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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County

Honorable J. Cordell Maddox, Circuit Court Judge

HENRY ANTONIO BURGESS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000740

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

KELLY OPPENHEIMER
Assistant Attorney General
Attorney General Office
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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State of South Carolina
County of Lexington

Court of General Sessions

State of South Carolina,)
)
 vs.)
)
 Henry Antonio Burgess,)
)
 Defendant.)

Transcript of Record
2015-GS-32-00544
2015-GS-32-00545
2015-GS-32-00546

November 16, 2015
Lexington, South Carolina

B E F O R E:

The Honorable Clifton Newman, Judge

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

Sutania A. Radlein, Assistant Solicitor
Attorney for the State

Sally J. Henry, Esquire
Attorney for the Defendant

Stacy S. Johnson, RPR
Circuit Court Reporter

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E X H I B I T S

NO.

DESCRIPTION

ID. EVD.

(No exhibits marked.)

1 (The following proceedings were held on November 16,
2 2015.)

3 **THE CLERK:** Okay. Henry Burgess, come around.

4 **THE COURT:** Yes, ma'am.

5 **THE CLERK:** Indictment 2015-GS-32-00544, State
6 versus Henry Antonio Burgess, indicted for possession
7 of tools capable of being used in a crime, pleading as
8 charged. Indictment 2015-GS-32-00545, State versus Henry
9 Antonio Burgess, indicted for burglary second degree,
10 Section B, violent, pleading as charged. And Indictment
11 2015-GS-32-00546, the State versus Henry Antonio Burgess,
12 indicted for malicious injury to electric utility lines,
13 pleading as charged. They are all signed and properly
14 attested to, they are all true billed, and he is
15 represented by Ms. Sally Henry of the public defender's
16 office.

17 Raise your right hand, sir.

18 (Whereupon, Henry Antonio Burgess was duly sworn by
19 the Clerk of Court.)

20 **THE COURT:** All right, Madam Solicitor.

21 **MS. RADLEIN:** Thank you, Your Honor. This incident
22 occurred on December 10th of 2014 at the El Cheapo gas
23 station, located at 3862 Old Charleston Highway here in
24 Lexington County. What happened in this case, Your Honor,
25 the Defendant essentially -- based on his own written

1 statement, he walked from his home to the El Cheapo about
2 1:00 in the morning -- arrived there around 1:00 in the
3 morning and he used a hammer, a screwdriver and, I believe,
4 some pliers to, one, cut the electric lines at the
5 El Cheapo; two, used the hammer and the screwdriver to
6 essentially knock his way into the building. There's this
7 -- on the side of the building at the office he broke
8 through the cinderblocks, the cement blocks, to the
9 building, Your Honor. Then at that time he -- it's
10 believed that he crawled into the office portion. He
11 brought a black trash bag with him where he went through
12 the office in the back storage area and piled up the trash
13 bag with cigarettes and several other items, including
14 candy, specifically Reese's butter cups, and some cash
15 from the white envelope by the cash register.

16 Your Honor, this incident was captured on video.
17 The Defendant distinctly was wearing a long-sleeved
18 thermal-type T-shirt with three buttons on the front, as
19 well as a beanie, and he was wearing these thick winter
20 gloves, which all can be seen in the video. He also was
21 wearing some jeans that notably were cuffed at the ends
22 and some shoes.

23 And why that's important, Your Honor, is because
24 shortly after the incident the alarm was tripped and law
25 enforcement did arrive. The Defendant was seen on camera

1 exiting back through the hole that he created and took off
2 into the woods. About thirty minutes later after the
3 police determined that a burglary had occurred, they were
4 heading down Old Wire Road past the El Cheapo and the
5 Defendant walked out of the wood line. The officer had to
6 take evasive action not to hit the Defendant and once he
7 made -- got a good view of him, realized he was the man
8 that he just watched on the video burglarize the El Cheapo
9 just a few moments prior.

10 He was detained at that time. He had a black bookbag
11 with him. As he was moving, you could hear that it had
12 some tools in it. The search incident to arrest at that
13 time revealed that tools were in there. You can see some
14 of the cement dust from the blocks that he used -- that was
15 from the building also on his clothes, which is notable.
16 You can see that he's wearing the same clothes on the video
17 and they were covered in cement dust.

18 **THE COURT:** So is this the best case you've ever had?

19 **MS. RADLEIN:** It's probably one of them, Your Honor.
20 He then -- later on that afternoon around 12:50 at the
21 detention center, Detective Roy Williams, who is present,
22 Your Honor, and who would have testified in this case,
23 along with Mr. Richardson, who was the deputy who responded
24 and almost hit the Defendant as he was leaving the
25 El Cheapo, Mr. Roy Williams met with the Defendant later

1 that day and to which he gave a full confession. He even
2 gave more details than law enforcement knew at the time.
3 He described how he cut the wires and described how he got
4 into the building. He described even the candy that he
5 stole or was attempting to steal. I think the issue of
6 actually taking the items out of the hole that he cut
7 wasn't big enough to drag the amount of items that he put
8 in the trash bag out the actual hole and law enforcement
9 was there.

10 **THE COURT:** All right.

11 **MS. RADLEIN:** I think that's --

12 **THE COURT:** Go ahead.

13 **MS. RADLEIN:** Thank you, Your Honor. Also the State
14 indicted him for being a person with two prior convictions,
15 which the State would have proven today as well. That's
16 the extent of the facts, Your Honor. If you want his
17 record --

18 **THE COURT:** There's two prior convictions for -- of
19 what significance is that?

20 **MS. RADLEIN:** Of burglary. Two prior convictions of
21 burglary, Your Honor. This is actually a burg second
22 violent; that the Defendant was the person who committed
23 the burglary and he had two prior convictions of burglary.

24 **THE COURT:** That means that it is violent because of
25 the prior two convictions or does it mean it's first degree

1 burglary because it's two prior -- what does it mean?

2 **MS. RADLEIN:** Your Honor, the State could have
3 straight indicted for first degree burglary in this case
4 because of the two priors, but I decided to go with the
5 burg second violent. So it makes it a violent per the
6 two priors and makes it a violent because of the nighttime
7 occurrence breaking into a building.

8 **THE COURT:** All right. Ms. Henry, the clerk and the
9 solicitor has indicated that Mr. Burgess wants to plead
10 guilty and the State has outlined some of the evidence
11 that they would have to present against him. Have you
12 discussed with him the nature of the charges, the possible
13 punishment, his constitutional rights to have a jury trial?

14 **MS. HENRY:** Yes, sir, at length.

15 **THE COURT:** And do you think he understands all of
16 that?

17 **MS. HENRY:** Yes, sir, I do.

18 **THE COURT:** And do you agree with his decision to
19 plead guilty?

20 **MS. HENRY:** Yes, sir.

21 **THE COURT:** All right. Mr. Burgess, how are you
22 doing?

23 **THE DEFENDANT:** Your Honor, I'm good.

24 **THE COURT:** You're good?

25 **THE DEFENDANT:** Yes, sir.

1 **THE COURT:** All right. Are you today under the
2 influence of any drugs, alcohol, medicine, anything that
3 might affect your ability to understand what you're doing?

4 **THE DEFENDANT:** No. No, sir.

5 **THE COURT:** Have you had enough time to make up your
6 mind as to whether or not you want to plead guilty?

7 **THE DEFENDANT:** Yes, sir.

8 **THE COURT:** Do you want to give up your right to a
9 jury trial and plead guilty to these charges?

10 **THE DEFENDANT:** Yes, sir.

11 **THE COURT:** Now the burglary violent carries up to
12 fifteen years, the malicious injury carries up to ten
13 years and the criminal tools carry up to five years. Do
14 you understand?

15 **THE DEFENDANT:** Yes, sir.

16 **THE COURT:** So if I were to run that -- all of these
17 sentences consecutive, you could be sentenced to up to
18 thirty years in prison. Do you understand?

19 **THE DEFENDANT:** Yes, sir.

20 **THE COURT:** Are you on probation or parole now?

21 **THE DEFENDANT:** Pro -- probation.

22 **THE COURT:** And you understand that this crime may
23 also be a willful violation of your -- or would be a
24 willful violation of your probation?

25 **THE DEFENDANT:** Yes, sir.

1 **THE COURT:** All right. Now as you stand before me,
2 you are presumed to be not guilty of this charge -- of
3 these charges and the jury's out there and they're ready
4 to come in and pick the jury and have your case and you
5 have a right to have a jury decide this case. Do you
6 understand?

7 **THE DEFENDANT:** Yes, sir.

8 **THE COURT:** And if you were to have a jury trial, you
9 would be presumed to be not guilty. You would have the
10 right to remain silent. The jury would be instructed that
11 they cannot hold that against you in any way. You'd have
12 the right to have your lawyer challenge any incriminating
13 evidence the State may offer against you. You'd have the
14 right to have her cross-examine any witnesses who might
15 appear against you. You'd have the right to bring in any
16 witnesses that you might have to testify in your favor. Do
17 you understand all that?

18 **THE DEFENDANT:** Yes, sir.

19 **THE COURT:** And the jury would be told that they
20 cannot find you guilty unless they were convinced beyond a
21 reasonable doubt that you're guilty. Do you know that?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** Now do you want to give up those rights
24 and plead guilty?

25 **THE DEFENDANT:** Yes, sir.

1 **THE COURT:** Has anyone promised you anything to get
2 you to plead guilty?

3 **THE DEFENDANT:** No, sir.

4 **THE COURT:** Do you think if you had a jury trial you
5 would most likely be found guilty?

6 **THE DEFENDANT:** I'm not sure.

7 **THE COURT:** Sir?

8 **THE DEFENDANT:** I'm not sure.

9 **THE COURT:** You're not sure? But you want to plead
10 guilty?

11 **THE DEFENDANT:** Yes, sir.

12 **THE COURT:** And what makes you guilty of these crimes?
13 What makes you guilty? What did you do that makes you
14 guilty?

15 **THE DEFENDANT:** I broke into that store. I broke into
16 the store.

17 **MS. HENRY:** Your Honor, if I might interject just
18 briefly.

19 **THE COURT:** All right.

20 **MS. HENRY:** He's had a heart attack in 2006 that was
21 followed by a couple of strokes, which has affected his
22 speech and also his facial expression, so he's difficult to
23 understand and I'd ask if you could give him just a little
24 leeway with that.

25 **THE COURT:** Okay. I understand. Maybe you can talk

1 into that mic a little bit better. I said what did you do
2 that makes you guilty of these crimes?

3 **THE DEFENDANT:** I broke into the store.

4 **THE COURT:** In the El Cheapo?

5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** And why did you do that?

7 **THE DEFENDANT:** Well, for my -- for my granddaughter.

8 **THE COURT:** For your granddaughter?

9 **THE DEFENDANT:** Yes, sir. I went -- I wanted to go to
10 church and I wanted to take her with me.

11 **THE COURT:** All right. Is it on a Saturday night?

12 **THE DEFENDANT:** I forgot what day it was that I did
13 it.

14 **THE COURT:** All right. And are you satisfied with the
15 representation your lawyer has given you in this case?

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** Has she done everything that she could or
18 should have done to help you?

19 **THE DEFENDANT:** Yes, sir.

20 **THE COURT:** And you have no defense. You're just
21 simply guilty of these crimes?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** And do you understand that if you want
24 to appeal the sentence and guilty plea you have to do so
25 within ten days?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** And understanding the nature of the charge
3 and the possible punishment, how do you plead to burglary
4 violent second degree; guilty or not guilty?

5 **THE DEFENDANT:** Guilty.

6 **THE COURT:** And how do you plead to malicious injury
7 to that property, the cutting the wires and all that?

8 **THE DEFENDANT:** Guilty.

9 **THE COURT:** And how do you plead to this burglary
10 tools?

11 **THE DEFENDANT:** Guilty.

12 **THE COURT:** I guess your burglary tool was a hammer,
13 huh?

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** All right. And you're guilty of all these
16 crimes?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** All right. And what are you on probation
19 for?

20 **THE DEFENDANT:** The same -- same thing.

21 **THE COURT:** The same stuff?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** Okay. All right. Well, I'll accept the
24 guilty plea and all the jurors can come back in, Mr. --
25 what's his name?

1 **BAILIFF:** Richard Thompson.

2 **THE COURT:** Richard? Come on in, the jury.

3 **MS. RADLEIN:** Your Honor, may I?

4 (Proceedings held at the bench; not reported.)

5 (Whereupon, the jury panel entered the courtroom at
6 11:09 PM.)

7 **THE COURT:** All right. Ladies and gentlemen, the
8 first case that I had for trial that the State was going
9 to have y'all selected to hear is the State versus Henry
10 Antonio Burgess. He's charged with burglary, possession
11 of criminal tools and malicious injury to property. He's
12 decided to plead guilty, and I've accepted the guilty
13 plea, and rather than have y'all continue to wait outside,
14 to have y'all to come in for the rest of this process
15 involving Mr. Burgess.

16 I've accepted his guilty plea and I'll hear further
17 from the State at this time. Ms. Radlein?

18 **MS. RADLEIN:** Thank you, Your Honor. Do you need me
19 to go into the facts again?

20 **THE COURT:** No, just whatever else you have for me.

21 **MS. RADLEIN:** Okay. Your Honor, in terms of the
22 Defendant's prior record in this case, Your Honor, it dates
23 back to 1987. He has a burglary second degree and a grand
24 larceny. In 1990, he has a trespassing, failure to stop on
25 police command. In 1992, he has a burglary second degree.

1 In 1995, he has a possession of crack, use of car without
2 owner's consent, possession of a stolen vehicle.

3 In 1998, I believe he was violated on probation or
4 parole. And Mr. Rusty Rentz is here and we can verify that
5 if I'm incorrect. In 2001, he has enticing a child from
6 attendance in public school. 2002, a public disorderly
7 conduct and simple assault, as well as an ABHAN later that
8 year. 2003, receiving stolen goods, one to five thousand,
9 and an ABHAN. In 2005, he has a burglary second violent
10 and also a petit larceny and another attempted burglary.

11 In 2010, Your Honor, the charge that he's currently
12 on probation for is a burg second violent. He received a
13 ten-year sentence suspended to five years with four years
14 probation. And I want the Court to be aware that that 2010
15 burglary, the victim on our current 2014 burglary is the
16 same victim. He entered that gas station, the El Cheapo
17 here in Lexington County, in the same manner. He entered
18 through the cement blocks. He -- I'm not sure if he used a
19 hammer, but I believe some tools to knock his way into the
20 building and, again, steal cigarettes, tobacco and other
21 candy items. We do have the victim representation here
22 today, which is Mr. Patel. He is the new owner of the
23 El Cheapo gas station.

24 **THE COURT:** What's his name again?

25 **MS. RADLEIN:** Mr. Patel.

1 **THE COURT:** Mr. Patel?

2 **MS. RADLEIN:** He's the new owner -- the previous
3 owner was also a Mr. Patel -- who was very involved in the
4 case. He assisted law enforcement. I believe even that
5 day after reviewing the video, as I mentioned earlier in
6 the facts, Your Honor, you know, when law enforcement first
7 arrived they didn't realize a burglary had occurred. He
8 had essentially took rubber mats to cover up and kind of
9 create a blind spot from the road so you couldn't see that
10 he was working on the side of the building. He hammered
11 his way in for about forty-five minutes to an hour to get
12 through that cinderblock before he crawled through. He,
13 once inside -- and they were able to watch the video with
14 Master Deputy Richardson. I believe Mr. Patel told law
15 enforcement that he recognized him. "He's the man that
16 victimized me before". And Mr. -- Master Deputy Richardson
17 is here and he can put that on the record as well, Your
18 Honor. Mr. Burgess is known in that area. The owners of
19 the gas station knew him and he just continues to victimize
20 them.

21 Also notably, Your Honor, his convictions for
22 burglary, every time he's incarcerated it stops, of course,
23 and then shortly thereafter he starts again. In this case,
24 he was released from the Department of Corrections in
25 August of 2012 and this occurred in December of 2014.

1 I believe that is the extent, Your Honor. If you
2 require any more facts in this case, I can put that on the
3 record at this time.

4 **THE COURT:** Mr. Burgess, do you dispute any of the
5 facts that the solicitor has given or do you agree with
6 everything she said?

7 **THE DEFENDANT:** Yes, sir, I agree.

8 **THE COURT:** You agree with everything she said?

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** All right. Mr. Patel, would you like to
11 say anything?

12 **MR. PATEL:** No.

13 **THE COURT:** I'll be happy to hear from you.

14 **MR. PATEL:** No, sir. Just --

15 **THE COURT:** All right.

16 **MS. RADLEIN:** No, he doesn't wish to address the
17 Court, Your Honor.

18 **THE COURT:** Anything else from law enforcement?

19 **MR. WILLIAMS:** Nothing, Your Honor.

20 **THE COURT:** All right. Mr. Rentz, regarding his
21 probation or parole or whatever he's on, what do you have?

22 **MR. RENTZ:** Yes, sir. Judge, Mr. Burgess pled July
23 the 12th of 2010 in front of Judge McMahon to burglary
24 second violent. He received a sentence of ten years, upon
25 service of five years, with four years probation. This

1 guilty plea today would be a violation and we would ask
2 that his probation be revoked.

3 **THE COURT:** And is he in jail because of bond or for a
4 probation violation or what?

5 **MR. RENTZ:** We're serving a citation, so we did not
6 issue a warrant.

7 **THE COURT:** A citation as a result of this guilty
8 plea?

9 **MR. RENTZ:** Yes, sir.

10 **THE COURT:** All right. Do you want to do that now?

11 **MR. RENTZ:** Yes, sir.

12 **MS. RADLEIN:** And, Your Honor, for the record, he is
13 currently in the detention center because of his bond.

14 **THE COURT:** What kind of bond did he get?

15 **MS. RADLEIN:** Your Honor, I can't recall off the top
16 of my head, but apparently it was high enough that the
17 Defendant didn't post it. I beg the Court's indulgence.

18 It appears to be five thousand on the malicious
19 injury, Your Honor, and thirty thousand on the burglary
20 charge and fifteen thousand on the possession of tools
21 capable of being used in the commission of a crime.

22 **THE COURT:** All right. Ms. Henry?

23 **MS. HENRY:** Thank you very much, Your Honor.

24 Mr. Burgess has been at the detention center for a
25 total of 337 days.

1 **THE COURT:** Can you pull the mic -- pull the mic over
2 to you?

3 **MS. HENRY:** Sorry. He's been at the detention center
4 for a total of 337 days by my count. He was not able to
5 make bond because the total amount being \$50,000 was way
6 out of his reach. Your Honor, I have passed up a letter
7 that Mr. Burgess wrote to the Court asking for the Court's
8 mercy. Has the Court had time to read that?

9 **THE COURT:** No, you just handed it to me a few minutes
10 ago.

11 **MS. HENRY:** Yes, sir.

12 **THE COURT:** Well, I'll read it right now. How about
13 that?

14 **MS. HENRY:** Thank you.

15 **THE COURT:** "Good morning, Your Honor. I've had a
16 heart attack and two strokes in February 2 -- 2006, a week
17 apart from each others, and 'cause I need money for my
18 medication I've been draining my mother really bad since
19 2006 for medications, hospital appointments and bills. My
20 mother is very close to seventy years old, Your Honor. I
21 came home in February of 2012 and I got baptized in
22 September for my birthday present and I've been going to
23 church faithfully three days a week. I've been going to
24 church ever since I was born. Thanks to my mother for
25 that. But on the day I got baptized it done something to

1 me and for me. Then my granddaughter was born in --
2 [REDACTED] 2014, and I was a happy man and a sad man. I
3 was happy because God allowed her to be born and I was sad
4 because I cannot buy her any things. And I've been trying
5 to get Medicaid since 2006. Each time I tried I got turned
6 down. This is my third time filing for aid. Then I was
7 arrested again in -- December 8, 2014, for a second time.
8 I feel really bad that there's two burglaries now on my
9 file sheet and they are there because I haven't had any
10 money. Nobody will hire me because of my heart attack and
11 strokes I've had and my mother said that I can't work
12 because I'm probably being watched by the disability
13 people. SSI phoned me at Lexington County jail. They told
14 me to contact my attorney when I get out. So you see, Your
15 Honor, what I'm up against. Two reasons why I feel bad;
16 one is because of my baptism and, two, is because I'm
17 unable to work due to what the doctor says. Love is the
18 most positive feeling there is, Your Honor, so it's been
19 something to feel loved since I am unable to do a lot of
20 things. Even when I does something for someone I feel less
21 than a man. It's a man's thing to feel praise for every
22 good thing he does. So I beg you, Your Honor, to find it
23 in your heart because I felt the need to punish myself for
24 what I've done. I've been locked up now for 372 days. So
25 now I stand before you hoping and praying that you will

1 find it in your heart to take my incarceration and the fact
2 that I'm -- that I didn't remove anything from the store,
3 it's on video, two cassettes. And God is my witness on
4 this, I feel it's only fair to share this with you, so I
5 hope and pray that you will find it in your heart to give
6 me time served with a little probation. I say a little
7 because the probation I'm on until February 1, 2016, I
8 wasn't paying any money because they know about my
9 conditions. Even though I wanted to get my granddaughter
10 some church clothes so I couldn't get -- so I could have
11 started to take her to church, I've learned a valuable
12 lesson from this. I have trust in God regardless of any
13 circumstances. In my Lord and Savior Jesus Christ name,
14 Amen. Thank you, Your Honor. Henry A. -- Mr. Henry A.
15 Burgess. P.S. Sorry for the sloppiness of this letter.
16 Also if you can find it in your heart to have mercy for me
17 as to what I've done. I want to thank you and if you could
18 find it in your heart to let me go home, I will never set
19 foot in any courtroom again".

20 All right. That's his letter, Ms. Henry.

21 **MS. HENRY:** Thank you for considering that, Your
22 Honor.

23 **THE COURT:** Yes, ma'am.

24 **MS. HENRY:** I think that truly expresses what's in
25 Mr. Burgess's heart. He has told me from the beginning

1 that he's always just wanted to go home, go back to his
2 home. He has support that's in the courtroom. A
3 Mrs. Rumph. Will you stand? She might like to speak
4 here at the appropriate moment. She's known Henry for
5 quite a while and is a very good friend of his. His mother
6 is working today. She could not be here. A fine, a fine
7 lady she is. She works for the Belk's corporation, has
8 for years, and has spoken to us on occasion about Henry.

9 Your Honor, he's forty-five years of age. He is the
10 father of three grown children. He's from the Gaston area
11 and he's worked for -- or did work for Bonnett Construction
12 for sixteen years and then after that his last job was a
13 loader for a trash collection company for two and a half
14 years. Then he had the heart attack followed by the two
15 strokes and has not been able to work since. And as you
16 can tell from what he wrote in the letter, he's very much
17 affected by that. I think it has undermined his own
18 opinion and self-esteem, so he found himself in a -- what
19 he felt like was an intolerable situation not being able
20 to work, not being able to bring home the bacon so to
21 speak and having to depend on his mother once again.

22 These factors certainly don't justify breaking into a
23 business. He realizes that and he very much regrets that
24 this happened. He would like the Court to be as merciful
25 as possible. He and I have spoken many, many times. He

1 knows what he's facing. He knows this is a serious
2 situation, but he's man enough to step up to the plate
3 and take the punishment, whatever the Court thinks is
4 appropriate, but hoping that the Court will take into
5 consideration his health and the fact that he's -- his age
6 probably means that a long sentence he would not be able
7 to survive.

8 I'd like for the Court to hear from Ms. Rumph, if you
9 would.

10 **THE COURT:** All right. Sure.

11 **MRS. RUMPH:** I am Theodora Rumph.

12 **THE COURT:** Theodor?

13 **MRS. RUMP:** Theodora, yes, sir.

14 **THE COURT:** Theodora. Go ahead.

15 **MRS. RUMPH:** And on behalf of Mr. Burgess, he has had
16 a rough past. I've known him since I was younger growing
17 up. I went to school with his sisters and brothers. Long
18 story short, knowing he has -- despite his past extensive
19 record, I was talking to him one day and I told him you
20 need to get yourself together, you need to get in church,
21 you need to try another path in your life that would be the
22 right way versus, you know, going down the wrong road, what
23 you were doing. He was feeling kind of down and other than
24 him being slightly mental, so to speak, he went to church,
25 started going to church. As a matter of fact, he was going

1 to church more-so than I and surprised me with the baptism
2 and everything and he was on the right road. I don't know
3 and I'm still in doubt that he did such a horrific crime,
4 but at the same --

5 **THE COURT:** You're saying he's not guilty?

6 **MRS. RUMPH:** Personally I really don't even know --

7 **THE COURT:** Do you want to see the video? He was
8 caught on tape.

9 **MRS. RUMPH:** I didn't see that obviously, but at the
10 same time --

11 **THE COURT:** Okay. He was caught on video, the whole
12 thing.

13 **MRS. RUMPH:** Really?

14 **THE COURT:** Yeah.

15 **MRS. RUMPH:** But knowing him I personally wouldn't
16 believe that he would go out and do something like that
17 being so, I guess, humbly resolved from the previous life
18 that he was living and --

19 **THE COURT:** When you say previous life, when are you
20 talking about? What period of time?

21 **MRS. RUMPH:** The period of time when he was getting in
22 and out of trouble.

23 **THE COURT:** I mean, when was that?

24 **MRS. RUMPH:** That was --

25 **THE COURT:** Because everything -- when she started,

1 she said his record started in -- what year did you say?

2 **MS. RADLEIN:** 1987.

3 **THE COURT:** 1987. And she's given me a continuous
4 pattern of crimes pretty much from that time.

5 **MRS. RUMPH:** But for all of that two years to be more
6 specific, he was doing -- I'm sorry.

7 **THE COURT:** Which two years?

8 **MRS. RUMPH:** From when he got baptized up until his --
9 to now, so to speak. Other than that 370 some odd days
10 ago.

11 **THE COURT:** Let's see. He said he got baptized in
12 February of 2012 and the previous -- he was released from
13 prison when?

14 **MS. RADLEIN:** Your Honor, he was incarcerated
15 throughout 2012 and was baptized -- not baptized, released
16 from prison August 31, 2012.

17 **THE COURT:** So he was baptized in prison?

18 **MRS. RUMPH:** No, sir, he was out.

19 **THE COURT:** Okay. We'll come back to all of that. Go
20 ahead.

21 **MRS. RUMPH:** That pretty much sums it up, Your Honor.

22 **THE COURT:** So when did -- when do you ever see him?
23 It seems as if he's in jail all the time.

24 **MRS. RUMPH:** I haven't seen him since he's been
25 incarcerated.

1 **THE COURT:** Well, I mean, how often, say, from the
2 year 2000 until now? When would you ever see him in the
3 last fifteen years?

4 **MRS. RUMPH:** When we got closer, I would say the past
5 two years, and that's when I saw the change.

6 **THE COURT:** Have you ever visited him in prison?

7 **MRS. RUMPH:** No, sir. I haven't even visited my own
8 brother in prison. I don't --

9 **THE COURT:** You have a brother in prison, too?

10 **MRS. RUMPH:** Had.

11 **THE COURT:** You had a brother in prison?

12 **MRS. RUMPH:** Yes. I'm not one that likes to go into
13 locked gates, so to speak.

14 **THE COURT:** Well, what brings you here today?

15 **MRS. RUMPH:** Just to be supportive on his side and,
16 of course, I was subpoenaed as well, so I had no choice.

17 **THE COURT:** Oh, I see. All right, Ms. Rumph. Thank
18 you very much.

19 **MRS. RUMPH:** Thank you.

20 **THE COURT:** Tell me about it, Mr. Burgess. What would
21 you like to say? Talk into that mic so I can hear you.

22 **THE DEFENDANT:** Your Honor, I'm sorry -- I'm sorry for
23 what happened and I ask you to be as lenient as possible.
24 I guess that's it.

25 **THE COURT:** All right. Ms. Henry, what else you got

1 for me?

2 **MS. HENRY:** That's all, Your Honor.

3 **THE COURT:** All right. Madam Solicitor, what's your
4 response? He wrote me a letter seeking time served and to
5 find it in my heart to let him go because he didn't steal
6 anything and he is a changed man and will never set foot in
7 another court again.

8 **MS. RADLEIN:** Your Honor, the State -- as we placed on
9 the record earlier, the State could have seeked burg first,
10 which carries, as you know, a mandatory fifteen years to
11 life. The Defendant is pleading to an exposure of zero to
12 thirty years on this charge. We do leave discretion --
13 the sentence in the discretion of the Court, Your Honor,
14 but we do believe that an active prison time is appropriate
15 in this case.

16 Also, Your Honor, for the record, as I mentioned
17 during the facts, when he piled up the black -- it was a
18 huge industrial size black trash bag with boxes of
19 cigarettes and candy and Reese's cups -- butter cups and
20 the cash, the hole that he had created was too small to
21 drag the bag out. If this trial were to go forward, we'd
22 have photos and the bag would have been lodged between a
23 futon and a hole, therefore, it --

24 **THE COURT:** Do you have copies of the photographs for
25 the judge to see?

1 **MS. RADLEIN:** Yes, Your Honor. Your Honor, the first
2 set of photographs, this will be the point of entry. Your
3 Honor, permission to approach?

4 **THE COURT:** Yes.

5 **MS. RADLEIN:** This would have been the point of entry,
6 the gate and the hole that the Defendant created and, Your
7 Honor, this would have been the point of entry from the
8 inside where the bag would have been lodged in between the
9 hole and a futon and here is photographs of the items in --
10 in the garbage bag.

11 **THE COURT:** So he took a -- what size hammer were you
12 using to knock a hole in the side of the building?

13 **THE DEFENDANT:** A regular -- regular size hammer.

14 **THE COURT:** Like a sledge hammer?

15 **THE DEFENDANT:** No, it was a small -- small hammer.

16 **THE COURT:** How many hours did it take you to knock
17 through the building?

18 **THE DEFENDANT:** I think two -- two hours.

19 **THE COURT:** Two hours. And this is the same store
20 that you had done the same thing before?

21 **THE DEFENDANT:** No, sir.

22 **THE COURT:** Well, Mr. Patel says that you're the same
23 fellow that burlarized it before. That's what you were on
24 parole for, a burglary to the same store.

25 **THE DEFENDANT:** No, sir, that -- the other store was

1 on Old Charleston Highway.

2 **THE COURT:** Another store owned by another Patel?

3 **THE DEFENDANT:** I think so. I'm not sure. I know the
4 store was on Old Charleston Highway.

5 **THE COURT:** Charleston Highway?

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** Now how were you going to use the Newport
8 cigarettes, the Reese's peanut butter cups, the -- what's
9 this right here -- the deodorant, and all these things out
10 of that store? How was that gonna help you to take your
11 granddaughter to church? You said you did the burglary
12 because you were trying to get something to take your
13 granddaughter to church.

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** Now how did those things tie in together?

16 **THE DEFENDANT:** I was gonna sell them.

17 **THE COURT:** You were gonna sell them? You were
18 gonna steal from his store and open you a store? Selling
19 Mr. Patel's items you're gonna run your own store?

20 **THE DEFENDANT:** Yes, sir.

21 **THE COURT:** Sir?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** I mean, how were you gonna do that? Tell
24 me about that plan.

25 **THE DEFENDANT:** I was gonna sell them to somebody and

1 get some money.

2 THE COURT: Were you on drugs or anything?

3 THE DEFENDANT: No, sir.

4 THE COURT: You just -- how many burglaries have you
5 done in your lifetime?

6 THE DEFENDANT: That I can think of, four, I think.

7 THE COURT: Say that again.

8 THE DEFENDANT: Four, I think.

9 THE COURT: Four or five?

10 THE DEFENDANT: Four, I think.

11 MS. HENRY: He said four, I think.

12 THE COURT: And how many times have you been in prison
13 for it?

14 THE DEFENDANT: Every time.

15 THE COURT: Every time?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: So as the solicitor says, you know, after
18 the second time you're facing life in prison and this is
19 a burglary during the nighttime, your third or greater
20 offense, so you were facing, depending on what they
21 indicted you for, life imprisonment. And you had a stroke
22 in 2006 and you did a burglary since that, right?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And you went to prison since that for
25 burglary?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** And you're out on parole for that and now
3 you've done the same thing again?

4 **THE DEFENDANT:** Yes, sir.

5 **THE COURT:** So what do you expect me to do?

6 **THE DEFENDANT:** I don't know. I guess --

7 **THE COURT:** What do you think about all that, Madam
8 Solicitor?

9 **MS. RADLEIN:** Your Honor, if I can finish your
10 previous question --

11 **THE COURT:** Okay.

12 **MR. RADLEIN:** -- there was something else that I
13 wanted to point out to the Court and then I will address
14 that. Your Honor, the Defendant, as I mentioned, gave a
15 statement to Detective Roy Williams and in that statement
16 he told law enforcement that he -- "I broke into the store
17 because I needed money for my medicine and my court date
18 was coming up. I'm sorry for what I did". Today he's
19 telling you something different is the reason for the
20 burglary and I believe by court date he meant his probation
21 case.

22 In terms of sentencing, Your Honor, we leave that
23 to your discretion. Again, his exposure is up to thirty
24 years.

25 **THE COURT:** All right. Mr. Rentz, what else do you

1 know about this man? How many times have you had him?

2 **MR. RENTZ:** Judge, I apologize. My computer is
3 downstairs. We were doing guilty pleas, so I cannot
4 answer that question.

5 **THE COURT:** All right. You just have him on parole
6 for burglary?

7 **MR. RENTZ:** Well, he's on probation.

8 **THE COURT:** Probation?

9 **MR. RENTZ:** Yes, sir. He did five years. It was ten
10 years on the service of five with four years probation.

11 **THE COURT:** All right.

12 **MR. RENTZ:** Judge, the solicitor is telling me that
13 last week when we talked I told her he had been on seven
14 times.

15 **THE COURT:** On probation for seven times?

16 **MR. RENTZ:** Seven times.

17 **THE COURT:** Seven times. Is that right, Mister?
18 Since you turned eighteen you've been on probation or
19 parole seven times?

20 **THE DEFENDANT:** I don't think so.

21 **THE COURT:** Do you think you're a career criminal?

22 **THE DEFENDANT:** I guess. I don't know.

23 **THE COURT:** You think it's time for you to go into
24 retirement from your criminal activity?

25 **THE DEFENDANT:** Yes, sir.

1 **THE COURT:** You know what retirement means, right?

2 **THE DEFENDANT:** Quit.

3 **THE COURT:** Sir?

4 **THE DEFENDANT:** Quit.

5 **THE COURT:** I mean, it's self-imposed retirement by
6 the judge, not voluntary retirement by you.

7 **THE DEFENDANT:** Oh.

8 **THE COURT:** All right. What else do I need to know?

9 **MS. HENRY:** Your Honor, we would like to handle the
10 probation matter at this time, if possible.

11 **THE COURT:** All right.

12 **MS. HENRY:** Mr. Burgess is a nice fellow, so I don't
13 know what motivated him to do this. It just seemed like
14 out of the blue. I believe he is doing the right thing by
15 taking responsibility for his actions today rather than
16 going through with the trial that would have probably
17 resulted in a guilty verdict. And, again, because he has
18 health issues, he has a family that's supporting him out
19 there, we're asking the Court to be as lenient as possible
20 and run the sentences concurrent.

21 **THE COURT:** All right. And he's facing on the
22 probation five years?

23 **MR. RENTZ:** Yes, sir.

24 **THE COURT:** All right. Mr. Burgess, the sentence
25 for the burglary second degree is fifteen years, for the

1 malicious injury is ten years, for the criminal tools is
2 five years, and revoke five years on the probation
3 violation, and run all sentences concurrent. So you have
4 a fifteen-year sentence with credit for time served for
5 the 337 days.

6 MS. HENRY: Thank you, Your Honor.

7 MS. RADLEIN: Thank you, Your Honor.

8 THE COURT: All right.

9 (Whereupon, the proceedings were concluded at
10 11:38 AM.)

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C E R T I F I C A T E

1
2
3 I, Stacy S. Johnson, Official Court Reporter for
4 the Eleventh Judicial Circuit of the State of South
5 Carolina, do hereby certify that the foregoing is a true,
6 accurate and complete transcript of record of all the
7 proceedings had and the evidence introduced in the hearing
8 of the captioned case in Circuit Court on the 16th day of
9 November, 2015.

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

12 I do further certify that I am neither of kin,
13 counsel, nor have an interest to any party hereto.
14

15 August 5, 2016
16
17

18 *Stacy S. Johnson*
19 STACY S. JOHNSON, RPR
20 CIRCUIT COURT REPORTER
21
22
23
24
25

ORIGINAL FORM 5

STATE OF SOUTH CAROLINA)
COUNTY OF)
Full name and prison number (if any) of Applicant.)
v.)
State of South Carolina)

IN THE COURT OF COMMON PLEAS

2016 CP 3201838

APPLICATION FOR
POST-CONVICTION RELIEF

BETTEL A. GARRIGG
CLERK OF COURT
LEXINGTON, SC

2016 MAY 20 PM 2:11

FILED

JP

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 Kershaw Correctional Inst 4218 Coldmine Hwy Kershaw SC.
2. Name and location of Court which imposed sentence Lexington County Court of General Sessions, Lexington SC.
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015CS3200545; Burglary - second degree
 - (b) 2015CS3200544; Tool - Possession of making implements capable of being used in crime.
 - (c) 2015CS3200546; utilities - malicious injury to telephones, or electric utility system
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) November 16, 2015 - 15 yrs. for Burglary - second degree
 - (b) November 16, 2015 - 5 yrs for Tool - Possession of making implements capable of being used in crime.

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Lex. Co. C. C. C. L. C. S. & T. O.

Revised 3/2003

(c) November 16, 2015 - 5 yrs. for Utilities-malicious injury to telephone or electric utility system.

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO

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

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

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

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

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

(c) the date of each such result:

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

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

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

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

- (a) was not advised by counsel of such
- (b) /
- (c) /

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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- (a) Denial of Effective Assistance of Counsel.
- (b) Involuntary Guilty Plea
- (c) /

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

- (a) Counsel failed to provide adequate assistance.
- (b) Did not make informed decision. NO Plea
- (c) guilty due to counsel's ineffectiveness.

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

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

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

- (a) the specific nature thereof:
 - i. N/A
 - ii. /
 - iii. /
 - iv. /
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. /
 - iii. /
 - iv. /
- (c) the disposition thereof:
 - i. N/A
 - ii. /
 - iii. /

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iv. /
(d) the date of each such disposition:

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

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

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

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

NO they have not.

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

(a) which grounds have been presented:

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

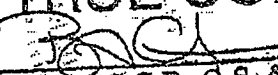
(b) the proceedings in which each ground was raised:

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

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 collateral Attack; (10)(a)
- (b) First collateral Attack; (10)(b)
- (c) /

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

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- (a) your arraignment and plea? yes, I was
- (b) your trial, if any? N/A
- (c) your sentencing? yes, I was
- (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? N/A

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. Ms. Salli Henry, Lexington County Judicial Center, 205 East Main St. Ste. 128, Lexington S.C. 29072
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Plea and sentencing
 - ii. /
 - iii. /

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

Conviction vacated Based on the above, of sentence modification to a Downward Departure.

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

NO, I am not

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Lex. Co. C.C.P., G.S. & F.O.

ORIGINAL

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Lexington)

I, _____, 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.

p Henry Burgess

JP

SWORN to and subscribed before me this 18th day of May, 2016

Cathrine A. Cross (L.S.)
Notary Public

My Commission Expires: My Commission Expires September 22, 2016

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

2016 MAY 20 PM 2:11

FILED

A TRUE COPY
[Signature]
Lex. Co. C.C.P., S.S. & F.C.

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

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.

Henry Burgess
Applicant

SWORN or affirmed to and subscribed before me this
1st day of May, 2016.

Catherine A. Commins
Notary Public

My Commission Expires: My Commission Expires December 31, 2018

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, VA

2016 MAY 20 PM 2:12

JP
FILED

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[Signature]
Lex. Co. C.G.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA)
 COUNTY OF LEXINGTON)
)
)
 Henry Antonio Burgess, #294411,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 ELEVENTH JUDICIAL CIRCUIT

2016-CP-32-01838

RETURN

In response to the post-conviction relief (PCR) application filed on May 20, 2016, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the March 2015 term of the Lexington County Grand Jury for one (1) count possession of tools capable of being used in a crime (2015-GS-32-00544), one (1) count of burglary, second degree (violent)(2015-GS-32-00545), and one (1) count of malicious injury to electric utility lines (2015-GS-32-00546). Sally J. Henry, Esquire, represented him.

On November 16, 2015, Applicant pled guilty as indicted to all charges. The Honorable Clifton Newman sentenced Applicant, without negotiations or recommendations, to five (5) years for possession of tools capable of being used in a crime, fifteen (15) years for burglary, second degree, and ten (10) years for malicious injury to electric utility lines. The sentences are set to run concurrently. Applicant was also on probation at the time he committed these crimes. He was found by Judge Newman to have violated his probation. Judge Newman revoked five (5) years of his

probation and that sentence was run concurrent with the sentences on the above mentioned indictments. Applicant did not appeal his convictions or sentences.

II.

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

1. "Denial of Effective Assistance of Counsel"
 - a. "Counsel failed to provide adequate assistance"
 - b. "Guilty due to counsel's ineffectiveness"
2. "Involuntary Guilty Plea"
 - a. "Did not make informed decision of plea"

Respondent denies the allegations of this application and denies Applicant is entitled to relief on any of these claims and demands strict proof thereof. Further, Applicant's claims are vague and ambiguous and should be denied and dismissed for this reason. The Uniform Post-Conviction Procedure Act requires that the applicant "specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In a PCR application, the applicant must make at least a *prima facie* showing that would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965). Since Applicant has failed to make even a *prima facie* showing, these allegations should be dismissed pursuant to Rule 12(b)(6), SCRCPP, for failure to state a claim upon which relief can be granted.

Further, 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; SCRCPP 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. SCRCPP 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, and the guilty plea transcript attached. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Applicant claims ineffective assistance of counsel in his application. Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief (PCR) proceeding, the applicant bears the burden of proving the allegations in their application. Id. 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, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland, 80 L.E.2d 674). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's

unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland or Hill 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. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

However, the record conclusively shows Applicant was guilty of the offenses which he pled guilty to; and counsel was not deficient. According to the guilty plea transcript, the State was about to call the case for trial and select a jury. Rather than proceed to trial, Applicant chose to waive his right to a jury trial and all accompanying rights and plead guilty. Applicant was facing a total possible sentence of 30 years if convicted of all charges, and applicant had a lengthy prior criminal record. Rather than receiving a possible sentence of 30 years, Applicant pled guilty and asked for mercy from the trial judge and received a sentence of 15 years concurrent on all charges, and his probation violation was even run concurrent. (Guilty plea Transcript, pp. 1-33).

The record shows Applicant was guilty beyond any doubt of the crimes with which he was charged and he would have been convicted if he proceeded to trial. Applicant used burglary tools to cut the power to the El Cheapo gas station in Lexington County. Applicant then took a hammer and knocked a hole in the wall of the store and entered the store unlawfully at night. Applicant had at least 2 prior convictions for burglary at the time of this crime. Once inside, Applicant took money from near a cash register, and cigarettes and candy and placed them in a black garbage bag. Applicant then attempted to exit the store with the bag but the bag of stolen goods was too large to

go through the hole Applicant made in the wall. The entire burglary and Applicant were captured on store surveillance cameras. Applicant then fled the store when police arrived and entered a wooded area. A police officer viewed the surveillance video and then drove down the road and met Applicant coming out of the same wooded area. Applicant was wearing the exact same clothes seen in the store surveillance video of the burglary. Applicant also had cement dust on his clothes consistent with him previously knocking out the cinder block wall to enter the store. Applicant was arrested in possession of burglary tools. Applicant was arrested because he matched the person seen in the store surveillance video. After being read his Miranda rights, Applicant confessed to a police investigator and gave police additional details of the burglary. Applicant would have been convicted had he proceeded to trial. (Guilty Plea Tr. pp. 1-33).

At his guilty plea, Applicant admitted to Judge Newman he was guilty of breaking into the store. He told Judge Newman why he burglarized the store. He admitted he was guilty of each of the indictments. He admitted the facts as recited by the Solicitor were true. Petitioner had no defense to the charges. He admitted he had at least two (2) prior burglary convictions. He handed a letter to Judge Newman in which he admitted his guilt and threw himself on the mercy of the court. (Guilty plea Tr. pp. 1-33).

Applicant had an extensive prior criminal record. Applicant was convicted in 1987 of burglary 2nd degree and grand larceny. In 1990, he was convicted of trespassing and failure to stop for a police command. In 1992, he was convicted of burglary 2nd degree. In 1995, he was convicted of use of car without owner's consent and possession of a stolen vehicle. In 1998, his probation or parole was violated. In 2001, he was convicted of enticing a child from attendance in public school. In 2002, he was convicted of public disorderly conduct, simple assault, and aggravated assault and battery. In 2003, he was convicted of receiving stolen goods and aggravated assault and battery. In

2005, he was convicted of burglary 2nd degree violent and petit larceny and another attempted burglary. In 2010, he was convicted of burglary 2nd degree violent. The victim in that burglary was the same victim as in the present case. And, Applicant committed the crime in the same fashion. As previously stated Applicant was on probation for that burglary at the time he committed the present burglary. As a result of the above, Applicant had been incarcerated in prison numerous times but had not been rehabilitated. Applicant was released from prison approximately 2 years before this current burglary. (Guilty plea Tr. pp. 1-33).

Based on the record, Applicant will not be able to show deficient performance or resulting prejudice where he committed the burglary on surveillance video, was captured near the crime scene, was captured wearing clothing that matched those on the surveillance video, was carrying burglary tools on him, and Applicant confessed to police he committed the crimes. Petitioner had no defense to the crimes. (Guilty Plea Tr. pp. 1-33). Counsel was neither deficient nor can Applicant establish there is a reasonable probability he would not have pleaded guilty but would have proceeded to trial, based on this record, including the fact that the State was about to call the case for trial and draw a jury when Applicant decided to plead guilty and throw himself on the mercy of the Court. Strickland; Hill v. Lockhart. This ground has no merit and must be denied and dismissed with prejudice.

IV.

Applicant further claims his plea was not entered knowingly or voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence

presented at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The guilty plea transcript reflects that the guilty pleas were knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. (Guilty Plea Tr. pp. 1-33). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, [an Applicant's] right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621 (1977). Statements made during a guilty plea should be considered conclusive, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975) *overruled on other grounds by* U.S. v. Whitley, 759 F.2d 327 (4th Cir. 1985). The Applicant has presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing that he was guilty of the offenses and that he knowingly, voluntarily, and intelligently entered his pleas of guilty to the above indictments. (Guilty plea Tr. pp. 1-33).

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

V.

Each and every allegation contained within the application is denied and strict proof required thereof.

VI.

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

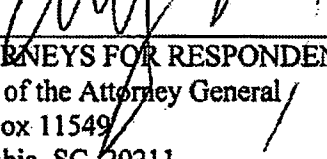
Respectfully submitted,

ALAN WILSON
Attorney General

DONALD ZELENKA
Deputy Attorney General

MELODY BROWN
Assistant Deputy Attorney General

ANTHONY MABRY
Senior Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3665

September 22, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

Henry Antonio Burgess, #294411,)

Applicant,)

vs)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2016-CP-32-1838

AFFIDAVIT OF SERVICE BY MAIL

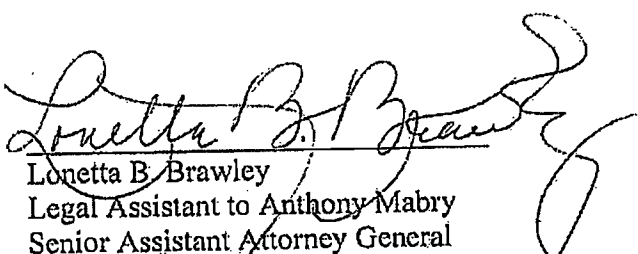
1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return**, with attachments, in the above-captioned matter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

Aimee J. Zmroczek, Esquire
P. O. Box 11961
Columbia, SC 29211

RETURN ATTACHMENT LIST:

- (1) PCR Application
- (2) Lexington County Clerk's Records
- (3) SCDC Records
- (4) Guilty Plea Transcript

DATED this 22nd day of September, 2017.


Lonetta B. Brawley
Legal Assistant to Anthony Mabry
Senior Assistant Attorney General

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E X H I B I T S

NO EXHIBITS WERE INTRODUCED

1 (The following proceedings were held December 14,
2 2017, beginning at 12:13 PM.)

3 **THE COURT:** All right. This is Henry Antonio Burgess
4 versus the State of South Carolina; is that right.

5 **MS. BROWN:** Thank you, Your Honor. Yes, sir.

6 This is Burgess versus State. It is Civil Action
7 Number 2016-1838. The application was filed May 20th of
8 2016.

9 By way of introduction to the case, Your Honor, on
10 November 16, 2015, Mr. Burgess was ready to go to trial
11 on the charges of burglary second, possession of tools
12 capable of being used in a crime, and malicious injury to
13 electric utility lines. He was represented at that time
14 by Sally Henry of the public defender's office here in
15 Lexington. He was facing a potential of thirty years.
16 Interestingly enough, it could have been a charge of
17 burglary first degree on the facts as was mentioned at
18 the plea, but the solicitor chose the charge of burglary
19 second.

20 Judge Newman accepted the plea and sentenced
21 Mr. Burgess to an aggregate total of fifteen years;
22 fifteen on the burglary second, five on the criminal tools
23 charge, ten on malicious injury. At that time Mr. Burgess
24 was also on probation for another burglary second charge
25 and he had five years revoked at that -- at the plea.

1 Briefly, the facts are cited at the plea. They're in
2 the transcript on pages 3 through 6 and, again, a little
3 back on 26 and 27, but basically the facts are these,
4 Your Honor.

5 This was a gas station robbery. On December 10, 2014,
6 Mr. Burgess went to a gas station in Lexington County about
7 1:00 in the morning. He cut the electric lines, then he
8 took a hammer and a screwdriver and made a hole in the
9 cement block wall enough to get into the building. He
10 crawled into the office and then into the storage space.
11 He had a large contractor's bag with him -- a trash bag
12 with him. He filled it up with cigarettes and candy, in
13 particular, Reese's peanut butter cups, and also some cash,
14 and the bag was filled so much he couldn't get it back
15 through the hole in the wall, so the bag remained in the
16 building.

17 Mr. Burgess left. The thing was that when he entered
18 the store the alarm was tripped and also the surveillance
19 camera, so this is all on tape. Now when officers looked
20 at that footage, they observed Mr. Burgess, his clothes,
21 that sort of thing, they went out and about thirty minutes
22 later one officer going down the road sees Mr. Burgess
23 come out towards the side of the road, the same clothes.
24 He says that's the man I just saw in the video, stops
25 Mr. Burgess, Mr. Burgess has those clothes on just like

1 the video, and cement dust on the clothes. He also has
2 the tools in his bag that he has at that time and he makes
3 a confession. So those are the facts that were presented
4 at the plea.

5 The allegations before the Court today are a little
6 vague, Your Honor. It's ineffective assistance of counsel,
7 involuntary plea. So our first motion, Your Honor, is to
8 make a more definite statement so we know sort of a roadmap
9 of where we're going in the hearing today. Otherwise, we
10 turn it over to Applicant to present his case.

11 **THE COURT:** Okay. Yes, ma'am.

12 **MS. ZMROCZEK:** Thank you, Your Honor.

13 Aimee Zmroczek for Mr. Burgess. And I think instead
14 of duplicating the clarity, what he tells me and what I
15 think he intends to anticipate -- or what I anticipate
16 him to testify to is that he is going to allege that his
17 guilty plea was involuntary due to threats and so, I mean,
18 I think that he has to testify to that, but that would be,
19 I think, the route that -- just for a roadmap of where we
20 were going, that he was forced into a plea, so.

21 **THE COURT:** Okay. All right. You can call him.

22 **MS. ZMROCZEK:** Thank you, Your Honor.

23 We call Henry Burgess.

24 (Whereupon, Henry Burgess was duly sworn by the
25 Clerk of Court.)

1 HENRY ANTONIO BURGESS,
2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. ZMROCZEK:

5 Q. Mr. Burgess, how old are you?

6 A. Forty-six -- forty-eight.

7 Q. Okay. You're soft-spoken and there's a microphone in
8 front of you and you can --

9 A. Forty-eight.

10 Q. Let me pull it closer to you.

11 All right. I hit my 46th birthday and I swear I've
12 lost my hearing.

13 So you're forty --

14 A. Eight.

15 Q. Forty-eight. Okay. And where are you being housed?

16 A. Kershaw.

17 Q. Kershaw Correctional Institute?

18 A. Yes, ma'am.

19 Q. And you're there as a result of a plea?

20 A. Yes, ma'am.

21 Q. And you filed a PCR, correct?

22 A. Yes, ma'am.

23 Q. And I sent you all your discovery. I sent you
24 everything that we had in your case, right?

25 A. Yes, ma'am.

1 Q. And you and I have discussed the case?

2 A. Yes, ma'am.

3 Q. And I told you the things that -- that were required
4 to go forward on a PCR?

5 A. Yes, ma'am.

6 Q. And I told you the things that would result if the
7 judge grants your PCR. We had those discussions as well,
8 right?

9 A. Yes, ma'am.

10 Q. Okay. So -- and you heard the AG requesting a little
11 more clarity on the -- your claim is that ineffective
12 assistance of counsel, involuntary guilty plea, right?

13 A. Yes, ma'am.

14 Q. Okay. So tell the judge and everyone why your guilty
15 plea was involuntary.

16 A. Because it was more like a -- a pressure thing where
17 they were pressuring me into --

18 Q. Who was pressuring you?

19 A. The -- my public defender and the assistant solicitor.

20 Q. Okay. And how were they pressuring you?

21 A. They was kept -- they kept coming back, coming back.
22 My -- my public defender kept telling me -- coming to the
23 jail and giving me the sentence, telling me I need to take
24 it.

25 Q. Did you look at the discovery in the case?

1 A. No, I didn't have it.

2 Q. Okay. You didn't -- so the only time you got it was
3 when I sent it to you?

4 A. I think so.

5 Q. Okay. So she just kept coming. Did she discuss --
6 you heard the facts, as alleged by the assistant attorney
7 general, right?

8 A. Yes, ma'am.

9 Q. And so did you discuss those -- even if you didn't see
10 the discovery, did you discuss those with your attorney?

11 A. Yes, ma'am.

12 Q. Okay. And did you provide her with some defenses?

13 A. Yes, ma'am.

14 Q. Okay. What were those defenses?

15 A. That a -- that -- that they -- they didn't have a
16 direct or -- identity of me, only -- only on camera, first
17 of all, and, second of all, they didn't see me with nothing
18 -- there wasn't nothing on my clothes, so all that -- all
19 that was lies.

20 Q. Okay. And did y'all discuss what -- what you -- did
21 you ask her to do anything to help?

22 A. Yes.

23 Q. Okay. What did you ask her to do?

24 A. I asked her to -- I told her that -- that I would
25 plead guilty because I did do the -- I did do the crime,

1 but I wasn't -- I wasn't pleading to -- pleading to the
2 fifteen because I was -- I was in the process of having --
3 having my case for disability and the process of a vet
4 getting --

5 Q. What were you on disability for?

6 A. I had a heart attack and a stroke.

7 Q. Your what? I'm sorry?

8 A. I had a heart attack and a stroke.

9 Q. Oh, okay. A heart attack and a stroke.

10 A. Yes, ma'am.

11 Q. Did that affect your ability to comprehend or think?

12 A. Yes, ma'am.

13 Q. I'm sorry?

14 A. Yes, ma'am.

15 Q. Okay. And did you discuss your disability application
16 with your attorney?

17 A. No, ma'am.

18 Q. Okay. And so you -- was it -- you just told her that
19 you weren't gonna plead to fifteen?

20 A. Yes, ma'am.

21 Q. And so how then -- tell me -- tell the Court --
22 explain where the -- the threats or the coercion came in.

23 A. At about the sixth time they came to visit me -- it
24 was about the sixth or seventh time they came to visit me,
25 I broke down and told them that I would take it and some

1 -- something else would come up or -- when I say something
2 else will come up, that means I can probably get into court
3 and fight it again.

4 Q. Okay. And the -- when you were in court, I sent you a
5 copy of the plea transcript, right?

6 A. Yes, ma'am.

7 Q. And there were no negotiations, right?

8 A. No, ma'am.

9 Q. You knew that you could get zero to fifteen on the
10 burglary second?

11 A. Yes, ma'am.

12 Q. Right?

13 A. Yes, ma'am.

14 Q. Okay. And -- and so when you were there and the
15 judge was asking you questions, you were answering his
16 questions, right?

17 A. Yes, ma'am.

18 Q. Okay. So, I guess, where is the threat that or the --
19 how was your -- how was your guilty plea involuntary?

20 A. I think in -- involuntary means -- what does it mean?
21 That -- that --

22 Q. Well, you wrote that it was involuntary because --
23 let's see. Hang on. You were not advised by counsel that
24 you could appeal and that they failed to provide -- she
25 failed to provide adequate assistance and didn't inform --

1 you didn't make an informed guilty plea because of --
2 because she didn't provide adequate assistance.

3 A. (Nods head.)

4 Q. What is -- I guess that's kind of the question. What
5 is the assistance that she didn't provide that you wanted
6 her to provide?

7 A. Actually -- well, actually she didn't do nothing.

8 Q. Okay.

9 A. The only thing she did was told the -- told the judge
10 that I graduated from high school and I'm in college, and
11 that was it.

12 Q. Okay. And what mitigation or what things do you think
13 that she should have presented to the Court?

14 A. She should have presented everything as far as they
15 didn't have -- they didn't have facial -- a facial imprint
16 of me on the camera, first of all. Second of all, they
17 didn't have no clothing -- no clothing -- no clothing of me
18 that I -- that I was in -- in the store and, second of all
19 -- no, third of all, they didn't -- they didn't have no --
20 have the clothes at the trial when I went to court, so they
21 didn't -- I don't know if they lost them or what. I don't
22 know.

23 Q. Okay. And you felt like she should have presented
24 that evidence?

25 A. Yeah, all that she should have presented.

1 Q. Okay.

2 All right. The AG is gonna ask you some questions,
3 okay, so make sure that you answer all of her questions as
4 well.

5 Oh, is there anything else that you need to -- to say
6 that she did wrong?

7 A. No, ma'am.

8 Q. Okay.

9 **MS. ZMROCZEK:** Thank you.

10 **THE COURT:** Yes, ma'am.

11 **MS. BROWN:** Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. BROWN:

14 Q. Mr. Burgess, you've had an opportunity to look at
15 the transcript from your guilty plea in November; is that
16 right?

17 A. No.

18 Q. This would have been the transcript November 16, 2015,
19 when you pled guilty before Judge Newman.

20 A. I think -- I think so.

21 Q. Okay. All right. And you remember speaking with
22 Judge Newman when you were giving your guilty plea --

23 A. Yeah.

24 Q. -- and he's entering that -- accepting your guilty
25 plea. You remember speaking with Judge Newman?

1 A. Uh-huh.

2 Q. Okay. And you remember the solicitor going over the
3 facts of the case, right?

4 A. Yes, ma'am.

5 Q. And they're pretty much the facts that I just read to
6 the Court today, too, as well, right?

7 A. Yes, ma'am.

8 Q. And you agree with those facts?

9 A. Yes, ma'am.

10 Q. Okay. All right. And you remember the judge told
11 you you had the right to send your case to the jury and
12 have a jury try it?

13 A. Yes, I -- I do remember that because he did say to me
14 -- here's the thing right here now I feel that he had to
15 say it because he didn't want the solicitor to get in
16 trouble or something, I don't know, so I guess since I
17 told the -- told -- told my lawyer that I would take the
18 charge and so she told me I could get fifteen years so if
19 I didn't I would -- I would get thirty if I didn't.

20 Q. Well, now when you went to court that morning --

21 A. Uh-huh.

22 Q. -- you were there for trial, right?

23 A. Yeah. Yeah.

24 Q. You knew you could have a trial?

25 A. Yeah.

1 Q. And Ms. Henry was there?

2 A. Yeah.

3 Q. And y'all were speaking before trial, right?

4 A. Uh-huh.

5 Q. And you decided to plea at that time?

6 A. Yeah.

7 Q. What did you tell Ms. Henry?

8 A. I told her that I -- that I would take the charge
9 and the time of fifteen years because I didn't want to get
10 thirty.

11 Q. Uh-huh. Okay. And then when you said you were gonna
12 plead guilty, you go back before Judge Newman, he's telling
13 you about your right to trial?

14 A. (Nods head.)

15 Q. He also tells you Ms. Henry could cross-examine
16 witnesses, all that sort of thing?

17 A. Uh-huh.

18 Q. You could present a case?

19 A. (Nods head.)

20 Q. And you said you understood that. Did you understand
21 that?

22 A. Yeah.

23 Q. Okay. And he also asked you some questions. Asked
24 you how you were feeling that day, if you had any
25 medication or had any problems understanding. Do you

1 remember that?

2 A. Uh-huh.

3 Q. And you told him you could understand, right?

4 A. Yeah.

5 Q. And he also asked you if you were satisfied with
6 counsel. Do you remember that?

7 A. Yeah.

8 Q. He asked you if Ms. Henry had done everything that she
9 said she was gonna do and that you wanted her to do. Do
10 you remember that?

11 A. Yeah.

12 Q. And you told him yes, didn't you?

13 A. Yeah.

14 Q. Okay. Now Judge Newman also asked you specifically
15 what makes you guilty. Do you remember that question, what
16 makes you guilty?

17 A. I don't remember that.

18 Q. You don't remember that. Do you remember saying I
19 broke into that store?

20 A. No.

21 Q. No? You don't remember that?

22 A. (Shakes head.)

23 Q. You don't remember saying that you were guilty of the
24 charge?

25 A. Yeah.

- 1 Q. Burglary first -- burglary second? Excuse me.
- 2 A. (Nods head.)
- 3 Q. Okay. You also said you were on probation?
- 4 A. Uh-huh.
- 5 Q. For the same thing --
- 6 A. Yeah.
- 7 Q. -- right? But it wasn't just the same charge, it was
- 8 burglary second of the same store, correct?
- 9 A. No.
- 10 Q. 2010 you pled before Judge McMahon, correct?
- 11 A. I don't know. I know it was a different store.
- 12 Q. It was a different store?
- 13 A. (Nod head.)
- 14 Q. Was it Mr. Patel's store?
- 15 A. I don't know.
- 16 Q. You don't remember that?
- 17 A. (Shakes head.)
- 18 Q. Okay. You actually had three burglary second degrees
- 19 in your record, right?
- 20 A. Uh-huh.
- 21 Q. 1987, 1992, 2010?
- 22 A. (Nods head.)
- 23 Q. Okay. So today you're asking the Court to find that
- 24 you were coerced, that you didn't want to plead and you did
- 25 plea?

1 A. Yeah.

2 Q. Explain that to us again.

3 A. 'Cause I didn't -- I didn't want to get thirty years.
4 That's why.

5 Q. Uh-huh. And you didn't get thirty years, did you?

6 A. No, that's -- that's because I took fifteen.

7 Q. Okay. So do you want this Court to put you back to
8 square one and let you face the thirty years again?

9 A. No.

10 Q. You don't want that?

11 A. No. I want -- I want a better sentence though.
12 That's what I'm here for.

13 Q. Okay.

14 A. I'm here for a better sentence.

15 Q. Okay. But not to have your plea put aside?

16 A. Huh?

17 Q. Not to have your plea put aside?

18 A. My plea?

19 Q. Uh-huh. You still want to plead guilty, you just want
20 a time cut?

21 A. Yeah.

22 Q. That's what you're saying?

23 A. Yes.

24 Q. Okay. All right. Well, let me -- let me talk about
25 sentencing just -- just real briefly here. Ms. Henry, you

1 said that she didn't really do anything for sentencing,
2 correct?

3 A. No.

4 Q. But Ms. Henry actually handed up a letter to Judge
5 Newman, do you remember that, at your plea?

6 A. No.

7 Q. Do you remember a letter that you wrote to Judge
8 Newman --

9 A. I probably did.

10 Q. -- that he read into the record?

11 A. I probably have. I probably have.

12 Q. Maybe you did? Okay. And there was also a witness
13 there for you, a lady that you knew that talked about your
14 baptism?

15 A. Yes.

16 Q. You remember that? Ms. Henry had that lady there for
17 you.

18 A. Uh-huh.

19 Q. And Ms. Henry actually argued leniency for you. She
20 brought up that you had a stroke and that was correct,
21 wasn't it?

22 A. Uh-huh.

23 Q. And that you'd had some heart problems, correct?

24 A. (Nods head.)

25 Q. What else did you want Ms. Henry to do?

1 A. I guess more than what she -- more than what she have
2 did. She didn't -- she didn't -- I don't feel that she
3 talked about the case mainly.

4 Q. Okay.

5 A. The only thing -- the only thing she talked about was
6 what I told her about me.

7 Q. Uh-huh. And had your witness there?

8 A. Yeah.

9 Q. Right?

10 A. Yeah.

11 Q. Okay.

12 **MS. BROWN:** Thank you for answering my questions,
13 Mr. Burgess.

14 No further questions, Your Honor.

15 **MS. ZMROCZEK:** Just briefly.

16 **REDIRECT EXAMINATION**

17 **BY MS. ZMROCZEK:**

18 Q. Mr. Burgess, do you remember -- and I'm not -- you
19 and I -- I sent you a letter back in January of 2017,
20 right?

21 A. Uh-huh.

22 Q. And here's a copy of it just to refresh your
23 recollection. You got that letter from me, right?

24 A. (Reading.)

25 Q. Do you remember getting that?

1 A. Yeah.

2 Q. I know that you just read it again just to refresh
3 your memory, but you received that in January, right?

4 A. Yes, ma'am.

5 Q. Okay. And so you and I have discussed that -- that
6 if you get granted a PCR that the case goes back to where
7 it started from; that it's not to get a time cut. You
8 understand that, right?

9 A. No time cut?

10 Q. Right. If a PCR is granted, the case starts all over.
11 The judge can't just give you a new sentence. You --

12 A. Oh, yeah.

13 Q. That's what we wrote -- that's what I wrote in the
14 letter. That's what we discussed, right?

15 A. Okay.

16 Q. Right?

17 A. Yes, ma'am.

18 Q. Okay. All right. I just wanted to make sure that we
19 were clear on that. So -- but you just -- you just -- it's
20 your position that Ms. Sally didn't -- or Ms. Henry didn't
21 argue strongly enough for you to get under the minimum
22 time, right?

23 A. (Nods head.)

24 Q. Okay.

25 **MS. ZMROCZEK:** All right. I have no further

1 questions, Your Honor.

2 **THE COURT:** Okay. Anything else?

3 **MS. BROWN:** Nothing from the State, Your Honor.

4 **THE COURT:** Okay. Thank you, sir. You can step down.

5 (Witness excused.)

6 **MS. ZMROCZEK:** We have no further witnesses at this
7 time, Your Honor.

8 **THE COURT:** Okay. Yes, ma'am.

9 **MS. BROWN:** Your Honor, the State would like to call
10 Ms. Sally Henry, please.

11 (Whereupon, Sally Henry was duly sworn by the Clerk of
12 Court.)

13 **THE COURT:** How are you doing?

14 **MS. HENRY:** Good morning, Judge. Or, I guess,
15 afternoon.

16 **THE COURT:** Okay.

17 **SALLY HENRY,**

18 having been duly sworn, testified as follows:

19 **DIRECT EXAMINATION**

20 **BY MS. BROWN:**

21 **Q.** Ms. Henry, would you, please, place your name on the
22 record.

23 **A.** Sally Henry, H-E-N-R-Y.

24 **Q.** Thank you. And, Ms. Henry, you were here this
25 afternoon to hear Mr. Burgess's testimony, correct?

1 A. That's correct.

2 Q. Okay. And you understand that he is claiming that
3 you did not do enough for him in sentencing?

4 A. Yes.

5 Q. Okay. And you represented him on that 2015 set of
6 charges, correct?

7 A. I did.

8 Q. Okay. And do you have your file with you?

9 A. Actually, Mr. Burgess's attorney has the file, but I
10 have reviewed it here today. We turned it over to her.

11 Q. Okay. And you've had a chance to review the
12 transcript of the November 16, 2015, plea?

13 A. Yes.

14 Q. How long had you been practicing at the time you
15 represented Mr. Burgess?

16 A. At the time I represented him, twenty-two years.

17 Q. Okay. And the majority of your practice was in what
18 area of law?

19 A. Criminal defense.

20 Q. Okay. And is it your practice to meet with your
21 clients face to face to discuss the charges and possible
22 defenses?

23 A. Yes.

24 Q. And did you do that with Mr. Burgess?

25 A. Yes.

1 Q. And can you explain approximately how many times you
2 would have met with him and how you would have developed
3 the defense?

4 A. I don't have the exact number of times I met with
5 him, but he was incarcerated for the entire length of the
6 representation and I went to the jail many, many times and
7 met with him to go over his discovery, let him see the
8 videos, et cetera, to make sure he was fully informed.

9 Q. Uh-huh. And you had reviewed the video in the case?

10 A. Yes.

11 Q. And had you reviewed the confession?

12 A. Yes.

13 Q. And the confession was consistent with video and other
14 evidence?

15 A. It was.

16 Q. And did your client tell you that he was, in fact,
17 guilty?

18 A. Mr. Burgess had a version of events that he wanted
19 me to offer, which could have amounted to a third-party
20 defense. He maintained all along that someone else did
21 this. He would not tell me who this someone else was nor
22 give me any information that I would be able to investigate
23 it and to track down this person. He said that he owed
24 this individual a debt. So while he never said he was
25 guilty, that was his version of what had happened, but

1 pretty much tying my hands in terms of what I could do.

2 Q. And he'd actually given two different reasons he had
3 to go into the store as well, didn't he?

4 A. He did. Yes.

5 Q. One time was get some money for his -- was it
6 granddaughter to take her to church and --

7 A. That's correct.

8 Q. And another time he needed money for court?

9 A. Yes.

10 Q. Okay. But then you had reviewed the video and that
11 appeared to be your client?

12 A. It definitely did, yes.

13 Q. Okay. Can you tell us a little bit about how the plea
14 came about?

15 A. We had prepared for trial to a great extent,
16 investigated the case, talked to people involved, gone to
17 the scene, so forth and so on. We were ready to go forward
18 because Mr. Burgess was not going to plea. That is what he
19 told me. In fact, I had taken him an offer from the State
20 at some point during the representation and the offer was
21 to plead to the burglary itself and all the other charges
22 would be dismissed. Nonetheless, Mr. Burgess was not going
23 to enter a plea, so we prepared for trial. The Monday
24 morning when we arrived at court, Mr. Burgess was waiting
25 in the detention area. He was dressed for trial. I went

1 back to talk with him. He asked me what was going on this
2 morning and I said we're getting ready to start your trial.
3 He said oh, I don't want a trial, I'm gonna plead to the
4 charges. So that was -- that was the first time he had
5 mentioned that.

6 Q. Okay. So it wasn't something you suggested that day
7 of the trial?

8 A. Absolutely not. We were prepared to go forward.

9 Q. Okay. Well, in your opinion based on your interaction
10 with your client, did he understand what pleading guilty
11 meant?

12 A. Yes, he understood what that meant.

13 Q. And he understood he was pleading guilty without a
14 promise?

15 A. That is correct. And he understood also that he was
16 pleading guilty now to all of the charges, not the original
17 offer that I had taken to him.

18 Q. Okay. And you had prepared the case as the transcript
19 reflects for mitigation and sentencing. You presented a
20 letter from your client and you had a witness there. How
21 did that mitigation case come about? Because you were
22 preparing for trial at that time, so how did you get
23 everything together for mitigation?

24 A. We had actually subpoenaed Mrs. -- I've forgotten
25 her name right now. The lady who spoke on his behalf,

1 Marcellus Rumpf, I believe, is her name. We had subpoenaed
2 her to be a part of our case. We had also spoken with his
3 mother throughout the course of the representation who had
4 come to our office and met with us, and I believe that's
5 mentioned in the transcript. She was not able to be there
6 that day because she was working, but she was not under
7 subpoena. She really had no knowledge of what had
8 occurred, but she was going to be there on his behalf, so
9 I mentioned that to the judge. And as I say, the other
10 individual had been under subpoena.

11 When Mr. Burgess came to court, he had the letter
12 with him that he had written that I presented to the judge.
13 I did not know that he had that letter until he came to
14 court, but he was on another page.

15 Q. Okay.

16 **MR. BROWN:** Thank you, ma'am. I appreciate it.

17 No further questions, Your Honor.

18 **MS. ZMROCZEK:** I have no questions, Your Honor.

19 **THE COURT:** Okay. Thank you. Can she be released?

20 **MS. ZMROCZEK:** Please.

21 **MS. BROWN:** Yes, sir.

22 **THE COURT:** Thank you.

23 (Witness excused.)

24 **THE COURT:** Anything else?

25 **MS. ZMROCZEK:** Nothing further from us.

1 **MS. BROWN:** Nothing, Your Honor.

2 **THE COURT:** Okay.

3 All right. I -- I need to read through it. Just out
4 of respect, I'm gonna read through it. I'll let you know
5 something pretty soon. It's under advisement. I'm gonna
6 go read through your packet, okay?

7 **THE APPLICANT:** Okay.

8 **MS. BROWN:** Thank you, Judge.

9 **THE COURT:** Thank you-all.

10 **MS. ZMROCZEK:** Thank you.

11 **THE APPLICANT:** Thank you.

12 (Whereupon, the proceedings were concluded at
13 12:42 PM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh 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 the evidence introduced in the hearing of the captioned case in Circuit Court on the 14th day of December, 2017.

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

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

July 5, 2018

ISI Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

RECEIVED

APR 20 2017

ORIGINAL

STATE OF SOUTH CAROLINA, C. SUPREME IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

Henry Antonio Burgess, #294411,

2016-CP-32-01838

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

FILED
2017 APR -6 AM 11:00
LISA H. COHER
CLERK OF COURT
LEXINGTON SC

This matter comes to the Court by way of an application for post-conviction relief (PCR) filed May 20, 2016. Respondent made its return dated September 22, 2017. An evidentiary hearing was held December 14, 2017. Applicant was present and represented by Aimee J. Zmroczek, Esquire. Senior Assistant Deputy Attorney General Melody J. Brown represented Respondent. This Court heard testimony from Applicant and also from plea counsel Sally J. Henry, Esquire. At the conclusion of the proceedings, the undersigned took the matter under advisement. Having considered the pleadings in this matter and supporting documents (including specifically all the documents provided by way of the State's return), along with the testimony received at the hearing, this Court denies relief and dismisses the application as Applicant has failed to carry his burden of proof.

Procedural History

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the March 2015 term of the Lexington County Grand Jury for one (1) count possession of tools capable of being used in a crime (2015-GS-32-00544), one (1) count of burglary, second degree (violent)(2015-GS-32-00545), and one (1) count of malicious injury to electric utility lines (2015-GS-32-00546). Sally J. Henry, Esquire, represented him.

On November 16, 2015, Applicant pled guilty as indicted to all charges. The Honorable Clifton Newman sentenced Applicant, without negotiations or recommendations, to concurrent sentences of five (5) years for possession of tools capable of being used in a crime, fifteen (15) years for burglary, second degree, and ten (10) years for malicious injury to electric utility lines. Applicant was also on probation at the time he committed these crimes. Judge Newman found Applicant violated his probation, and revoked five (5) years of his probation. That sentence was run concurrent with the sentences on the above mentioned indictments. Applicant did not appeal his convictions or sentences.

Current PCR Allegations

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

1. "Denial of Effective Assistance of Counsel"
 - a. "Counsel failed to provide adequate assistance"
 - b. "Guilty due to counsel's ineffectiveness"
2. "Involuntary Guilty Plea"
 - a. "Did not make informed decision of plea"

Findings of Fact and Conclusions of Law

Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented in light of the controlling legal precedent.

Standard of Review: Allegation of Ineffective Assistance

When an applicant "enters a plea on the advice of counsel, [he] may only attack the voluntary and intelligent character of the plea" by way of the long established two-prong test to show ineffective assistance of counsel. *Frasier v. State*, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985)). "A claim of ineffective assistance of guilty plea

counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel's performance was deficient; and second, evidence that the applicant was prejudiced by that deficiency." *Stalk v. State*, 383 S.C. 559, 560-61, 681 S.E.2d 592, 593 (2009) (citing *Hill v. Lockhart*, *supra*). In regards to the first prong, "[t]he proper measure of attorney performance remains reasonableness under prevailing professional norms." *Strickland v. Washington*, *supra* at 688, 104 S.Ct. at 2065. In order to satisfy the prejudice requirement, "the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial." *Hill v. Lockhart*, *supra* at 59, 106 S.Ct. at 370.

At all times during the proceeding, an applicant maintains the burden of establishing that he is entitled to relief. *Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). Moreover, an applicant must overcome "a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." *Morris v. State*, 371 S.C. 278, 282, 639 S.E.2d 53, 55 (2006). An applicant must demonstrate 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." *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 441(1985) (quoting *Strickland v. Washington*, 466 U.S. 668, 686 (1984)).

Discussion: Ineffective Assistance Claim

Applicant's PCR hearing testimony indicated, basically, that he felt pressured to plead guilty, felt he did not have sufficient assistance, and wanted his counsel to do more in obtaining a lenient sentence. Though in his direct testimony he appeared to indicate there was no identification evidence, and counsel should have fashioned a defense based on lack of identification evidence, on cross-examination he agreed that he had agreed with the facts read by the solicitor and agreed he

waived his right to a trial so he could plead guilty. Though he indicated agreement at least in part that he understood his plea, he asserted he did not recall admitting guilt. He also appeared at one point to admit guilt again, (the record showing he specifically admitted "I broke into that store." See Guilty Plea Tr. p. 10, lines 15-16), but asserted he wanted less time on his sentence, *i.e.*, "a better sentence."

Plea counsel testified she met with applicant "many, many times," reviewed the available evidence which included a confession and a video of the crime that showed applicant in the store, and was prepared to go to trial the day of the plea. However, on the day they were to start the trial, applicant informed her that he wished to plead guilty. He provided a hand written letter to the court which she would later present to the court in sentencing. (See Guilty Plea Tr. p. 18, lines 6-14). Her testimony indicated she made preparations for trial and mitigation, had witnesses available, argued applicant's medical limitations, and generally for leniency. She indicated the evidence was supportive of guilt -- particularly the confession and video tape.

The record supports plea counsel's testimony and I find that testimony credible. Applicant's testimony is in tension with the plea, is inconsistent in critical part, and I find his testimony not credible as to the allegations of deficient representation and involuntary plea.

According to the guilty plea transcript, the State was about the call the case for trial and select a jury. (Guilty Plea Tr. p. 13). Rather than proceed to trial, Applicant chose to waive his right to a jury trial and all accompanying rights and plead guilty. Applicant was facing a total possible sentence of 30 years of convicted of all charges, and applicant had a lengthy prior criminal record. Rather than receiving a possible sentence of 30 years, Applicant pled guilty and asked for mercy from the trial judge and received a sentence of 15 years concurrent on all charges, and his probation

violation was even run concurrent.

The record shows Applicant was guilty beyond any doubt of the crimes with which he was charged and he would have been convicted he proceeded to trial. Applicant used burglary tools to cut the power to the El Cheapo gas station in Lexington County. Applicant then took a hammer and knocked a hole in the wall of the store and entered the store unlawfully at night. Applicant had at least 2 prior convictions for burglary at the time of this crime. Once inside, Applicant took money from near a cash register, and cigarettes and candy and placed them in a black garbage bag. Applicant then attempted to exit the store with the bag but the bag of stolen goods was too large to go through the hole Applicant made in the wall. The entire burglary and Applicant were captured on store surveillance cameras. Applicant then fled the store when police arrived and entered a wooded area. A police officer viewed the surveillance video and then drove down the road and met Applicant coming out of the same wooded area. Applicant was wearing the exact same clothes seen in the store surveillance video of the burglary. Applicant also had cement dust on his clothes consistent with him previously knocking out the cinder block wall to enter the store. Applicant was arrested in possession of burglary tools. Applicant was arrested because he matched the person seen in the store surveillance video. After being read his Miranda rights, Applicant confessed to a police investigator and gave police additional details of the burglary. (Guilty Plea Tr. pp. 3-7; pp. 13-16; pp. 26-27). The record fully and fairly supports Applicant would have been convicted had he proceeded to trial.

At his guilty plea, Applicant admitted to Judge Newman he was guilty of breaking into the store. (Guilty Plea Tr. p. 10, lines 12-16). He admitted he was guilty of each of the indictments. (Guilty Plea Tr. p. 12, lines 2-17). He admitted the facts as recited by the Solicitor were true.

(Guilty Plea Tr. p. 16, lines 4-9). Petitioner agreed had no defense to the charges. (Guilty Plea Tr. p. 11, lines 20-22). He provided a letter to Judge Newman in which he threw himself on the mercy of the court. (Guilty plea Tr. pp. 18, line 3 – p. 20, line 20). Further, Applicant had an extensive prior criminal record.

Applicant was convicted in 1987 of burglary 2nd degree and grand larceny. In 1990, he was convicted of trespassing and failure to stop for a police command. In 1992, he was convicted of burglary 2nd degree. In 1995, he was convicted of use of car without owner's consent and possession of a stolen vehicle. In 1998, his probation or parole was violated. In 2001, he was convicted of enticing a child from attendance in public school. In 2002, he was convicted of public disorderly conduct, simple assault, and aggravated assault and battery. In 2003, he was convicted of receiving stolen goods and aggravated assault and battery. In 2005, he was convicted of burglary 2nd degree violent and petit larceny and another attempted burglary. In 2010, he was convicted of burglary 2nd degree violent. The victim in that burglary was the same victim as in the present case. And, Applicant committed the crime in the same fashion. As previously stated Applicant was on probation for that burglary at the time he committed the present burglary. (Guilty Plea Tr. p. 6, line 13 – p. 7, line 7; p. 13, line 21 – p. 15, line 25; p. 16, line 22 – p. 17, line 11).

Applicant has not shown counsel was deficient in her representation of him, and there is no credible evidence of any undue or improper pressure on Applicant to plead guilty to the charges. Rather, the plea transcript shows a knowing and voluntary plea on facts that well-support the crime and the sentence handed down. In particular I note the overwhelming evidence of guilt including the video evidence and confession of guilt, along with the fact that "the State could have straight indicated for first degree burglary in this case because of the two priors..." (Guilty Plea Tr. p. 7,

lines 2-4). The record supports Applicant was already receiving a benefit from the charging decisions, and made the decision to plead guilty in hopes of a lesser sentence on the lesser charge, not from any ineffective assistance. This Court finds Applicant has failed in his burden of proof.

Standard of Review: Involuntary Plea Allegation

"It is beyond dispute that a guilty plea must be both knowing and voluntary." *Parke v. Raley*, 506 U.S. 20, 29 (1992). See also *Boykin v. Alabama*, 395 U.S. 238, 242 (1969) ("a guilty plea should only be accepted where the record evidences 'an affirmative showing that it was intelligent and voluntary.'"). What is key to the analysis in reviewing the plea for voluntariness is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *Raley*, 506 U.S. at 29 (quoting *North Carolina v. Alford*, 400 U.S. 25, 31 (1970)). However, as noted above, "[w]hen a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea. He may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel" was incompetent. *Tollett v. Henderson*, 411 U.S. 258, 267 (1973).

To find a guilty plea is voluntarily and knowingly made, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709 (1969); *Dover v. State*, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. *Harris v. Leake*, 282 S.C. 131, 318 S.E.2d 360 (1984).

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

Applicant has presented no reason to support that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing – particularly those responses indicating that he was guilty of the offenses and that he knowingly, voluntarily, and intelligently entered his pleas of guilty to the above indictments. Moreover, the totality of the guilty plea transcript reflects that the guilty pleas were knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. In particular, the record reflects the plea judge carefully questioned Applicant on his understanding that he was not then suffering any impairment that would prevent his understanding of the proceedings, that he, in fact, did understand the proceedings; that he understood the charges; understood the presumption of innocence, the right to cross-examination, the right to present witnesses, the State's burden of proving guilt beyond a reasonable doubt; that he was pleading guilty voluntarily, without promise of anything, because he was actually guilty of the crimes; and, that he was satisfied with counsel. (See Guilty Plea Tr. p. 7, line 21 – p. 12, line 22).

Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and should be treated as such. As resolved above, Applicant has failed in his burden of showing ineffective

assistance. Thus, Applicant has failed to show ineffective assistance such as would undermine the voluntary nature of his plea, which is otherwise supported by the plea record. Applicant is not entitled to any relief.

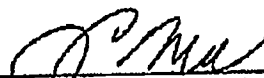
Conclusion

Applicant has not carried his burden of proof to show a reasonable probability he would not have pleaded guilty but would have proceeded to trial. Rather, the evidence before the Court indicates the State was about to call the case for trial and draw a jury when Applicant decided to plead guilty and throw himself on the mercy of the Court. This Court denies relief.

THEREFORE, for all the foregoing reasons:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant is remanded to the custody of the Department of Corrections to complete service of his sentence.

IT IS SO ORDERED this 30 day of March, 2018.



The Honorable J. Cordell Maddox, Jr.
Presiding Circuit Court Judge

Anderson, South Carolina.

WITNESSES

DOCKET NO. 2015GS3200544

Lexington County Sheriffs Department

The State of South Carolina

R. B. Williams

County of Lexington

Law Enforcement Case #: 14022435

SR

ARREST WARRANT NUMBER

COURT OF GENERAL SESSIONS

2014A3211000317

MARCH TERM 2015

ACTION OF GRAND JURY

THE STATE

vs.

Henry Antonio Burgess

TRICE

CDR #: 0124

Foreperson of Grand Jury
Date:

3/16/15

Indictment for

Possession of Tools Capable of Being
Used in A Crime

VERDICT

§ 16-11-0020

Foreperson of Petit Jury
Date:

DONALD V. MYERS, SOLICITOR

A TRUE COPY

Lex. Co. C.C.C.P. G.S. & E.C.

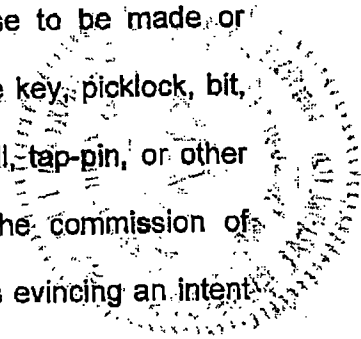
STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Possession of Tools Capable of Being Used in A
Crime

§ 16-11-0020

At a Court of General Sessions, convened on March 2015, the Grand Jurors of Lexington County present upon their oath:

That Henry Antonio Burgess did, in Lexington County, South Carolina on or December 10, 2014, knowingly and willfully make or mend, cause to be made or mended, or have in his possession any engine, machine, tool, false key, picklock, bit, nippers, nitroglycerine, dynamite cap, coil or fuse, steel wedge, drill, tap-pin, or other implement or thing adapted, designed, or commonly used for the commission of burglary, larceny, safecracking, or other crime, under circumstances evincing an intent to use, employ, or allow the same to be used or employed in the commission of a crime; or knowing that the same are intended to be so used, in violation of §16-11-20 of the Code of Laws of South Carolina, 1976, as amended.



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

[Handwritten Signature]
ASSISTANT SOLICITOR

WITNESSES

Lexington County Sheriffs Department

R. B. Williams

Law Enforcement Case #: 14022435

SR

ARREST WARRANT NUMBER

2014A3211000318

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

3/16/15

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015GS3200545

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MARCH TERM 2015

THE STATE
vs.

Henry Antonio Burgess

CDR #: 0086

Indictment for

Burglary Second Degree Violent

§ 16-11-0312(B)

DONALD V. MYERS, SOLICITOR

A TRUE COPY

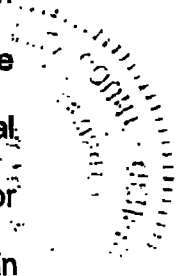
Lex. Co. C.C.P., C.S. & F.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Burglary Second Degree Violent
§ 16-11-0312(B)

At a Court of General Sessions, convened on March 2015, the Grand Jurors of Lexington County present upon their oath:

That Henry Antonio Burgess did, in Lexington County, South Carolina on or about December 10, 2014, knowingly and willfully enter a building at 3862 Old Charleston Hwy, Gaston, South Carolina, without consent and with the intent to commit a crime therein, to wit: the Defendant did break in to the El Cheapo in an attempt to steal several items, and the defendant has two or more convictions for burglary or housebreaking or a combination of both, and/or the entering or remaining occurred in the nighttime, in violation of § 16-11-312 (B) of the Code of Laws of South Carolina, 1976, as amended.



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


ASSISTANT SOLICITOR

WITNESSES

Lexington County Sheriffs Department

R. B. Williams

Law Enforcement Case #: 14022435

SR

ARREST WARRANT NUMBER

2014A3211000319

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

[Signature]

3/16/15

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015GS3200546

The State of South Carolina
County of Lexington

COURT OF GENERAL SESSIONS

MARCH TERM 2015

THE STATE
vs.

Henry Antonio Burgess

CDR #: 0111

Indictment for

Malicious Injury to Electric Utility Lines

§ 16-11-0740

DONALD V. MYERS, SOLICITOR

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)

INDICTMENT FOR
 Malicious Injury to Electric Utility Lines

§ 16-11-0740

At a Court of General Sessions, convened on March 2015, the Grand Jurors of Lexington County present upon their oath:

That **Henry Antonio Burgess** did, in Lexington County, South Carolina on or about December 10, 2014, knowingly, willfully, wantonly and without the consent of the owner destroy, damage, or in any way injure any telegraph, telephone or electric utility system, including poles, cables, wires, fixtures, antennas, amplifiers, or other apparatus, equipment, or appliances or obstructs, impedes or impairs the service thereof, or the transmission of messages or current thereof, to wit: the Defendant did cut phone lines and internet cable while at the El Cheapo located at 3862 Old Charleston Hwy, Gaston, South Carolina, in violation of § 16-11-740, Code of Laws of South Carolina, 1976, as amended.

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


 ASSISTANT SOLICITOR