

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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S.C. SUPREME COURT

On Writ of Certiorari to Florence County  
Michael G. Nettles, Circuit Court Judge

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Appellate Case No: 2018-001331  
Lower Court Case No: 2015-CP-21-0055

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MCIVER FEAGIN,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA

PETITIONER.

---

APPENDIX

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STATE OF SOUTH CAROLINA) )  
COUNTY OF FLORENCE ) ) GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)  
STATE, )

v. ) TRANSCRIPT OF RECORD  
10-GS-21-681  
MCIVER FEAGIN, )  
DEFENDANT. )

September 21, 2010  
Florence, South Carolina

**BEFORE :**

THE HONORABLE THOMAS A. RUSSO, JUDGE

**APPEARANCES:**

PATRICIA S. PARR, ESQ.  
Assistant Solicitor

W. VICKERY MEETZE, ESQ.  
Attorney for Defendant

FRANCES BAKIS-RAY, RPR  
Circuit Court Reporter

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1 THE COURT: This is involving case  
2 2010-GS-21-681, State versus McIver Feagin, Jr.  
3 Yesterday Mr. Feagin entered a guilty plea under  
4 North Carolina versus Alford to the offense of  
5 burglary second degree nonviolent, and the Court  
6 qualified the plea, accepted the plea, and then  
7 withheld sentencing till today to give the victim an  
8 opportunity to be present and to be heard regarding  
9 sentencing so Ms. Parr, I'll be happy to hear from  
10 the State.

11 MS. PARR: Your Honor, the State has  
12 Ms. Frances Worley in the courtroom and also  
13 Mr. William Laturno (ph) who both would like to  
14 address the Court.

15 THE COURT: Sure, I'll be happy to hear  
16 from either one of those individuals, however you  
17 want to present.

18 MS. PARR: Okay, I'll let the Court hear  
19 from Ms. Worley. If you'll state your name first.

20 MS. WORLEY: Francis Worley.

21 THE COURT: Okay, Ms. Worley, I'll be  
22 happy to hear from you, ma'am.

23 THE VICTIM: Sir, I'm, I've had a history  
24 with this man in the past, boyfriend/girlfriend  
25 thing. He's helped me with my father. But he's

1 also, has some mental issues that he probably  
2 really, really needs to deal with. He has  
3 threatened my brother's life, my life, my friend's  
4 life, and I'm in fear for all of those to be at  
5 danger if he is released.

6 THE COURT: Now Ms. Worley, there at one  
7 point was a protective order in place?

8 THE VICTIM: Restraining order from family  
9 court because the attorney I work for suggested that  
10 I get that 'cause he kept harassing me at work.

11 THE COURT: All right. Am I correct that  
12 has since expired?

13 THE VICTIM: Yes.

14 THE COURT: All right. But your  
15 concern — and I obviously am completely unaware of  
16 the relationship and where it's at, or whatever,  
17 but —

18 THE VICTIM: It's not any relationship.

19 THE COURT: Is it your belief that — is  
20 your concern that he won't honor your wishes and  
21 stay away?

22 THE VICTIM: I know that.

23 THE COURT: Okay, all right.

24 MS. PARR: Mr. Laturno.

25 THE COURT: All right, Mr. Laturno, if I

1 could get your full name for the record please, sir.

2 MR. LATURNO: William Laturno.

3 THE COURT: All right, sir, I'll be happy  
4 to hear from you.

5 MR. LATURNO: I've known the people  
6 involved for about three years. I've helped them  
7 both out. Mr. Feagin has, he's not personally  
8 threatened me, but he has at least expressed his  
9 desire to confront me physically, and I do, I would  
10 be very cautious about turning my back on him. I'm  
11 not really sure what else to tell you outside of  
12 that, that I think that one has to be cautious.

13 THE COURT: Sure, okay. Let me ask you,  
14 Ms. Worley, well, of course I know it's my decision  
15 but the family court protective order has expired.

16 THE VICTIM: Yes, sir.

17 THE COURT: If I give Mr. Feagin a  
18 straight sentence he will serve whatever time the  
19 law requires that he serve and then he'll be done,  
20 and then at that point this Court has no further  
21 control over him. If I do what we call a split  
22 sentence, then I can have some control. I can issue  
23 a restraining order; and if he violates that  
24 restraining order, then I will have — in other  
25 words, where a split sentence is is where he — I

1 would sentence him to a period of time and suspend a  
2 portion of that and then, and then place him on  
3 probation. And during that time, as a condition of  
4 that probation there would be a restraining order;  
5 and if he were to violate that restraining order in  
6 any way, then he would go back to prison. That way  
7 I can maintain some control over him, and of course,  
8 no one can control anybody. If Mr. Feagin, I mean,  
9 he has shown in the past that a restraining order  
10 doesn't matter so, you know, it may be that it's  
11 just let him go do the time he needs to do, I don't  
12 know. Do you have a concern that he wouldn't abide  
13 by any orders of the Court?

14 THE VICTIM: I feel sure he wouldn't abide  
15 by any kind of restraining order, and it'd would be  
16 hard for me to call a probation officer and say that  
17 he violated the probation when I'm in the gray. The  
18 other thing is, I really think he needs psychiatric  
19 help. He needs psychiatric help. He needs mental  
20 help. I don't know even if y'all can do that but...

21 THE COURT: Well, I can order that as a  
22 condition of probation. I can't —

23 THE VICTIM: Make him.

24 THE COURT: —order if I just send him to  
25 the Department of Corrections.

1           THE VICTIM: All right, then I'll leave it  
2 in the Court discretion.

3           THE COURT: Mr. Feagin, you've placed the  
4 Court in quite a quandary because — and you need to  
5 trust me when I tell you this, I know what you're  
6 about to tell me. You're about to tell me that,  
7 Judge, I learned my lesson, I won't — you haven't  
8 learned your lesson.

9           THE DEFENDANT: No, no, sir, That ain't  
10 what I'm about to tell you. I've learned my lesson,  
11 yeah, I'm, I would say something if you'd let me  
12 speak just a minute.

13           THE COURT: I'll hear from you.

14           THE DEFENDANT: And Fran, this is going  
15 toward Fran. Fran, you know I really do not wish  
16 you any kind of harm.

17           THE COURT: What, no, here's what you need  
18 to do, Mr. Feagin.

19           THE DEFENDANT: I really do not wish her  
20 any kind of harm to her, Your Honor.

21           THE COURT: You need to address this Court  
22 and not do it indirectly by sending Ms. Worley a  
23 message.

24           THE DEFENDANT: Yes, sir.

25           THE COURT: You need to address the issue

1 'cause —

2 THE DEFENDANT: Your Honor, thank you.

3 THE COURT: I'm not bound by these  
4 recommendations.

5 THE DEFENDANT: Yes, sir, I understand it  
6 but, Your Honor, I'd just like to say to Ms., or to  
7 the court — that I don't wish this lady no harm. I  
8 don't wish nobody no harm. I — she's come to see  
9 me at the jailhouse and told me she would help me to  
10 stay away from her. And I agree with her; it's over  
11 with between us.

12 THE COURT: Well, here's the problem and  
13 this is the problem that you've placed, you've put  
14 me in and that is this. She told you that before  
15 and there was a restraining order in place and you  
16 violated that restraining order, not just once, but  
17 if I'm not mistaken, three times. You had two prior  
18 before this time.

19 THE DEFENDANT: May I speak a minute or  
20 two, Your Honor?

21 THE COURT: It's not — it's really not  
22 important 'cause here's the thing, and here is what  
23 you need to understand, and I tried to share this  
24 with you yesterday. If a court or family court or  
25 circuit court issues a restraining order and tells

1 me, Tommy Russo, you are to have no further contact  
2 with Cheryl Russo. If Cheryl Russo calls me and  
3 says, honey, I love you, please come home. If I go  
4 home, I violated the restraining order because the  
5 Court's not asking, are y'all willing to make up.  
6 The court's saying, I don't care what your  
7 relationship is, you stay away from her. And you  
8 violated that three times. And so that's the  
9 concern and I'm sure that's the concern Ms. Worley  
10 has, is that the courts have tried to protect her  
11 from you in the past, and you have violated it and  
12 violated the sanctity of her home.

13 Here's my concern, do I do something that  
14 allows me to have further control over you even  
15 though it's limited because you can violate it any  
16 time you want; or do I just send you a message that  
17 you're gonna go do time, and then when you get out,  
18 if you commit any other acts against this lady  
19 you're going back in.

20 THE DEFENDANT: Your Honor, if I may. I  
21 got too much to lose. I'm asking, please, all I  
22 have is on the line right here today. And I'm  
23 asking the Court to please give me this one last  
24 chance in my life, I'm 39 years old. I'm getting  
25 too told for this. I do not want nothing else to do

1 with this woman. I do not wish her any harm, none  
2 of her family. I've never threatened her life; I  
3 don't know where she gets this from. And that's the  
4 God's honest truth. I've never — just like  
5 Ms. Brayboy said in here yesterday, she's —

6 THE COURT: Let me make this clear,  
7 Mr. Feagin, 'cause I don't think, I don't think you  
8 appreciate what's happened here. You went into her  
9 home. In this country our law places a tremendous  
10 value on the sanctity of someone's home. That old  
11 adage about a man's home is his castle, there's a  
12 lot of truth to that in this country. A person's  
13 home is their sanctity. It is not to be violated by  
14 anybody against their will. No one is allowed in my  
15 house without either my permission or my wife's  
16 permission. And for you, it goes even worse in this  
17 case because she asked you to stay away. She asked  
18 you to stay away to the point that she actually got  
19 court assistance. And you, you say you didn't  
20 intend to harm her, but the harm was done when you  
21 violated her home.

22 THE DEFENDANT: I understand, Your Honor.  
23 I really do understand, Your Honor. And I just,  
24 like she said, I do need the counseling and if that  
25 will be a, I will be more than glad to go.

1           THE COURT: Here's the problem,  
2 Mr. Feagin, and I'm not trying to give you a  
3 difficult time, but I'm confident that if I asked  
4 you to go over there and stand on your head and  
5 whistle the Star Spangled Banner you would do it to  
6 stay out of jail. In other words, you'll tell me  
7 anything I want to hear to not go to prison, but why  
8 didn't you get that counseling when you had an  
9 opportunity?

10           THE DEFENDANT: I was going. I was  
11 seeking counseling, Your Honor, when all this  
12 happened. I was seeking counseling. I had  
13 appointments to go to counseling, Your Honor, and  
14 then this happened. I, and the thing, Your Honor,  
15 I, t I didn't get -- this is my whole thing here. I  
16 love her to death, I really do, but I realize it's  
17 over between us. I really understand that she does  
18 not want me to be around her.

19           THE COURT: Why did it take three  
20 violations of a restraining order to get that  
21 through to you?

22           THE DEFENDANT: Because she kept inviting  
23 me back to her house, Your Honor, and that's the  
24 God's honest truth. She kept telling me to come  
25 back, she love me.

1 THE COURT: You heard what I told you?

2 THE DEFENDANT: Yes, sir, and that's what,  
3 that's why —

4 THE COURT: And I don't care what she did.  
5 It doesn't matter to me what she did.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: She has no authority to invite  
8 you over if a judge has told you you're not allowed  
9 to be there.

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

11 THE COURT: All right. I'm just gonna go  
12 ahead and tell you now, I'm not following the  
13 recommendation because I feel that I have to try to  
14 do more in this case to protect Ms. Worley and to  
15 help you. And I'm taking a — Ms. Worley, what I'm  
16 gonna do here, and I realize your concern about his  
17 violating a restraining order but, I'm gonna put a  
18 restraining order in place that's gonna last for  
19 five years.

20 THE VICTIM: Thank you.

21 THE COURT: I'm gonna make you a promise  
22 young man.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: I'm retaining jurisdiction on  
25 this case.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: I rarely do that. If you  
3 violate the terms and conditions of what I'm gonna  
4 do here, I'm gonna order that you be brought back in  
5 front of me.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And I want you to understand  
8 something. I'm sentencing you to 15 years in  
9 prison. If you violate the terms and conditions of  
10 what I'm about to order here, I'm making you this  
11 promise today, you will get every day of that 15  
12 years. You understand me?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now you test me.

15 THE DEFENDANT: No, sir.

16 THE COURT: You just try.

17 THE DEFENDANT: I don't want to test you.

18 THE COURT: The sentence of the Court on  
19 indictment 2010-GS-21-681 is that you are to be  
20 committed to the State Department of Corrections for  
21 a period of 15 years, provided that upon the service  
22 of 279 days, the balance is suspended. I'm gonna  
23 place you on probation for five years and give you  
24 credit for the time you served. Special conditions  
25 of probation, number one, no contact with Ms. Worley

1 or Mr. Laturno, any member of her family. You  
2 listen to me.

3 THE DEFENDANT: Yes, sir, I'm listening.

4 THE COURT: Contact means phone calls,  
5 emails, text messaging, obviously in person, driving  
6 by her house. If you are found anywhere in the  
7 vicinity of her you're gonna be in violation of this  
8 restraining order. No contact, Mr. Feagin, means no  
9 contact, period.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: In other words, from this day  
12 and for the next five years and hopefully for the  
13 rest of your life, Ms. Worley is a part of your  
14 past.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And in no way a part of any  
17 part of your life from here forward.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: If you violate it — and I  
20 want probation to understand, I want you picked up,  
21 locked up until I can get, they can bring you in  
22 front of me.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: I'm gonna order as a condition  
25 of probation mental health counseling. You're gonna

1 attend mental health for whatever issue. I don't  
2 know what issues you may have. You told me that you  
3 were seeking help early on; well, I'm ordering it.  
4 It's gonna be a part of your probationary sentence.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Sir, my suggestion to you is  
7 you go about taking care of your life, your family,  
8 and your — the probate matter with your dad's  
9 estate. You go about taking care of all of that and  
10 go on about, like you said earlier, living your life

11 —

12 THE DEFENDANT: Yes, sir.

13 THE COURT: —which has no longer any  
14 part of Ms. Worley's.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You must attend the mental  
17 health counseling. If you fail to attend that's a  
18 violation of terms and conditions of probation.

19 THE DEFENDANT: Yes, sir. Your Honor, one  
20 other little problem here, if I may speak.

21 (Mr. Meetze and defendant confer.)

22 THE DEFENDANT: Never mind, Your Honor.  
23 Never mind, I was going to ask —

24 THE COURT: Well, you got an outstanding  
25 lawyer now you need to listen to him. But I don't

1 want you to come back later and say you were cut off  
2 and didn't get a chance to speak.

3 MR. MEETZE: Your Honor, he's got a  
4 magistrate charge that he's also being held on that  
5 he was hoping that this Court could do something  
6 with regards to that bond, and I had told him  
7 earlier that you didn't have jurisdiction over that  
8 matter.

9 THE COURT: That's not before me,  
10 Mr. Feagin. I don't have any jurisdiction on that.

11 THE DEFENDANT: That's all right, Your  
12 Honor.

13 THE COURT: But you can get that taken  
14 care of.

15 (Attorney confers with defendant.)

16 THE COURT: Was that the problem you had?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay, I don't have any  
19 jurisdiction on magistrate level matters so you'll  
20 just need to take care of that.

21 THE DEFENDANT: Your Honor, I'd like to  
22 say to the Court, thank you very much.

23 THE COURT: Well, I'm gonna tell you, I'm  
24 doing this to protect this lady; but I'm trying to  
25 help you, Mr. Worley.

1 THE DEFENDANT: Mr. Feagin.

2 MS. PARR: Mr. Feagin. I'm trying to  
3 protect Ms. Worley; I'm trying to help you out. Now  
4 I'm just, I don't know how to get across to you  
5 because I really have a concern because you have not  
6 honored the Court's orders in the past; but any time  
7 you even think of her or doing anything, I want you  
8 to think about 15 years.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Because I'm promising you, and  
11 I'm a man of my word —

12 THE DEFENDANT: I believe that, Your  
13 Honor.

14 THE COURT: —you will get every day of  
15 it.

16 THE DEFENDANT: I believe that, Your  
17 Honor. I just, like I said, I appreciate this  
18 opportunity, Your Honor, and I would like to say  
19 that I've turned myself over to the Lord. I'm  
20 asking for this today —

21 THE COURT: I hope to goodness that's  
22 true.

23 THE DEFENDANT: It is true, and I just  
24 pray today's continue in my favor.

25 THE COURT: Well, good luck to you, sir.

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THE DEFENDANT: Thank you, Your Honor.

\* \* \* END OF REQUESTED TRANSCRIPT OF RECORD \* \* \*



STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS  
COUNTY OF FLORENCE ) FIFTH JUDICIAL CIRCUIT

2010-GS-21-0681

State of South Carolina, )  
 )  
Plaintiff, )  
 )  
v. ) Transcript of Record  
 )  
McIver R. Feagin, Jr., )  
 )  
Defendant. )  
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 )

December 10, 2012  
Florence, South Carolina

B E F O R E:

The Honorable Thomas A. Russo, Judge

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

Probation Agent  
Attorneys for the State

Mr. Grough, Esquire  
Attorneys for the Defendant

Hilda M. Jordan, CVR-M  
Circuit Court Reporter

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I N D E X

PROBATION REVOCATION HEARING

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NO.</u>
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EXHIBITS:

NO EXHIBITS WERE MARKED TO THIS PROCEEDING.

Certificate of Court Reporter .....	18
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THE COURT: All right. Yes, sir?

PROBATION AGENT: Your Honor, may it please the Court. This is Indictment 2010-GS-21-0681. Before you is one, McIver Feagin. Your Honor, he's here today before you on the charge of violation of probation. What I just passed up to you is the violation packet. It includes the notice of hearing, the legal process in this matter, both the warrant and the citation. A copy of the original Court order in this matter for the probation case. A copy of the letter we sent to the victim, we haven't heard back from her. Also there's a copy of the new sentencing document for what he's already serving the Department of Corrections for, Your Honor.

THE COURT: All right, sir. Let me look through this real quick.

All right. Anything further from the department?

PROBATION AGENT: Your Honor, I can go over some of the background, if you'd like?

THE COURT: All right, sir.

PROBATION AGENT: He was sentenced in this Court and you were the sentencing judge, he received a sentence of 15 years provided upon the service of 279 days, balance suspended and five years probation. This is for the offense of burglary second. After being sentenced, he transitioned

1 to probation on October 22, 2010. After that time there  
2 were problems as far as getting Mr. Feagin into the office.  
3 He actually made a call to the Florence County Office in  
4 early December and they took a report from him after that.  
5 Following that he transferred to Williamsburg County. We  
6 made contact with him December of 2010. After that time we  
7 lost contact with Mr. Feagin. Missed the next report and  
8 then the following month of January. We got a report during  
9 that time from the Williamsburg County Sheriff's Department  
10 where he may have been a suspect in some burglary. We since  
11 found out he wasn't involved in that. We tried to locate  
12 Mr. Feagin at the address that was given. We learned he  
13 actually wasn't living at the address he gave Florence  
14 County. That gave us some concern. We looked for Mr.  
15 Feagin. We actually ended up staffing this case and issuing  
16 a warrant for Mr. Feagin, Your Honor, January 20, 2011. At  
17 that time he was charged with changing his address without  
18 notifying probation. We weren't sure where he was living at  
19 that time. And also we couldn't do a verify home address or  
20 anything like that.

21 He's never made a payment on his case, Your Honor.  
22 Fees, surcharges or anything else. Subsequently we located  
23 Mr. Feagin. We asked some help in the community. We talked  
24 to everybody in the area. We talked to one of the local  
25 stores. We ask that he turn himself in March of 2011. He

1 bonded out the next day. Came back to the office. We  
2 received notice from Florence County as the time saying he  
3 was actually being questioned, being sought after for some  
4 harassment of the original victim of this case.

5 Now, I should back-track. There were special conditions  
6 in this matter. He had two special conditions. No contact  
7 with the victim and mental health counseling in this matter.  
8 He has never been to mental health counseling due to the  
9 fact we've only had contact with Mr. Feagin three times in  
10 the life of this probationary case.

11 After seeing the -- from Florence County -- Lake City,  
12 which is in Florence County, concerning Mr. Feagin activity.  
13 Shortly after that, the month of May 2011 they issues a  
14 warrant for Mr. Feagin. We picked Mr. Feagin up. The  
15 warrant was for harassment in this involved the original  
16 victim in the harassment case. He was subsequently arrested  
17 and taken to Florence County Detention Center, and he stayed  
18 there, Your Honor, until October of last year, Your Honor,  
19 where he pled guilty to harassment and to resisting arrest.  
20 Again, this was on the same victim. The total charges being  
21 in this case, he has a new general session conviction, that  
22 being for harassment and resisting arrest.

23 As I said earlier he's never made a payment on this  
24 case, and he's violated the court order of no contact with  
25 the victim, this being the original victim in the case,

1 itself, and he is currently serving a three year sentence  
2 and a one year sentence in the Department of Corrections,  
3 Your Honor.

4 THE COURT: All right. Thank you very much, sir.

5 PROBATION AGENT: You're welcome, sir.

6 THE COURT: Mr. Grough, you represent Mr. Feagin?

7 MR. GROUGH: I do, Your Honor.

8 THE COURT: Have you reviewed with him these  
9 allegations, sir?

10 MR. GROUGH: I have, Your Honor.

11 THE COURT: All right. I'll be happy to hear from you on  
12 his behalf.

13 MR. GROUGH: Thank you, Judge. Standing with me is  
14 McIver Feagin, and here on his behalf is Mr. Cot Parker who  
15 is seated behind me. I'll ask him to say a few words at the  
16 appropriate time, Your Honor.

17 I'll start by telling you that McIver has been  
18 incarcerated for the last 589 days. I'm not sure -- I  
19 believe that the warrant that he was served for his  
20 violation of probation precedes that, but as of May 2, 2011,  
21 that was the day that he was arrested on the harassment  
22 charges you heard about and has not been released from  
23 custody since then. Whatever your decision is today we hope  
24 you will take that into consideration and obviously give him  
25 the credit for those one year, seven months and nine days or

1 so.

2 Another thing I can tell you, certainly, about McIver  
3 is there is a no contact provision in there and if Your  
4 Honor is inclined to hear from Mr. Parker for Mr. Feagin in  
5 addition to me you'll understand what McIver and I have  
6 wrestled with over the last little while that I've  
7 represented him on the harassment charges, as well, at least  
8 for a time, and now, obviously, on the probation violation  
9 that followed, is that this was not anything that was  
10 initiated by Mr. Feagin. It's not something I get the  
11 impression from him or from Mr. Parker that would have  
12 happened but for the victim approaching him and trying to  
13 reconciling with him first.

14 THE COURT: Now, he pled guilty to harassment.

15 MR. GROUGH: I understand that, Judge, but that was  
16 essentially an offer that he could not refuse. If I remember  
17 correctly it may have been under North Carolina verses  
18 Alford. It escapes me at this point, regardless, he was  
19 looking at --

20 THE COURT: This sentencing sheet does not reflect that  
21 he pled under Alford to the charge I had him on, the  
22 burglary charge.

23 MR. GROUGH: That notwithstanding, Judge. I certainly  
24 do understand. We're not disputing there's a violation here  
25 today. We're only presenting mitigation in hopes that Your

1 Honor will consider that in determining what in  
2 determinating what an appropriate revocation would be. I do  
3 have a phone of McIver's that if Your Honor is so inclined  
4 I'd like to show you, at least, a handful of text messages  
5 from the purported victim after his initial arrest, after  
6 he'd been placed on probation in this case.

7 THE COURT: Well, here's the thing, Mr. Grough, just so  
8 you'll understand. I remember Mr. McIver -- Mr. Feagin when  
9 he was before me, and I remember specifically telling him  
10 that this no contact order related to him that I had no  
11 control over her and if she tries to contact you or if she  
12 contacts you you just need to ignore it. You need to not  
13 respond to it. You're to have no contact with her. So I  
14 don't know -- I mean, I'll be happy to look at any text  
15 messages or whatever you've got, but I'm assuming he  
16 responded?

17 MR. GROUGH: And Your Honor that is what he and I have  
18 been wrestling with. As I've been explaining to him all  
19 these things that I'm discussing with you now, he and I have  
20 discussed in the past, are all things for the purpose of  
21 mitigation. None of them refute any sort of violation and  
22 --

23 THE COURT: I understand.

24 MR. GROUGH: -- none of them suggest that he isn't on  
25 some level responsible, but they do suggest that this might

1 not be nearly as one-sided as the victim would have you  
2 believe after the fact.

3 THE COURT: I'm assuming the victim doesn't care. They  
4 were notified and didn't bother to show up.

5 MR. GROUGH: Correct. What I can tell you, through my  
6 conversations with Mr. Parker, who, again, is seated back  
7 there and I hope that he will have an opportunity to  
8 reiterate as well. He provided some employment for Mr.  
9 Feagin after he was released out on probation, under Your  
10 Honor's order and was working almost, if not, seven days a  
11 week so long as there was work to do. Things were going  
12 well. They had set up a little house for him to live in,  
13 they had put some running water and some lights out there,  
14 as well. One day, Fran, the victim in this case, Your  
15 Honor, approached McIver with a car full of clothes and  
16 essentially said, I don't have anywhere to stay, I'm  
17 homeless. Can you help me. I want to get back together with  
18 you, I still love you.

19 THE COURT: And the answer is no.

20 MR. GROUGH: And, again, it's as though we're having the  
21 same conversation that he and I have had and you are playing  
22 my role and I'm playing his, but the position that he was in  
23 was a person that he loved and a person that he cared for  
24 was in tremendous need, and he felt compelled to offer  
25 assistance to her. That's now obviously something that he

1 wishes he could take back. He --

2 THE COURT: All right. Let's -- first of all, let's say  
3 this, and let's recognize this. He was before me September  
4 of 2010. He began violating his probation fairly quickly.  
5 So it's never been going well. It may have been going well  
6 in the fact that he got a job and he was working, but he  
7 began violating probation almost immediately. So it hasn't  
8 been going well. He's absconded supervision, he hasn't  
9 reported, he gave bad addresses and wasn't living at those  
10 addresses. I mean, I say this to you, Mr. Grough, because  
11 you seem to very focused, which I would understand, on the  
12 contact with the victim, but you know me. You've been  
13 around me long enough to know that what I don't tolerate  
14 from people on probation is just not showing up.

15 So help me understand how he decides how he's just not  
16 going to show up for probation.

17 MR. GROUGH: And I'll let him address that, Your Honor.

18 THE COURT: Sure.

19 MR. FEAGIN: Your Honor, my father just died. I've  
20 mentioned that before the sentencing, and I know that has no  
21 bearing on what I did. I can tell you it wasn't my  
22 intention to disregard your Court order. I did try to go  
23 down there. I went. They told me I did wrong. Then I  
24 couldn't get the people to tell me -- the address, I did  
25 give them my address there. I didn't have the address to

1 the other place.

2 THE COURT: Well, when they went and checked you weren't  
3 there.

4 MR. FEAGIN: I was working.

5 THE COURT: Well, they said the people that were living  
6 there said you weren't there.

7 MR. FEAGIN: I was living there. Mr. Parker can verify.  
8 I was living there until they set up the other trailer to I  
9 got the address.

10 THE COURT: Did you give them notification of that?

11 MR. FEAGIN: Yes, sir. As soon as I got in touch --  
12 soon as I can get in touch with them.

13 THE COURT: There are several occasions here that you  
14 failed to report.

15 MR. FEAGIN: I didn't have no way, Your Honor, and the  
16 only reason -- I'm being honest, my girlfriend said she'd  
17 pretend to be my sister. She would come take me to  
18 probation. I had nobody else to help me. I couldn't ask Mr.  
19 Parker here to do it because he was -- he has issues  
20 himself. I can't make everybody quit their life to handle my  
21 responsibilities. I even walked to probation one time. It's  
22 like 30 miles from where I live at. It's not that I have  
23 been trying willfully and neglectfully to violate my  
24 probation but I hadn't -- what was I supposed to do, both my  
25 parents are gone. My brother and sister don't like it

1 because I have been so much trouble in the past.

2 THE COURT: Look here. I'm not trying to be  
3 insensitive. I'm not -- I appreciate your comments, but  
4 here's the thing, Mr. Feagin, and, again, I'm not trying to  
5 be insensitive, but you were using the death of your father  
6 back in 2010 when you were in front of me pleading guilty  
7 then.

8 MR. FEAGIN: Yes, Your Honor.

9 THE COURT: You've been using that as an excuse for  
10 quite some time now.

11 MR. FEAGIN: Your Honor, as I said it's no excuse. But  
12 when she told me she was going to help me, I couldn't find  
13 nobody else to help me.

14 THE COURT: But here's what you're saying, is I ignored  
15 your order and I took her in.

16 MR. FEAGIN: Your Honor, I did what I know in my heart  
17 to do, too. I mean --

18 THE COURT: Oh, now, don't go down that road.

19 MR. FEAGIN: I mean, Mr. Russo, Judge Russo, you know  
20 when I told you I changed my life, I did. I was going to  
21 church with this woman every Sunday.

22 THE COURT: You weren't supposed to even have contact  
23 with her.

24 MR. FEAGIN: I know that, Judge Russo --

25 THE COURT: You know, part of the reason I ordered no

1 contact with her is not because you're not good for her, but  
2 she's not good for you, either.

3 MR. FEAGIN: I realize that now. I really do realize  
4 that. But I loved her.

5 THE COURT: Well, you don't know what love is.

6 MR. FEAGIN: What I'm trying to say, Your Honor, it's  
7 not me. I had no intention to talk with this woman, period.  
8 She had a man in Manning, South Carolina to pay her bills,  
9 to do everything for her. Why mess with me period if I was  
10 so much of a threat to her or her worry about her life. She  
11 stayed in my bed for seven months.

12 THE COURT: You pled guilty in front of Judge Nettles  
13 two months ago.

14 MR. FEAGIN: Yes, sir.

15 THE COURT: For harassing her. So that -- that's not a  
16 situation where she's contacting you, that's a situation  
17 where you're contacting her in violation of a restraining  
18 order.

19 MR. FEAGIN: We was both contacting each other.

20 THE COURT: Well, you were contacting her.

21 MR. FEAGIN: I understand. Yes, sir, I did contact her.  
22 I -- because like I said, she said she wanted to help me.

23 THE COURT: All right.

24 MR. FEAGIN: One other thing, Your Honor, she took me up  
25 there to turn myself in and bonded me out of the probation

1 violation. I asked her not to. I said don't bond me out.  
2 If you really want to help me leave me in here and come talk  
3 to the judge with me.

4 PROBATION AGENT: If I can add, this is Mr. Feagin's  
5 fifth time on supervision. Two of those probation cases  
6 ended up on revocation. He has a substantial record, Your  
7 Honor. This probation for burglary is his fourth burglary.

8 THE COURT: Oh, I know. I know.

9 I find that the violations of probation have been  
10 willful. I don't see Mr. Feagin as being a viable probation  
11 candidate. He doesn't cooperate, he doesn't do the things  
12 he's supposed to do. Probation is not at the leisure of the  
13 defendant but at the need of the probation office and I  
14 don't think he understands that. I don't think he  
15 understands Court orders. A Court order is that, it's an  
16 order. You're not to have contact with somebody, and I  
17 think -- the order is not don't have contact unless you  
18 really love her and then you can. It's just not that way  
19 and I'm going to revoke this case in full and give him any  
20 credit that he's entitled to on these charges.

21 MR. GROUGH: Thank Your Honor. I should add as far as  
22 the time he had initially 279 days, but since that time it's  
23 only 2 days time for the probation violation. We issued the  
24 process served and he was out the next day. The time he  
25 served in the Department of Corrections is not for the

1 probation violation. It's on the new sentence itself.

2 THE COURT: And like I said, I don't calculate time,  
3 now. The Department of Corrections calculates time. I'm  
4 going to order that he's to be given time -- given credit  
5 for any time that he's been incarcerated based on this  
6 probation matter, and he already got -- he's already  
7 received the credit for the 279 -- and I want to make this  
8 clear because I've had this come back several times. When  
9 he came before me, he had served 279 days, before he came  
10 before me. So when I imposed sentence I gave him credit for  
11 the 279 days that he served, and then placed him on  
12 probation. So when he was placed on probation he's been  
13 given credit for the 279 and now's he's serving whatever is  
14 left on the probation case. So I want to make it clear,  
15 that credit has been given. On this revocation he's to be  
16 given any credit that he has been serving with relationship  
17 to either the warrants that were served on him for this or  
18 for any time that he's been in pursuant to those warrants.  
19 Now, if he got served with these warrants and then bonded  
20 out and then went in front of Judge Nettles or got arrested  
21 on other charges and he was locked up, he's locked up on  
22 these other charges not on the probation matter, but I'm  
23 going to let the Department of Corrections work with  
24 probation to determine how much time, but I am going to  
25 order that he be given credit for any time he is entitled

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to.

MR. GROUGH: Thank you, Your Honor.

THE COURT: All right.

PROBATION AGENT: Your Honor, civil judgment for the unpaid surcharges?

THE COURT: Yes, sir.

PROBATION AGENT: Thank you, Your Honor.

THE COURT: Thank you.

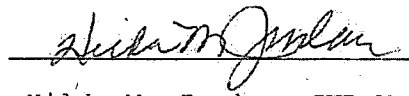
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C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROBATION REVOCATION HEARING IN THE CAPTIONED CAUSE, IN THE COURT OF GENERAL SESSIONS FOR FLORENCE COUNTY, SOUTH CAROLINA, ON THE 10 DAY OF DECEMBER, 2012.

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



Hilda M. Jordan, CVR-M

April 11, 2015

FORM 5

STATE OF SOUTH CAROLINA )

2015 JAN -8 ) PM 4: 05 THE COURT OF COMMON PLEAS

COUNTY OF Florence )

McIver R Feagin JR. # 266756  
Full name and prison number (if any) of Applicant. )

2015 CP 21 55

v. )

State of South Carolina )

APPLICATION FOR

POST-CONVICTION RELIEF

**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and veified (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 threes 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 Waterree River Correction Instatution
2. Name and location of Court which imposed sentence Florence County Court House
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) Indictment Number 10-GS-21-00681 (Violation of Probation)
  - (b) Indictment Number 2010-GS-21-0681 (Original Indictment)
  - (c) For 2<sup>nd</sup> Degree Burglary
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) Dec. 10, 2012 Full revocation of 15 years
  - (b) Sept. -20 -2010 on Indictment 2010-GS-21-0681  
15 years provided that upon the service of 279 Revised 3/2003  
days and or payment, plus cost and assessment balance  
is suspended 5 years probation.

- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty to 2<sup>nd</sup> Degree Burglary
- (b) after a plea of not guilty to violation of probation
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. That it should not be cited, relied on as precedent in any
- ii. except as provided by Rule 268(d)(2), SCACR
- iii. Appellate Case No. 2012-213695 (Thomas A. Russo, Circuit Court Judge)
- (c) the date of each such result:
- i. Unpublished Opinion No. 2014-UP-460
- ii. Submitted November 1, 2014 - Filed Dec. 17, 2014
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. See above
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) \_\_\_\_\_
- (b) N/A
- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Counsel in probation revocation hearing
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) Failure to file motion to have Judge Russo removed
- (b) Failure to submit phone and texts messages to exhibit for
- (c) Failure to call witnesses to stand. (Leave open for additional arguments)

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

- (a) any petition in a State Court under South Carolina Law? \_\_\_\_\_
- (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? Not to my knowledge

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

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

(d) the date of each such disposition:

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

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

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

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

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

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

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

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

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

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

NO

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

(a) which grounds have been presented:

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

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

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

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

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

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

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

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

(a) \_\_\_\_\_

(b) \_\_\_\_\_

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

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

- (a) your arraignment and plea? N/A
- (b) your trial, if any? William Grove - Florence County
- (c) your sentencing? Same as above
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Conviction - Indigent Defense - Public Defender
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? by Public Defender office

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. Robert M. Dudek Appellate Defense of S.C. Columbia, S.C.
  - ii. William Grove - Lower Court - Florence County
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Above
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

Seeking a new revocation hearing and a reduction in sentencing

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

NO

to time served. I ask that this remain open for further addendums and additions.

STATE OF SOUTH CAROLINA )

County of Sumter )

VERIFICATION

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.

McJury R. Seagin JR.  
McJury R Seagin JR.

SWORN to and subscribed before me this 6th  
day of January, 2015.

Pamela D. H. H. H. (L.S.)  
Notary Public

My Commission Expires: 3/15/2021

2015 JAN - 8 PM 4: 35  
CORNIE REED  
DEPT 603  
FLORIANE CENTER

FILE

**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.

McLever R Seagin Jr.  
Applicant  
McLever Seagin Jr

SWORN or affirmed to and subscribed before me this

6<sup>th</sup> day of January, 2015.

Ramel D Hatfield  
Notary Public

My Commission Expires: 3/15/2021

FILED  
2015 JAN -8 PM 4:35  
CORNER 1000 5TH  
COOP & 13  
FLORENCE COUNTY

Pro-Se Brief to be filed with PCR Page 1 of 2  
Application on ineffective Counsel

This Pro-Se brief pretains to question 11 on the PCR application. (1) Failure to file motion to have Judge Thomas A. Russo removed from revocation hearing on the basis of Canon 3(B)(5) also the fact that I informed Mr. William Grove of Judge Russo being a former solicitor in a case involving me on July 15<sup>th</sup> 2002 where the disposition of the case was dism/nol-pros/pros ended. Which brings me to the next reason the motion should have been filed by Mr. William Grove. Is also in Canon 3(E)(A) and (B). Please see commentary in both Canon 3(B)(5) and Canon 3(E)(A) and (B). Now Mr. William Grove did in fact err in the effectiveness of counsel with the foreknowledge of facts presented to him verbally before-hand by me the defendant. Which allowed Judge Russo to sentence me excessively to a sentence of 15 years on a violation of probation. Where there was evidence to which would have refuted the Probation Agent's allegations set forth in the warrant. (2) Failure to submit phone and text message to exhibit for evidence that would not have only been use for mitigating reasons, but also would have proven to the courts that the original case was one sided. Which again allowed Judge Russo to excessively sentence me

to 15 years. (3) Failure to call witness stand. When witness was present and willing testify on behalf of me the defendant. Mr. William Grove in fact erred again due to the foreknowledge of what the witness testimony would be. Which would refute the allegations of Probation Agents warrant and testimony against me. Which allowed Judge Russo to excessively sentence me to 15 years. (4) Failure to do these things set forth in this brief shows the ineffectiveness of counsel by Mr. William Grove. Also hindered my appeal at the appellate level, because all evidence or witness testimony was not available to appellate defense attorney Mr. Robert M. Dudek or those in review of appeal.

Sincerely  
Applicant

McIver R. Feagin JR 12-29-14

To Clerk of Court  
Connie Reel-Shearn

FILED  
2015 JAN - 8 PM 4:35  
CONNIE REEL-SHEARN  
CLERK OF COURT  
FLORIDA COUNTY

I, McIver R. Feagin JR. am submitting  
this request for a Pro-bono attorney assigned  
to my PCR.

C.C.

Please forward request to Attorney  
Generals office for approval.

Thanks  
Sincerely  
McIver R Feagin JR 12-29-14

STATE OF SOUTH CAROLINA )  
 COUNTY OF FLORENCE )  
 )  
 )  
 McIver R. Feagin, Jr., #266756, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 TWELFTH JUDICIAL CIRCUIT

2015-CP-21-55

**RETURN**

In response to the post-conviction relief application filed on January 8, 2015, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted by the June 2010 term of the Florence County Grand Jury for Burglary - First Degree (2010-GS-21-681). William E. Grove, Esquire, represented him. On September 21, 2010, Applicant entered a plea pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), to Burglary- Second Degree, Non-Violent. The Honorable Thomas A. Russo sentenced Applicant to confinement for fifteen years suspended upon time served (279 days) and five years' probation. On December 10, 2012, Applicant again appeared before Judge Russo for a probation violation, and Judge Russo revoked his probation in full. Applicant was represented by William E. Grove, Esquire, during his probation hearing.

A notice of appeal of the probation revocation was filed on Applicant's behalf, and an appeal was perfected pursuant to Anders v. California, 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Feagin, Op. No. 2014-UP-460 (filed on December 17, 2014). The Remittitur was issued on January 13, 2015.

For the purpose of this Return, Respondent incorporates the records of the Florence County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, appellate records, and the transcripts of both the original plea and the revocation hearing. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

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

1. "Ineffective Counsel in probation revocation hearing"
  - a. "Failure to file motion to have Judge Russo removed"
  - b. "Failure to submit phone and texts (sic) messages to exhibit"
  - c. "Failure to call witness to stand"

Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure (SCRCPP). All amendments should be made well in advance of the evidentiary hearing. If Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCPP.

## III.

Applicant challenges the revocation of his probation. Respondent submits that Applicant's claim of ineffective assistance of probation revocation counsel is without merit. The decision to revoke probation is in the discretion of the circuit court judge. State v. Williamson, 356 S.C. 507, 510, 589 S.E.2d 787, 788 (Ct. App. 2003). Instead of requiring proof beyond a reasonable doubt, probation is properly revoked upon an evidentiary showing of facts tending to establish a probation violation. State v. Hill, 368 S.C. 649, 658, 630 S.E.2d 274, 279 (2006) (citing State v. White, 218

S.C. 130, 136, 61 S.E.2d 754, 756 (1950)). While underlying probation violations may be criminal offenses, the probation revocation proceeding is not a criminal trial of those charges. Id. at 658-659, 61 S.E.2d at 279. Criminal procedure rules governing disclosure of evidence in criminal cases do not apply to probation revocation proceedings; such proceedings are not criminal trials. Id. at 659, 61 S.E.2d at 280. Probation revocation hearings have a *much lower* evidentiary threshold than criminal proceedings. Id. at 658, 61 S.E.2d at 279 (emphasis added).

The determination of whether to revoke probation is within the trial court's discretion, and the authority to review such a decision is confined to correcting errors of law unless the lack of legal or evidentiary basis indicates the circuit judge's decision was arbitrary and capricious. State v. Pauling, 371 S.C. 435, 639 S.E.2d 680 (2006). A revocation hearing addresses two issues: whether the probationer violated a condition of probation and whether the violation warrants revocation. Black v. Romano, 471 U.S. 606 (1985); Morrissey v. Brewer, 408 U.S. 471 (1972). If the evidence tends to show a violation of the conditions, then revocation is an appropriate means of enforcing the probationary sentence. State v. Clough, 220 S.C. 390, 68 S.E.2d 329 (1951); State v. McCray, 222 S.C. 391, 73 S.E.2d 1 (1952).

Due the nature of the revocation hearing, the Sixth and Fourteenth Amendments does not *per se* create the right to counsel. Gagnon v. Scarpelli, 411 U.S. 778 (1973). Nevertheless, in South Carolina, Rule 602(a), SCACR, requires the appointment of counsel for indigent defendants in probation revocation proceedings. *See also* Barlet v. State, 288 S.C. 481, 343 S.E.2d 620 (1986). Because a probationer has a right to counsel, "the same analysis for ineffectiveness that applies in other PCR proceedings involving claims against counsel should, by analogy, apply in PCR proceedings involving claims against probation counsel." Turner v. State, 384 S.C. 451, 455, 682 S.E.2d 792, 794 (2009).

In a PCR action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove “counsel’s conduct so undermined the proper functioning of the adversarial process” that the proceedings “cannot be relied upon as having produced a just result.” Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, Applicant must prove that counsel’s performance was deficient. Under this prong, the court measures an attorney’s performance by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of probation revocation counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an

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

IV.

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

V.

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

Respectfully submitted,

ALAN WILSON  
Attorney General

ROBERT BOLCHOZ  
Chief Deputy Attorney General

JOHANNA C. VALENZUELA  
Senior Assistant Deputy Attorney General

LINDSEY A. MCCALLISTER  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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January 17, 2017

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF FLORENCE )  
 )  
MCIVER R. FEAGIN, JR., #266756 )  
 )  
Applicant, )  
 )  
vs )  
 )  
STATE OF SOUTH CAROLINA, )  
 )  
Respondent, )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

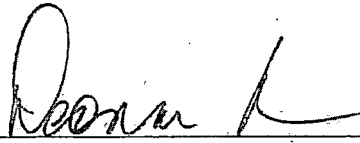
2015-CP-21-55

AFFIDAVIT OF SERVICE BY MAIL

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

**Jonathan D. Waller, Esquire**  
Giese Law Firm  
1315 Blanding Street  
Columbia, SC 29201

DATED this the 17<sup>th</sup> day of January, 2016.

  
\_\_\_\_\_  
Deonna Rogers, Legal Assistant  
For Respondent

STATE OF SOUTH CAROLINA )	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE )	TWELTH JUDICIAL CIRCUIT
McIver R. Feagin, Jr., #266756, )	2015-CP-21-55
Applicant, )	
v. )	
State of South Carolina, )	<b>Amendment to Application for</b>
Respondent. )	<b>Post Conviction Relief</b>

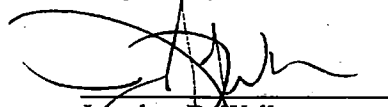
Applicant, by and through his Attorney, Jonathan D. Waller, Esquire, would amend his Application for Post Conviction Relief filed on January 8, 2015, by adding the claims of ineffective assistance of probation revocation counsel and that his probation was revoked and a sentence imposed that exceeds the penalty authorized by law to question 10 and by adding the following specific prayers for relief to his original allegations:

1. As to representation rendered by William E. Grove, Esquire:
  - a. Probation revocation counsel failed to object when Applicant was sentenced to fifteen (15) years imprisonment on a revocation of his probation for Indictment No. 2010-GS-21-681 (Burglary – First Degree) after applicant plead guilty to Burglary – Second Degree (non-violent), which carries a maximum punishment of up to ten (10) years imprisonment.
  - b. The relief sought under Applicant’s Application for Post Conviction Relief; Ineffective assistance of probation revocation counsel; is the correction of his sentence and that his case be remanded to the General Sessions court for further proceedings.

2. As to the excessive sentence:

- a. Applicant was originally sentenced to fifteen (15) years imprisonment, credit for 279 days, with the balance suspended upon the service of five (5) years probation. Applicant was subsequently found to have willfully violated his probation and his probation was revoked and he was sentenced to complete the remaining portion of the full fifteen (15) year sentence with credit for time served. The maximum penalty allowed by law with respect to Burglary – Second Degree (non-violent) is ten (10) years imprisonment
- b. The relief sought in Applicant's claim of excessive sentence is the correction of Applicant's sentence for that conviction based upon the record and applicable statutes.

Respectfully submitted,



Jonathan D. Waller  
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Suite 2B  
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ATTORNEY FOR APPLICANT

November 8, 2017  
Columbia, SC

State of South Carolina	)	Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2015-CP-21-00055
	)	
McIver R. Feagin Jr.,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

November 17, 2017  
Florence, South Carolina

**B E F O R E:**

The Honorable Michael G. Nettles, Judge

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

Jonathan Waller, Esquire  
Attorney for the Plaintiff

Lindsey McCallister, Esquire  
Attorney for the Defendant

Krystal J. Smith  
Circuit Court Reporter

I N D E X

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1 NOVEMBER 17, 2017

2 (WHEREUPON, the proceedings began at 10:25 a.m.)

3 THE COURT: Take your time, Ms. McCallister. When  
4 you're prepared, you can put the caption on the record.

5 MS. MCCALLISTER: Your Honor, this is McIver Feagin  
6 versus the State of South Carolina, 2015-CP-21-0055.

7 THE COURT: I think in -- in the upper part of the state  
8 or the Midlands, they might say Fee-gin. I think down here  
9 we say Fay-gin.

10 MS. MCCALLISTER: Feagin.

11 THE COURT: All right.

12 MS. MCCALLISTER: Okay. I'm sorry. I apologize.

13 THE COURT: That's okay.

14 MR. WALLER: I've been doing the same thing too.

15 MS. MCCALLISTER: Your Honor, Mr. Feagin was indicted in  
16 June of 2010 for burglary first degree. He pleaded guilty on  
17 September 22<sup>nd</sup>, 2010, before Judge Russo. That was a plea  
18 pursuant to Alford v. North Carolina to the lesser included  
19 of burglary second.

20 Your Honor, he was sentenced to 15 years, suspended to  
21 time served plus 5 years' probation. There were special  
22 conditions of that probation, including no contact with the  
23 victim and that he attend mental health counseling.

24 Your Honor, on December 10<sup>th</sup> of 2012, he appeared before  
25 Judge Russo for a probation revocation. He was represented

1 at that probation revocation by Will Grove.

2 At that time, Judge Russo revoked his probation in full.  
3 He did file an appeal of that probation revocation, which was  
4 dismissed pursuant to Anders v. California, Your Honor.

5 He filed this PCR on January 8<sup>th</sup>, 2015, and with an  
6 amendment filed November 8<sup>th</sup>, 2017. He is represented by Mr.  
7 Waller in this action, and they are both present in the  
8 courtroom today.

9 THE COURT: All right.

10 MR. WALLER: And, Your Honor, if I may approach, I'll  
11 hand this up. I have a copy. I'm not sure if one would have  
12 made it to Your Honor with the amendment.

13 THE COURT: Okay. All right. I'm going to forward you  
14 the opportunity, Mr. Waller, to set forth all the grounds,  
15 including the amendment.

16 MR. WALLER: Sure, Your Honor.

17 Your Honor, quite simply, we have two allegations. One  
18 -- and they go hand-in-hand, one of which being that we  
19 contend that Mr. -- Mr. Feagin was sentenced to 15 years for  
20 an offense that only carries up to ten years, and that his  
21 sentence has expired. That during the probation revocation  
22 hearing, that Mr. Grove did not object to him being revoked  
23 to 15 years because the sentence only carried ten.

24 Mr. Feagin -- when he first pled guilty, he was put on  
25 probation and nobody -- nobody raised the issue. The statute

1 of limitations as far as the first -- from his plea had run;  
2 so we can't, you know, bring allegations regarding that, but,  
3 quite honestly, that's -- quite simply, that's our -- that's  
4 our allegations are that the sentence he pled guilty to and  
5 was put on probation for only carries a maximum of ten years  
6 and he should not have been sentenced to 15 years.

7 THE COURT: All right.

8 Ms. McCallister, I'll be glad to hear what your general  
9 position is. We'll take testimony here in a moment, if  
10 necessary, but it seems like a pretty straightforward  
11 proposition here.

12 MS. MCCALLISTER: Your Honor, it does seem like a  
13 straightforward proposition. The State disagrees that this  
14 was -- at the time -- at the time, this was right around the  
15 Omnibus Act in 2010, and the State contends that because the  
16 -- the crime for which he was sentenced took place in  
17 December of 2009, then he was properly sentenced under the  
18 old burglary second statute, Your Honor, which would have  
19 carried 15 years.

20 So the State contends that the sentence is proper and we  
21 can -- I have some cites to give you and things to look at,  
22 if you want to hear that, or if you would rather hear the  
23 testimony first.

24 THE COURT: Let's hear the testimony, and I'm very  
25 interested to hear what everybody's position is, but you --

1 as far as the effective dates of the statute, you're  
2 convinced that it was a proper sentence?

3 MS. MCCALLISTER: Yes, Your Honor, and I think there's  
4 case law --

5 THE COURT: And does the --

6 MS. MCCALLISTER: -- some cases that --

7 THE COURT: Is it from when the offense took place or  
8 when the plea took place?

9 MS. MCCALLISTER: Your Honor, the way that I read the  
10 case law is that, because there was a savings clause in the  
11 Omnibus Act that saved pending actions, that he can be  
12 properly charged because of the offense date, which was in  
13 December of 2009, which would have been before the 2010  
14 Omnibus Bill took effect.

15 THE COURT: Okay. Mr. Waller, you're recognized.

16 MR. WALLER: Your Honor, would you like me to respond or  
17 call my witness?

18 THE COURT: Yeah. We can talk about it a little bit and  
19 then we'll have testimony and we'll talk about it again.

20 MR. WALLER: Sure.

21 What Ms. McCallister just said about the savings clause,  
22 I completely agree. However, Mr. Feagin was indicted for  
23 burglary first and he pled guilty to a lesser-included  
24 offense. So the fact that it took place before is -- it  
25 doesn't matter when the State allows him to plead guilty to a

1 lesser -- to a lesser offense.

2 THE COURT: So you're saying that because it's a lesser  
3 offense that it doesn't -- it doesn't go back to the offense  
4 date, it's the sentence date?

5 MR. WALLER: That's correct, Your Honor. That's what  
6 I'm saying.

7 THE COURT: That sounds like an interesting idea. Is  
8 there any case law to back that up?

9 MR. WALLER: Well, Your Honor, I think just looking at  
10 the Code, Your Honor, he pled guilty to burglary second  
11 nonviolent. There was not a burglary second nonviolent or a  
12 burglary second violent prior to June 2<sup>nd</sup> of 2010. The CDR  
13 code, 0080, that he pled -- that he pled guilty to that's on  
14 the sentencing sheet, that's on the probation revocation  
15 sentencing sheet, did not exist before June 2<sup>nd</sup>, 2010, when  
16 the Omnibus Crime Bill went into effect.

17 Your Honor, the State allowed him to plead guilty to  
18 that charge and, Your Honor, I think that's what controls,  
19 not the fact that he was arrested over the time -- you know,  
20 charges were pending while the Omnibus Crime Bill went into  
21 effect.

22 Your Honor, the -- even taking it one step further, the  
23 offense that he pled guilty to, burglary second nonviolent,  
24 would seem to be the lesser included of burglary first, but  
25 based on the factors that he pled guilty under. He broke

1 into a dwelling and he admitted to that. It wasn't a  
2 business. It wasn't anything that would have normally been  
3 under a burglary second violent charge.

4 But, Your Honor, if you would look at the transcript,  
5 the sentencing sheets, and everything else, it says burglary  
6 second nonviolent, which did not exist prior to June 2<sup>nd</sup>,  
7 2010.

8 THE COURT: Hmm. When is your client's projected  
9 release date?

10 MR. WALLER: Your Honor --

11 THE COURT: Under what -- under what the State maintains  
12 is a proper sentence?

13 MR. WALLER: About 18 months, I believe, Your Honor.

14 THE COURT: Might counsel approach the bench for one  
15 moment?

16 (WHEREUPON, a bench conference was held off the record,  
17 after which the proceedings resumed as follows.)

18 MR. WALLER: Your Honor, the applicant would call Will  
19 Grove.

20 THE COURT: Mr. Grove, please come forward. I'm going  
21 to ask you, if you could, to place your left hand on the  
22 Bible and raise your right hand as the clerk administers the  
23 oath.

24 THE CLERK: Do you swear or affirm that the testimony  
25 you give will be the truth, the whole truth, and nothing but

WILL GROVE - DIRECT BY MR. WALLER

1 the truth, so help you God?

2 THE WITNESS: I do.

3 THE COURT: Have a seat in that witness chair. Pull up  
4 real close to that microphone and speak loudly, clearly, and  
5 slowly in order that we can hear everything that you have to  
6 say, and let's start with your full name.

7 THE WITNESS: William Eugene Grove, G-r-o-v-e.

8 THE COURT: Very good, Mr. Grove. Good to see you  
9 again.

10 THE WITNESS: Thank you, Your Honor. You too.

11 MR. WALLER: Thank you, Your Honor.

12 WILL GROVE, being first duly  
13 sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. WALLER:

16 Q: Mr. Grove, how did you come to represent Mr. Feagin?

17 A: When he was on probation and served with a probation  
18 violation, I was working in the Public Defender's Office here  
19 in Florence and was appointed to represent him on the  
20 violation of probation.

21 Q: Okay. Do you remember when you might have received  
22 notice that he was going up for a probation revocation  
23 hearing?

24 A: I do not. I can tell you as a general rule we would  
25 find out sometimes day of the hearing. Most of the time,

WILL GROVE - DIRECT BY MR. WALLER

1 sometime during that week we'd get assignments and talk to  
2 clients ahead of time. I also represented him on a pending  
3 charge; so I was aware that he was on probation, but in terms  
4 of notice of the violation hearing date, I don't remember  
5 when that occurred.

6 Q: Okay. Did you have a chance to meet with him on the  
7 probation revocation before y'all went to court?

8 A: Yes.

9 Q: Okay. Do you remember what y'all talked about?

10 A: We talked about a few things. One of them was that he  
11 was concerned that Judge Russo was going to hear his  
12 probation case. He wanted me to request that Judge Russo be  
13 recused.

14 I didn't think that that was proper. I didn't think  
15 that we had any reasonable grounds to recuse Judge Russo. He  
16 had presided over the plea, and I believe he had retained  
17 jurisdiction over the probation case. I didn't see any fruit  
18 coming from asking Judge Russo to recuse himself and so I  
19 decided not to do that.

20 He -- we spent a lot of time talking about his  
21 girlfriend or ex-girlfriend, the lady listed as the victim,  
22 the lady who he wasn't supposed to be having contact with,  
23 and we spent a lot of time talking about the contact being  
24 mutual and consensual, that they had had conversations, they  
25 had texted back and forth, and I tried to express to him that

WILL GROVE - DIRECT BY MR. WALLER

1 that was still an express violation of his probation.

2 It might be mitigatory that, you know, she was the --  
3 she engaged in the conversations. She began conversations  
4 with him. She sought him out, but he participated in those  
5 conversations. I think he brought her into his home at one  
6 point and that -- none of that changes the fact that he had  
7 contact with her and he was in violation of his probation for  
8 that reason, along with several others.

9 Q: Essentially, he was the one that was under an order not  
10 to see her, not her?

11 A: That's right.

12 Q: Okay. Was there also a -- a conviction that would have  
13 been a violation as well?

14 A: Yes. He pled to harassment and something else.

15 Q: Okay.

16 A: And I can't remember off the top of my head what it was.  
17 And received an active sentence of two or three years, I  
18 believe, with a substantial amount of credit for time served.

19 Q: Okay. You did not represent him on the first plea; is  
20 that correct?

21 A: Correct. The burglary charge that he was ultimately on  
22 probation for -- I was not his lawyer for that, but I was his  
23 lawyer for the subsequent charges.

24 Q: Did you know anything regarding the underlying facts and  
25 circumstances of that case?

WILL GROVE - DIRECT BY MR. WALLER

1 A: I know -- I knew through my representation of him that  
2 it involved this woman that he had had contact with while he  
3 was on probation, but outside of that, I didn't go pull that  
4 file and read through an old file that he had pled guilty to  
5 --

6 Q: Okay.

7 A: -- three or four years before, no.

8 Q: Did you -- what information did you have regarding what  
9 he was facing on his -- what was hanging over his head?

10 A: Candidly, I don't remember. It was -- it would have  
11 either been that he had a 15-year suspended sentence --  
12 that's the most likely scenario -- or that he had pled guilty  
13 to a burglary second.

14 I do not remember putting together that it was a  
15 burglary second nonviolent, and that there was a 15-year  
16 suspended sentence. That I think would have jumped out at me  
17 as different because for my entire career as a public  
18 defender or criminal defense lawyer of any kind, there has  
19 always been a burglary second nonviolent. I didn't practice  
20 in criminal law when there was just one burglary second  
21 degree.

22 So I've always associated burglary second nonviolent as  
23 being a 10-year sentence. So if I had realized or if I had  
24 been aware that it was a burglary second nonviolent with a  
25 15-year sentence, I think that that would have struck me as

WILL GROVE - DIRECT BY MR. WALLER

1 unusual, but I didn't -- I didn't see that.

2 Q: Did you know that it was a burglary second nonviolent?

3 A: I don't think so. If I saw burglary second degree and  
4 15 years, I think I would have assumed that he had pled to a  
5 burglary second violent charge.

6 Q: Okay. Did you --

7 MR. WALLER: Your Honor, may I approach the witness?

8 THE COURT: Yes.

9 BY MR. WALLER:

10 Q: Did you have a chance to review the sentencing sheet?

11 A: I've seen it in the packet of information, but I did not  
12 review the Form 9 or the sentencing sheet prior to his  
13 probation violation hearing. I would have been given a Form  
14 1106 from Probation that would have had that information in  
15 it and, if it's contained in there, I simply missed it.

16 Q: Okay. What, if any, conversations would you have had  
17 with Mr. Feagin regarding the potential penalties that he  
18 was, you know, facing in the probation revocation?

19 A: We would have talked about the total sentence and that  
20 -- and that 15 years was -- was a possibility. That would  
21 have been written very clearly on something, on the 1106 I  
22 suppose.

23 We would have talked about how that was a worst-case  
24 scenario, obviously. He had a substantial amount of credit  
25 granted at the time of his plea and he had sat for a

WILL GROVE - DIRECT BY MR. WALLER

1 substantial amount of time in the detention center after  
2 having been served with that warrant and that he would be  
3 entitled to all of that credit, but it was a 12- or 13-year  
4 sentence in terms of total exposure that he would have been  
5 looking at.

6 Q: Okay. Would you have had an opportunity -- you  
7 testified you did not pull the original file?

8 A: That's correct.

9 Q: Okay. Do you -- did you have copies of the original  
10 indictments or sentencing sheets or anything of that nature?

11 A: I don't think so. In handling probation violations,  
12 typically what we would receive is a copy of the Form 1106  
13 from Probation, a copy of the warrant that Probation served  
14 or the citation that they had served in the particular case,  
15 and not much else as it pertained to the violation itself.

16 Q: Okay. Would you have spoken with his previous attorney  
17 -- I believe it was Vick Meetze -- regarding what he was  
18 facing?

19 A: I could have. I don't think that I did. Again, it just  
20 -- it never presented itself as an issue to me and I think  
21 that that's -- certainly, I'm responsible for that, but it  
22 never dawned on me that that was something that could have  
23 been corrected or needed correcting.

24 Q: Okay. So you just thought he was -- had 15 years  
25 hanging over his head for a burglary second?

WILL GROVE - DIRECT BY MR. WALLER

1 A: That's right.

2 Q: Okay. Are you familiar off the top of your head with  
3 CDR codes?

4 A: Some of them stick with me, but certainly not all of  
5 them.

6 Q: All right. Are you familiar with the CDR code system?

7 A: Yes.

8 Q: Have you researched that before or had to research  
9 individual CDR codes?

10 A: I've had to look up CDR codes individually before. I've  
11 had to go back and correct them when they weren't right.  
12 Yes, I am familiar with it.

13 Q: Okay.

14 MR. WALLER: I beg the Court's indulgence, please.

15 THE COURT: Mr. Grove, do you think that was an improper  
16 sentence?

17 THE WITNESS: I don't know, Your Honor. It certainly  
18 creates a very interesting issue about due process.

19 As written, yes. I don't think a burglary second  
20 nonviolent can carry up -- if it was -- and in my opinion, I  
21 mean, for whatever that's worth. If it said burglary second  
22 degree, I think that's a different story, but the fact that  
23 it spells out nonviolent but then 15, there's -- there's  
24 never been a situation that that was -- that those two things  
25 coexisted.

WILL GROVE - CROSS BY MS. MCCALLISTER

1 THE COURT: All right.

2 MR. WALLER: Your Honor, I have no further questions for  
3 Mr. Grove.

4 THE COURT: All right. Ms. McCallister?

5 MS. MCCALLISTER: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MS. MCCALLISTER:

8 Q: Mr. Grove, if we assume for the sake of argument that  
9 this was an improper sentence that was given at the plea, do  
10 you feel that the probation revocation is the proper forum to  
11 challenge that sentence?

12 THE COURT: That's a very good question.

13 A: No. There was -- the opportunity to appeal the sentence  
14 had long lapsed by that time. It may have been incumbent on  
15 me to bring it to the judge's attention so that the judge  
16 could factor that into what an appropriate sentence might be,  
17 but in terms of challenging the underlying charge or the  
18 underlying sentence, no, that's not the appropriate forum.

19 Q: Okay.

20 MS. MCCALLISTER: Thank you. That's all I have.

21 THE COURT: All right.

22 MR. WALLER: Nothing further, Your Honor.

23 THE COURT: You may step down. Any objection to Mr.  
24 Grove being excused?

25 MR. WALLER: No objection, Your Honor.

1 THE COURT: You're free to leave. You can stay if you'd  
2 like.

3 THE WITNESS: I might stick around for just a moment,  
4 Your Honor.

5 THE COURT: All right. Good.

6 MR. WALLER: Nothing further from the applicant except  
7 just some argument, Your Honor.

8 MS. MCCALLISTER: Same, Your Honor.

9 THE COURT: All right. Well, Ms. McCallister -- well,  
10 since it's your application, I'll let you go first, Mr.  
11 Waller.

12 MR. WALLER: Your Honor, you've heard most of the  
13 argument. The remaining argument that I would -- I would ask  
14 Your Honor to review the original plea transcript, which  
15 should be part of your packet.

16 This is the sentencing portion. It took place the day  
17 after the plea itself. In particular, review the portions  
18 where Ms. Parr, who I believe has since then retired, on page  
19 3 at the very -- the very beginning of the case says that Mr.  
20 Feagin is pleading to burglary second degree nonviolent. And  
21 the sentencing sheet from that lists burglary second and it  
22 specifically says nonviolent on the offense.

23 THE COURT: And the CDR code says nonviolent.

24 MR. WALLER: Yes, sir. The CDR code is 0080, which is  
25 nonviolent.

1 And as I mentioned before, that CDR code was not in  
2 effect prior to June of 2010. There was an old CDR code for  
3 burglary second degree when it was all-encompassing. In June  
4 of 2010, two new CDR codes were produced, one for burglary  
5 second nonviolent and one for burglary second violent. Two  
6 separate offenses, two -- two completely different things.

7 Your Honor, it would -- if you look forward to the --  
8 the sentencing sheet for the probation revocation hearing, it  
9 again lists the CDR -- conviction CDR code as 0080. Your  
10 Honor, the sentencing sheet from the plea had burglary second  
11 nonviolent and it had the correct CDR code.

12 It had the handwritten zero to 15 that the Solicitor's  
13 Office traditionally does give the judge, you know, a quick  
14 reference to the potential penalties. Your Honor, I think  
15 that was just an error. This was a time where everyone was  
16 adjusting to the changes in the law and the changes in  
17 sentencing.

18 But, Your Honor, I think the record is clear that the  
19 sentence for which he pled guilty to was burglary second  
20 nonviolent, which didn't exist before June of 2010. It did  
21 not exist when he was arrested for burglary first. He was  
22 allowed to plead to a lesser charge and, as Your Honor knows,  
23 you can plead to a legal fiction, even if that is not  
24 something that --

25 THE COURT: I think -- I think it must be a coffeepot

1 back there. They're checking it out. If there's a flame  
2 coming from back there, I'll tell y'all y'all can leave.

3 MR. WALLER: He can plead to a legal fiction as long as  
4 the State allows him to. So he was proceeding with the  
5 benefit of a bargain here and so the State controlled what he  
6 -- along with his attorney, what he was pleading guilty to,  
7 and I think it's clear that he was pleading to burglary  
8 second degree nonviolent under the new law, which carried up  
9 to 10 years.

10 THE COURT: Ms. McCallister, I know that probably in a  
11 perfect world he should have appealed that.

12 MS. MCCALLISTER: Yes.

13 THE COURT: But I can understand why a reasonable person  
14 would not, just not knowing any better, but here we are where  
15 he's doing a 15-year sentence on something that only has ten,  
16 and that almost seems it has a ring of wrong to it.

17 MS. MCCALLISTER: Your Honor, I understand. I  
18 understand Mr. Waller's argument. The State disagrees about  
19 what happened and how we got here though, Your Honor.

20 I think I heard Mr. Waller say that the violent and  
21 nonviolent for burglary second did not exist prior to 2010.  
22 Your Honor, the statute code from 2009 does list Section 16-  
23 11-312(b) as a violent offense, which would make (a) a  
24 nonviolent offense in the State's mind.

25 THE COURT: But the CDR code that he pled to was only a

1 10-year sentence.

2 MS. MCCALLISTER: Your Honor, he pled after the Omnibus  
3 went into effect and so -- and he -- and Mr. Waller is  
4 correct that then those CDR codes were created, Your Honor.

5 So I don't know that the CDR code on the State or on the  
6 sentencing sheet that they put in at the time -- if that --  
7 that could be just a scrivener's error that somebody didn't  
8 realize that this was for a case that had arisen under the  
9 old statute and they put the wrong CDR code.

10 THE COURT: Do you think now is the time to correct it?

11 MS. MCCALLISTER: Your Honor, I don't think now is the  
12 time. I mean to correct the CDR code or to correct a  
13 sentence?

14 THE COURT: The situation.

15 MS. MCCALLISTER: Your Honor, the State's position is  
16 still that 15 years in 2009 for a nonviolent burglary was an  
17 appropriate sentence, and so the State's position is that  
18 there is nothing to correct.

19 THE COURT: Hmm. All right.

20 Mr. Waller, do you --

21 Or do you have anything else?

22 MS. MCCALLISTER: Your Honor, I just would point you to  
23 the case State v. Brown, Your Honor, and the cite for that is  
24 402 S.C. 119. It's a 2013 case.

25 There was an issue that's not exactly the same but

1 similar. Mr. Brown, in that case, was indicted on charges  
2 under the grand larceny statute, which by the 2010 Omnibus  
3 the minimum level was raised from 1,000 to 2,000. He was  
4 indicted in May of 2012 for a crime that was committed in  
5 April of 2010.

6 The jury was instructed on the old statute; so the  
7 thousand dollar level. He appealed that. He was convicted  
8 under the old statute and appealed the jury instruction  
9 issue, and the Court of Appeals analyzed this issue with the  
10 Omnibus Act and the savings clause and whether that jury  
11 instruction was proper and whether he was properly charged  
12 under the old statute, and they found that he was because of  
13 the language of the savings clause that you are -- that your  
14 liability for the crime is incurred at the time the crime is  
15 committed.

16 In this case, Mr. Feagin's crime was committed in  
17 December of 2009, which the State contends at that point he  
18 incurred the liability, which would've been under the old  
19 statute.

20 THE COURT: Mr. Waller?

21 MR. WALLER: Your Honor, I'm familiar with what she's  
22 talking about. Your Honor, that goes to the guilt or  
23 innocence, not to the penalty. If the penalty for what he is  
24 being sentenced to has been reduced by the legislature, he  
25 should get the benefit of that bargain.

1 He's -- certainly, the elements of the crime didn't  
2 change, and he's not contesting that. He's not contesting  
3 his conviction whatsoever. He's just saying that -- that --

4 THE COURT: He got 15 when he should have gotten ten?

5 MR. WALLER: Yes, sir. Yes, sir.

6 THE COURT: All right. What -- y'all would know better  
7 than I. If I were to grant the relief and he is released and  
8 they appeal the order, then he'll remain in detention and  
9 when the appeal comes up, if he's out of jail, will they  
10 dismiss it as being moot or what do they do?

11 MR. WALLER: Your Honor, certainly, I think we could go  
12 through the appeal bond process. That's certainly not -- not  
13 a given, but that certainly is a potential remedy, even if  
14 the State decides to appeal, that he could potentially get a  
15 bond while that appeal is pending. Your Honor, I don't  
16 believe it would be moot even if he is released.

17 THE COURT: Why wouldn't it?

18 MR. WALLER: Well, I think that the --

19 THE COURT: What do they normally do?

20 MR. WALLER: In the radical sense, it may be.

21 THE COURT: Yeah.

22 MR. WALLER: But I don't think from a --

23 THE COURT: Legal standpoint.

24 MR. WALLER: -- legal standpoint. Yes, sir.

25 THE COURT: What do you have to say about that, Ms.

1 McCallister?

2 MS. MCCALLISTER: Whether it would be moot or not, Your  
3 Honor?

4 THE COURT: Right. He's going to be released in 18  
5 months and it will take longer than that to get up there.

6 MS. MCCALLISTER: It may very well, Your Honor.

7 Like Mr. Waller said, there's always -- there's always  
8 the appeal bond process and that may be something that offers  
9 some relief, but I mean the relief that he's seeking is to be  
10 released and he's saying that he is on -- he's being held on  
11 an illegal sentence. I don't know what remedy there is if  
12 the sentence expires by the time the appeal is heard.

13 THE COURT: That was the question I was asking.  
14 Apparently, nobody in this room knows.

15 MS. MCCALLISTER: I do not know, Your Honor.

16 THE COURT: All right.

17 MR. WALLER: I don't have anything further on that, Your  
18 Honor.

19 THE COURT: All right. Mr. Waller, I'm going to ask  
20 that you prepare an order to -- consistent with your argument  
21 and forward a copy of that to Ms. McCallister prior to  
22 submitting it to me to ensure that it accurately reflects my  
23 ruling here today.

24 And anything further from anybody?

25 MR. WALLER: Your Honor, may I request that you consider

1 issuing a Form 4 with a formal order to follow so we can get  
2 the process started?

3 THE COURT: If you prepare it, I'll be happy to do it.

4 MR. WALLER: Yes, sir.

5 THE COURT: All right. You may call your next case.

6 Good luck to you.

7 THE APPLICANT: Thank you, Judge.

8 MS. MCCALLISTER: Your Honor, I think we're finished for  
9 today.

10 (WHEREUPON, the proceedings ended at 10:55 a.m.)

11

12 --- END REQUESTED TRANSCRIPT ---

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State of South Carolina        )  
  )     Certificate  
County of Florence            )

I, the undersigned, Krystal J. Smith, Notary Public and  
Official Court Reporter for the Twelfth Judicial Circuit of  
the State of South Carolina, do hereby certify that the  
foregoing pages, numbered 1 through 25, constitute a true,  
accurate, and complete Transcript of Record of all the  
proceedings had and evidence introduced in the hearing of the  
above captioned case, relative to appeal, in the Court of  
Common Pleas for Florence County, South Carolina, on the 17<sup>th</sup>  
day of November, 2017.

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

Krystal J. Smith  
Court Reporter

Florence, South Carolina  
September 13, 2018

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF FLORENCE )  
 )  
 McIver R. Feagin, Jr., #266756, )  
 )  
 Applicant, )  
 )  
 vs. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 TWELFTH JUDICIAL CIRCUIT

C/A No.: 2015-CP-21-55

**ORDER GRANTING  
 POST CONVICTION RELIEF**

2017 DEC -4 PM 3:15  
 DORIS SOULOS O'HARA  
 CLERK OF COURT C.P. & G.S.  
 FLORENCE COUNTY, SC

**FILED**

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed January 8, 2015. Respondent made its Return on January 17, 2017, requesting an evidentiary hearing be convened. Jonathan D. Waller, Esquire, was appointed pursuant to Rule 608, SCACR, to represent Applicant in this matter. Applicant, by and through counsel, filed an Amendment to Application for Post Conviction Relief on November 13, 2017. An evidentiary hearing was held on November 17, 2017, at the Florence County Courthouse. Applicant was present and represented by Counsel Waller. Respondent was represented by Lindsey A. McCallister, Esquire, of the South Carolina Office of Attorney General.

At the PCR hearing, Applicant's probation revocation counsel, William E. Grove, Esquire testified. The Court had before it the Florence County Clerk of Court's records, Applicant's South Carolina Department of Corrections records, the PCR Application, the Return, Applicant's Amendments, the sentencing transcript from Applicant's plea, and the probation revocation hearing transcript.

**I. PROCEDURAL BACKGROUND**

Applicant was indicted during the June 3, 2010 term of the Florence County Grand Jury for Burglary - First Degree (2010-GS-21-681). The parties reached a plea agreement for a

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*Doris Soulos O'Hara*  
 CLERK OF COURT C.P. & G.S.  
 FLORENCE COUNTY, S.C.

recommendation by the State to a cap of five (5) years to the lesser-included offense of Burglary – Second Degree (Non-Violent). Applicant pled pursuant to North Carolina v. Alford.<sup>1</sup>

The Honorable Thomas A. Russo sentenced Applicant to fifteen (15) years imprisonment suspended upon time served (279 days) and five years probation. Judge Russo retained jurisdiction of the matter and on December 10, 2012, Applicant again appeared before Judge Russo for a probation violation hearing. Applicant was represented by William E. Grove, Esquire, for his probation hearing.<sup>2</sup> Judge Russo found a willful violation of the conditions of probation and revoked Applicant's probation in full, sentencing Applicant to serve the remainder of the fifteen (15) year sentence in the Department of Corrections.

A timely notice of appeal of the probation revocation was filed on Applicant's behalf, and an appeal was perfected pursuant to Anders v. California, 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Feagin, Op. No. 2014-UP-460 (filed on December 17, 2014). The Remittitur was issued on January 13, 2015.

Prior to the PCR hearing, Applicant, through counsel, indicated that he would only be proceeding under the allegations made in the Amendment to Application for Post Conviction Relief filed November 13, 2017. In that Amendment, Applicant made claims of "Ineffective assistance of probation revocation counsel," and "Excessive Sentence" in his Application, stating specifically that counsel failed to object to a sentence in excess of the maximum penalty authorized by statute and that Applicant was sentenced in excess of the maximum penalty authorized by statute.

## II. SUMMARY OF TESTIMONY

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<sup>1</sup> 400 U.S. 25, 91 S.Ct. 160 (1970).

<sup>2</sup> William E. Grove, Esquire, was not counsel for Applicant's underlying plea.

At an evidentiary hearing held November 17, 2017 at the Florence County Courthouse, probation revocation counsel, William E. Grove, testified as to the facts and circumstances surrounding Mr. Grove's representation of Applicant. Mr. Grove testified that he was appointed to represent Applicant through his duties with the Florence County Public Defender's office. Mr. Grove testified that he did not represent Applicant on the original charges and that, with respect to this case, his representation was limited to Applicant's probation revocation. Mr. Grove testified that he may have represented Applicant on an unrelated charge prior to the representation at issue. Mr. Grove testified that he became aware of the allegations of probation violations at some point prior to the day of the probation hearing. He testified that there is often a very short period of advance notice with probation violations, sometimes the day of the hearing, but that he had adequate advanced notice of Applicant's alleged violations and was able to meet with Applicant in advance of the hearing to prepare mitigation regarding the alleged violations.

Mr. Grove testified that he did not conduct any investigation into the underlying case, did not obtain a copy of the Burglary file, nor speak with plea counsel regarding Applicant's sentence. He testified that the only information he had was that Applicant pled to Burglary 2<sup>nd</sup> degree for a fifteen (15) year suspended sentence. Mr. Grove testified that as long as he has been engaged in the practice of criminal law, there has been a charge of Burglary - 2<sup>nd</sup> Degree (Non-Violent) as well as a Burglary - 2<sup>nd</sup> Degree (Violent). He testified that he assumed that a defendant with a sentence of 15 years to a Burglary - 2<sup>nd</sup> Degree, would have been the result of a Burglary - 2<sup>nd</sup> Degree (violent).

Mr. Grove testified that he is familiar with the CDR Code system and that he has researched various CDR Codes in the course of his representation of criminal clients throughout his career. He testified that he knows some CDR Codes by memory but that the CDR Code for Burglary – 2<sup>nd</sup> Degree (Non-Violent) is not one he knows from memory. Mr. Grove testified that he would not have been provided with a copy of the probation revocation sentencing sheet (DPPPS Form 9) in advance of the hearing and would only have been provided with other documents which would not have contained information regarding CDR Code numbers. Mr. Grove testified that he gave no consideration to objecting to the revocation, in full, of Applicant's sentence as he was focused on presenting mitigation as to the willfulness of the alleged violations. Mr. Grove also testified that he did not believe that the probation hearing was the appropriate venue to challenge the sentence issued in the original plea. Mr. Grove also testified that, by the date of his appointment on Applicant's probation revocation, the time to file an appeal or a motion for reconsideration of the sentence from the guilty plea had long since expired.

### III. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance on counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 334 S.E.2d 813.

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

judgment.” Strickland, 466 U.S. at 690, 104 S.Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-118, 386 S.E.2d at 625.

South Carolina Rule 602(a), SCACR requires the appointment of counsel for indigent defendants in probation revocation proceedings. The courts have used the Strickland test to evaluate claims of ineffective assistance of probation revocation counsel. See, e.g., United States v. Wren, 682 F.Supp. 1237 (S.D.Ga. 1988). However, since a probation revocation is not a formal adversarial proceeding, “the Court must review counsel’s performance in light of the particular type of proceeding involved.” Id.

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

The Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the sentencing portion of the plea transcript, the probation revocation hearing transcript, Applicant’s records from the South Carolina Department of Corrections, the Application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant

to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

Applicant argues that his sentence exceeds the maximum authorized by law. Applicant was indicted in June of 2010 for the offense of Burglary – 1<sup>st</sup> Degree for an incident that occurred in December of 2009. Applicant entered his plea to Burglary – 2<sup>nd</sup> Degree (Non-Violent) and was sentenced on September 20, 2010. On June 2, 2010 the Omnibus Crime Reduction and Sentencing Reform Act went into effect and, in part, divided the previously singular Burglary – 2<sup>nd</sup> Degree into the newly created Non-Violent penalty statute §16-11-312(C)(1), bearing CDR Code #0080 and punishable by imprisonment for not more than 10 years, and the previously enacted Violent penalty statute §16-11-312(C)(2), bearing CDR Code #0086 and punishable by imprisonment for not more than fifteen years, provided, that no person convicted of burglary in the second degree pursuant to subsection (B) shall be eligible for parole except upon service of not less than one-third of the term of the sentence. The CDR Code #0080 was created in conjunction with the new offense of Burglary – 2<sup>nd</sup> Degree (Non-Violent) and was not effective until June 2, 2010.

The State argues that the Omnibus Crime Reduction and Sentencing Reform Act contains a savings clause, which it does, and that because Applicant's offense occurred prior to the enactment of the Omnibus Crime Reduction and Sentencing Reform Act, that Applicant was prosecuted under the "old" law. A review of the record shows that the State's argument is without merit. First and foremost, if Applicant had pled as indicted, the savings clause of the Omnibus Crime Reduction and Sentencing Reform Act may apply; however, in the case at hand, Applicant was allowed to plead to a lesser offense and the record is clear that Applicant was

allowed to plead to the "new" Burglary – 2<sup>nd</sup> Degree (Non-Violent). In the plea sentencing transcript the Assistant Solicitor informs the plea judge that Applicant is pleading to Burglary – 2<sup>nd</sup> Degree (Non-Violent); the violent or non-violent provision is a distinction not made under the "old" law.<sup>3</sup> Further, the sentencing sheet for Applicant's plea lists the offense for which he is pleading as Burglary – 2<sup>nd</sup> Degree (Non-Violent) bearing a CDR Code of 0080.<sup>4</sup> The Probation Revocation sentencing sheet contains the same CDR Code #0080. Finally, no testimony or other evidence was presented by the State that could, in any way, be reasonably interpreted that Applicant pled under the "old" law.

The State offers further argument that pursuant to State v. Brown, 402 S.C. 119, 740 S.E.2d 493 (2013), a change or "update" to the statute regarding the offense does not absolve a criminal defendant of a more serious offense when the act was committed prior to the change or "update." First, because Applicant pled guilty to a lesser offense, the savings clause or the Court's rulings in Brown do not apply to the case at hand. Further, Brown is factually distinguishable from the case at hand as it concerned a change or "update" of the elements of an offense; specifically an update of monetary thresholds for various levels of larceny to reflect the inflation in the value of goods that occurs with the passage of time. The elements of Burglary – 2<sup>nd</sup> Degree did not change for either §16-11-312(A) – entry into a dwelling, or §16-11-312(B) – entry into a building with an aggravating circumstance; the legislature simply created a separate penalty for

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<sup>3</sup> The State argues the "old" law did make such a distinction, though not explicitly, and the revised statute merely changed the penalties.

<sup>4</sup> The State argues the CDR Code issue is most likely a scrivener's error since Applicant pleaded guilty and was sentenced shortly after the Omnibus Crime Reduction and Sentencing Reform Act took effect.

§16-11-312(A). As previously stated, because Applicant was allowed to plead to the lesser offense of Burglary – 2<sup>nd</sup> Degree (Non-Violent), under CDR Code #0080 it is clear that the State intended for the plea to occur pursuant to the newly created penalty. As such, this Court finds that Applicant was sentenced in excess of the maximum penalty authorized by statute.

Applicant argues Probation Revocation Counsel was ineffective in failing to object to the sentence of the court following its determination that he had willfully violated the conditions of his probation. In South Carolina all persons charged with probation violations have a right to counsel. Barlet v. State, 288 S.C. 481, 343 S.E.2d 620 (1986). To prove ineffective assistance of counsel, a petitioner must show 1) that counsel's performance was deficient; and 2) that petitioner was prejudiced by such deficiency. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The courts have used the Strickland test to evaluate claims of ineffective assistance of probation revocation counsel. See, e.g., United States v. Wren, 682 F.Supp. 1237 (S.D.Ga. 1988). However, since a probation revocation is not a formal adversarial proceeding, “the Court must review counsel’s performance in light of the particular type of proceeding involved.” Id. Probation Revocation Counsel did not object to the sentence imposed by the probation revocation judge. Counsel testified that he conducted no investigation into Applicant’s underlying sentence. Counsel did not even review the file from Applicant’s plea prior to the probation hearing. Counsel testified that he “knew” that Applicant had a remaining balance of fifteen (15) years of potential sentence and assumed the exposure was the result of a Burglary – 2<sup>nd</sup> Degree (Violent) conviction or a Burglary – 2<sup>nd</sup> Degree conviction prior to the Omnibus Crime Reduction and Sentencing Reform

Act. Counsel testified that at the time of the sentence, he did not recognize any error in sentencing.

Counsel had ample opportunity to meet with Applicant prior to the probation hearing. Counsel testified that he had prepared mitigation regarding the alleged violations that included text messages from the victim in the underlying offense. Applicant failed, however, to conduct even a minimal investigation into the offense for which Applicant was being supervised by probation. Counsel represented Applicant through his employment with the public defender's office, the same organization, which represented Applicant during his plea. Counsel could have reviewed the file or spoken with Applicant's prior counsel, but he chose not to do so.

The issue was, accordingly, not preserved for appeal, despite counsel filing a notice of intent to appeal on behalf of Applicant. The South Carolina Supreme Court has held that a challenge to an excessive sentence is not a question of subject matter jurisdiction, cannot be raised for the first time on appeal, and therefore must be preserved by motion or objection. State v. Johnston, 333 S.C. 459, 510 S.E.2d 423 (S.C., 1999). Applicant's appropriate remedy therefore is through the Post Conviction Relief Act. Id. Though this Court agrees with the State that the probation revocation hearing was not the appropriate forum to challenge the original sentence itself, (See Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. at 2065)), this Court also finds that Counsel's representation of Applicant fell below the standard of "reasonableness under prevailing professional norms" when he failed to object to the 15 year probation revocation sentence as greater than the 10 years that Applicant could have potentially been sentenced on the violations of probation. This Court notes that Applicant raises no claims of ineffective assistance of plea counsel, and any claims of ineffectiveness are solely related to probation revocation counsel. Applicant furthermore has met his burden of a showing

of prejudice given the fact that Applicant is incarcerated in the Department of Corrections serving a sentence five (5) years greater than is allowed by statute. The prejudice to Applicant is clear both in his sentence with the Department of Corrections as well as counsel's failure to conduct any investigation into the nature of the probationary sentence Applicant was serving.

As to any and all other allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

#### VI. CONCLUSION

Based upon the foregoing, the Court finds and concludes that Applicant has met his burden and shown that he was sentenced in excess of the maximum penalty authorized by statute and that counsel was deficient in his representation of Applicant during his probation revocation hearing. Applicant was prejudiced when his probation was revoked and he was sentenced to a term of imprisonment for violations of his probation in excess of the maximum penalty authorized by statute. Accordingly, Applicant's probation revocation sentence is vacated and the case is hereby remanded to the General Sessions court for further proceedings.

THEREFORE, the Applicant's Application for post-conviction relief is hereby granted and remanded to the Court of General Sessions for further proceedings consistent with this Order.

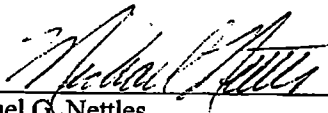
#### **IT IS THEREFORE ORDERED THAT:**

1. The Application for Post Conviction Relief is hereby granted and Applicant's criminal case is hereby remanded to the Court of General Sessions; and

2. Applicant will be released from the South Carolina Department of Corrections and transported to the Florence County Detention Center for further proceedings consistent with this Order.

AND IT IS SO ORDERED this 1 day of April, 2017.

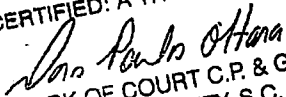
Florence, South Carolina

  
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Michael G. Nettles  
Presiding Judge

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DORIS POULOS O'HARA  
CCCP & GS  
FLORENCE COUNTY, SC

FILED

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FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA )  
COUNTY OF FLORENCE )  
McIver Feagin, #266756, )  
) )  
Applicant, )  
) )  
v. )  
State of South Carolina, )  
) )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE TWELFTH JUDICIAL CIRCUIT

Case No.: 2015-CP-21-0055

**STATE'S NOTICE OF MOTION  
AND MOTION TO ALTER  
OR AMEND JUDGMENT PURSUANT  
TO RULE 59(E), SCRPC**

Respondent now moves pursuant to Rule 59(e), SCRPC, and all other applicable rules to alter or amend the judgement issued by this Court.

This matter is before this Court by way of an application for post-conviction relief ("PCR"). Following a hearing on the matter, this Court granted relief by order dated December 1, 2017, and filed December 4, 2017. In its order, this Court found Counsel was ineffective for failing to argue, at Applicant's probation revocation hearing, the sentence imposed at Applicant's guilty plea was unlawful, and therefore, Applicant's entire sentence should not be revoked. This Court remanded the matter to the Court of General Sessions for a new probation revocation hearing. Respondent received the order via United States Postal Service on December 7, 2017.

**DISCUSSION**

In making this motion, Respondent reserves and incorporates all previous arguments and authority presented to this Court. Respondent submits the judgment should be altered or amended based on the following:

Applicant was charged with first-degree burglary for a crime that occurred in December 2009. On September 20, 2010, Applicant pleaded guilty to second-degree burglary (non-violent)

and was sentenced to fifteen years' imprisonment suspended to time served plus five years' probation. Applicant did not appeal his guilty plea or the sentence, and the time period in which to do so had expired by the time of Applicant's probation revocation hearing on December 10, 2012. Following that hearing, Applicant's probation was revoked in full.

At the PCR evidentiary hearing, Applicant argued his fifteen-year sentence is invalid because second-degree burglary (non-violent) did not exist as an offense in South Carolina until the passage of the Omnibus Crime Reduction and Sentencing Reform Act ("Omnibus") on June 2, 2010. In support of this argument, Applicant relies on the CDR code listed on Applicant's sentencing sheet, #0080, which corresponds to second-degree burglary (nonviolent). Applicant also cited to the transcript of Applicant's sentencing hearing, in which the plead judge refers to the Applicant's offense as "burglary – second degree, non-violent." Sentencing Tr. p. 3. Applicant argued, and this Court found, probation revocation counsel was ineffective for failing to argue Applicant's sentence was improper, and therefore, only up to ten years should be revoked, rather than the full fifteen.<sup>1</sup>

I. **Second-degree burglary (non-violent) existed in the pre-Omnibus code as section 16-11-312(A). Therefore, Applicant's fifteen year sentence is correct, and probation revocation counsel was not ineffective for failing to argue otherwise.**

Applicant contends the crime of second-degree burglary (non-violent) did not exist prior to the enactment of the Omnibus, and therefore, Applicant should only have received a ten-year sentence as a result of his guilty plea. However, the burglary statute in effect at the time of Applicant's plea did make a distinction between violent and non-violent offenses, when read in combination with the statute defining violent crimes for purposes of parole eligibility. Section 16-11-312 of the 2009 South Carolina Code of Laws reads as follows:

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<sup>1</sup> Applicant did not argue probation revocation counsel should have contested the violation; the issue was solely one of mitigation as multiple violations were clearly established.

- (A) A person is guilty of burglary in the second degree if the person enters a dwelling without consent and with intent to commit a crime therein.
- (B) A person is guilty of burglary in the second degree if the person enters a building without consent and with intent to commit a crime therein, and either:
- (1) When, in effecting entry or while in the building or in immediate flight therefrom, he or another participant in the crime:
    - (a) Is armed with a deadly weapon or explosive; or
    - (b) Causes physical injury to any person who is not a participant in the crime; or
    - (c) Uses or threatens the use of a dangerous instrument; or
    - (d) Displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; or
  - (2) The burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or
  - (3) The entering or remaining occurs in the nighttime.
- (C) Burglary in the second degree is a felony punishable by imprisonment for not more than fifteen years, provided, that no person convicted of burglary in the second degree shall be eligible for parole except upon service of not less than one-third of the term of the sentence.

Section 16-1-60 of the 2009 South Carolina Code of Laws defined violent crimes to include "burglary in the second degree (Section 16-11-312(B))." By implication then, Section 16-11-312(A) was a non-violent offense. However, prior to the enactment of the Omnibus, both sections, violent and non-violent, were punishable by up to fifteen years' imprisonment. Applicant therefore could plead guilty to a non-violent second-degree burglary and still properly receive a sentence of fifteen years.

Applicant argues, because he pleaded guilty to a lesser-included offense, he was pleading guilty to the post-Omnibus second-degree burglary charge, which only carries up to ten years. However, because the Omnibus included a savings clause, this argument is incorrect. Section 65 of the Omnibus specifically provided:

The repeal or amendment by the provisions of this act or any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless

the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Applicant's criminal prosecution was pending at the time the Omnibus took effect, and therefore, the penalties existing under the 2009 statute remained in full force and effect as to Applicant. A plea to a lesser-included charge cannot change the fact Applicant incurred liability for this criminal act at the time it was committed in December 2009.

The Supreme Court of South Carolina has interpreted the Omnibus savings clause at issue here and found "[t]he General Assembly's inclusion of a savings clause demonstrates clear legislative intent to avoid disrupting pending or ongoing criminal prosecutions. To read the savings clause in any other way would result in a prohibited alteration of the statute's operation. . . . Appellant clearly incurred liability. . . at the time he committed the crime." State v. Brown, 402 S.C. 119, 127-28, 740 S.E.2d 493, 497 (2013).

Therefore, because Applicant incurred liability for this crime at the time it was committed in December 2009, a fifteen-year sentence was properly applied in Applicant's case. Contrary to Applicant's assertion, second-degree burglary (non-violent) did exist as an offense in December 2009. The burglary statute in effect at that time, read in conjunction with the statute defining violent offenses, clearly made a distinction between a non-violent offense, section 16-11-312(A), and a violent offense, section 16-11-312(B), though it punished both offenses with a fifteen year maximum sentence. S.C. Code Ann. § 16-11-312(C) (2009). The amendments made to section 16-11-312 by the Omnibus did not create an entirely new offense, but rather simply reduced the penalty for the non-violent offense to ten years.

**II. The CDR code listed on Applicant's sentencing sheet is not the controlling authority for offenses or penalties.**

Applicant relies on the CDR code listed on Applicant's sentencing sheet, #0080, which corresponds to "burglary, second-degree (non-violent)" as support for his argument that Applicant actually pleaded to the ten-year, post-Omnibus offense because that CDR code did not exist until the enactment of the Omnibus in June 2, 2010. The CDR code listed on a sentencing sheet, however, is not the controlling authority as to the offense or penalty for sentencing purposes. "Because the South Carolina Code of Laws is the controlling authority for classifications, definitions, and penalties for criminal offenses, a statute listed on a sentencing sheet, and not a CDR code, will dictate a criminal's sentence." State v. Bennett, 375 S.C. 165, 174, 650 S.E.2d 490, 495 (2007).

The statute listed on Applicant's sentencing sheet is simply 16-11-312; it does not specify subsection (A) or (B). This is consistent with the State's argument that Applicant pleaded to the pre-2009 statute because both subsections were punishable by up to fifteen years without needing to specify. The sentencing sheet further names Applicant's offense as "Burglary (Non-Violent) (After June 20, 1985) – Second degree." As discussed above, a non-violent second-degree burglary offense existed under the pre-Omnibus statute as section 16-11-312(A). However, because Applicant's plea was accepted and the sentence imposed after the enactment of the Omnibus, which necessitated a new, distinct CDR code because a separate penalty was created for the non-violent offense, the inclusion of CDR code #0080 was most likely a mere scrivener's error. Regardless, pursuant to the rule of Bennett, the CDR code does not trump the statute listed on the sentencing sheet.

**III. Even if Applicant was incorrectly sentenced to fifteen years, he waived his objection when he failed to appeal the guilty plea, and thus the fifteen-year sentence was the law of the case.**

At the evidentiary hearing, probation revocation counsel testified the time period to file a motion to reconsider Applicant's sentence or to appeal the guilty plea had long since run out by the time he represented Applicant on his probation violation in December 2012. Further, Applicant has never argued or presented any evidence he attempted to appeal his guilty plea or the fifteen-year sentence. Probation revocation counsel further testified, and Applicant did not dispute, the probation revocation hearing was not the proper forum to make such a challenge to an allegedly improper sentence. Applicant's sentence, therefore, was the law of the case by the time he was arrested for probation violations, and his probation revocation counsel cannot be ineffective for failing to argue the sentence was in correct.

In State v. Lee, Lee pleaded guilty and was sentenced to ten years' imprisonment suspended to a five-year probationary period for ABWIK to begin upon his release from the sentence he was then serving for a separate resisting arrest-assault on an office charge. 350 S.C. 125, 128, 564 S.E.2d 372, 374(Ct. App. 2002). Lee was subsequently paroled and began serving his probationary sentence for the ABWIK on the same day. Id. After Lee's probation was revoked, he appealed and argued the plea court had no authority to issue his original sentence since it required him to be on probation and parole at the same time, and therefore, the circuit court lacked subject-matter jurisdiction to revoke his probation because his underlying, original sentence was erroneous. Id. at 132, 564 S.E.2d at 376. The Court of Appeals found this argument was without merit because "the statutory authority of the sentencing court to issue the underlying sentence could have been challenged in a motion to reconsider the sentence, on direct appeal, or as a defense to the probation revocation proceedings. Lee made no such challenge. Thus, the sentence is the law of the case." Id. at 132-33, 564 S.E.2d at 576. Similarly,

Applicant did not challenge his sentence in a motion to reconsider or on a direct appeal,<sup>2</sup> and the fifteen-year sentence became the law of the case. Probation revocation counsel cannot be ineffective for failing to object to the revocation of fifteen years when, by that time, Applicant had waived any objections he may have had to such sentence.

Applicant was correctly sentenced to fifteen years for the offense of second-degree burglary (non-violent) because that offense existed in the pre-Omnibus Code of Laws as section 16-11-312(A). The CDR code listed on Applicant's sentencing sheet is not controlling and is likely the result of a scrivener's error. In any event, it is undisputed the time to appeal the fifteen-year sentence had expired by the time of Applicant's probation revocation hearing in December 2012. Therefore, that sentence had become the law of the case, and probation revocation counsel was not ineffective for failing to argue Applicant's sentence was illegal and should not be revoked in full. For the foregoing reasons, Respondent requests that the order be altered or amended.

{Signature on following page.}

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<sup>2</sup> The Court in Lee held the allegedly illegal sentence should have been raised as a defense to the probation violation because Lee argued his time on probation should not have started until his parole was finished. 350 S.C. at 132, 564 S.E.2d at 476. Here, Applicant's allegedly illegal sentence would not be a defense to his parole violations, which included having contact with the victim and failing to report to his parole officer, so probation revocation counsel cannot be ineffective for failing to raise the issue.

Respectfully submitted,

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Attorney General

W. JEFFREY YOUNG  
Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

LINDSEY A. MCCALLISTER  
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By:   
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December 18, 2017

STATE OF SOUTH CAROLINA  
COUNTY OF FLORENCE

MCIVER FEAGIN, JR., #266756

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent,

IN THE COURT OF COMMON PLEAS

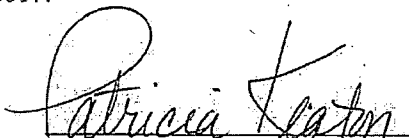
2015-CP-21-55

CERTIFICATE 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 **State's Notice of Motion and Motion to Alter or Amend Judgment Pursuant to Rule 59(E), SCRCF** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan D. Waller, Esquire  
Giese Law Firm  
1116 Blanding St, Ste 2B  
Columbia, SC 29201

DATED this the 18<sup>th</sup> day of December, 2017.

  
Patricia Keaton, Legal Assistant  
For Respondent

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF FLORENCE )  
 )  
 Melver R. Feagin, Jr., #266756, )  
 )  
 Applicant, )  
 )  
 vs. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 TWELFTH JUDICIAL CIRCUIT

C/A No.: 2015-CP-21-55

**APPLICANT'S RESPONSE IN OPPOSITION  
 RESPONDENT'S MOTION TO ALTER OR  
 AMEND THE JUDGMENT PURSUANT TO  
 RULE 59(e), SCRCP**

Applicant herein responds to Respondent's Motion to Alter or Amend the Judgment Pursuant to Rule 59(e), SCRCP, filed on December 21, 2017 ("59(e) Motion"). This Court granted Applicant Post Conviction Relief on his claims after considering Applicant's Application, Amendments to Application, the State's Return, the Florence County Clerk of Court records, transcripts of both the plea and probation revocation hearings, testimony during the evidentiary hearing, and argument from all parties. Respondent's 59(e) motion should be denied in full without the necessity of a hearing.

**Standard of Review**

"S.C. R. Civ. P. 59(e) and the federal rules of civil procedure are practically identical." *Elam v. SC Dep't of Transp.*, 361 S.C. 9, 22, 602 S.E.2d 772, 779 (2004). The Fourth Circuit has said of Rule 59(e) motions that, "[i]n general 'reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly.'" *Pac. Ins. Co. v. Am. Nat'l Fire Assoc.*, 148 F.3d 396, 402 (4<sup>th</sup> Cir. 1998)(citations omitted). Indeed, a 59(e) motion is not necessary to preserve issues that have been ruled upon. Instead, it is used to preserve those that have been raised to the trial court but not ruled upon. *Bailey v. Segars*, 346 S.C. 359, 365 550 S.E.2d 910,

913 (Ct. App. 2001). An issue or argument cannot be raised for the first time via a Rule 59(e) motion if it could have been raised prior to judgment but was not. *Brailsford v. Brailsford*, 380 S.C. 443, 448, 669 S.E.2d 342, 344045 (Ct. App. 2008).

#### Argument

**A. Respondent's arguments are impermissibly raised for the first time in the 59(e) Motion and are not properly before the Court.**

Respondent raises several arguments for the very first time by way of the 59(e) Motion.

This is not allowed, and these arguments should be disregarded. These arguments are:

- Respondent's argument that the savings clause of the Omnibus Crime Reduction and Sentencing Reform Act ("Omnibus") applies to Applicant's plea to the lesser offense of Burglary 2<sup>nd</sup> Degree (Non-violent). Respondent argued at the evidentiary hearing that the savings clause applied to Applicant's original charge of Burglary 1<sup>st</sup> Degree.
- Respondent's argument that the CDR Code is not the controlling authority for offenses or penalties.
- Respondent's argument that Applicant waived his objection to the 15-year sentence, when he failed to appeal the guilty plea, and that the 15-year sentence is now the "law of the case."

Respondent is using the Rule 59(e) vehicle to raise new arguments that could have been raised prior to judgment. This is impermissible under South Carolina law, and Respondent's new arguments are thus barred. *Brailsford*, 380 S.C. at 448, 669 S.E.2d at 344-45.

**B. To the extent the Court considers Respondent's new arguments, they are misplaced and erroneous as a matter of fact and law.**

1. Applicant's plea to a lesser charge is to the newly formed Burglary 2<sup>nd</sup> Degree (non-violent). Respondent argues for the first time in its motion that because the Omnibus act contains a savings clause that because he had a charge

pending prior to the enactment of the Omnibus act that any resolution of those charges must be pursuant to the pre-Omnibus offenses. Respondent even goes so far as to argue that the pre-Omnibus version of §16-11-312 contains an "implied" non-violent provision; arguing that if §16-11-312(B) was "violent" then §16-11-312(A) conversely must be "non-violent." Respondent fails to recognize that as Applicant plead to a lesser charge, that he did so at the consent, permission, and direction of the Solicitor. Therefore, any question of whether Applicant was allowed to plea to the pre or post Omnibus Burglary 2<sup>nd</sup> degree would have been in the hands of the Solicitor and Applicant's plea counsel. Respondent failed to call either as witnesses or present any evidence regarding the parties' intent outside of the fifteen-year sentence imposed.<sup>1</sup> The existence, or lack thereof, of a pre-Omnibus non-violent Burglary 2<sup>nd</sup> Degree or any savings clause has no bearing on the facts of this case because of the plea to the lesser offense and the complete lack of evidence to the contrary.

2. **Applicant's CDR code follows the controlling statute for his offense, not the other way around.** Respondent argues for the first time in its motion that the CDR code listed on Applicant's sentencing sheet is not the controlling authority for offenses or penalties. This argument also does not stand on its own, but is contingent on Respondent's previous arguments regarding an "implied" non-

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<sup>1</sup> Coincidentally, Respondent argues that the CDR code contained in the Sentencing Sheet was a scrivener's error due to the "newness" of the change in the law. Applicant contends that the same could be said for the Court's sentence due to the familiarity of the previous Burglary 2<sup>nd</sup> Degree sentencing range.

violent Burglary 2<sup>nd</sup> Degree contained in the pre-Omnibus S.C. Code of Laws. Applicant has never contended that the CDR Code is the "controlling" authority regarding sentences. It is however, clear evidence of the intent of the Solicitor when negotiating and offering to allow Applicant to plead guilty to a lesser offense. Applicant's sentencing sheet contains the more generic §16-11-312 without referencing which subsection Applicant is pleading to. The CDR code #0080 is concerning only the specific statute of §16-11-312(A) *after* the enactment of the Omnibus act. Respondent's argument that the CDR code listed on the sentencing sheet was a scrivener's error is mere speculation, wholly unsupported by any evidence. Again, with the absence of evidence to the contrary, the CDR code must be considered correct and as such, direct evidence of the intent of the Solicitor and Applicant's plea counsel.

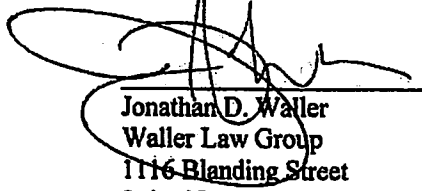
3. Respondent's argument that Applicant's failure to appeal his guilty plea has caused the fifteen-year sentence to be the "law of the case" is without merit and baseless. Respondent relies solely on *State v. Lee*, 350 S.C. 125, 564 S.E.2d 372 (Ct. App. 2002), for its contentions. *Lee* is a direct appeal from a probation revocation where the Appellant raised questions of subject matter jurisdiction of the plea court to impose its sentence. Neither the arguments nor opinion have any bearing on the case at hand as *Lee* only reviews the "statutory authority of the sentencing court to issue the underlying sentence." *Id.* at 132-33, 564 S.E.2d at 576. The *Lee* Court was not asked to, and indeed does not, address any issues related to the effectiveness of counsel or the merits of a sentence in excess of

what is allowed by statute. Lee's only similarity to the case at hand is that both men had the unfortunate experience of having their probation revoked. Respondent's argument is dissimilar to the case at hand and thus should not be considered.

**Conclusion**

For the reasons discussed above, as well as those presented by Applicant at the evidentiary hearing, Respondent's Rule 59(e) Motion is without merit and should be denied in full. Applicant further requests that this Court deny Respondent's motion without a hearing or further oral argument as a hearing that will cause unnecessary delay against the interests of justice as this Court has already ruled that Applicant should be released from the Department of Corrections. Under Rule 59(f), SCRPC, a Rule 59(e) motion "may in the discretion of the court be determined on briefs filed by the parties without oral argument."

Respectfully submitted,



Jonathan D. Waller  
Waller Law Group  
1116 Blanding Street  
Suite 2B  
Columbia, South Carolina 29201

ATTORNEY FOR APPLICANT

January 3, 2018

Columbia, SC

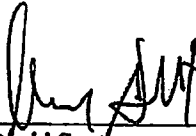
STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF FLORENCE )  
 )  
McIver R. Feagin, Jr., 266756, )  
 )  
Applicant, )  
 )  
vs. )  
 )  
State of South Carolina, )  
 )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
TWELFTH JUDICIAL CIRCUIT

**CERTIFICATE OF SERVICE**

Case No. 2015-CP-21-00055

I certify that on this date I served the Applicant's Response in Opposition to Respondent's Motion to Alter or Amend the Judgment Pursuant to Rule 59(e), SCRCPC in this case on counsel for Respondent by delivering a copy of same to the Respondent's attorney of record by delivering by the United States Postal Service, in a sealed envelope clearly bearing a return address with adequate first class postage affixed thereon, said copy to her office located at Post Office Box 11549, Columbia, SC 29211, and addressed to her attention.

  
\_\_\_\_\_  
M. David Scott

Columbia, South Carolina  
This 3<sup>rd</sup> of January, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	
	)	Case No.: 2015-CP-21-0055
McIver Feagin, #266756,	)	
	)	
Applicant,	)	<b>REPLY TO APPLICANT'S RESPONSE</b>
	)	<b>IN OPPOSITION TO RESPONDENT'S</b>
v.	)	<b>MOTION TO ALTER OR AMEND</b>
	)	<b>JUDGMENT PURSUANT TO RULE</b>
	)	<b>59(E), SCRPC</b>
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent moved on December 18, 2017, pursuant to Rule 59(e), SCRPC, to alter or amend the trial court's judgement in this case, issued by written order filed December 4, 2017.

Applicant submitted a Response in Opposition to Respondent's Motion on January 3, 2018.

**DISCUSSION**

In its Rule 59(e) motion, Respondent argued the judgment of the trial court should be altered or amended based on the following three issues:

1. Second-degree burglary (non-violent) existed in the pre-Omnibus code as section 16-11-312(A). Therefore, Applicant's fifteen year sentence was correct, and probation revocation counsel was not ineffective for failing to argue otherwise.
2. The CDR code listed on Applicant's sentencing sheet is not the controlling authority for offenses or penalties.
3. Even if Applicant was incorrectly sentenced to fifteen years, he waived his objection when he failed to appeal the guilty plea, and thus the fifteen-year sentence was the law of the case.

In response, Applicant argues Respondent is impermissibly raising these arguments for the first time in its Rule 59(e) motion, and the court is barred from considering them by error preservation rules. Respondent contends all of the *issues* raised in its Rule 59(e) motion were

raised to the trial court, and its Rule 59(e) motion is proper under those circumstances. “Error preservation requirements are intended ‘to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.’” Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) (quoting I’On, LLC v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000)); see also Atlantic Coast Builders and Contractors, LLC v. Lewis, 398 S.C. 323, 730 S.E.2d 282 (2012) (explaining the function of error preservation rules is to ensure the appellate courts do not reach issues not ruled upon the trial court). Additionally, the “purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to request the judge to reconsider matters properly encompassed in a decision on the merits.” Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). “Consequently, a party is usually allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented.” Elam v. S.C. Dept. of Transp., 361 S.C. 9, 21, 602 S.E.2d 772, 778-79 (2004). A Rule 59(e) motion is viewed as “part and parcel of a party’s ‘single bite at the apple’ in presenting his case to the trial court.” Id. at 21, 602 S.E.2d 778.

These three issues were clearly contested at trial, as the trial court’s order makes finding of facts concerning all three issues. Therefore, these issues are “matters properly encompassed in a decision on the merits.” Arnold, 309 S.C. at 172, 420 S.E.2d at 842. Respondent believes, however, the trial court has misapprehend its argument regarding the application of the savings clause in the Omnibus Crime Reduction and Sentencing Reform Act (Omnibus), and the trial court’s findings regarding the import of the CDR code listed on Applicant’s sentencing are premised on an error of law. In Elam, the South Carolina Supreme Court explicitly stated a party may properly file a Rule 59(e) motion “when she believes the court has misunderstood, [or] failed to fully consider. . . an argument or issue, and the party wishes for the party to reconsider. . .” Id.

at 24, 602 S.E.2d at 780. Additionally, the Elam Court acknowledged “the wisdom of giving [circuit] courts the opportunity promptly to correct their own alleged errors. ....” Id. at 22, 602 S.E.2d at 779 (citation omitted).

Therefore, Respondent respectfully requests consider the arguments Respondent made at trial and in its Rule 59(e) motion, and issue an order altering or amending the judgment.

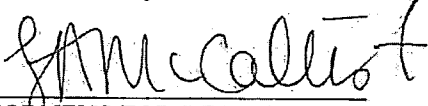
Respectfully submitted,

ALAN WILSON  
Attorney General

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Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

LINDSEY A. MCCALLISTER  
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By:   
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January 8, 2018

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

FORM 4

JUDGMENT IN A CIVIL CASE  
 CASE NO. 2015 CP-21-55

Mclver R. Feagin, Jr.  
 PLAINTIFF(S)

State of South Carolina  
 DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

CERTIFIED: A TRUE COPY  
 No. 10-10-15  
 CLERK OF COURT C.P. & G.S.  
 FLORENCE COUNTY, S.C.

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

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.  
 Additional Information for the Clerk :

2018 JUN -5 PM 3:28  
 JAMES POLLOS O'HARA  
 CLERK C.P. & G.S.  
 FLORENCE COUNTY, SC

FILED

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.  
 E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

2140  
 Judge Code

5/25/2018  
 Date

**For Clerk of Court Office Use Only**

This judgment was entered on the <sup>5th</sup> ~~28~~ day of <sup>July</sup> ~~May~~, 2018 and a copy mailed first class or placed in the appropriate attorney's box on this <sup>10th</sup> day of <sup>July</sup>, 2018 to attorneys of record or to parties (when appearing pro se) as follows:

Jonathan D. Waller  
1116 Broadway St. Suite 2 B  
Columbia, S.C. 29201  
ATTORNEY(S) FOR THE PLAINTIFF(S)

Lindsey A. McCallister  
P.O. Box 11549  
Columbia S.C. 29211  
ATTORNEY(S) FOR THE DEFENDANT(S)  
Doris Paulas C'Hara  
CLERK OF COURT

**Court Reporter:**

**E-Filing Note:** In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRPC.

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

I am familiar with the facts and legal issues in this case, therefore, there is no reason to hold a hearing. Motion to amend pursuant to Rule 59(e) SCRPC is denied.

**WITNESSES**

Roger Tilton Lake City Police Department

PATRICIA S. PARR

ARREST WARRANT NUMBER

1332508

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO: 2010-GS-21-0681

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JUNE TERM 2010

THE STATE

vs.

MCIVER REMBERT FEAGIN JR.

Indictment for

BURGLARY 1<sup>ST</sup> DEGREE

FILED

2010 JUN -3 PM 12:36

CONNIE REEL-SHEARIN  
CCJP & GS  
FLORENCE COUNTY WSP

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF FLORENCE )

INDICTMENT FOR  
BURGLARY 1<sup>ST</sup> DEGREE

At a Court of General Sessions, convened on JUNE 3, 2010 the Grand Jurors of FLORENCE County present upon their oath:

**COUNT ONE- BURGLARY 1<sup>ST</sup> DEGREE**

That MCIVER REMBERT FEAGIN JR. did in Florence County on or about December 16, 2009, willfully and unlawfully attempt to enter the dwelling of Frances Worley without consent and with the intent to commit a crime therein, and the defendant has two or more convictions for burglary, in violation of the Common Law and Section 16-11-311. S. C. Code of Laws, 1976. as amended.

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



---

E.L. Clements, III  
TWELFTH CIRCUIT SOLICITOR

County of Florence  
STATE VS.

Indictment Number: 2010-GS-21-681  
Probation C/W#s: W-45-11-0003  
C-45-12-0081

AKA: Mc Iver R. Feagin  
Race: W Sex: M  
DOB: [REDACTED]  
SSN: [REDACTED]  
SID#: [REDACTED]

Name of Original Offense: Burglary 2nd  
Original A/W#: I 332506  
Date of Original Offense: 12-16-2009  
Conviction S.C. Code §: 16-11-0312  
Conviction CDR Code #: 01 01 810  
Original Sentence: 15 yrs. prob. upon 279 days  
Susp. 15 years Probation  
ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 09/20/10 in the Court of General Sessions of Florence County, and/or the additional conditions ordered by the Court in probation continuation orders(s) issued on 1-20-11, as set forth in the attached warrant(s) or citation(s) dated 1-20-11. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number of condition special conditions as provided in the affidavit)  
1, 2, 6, 7, 9, 10 + Special Condition

Therefore, IT IS ORDERED that:

- the suspended sentence be revoked and the above named defendant be required to serve 15 months/years the remainder of the original sentence, and/or pay \$           .
- the suspended sentence be revoked and the above named defendant be required to serve            months/years of the original sentence and/or pay \$           ; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- the above named defendant is placed on active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).
- Financial Obligations: Order satisfies:  Department fees (arraoage/balance) Civil Judgment:  Department fees  
 Fines and other fees (arraoage/balance)  Fines and other fees  
 Restitution (and 20%) (arraoage/balance)  Restitution (and 20%)
- Additional Conditions ordered by the Court:  
Credit for anytime served on this case.  
Warrant served 3-20-2011
- The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.
- The defendant has previously served 279 days months/years on this sentence.  
(split sentence time and/or prior partial revocation time)
- The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This 10 day of December 2012  
Florence, SC

Presiding Judge Hon. Thomas Russo  
JH Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature Refused to Sign Witnessed by [Signature]  
Signed this 10th day of December 2012 at Brigotree SC

FILED  
11 MAR 30 AM 11:30  
CLERK OF COURT  
WILLIAMS  
KINGSTREE, S.C.

**STATE OF SOUTH CAROLINA**  
COUNTY OF WILLIAMSBURG

Probation  
**ARREST WARRANT**

Indictment Number 10-GS-21-00881

Warrant Number W-45-11-0003

State Identification No. (SID) 00741108

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF KINGSTREE, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that MCIVER FEAGIN, MCIVER REMBERT FEAGIN, JR. did on the 20 day of January, 2011 violate the criminal laws of the State of South Carolina as set forth below:

**DESCRIPTION OF OFFENSE:**

Willfully violating conditions of Probation Pursuant to section 24-21-450

Now, therefore, you are empowered and directed to arrest the said defendant and bring MCIVER FEAGIN, MCIVER REMBERT FEAGIN, JR. before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Done at KINGSTREE, S. C. this 20 day of January, 2011.

*Curtis Keels* (L.S.)  
Signature of Probation and Parole Agent

County of **WILLIAMSBURG**

**STATE OF SOUTH CAROLINA**

**AFFIDAVIT**

Personally appeared before me, one Curtis Keels, who, first being duly sworn, deposes and says that MCIVER FEAGIN, MCIVER REMBERT FEAGIN, JR. did within this County and State on the 20 day of January, 2011, violate the criminal laws of the State of South Carolina in the following particulars:

**DESCRIPTION OF OFFENSE:**

Willfully violating conditions of Probation Pursuant to section 24-21-450

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

By failing to make a complete and truthful report each month or as directed, offender will not report as ordered.  
By failing to allow the agent to visit his residence in that he has failed to provide the correct address.  
By failing to pay supervision fees as directed, has failed to make any payments.  
By failing to pay court cost/surcharge, has failed to make any payments.  
By failing to follow the advice and instructions of the agent in that he will not report nor follow directions from the agent.

Sworn to and Subscribed before me  
this 20 day of January, 2011.

*Curtis Keels*  
Affiant

*Kate L. Mack* (L.S.)  
Signature of Notary Public  
11-3-2016  
My Commission Expires

Address: P.O. BOX 527  
KINGSTREE, SC 29556  
WILLIAMSBURG  
USA

RETURN

\_\_\_\_\_  
Constable or Law Enforcement Officer

A copy of this Arrest Warrant was delivered by me to the following defendant:

Mc Iver Feagin

on the 28th day of March 2011

[Signature]  
Constable or Law Enforcement Officer

This Warrant is certified for service in [County of warrant Certification] County. The accused is to be arrested and brought before me to deal with according to law.

\_\_\_\_\_  
Signature of Judge (L.S.)

STATE OF SOUTH CAROLINA  
COUNTY OF  
WILLIAMSBURG

THE STATE  
against

MCIVER FEAGIN, MCIVER REMBERT FEAGIN, JR.

ARREST WARRANT

Offense: Violation of Conditions of Probation Supervision

Offense Section: 24-21-450

Date: 1/20/2011

Officer and Agency: SC Department of Probation,  
Parole and Pardon Services

Curtis Keels

Disposition \_\_\_\_\_

Sentence \_\_\_\_\_

Co-Defendants \_\_\_\_\_

INFORMATION ON DEFENDANT

Name MCIVER FEAGIN  
Address \_\_\_\_\_  
Phone \_\_\_\_\_  
Sex Male Race White Height 509  
Weight 145 Birth date \_\_\_\_\_  
Social Security Number \_\_\_\_\_

INFORMATION ON WITNESSES

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_

PRELIMINARY HEARING held by

Magistrate \_\_\_\_\_  
on \_\_\_\_\_  
with \_\_\_\_\_

Attorney for the Defendant

Decision \_\_\_\_\_

Date Set 3-28-11  
Magistrate [Signature]  
Amount BLOOD = C/P  
Surety \_\_\_\_\_

STATE OF SOUTH CAROLINA  
COUNTY OF Florence  
STATE

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010-GS-21-0681

VS.  
Mciver Rembert Feagin Jr  
AKA:  
Race: W Sex: M Age: 39  
DOB: [REDACTED]  
Address: [REDACTED]  
City, S: [REDACTED]  
DL# [REDACTED]

AW#: 1332506  
Date of Offense: 12/16/2009  
S.C. Code §: 16-11-0311  
CDR Code #: 0079

SENTENCE SHEET

*N.C. v. A. Ford*

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS

TO: Burglary / Burglary (Non - Violent) (After June 20, 1985) - Second degree *0-15 m*

In violation of § 16-11-0312 of the S.C. Code of Laws, bearing CDR Code # 0080

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  \$17-25-45  
(CSC w/minor 1<sup>st</sup> or Lawd Act)

The charge is:  As indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (def.'s initials)  
The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State. *5 yr ap*

ATTEST: *[Signature]* *4352* *Mciver Rembert Feagin* *[Signature]* *15871*  
Solditor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center,  
for a delimitate term of *15* ~~days~~ *months* or  under the Youthful Offender Act not to exceed *15* years  
and/or to pay a fine of \$ *279*; provided that upon the service of *279* ~~days~~ *months* and or payment  
of \$ *5*; plus costs and assessments as applicable; the balance is suspended with probation for *5*

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

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

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-66 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_

Obtain GED   
Attend Voc. Rehab. Or Job Corp. \_\_\_\_\_

Recipient:		
*Fine:		\$
§14-1-206 (Assessments 107.5%)		\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <i>100.00</i>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <i>5.00</i>
§44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$ <i>318</i>
TOTAL		\$ <i>10818</i>

May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling   
Random Drug/Alcohol Testing   
Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ Beginning \_\_\_\_\_  
\$ \_\_\_\_\_ Paid to Public Defender Fund  
Other: *Mental Health Counseling*  
*No Contact w/ victim*

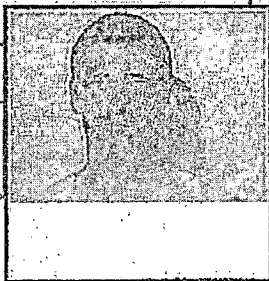
Conditional Discharge, §44-53-450(e) requires \$350 be paid to the Clerk prior to case disposition  
 Appointed PD or appointed other counsel \$47.12 requires \$500 be paid to Clerk during probation. *10-18*

Clerk of Court/Deputy Clerk *[Signature]*  
Court Reporter: *[Signature]*  
SCCA217 (09/2010)

Presiding Judge *[Signature]*  
Judge Code: *2141*  
Sentence Date: *9-20-2010*

*Restraining order to be entered*

**ARREST WARRANT**  
**I-332506**  
 STATE OF SOUTH CAROLINA  
 County/  Municipality of  
**LAKE CITY**



THE STATE  
 against

MCIVER REMBERT FEAGIN JR

Sex: [redacted] Race: [redacted] Height: [redacted] Weight: [redacted]  
 DL # [redacted] Agency OR#: SC0210200  
 Prosecuting Agency: LAKE CITY POLICE DEPARTMENT  
 Prosecuting Officer: ROGER TILTON  
 Offense: BURGLARY 1ST DEGREE  
 Offense Code: 0079  
 Code/Ordinance Sec: 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the  
 County/  Municipality of  
 The accused  
 is to be arrested and brought before me to be  
 dealt with according to law.

Signature of Judge (L.S.)  
 D. 12/17/2009

**RETURN**  
 A copy of this arrest warrant was delivered to  
 defendant MCIVER REMBERT FEAGIN JR  
 on [Signature]  
 Signature of Constable/Law Enforcement Officer

**RETURN WARRANT TO:**  
 LAKE CITY MUNICIPAL COURT  
 202 KELLEY STREET  
 LAKE CITY, SC 29560

STATE OF SOUTH CAROLINA )  
 County/  Municipality of )  
**LAKE CITY** ) **AFFIDAVIT**

Form Approved by  
 S.C. Attorney General  
 July 23, 1993  
 SCLA 518

Personally appeared before me the affiant ROGER TILTON who  
 being duly sworn deposes and says that defendant MCIVER REMBERT FEAGIN JR  
 did within this county and state on 12/16/2009 to 12/16/2009 violate the criminal laws of the  
 State of South Carolina (or ordinance of  County/  Municipality of LAKE CITY)  
 in the following particulars:  
**DESCRIPTION OF OFFENSE: 16-11-0311 / BURGLARY 1ST DEGREE**

I further state that there is probable cause to believe that the defendant named above did commit  
 the crime set forth and that probable cause is based on the following facts:  
 THAT ON OR ABOUT DECEMBER 16, 2009 THE DEFENDANT DID UNLAWFULLY ENTER INTO THE VICTIM RESIDENCE  
 WITHOUT HER CONSENT WITH THE INTENT TO VIOLATE A LAWFUL ORDER OF PROTECTION. THE DEFENDANT ENTERED  
 INTO 170 SOUTH ACLINE STREET IN LAKE CITY SOUTH CAROLINA BY FORCING OPEN THE FRONT DOOR AT  
 APPROXIMATELY 10:00PM. THE VICTIM HAS AN ORDER OF PROTECTION AGAINST THE DEFENDANT. ONCE INSIDE THE  
 RESIDENCE THE DEFENDANT CALLED THE VICTIM AND TOLD HER HE WAS THERE. THE DEFENDANT WAS FOUND BY LAW  
 ENFORCEMENT STILL INSIDE THE RESIDENCE. CASE WAS INVEASTIGATED BY THE LAKE CITY POLICE DEPARTMENT.  
 CASE INVESTIGATED BY THE LAKE CITY POLICE DEPARTMENT. CASE 09-01783

Signature of Affiant [Signature]  
 Affiant's Address: 202 KELLEY STREET  
LAKE CITY SC 29560  
 Affiant's Telephone: (843) 374-5421

STATE OF SOUTH CAROLINA )  
 County/  Municipality of )  
**LAKE CITY** )

**ARREST WARRANT**  
**TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:**  
 It appearing from the above affidavit that there are reasonable grounds to believe that  
 on 12/16/2009 defendant MCIVER REMBERT FEAGIN JR  
 did violate the criminal laws of the State of South Carolina (or ordinance of  
 County/  Municipality of LAKE CITY) as set forth below:  
**DESCRIPTION OF OFFENSE: BURGLARY / BURGLARY (AFTER JUNE 20, 1985) FIRST DEGREE**

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said  
 defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered  
 to the defendant at the time of its execution, or as soon thereafter as is practicable.  
 Sworn to and subscribed before me )  
 on 12/17/2009 )  
 [Signature] (L.S.) )  
**CHRISTOPHER R NOWLIN**  
 Judge's Address P. O. BOX 1329  
LAKE CITY SC 29560  
 Judge's Telephone 843-347-5412  
 Issuing Court:  Magistrate  Municipal  Circuit

200 DEC 2 AM 52

Judge Code: 6812  
 Case: 09-01783

ORIGINAL

**BAIL set by**

Judge \_\_\_\_\_

on \_\_\_\_\_

Type and Amount: \_\_\_\_\_

Name of Surety: \_\_\_\_\_

**PRELIMINARY HEARING held by**

Judge \_\_\_\_\_

on \_\_\_\_\_

Defense Attorney: \_\_\_\_\_

Decision: \_\_\_\_\_

**DISPOSITION before**

Judge \_\_\_\_\_

on \_\_\_\_\_

by \_\_\_\_\_  
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: \_\_\_\_\_

Sentence: \_\_\_\_\_

**JURORS**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**WITNESSES**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

**CODEFENDANTS**

\_\_\_\_\_  
\_\_\_\_\_