600326

TRUE BILL ACTION OF GRAND JURY

Date

APR 15 2014

Christopher B. Beyer
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-39-
CCL

2581

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

APR 15 2014

TERM 2013

THE STATE

vs.

MICHAEL DALE BROWNING

Indictment for

3016

POSSESSION OF METHAMPHETAMINE

VIOLATION § 44-53-0375(a)

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

INDICTMENT FOR
PETIT LARCENY PURSUANT TO § 16-1-0057

At a Court of General Sessions, convened on _____ the Grand Jurors of Pickens
County present upon their oath:

That MICHAEL DALE BROWNING did in Pickens County, on or about the 6th day of March, 2014, feloniously take and carry away the personal property of Glenn Julian, to wit: various pieces of metal with a total value less than Two Thousand Dollars (\$2,000.00) with intent to deprive the owner permanently of such property. This is in violation of § 16-13-0030 and § 16-1-0057 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.

Countney C. Jandvark
SOLICITOR

WITNESSES

Jeff Bolde

Pickens County Sheriff's Office

3/7/2014

ARREST WARRANT NUMBER

2014A3910600044

ACTION OF GRAND JURY

TRUE BILL

Date

DEC 09 2014

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-39-0773
CCL

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

DEC 09 2014

TERM 2014

THE STATE

vs.

MICHAEL DALE BROWNING

Indictment for

3596

PETIT LARCENY PURSUANT TO § 16-1-0057

VIOLATION § 16-13-0030(A)

Continued C. Jandorske
SOLICITOR BAR # 100158

WITNESSES

Keith Allen Wald

Pickens County Sheriff's Office

5/5/2014

ARREST WARRANT NUMBER

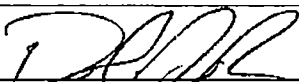
2014A3910200094

ACTION OF GRAND JURY

~~TRUE BILL~~

DEC 09 2014

Date



Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-39-1263
CCL

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

DEC 09 2014

TERM 2014

THE STATE

vs.

MICHAEL DALE BROWNING

Indictment for

0080

BURGLARY SECOND DEGREE

VIOLATION § 16-11-0312

COUNTY OF
STATE

Pickens

VS.

Michael Dale Browning

AKA:

Race: WHITE Sex: M Age: 36 47

DOB: 1-1968 SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Liberty, SC 29657

DL#: [REDACTED] SID#: [REDACTED]

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

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

TO: Drugs / Possession of less than one gram of meth. or cocaine base, 3rd or sub. offense

INDICTMENT/CASE#: 2013GS3902581

A/W#: 2013A3910600326

Date of Offense: 8/17/2013

S.C. Code § 44-53-0375(a)

CDR Code #: 3016

SENTENCE SHEET

0-5 + 10r 457500

☐ CONVICTED OF or ☒ PLEADS

in violation of § 44-53-0375(a) of the S.C. Code of Laws, bearing CDR Code # 3016

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.ATTEST: Chapman for 101249 100138 Michael Browning Joseph A. Nappert 3615
Landsverk, Courtney Connell SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

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

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

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 141 DAYS☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.70TOTAL \$ 133.70

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2013GS3902581
2
6/18/15

94
STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Pickens

VS.

Michael Dale Browning

AKA:

Race: WHITE

Sex: M

Age: 47

DOB: 1968

SS#: [REDACTED]

Address:

City, State, Zip: Liberty, SC 29657

DL#:

SID#:

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

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

TO: Larceny / Petit or Simple Larceny \$2000 or Less (Enhancement per 16-1-0057)

in violation of § 16-13-0030(A) of the S.C. Code of Laws, bearing CDR Code # 3596

☒ NON-VIOLENT

☐ VIOLENT

☐ SERIOUS

☐ MOST SERIOUS

☐ Mandatory GPS(CSC w/minor 1st or Lewd Act)

☐ §17-25-45

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

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

ATTEST:

Landsverk, Courtney Connell

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☐ State Department of Corrections,

☐ County Detention Center,

for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

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

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

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 141 DAYS

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

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

SPECIAL CONDITIONS:

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

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

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

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS3900773

A/W#: 2014A3910600044

Date of Offense: 3/6/2014

S.C. Code § 16-13-0030(A)

CDR Code #: 3596

SENTENCE SHEET

0-10

☐ CONVICTED OF or ☒ PLEADS

Presiding Judge

Judge Code:

Sentence Date:

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Hard P. Welborn, Jr.
Renee Tolson

2130
6/18/15

COUNTY OF Pickens
STATE VS.
Michael Dale Browning

AKA: _____
Race: WHITE Sex: M Age: 47
DOB: 1968 SS#: 101249
Address: _____
City, State, Zip: Central, SC 29630
DL#: _____ SID#: _____

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

In disposition of the said indictment comes now the Defendant who was
TO: BURGLARY, SECOND DEGREE (DWELLING)

INDICTMENT/CASE#: 2014GS3901263

A/W#: 2014A3910200094

Date of Offense: 3/18/2014

S.C. Code §: 16-11-0312

CDR Code #: 0080

SENTENCE SHEET

0-10

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-11-0312 of the S.C. Code of Laws, bearing CDR Code # 0080
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

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

ATTEST: Courtney Connell 101249 Michael Browning Sarah R. Wanjana
Landsverk, Courtney Connell SC Bar# Defendant Attorney for Defendant SC Bar#

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

for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of 60 days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 3

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 141 Days

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

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

SPECIAL CONDITIONS:

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

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

Payment Terms:

☐ Set by SCDPPPS Per Order

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$ <u>500.00</u>
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>18.70</u>
TOTAL		\$ <u>1648.70</u>

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☒

Random Drug/Alcohol testing ☒

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

\$ _____ paid to Public Defender Fund

Other:

IN PATIENT TREATMENT
HOW FOR CEE

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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2/18/15