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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Lexington County

Honorable Perry H. Gravely, Circuit Court Judge

\_\_\_\_\_  
JOSEPH O. MORANT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-002042

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

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State of South Carolina  
County of Lexington

Court of General Sessions

State	)	
	)	
	)	Transcript of Record
v.	)	2015-GS-32-0773
	)	2015-GS-32-0774
Joseph O. Morant	)	2015-GS-32-1152
	)	2015-GS-32-1153
<u>Defendant.</u>	)	2015-GS-32-1390

July 14, 2016  
Lexington, South Carolina

B E F O R E:

The Honorable Eugene Griffith, Judge.

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

Suzanne Mayes, Assist. Solicitor  
Attorney for the State

Michael D. McMullen, Esquire  
Attorney for the Defendant

Bethanie K. Creppon  
Circuit Court Reporter

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WITNESS

I N D E X

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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(No Exhibits.)

## P R O C E E D I N G S

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THE CLERK: 2015-GS-32-1390, State vs. Joseph Morant, indicted for burglary second degree, he is pleading as charged; 2015-GS-32-1152 State vs. Joseph Morant, indicted for burglary second degree violent, he is pleading as charged; 2015-GS-32-773, State vs. Joseph Morant, indicted for burglary first degree, he is pleading as charged.

2015-GS-32-774, State vs. Joseph Morant, indicted for burglary first degree, he is pleading as charged; 2015-GS-32-1149, State vs. Joseph Morant, indicted for burglary first degree, he is pleading as charged; 2015-GS-32-1153, State vs. Joseph Morant, indicted for burglary first degree, he is pleading as charged.

All indictments are true-billed and he is represented by Mr. McMullen.

JOSEPH MORANT

being first duly sworn, testified as follows:

THE DEFENDANT: Yes, ma'am.

MS. MAYES: Your Honor, may we approach?

THE COURT: Sure, you can.

(Sidebar conference.)

THE COURT: All right. Your name is Joseph

1 Morant?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: I've got several indictments to  
4 publish: 2015-1153 reads that you, while in  
5 Lexington County, on the 23rd of November of '13,  
6 did enter a dwelling on Bush Street owned by  
7 Ms. Gossett in Lexington County in violation of  
8 provision of 16-11-311. It's my understanding that  
9 you're pleading on that indictment as presented.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Also Indictment 15-GS-32-1149,  
12 burglary first. And it reads that you, while in  
13 Lexington County on the 26th of January of '14, did  
14 enter a dwelling owned by Ms. Gossett at [REDACTED]  
15 [REDACTED], being in violation of 16-11-311.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And you're pleading guilty as  
18 presented on that one. Indictment 15-GS-32-774,  
19 that indictment reads that you, while in Lexington  
20 County, between the dates of January 18th and 19th,  
21 did enter a dwelling on Holland Street owned by Mary  
22 Rawl without consent and with intent to commit a  
23 crime at nighttime, which is in violation of  
24 16-11-311. It's my understanding you're going to  
25 plead guilty on that indictment as presented.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Also Indictment 15-GS-32-774 for  
3 burglary first reads that you, while in Lexington  
4 County, on the 23rd of November of '13, did enter a  
5 dwelling of [REDACTED] owned by Ms. Rawl  
6 without consent and with the intent to commit a  
7 crime at nighttime in violation of provision  
8 16-11-311. It's my understanding you're pleading  
9 guilty on that indictment as presented.

10 Also Indictment 15-GS-32-1152, burglary second  
11 degree. That indictment reads that you, while in  
12 Lexington County, on the 24th of December of '13,  
13 did enter a dwelling without consent on Morningside  
14 Drive owned by James Corey in violation of the  
15 provisions of 16-11-312(b). It's my understanding  
16 that you're pleading guilty to burglary second  
17 degree, the violent provision.

18 And also Indictment 15-GS-32-1390, burglary  
19 second degree. That indictment reads that you,  
20 while in Lexington County, on January 30th of '14,  
21 did enter a dwelling located on Holland Street, West  
22 Columbia, owned by Mr. Albert Herman with intent to  
23 commit a crime in violation of provisions of  
24 16-11-311 Subpart A. It's my understanding that  
25 you're going to plead guilty to burglary second

1 degree, the nonviolent provision. Is that correct?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Mr. McMullen, you  
4 represent Mr. Morant on all of these indictments; is  
5 that right?

6 MR. MCMULLEN: Yes, Your Honor.

7 THE COURT: Have you explained to him the  
8 elements of these six offenses?

9 MR. MCMULLEN: Yes, sir.

10 THE COURT: There's four burglary firsts, two  
11 burglary seconds, and one of each version of the  
12 burglary seconds.

13 MR. MCMULLEN: Yes, sir.

14 THE COURT: Do you have a belief, after  
15 examining the discovery by the State, conducting  
16 your own investigation, interviewing your client and  
17 other potential witnesses, that if your client went  
18 to trial on any of these burglaries, more probably  
19 than not he could be found guilty?

20 MR. MCMULLEN: Yes, Your Honor.

21 THE COURT: And you agree with your client's  
22 decision to enter these six pleas?

23 MR. MCMULLEN: I do.

24 THE COURT: All right. Sir, you've been placed  
25 under oath. In the last 24 hours have you taken any

1 drugs, alcohol, or medications?

2 THE DEFENDANT: Yeah, I took medication, sir.

3 THE COURT: All right. Is it prescribed by a  
4 physician or a nurse?

5 THE DEFENDANT: It's prescribed by a physician,  
6 sir.

7 THE COURT: And is it affecting you normally?

8 THE DEFENDANT: No, sir.

9 THE COURT: I mean --

10 THE DEFENDANT: I mean, it helps me -- no.

11 THE COURT: Do you know what's going on?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. You feel okay right now?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. Other than that medication,  
16 did you take anything else?

17 THE DEFENDANT: No, sir.

18 THE COURT: When you talk to your lawyer about  
19 all these pleas and doing what you're doing today,  
20 were you also in the same frame of mind or on the  
21 same medication and you understood your conversation  
22 with him?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Very well. You're clearheaded  
25 right now, more or less?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Now, you have the constitutional  
3 right to have six jury trials. Six separate  
4 incidences, some of the houses seem to be the same,  
5 but six jury trials. Your rights are the same in  
6 each. The State bears the burden of proving your  
7 guilt at trial. You could plead not guilty and have  
8 a jury trial on each of them.

9 The State would not be allowed to call you as a  
10 witness, but the State would have to call other  
11 witnesses that would have knowledge of the cases,  
12 ask them questions, present evidence for the jury to  
13 consider the issue of guilt or innocence. You don't  
14 have to prove anything or disprove anything.

15 Mr. McMullen would be allowed to cross-examine  
16 their witnesses, he'd be allowed to challenge their  
17 evidence, he'd be allowed to present defenses you  
18 may have, but you wouldn't have to testify and the  
19 State would not be allowed to comment on your  
20 silence if you chose not to testify. You could  
21 choose to testify, but that would be your decision  
22 and not the State's. Now, do you understand your  
23 rights to defend yourself at trial?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Understanding those rights, is it

1 your decision today to waive all those rights in  
2 order to enter these six pleas?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And are you waiving your rights  
5 freely and voluntarily?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. Ms. Mayes, give me the  
8 factual summary for these pleas.

9 MS. MAYES: Yes, sir, Your Honor. We'll go  
10 down the list as they are set out on the guilty plea  
11 information sheet. The first two burglaries that we  
12 will address concern the residence of Marie Rawl.

13 Your Honor, Marie Rawl resides here in the West  
14 Columbia area of Lexington County at [REDACTED]  
15 [REDACTED]. And she, Your Honor, is a lady that lives  
16 alone. The first time she was burglarized was on  
17 November 23rd, 2013, and then the next burglary  
18 occurred on January -- the nighttime between January  
19 18th, 2014, and the early morning hours of January  
20 19th, 2014, so roughly about two months later.

21 And this seems to be a pattern that happened  
22 with another set of victims as well where maybe once  
23 he's scoped out a house and figures out that the  
24 person lives alone and what their hours are in terms  
25 of when they're home and when they're not home, that

1 becomes a vulnerable point for him.

2 And with Ms. Rawl, Your Honor, she was  
3 working -- she had a job that had her working night  
4 shifts. So if someone was watching the home, they'd  
5 know that those were the hours she normally not was  
6 there.

7 So, Your Honor, the first time that he enters  
8 the home of Marie Rawl, November 23rd of 2013, Your  
9 Honor, at that point in time he entered through a  
10 window and he actually left blood behind at the  
11 crime scene. That blood was collected by the West  
12 Columbia Police Department, analyzed, and we do have  
13 a DNA match in that case. That's ultimately how he  
14 became a suspect in all of the burglaries, is once  
15 that DNA profile was entered into CODIS, he has a  
16 prior record, so that allowed them to identify him  
17 as a suspect.

18 Your Honor, the next time he entered the home  
19 of Marie Rawl, he also entered from a side porch  
20 area -- well, he used a cinder block to break one of  
21 the windows and then he left through a side porch  
22 area. And when he left, he left behind blood on  
23 that door of the side porch.

24 And the first time he burglarized her home, he  
25 was able to get various items and electronics and a

1 laptop. And he intended to take her flat-screen TV,  
2 but for some reason wasn't actually able to get away  
3 with it. When they responded to her house, that  
4 flat-screen TV was out in the yard, so it was  
5 probably something that he had intended to come back  
6 for. This time when came back in January, that  
7 flat-screen TV was the item that was taken.

8 Your Honor, also, he was identified as a  
9 suspect in the burglaries concerning Jewel Gossett.  
10 She is Jewel Gossett Rivera, Your Honor. She's  
11 present in the courtroom today, as is Ms. Marie  
12 Rawl. Ms. Gossett is here with her husband Louis  
13 Rivera. Your Honor, they're law enforcement  
14 officers, they've been very involved with this case,  
15 and they tell us that on one occasion there was a  
16 marked law enforcement vehicle sitting in the  
17 driveway, and yet the burglary still happened. So  
18 it appears that whatever was going on with  
19 Mr. Morant, he had become very desperate or  
20 reckless, I guess I would put it, in terms of going  
21 into these homes.

22 Your Honor, as to that particular home of  
23 Mr. and Mrs. Rivera or Jewel Gossett, as it's listed  
24 in the indictment, that's at [REDACTED]. And  
25 that area of West Columbia is fairly close to the

1 area where Marie Rawl lived. And on November 23rd,  
2 2013, in the evening hours -- that's the same  
3 incident date as Ms. Rawl. So it looks like he was  
4 hitting both houses on that same incident date.

5 Your Honor, they reported that he removed a  
6 window air conditioning unit and then removed  
7 various items of personal property including two  
8 televisions and several pieces of jewelry. Latent  
9 fingerprints were identified on the bottom of the  
10 air conditioner at the point of entry and identified  
11 to be those of the defendant. Blood evidence was  
12 also found in the residence in that case.

13 Your Honor, as I indicated, he later then went  
14 back to that same residence, being the residence of  
15 Jewel Gossett, in January, and this time also gained  
16 entry into the house and actually took the items  
17 that they had replaced the original stolen items  
18 with. So the first burglary was in November, then  
19 there's Christmas, they get various items as  
20 Christmas gifts to replace the items that had been  
21 stolen, and then those are the items that are taken  
22 in January. And I know they do want to address the  
23 Court, Your Honor, at the appropriate time.

24 Following those four burglaries, Your Honor, we  
25 have another burglary on Holland Street which is

1 nearby the residence of Marie Rawl, and this was the  
2 residence of an Albert Herman, and that was [REDACTED]  
3 [REDACTED]. Your Honor, it's reported that  
4 Mr. Morant entered the residence, removed  
5 electronics and foreign coins belonging to the  
6 resident, and left the scene. A short time later  
7 Mr. Herman entered the front door of his residence  
8 and discovered that it had been broken into.

9 While on the phone with his roommate, he heard  
10 an unknown suspect re-enter his residence through  
11 the back door and walk into the residence.  
12 Mr. Herman called out to see who the person was and  
13 he was able to see the suspect fleeing on a bicycle.

14 One common theme in some of these cases is that  
15 Mr. Morant seems to be coming and going on a  
16 bicycle, so there's only a limited number of items  
17 that he can carry. It's believed that he was most  
18 likely putting them in a pillowcase or something of  
19 that nature and then leaving with them. While  
20 responding to the call, Mr. Morant was stopped by  
21 officers a short distance from the crime scene and  
22 was found to be in possession of some of the stolen  
23 items.

24 In addition, Your Honor, there's the final  
25 burglary that he's pleading to, and that is on

1 December 24th, 2013, at approximately 4:10 a.m. Law  
2 enforcement officers observed him to be near Double  
3 Branch Road with an orange-in-color leaf blower.  
4 That same item had been stolen earlier in the day  
5 from an outbuilding at [REDACTED]. And  
6 upon search of that property, law enforcement  
7 officers were able to observe that it was, in fact,  
8 the leaf blower that was missing. And then they  
9 found Mr. Morant a short time later, just hours  
10 later, near that crime scene with the same leaf  
11 blower.

12 It states that Mr. Morant was unable to carry  
13 all of the yard equipment and exited the property  
14 taking only the leaf blower. So it looks like some  
15 of the items had been moved out of that outbuilding,  
16 but he just wasn't able to come back and carry them  
17 all away.

18 Your Honor, he does have a prior record which  
19 I'll inform the Court once you're ready for that.  
20 This is a negotiated plea. Through plea  
21 negotiations, Mr. McMullen and the State have  
22 reached a negotiated plea of 15 to 20 years on a  
23 burglary first degree charge with other charges  
24 being sentenced concurrently, and that would be a  
25 no-parole offense.

1           THE COURT: All right. Mr. Morant, you heard  
2 the summary by Ms. Mayes and the sequence of events  
3 that you went in some houses kind of in the same  
4 neighborhood, a few houses twice, over a period of  
5 months. The summary of what she gave the Court, is  
6 that accurate, sir, of what you did?

7           THE DEFENDANT: Yes, sir.

8           THE COURT: Okay. You're pleading guilty to  
9 four burglary firsts and two burglary seconds; one  
10 violent and one nonviolent burglary second. But the  
11 burglary firsts are the ones that concern me the  
12 most because those are the most serious crimes.  
13 They're violent crimes, meaning that with today's  
14 plea, you'll have enough convictions on your record  
15 of this type -- and you've got a prior attempted  
16 armed robbery. That's a most serious --

17           THE DEFENDANT: I don't have a --

18           MS. MAYES: Your Honor, he -- I believe when  
19 Ms. Fullwood represented him, we had a matter  
20 previously that they maintained that that is an  
21 actual common law robbery conviction.

22           THE COURT: Okay. Anyway, all right. Just to  
23 be clear, today's plea will contain four  
24 most-serious convictions and four of the five --  
25 five of the six are violent crimes, meaning when you

1 get to the department of corrections, you're going  
2 to have convictions on your record for  
3 most-serious-type crimes. The most-serious  
4 conviction is the highest classification that the  
5 General Assembly has handed down to the State, and  
6 what it means is if you get a second most-serious  
7 conviction or two more most-serious convictions, you  
8 could face a sentence of life without parole.

9 Now, the burglary firsts anyway,  
10 15-years-to-life range, but you've negotiated with  
11 the State through your lawyer that you'll receive no  
12 more than 20 years, but no less than 15, which is  
13 the statutory minimum. And so what I want you to  
14 understand is, with this plea today, you'll have  
15 enough convictions on your record that if anything  
16 like this happens again, it's very likely the State  
17 would, at that time, be able to seek a  
18 life-without-parole sentence on you. Okay?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Now, also with that is you'll be  
21 classified with the department of corrections as a  
22 violent offender, meaning you'll not be entitled to  
23 the programs that the non-violent offenders are  
24 entitled to; most particularly, you won't be  
25 eligible for parole.

1           Now, after serving 85 percent of whatever  
2 sentence between 15 and 20 years the Court gives  
3 you, you can be eligible for a community supervision  
4 type of release. Do you understand the difference  
5 and the implications of having four most-serious  
6 convictions as well as being a violent offender? Do  
7 you understand that?

8           THE DEFENDANT: Yes, sir.

9           THE COURT: Now, it's my understanding the  
10 negotiations in this include a dismissal of all of  
11 the related larcenies and petit larcenies or grand  
12 larcenies and the breaking and entering into the  
13 automobiles, which all of those include -- are not  
14 85-percent crimes.

15           So she's dismissing the smaller ones. She's  
16 receiving a conviction for you for the burglary  
17 first, which is the -- I say most serious, but  
18 that's kind of not a fair characterization. It is a  
19 most-serious conviction, but it is my biggest  
20 concern that it implicates your record the worst,  
21 having the burglary first. And I feel certain  
22 that's Ms. Mayes' intent, is she wants to impact  
23 your record as good as she can, and she's doing so.  
24 Do you understand that?

25           THE DEFENDANT: Yes, sir.

1           THE COURT: All right. Now, have you been  
2 promised anything else to get you to plead guilty  
3 other than a sentence at 85 percent, somewhere  
4 between 15 and 20 years? Anything lower than that,  
5 like the burglary seconds, would be less time, but  
6 they'd be running concurrently. So the time is  
7 going to be ticking on the burglary first, that's  
8 going to be the lead indictment for you.

9           And she's dismissing all of the lesser, smaller  
10 crimes that you're charged with in exchange for this  
11 plea. Has anything else been promised to you other  
12 than that end result of six pleas, four burglary  
13 firsts, burg second non-violent, burg second  
14 violent, and 15 to 20 years at 85 percent? Anything  
15 else promised to you?

16           THE DEFENDANT: No, sir.

17           THE COURT: Anybody threatened or coerced you  
18 to get you to plead guilty?

19           THE DEFENDANT: No, sir.

20           THE COURT: You understand you'll have a  
21 limited number of days to file a notice of intent to  
22 appeal if you believe anything that's been  
23 procedurally done improperly at today's hearing of  
24 today's plea? Do you understand that?

25           THE DEFENDANT: Yes, sir.

1           THE COURT: Obviously you understand that as a  
2 result of this plea, you have to provide a sample of  
3 your DNA. I think you've already done that, so I  
4 doubt they'll require you to do it again. You've  
5 had enough time to discuss these six pleas with  
6 Mr. McMullen?

7           THE DEFENDANT: Yes, sir.

8           THE COURT: He's answered all of your  
9 questions, went over each of the files with you?

10          THE DEFENDANT: Yes, sir.

11          THE COURT: You've understood your  
12 conversations with him?

13          THE DEFENDANT: Yes, sir.

14          THE COURT: Are you satisfied with the advice  
15 and counsel he provided you?

16          THE DEFENDANT: Yes, sir.

17          THE COURT: Do you need any more time before we  
18 go forward?

19          THE DEFENDANT: No, sir.

20          THE COURT: Any complaints against the 11th  
21 Circuit Solicitor's Office or any of the law  
22 enforcement agencies that investigated these crimes?

23          THE DEFENDANT: No, sir.

24          THE COURT: Are you pleading guilty freely and  
25 voluntarily?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And you're pleading guilty because  
3 you did in fact commit these six offenses?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Regarding Indictments  
6 15-GS-32-1152, 773, 774, 1149, 1153, and 1390, I  
7 find that Joseph Odel Morant has made a free,  
8 knowing, and intelligent plea of guilt to four  
9 counts of burglary first degree, one count of  
10 burglary second degree violent, one count of  
11 burglary second degree non-violent; he's entered all  
12 six pleas with advice and counsel of an attorney  
13 with whom he states while under oath he's satisfied.

14 I find the State has provided more than ample  
15 facts to support each of these pleas. I also find  
16 that the parties have negotiated a sentence in the  
17 range between no less than 15 and no more than 20  
18 years on the burglary first charges. Any charge  
19 that would carry less than that would run  
20 concurrently.

21 I also find that the State has dismissed or  
22 nol-prossed the lesser property crimes such as the  
23 grand larcenies and the related breaking into autos  
24 on any of these; thus, as a result of these six  
25 pleas, there will be no other pending charges in

1           Lexington County against Mr. Morant.

2           MS. MAYES: That's correct, Your Honor.

3           THE COURT: All right. Mr. McMullen?

4           MR. MCMULLEN: May it please the Court?

5           THE COURT: Yes, sir.

6           MR. MCMULLEN: Your Honor, may I begin by  
7           saying there were some issues as to his mental  
8           competence. And I'm satisfied, as are the doctors,  
9           that he is competent to stand trial, that he knows  
10          what he's doing today, and he understands the -- he  
11          understands right from wrong. He knows he's done  
12          wrong. He tells me he's sorry for what he has done.  
13          And I just want to go along with saying I believe  
14          that he is fully competent to do this.

15          I've known Joseph since shortly after I became  
16          a lawyer. He was in his late 20s and I was in my  
17          mid-30s and I was renting from Jack Swerling after  
18          leaving the office here in Lexington. They couldn't  
19          afford Jack, but the family of modest means wanted  
20          to get him a paid lawyer. We appeared in the  
21          courtroom across the -- it used to be across the  
22          way. And some of the charges on his record, I  
23          represented him on those.

24          At some point they ran out of money and I ran  
25          out of patience and Joseph used a public defender

1 and went away for a while. We stayed loosely in  
2 touch. He would call every once in a while and just  
3 tell me he was doing well or that he had a  
4 grandchild now. And I care about him. I know that  
5 the things he's done -- you know, reckless is a very  
6 good word for it.

7 He's had drug issues variously reported since  
8 he was 15 or 17 or 21. He's never been happy; he's  
9 always suffered from depression. And at one point  
10 in his early years, I believe he was 17, some  
11 strange man kidnapped him and had him in the car for  
12 a couple hours and sexually abused him until he was  
13 able to get away. So he's -- you know, he's had a  
14 tough time. There are a lot of people who go  
15 through tough times without committing crimes, of  
16 course.

17 But he's disabled, he gets a check -- he has  
18 been getting a check for that. He's got two  
19 children, a 23-year-old girl and a 15-year-old girl,  
20 and then he's got a grandson. He tells me that, you  
21 know, part of the thing -- he grew up without a  
22 father in the home. He's one of seven or eight  
23 children, that's the way it's reported. But he's  
24 the youngest and he has been kind of treated like  
25 that. So in one way you might think, well, he had

1 more of a couple -- couple of father figures there  
2 in the house. But, in any event, I think he said he  
3 felt the need sometimes to prove his manhood.

4 He got into drugs. I think he was kind of  
5 swayed by some boys at school to start with the  
6 drugs. And I think that, coupled with his  
7 depression and other diagnoses, that the drugs, you  
8 know, caused him to kind of self-medicate and feel  
9 good for a little while.

10 Psychosis not otherwise specified, crack  
11 cocaine dependence, alcohol dependence, antisocial  
12 personality disorder are all diagnoses that he's  
13 had; also he's had diagnoses -- bear with me, sir.  
14 Major clinical depression, posttraumatic stress  
15 disorder, bipolar disorder, and schizophrenia. And  
16 those -- again, I'm not in any way saying he's  
17 incompetent to do what he's doing. I find the  
18 opposite to be true.

19 I think when he's not taking crack or doing  
20 drugs of, you know, other sorts, that when he's  
21 taking the medicine that he is supposed to be  
22 taking, then he's someone you can easily converse  
23 with and is easy to like.

24 I went over with him what Your Honor did  
25 earlier about the crimes that constitute serious and

1 most serious, and we both -- we all know the  
2 burglaries themselves could have subjected him to  
3 life without parole. And for the State to not do  
4 that, we're grateful. I think that's quite generous  
5 on their part, especially when you steal from the  
6 police. And as I understand it, the solicitor  
7 didn't say it, but I believe a service revolver was  
8 stolen in one of these. I happen to know one of the  
9 officers involved, and I hate that this happened to  
10 her.

11 The -- I guess what we're doing right now is  
12 I'm begging for him to have 15 instead of 20 or  
13 anything less than 20 that Your Honor might feel  
14 comfortable or justified or might feel possible. I  
15 would -- to maybe put it in some perspective, he was  
16 born in [REDACTED] of 1970, he's 46.

17 According to my math he'll be -- if you gave  
18 him 15 years, he'd do 12.75 before being considered,  
19 and if you gave him 20, he'd do 17. Either way,  
20 he's going to be right at 60 years old or a little  
21 older when he's released. And I hope that by then  
22 he doesn't feel the urge to go out and do crack  
23 cocaine anymore. I feel like if there were no such  
24 thing as crack, we wouldn't be here today. But that  
25 could have been said about anybody at this podium,

1 probably at any given time.

2           Anyway, I just basically beg for mercy. He  
3 comes from a nice family. If I could ask the people  
4 in his family to rise. They'll be visiting him in  
5 prison for the foreseeable future. His mother may  
6 never see him a free man again as she's up in years.  
7 I certainly hope that's not true, but I think she  
8 can rest comfortably knowing that he got some kind  
9 of break here.

10           They, like I said, are of modest means. I  
11 charged a modest fee. I care very much about him.  
12 I don't know if his brother wants to add anything to  
13 this, if the Court would hear him.

14           MR. CHARLEY: I want to apologize to the people  
15 that he hurt and ask them for mercy for him. And I  
16 apologize to y'all also.

17           THE COURT: You have anything you would like to  
18 say?

19           THE DEFENDANT: Yes, sir. I would like to  
20 say -- first of all, sir, I want to thank you for  
21 allowing me to be before your court today. And I  
22 would also like to thank Ms. Suzanne Mayes for also  
23 having your mercy on me and not allowing me -- not  
24 seeking what she could have been seeking more.

25           You know, I'd like to apologize to the victims

1       that I, you know, hurt and harmed, you know, because  
2       nobody deserves to be, you know, stolen from, no one  
3       deserves to have to live in fear thinking that  
4       somebody is going to -- the person is going to come  
5       back. And I truly apologize for that.

6               And, you know, I'm not a -- I don't want to  
7       seem like I'm boasting on myself, but I know that  
8       I'm not a bad person. You know, I know I made a lot  
9       of bad decisions, you know, and one thing I do know,  
10      I know I'm not a -- you know, I'm a bad person at  
11      doing wrong because I always get caught. And not  
12      saying it's right to do wrong, but any time I've  
13      done wrong, I always, you know, got caught in it.

14             So I really know -- I realize now that doing  
15      wrong is -- you know, God is not going to allow  
16      certain people to do wrong, and I'm one of those  
17      people, you know. And I thank him for that because  
18      that has helped me realize that I'm -- you know,  
19      that even though I try to conform myself to a  
20      lifestyle that I really wasn't supposed to be a part  
21      of.

22             You know, I rebelled and went the opposite way,  
23      and this is just a part of my punishment, you know.  
24      And I just hate so many people have to suffer  
25      because of -- because of me choosing to do things

1 opposite, you know. I mean, I'd like to blame a lot  
2 of stuff on what happened to me in the past, but I  
3 can only do that so far because, you know, a lot of  
4 times, you know, it's about the choices you make,  
5 the people you, you know, affiliate with.

6 And a lot of these incidents, they wasn't  
7 premeditated, you know. It was just, you know, I  
8 was doing a lot of yard work in these areas, you  
9 know, and I should have stayed away from them  
10 because these areas, I know -- I knew that they  
11 would weaken me because of my drug addiction.

12 But, you know, my mother used to always tell me  
13 I needed to stay out of those areas because it's too  
14 close to those -- you know, drugs were being sold  
15 around there. And eventually I got weakened again,  
16 you know. And at times I would go in these areas  
17 and -- you know, go there and work, do my jobs.

18 And it seemed like after I did my jobs, it was  
19 like I got weakened, something just called me, and,  
20 you know, I would go to the drugs. And once I ran  
21 out of money -- I never premeditated to go in any of  
22 these peoples' houses, it was just -- you know, it  
23 just -- I mean, it just controlled me, you know.

24 And, I mean, you could see, like he said, I was  
25 reckless, I never wore gloves or no stuff like that.

1 I was just -- something I just -- you know, the  
2 drugs just -- you know, it was just overpowering,  
3 you know. I should have never, never went in that  
4 direction, you know, as far as with drugs, any type  
5 of drugs.

6 But it's, you know -- you know, I realize I'm  
7 just, you know -- you know, I just need to be the  
8 type of person that lives the right type of life  
9 because the life that I tried to be a part of  
10 wasn't -- isn't for me, you know. Yes, sir. And I  
11 know that a lot of things that's happening now are  
12 my worst nightmares, you know, for this -- you know,  
13 not being able to, you know -- you know, not being  
14 able to be with my mom, you know -- you know, if  
15 anything happened to her, you know, I never thought  
16 that, you know, it would be -- you know, it's like I  
17 said, my worst nightmare if something happened to  
18 her while I'm incarcerated. And now I've put myself  
19 in that situation, you know, that it's a possibility  
20 that it could happen.

21 But, you know, I'm going to stay strong. And,  
22 like I said, I apologize to the victims and I pray  
23 that the Court have mercy upon me. I know I don't  
24 deserve any mercy, but I ask for it.

25 THE COURT: Okay.

1           MR. MCMULLEN: Your Honor, he's been in jail  
2 since January 30th of 2014.

3           THE COURT: January 30th?

4           MR. MCMULLEN: Yes, sir.

5           THE COURT: Ms. Mayes, you said you had  
6 someone -- victims. Rawl, is that right?

7           MS. MAYES: Yes, sir, Your Honor, Marie Rawl is  
8 here, as well as Jewel Gossett Rivera. Your Honor,  
9 Marie Rawl is the resident at the Holland Street  
10 location. She had a job where she was working night  
11 shift for a medical answering service and she would  
12 get home about 6:00 a.m. in the morning. And when  
13 the first burglary happened in November of 2013, she  
14 actually pulled into the driveway and it was still  
15 dark outside and she saw the defendant leaving out  
16 of the back of the home.

17           So that was a very frightening episode for her.  
18 She actually called 911 while sitting in her car.  
19 And then she was quite frightened after that  
20 burglary living alone, and then, you know, you give  
21 it two months, and he comes back again and  
22 burglarizes her all over again. And she wishes to  
23 be heard, Your Honor.

24           MS. RAWL: Your Honor, please forgive me for  
25 crying, but I've had a stroke since this all

1           happened. And I believe that part of this, the  
2           stress and everything that I was under at the time,  
3           caused that stroke. I'm very careful about locking  
4           my doors, and I hadn't been before this. I've lived  
5           in my house my entire life.

6           And I appreciate his words, his apology. And I  
7           would also appreciate you considering the maximum  
8           sentence because I'm scared living in my house. And  
9           it's nothing that's going to take that fright away,  
10          but at least with the maximum sentence of 20 years,  
11          I could have some peace of mind.

12                 MS. MAYES: And, Your Honor, Jewel Gossett who  
13           is now Jewel Gossett Rivera, this is her husband  
14           with here, Louis Rivera. Your Honor, they are the  
15           residents at [REDACTED].

16                 THE COURT: All right. Ms. Rivera.

17                 MS. RIVERA: Your Honor, I just wanted to say  
18           that for him to say that it was not premeditated is  
19           a very -- it's more than an understatement. It was  
20           very meditated, it was very thought out, because it  
21           took time to get into my house the first time. It  
22           wasn't something that he just popped the window and  
23           got in. He took some time to get the air  
24           conditioning unit; it was bolted and broken and  
25           pried out.

1           And he was bitten once inside my home, and I  
2 could follow the blood trail inside my house to see  
3 exactly where he went in my house. Getting bit was  
4 not enough to stop him, to say, hey, this is enough  
5 of a bad idea, let's get out. He continued to go  
6 through my house, go through my bedroom, go through  
7 my personal belongings, take my stuff.

8           My son was living with me at the time. I was  
9 not even engaged at this time, we were dating. It  
10 was just me and my son. My son is actually the one  
11 who walked into the house to see blood where the TV  
12 and property used to be.

13           For -- you know, I may have gotten over one,  
14 but to come back and do it again, I mean -- and this  
15 time it was so, you know, not thought out that he  
16 propped the door open to let the dog out to buy  
17 himself some more time inside the house, to  
18 completely clear my house out.

19           So it was not minimal stuff taken, to include  
20 my duty weapon and my personal weapon. There are  
21 two weapons that he's taken out of the hands of me  
22 and put in God knows whose hands. I mean, I protect  
23 and serve, and for him to take the weapons from me  
24 and give them to somebody who can use them against  
25 me and any other citizen I feel like is a little bit

1           too much. I don't -- I do want to ask for the  
2           maximum just because of that. He's yet to say where  
3           these weapons are. It doesn't -- it's just getting  
4           swept over it like it doesn't even exist. I could  
5           care less about my property. I mean, some of it had  
6           sentimental value. I had jewelry, I mean, stuff I'm  
7           never going to be able to replace. I don't care  
8           about that stuff.

9           I get victimized any time I come home late at  
10          night. I mean, if I'm coming home by myself, I  
11          still think about it, and I'm sure Ms. Rawl does  
12          too. It's something you never really get over.  
13          It's a very uneasy feeling. And that's -- I mean, I  
14          just wanted to bring that to your attention, that it  
15          was my son who discovered it. I mean, he walked  
16          into that house. He was 14 or 15 at the time.

17          THE COURT: I can't imagine.

18          MS. MAYES: Your Honor, as to record, I think  
19          the only distinction there is that there is a  
20          dispute. The Defense maintains that the attempted  
21          armed robbery is actually common law robbery.

22          THE COURT: You said he's earned credit since  
23          December [sic] 30th of 2014?

24          MR. MCMULLEN: Yes, sir.

25          THE COURT: All right. Anything else?

1 MS. MAYES: Nothing from the State, Your Honor.

2 THE COURT: Mr. McMullen?

3 MR. MCMULLEN: (Shakes head.)

4 THE COURT: All right. On the burglary second  
5 non-violent, ten years, credit for days since  
6 December 30th, '14. On the burglary second violent,  
7 sentence is 15 years. He gets days' credit from  
8 December 30th of 2014. On the four burglary firsts,  
9 which is the balance of the indictments, I can't  
10 come under 20 years. It's straight days, all days  
11 since January 30th of 2013. Y'all did a fine job  
12 getting this case put together and worked out, but I  
13 can't come under 20. I'm sorry.

14 MS. MAYES: Thank you, Your Honor.

15 MR. MCMULLEN: Thank you, Judge.

16 (Off-the-record discussion.)

17 THE COURT: I want to amend that on the record.  
18 That's 12 months. He gets days' credit since  
19 January 30th of 2014.

20 MS. MAYES: That's correct, Your Honor.

21 MR. MCMULLEN: Yes, sir. Thank you.

22 -- END OF TRANSCRIPT OF RECORD --

23

24

25

## C E R T I F I C A T E

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 14th of July, 2016.

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

October 4, 2017

s/Bethanie K. Creppon

Bethanie K. Creppon  
Circuit Court Reporter

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

County of Lexington

2017 JUN 12 PM 3:00

D. Morant 8465  
Full name and prison number (if any) of Applicant )

v. )

State of South Carolina )

APPLICATION FOR  
POST-CONVICTION RELIEF

LEXINGTON COUNTY COURT  
2017 CP 32 02430

**INSTRUCTIONS B READ CAREFULLY**

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

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

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

1. Place of detention Broad River Correctional Institution

2. Name and location of Court which imposed sentence Lexington County Court  
of General Session

3. Name(s) of co-defendant(s) (if any) N/A

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2015-65-21-00272 2014 A 212020 1465, 466, 468

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*[Signature]*

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) July 15, 2014
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty
- (b) after a plea of not guilty \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_

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

8. If you answered Ayes@ to (7), list:

- (a) the name of each Court to which you appealed:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (c) the date of each such result:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

9. If you answered Ano@ to (7), state your reasons for not so appealing:

- (a) N/A

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*[Handwritten Signature]*

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) Ineffective Assistance of Counsel
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) Counsel was Ineffective for failing to Investigate DNA findings
- (b) along with place of testing. see Ard v. Catoe, 642 S.E.2d 590, 591
- (c) (2007)

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

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? \_\_\_\_\_
- (d) any other petitions, motions or applications in this or any other Court? N/A

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

- (a) the specific nature thereof:
  - i. Petition for writ of Certiorari
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. South Carolina Supreme Court - Columbia, SC 29211
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

**A TRUE COPY**  
*Chill Carter*  
 Lex. Co. C.C.C.P., G.S. & F.C.

- iv. \_\_\_\_\_
- (c) the disposition thereof:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (d) the date of each such disposition:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

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

NO

15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
    - i. N/A
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (b) the proceedings in which each ground was raised:
    - i. N/A
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_

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*[Signature]*

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

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) This is first opportunity the Applicant has have to
- (b) Present these Issues
- (c) \_\_\_\_\_

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? \_\_\_\_\_
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? \_\_\_\_\_

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

- (a) the name and address of each attorney who represented you:
  - i. Public defender Mrs Elizabeth Fullwood -  
Michel D. McMullin Attorney
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. N/A
  - ii. N/A
  - iii. N/A

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

Reduction of sentence and Any other Relief this court deems proper and just

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA )  
County of Richland )

VERIFICATION

I, Joseph MORANT, 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.

Joseph MORANT 7-6-17

SWORN to and subscribed before me this 5th day of JULY, 2017.

Janelle T. Spearman (L.S.)  
Notary Public

My Commission Expires

JANELLE T. SPEARMAN  
Notary Public - State of South Carolina  
My Commission Expires  
August 26, 2025

A TRUE COPY

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

2017 CP 32 02430

ORIGINAL

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

I, Joseph O MOANT 184215, 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.

Joseph O. Moant
Applicant

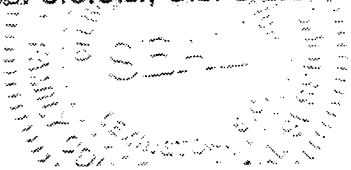
SWORN or affirmed to and subscribed before me this 5th day of July 2017.

Janelle T. Spearman
Notary Public

My Commission Expires: JANELLE T. SPEARMAN
Notary Public - State of South Carolina
My Commission Expires August 26, 2025

A TRUE COPY

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



STATE OF SOUTH CAROLINA

COUNTY OF

ORIGINAL 43  
IN THE COURT OF COMMON PLEAS

2017 JUL 10 PM 3:00

CIVIL ACTION COVERSHEET

Joseph O. MORANT-184215

Plaintiff(s)

vs.

Defendant(s)

-CP-

2017 CP 3202430

(Please Print)

Submitted By:

Address:

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
- NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- |  |  |   |  |
|--|--|---|--|
| <p><b>Contracts</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Constructions (100)</li> <li><input type="checkbox"/> Debt Collection (110)</li> <li><input type="checkbox"/> Employment (120)</li> <li><input type="checkbox"/> General (130)</li> <li><input type="checkbox"/> Breach of Contract (140)</li> <li><input type="checkbox"/> Other (199)</li> </ul>   | <p><b>Torts - Professional Malpractice</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Dental Malpractice (200)</li> <li><input type="checkbox"/> Legal Malpractice (210)</li> <li><input type="checkbox"/> Medical Malpractice (220)</li> <li>Previous Notice of Intent Case #<br/>20 -CP-</li> <li><input type="checkbox"/> Notice/ File Med Mal (230)</li> <li><input type="checkbox"/> Other (299)</li> </ul>  | <p><b>Torts - Personal Injury</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Assault/Slander/Libel (300)</li> <li><input type="checkbox"/> Conversion (310)</li> <li><input type="checkbox"/> Motor Vehicle Accident (320)</li> <li><input type="checkbox"/> Premises Liability (330)</li> <li><input type="checkbox"/> Products Liability (340)</li> <li><input type="checkbox"/> Personal Injury (350)</li> <li><input type="checkbox"/> Wrongful Death (360)</li> <li><input type="checkbox"/> Other (399)</li> </ul> | <p><b>Real Property</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Claim &amp; Delivery (400)</li> <li><input type="checkbox"/> Condemnation (410)</li> <li><input type="checkbox"/> Foreclosure (420)</li> <li><input type="checkbox"/> Mechanic's Lien (430)</li> <li><input type="checkbox"/> Partition (440)</li> <li><input type="checkbox"/> Possession (450)</li> <li><input type="checkbox"/> Building Code Violation (460)</li> <li><input type="checkbox"/> Other (499)</li> </ul>  |
| <p><b>Inmate Petitions</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> PCR (500)</li> <li><input type="checkbox"/> Mandamus (520)</li> <li><input type="checkbox"/> Habeas Corpus (530)</li> <li><input type="checkbox"/> Other (599)</li> </ul>  | <p><b>Judgments/Settlements</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Death Settlement (700)</li> <li><input type="checkbox"/> Foreign Judgment (710)</li> <li><input type="checkbox"/> Magistrate's Judgment (720)</li> <li><input type="checkbox"/> Minor Settlement (730)</li> <li><input type="checkbox"/> Transcript Judgment (740)</li> <li><input type="checkbox"/> Lis Pendens (750)</li> <li><input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)</li> <li><input type="checkbox"/> Other (799)</li> </ul> | <p><b>Administrative Law/Relief</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Reinstate Driver's License (800)</li> <li><input type="checkbox"/> Judicial Review (810)</li> <li><input type="checkbox"/> Relief (820)</li> <li><input type="checkbox"/> Permanent Injunction (830)</li> <li><input type="checkbox"/> Forfeiture-Petition (840)</li> <li><input type="checkbox"/> Forfeiture-Consent Order (850)</li> <li><input type="checkbox"/> Other (899)</li> </ul>  | <p><b>Appeals</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Arbitration (900)</li> <li><input type="checkbox"/> Magistrate-Civil (910)</li> <li><input type="checkbox"/> Magistrate-Criminal (920)</li> <li><input type="checkbox"/> Municipal (930)</li> <li><input type="checkbox"/> Probate Court (940)</li> <li><input type="checkbox"/> SCDOT (950)</li> <li><input type="checkbox"/> Worker's Comp (960)</li> <li><input type="checkbox"/> Zoning Board (970)</li> <li><input type="checkbox"/> Administrative Law Judge (980)</li> <li><input type="checkbox"/> Public Service Commission (990)</li> <li><input type="checkbox"/> Employment Security Comm (991)</li> <li><input type="checkbox"/> Other (999)</li> </ul> |
| <p><b>Special/Complex/Other</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Environmental (600)</li> <li><input type="checkbox"/> Automobile Arb. (610)</li> <li><input type="checkbox"/> Medical (620)</li> <li><input type="checkbox"/> Other (699)</li> <li><input type="checkbox"/> Pharmaceuticals (630)</li> <li><input type="checkbox"/> Unfair Trade Practices (640)</li> <li><input type="checkbox"/> Out-of State Depositions (650)</li> <li><input type="checkbox"/> Sexual Predator (510)</li> </ul> |  |   |  |

A TRUE COPY

Submitting Party Signature: Joseph O. Morant  
Lex. Co. C.C.O.P., G.S. & T.

Date:

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
	)	
Joseph O. Morant	)	C.A. No. 2017-CP-32-02430
S.C.D.C. No. 00184215	)	
	)	
Applicant,	)	
	)	
v.	)	<b>RETURN TO APPLICATION</b>
	)	<b>FOR POST-CONVICTION RELIEF</b>
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent hereby submits it's Return to Mr. Joseph Morant's Application for Post-Conviction Relief (PCR), filed July 10, 2017. Respondent requested the Transcript from Applicant's guilty plea on July 18, 2017, but has yet to receive it from Court Administration's Office. Respondent therefore reserves the right to amend this Return upon receipt and review of the transcript:

**I.**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to an order of commitment of the Clerk of Court for Lexington County. The Applicant was indicted at multiple 2015 term of the Court of General Sessions for Lexington County for two counts of Burglary 2<sup>nd</sup> Degree and three counts of Burglary 1<sup>st</sup> Degree, (2015-GS-32-01390; 2015-GS-32-01152; 2015-GS-32-01149; 2015-GS-32-00774; 2015-GS-32-01153). The Applicant was represented by Michael McMullen, Esq. and Elizabeth Fullwood, Esq., on the charges. On July 4, 2016, Petitioner pled guilty as charged. The Honorable Eugene Griffith heard and accepted the plea of Applicant, and sentenced Applicant to 10 years, 15 years, 20 years, 20 years, and 20 years, respectively, with all sentences to run concurrently.

Applicant did not seek direct appellate review of his plea or sentencing. Attorney Ashley McMahan Esq. was assigned as PCR counsel for Applicant.

On July 10, 2017, Applicant filed his Application for Post-Conviction Relief, in which he raised the following claims:

- a. Ineffective Assistance of Counsel for failing to investigate DNA findings along with place of testing

(See 2017 Post-conviction Relief Application, pp. 3).

## II.

### MERITS

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. *United States v. Cronin*, 466 U.S. 648, 658, 104 S. Ct. 2039, 2046, 80 L. Ed. 2d 657 (1984). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); *Hill v. Lockhart*, 474 U.S. 52, 57, 106 S. Ct. 366, 370 (1985); *Butler*, 334 S.E.2d 813. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Strickland*, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong,

attorney performance is measured by its "reasonableness under professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625, (citing *Strickland*). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

In the context of guilty pleas, *Strickland* is still the applicable test, but it's application is directed toward determining whether the plea was voluntarily, knowingly, and intelligently entered. *Hill v. Lockhart*, 474 U.S. 52, 57, 106 S. Ct. 366, 370 (1985); *Hyman v. State*, 397 S.C. 35, 43, 723 S.E.2d 375, 379 (2012) (citing *Anderson v. State*, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000)).

A defendant who enters a plea on advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial.

*Id.* (citing *Holden v. State*, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011)). A plea is proper if it can be shown that a defendant was "aware of the nature and crucial elements of the offense, the maximum and any minimum penalty, and the nature of the constitutional rights being waived."

*Id.*

- i. **Applicant fails to demonstrate error or prejudice relating to his claim of ineffective assistance of counsel.**

The Respondent contends that Applicant's plea counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant has failed to assert facts

sufficient to prove error on the part of counsel necessary to show ineffective assistance of counsel.

The PCR Application provides only a single line of explanation, alleging counsel did not “investigate DNA findings along with place of testing.” (PCR Application, pp. 3). Applicant has not set forth any factual basis that DNA findings were available, improperly collected, inaccurate, or even potentially beneficial to his defense. Without showing that there were DNA findings *and* a basis in which to warrant *investigation* of them, there can be no error by counsel. Note, that it is perfectly possible that counsel reviewed and considered the DNA findings in her efforts to evaluate the case and advise Applicant. At any rate, there is no indication or explanation as to why an investigation of the DNA findings and place of testing would have any evidentiary value in defense of the charges against Appellant. Applicant’s assertions are merely bald allegations without factual support, and therefore facially insufficient to overcome the presumption of adequate assistance by counsel.

Additionally, Applicant fails to indicate precisely which charges the alleged DNA evidence would potentially apply. Applicant plead guilty to five separate charges of burglary, committed on five separate dates, at four different residences; the Application is silent as to which charge the alleged DNA evidence would even correspond.

For the reasons above, Applicant has failed to prove deficient error under *Strickland*, and the claim for ineffective assistance of counsel must therefore be denied.

*ii. Applicant fails to show prejudice in the alleged failures of counsel in investigating the DNA evidence and its place of testing.*

The Respondent contends that the alleged errors of Applicant’s plea counsel fail to demonstrate prejudice against Applicant, as required under *Strickland*. Applicant has failed to assert facts sufficient to show prejudice necessary to establish ineffective assistance of counsel.

As stated above, the PCR Application provides only a single line of explanation, alleging counsel did not investigate DNA findings and the place in which they were tested. Even if error can be found on the part of plea counsel, which Respondent argues above is lacking, there must also be a showing of prejudice upon the Applicant resulting from the error such that Applicant *would not have plead guilty and insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 57, 106 S. Ct. 366, 370 (1985).*

In the instant case, Applicant has failed to articulate how the absence of counsel's alleged failure to investigate DNA evidence would have influenced his case and his decision to plead guilty. Likewise, Applicant has not articulated what deficiency exists in the location of testing. The Application demonstrates two allegations, but no assertion as to how the absence of these two errors would have resulted in a different outcome. Applicant has also failed to demonstrate or even allege that an investigation of the DNA findings and the location of testing would have produced some reasonable basis for defense of his charges.

Lastly, with five separate charges of burglary, three of which all receiving twenty (20) year sentences, Applicant has not demonstrated how the DNA evidence relating to any one charge would cause him to reconsider his guilty plea to the remaining charges which would have no relation to the alleged DNA issues. There is no showing that Applicant would have received a differing sentence in the absence of the alleged deficiencies of counsel, nor a showing that his decision to plead guilty was in anyway influenced.

Even if the sparse allegations of the Application are true, that would not negate the fact that Applicant was being charged with five different crimes and sentenced to three different 20 year sentences. Applicant's decision to plead guilty would not have changed even if the vague alleged issues concerning DNA findings had not occurred.

**iii. Applicant plea was voluntarily given, and knowingly and intelligently made before Judge Griffith.**

Upon information and belief, Respondent contends that the colloquy of Judge Griffith ensured that Applicant's guilty plea was properly qualified and that Applicant knew his charges, the elements requiring proof by the state, his potential sentences, knew the evidence against him, and knew the rights he was waiving in proceeding to plead guilty. Consequently, there is no basis to overturn Applicant's plea.

A guilty plea can only be attacked on PCR proceedings for having been involuntarily, unknowingly, or unintelligently made. *Hill v. Lockhart*, 474 U.S. 52, 57, 106 S. Ct. 366, 370 (1985). Courts ensure that this standard is met by conducting a thorough questioning of each defendant to ensure the defendant understands the crimes for which they are charged, the penalties that can accompany the charges, and the rights they would be waiving in choosing to plea. Additionally, courts will generally inquire as to whether the individual is pleased with their attorney or needs any additional time with their attorney to consider the case or the plea.

In the case at hand, Applicant fails to show any reason for doubt that he was anything other than well aware of all the necessary information to make a voluntary, knowing, and intelligent decision that pleading guilty was in his best interest. The judge's colloquy ensures this, and if Applicant had made known the alleged concerns to the judge during his plea, the Court would not have accepted the plea. Applicant admitted guilt and waived rights to trial on the basis that the evidence against him was too great.

When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea. He may only attack the voluntary and intelligent character of the plea. . ."

*Tollett v. Henderson*, 411 U.S. 258, 267, 93 S.Ct. 1602, 36 L.E.2d 235 (1973). Applicant's allegations against plea counsel would not change the voluntary and intelligent character of his plea and would not lead to a differing result.

For the above reasons, the Application for Post-Conviction Relief must be denied for failure to show error or prejudice resulting from alleged DNA findings and testing such that Applicant would have insisted on going to trial on his five burglary charges. The necessary prongs of *Strickland* have not been met, and the plea must stand.

## VI.

Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law. However, if upon amendment or otherwise, the Court finds that the allegation of ineffective assistance of counsel raises questions of fact the record does not conclusively refute, then Respondent requests that an evidentiary hearing be held to fully resolve such issues. See *Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

## VII.

In the event this Court finds that an evidentiary hearing is necessary, Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code Ann. § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing.

**VIII.**

Each and every allegation contained within the application not either expressly admitted, qualified, or explained is hereby denied. Respondent reserves all rights to amend this Return upon receipt of the Applicant's plea transcript.

**IX.**

WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

ALAN WILSON  
Attorney General

DONALD J. ZELENKA  
Deputy Attorney General

MELODY J. BROWN  
Senior Assistant Deputy Attorney General

W. JOSEPH MAYE  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

September 13, 2017

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF LEXINGTON )  
 )  
 )  
 )  
 Joseph O. Morant, #184215, )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

---

IN THE COURT OF COMMON PLEAS

2017-CP-32-2430

AFFIDAVIT OF SERVICE BY MAIL

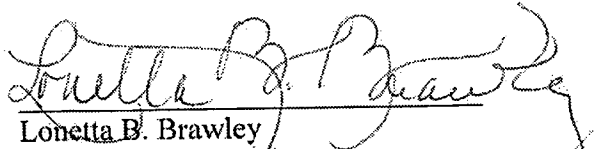
1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return**, with attachments, in the above-captioned matter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

Ashley McMahan, Esquire  
 P. O. Box 5501  
 West Columbia, SC 29171

**RETURN ATTACHMENT LIST:**

- (1) PCR Application
- (2) Lexington County Clerk's Records
- (3) SCDC Records

DATED this 13<sup>th</sup> day of September, 2017.

  
 Lonetta B. Brawley  
 Legal Assistant to W. Joseph Maye  
 Assistant Attorney General

1 State of South Carolina )  
 2 County of Lexington )  
 3 Joseph O. Morant, )  
 4 Applicant/Plaintiff, )  
 5 vs. )  
 6 State of South Carolina, )  
 7 Respondent/Defendant. )  
 8 \_\_\_\_\_ )

In the Court  
 Of Common Pleas  
 Case No.: 201-CP-32-02430

Transcript of Record

9  
 10 August 1st, 2018

11 Lexington, South Carolina

12 BEFORE:

13 The Honorable Perry H. Gravely, Judge

14  
 15 APPEARANCES:

16  
 17 Ashley A. McMahan, Esquire  
 18 Attorney for the Applicant/Plaintiff

19 Kelly Oppenheimer, Assistant Attorney General  
 20 Attorney for the Respondent/Defendant

21 ALSO PRESENT:

22 Joseph O. Morant

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8	MICHAEL McMULLEN		
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17	EXHIBITS		
18	NO. DESCRIPTION	ID	EVDS.
19	NONE		
20			
21			
22			
23			
24			
25			

1 Thereupon, the following proceedings were had,

2 MS. OPPENHEIMER: May it please the Court, Your  
3 Honor.

4 THE COURT: Yes.

5 MS. OPPENHEIMER: This is Joseph Morant versus the  
6 State of South Carolina. Docket number 2017-CP-32-02430.  
7 During its March 2015 term the Lexington County Grand  
8 Jury indicted applicant for first degree burglary.  
9 Thereafter during its May 2015 term the grand jury  
10 indicted applicant for second degree burglary violent and  
11 two additional counts of first degree burglary.  
12 Applicant was again indicted by the Lexington County  
13 Grand Jury during its June 2015 term for second degree  
14 burglary non violent. Michael D. McMullen represented  
15 him on these charges and Assistant Solicitor Suzanne  
16 Mayes of the Eleventh Circuit Solicitor's Office  
17 prosecuted the case.

18 On July 14th, 2016 applicant appeared before the  
19 Honorable Eugene C. Griffith, Junior and pled guilty as  
20 indicted to all charges. Pursuant to a negotiated  
21 sentence Judge Griffith sentenced applicant to a term of  
22 imprisonment of 20 years for each first degree burglary  
23 charge, 15 years for the second degree burglary violent  
24 charge, and 10 years for the second degree burglary non  
25 violent charge which were to run concurrently. Applicant

1 did not appeal.

2 On July 10th, 2017 applicant filed an application  
3 for post conviction relief alleging ineffective  
4 assistance of counsel for failing to investigate DNA  
5 findings and the place of testing. On September 13th,  
6 2017 respondent made its return requesting an evidentiary  
7 hearing be held. Thereafter on July 16th, 2018 through  
8 his counsel applicant amended his application to include  
9 allegations that counsel was ineffective due to a  
10 conflict of interest and for failing to acquire  
11 information regarding the footprints the State had.  
12 Applicant is present today and represented by Ashley  
13 McMahan.

14 THE COURT: Glad to hear from you. Any opening  
15 remarks?

16 MS. McMAHAN: Yes, Your Honor. That is our three  
17 main issues, Your Honor.

18 THE COURT: All right.

19 MS. McMAHAN: The applicant calls Mr. Morant to the  
20 stand.

21 Thereupon,

22 JOSEPH O. MORANT

23 after having been first duly sworn, testified as follows,

24 DIRECT EXAMINATION

25 BY MS. McMAHAN:

1 Q. Would you state your name please.

2 A. Joseph Odell Morant.

3 Q. Did you file this PCR application?

4 A. Yes, ma'am.

5 Q. In your application you talk about DNA findings and  
6 issues related to that. Well, before we get into that, who  
7 represented you?

8 A. In the beginning Ms. Elizabeth "Beth" Fullwood.  
9 Then Michael D. McMullen took over my case.

10 Q. So Mr. McMullen ultimately ended up representing  
11 you?

12 A. Yes, ma'am.

13 Q. Let's get back to the DNA issue. What do you want  
14 to tell the Court about the DNA issue that you had?

15 A. Well, on the DNA, in the court case they was telling  
16 me like at the beginning that SLED tested my DNA and I found  
17 out in the end that they said it was a private company that  
18 was out of Florida that tested the DNA. You know, that was  
19 one of the issues.

20 Q. Okay. Did you ever get to see that DNA test?

21 A. Uhm, well, yeah, I saw the, I seen the DNA test.  
22 Yes, ma'am. That was on my transcript.

23 Q. What didn't you like about the fact that there was a  
24 private company that did it versus SLED?

25 A. Well, because basically they told me that's one of

1 the reasons why, you know, I chose to plead guilty because  
2 when they said that SLED did it, you know, I was like, SLED,  
3 you know, that was kind of scary so, you know, that kind of  
4 made me say that maybe I might need to plead if SLED did it  
5 but then I found out that they said that, you know, it was a  
6 privately owned company. They said that it didn't make much  
7 of a difference though.

8 Q. So if you had known that it was a private company,  
9 would you have had questions about what you were gonna do?

10 A. Yes, ma'am.

11 Q. But you didn't find that out until after you pled  
12 guilty?

13 A. Yes, ma'am.

14 Q. So tell me about the issue related to Mr. McMullen  
15 having a conflict with the victim?

16 A. Well, he told me that he went to school with one of  
17 the victims, you know, and that she was a nice person, you  
18 know, she -- He hated that it happened to her, you know, and  
19 not only that, he had told me that his house had been  
20 burglarized before and he just stressed the point how he hate  
21 that type of, you know, he hated that type of crime, you know.  
22 He was telling me that, you know, I don't know if your house  
23 has ever been burglarized but it's traumatic and, you know,  
24 it's, you know, you know...

25 Q. So did you feel like that he might not have had your

1 best interest when he was telling you about all of that?

2 A. Yes, ma'am. Because, you know, I mean, it was kind  
3 of hard because I have dealt with him in the past and I have  
4 feelings for him. We was pretty close, you know, but I was  
5 just caught in the middle because I didn't know how before I  
6 pled guilty, me and him did a lot of odds and ends, stuff like  
7 that and he kept telling me you're gonna get a life sentence,  
8 you know, and you shouldn't have did the crime and you going  
9 to prison, you know. It's just --

10 Q. So he told you that you could get a life sentence?

11 A. Well, he told me I was gonna get a life sentence if  
12 I didn't take the plea bargain.

13 Q. And you ultimately pled to what the plea bargain  
14 was?

15 A. Yes, ma'am. Yes, ma'am. And my first lawyer had  
16 told me that really that she could get me --

17 MS. OPPENHEIMER: Objection. Hearsay.

18 THE COURT: All right. It's all right. I'll give  
19 it the weight that is appropriate.

20 BY MS. McMAHAN:

21 Q. What did Ms. Fullwood tell you?

22 A. She had told me that she could get me 15 years, you  
23 know, and in actuality really he didn't do much to my case  
24 other than - she already had done did the majority of the  
25 work, you know, with the 15 year plea and then all of a sudden

1 I get 20 years, you know, so...

2 Q. Okay. And so what was the issue with the  
3 footprints?

4 A. Well, I mean, I never, the only thing I know they  
5 said they had footprints. That's all I knew.

6 Q. So you never saw anything about them?

7 A. No, ma'am.

8 Q. Did you meet with Mr. McMullen and Ms. Fullwood and  
9 go over the evidence that they had against you?

10 A. Well, yeah. I had met with Ms. Fullwood in the  
11 beginning. I had tried to dismiss Ms. Fullwood like twice  
12 because, you know, I didn't feel like she was really doing  
13 much to help me but I was denied twice. I was denied, you  
14 know.

15 Q. Who told you about the footprints?

16 A. It was in my motion.

17 Q. So there was some information about footprints in  
18 your discovery motion?

19 A. Yes, ma'am. Yes, ma'am.

20 Q. Did you ask Mr. McMullen about those?

21 A. No, ma'am. Ms. Fullwood had said that once I had  
22 tried to dismiss her, get her off, I mean, fire her, terminate  
23 her from off my case, you know, the judge had to actually tell  
24 her that she needed to step up and start working helping me  
25 out a lot more on my case, and that's when at the end of my

1 case that's when she started saying that she was gonna hire  
2 like a private, I think a private firm to do the DNA testing  
3 and like her own mental health, you know, people that was  
4 a part of her, you know, I guess a part of her law firm or  
5 whatever. That's only when she started. I mean, once the  
6 judge had told her that, that's when she started taking  
7 more interest in my case but by that time my family had done  
8 said that they was pretty much, you know, they wanted me to  
9 have somebody else. Then that's when they got Michael  
10 McMullen to help me out.

11 Q. Mr. McMullen, has he represented you before?

12 A. Yes, ma'am.

13 Q. And you said, you alluded to some mental health  
14 stuff. Did you have some mental health issues related to this  
15 case?

16 A. Yes, ma'am.

17 Q. What were those?

18 A. Well, I suffer from psychosis, you know. I was  
19 getting disability from mental health, you know. I suffer  
20 from psychosis, PTSD and depression, stuff of that nature.

21 Q. So you have been dealing with mental health for  
22 almost your whole life; is that correct?

23 A. Yes, ma'am.

24 Q. Okay. Did you tell Ms. Fullwood that?

25 A. Yes, ma'am.

1 Q. Did Mr. McMullen know that?

2 A. Yes, ma'am. But Ms. Fullwood was like that don't  
3 really matter, you know.

4 Q. Okay.

5 A. Yeah.

6 Q. How many times did you talk to Mr. McMullen about  
7 your case before you pled guilty?

8 A. I only had him probably like two or three months  
9 before I went to court.

10 Q. Did he come see you in jail or were you out on  
11 bond?

12 A. Came to see me in jail.

13 Q. How many times did you see him in jail?

14 A. I think probably about three times. I think two or  
15 three times, something like that.

16 Q. What did you guys talk about?

17 A. Well, we just talked about how if I get found  
18 guilty, you know, I was gonna get life without parole, you  
19 know. He used to tell me about how much he care about me. He  
20 don't want to see me get life, you know. Yeah.

21 Q. So did he go over what each of the charges would  
22 carry, what the possible sentences would be?

23 A. Ms. Fullwood did but he didn't.

24 Q. Did you go over all the discovery with Mr.  
25 McMullen?

1           A.    No.  I never just went over the whole case with  
2   him.

3           Q.    Did he have the discovery?

4           A.    Yes.  Yes.  He had the discovery.

5           Q.    Okay.  Did you ever tell him you wanted to go to  
6   trial?

7           A.    Well, yes.  I told him that I wanted to go to trial  
8   but I was kind of like, he was like with the DNA and stuff  
9   that he said they had and she said they had I was like I don't  
10  think I better, you know.

11          Q.    So once you found out about the DNA, you decided to  
12  try to see what kind of deal you could get?

13          A.    Yes, ma'am.

14          Q.    So what you pled to was that always what your offer  
15  was or did you have a different offer?

16          A.    At first she said it was like 20, I think it was 20  
17  to 25.

18          Q.    Okay.  And you pled the 15 to 20?

19          A.    Uh-huh.

20          Q.    Okay.  Did Ms. Fullwood or Mr. McMullen go over all  
21  your constitutional rights like your right to trial, your  
22  right to confront the witnesses and all that?

23          A.    Yes.  Yes.  Yes.

24          Q.    Did you know that you were giving up those  
25  constitutional rights when you went in front of the judge and

1     pled guilty?

2             A.    Yeah.  Yeah.

3             Q.    Okay.  What else do you want the judge to know about  
4     your case today?

5             A.    Well, I think the reason why, uhm, Mr. McMullen,  
6     like I said, you know, I really like him a lot but I think  
7     that being that I was limited with funds that it kind of  
8     slowed, you know, kind of, you know, being that we didn't  
9     really -- I can kind of understand because, you know, it's a  
10    job for him but, you know, even he said in the past even in my  
11    transcript how he had to let my case go the last time because  
12    I was limited in funds and he had to let the Public Defender  
13    take it, you know.  But I'm thinking that being that the funds  
14    wasn't there that he was kind of like rushing it and getting  
15    it over with because when I found out about the  
16    reconsideration that I could of - I didn't even know.  
17    Somebody else told me that I could have filed for  
18    reconsideration within 10 days, you know, and that kind of  
19    hurt me because I was like, wow, why didn't he, you know, try  
20    to file that for me.

21            Q.    Did you ever talked about a reconsideration?

22            A.    No.  Because I really didn't know nothing about no  
23    reconsideration.  I didn't find out about reconsideration  
24    until I came to prison.

25            Q.    Do you understand now that if you filed a motion for

1 reconsideration you could get less or more time?

2 A. Well, I understand now that you telling me. Yeah.

3 Q. Okay. What else do you want Judge Gravely to know  
4 about your case?

5 A. Well, that's pretty much it.

6 MS. McMAHAN: Answer any questions Ms. Oppenheimer  
7 has, okay?

8 THE COURT: Cross examination.

9 CROSS EXAMINATION

10 BY MS. OPPENHEIMER:

11 Q. Do you recall at your plea telling Judge Griffith  
12 that you had gone over each file with Mr. McMullen?

13 A. Each file?

14 Q. Each file on each of these cases, each of these  
15 burglaries?

16 A. I don't remember telling him that. I don't remember  
17 because I don't remember us going over each file. I don't  
18 think we went over each one.

19 Q. But if you told him that at the plea, that would be  
20 different than your testimony today?

21 A. Yes, ma'am.

22 Q. Did you give Mr. McMullen any potential leads or  
23 witnesses to investigate?

24 A. No, ma'am.

25 Q. And do you recall telling Judge Griffith that you

1 were satisfied with the advice and counsel of Mr. McMullen?

2 A. Yes, ma'am.

3 Q. And you told Judge Griffith that you were pleading  
4 guilty freely and voluntarily, correct?

5 A. Yes, ma'am.

6 Q. And that you were pleading guilty because you were,  
7 in fact, guilty of these six burglaries?

8 A. Yes, ma'am.

9 Q. And you also told him that no one had promised you  
10 anything, threatened you or coerced you into pleading guilty,  
11 correct?

12 A. Yes, ma'am.

13 Q. With regards to the DNA, that was a match to you,  
14 correct?

15 A. Yes. Yes, ma'am.

16 Q. And Judge Griffith also went over each of your  
17 rights at trial?

18 A. Excuse me, ma'am. It wasn't a match. It was only a  
19 match to like they said like two different burglaries not to  
20 -- Because it wasn't no DNA on no other burglaries. I think  
21 two or three they said.

22 Q. But they found your blood on a window that you had  
23 broken into in one of these houses, correct?

24 A. Yes, ma'am. But that was the house that they said I  
25 broke in twice and I know I didn't break into it twice.

1 Q. And they also found blood in another house that you  
2 had broken into, correct?

3 A. Yeah. Yes, ma'am.

4 Q. And do you recall the State reviewing the facts at  
5 your plea?

6 A. The facts at my plea?

7 Q. Yes.

8 A. Yes, ma'am.

9 Q. And you agreed with those facts, correct?

10 A. Yes, ma'am.

11 Q. And Judge Griffith went over each of your rights at  
12 trial with you, correct?

13 A. Yes, ma'am.

14 Q. And you told him that you understood each of those  
15 rights?

16 A. Yes, ma'am.

17 Q. And you told him that understanding those rights you  
18 still wanted to plead guilty?

19 A. Yes, ma'am.

20 Q. And at no point in time did you tell him that you  
21 wanted a trial?

22 A. No, ma'am.

23 Q. And you also told him that you were waiving your  
24 rights freely and voluntarily, correct?

25 A. Yes, ma'am.

1 Q. You testified that Mr. McMullen told you that he  
2 knew one of the victims. Did you ever ask to relieve Mr.  
3 McMullen?

4 A. No, ma'am.

5 Q. But you were aware that you could because you tried  
6 to get Ms. Fullwood off your case, too?

7 A. Yes, ma'am. But I didn't really think that much of  
8 it at that time.

9 Q. So it didn't bother you?

10 A. I thought about it but I didn't really -- I don't  
11 know.

12 Q. But it didn't bother you enough at the time to  
13 relieve him?

14 A. Well, I didn't have no choice and then I was at the  
15 end. I didn't want to -- I had done sit in the county jail  
16 for over two years. I was ready to get it all behind me.

17 Q. And you just wanted to plead guilty and put it  
18 behind you, correct?

19 A. Yes, ma'am.

20 MS. OPPENHEIMER: I have no further questions, Your  
21 Honor.

22 THE COURT: Any redirect?

23 MS. McMAHAN: No, Your Honor.

24 THE COURT: All right. Thank you. You may step  
25 down. Anything else from the applicant?

1 MS. McMAHAN: The applicant rests, Your Honor.

2 THE COURT: Okay. Glad to hear from the State.

3 MS. OPPENHEIMER: The State calls Michael McMullen.

4 Thereupon,

5 MICHAEL McMULLEN

6 after having been first duly sworn, testified as follows,

7 DIRECT EXAMINATION

8 BY MS. OPPENHEIMER:

9 Q. Good afternoon, Mr. McMullen. How are you doing?

10 A. I'm fine. Thank you.

11 Q. How long have you been practicing law?

12 A. Since 1992.

13 Q. Where are you employed?

14 A. I have my own law firm in Columbia.

15 Q. What percentage of your practice is criminal law?

16 A. A hundred.

17 Q. Has the majority of your time practicing law been  
18 criminal law?

19 A. Yes.

20 Q. Were you retained in this case?

21 A. Yes.

22 Q. Do you recall approximately when?

23 A. Probably about a month before the plea give or  
24 take.

25 Q. Were you able to review the discovery?

1 A. Yes.

2 Q. Did you review that with Mr. Morant?

3 A. Yes. I did.

4 Q. What evidence did the State have against Mr.  
5 Morant?

6 A. I can't remember in every case but they did have  
7 DNA. They had blood where he had broken the glass to get in.  
8 I believe they recovered stolen property at his residence when  
9 they executed a search warrant there. I'm not certain of that  
10 but one of the things stolen was a weapon and I think they  
11 found that.

12 Q. All right. And the DNA came back as a CODIS hit and  
13 matched Mr. Morant?

14 A. Yes.

15 Q. Did you have any reason to question those results?

16 A. No, ma'am.

17 Q. Did you have any reason to get them independently  
18 tested?

19 A. No, ma'am.

20 Q. Did you review each of these charges with Mr. Morant  
21 prior to the plea?

22 A. I did.

23 Q. Did you discuss potential sentences with him?

24 A. Yes.

25 Q. Did he ever indicate that he didn't understand

1 something?

2 A. No, ma'am.

3 Q. Did you review his constitutional rights?

4 A. Yes.

5 Q. At any point in time did he tell you that he wanted  
6 to go to trial?

7 A. Yes. He was really fighting this. The Solicitor  
8 here was pretty insistent that if he did not take the plea, he  
9 was gonna go to trial sooner rather than later; that she was  
10 seeking life without parole and as I recall his record would  
11 qualify him for that and I think she had noticed him properly  
12 under the statute for that. Not only that but some of these  
13 burglaries occurred, all of them in a dwelling. Well, all but  
14 two in a dwelling, I believe. They occurred at night. In one  
15 case he became armed. In that case it was a police officer's  
16 or a sheriff deputy whose house he broke into. That's the  
17 woman whom I knew. I was an Assistant Solicitor here from '95  
18 to '98 so some 15 years earlier and I happened to know that  
19 officer. She was also the one who had a dog that was used in  
20 service and I believe there was something about the dog biting  
21 him or getting loose. I forget exactly what but the dog  
22 somehow interacted with Mr. Morant.

23 But the family came to me saying we're afraid that  
24 he's gonna go to trial. He's gonna get life without parole  
25 and he will never see the light of day again and that was my

1 concern, too, and we had - I represented him many times over  
2 the years and we got some really miraculous results. I can't  
3 take credit for all of it but the good Lord was looking out  
4 for him for a long time and we had that history. We had a  
5 relationship I think with all the family. I know his mother  
6 Adamay Charlie. I know his brother worked at Jeffers Magill.  
7 I just developed trust over the years with the family and they  
8 came to me and said please talk to him and convince him and it  
9 was my belief I was doing good lawyer counseling by advising  
10 him to plead guilty and some day get out of prison and not  
11 make his mother see him go away for life.

12 Q. All right. And you advised him of his family's fear  
13 as well as your fear that he would be LWOPed if he proceeded  
14 to trial?

15 A. Absolutely.

16 Q. And ultimately was it his decision to plead  
17 guilty?

18 A. Yes, ma'am.

19 Q. If he had wanted to proceed to trial, would you have  
20 been prepared?

21 A. I would have had to be. Yes, ma'am.

22 Q. With regards to one of these victims did you have a  
23 close relationship with her?

24 A. No. In fact, if she walked in, I wouldn't know who  
25 she was. I just knew her professionally from having been here

1 15 years ago.

2 Q. Did you explain that to Mr. Morant?

3 A. I don't think so. I think that I told him I felt,  
4 you know, that I knew the lady but I certainly didn't present  
5 it as though she was my friend and I hate that you broke in  
6 her house or anything like that.

7 Q. Did you see any reason to be relieved based on that  
8 professional relationship?

9 A. No, ma'am.

10 Q. Did you have any bias from that?

11 A. No, ma'am.

12 Q. Do you recall any footprints that were found at any  
13 of the homes?

14 A. There was. I think I want to say it was on a door  
15 but I'm not certain of that. It may have been inside. I just  
16 don't recall but I do know there was an issue that that was  
17 part of their proof.

18 Q. And the footprint matched Mr. Morant?

19 A. I believe so. Yes. I'm not sure that they really  
20 did much of an analysis of it but it wasn't -- Let's say, you  
21 know, you can see he's a larger guy and has a big foot. It  
22 wasn't like this was a small footprint. It was consistent  
23 with Mr. Morant's foot size: In light of the blood DNA  
24 evidence, the proximity of the burglaries in time and place  
25 and finding blood in two of the places that matched him I

1 thought there was overwhelming evidence to convict him.

2 Q. Did you explain that to Mr. Morant?

3 A. Yes. In fact, I told him the way it was presented  
4 to me by the Solicitors is we'll try these cases until one  
5 sticks. If you get lucky on one, we're gonna keep trying him  
6 until we get a conviction.

7 Q. And based on all of the advice and information you  
8 gave him he decided to plead guilty?

9 A. Yes, ma'am.

10 MS. OPPENHEIMER: I have no further questions, Your  
11 Honor.

12 THE COURT: All right. Cross examination.

13 CROSS EXAMINATION

14 BY MS. McMAHAN:

15 Q. So you said you have been representing him for a  
16 long time. How long have you known him?

17 A. Probably I would say at least 15 years.

18 Q. How many times have you represented him in criminal  
19 matters?

20 A. Probably four.

21 Q. You said you thought there might have been stolen  
22 property at his residence?

23 A. Yeah. I could be wrong but I believe so.

24 Q. So if the evidence suggests that you could be wrong,  
25 you don't dispute that?

1 A. I don't dispute that.

2 Q. In the whole time that you have represented him has  
3 he had mental health issues?

4 A. Yes.

5 Q. What are they?

6 A. He suffers from depression.

7 MS. OPPENHEIMER: Objection. He's not a mental  
8 health expert.

9 THE COURT: I think he can tell what he knew though.

10 BY THE WITNESS:

11 A. Joseph has -- The biggest thing I think is post  
12 traumatic stress disorder. He was raped as a very young man,  
13 left in the woods, had to find his way home and I know that  
14 was a big factor in some of our early discussions about why he  
15 does, made some of the decisions he made but I know also he's  
16 prescribed some medications.

17 BY MS. McMAHAN:

18 Q. Has he ever had a mental evaluation by the court for  
19 all of this?

20 A. I don't know that it was by the court but I know  
21 that he has been seen and treated by Columbia Area Mental  
22 Health over the years. That's where he gets his medication I  
23 believe.

24 Q. So for most of his lifetime he's been seen by  
25 Columbia Area Mental Health?

1 A. Yes, ma'am. Since early age.

2 Q. In reviewing his medical records and everything  
3 these were the issues that were addressed in his medical  
4 records?

5 A. Yes, ma'am.

6 Q. Did he ever talk you about if he was psychotic or  
7 anything at the time this happened?

8 A. No, ma'am. No.

9 Q. Did he ever say he was on his medication at the time  
10 that this happened?

11 A. I believe he took his medication. I know sometimes  
12 he would have lapses where he didn't go get it or didn't have  
13 the money he needed or transportation but I think he generally  
14 took his medication.

15 Q. If he had not been on his medication, would that be  
16 a full defense or more of a mitigating factor or both?

17 A. It may have been a full defense. I don't know the  
18 extent of -- I just know that when I spoke with him he seemed  
19 lucid and like he was taking the medication back then.

20 Q. So you had no problems communicating with him?

21 A. No, ma'am.

22 Q. When you go over constitutional rights with  
23 somebody, how do you do that?

24 A. Pretty much, you know, I have done it with him more  
25 than once but pretty much basically tell them about the right

1 to a jury trial and the right to call witnesses and that I  
2 could cross examine the witnesses against him; that he  
3 wouldn't have to take the stand and nobody could use it  
4 against him if he chose not to. You know, he knows what a  
5 jury trial is and would ask intelligent questions along the  
6 way.

7 Q. Did he ever indicate to the officers or anything,  
8 did he make a statement that he did any of this?

9 A. I don't think so. I mean, not until the guilty  
10 plea.

11 Q. Did he ever give -- Did you sit down and ever  
12 explain to him the range of the sentencing offered?

13 A. Yes.

14 Q. Do you remember what you told him about it?

15 A. I believe he was looking at a maximum of 20 years  
16 and that the State had promised not to seek an additional five  
17 for the possession of a weapon during the commission of a  
18 violent crime.

19 Q. So did you explain to him that when he went in that  
20 day that he could be looking at anywhere between 15 and 20?

21 A. Yes, ma'am.

22 Q. What was your goal in that guilty plea?

23 A. 15.

24 Q. But ultimately he got 20; is that correct?

25 A. Yes, ma'am.

1 Q. What was significant about dropping the possession  
2 of a weapon during the commission of a violent crime?

3 A. Because the five years would have been consecutive  
4 to any sentence that he would have had to serve on the  
5 underlying charges.

6 Q. Was this a negotiated deal or a recommendation?

7 A. It was negotiated.

8 Q. As to the shoe print, did you know if the State ever  
9 took an impression of any shoes or anything that Mr. Morant  
10 owned?

11 A. I don't think that they did.

12 Q. So it was just based on the fact that it was a  
13 consistent foot size with his size in close proximity to the  
14 other houses or other places?

15 A. I think that that's right. I want to say that there  
16 was maybe some blood that helped form the print, helped leave  
17 the print but I'm not certain of that.

18 Q. Where did the blood come from?

19 A. He cut himself on the window trying to get in.

20 Q. Did all of these burglaries happen in the same night  
21 or were they over a period of several days?

22 A. I want to say they were over a period of about 10  
23 days to two weeks.

24 Q. Okay. Was it all in the same neighborhood area?

25 A. Yes.

1 Q. Okay. Anything else you would like the Court to  
2 know today?

3 A. I care a lot about Joseph and I hope he doesn't open  
4 this back up and face the possibility of life without  
5 parole.

6 MS. McMAHAN: Nothing further, Your Honor.

7 THE COURT: Any redirect?

8 MS. OPPENHEIMER: Very briefly, Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. OPPENHEIMER:

11 Q. Were you ever concerned with Mr. Morant's competency  
12 during your representation?

13 A. No, ma'am.

14 Q. And during that period of time you testified that he  
15 appeared lucid and sane?

16 A. Yes.

17 Q. And he appeared to be taking his medication?

18 A. Yes.

19 Q. So you had no reason to have him evaluated for  
20 competency or criminal responsibility?

21 A. No, ma'am. I don't think so.

22 MS. OPPENHEIMER: No further questions, Your  
23 Honor.

24 THE COURT: Step down. Anything further from the  
25 State?

1 MS. OPPENHEIMER: Nothing further, Your Honor.

2 THE COURT: All right. Any additional?

3 MS. McMAHAN: Your Honor, I would just ask that you  
4 review the entire record including the clerk's records  
5 for all the charges that had possibly been pending and  
6 review the statements that Mr. Morant gave today and make  
7 your decision accordingly.

8 THE COURT: All right. I'll do so. Mr. Morant, at  
9 your attorney's request I'll review this matter before I  
10 make a decision. I'll let the attorneys know as soon as  
11 possible. Good luck to you.

12 MR. MORANT: Thank you, sir.

13 THE COURT: You're allowed to leave. Thank you.

14 WHEREUPON, THE HEARING WAS CONCLUDED.

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CERTIFICATE OF REPORTER

(STATE OF SOUTH CAROLINA)

(COUNTY OF LEXINGTON )

I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R., and Official Circuit Court Reporter for the Eleventh Judicial Circuit in and for the State of South Carolina, do hereby certify that I reported the proceedings in the before captioned case in the Court of Common Pleas in and for the State of South Carolina on the 1st day of August, 2018.

I FURTHER CERTIFY that the forgoing 28 pages constitute a true and accurate record of said proceedings.

I FURTHER CERTIFY that I am neither related, counsel to, nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand at Lexington County, this 9th day of February, 2019.

  
By: s/ Steven E. LeBlanc

Steven E. LeBlanc, Sr., R.P.R.  
Eleventh Circuit Court Reporter  
State of South Carolina.

**ORIGINAL**

STATE OF SOUTH CAROLINA )  
 COUNTY OF LEXINGTON )  
 )  
 Joseph O. Morant, #184215, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

**IN THE COURT OF COMMON PLEAS  
FOR THE ELEVENTH JUDICIAL CIRCUIT**

Case No. 2017-CP-32-02430

**ORDER OF DISMISSAL**

2018 OCT 29 AM 8:14

FILED

This matter comes before the Court by way of an application for post-conviction relief filed July 10, 2017, by Joseph O. Morant (Applicant). The State (Respondent) made its return on September 13, 2017, requesting an evidentiary hearing be held. Thereafter, on July 16, 2018, Applicant, through his counsel, filed an amendment to the application for post-conviction relief. An evidentiary hearing into the matter was convened on August 1, 2018, at the Lexington County Courthouse before the Honorable Perry H. Gravely. Applicant was present at the hearing and represented by Ashley A. McMahan, Esquire. Assistant Attorney General Kelly Oppenheimer of the South Carolina Attorney General's Office represented Respondent.

Following a thorough review of the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations and denies this application with prejudice.

**PROCEDURAL HISTORY**

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. During its March 2015 term, the Lexington County Grand Jury indicted Applicant for first-degree burglary (2015-GS-32-00774). Thereafter, during its May 2015 term,

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the Lexington County Grand Jury indicted Applicant for second-degree burglary, violent (2015-GS-32-01152) and two additional counts of first-degree burglary (2015-GS-32-01149; -01153). Applicant was again indicted by the Grand Jury during its June 2015 term for second-degree burglary, non-violent (2015-GS-32-01390). Michael D. McMullen, Esquire, represented Applicant on these charges. Assistant Solicitor Suzanne Mayes, of the Eleventh Circuit Solicitor's Office, prosecuted the case. On July 14, 2016, Applicant appeared before the Honorable Eugene C. Griffith, Jr. and pled guilty as indicted to all charges. Judge Griffith sentenced Applicant to a term of imprisonment of ten years for second-degree burglary, non-violent, fifteen years for second-degree burglary, violent, and twenty years for each count of first-degree burglary. The sentences were to be served concurrently. Applicant did not appeal his plea or sentence.

#### CURRENT APPLICATION

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

1. Ineffective Assistance of Counsel.
  - a. Counsel was ineffective for failing to investigate DNA findings along with place of testing.

In his amendment to the application for post-conviction relief, Applicant raises the following additional grounds:

1. Ineffective Assistance of Counsel:
  - a. Counsel had a conflict of interest because he knew the victim; [and]
  - b. Failed to acquire information regarding the footprints the state had.

At the evidentiary hearing, Applicant proceeded forward on the allegations raised in both his original application for post-conviction relief and his amendment to the application for post-

*[Handwritten signature]*

conviction relief. Applicant also raised an allegation at the evidentiary hearing Counsel was ineffective for failing to have Applicant mentally evaluated.

#### STATEMENT OF FACTS

On November 23, 2013, Applicant first entered the home of Marie Rawl through a window<sup>1</sup>. Tr. 11. Applicant took various items in the home, including electronics and a laptop. Tr. 11-12. He also attempted to take Ms. Rawl's flat-screen television but was unable to, as indicated by the television being left in the yard. Tr. 12. That same evening, Applicant broke into the home of Jewel Gossett Rivera<sup>2</sup>, a law enforcement officer. Tr. 13. Applicant took a window air conditioning unit, as well as two televisions and several pieces of jewelry. Tr. 13. Applicant's fingerprints were found not only on the base of the air conditioning unit but also the point of entry to the home. Tr. 13.

Later, on December 24, 2013, at approximately 4:10 in the morning, law enforcement officers observed Applicant with an orange leaf blower. Tr. 15. That same item had been stolen earlier from a nearby outbuilding. Tr. 15.

Applicant again broke into Ms. Rawl's home during the nighttime hours of January 18, 2014, through January 19, 2014. Tr. 10. During this second break-in, Applicant used a cinder block to break one of the windows on the side porch<sup>3</sup>. Tr. 11. That time, he took the aforementioned television. Tr. 12. Applicant also returned to Ms. Gossett's home, taking the items that had been previously replaced. Tr. 13.

Applicant also broke into the home of Albert Herman, which was near Ms. Rawl's. Tr. 13-14. In that home, Applicant took electronics and foreign coins and left. Tr. 14. He re-entered the residence, however, through a back door while Mr. Herman was inside. Tr. 14. Mr.

<sup>1</sup> Applicant's blood was found on the window. Tr. 11.

<sup>2</sup> Ms. Gossett's home is located near Ms. Rawl's. Tr. 12-13.

<sup>3</sup> Applicant again left blood at the scene, this time on the door of the side porch. Tr. 11.

*PHV*

Herman called out to see who the robber was and saw an unknown suspect fleeing on a bicycle. Tr. 14. Law enforcement responded to the scene and stopped Applicant a short distance from the scene. Tr. 14. At that time, law enforcement found some of the stolen items in Applicant's possession. Tr. 14.

#### TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented the testimony of Michael D. McMullen, Esquire (Counsel). This Court also had before it a copy of Applicant's plea transcript, the records of the Lexington County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified on his own behalf. Applicant testified he was initially represented by Lexington Public Defender Elizabeth C. Fullwood, but then his family hired Counsel to represent him. He further testified counsel Fullwood told him he would receive a sentence of fifteen years. He also testified counsel Fullwood did the majority of the work on his case, and Counsel did not do much. Applicant testified he did not provide Counsel with any leads or witnesses to investigate.

Applicant also testified he met with Counsel two or three months prior to his guilty plea, and Counsel visited him in the jail two or three times. He testified he was close with Counsel, but they argued a lot, because Counsel would tell Applicant he was going to prison for life and that he "shouldn't have done it." He further testified Counsel told him if he were convicted, he would receive a sentence of life without the possibility of parole. He elaborated Counsel told him he did not want to see Applicant get a life sentence. He also testified, however, Counsel never reviewed the potential sentences with him, but counsel Fullwood did. He testified he did not review the discovery with Counsel, though Counsel had the discovery. Applicant did not

recall telling the plea court he had reviewed each case file with Counsel. He further testified they did review his constitutional rights, and he told Counsel he wanted to proceed to trial. He elaborated, however, he did not understand he was waiving those rights. Applicant further testified the first plea offer was for a sentencing range of twenty to twenty-five years, but he plead for a range of fifteen to twenty years.

Applicant testified the South Carolina Law Enforcement Division (SLED) tested the DNA evidence, which was found in the burglarized house, but then a privately owned company in Florida did. He further testified he saw the DNA test. He explained the DNA was a match to him and was a match to two different burglaries. He also testified this was one reason he pled guilty. He elaborated SLED is "scary," and he needed to plead guilty if SLED tested the DNA. He further elaborated he was unaware the private company was testing the DNA until after he pled guilty. He further testified there were footprints at the crime scene, which was included in the discovery motion. He testified, however, he did not see anything.

He also testified Counsel told him he went to school with one of the victims, and he hated this happened to her. He explained Counsel told him he hated this type of crime, and it is traumatic. He further explained Counsel told Applicant his house had been burglarized. Applicant further testified Counsel was caught in the middle. Applicant testified he did not ask for Counsel to be relieved, though he knew he could.

Applicant testified he suffers from psychosis, post-traumatic stress disorder, and depression. He explained he has been dealing with these diagnoses his whole life. He further explained he told both counsel Fullwood and Counsel about these diagnoses.

Applicant also testified at the plea, he told the court he was satisfied with the advice and counsel of Counsel. He testified he also informed the plea court he was pleading freely and

voluntarily and was pleading guilty because he had committed these six burglaries. He further testified he informed the plea court no one had threatened him, coerced him, or promised him anything in order for him to plead guilty. Applicant recalled the plea court reviewing each of his rights at trial with him, and he informed the plea court he understood each of those rights. He elaborated he told the plea court understanding each of those rights, he wanted to plead guilty. He further elaborated he told the plea court he was waiving his rights at trial freely and voluntarily. Applicant testified, however, he pled in order to put it behind him.

Following Applicant's testimony, Applicant rested his case. Respondent then presented the testimony of Counsel. Counsel testified he has been practicing law since 1992, and one hundred percent of his practice is criminal law. He testified he was retained to represent Applicant approximately one month prior to the plea. He further testified he had known Applicant for approximately fifteen years, and he has represented him four different times in a criminal matter.

He testified he was aware Applicant suffered from post-traumatic stress disorder, as Applicant was raped as a young man and left in the woods and, therefore, has undergone mental evaluation for most of his life. He further testified Applicant never told him he was psychotic. Counsel testified he never had the indication Applicant did not understand something. Indeed, Applicant would ask intelligent questions along the way. Counsel also testified at times, Applicant would have lapses in taking his medication, which could have possibly been a full defense. He further testified, however, Applicant seemed lucid and as though he was taking his medications, and he had no problems communicating with Applicant. Counsel explained he had no reason to seek a mental evaluation of Applicant.

He testified he discussed the elements of each charge with Applicant and also discussed potential sentences. He further testified he informed Applicant of his constitutional rights. Counsel also testified he reviewed the discovery with Applicant. He testified DNA evidence was obtained from blood left on a broken glass window, which was used to enter one of the homes. He explained he had no reason to question the results of the DNA and no reason to have the DNA independently tested. Counsel also testified when executing a search warrant at Applicant's home, law enforcement found the stolen property. He testified there was a footprint on the door of one of the homes, which matched Applicant. He explained there was not much analysis done with the print, but the size was consistent with that of Applicant. He further explained the State did not take an impression of the footprint, but it was consistent with Applicant. Counsel testified in light of the DNA evidence and the proximity of the scenes, the evidence was overwhelming. He further testified he explained this to Applicant.

He also testified Applicant wanted to proceed to trial, and they fought about that. He explained the solicitor was insistent on a trial sooner rather than later, and LWOP notice had been properly served. He further explained Applicant's family feared he would receive a sentence of LWOP at trial, and they asked Counsel to talk to Applicant. Counsel testified Applicant's family asked him to advise Applicant to plead guilty. He testified he advised Applicant of the possibility of a sentence of life without the possibility of parole. Counsel testified he explained the sentencing range of the plea offer, and that the offer was for a maximum sentence of twenty years. He explained he informed Applicant this was a negotiated offer for a range of fifteen to twenty years, and their goal was for fifteen years. He further testified it was Applicant's decision to plead guilty. Counsel explained had Applicant wanted to proceed to trial, he would have been prepared.

Counsel also testified he knew one of the victim's, who was a sheriff's deputy. He explained he was an assistant solicitor from 1995 to 1998, and he knew her fifteen years earlier. He further explained they did not have a close relationship, and he merely knew her professionally. Counsel also testified he told Applicant he knew this victim, but he did not present their relationship as being that of friends. He testified he was not biased, and he had no reason to be relieved.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

#### *Ineffective Assistance of Counsel*

In a post-conviction relief action, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant 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 trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. 441, 334 S.E.2d 813.

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

judgment. *Butler*, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115; 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." *Cherry*, 300 S.C. at 117, 385 S.E.2d at 625 (citing *Strickland*). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. In order to satisfy the prejudice prong of this test following a guilty plea, the applicant "must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

After careful review based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

#### *Counsel's alleged conflict of interest*

Applicant alleges Counsel was ineffective for having a conflict of interest. Specifically, Applicant alleges Counsel had a conflict of interest because he knew one of the victims. "An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant's." *Staggs v. State*, 372 S.C. 549, 551, 643 S.E.2d 690, 692 (2007). Furthermore, a conflict of interest occurs when "a defense attorney places himself in a situation inherently conducive to divided loyalties." *Lomax v. State*, 379 S.C. 93, 101, 665 S.E.2d 164,

168 (2008). "Until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for a claim of ineffective assistance of counsel arising from multiple representation." *Langford v. State*, 310 S.C. 357, 359, 426 S.E.2d 793, 795 (1993). "The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction." *State v. Gregory*, 364 S.C. 150, 152-53, 612 S.E.2d 449, 450 (2005).

Here, Counsel testified he knew the victim in a professional capacity when he was an assistant solicitor from 1995 to 1998, nearly fifteen years prior to Applicant's case. He further testified he was not biased due to this professional relationship, and he informed Applicant that he knew one of the victims. There is no indication whatsoever Counsel actively represented conflicting interests. Indeed, Counsel had a professional relationship with this victim well before Applicant's charges arose. This Court finds Counsel did not have a conflict of interest and, therefore, Applicant has failed to establish any deficiency or resulting prejudice. This Court further finds this allegation must be denied and dismissed with prejudice.

#### *Counsel's alleged failure to investigate*

Applicant further contends Counsel was ineffective for failing to investigate. Specifically, Applicant alleges Counsel was ineffective for failing to further investigate the DNA evidence and the footprints found at one of the scenes. "Counsel's concern is the faithful representation of the interest of his client and such representation frequently involves highly practical considerations as well as specialized knowledge of the law." *Tollett v. Henderson*, 411 U.S. 258, 267-68 (1973). "Although counsel should conduct a reasonable investigation into potential defenses, *Strickland* does not impose a constitutional requirement that counsel uncover

every scrap of evidence that could conceivably help their client.” *Tucker*, 350 F.3d at 442 (quoting *Green v. French*, 143 F.3d 865, 892 (4th Cir. 1998)). “In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” *Strickland*, 466 U.S. at 691; *Wiggins v. Smith*, 539 U.S. 510, 521-22 (2003). Moreover, “failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result.” *Porter v. State*, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357, *abrogated on other grounds by Smalls*, 422 S.C. 174, 810 S.E.2d 836 (citing *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)).

Here, Applicant wholly failed to identify what further investigation he wanted Counsel to do with the DNA evidence and the footprints. Indeed, Applicant admitted he did not provide Counsel with any independent leads or witnesses to investigate. Furthermore, Counsel testified he had no reason to question the DNA results and also had no reason to have the DNA independently tested. He also testified the footprint was consistent with that of Applicant. Given Applicant’s complete failure to identify any further investigation in which he wanted Counsel to take part, this Court finds Applicant has wholly failed to establish Counsel was deficient.

This Court further finds Applicant has failed to establish any resulting prejudice from the alleged deficiency. Applicant did not present any results of any additional tests performed on the DNA evidence or the footprints at the evidentiary hearing. Applicant’s bare assertions as to what further tests would have shown, without more, do not give rise to the level of proof required for Applicant to meet his burden. *See Porter*, 368 S.C. at 385-86, 629 S.E.2d at 357 (“Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when

the allegation is supported only by mere speculation as to result.”). Accordingly, this allegation must be denied and dismissed with prejudice.

*Counsel's alleged failure to have Applicant evaluated*

Applicant alleges Counsel was ineffective for failing to have Applicant psychologically evaluated. Applicant specifically contends because he has been diagnosed with post-traumatic stress disorder, psychosis, and depression, Counsel should have had Applicant evaluated. However, Applicant failed to present a psychological expert at the evidentiary hearing or offer any evidence of how such an expert would have changed his decision to plead guilty. Because Applicant neither produced such an expert “nor offered [his] testimony in some other manner consistent with the rules of evidence,” what his additional testimony would have been is “purely speculative.” *Bannister v. State*, 333 S.C. 298, 304, 509 S.E.2d 807, 810 (1998). This Court finds this allegation must be denied and dismissed with prejudice.

**CONCLUSION**

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

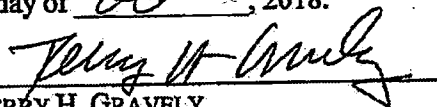
This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides if the applicant wishes to seek appellate review, post-

conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED this 12<sup>th</sup> day of Oct, 2018.

  
PERRY H. GRAVELLY  
Presiding Judge  
Eleventh Judicial Circuit

Pickens, South Carolina

WITNESSES

West Columbia Police Department

S Neel

Law Enforcement Case #: 1401863

LSM

ARREST WARRANT NUMBER

2014A3221101159

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

*M. D. [Signature]*

6/11/15

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015GS3201390

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JUNE TERM 2015

THE STATE

vs.

Joseph Odell Morant

CDR #: 0080

Indictment for

Burglary - second degree

§ 16-11-0312

DONALD V. MYERS, SOLICITOR



LEXINGTON COUNTY

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
 )

INDICTMENT FOR  
Burglary - second degree

§ 16-11-0312

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

That Joseph Odell Morant did in Lexington County, South Carolina on or about January 30, 2014 knowingly and willfully enter a dwelling, without consent and with the intent to commit a crime therein, including but not limited to the crime of larceny, to wit: the residence located at [REDACTED] in the West Columbia area of Lexington County, such being the dwelling of Albert Herman, in violation of § 16-11-312 (A) of the Code of Laws of South Carolina, 1976, as amended.

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

*Suzanne Mayes*  
ASSISTANT SOLICITOR

A TRUE COPY

*[Signature]*  
Lex. Ct. C.C.C.H., G.S. & F.C.



WITNESSES -

T. Griffin

West Columbia Police Department

Law Enforcement Case #: 1325840

LSM

ARREST WARRANT NUMBER

2013A3221101104

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

6/1/15

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015GS3201152

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MAY TERM 2015

THE STATE

vs.

Joseph Odell Morant

CDR #: 0086

Indictment for

Burglary - 2nd degree

§ 16-11-0312(B)

DONALD V. MYERS, SOLICITOR

JUN 24 2015

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
 )

INDICTMENT FOR  
Burglary - 2nd degree  
§ 16-11-0312(B)

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

That Joseph Odell Morant did in Lexington County, South Carolina on or about December 24, 2013 knowingly and willfully enter a building, without consent and with the intent to commit a crime therein, including but not limited to the crime of larceny, to wit: [REDACTED], such building being the property of James Corley, and the entry or remaining therein occurred during the nighttime, in violation of § 16-11-312 (B) of the Code of Laws of South Carolina, 1976, as amended.

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

A TRUE COPY

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

*Suzanne Meyer*  
ASSISTANT SOLICITOR

**WITNESSES**

Lexington County Sheriffs Department

R Jacob

Law Enforcement Case #: 14001498

LSM

**ARREST WARRANT NUMBER**

2014A3210700036

**ACTION OF GRAND JURY**

**JOHN DALL**

Foreperson of Grand Jury

Date:

5/4/15

**VERDICT**

Foreperson of Petit Jury

Date:

**DOCKET NO. 2015GS3201149**

**The State of South Carolina**

**County of Lexington**

**COURT OF GENERAL SESSIONS**

**MAY TERM 2015**

**THE STATE**

**vs.**

**Joseph Odell Morant**

**CDR #: 0079**

**Indictment for**

**Burglary - First degree**

**§ 16-11-0311**

**DONALD V. MYERS, SOLICITOR**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
 )

INDICTMENT FOR  
Burglary - First degree  
§ 16-11-0311

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

That **Joseph Odell Morant** did in Lexington County, South Carolina on or about January 26, 2014 did knowingly and willfully enter a dwelling, to wit: [REDACTED] being the dwelling of Jewell Gossett, without consent and with the intent to commit a crime therein and the entering or remaining occurred in the nighttime, in violation of § 16-11-311 of the Code of Laws of South Carolina, 1976, as amended.

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

*Suzanne Mayes*  
ASSISTANT SOLICITOR

A TRUE COPY

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

WITNESSES

West Columbia Police Department

S Neel

Law Enforcement Case #: 1401243

LSM

ARREST WARRANT NUMBER

2014A3221101171

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 3/16/15

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015GS3200774

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MARCH TERM 2015

THE STATE

vs.

Joseph Odell Morant

CDR #: 0079

Indictment for

Burglary - First Degree

§ 16-11-0311

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
 )

INDICTMENT FOR  
Burglary - First Degree

§ 16-11-0311

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

That **Joseph Odell Morant** did in Lexington County, South Carolina on or about January 18, 2014 through January 19, 2014, knowingly and willfully enter a dwelling, to wit: [REDACTED] being the dwelling of Marie Rawl, without consent and with the intent to commit a crime therein, such crime including but not limited to larceny, and the entering or remaining occurred in the nighttime, in violation of § 16-11-311 of the Code of Laws of South Carolina, 1976, as amended.

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

*Suzanne Mayes*  
ASSISTANT SOLICITOR

A TRUE COPY

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

WITNESSES

Lexington County Sheriffs Department

R Jacob

Law Enforcement Case #: 13021490

LSM

ARREST WARRANT NUMBER

2014A3210700045

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

5/4/15

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015GS3201153

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MAY TERM 2015

THE STATE

vs.

Joseph Odell Morant

CDR #: 0079

Indictment for

Burglary - First Degree

§ 16-11-0311

DONALD V. MYERS, SOLICITOR



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
 )

INDICTMENT FOR  
Burglary - First Degree

§ 16-11-0311

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

That **Joseph Odell Morant** did in Lexington County, South Carolina on or about November 23, 2013 did knowingly and willfully enter a dwelling, to wit: [REDACTED] being the dwelling of Jewell Gossett, without consent and with the intent to commit a crime therein and the entering or remaining occurred in the nighttime, in violation of § 16-11-311 of the Code of Laws of South Carolina, 1976, as amended.

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

*Suzanne Mayo*  
ASSISTANT SOLICITOR

A TRUE COPY

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