

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Michael G. Nettles, Circuit Court Judge

RECEIVED

AUG 27 2019

S.C. SUPREME COURT

MICHELLE S. ALLISON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-000290

APPENDIX

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ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD

5 Shundell Holmes, Ryan Johnson,)
6 Egor Dmitrienko, Otis Mason,)
7 Dustin Arrington, Michelle)
8 Allison, Matthew Dority,)
9 Marvin McDowell, peter Goins,)
Timothy Smith, Joseph Pearson,)
Jonathan Gash, Jerome Farmer.) July 24, 2017
Spartanburg, SC

10

11

12 B E F O R E:

13 HONORABLE J. MARK HAYES, II, JUDGE

14

15

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

16

ROBERT B. HALL, ESQUIRE
Attorney for Defendants Holmes, Johnson

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ANDREA LEAH PRICE, ESQUIRE
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MICHAEL DAVID MORIN, ESQUIRE
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Defendants sworn -- page 7.
No exhibits entered into evidence.

1 (Proceedings July 24, 2017)
2 THE COURT: If you are sitting in the gallery, if you
3 would, just come forward and have a seat in the jury box.
4 Shundell Holmes.
5 DEFENDANT HOLMES: Yes, sir.
6 THE COURT: Come right on up here, sir.
7 Ryan Johnson, come on up here, sir.
8 Egor Dmitrienko, come right up here, sir.
9 Otis Mason, come on up here, sir.
10 Dustin Arrington, come on up.
11 Michelle Allison.
12 DEFENDANT ALLISON: I'm over here.
13 THE COURT: Oh, there you are. Yes, ma'am.
14 Matthew Dority.
15 DEFENDANT DORITY: Yes, sir.
16 THE COURT: Marvin McDowell.
17 DEFENDANT MCDOWELL: Yes, sir.
18 THE COURT: Peter Goins.
19 Divyne Singleton, come on up.
20 Mary Dale.
21 Timothy Seay -- Timothy Seay.
22 MS. WELBORN: Your Honor, I think it's Timothy Smith.
23 THE COURT: Smith. I'm sorry. Timothy Smith.
24 Joseph Pearson.
25 Jonathan Gash.

1 Jerome Farmer.

2 Mr. Farmer, who is your lawyer?

3 MS. PRICE: I am, Your Honor.

4 THE COURT: Okay. And, Mr. Gash, who is your lawyer?

5 DEFENDANT GASH: I don't have one.

6 THE COURT: You don't have one?

7 DEFENDANT GASH: No, sir.

8 THE COURT: Okay. Mr. Gash, if you would since you're
9 going to be pro se, I need for you to return back to the
10 gallery if you would.

11 Mr. Pearson, who is your lawyer?

12 DEFENDANT PEARSON: Ms. White.

13 THE COURT: White. And -- okay. All right. Okay.
14 If you would -- anybody else?

15 (No response.)

16 THE COURT: Okay. If you would, I need for all of
17 y'all to please listen to me for just a moment.

18 I've been told that each one of you has one or more
19 matters that are presently pending in the court of general
20 sessions. I've also been told that each one of you has
21 expressed a desire or an intent to want to enter a plea to
22 those matters.

23 I need to let you know that as part of every plea that
24 is presented in front of me, we make a recording. This
25 lady who is sitting right here to my right, she's a court

1 reporter. She's taking down everything that's said.

2 I tell you that because if ever during this process
3 now or later today, if you need to speak to me, I need for
4 you to speak up loud enough so both she and I can hear,
5 because if we can't hear you, I cannot accept your plea.
6 But, likewise, if ever during this process if you cannot
7 hear me, immediately let me know, and I'll speak up as
8 well.

9 Now, in just a few moments I'm going to ask you a
10 series of questions. I'm going to ask you these questions
11 as a group, but I do not wish for you to -- that for some
12 reason because I'm asking you these questions as a group,
13 that for some reason these questions are not important,
14 because these questions are very important. The questions
15 that I ask you and the answers you give me to these
16 questions help me decide whether or not I can, in fact,
17 accept your plea. So please listen to them.

18 If you need to respond to any of the questions, I'm
19 going to ask if you would to please stand up and let me
20 call you one a time. Just don't everybody speak out at
21 once. But let me call you one at a time.

22 Now, if ever during this process if any of you feel
23 the need to want to speak with your lawyer, just let me
24 know, and I'll allow you to talk to your in private.

25 I'm now going to call your names one more. This time

1 when I call your name I'm going to ask if you would to
2 please stand and remain standing. After everybody's name's
3 been called and she has all of your names written down, the
4 lady on this side of the courtroom, the clerk of court,
5 she's going to swear you in. So please respond out loud
6 when she asks you to do so.

7 All right. Again, we have Jerome Farmer, Jonathan
8 Gash. I'm sorry. Sit back down, Mr. Gash. I'm sorry.

9 All right. Joseph Pearson, Timothy Smith, Mary Dale,
10 Divyne Singleton, Peter Goins, Marvin McDowell, Matthew
11 Dority, Michelle Allison, Dustin Arrington, Otis Mason,
12 Egor Dmitrienko, Ryan Johnson, Shundell Holmes.

13 Please raise your right hand.

14 (Whereupon, all defendants were duly sworn.)

15 THE COURT: Here are the questions I need for you to
16 please listen to.

17 During the last 24 hours have you consumed any type of
18 substance that is adversely or negatively affecting your
19 ability to understand what we're doing today? If you have
20 taken something, I need for you to please stand at this
21 time.

22 (No response.)

23 THE COURT: In the past if have you've ever received
24 any type of substance abuse treatment -- that's for a drug
25 or alcohol problem -- I need for you to please stand at

1 this time, if you've ever received any type of substance
2 abuse treatment, please stand.

3 We'll start here. Yes, sir. Your name again.

4 DEFENDANT FARMER: Jerome Farmer.

5 THE COURT: Mr. Farmer, was that for drugs, alcohol or
6 both?

7 DEFENDANT FARMER: Drugs.

8 THE COURT: And where did you receive that last
9 treatment?

10 DEFENDANT FARMER: CAP in Montgomery, Alabama.

11 THE COURT: About how long ago was that approximately?

12 DEFENDANT FARMER: Been back in 2012.

13 THE COURT: And was it successful at the time?

14 DEFENDANT FARMER: Yes.

15 THE COURT: Thank you, sir. You may be seated.

16 Yes, sir. Your name?

17 DEFENDANT DORITY: Matthew DORITY.

18 THE COURT: Mr. DORITY, did you receive treatment for
19 drugs, alcohol or both?

20 DEFENDANT DORITY: Drugs.

21 THE COURT: And where did you receive that last
22 treatment?

23 DEFENDANT DORITY: Overcomers in Greenville.

24 THE COURT: How long ago was that approximately?

25 DEFENDANT DORITY: Approximately four years ago.

1 THE COURT: And was it successful at the time?

2 DEFENDANT DORITY: Yes, sir.

3 THE COURT: Thank you, sir. You may be seated.

4 If you are satisfied with the work that your lawyer
5 has done for you, I need for you to please stand at this
6 time. If you're satisfied with the work that your lawyer
7 has done, please stand.

8 (whereupon, all defendants stood.)

9 THE COURT: Let the record reflect that everyone
10 stood. Thank you very much. You may be seated.

11 Your name?

12 DEFENDANT HOLMES: What I was -- I got attorney, but I
13 was trying to see to get a lawyer, a paid lawyer. I talked
14 to her Friday, but she said it was too late for her to --
15 to --

16 THE COURT: What's your name?

17 DEFENDANT HOLMES: Shundell Holmes. She was -- her
18 name is Candice Lapham.

19 THE COURT: Let me do this, Mr. Holmes. Listen to the
20 rest of the questions. And I need for you to speak with
21 your lawyer about that, because you do have a lawyer. But
22 speak with your lawyer about that. Okay.

23 DEFENDANT HOLMES: Yeah. I was talking about a paid
24 attorney.

25 THE COURT: Yeah. I know. Speak with Mr. Hall about

1 that after we finish this process. Okay?

2 DEFENDANT HOLMES: Yes, sir.

3 THE COURT: If anybody has come to you and threatened
4 you in any way, or if they have made you any promises in
5 order to get you to make the decision to enter the plea,
6 then I need for you to please stand at this time. If you
7 have been threatened in any way or promised anything,
8 please stand.

9 (No response.)

10 THE COURT: If the decision by you to enter the plea
11 is a free and voluntary decision on your part, then I need
12 for you to please stand at this time. If this is a free
13 and voluntary decision, please stand.

14 (Whereupon, all defendants stood.)

15 THE COURT: Let the reflect that everyone stood.
16 Thank you very much. You may be seated.

17 I need for you to understand that under the law you
18 are presumed innocent of each and every charge that's
19 presently against you.

20 And you are entitled to have a jury trial on each and
21 every one of those charges. Now, at any jury trial that
22 would take place it would be the state that has the burden
23 of proof, and the state would have to convince all 12
24 members of a jury that you are, in fact, guilty beyond a
25 reasonable doubt of each and every one of those charges.

1 Now, in order to enter a plea however you have to give
 2 up your right to that jury trial. But if you wish to have
 3 a jury trial on any of the charges that are presently
 4 against you, that is perfectly fine. We will simply
 5 schedule a jury trial for you.

6 Is there anyone who wishes to have a jury trial on any
 7 of the charges that are presently against them? If you do
 8 wish to have a jury trial, please stand at this time.

9 (No response.)

10 THE COURT: In addition to giving up your right to
 11 that jury trial there are other very important
 12 constitutional rights that you are entitled to but that you
 13 have to give up in order to enter a plea.

14 You have to give up your right to confront and
 15 cross-examine the state's witnesses. You also have to give
 16 up your right to present evidence which you or your lawyer
 17 might feel would establish a defense to the charge or
 18 charges against you. And you have to give your right of
 19 subpoena and you have to give up your right to remain
 20 silent.

21 Now, if you understand all of those rights and you
 22 wish to give up those rights and go forward with entering
 23 the plea, then I need for you to please stand at this time.

24 (Whereupon, all defendants stood.)

25 THE COURT: Let the record reflect that everyone

1 stood.

2 Thank you very much. You may be seated.

3 Again, if ever during this process, if you want to
4 speak with your lawyer, just let me know, and I'll allow
5 you to talk to your lawyer in private.

6 Those of you who joined us from the gallery, you can
7 return back to the gallery. Thank you.

8 And, Mr. Holmes, that's where you can talk to Mr. Hall
9 about that.

10 DEFENDANT HOLMES: Yes, sir.

11 END OF QUALIFICATION PORTION OF TRANSCRIPT OF RECORD

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 Michelle Allison,) 2017-GS-42-2708
6 Defendant.) July 24, 2017
7) Spartanburg, SC
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10 B E F O R E :
11 HONORABLE J. MARK HAYES, II, JUDGE
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13

14 A P P E A R A N C E S :
15 TIMI POULOS, ESQUIRE
16 Attorney for the State
17 SUZANNE H. WHITE, ESQUIRE
18 Attorney for the Defendant
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22 Linda D. Moffitt
23 Circuit Court Reporter
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Guilty plea -- page 15.

No exhibits entered into evidence.

1 MS. POULOS: Thank you, Your Honor.

2 Before you is Michelle Sloan Allison. She's before
3 the Court on Indictment 2017-GS-42-2708. It's an
4 indictment for accessory after the fact to grand larceny.

5 She is waiving presentment to the grand jury, Your
6 Honor, and the state is recommending concurrent sentencing
7 with her present D.O.C. sentence, along with a restitution
8 order that has been signed by her.

9 THE COURT: You are Ms. Allison?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And it is your intent to enter a plea to
12 the charge that was announced?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: How old are you?

15 THE DEFENDANT: Thirty-one.

16 THE COURT: How far did you go in school?

17 THE DEFENDANT: I have some college.

18 THE COURT: Did you get a high school diploma?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: How much college did you get?

21 THE DEFENDANT: Two years.

22 THE COURT: Where?

23 THE DEFENDANT: At Spartanburg Community College.

24 THE COURT: Are you married, single, divorced or
25 widowed?

1 THE DEFENDANT: Single.

2 THE COURT: Children?

3 THE DEFENDANT: Three.

4 THE COURT: How old?

5 THE DEFENDANT: Eleven, seven and one.

6 THE COURT: Do you -- did -- or did you have a job
7 outside the home prior to your arrest?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: What were you doing?

10 THE DEFENDANT: I was working at McDonald's.

11 THE COURT: Military?

12 THE DEFENDANT: No, sir.

13 THE COURT: How long have you been in jail on this
14 charge?

15 MR. WHITE: Your Honor, she was in jail for 124 days
16 originally, and then she was released on home detention for
17 33 days. Then she was subsequently sent to the department
18 of corrections on another charge for 39. So it's 196
19 total.

20 THE COURT: Please listen to the solicitor. She's
21 going to provide us with the facts.

22 MS. POULOS: Thank you, Your Honor.

23 Your Honor, this occurred between December 21st and
24 26th of 2016 at ■ Angela Circle in Inman.

25 The victim, Mr. Wayne Riley, stated that he'd been out

1 of town for a few days and found his residence had been
2 broken into and ransacked. Entry had been gained through
3 his bedroom window which had been broken and opened. There
4 were numerous drawers and cabinets that had been opened,
5 items scattered throughout the floor.

6 Stolen were several pieces of jewelry belonging to his
7 wife, two T.V.s, a laptop computer, digital cameras and .25
8 caliber Beretta semiautomatic pistol.

9 Through further investigation the codefendant,
10 Michael -- Michael Allison who is the brother of this
11 defendant Michelle -- was developed as a suspect.

12 Michelle stated that she had had a drug problem and
13 she had recently moved out of the victim's residence.
14 Ms. Allison had seen staying with the Rileys, Your Honor,
15 at the time.

16 She had gotten out of jail and moved in with them
17 because they had custody of her child while she was
18 incarcerated.

19 Her brother, Michael, was arrested in Union County on
20 some unrelated charges, and he was in possession of the
21 victim's gun, as well as two magazines with 16 rounds each,
22 several pieces of jewelry belonging to Ms. Riley and 27
23 Wal-Mart gift cards also belonging to the victim.

24 A few days after the burglary there was a Christopher
25 Lamb called Michelle, this defendant, and told her to sell

1 the victim's property. He made reference to going in the
2 home with her brother. And upon questioning by police her
3 brother stated that he knew that the Rileys would be out of
4 town and it's because that she told him that the Rileys
5 were going to be out of town that he advised that he could
6 get some of the property back. He was released. Lots of
7 that property has been returned, Your Honor. Several of it
8 was not. That is indicative of the restitution order.

9 Your Honor, Mr. Allison pled guilty on June the 6th.
10 He received a 10-year sentence suspended to five years and
11 five years probation, along with the restitution.

12 She does have a prior record. She has a 2011 D.U.S.,
13 giving false information, H.T.O. and shoplifting; 2013,
14 possession of meth, trespassing, D.U.S., attempt to possess
15 a controlled substance; a 2014, open container; 2015,
16 D.U.S., manufacturing meth. And she just pled guilty in
17 Union County to a -- I believe it was a distribution of
18 meth and is doing a 10-year sentence in the department of
19 corrections.

20 -THE COURT: Do you believe that as she stated the
21 facts that the solicitor is substantially correct?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And do you understand that on this
24 particular charge I can sentence you up to five years
25 today?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Understanding the possible sentence I
3 could impose, do you still wish to enter the plea?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Are you, in fact, guilty of this accessory
6 after the fact of grand larceny?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Have all of your answers to my questions
9 been truthful?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Discovery has been shared with the
12 defense?

13 MS. POULOS: Yes, Your Honor.

14 THE COURT: I know we've got restitution, \$8,793.
15 Anything else from Mr. Riley?

16 MS. POULOS: Yes, Your Honor. He does wish to address
17 the Court.

18 THE COURT: Sir, we are making a recording of
19 everything that happens here. Please speak up loud enough
20 so that both I and the court reporter can hear you.

21 And just start by giving us your full name.

22 THE VICTIM: Yes, sir. My name is Wayne Alfred Riley.

23 THE COURT: Yes, sir, Mr. Riley.

24 THE VICTIM: Your Honor, Ms. Allison violated our
25 trust in her. When she was released from prison the last

1 time I helped her get out of her Union and places where
2 she'd gotten in trouble before. And she moved in with my
3 wife and I in Inman and stayed there for about five months
4 until she got arrested again in Union on a drug charge.

5 I had custody of her child, because she couldn't do
6 it, so that they would be together, and she violated that
7 trust.

8 She -- I told her when I was leaving town, and the
9 next day they broke into my house. It was very obvious an
10 inside job. Knew where everything was at, exactly how to
11 get into my house.

12 She -- this came out in the court case against -- with
13 her brother. She'd convinced him to help her break into my
14 house.

15 She gets a charge today same as what he got, five
16 years. She's already in prison for ten years. So if you
17 make it concurrent it's like nothing to her. She's not
18 getting any sentence today unless it goes consecutive.

19 I just feel just a waste of time if that's all that's
20 going to come up. She's not going to get penalized at all
21 for what she did to us.

22 She stole \$20,000 worth of value of things. We
23 received back about \$3,000 worth of stuff. Most of the
24 things we've gotten recently were just face jewelry.
25 Originally, I had gotten the diamond ring back from her

1 brother, but the stuff we got back from her was just face
2 jewelry. Some of it she gave to her older daughter and
3 son. I've received those back, or I've not gotten them
4 yet, but the police have them.

5 I just feel that she ought to be a -- charge of what
6 was originally set up, first degree robbery. That's what
7 it was and that's how I feel. Thank you, sir.

8 THE COURT: Thank you, sir.

9 Yes, ma'am.

10 MR. WHITE: Thank you, Your Honor. May it please the
11 Court.

12 Ms. Allison and I have talked for several months about
13 this since she was originally arrested, Your Honor. And I
14 understand the Rileys' feelings towards her, a feeling of
15 trust that's been lost.

16 Ms. Allison -- there was no evidence, Your Honor, that
17 Ms. Allison ever entered the home, and she's adamantly
18 denied that she was ever in the home after she left. Her
19 brother obviously did take some items, Your Honor, as well
20 as Mr. Lamb.

21 There's no doubt that they were aware that she -- that
22 the Rileys were gone. This is over a Christmastime.
23 Ms. Allison denies that she told them that. I don't know
24 exactly what her brother said during the plea. But, Your
25 Honor, I did get a letter from her brother saying that she

1 didn't know about it before it happened.

2 Recently, I did talk with her. Obviously, she was
3 aware after it happened that her brother had taken these
4 things and Mr. Lamb had taken these things, which is why we
5 were agreeable to a plea of accessory after the fact to
6 grand larceny.

7 She regrets, I know, that the Rileys have been hurt,
8 Your Honor. She has received a sentence of ten years for a
9 distribution of meth charge.

10 Your Honor, Ms. Allison is being punished
11 significantly for that. She is losing, you know, the
12 ability to see her children during this, Your Honor. She's
13 going to be responsible, along with her brother, for paying
14 back over \$8,000 of restitution.

15 Your Honor, she just asks that you consider the
16 recommendation, that you run everything concurrent. She is
17 going to be significantly punished through this.

18 I've talked with her earlier about the fact of using
19 this time to work on herself with her drug abuse. This has
20 all come from, obviously, an addiction issue. She has
21 every capability of being able to get out, take classes
22 while she's in the prison department and do things that
23 will hopefully get her out so that she can be a parent to
24 her child, to her children, Your Honor. And I know that
25 that's what she hopes to do at some point.

1 We just ask for your consideration for that, allow her
2 to be able to serve this time concurrently so that she can
3 get out from the sentence that she received in Union for
4 the drugs, Your Honor, and be able to go ahead and be a
5 positive influence in their life for once.

6 THE COURT: Do you agree with the statements just made
7 by your lawyer?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Is there anything else that you would like
10 to say or want me to know or consider?

11 THE DEFENDANT: Yes, sir. I just want to apologize
12 and let the Rileys know that I'm grateful for what they
13 have done for me and let them know that I'll do everything
14 I can to try to make it back whole.

15 THE COURT: Thank you, ma'am.

16 I find that there is a substantial factual basis for
17 the plea on this case. It will be a 5-year sentence at the
18 state department of corrections.

19 I'll suspend that upon the service of two and one half
20 years, followed by five years of supervision. I have
21 indicated this will run consecutive to her present D.O.C.
22 sentence.

23 She'll get credit for 196 days.

24 Restitution has been ordered.

25 I've indicated there's not to be any contact with the

1 victims.

2 Also, as part of this sentence A.T.U. has to be made
3 available, if possible, and available. I've also indicated
4 in order to get the restitution paid back I would allow the
5 probationary parts of the case to be terminated once all
6 monetary obligations have been satisfied.

7 Good luck to you, ma'am.

8 END OF REQUESTED TRANSCRIPT OF RECORD

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FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Spartanburg)
)
 Full name and prison number (if any) of Applicant.)
Michelle Sloan Allison 356182)
 v.)
 State of South Carolina)

IN THE COURT OF COMMON PLEAS

2017-CP-42-3815

APPLICATION FOR

POST-CONVICTION RELIEF

2017 OCT 17
 M. HOPE BLANKLEY
 CLERK

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (possibly 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 Leath Correctional Inst.
2. Name and location of Court which imposed sentence Spartanburg, SC; General Sessions
3. Name(s) of co-defendant(s) (if any) Michael C Allison
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) ~~2017GS4202708~~ 2017GS4202708
 - (b) N/A
 - (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) July 24, 2017; 5 yrs suspended to 2 1/2 years DOC. w/ 5 yrs prob. PTUP
 - (b) N/A

- (c) N/A
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty ✓
 - (b) after a plea of not guilty N/A
 - (c) after a plea of nolo contendere N/A
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
N/A
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (b) the result in each such Court to which you appealed:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (c) the date of each such result:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. N/A
 - iii. N/A
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) My public defender, (Suzanne White), told me to do a PCR.
 - (b) _____
 - (c) _____
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

2017 OCT 17 AM 10:32
 M. HOPE BLACKLEY

I was told one plea and given another at time of sentencing. I did not enter the
(a) plea - knowingly and intelligently. *Boykin v Alabama, 395 U.S. 238.*

(b) _____

(c) _____

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

in (10):
(a) *the plea exceeded the expectations given to me by my public defender with a consecutive sentence instead of a concurrent sentence that I was told I would receive by my public defender. I was not fully advised of the sentence that could be given.*

(b) _____

(c) _____

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

(a) any petition in a State Court under South Carolina Law? 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)? N/A

(d) any other petitions, motions or applications in this or any other Court? N/A

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

(a) the specific nature thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

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M. HOPE BLACKLEY

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

NO

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

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

2017 OCT 17 AM 10:33
M. HOPE BLACKLEY

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) N/A

(b) N/A

(c) N/A

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? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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

- (a) the name and address of each attorney who represented you:
 - i. Suzanne White 366 N Church St Suite 3000, Spartanburg, SC 29303
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Suzanne White 366 N Church St Suite 3000, Spartanburg SC 29303
 - ii. _____ Plea - July 24, 2017
 - iii. _____

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

Would like my sentence run concurrent like the plea I was told I would receive.

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

NO YES

2017 OCT 17 AM 10:33
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Spartanburg)

Michelle Allison
I, Allison, 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.

Michelle D Allison 356/82

SWORN to and subscribed before me this 4th
day of October, 2017.

Patricia Buergette Hill (L.S.)
Notary Public

My Commission Expires: Jan 8, 2023

SPARTANBURG COUNTY
2017 OCT 17 AM 10:33
M. HOPE BLACKLEY

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

^{Michelle}
I, ~~Allison~~, 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.

Michelle Allison 356/82
Applicant

SWORN or affirmed to and subscribed before me this
4th day of October, 2017.

Sandra Dorogette Hill
Notary Public

My Commission Expires Jan. 4, 2023

2017 OCT 17 AM 10:33
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Michelle S. Allison, #356182,

2017-CP-42-3815

Applicant,

RETURN

v.

State of South Carolina,

Respondent.

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on October 17, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In May 2017, the Spartanburg County Grand Jury indicted Applicant for first-degree burglary (2017-GS-42-2221) and grand larceny (2017-GS-42-2222). Applicant was also charged with accessory after the fact to a felony (2017-GS-42-2708).

Suzanne H. White, Esquire, represented Applicant. Assistant Solicitor Timi Poulos represented the State. On July 24, 2017, Applicant waived presentment to the grand jury and pled guilty to accessory after the fact to a felony before the Honorable J. Mark Hayes, II. The State dismissed the burglary and grand larceny indictments in exchange for Applicant's guilty plea. The State also recommended a sentence concurrent to an unrelated charge for which Applicant was already incarcerated.¹ Judge Hayes sentenced Applicant to five years' incarceration, suspended upon

¹ At the time of her plea, Applicant was serving a ten year sentence for distribution of methamphetamine from Union County. (Tr. p. 18).

the service of two and a half years and probation for five years. The sentence was to run consecutive to her ten year sentence for which she was already incarcerated. Applicant did not appeal her conviction or sentence.

Attached to this Return and incorporated by reference are the records of the Spartanburg County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the PCR application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Involuntary guilty plea

- a. "I was told one plea and given another at time of sentencing. I did not enter the plea knowingly or intelligently. Boykin v. Alabama, 395 U.S. 238."
- b. "The plea exceeded the expectations given to me by my public defender with a consecutive sentence instead of a concurrent sentence that I was told I would receive by my public defender. I was not fully advised of the sentence that could be given."

III.

Applicant asserts her plea was involuntary. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective

assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

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

hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Id. at 138-39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

In this case, the record refutes Applicant's allegation she was not aware of the sentence that could be imposed. At the guilty plea, the plea judge informed Applicant he could sentence her up to five years, to which Applicant responded she understood. (Tr. pp. 18-19). Applicant further testified that understanding the possible sentence the court could impose, she still wished to enter a plea of guilty. (Tr. p. 19). Not only was Applicant under oath during her guilty plea, she also reasserted the truthfulness of her answers to the plea judge. (Tr. p. 19).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant must specify any claims she intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a), SCRCP. All claims should be made well in advance of the evidentiary hearing. If Applicant has is represented by an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing.

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits, witnesses, and materials used to produce potential expert witness testimony be provided to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

V.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of involuntary guilty plea. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws 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.

VI.

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

[Conclusion and Signature to follow]

VII.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claim of involuntary guilty plea.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

VALERIE GARCIA GIOVANOLI
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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

January 11, 2018

I-N-D-E-X

WITNESSES:	DIRECT	CROSS	RE-DIRECT	RE-CROSS
Michelle Sloan Allison				
By Ms. Ross	6			
By Ms. Giovanoli		9		
By Ms. Ross			12	
Suzanne White				
By Ms. Giovanoli	13			
By Ms. Ross		19		

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)

1 THE COURT - May it please the Court.

2 THE COURT - Yes.

3 MS. GIOVANOLI - This is Michelle Allison versus
4 the State of South Carolina, docket number 2017-CP-42-3815.
5 We're before the Court on an application for post-
6 conviction relief filed October 17th, 2017. In May, 2017,
7 applicant was indicted for first degree burglary and grand
8 larceny. Applicant was also charged with accessory after
9 the fact to a felony. Suzanne White represented applicant,
10 and on July 24th, 2017, applicant waived presentment to the
11 grand jury and pled guilty to accessory after the fact to a
12 felony. The State dismissed the burglary and the grand
13 larceny indictments in exchange for applicant's guilty
14 plea. The State also recommended a sentence concurrent to
15 an unrelated charge for which she was serving for a Union
16 County distribution of methamphetamine conviction. Judge
17 Hayes, J. Mark Hayes, II, sentenced applicant to five years
18 incarceration suspended upon the service of two and a half
19 years and probation for five years. The sentence was to
20 run consecutive to her ten year sentence for which she was
21 already incarcerated. She did not appeal her conviction or
22 her sentence, but she did file a post-conviction relief
23 application alleging that her guilty plea was involuntary,
24 because she states I was told one plea, given another at
25 the time of sentencing, I did not enter the plea knowingly

1 and intelligently, also that the plea exceeded her
2 expectations given to her by her public defender, Ms.
3 Suzanne White in that it was consecutive instead of
4 concurrent. The State is present and ready to proceed.
5 Applicant is also present, and she's represented by Ms.
6 Susannah Ross to whom I will hand it over.

7 MS. ROSS - Thank you, Your Honor, may it please
8 the Court.

9 THE COURT - Yes, ma'am. I'm, once again, going
10 to ask that you delineate which -- what your allegations of
11 ineffectiveness and any other grounds for post-conviction
12 relief.

13 MS. ROSS - They are that the same that she put in
14 her application, that ineffective assistance of counsel,
15 because she was advised that if she pled, she would receive
16 concurrent time, it wouldn't add any time to her sentence.
17 She said she could not plead guilty otherwise as she had a
18 strong defense.

19 THE COURT - So essentially involun -- the
20 involuntariness of the plea on -- particular focus on it
21 being consecutive as opposed to concurrent?

22 MS. ROSS - Yes, Your Honor.

23 THE COURT - Any other allegations?

24 MS. ROSS - No, that's her basic allegation.

MICHELLE SLOAN ALLISON - DIRECT BY MS. ROSS

6

1 THE COURT - Very good, and you may proceed and
2 call your first witness.

3 MS. ROSS - Okay, we call Michelle Allison.

4 THE COURT - Ms. Allison, please come forward if
5 you could.

6 MICHELLE SLOAN ALLISON, AFTER BEING FIRST DULY
7 SWORN, TESTIFIES AS FOLLOWS -

8 THE COURT - Have a seat in the witness chair
9 there. I'm going to ask that you pull up real close to
10 that microphone. Speak loudly, clearly and slowly in order
11 that we can hear everything that you have to say, and let's
12 start with your full name, Ms. Allison..

13 MS. ALLISON - Michelle Sloan Allison.

14 THE COURT - Very good.

15 Yes, ma'am.

16 DIRECT EXAMINATION

17 BY MS. ROSS -

18 Q Hey there, Ms. Allison. How far did you go in school?

19 A I have some college.

20 Q Okay. And give a little bit of background on these
21 guilty pleas. You had one in June and ---

22 A Of, um, for PWID second in Union and then I had this
23 one in, um, up here, first degree burglary and grand

24 larceny for Spartanburg, but I pled guilty to the PWID

25 second in June, and then while I was in receiving, she told

1 me to -- she brought me back to go to Court for this one
2 and she -- and -- sorry -- Ms. White said that I hadn't --
3 just to go on an plead guilty, I had nothing to worry
4 about, because it would be run concurrent and, so I just --
5 she said it will be run concurrent with your other
6 sentence, it won't be like you're doing anymore time.

7 Q And at this point you've just received ten years.

8 Correct?

9 A Yes, ma'am.

10 Q And you're not alleging PCR or appealing that ten
11 years or anything like that.

12 A No, ma'am.

13 Q And would you have pled guilty if Ms. White hadn't
14 told you you'd get concurrent time, you weren't getting
15 anymore time?

16 A No, ma'am.

17 Q Do you have -- what's your family situation?

18 A I have my mom.

19 Q Do you have any children?

20 A I have three. I have an 11, a eight and a two year
21 old.

22 Q And who are they staying with?

23 A The oldest two's with their dad, and the youngest
24 one's with my best friend.

MICHELLE SLOAN ALLISON - DIRECT BY MS. ROSS

8

1 Q And why didn't you just say, no, I'm not guilty, I
2 want to go to trial on this burglary?

3 A Because she would -- she just told me I had nothing to
4 worry about and she was like it's not a felony or -- I was
5 ---

6 Q Okay. Tell me your level of involvement? If you'd
7 gone to trial, what would your defenses have been?

8 A I wasn't there. My brother used my phone and found
9 out that they were out of town. I didn't have -- I didn't
10 know that he was going to go through my text messages or
11 anything like that.

12 Q Is that the allegation, that you told him they were
13 going to be out of town? Is that the basis of the charge?

14 A Yes, ma'am, that I told them to go.

15 Q And, in fact, you had never told him that.

16 A No, ma'am.

17 Q All right.

18 A He wrote a letter stating that he didn't even know why
19 I got charged for it.

20 Q To the Court or to you or to ---

21 A To the -- my lawyer.

22 Q To Ms. White?

23 A (No response)

1 Q And do you believe that would be a good defense such
2 that you would likely not have been convicted if you'd gone
3 to trial?

4 A Yes, ma'am.

5 Q Do you know what the maximum for the charge you had
6 is?

7 A No, ma'am.

8 MS. ROSS - I've got no further questions.

9 THE COURT - Cross examination.

10 MS. GIOVANOLI - Thank you, Your Honor.

11 Good morning, Ms. Allison.

12 MS. ALLISON - Good morning.

13 CROSS EXAMINATION

14 BY MS. GIOVANOLI -

15 Q You just stated that you didn't know the maximum for
16 the charges you had been -- had pled to. Is that correct?

17 A Yes, ma'am.

18 Q But during the Court -- your guilty plea -- it's
19 actually on page 18 of the transcript -- the Court actually
20 asked you, do you understand this particular charge, I can
21 sentence you up to five years, to which you responded, yes,
22 sir. Do you not remember that?

23 A I was nervous, no ma'am, I wasn't ---

24 Q Okay, and your defense was that you were not present
25 during the burglary of the victim's homes?

MICHELLE SLOAN ALLISON - CROSS BY MS. GIOVANOLI

10

1 A Correct.

2 Q Isn't it true that you actually lived with the
3 victims?

4 A Yes, ma'am, at one point in time I did.

5 Q And you, in fact, knew that they were going out of
6 town at that time?

7 A Yes, ma'am. Wayne had texted me and told me that he
8 was going out of town, that he was out of town. I talked
9 to him while they were gone.

10 Q And isn't it true that Christopher Lamb called you
11 after the burglary and asked you to sell stolen
12 merchandise?

13 A He asked me to sell something, but I don't know
14 exactly what he was asking me to sell.

15 Q And he actually made reference to actually entering
16 the victim's home with your brother in those messages?

17 A But I -- I -- like I told him, I didn't know what he
18 was talking about.

19 Q And are you aware that your brother told the police
20 that you were the one that told him the Rileys were going
21 to be out of town?

22 A I mean the only way he could've got that was using my
23 phone, because he didn't have a phone at the time.

24 Q But he actually told law enforcement that you told him
25 that they were out of town. Is that your understanding?

1 A I mean if that's what he said. I mean he didn't -- he
2 told -- he didn't tell me anything like that.

3 Q And you have a prior conviction from 2011 for giving
4 false information. Is that correct?

5 A I don't remember getting that charge.

6 Q Okay, do you remember your conviction for shoplifting
7 in that year?

8 A Yes, ma'am.

9 Q And you also have a 2013 possession of meth,
10 trespassing, driving under suspens -- suspended license and
11 attempt to possess a controlled substance. Is that
12 correct?

13 A Attempting to manufacture, yes, ma'am.

14 Q And then in 2015 another driving under suspension and
15 manufacturing meth. Is that correct?

16 A The '15 charge, that was the attempting to
17 manufacture, and the driving under suspension, I was
18 incarcerated from the January the 7th the whole year.

19 MS. GIOVANOLI - Okay. I have no further
20 questions. Thank you.

21 THE COURT - Any re-direct?

22 MS. ROSS - Just a couple.

23 RE-DIRECT EXAMINATION

24 BY MS. ROSS -

1 Q What did your brother get for the burglary? What was
2 his sentence, do you know?

3 A I think it was ten suspended to five with five years
4 probation.

5 Q Okay. And that's in the transcript on page 18. And
6 as far as -- and he, regardless of what's in the record
7 about what he said or didn't say, Ms. White had a letter
8 that where he says that you didn't tell him anything.

9 A Yes, ma'am, that he didn't even know why I was
10 arrested.

11 MS. ROSS - All right, no further questions.

12 THE COURT - You may step down. Thank you.

13 You may call your next witness.

14 MS. ROSS - That's applicant's case.

15 THE COURT - All right, Ms. Giovanoli, you're
16 recognized.

17 MS. GIOVANOLI - Thank you, Your Honor. We would
18 call Suzanne White.

19 THE COURT - Ms. White, please come forward.

20 SUZANNE WHITE, AFTER BEING FIRST DULY SWORN,

21 TESTIFIES AS FOLLOWS -

22 THE COURT - Have a seat. Watch your step. Pull
23 up real close to that microphone, speak loudly, clearly and
24 slowly in order that we can hear everything that you have
25 to say.

1 MS. WHITE - Okay.

2 THE COURT - Start with your full name.

3 MS. WHITE - Suzanne White.

4 MS. GIOVANOLI - Good morning, Ms. White.

5 MS. WHITE - Good morning.

6 DIRECT EXAMINATION

7 BY MS. GIOVANOLI -

8 Q How long have you been practicing criminal law?

9 A I've been practicing since the end of 2009.

10 Q Okay. And what's your current position?

11 A I'm an assistant public defender with the Spartanburg
12 County Public Defender's Office.

13 Q And how long have you been with them?

14 A I started in July of 2015.

15 Q And you represented Ms. Allison in this case?

16 A I did.

17 Q Okay, and you heard a little bit of her testimony
18 about your discussions with her prior to pleading guilty.

19 A I did.

20 Q Can you give us a little bit of an explanation as to
21 why you advised your client to plead guilty?

22 A In all of our discussions she had always maintained
23 that she was not guilty of the burglary. As she said, she
24 maintained that she had not even given her brother any
25 information about it, that if he had gotten information

SUZANNE WHITE - DIRECT BY MS. GIOVANOLI

14

1 about Mr. Riley being out of town, it had to have been
2 because he had access to her cell phone, and, in fact, you
3 know, they really didn't have any evidence directly related
4 to her accessing the home or being there when the burglary
5 happened. It was some circumstantial evidence related to
6 the conversation Mr. Lamb had and Mr. Allison -- they had
7 both been arrested I think were in the Union County jail at
8 the time, and so it was circumstantial, but the victim was
9 also very adamant that Ms. Allison be held responsible,
10 because she unfortunately had been the one who had lived in
11 the home and they seemed very adamant that she go to trial
12 on the burglary first. You know, knowing that that carried
13 a risk of 15 to life, you know, I hated her to be put in
14 that position, so when we were able to talk about the
15 possibility of a plea to an accessory after the fact to
16 grand larceny, based on the fact that she had had some
17 knowledge after the fact that her brother had stolen some
18 items, we had decided that was a good way to resolve it,
19 and I was trying to get a concurrent sentence certainly for
20 her. She and I had talked numerous times about it, then
21 she was taken to Union and then taken to the DOC, so when
22 she was brought back up, I just had a chance to meet with
23 her that morning prior to the plea to let her know that it
24 was an accessory after the fact to grand larceny, that the
25 recommendation from the State was concurrent. You know,

1 she was -- had just received a ten year sentence, so our
2 goal was to get it to run concurrent with that so that she
3 would not have any additional time, and she did say that
4 was her -- one of her biggest concerns.

5 Q And so you engaged in negotiations with the State?

6 A Yes.

7 Q And ---

8 THE COURT - And that was -- indeed the
9 recommendation was the recommended concurrent but she got -
10 --

11 A Consecutive.

12 THE COURT - --- consecutive.

13 A Yes, Your Honor.

14 THE COURT - Did you promise her that she would
15 get concurrent time?

16 A I did not promise her. I told her that I -- maybe
17 that I felt confident that we could get concurrent or that
18 I felt confident that the Judge would consider that based
19 on the fact that it was the State's recommendation. I
20 didn't guarantee, but I also didn't really discuss with her
21 the possibility of consecutive. We focused mainly on the
22 fact that it was a recommendation of concurrent, and that
23 based on the ten years she had received, we felt like the
24 Judge would most likely honor that.

25 Q And did the victim speak during the guilty plea?

1 A He did.

2 Q And what did he say?

3 A Again, he was adamant he wanted her charged with first
4 degree burglary. He pretty much placed all the blame on
5 Ms. Allison for anything that had happened. You know, and
6 ---

7 Q What did he -- what did he say with regard to
8 concurrent/consecutive?

9 A Oh, he thought -- well, he -- he didn't think that
10 that was fair, because he said that she would not get any
11 time for the actual crime that she had committed, that
12 based on the ten years she had gotten for the drug charges,
13 that if she got concurrent that she just wasn't getting any
14 punishment for this charge.

15 Q Okay, so your testimony is you did not promise her
16 that she would receive concurrent sentencing?

17 A I didn't use the words I promise or I guarantee, but I
18 certainly did tell her that I was confident and I felt that
19 Judge Hayes would definitely, you know, probably consider
20 that.

21 Q Did you advise her of the potential sentence she faced
22 going to trial on the original charges?

23 A Yes, we had discussed the possible sentences for
24 burglary first.

1 Q Okay. And did you discuss the maximum sentence for
2 the charge to which she did plead?

3 A I believe we did.

4 Q And as far as just the -- the discovery, you said that
5 you negotiated for her to plead to accessory after the
6 fact. What evidence did the State have against her to
7 prove that she was guilty of accessory after the fact?

8 A There was some discussion about selling some of the
9 items that had been stolen from the Rileys between Mr. Lamb
10 and -- I can't -- Mr. Allison actually was caught with some
11 of the items in an attempt to sell them through Facebook or
12 some -- some -- one of those programs on line, and from our
13 discussion I believe she had become aware of either her
14 mother having some of the items that Mr. Allison had stolen
15 and that was the extent of what we thought her guilt was in
16 this.

17 Q When you say communications, are you referring to text
18 messages ---

19 A Um, I was talking more about the phone calls that you
20 referenced from the jail that had been recorded.

21 Q Okay. So jail phone calls and then also in your
22 discovery, did you have a statement that Mr. Allison had
23 made to law enforcement?

24 A I did, yes.

25 Q And did that implicate your client?

SUZANNE WHITE - DIRECT BY MS. GIOVANOLI

18

1 A I remember it saying that in the incident report. I
2 was trying to go through my file -- and if you'll give me a
3 second to look for an actual statement ---

4 Q You're looking for a written statement.

5 A Right. I don't believe he had a written statement
6 from what I can recall. I think it was all oral.

7 Q Okay. So it was an oral statement to law enforcement.

8 A Correct.

9 Q Okay. And also she referred to a letter from her
10 brother stating that she didn't have anything to do with
11 it. Did she provide that letter to you?

12 A I actually got that letter in the mail from the
13 brother about a day or two before our plea where he -- and
14 I think I mentioned that on the record; I didn't go into
15 detail -- but he said that he -- he broke into Wayne
16 Riley's house alone, that Sloan Allison or Ms. Allison
17 didn't have anything to do with it or know that it was
18 going to happen.

19 Q Okay. And did she ever express a desire to go to
20 trial on the original charges?

21 A We had talked about it, definitely, because she again
22 asserted she was not guilty of breaking in. The biggest
23 concern was she's a mother with young children and the risk
24 of going to trial for burglary knowing, you know, her

1 brother's involvement and the circumstantial evidence was
2 concerning.

3 MS. GIOVANOLI - Thank you. I have no further
4 questions.

5 MS: ROSS - Just one.

6 CROSS EXAMINATION

7 BY MS. ROSS -

8 Q Did you attempt to negotiate a plea agreement versus a
9 recommendation?

10 A You mean like a negotiated sentence?

11 Q A negotiated plea.

12 A I did.

13 Q And the State would not go for that?

14 A Ms. Poulus had informed me that -- that she had had
15 difficulty with the victim agreeing to this as a
16 recommendation to begin with, because he was insistent
17 about burglary first. He was not happy that we were
18 allowing her to plead to accessory after the fact to grand
19 larceny, and so she told me she could not negotiate the
20 sentence.

21 Q Okay, and are you aware of whether the pending charge
22 was known by sentencing court in Union when she received a
23 ten year sentence?

SUZANNE WHITE - CROSS BY MS. ROSS

20

1 A I do not know. No, I was not present and I didn't
2 have any communication, because I was shocked that she had
3 received that large of a sentence when I heard about that.

4 Q The Union sentence for ten years.

5 A Correct, yes.

6 Q And -- and clearly the maximum for what she was
7 pleading to was well less than the ten years.

8 A Correct.

9 MS. ROSS - All right, I've got no further
10 questions.

11 THE COURT - You may step down.

12 MS. WHITE - Thank you.

13 MS. GIOVANOLI - The State has no further
14 witnesses.

15 THE COURT - Okay. Be glad to hear from you, Ms.
16 Ross, with regard to argument or summation.

17 MS. ROSS - Judge, as you know the plea has to be
18 knowingly and voluntarily made. She was going into that
19 guilty plea with all assurances that she would receive a
20 concurrent sentence. Ms. Allison said that was the only
21 reason she pled, because she was not guilty of the charge.
22 With the letter from her brother, the risk of certainly a
23 conviction for her great. (sic) It was very mitigated, and
24 that I would argue that the plea was simply not knowingly
25 and voluntarily made, because she did not get the

1 concurrent sentence that she was led to expect by her
2 lawyer.

3 THE COURT - Very good.

4 Ms. Giovanoli.

5 MS. GIOVANOLI - Yes, Your Honor. I believe that
6 Ms. White's testimony is clear that she never guaranteed or
7 promised that her client would receive a concurrent
8 sentence, although they were hopeful for that and the State
9 even recommended it. It was in the Court's discretion to
10 sentence her to something consecutive, and I think that
11 based on the victim's statements to the Court, that's why
12 the Court chose to do so. There was a substantial benefit
13 to this plea. She did plead to accessory after the fact,
14 which the Judge also informed her he could sentence her to
15 a maximum of five years -- that's in the record -- to which
16 she responded that she understood, and she was looking at
17 life with a burglary first degree charge and a grand --
18 grand larceny charge, so we just -- I believe that the
19 record supports that her plea was knowing and voluntary --
20 voluntarily made, and I also think that Ms. White, um, her
21 advice to client was sound. She was hopeful that she would
22 get -- and confident she would get a concurrent sentence.
23 Unfortunately, the Judge thought -- felt otherwise and he
24 had the discretion to sentence her to a consecutive two and
25 a half years of prison time.

1 MS. ROSS - Just in brief reply. The expectation
2 of consecutive time was never made here, that Ms. Allison
3 was never thinking of the possibility of consecutive time.
4 She is thinking the recommendation is concurrent time and
5 the maximum would not amount to any more -- if she'd
6 received the maximum for that plea, it wouldn't amount to
7 consecutive time.

8 THE COURT - Ms. Ross, you have put on the record
9 clearly what your position; you've done a very good job in
10 that regard, however, I'm going to deny the application for
11 post-conviction relief. Clearly, you're protected on the
12 record for appellate purposes, but I do indeed believe that
13 there was no promise that she receive consecutive time. I
14 do indeed find that she received a benefit of a bargain
15 here today, and I -- I would ask that Ms. Giovanoli put in
16 the order the colloquy with regard to the fact that she
17 could get up to five years as explained to her by Judge
18 Hayes and the fact that she acknowledged guilt on the
19 record, but you're protected on the record, and Ms.
20 Allison, good luck to you.

21 MS. ROSS - Thank you, Your Honor.

22 THE COURT - And, Ms. Giovanoli, I'm going to ask
23 that you prepare an order. Send a copy of that to Ms. Ross
24 to ensure that it accurately reflects what my ruling was.

25 We're going to stand at ease for five minutes.

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MS. GIOVANOLI - Thank you.

(END OF TRANSCRIPT)

C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 23 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of Michelle Sloan Allison vs. State of South Carolina, as taken by me in Court of Common Pleas for the Seventh Judicial Circuit on February 22, 2018, and provided by me this the 3rd day of April, 2019.

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



Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Michelle S. Allison, #356182,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2017-CP-42-3815

**ORDER OF DISMISSAL
WITH PREJUDICE**

2019 FEB -8 9 19
CLERK OF COURT
SPARTANBURG COUNTY

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Michelle S. Allison (Applicant) on October 17, 2017. The State (Respondent) made its return requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on February 20, 2018 at the Spartanburg County Courthouse. Applicant was present and represented by Susannah Ross, Esquire. Valerie Garcia Giovanoli, Esquire, of the Office of the Attorney General represented Respondent.

At the hearing, Applicant testified on her own behalf. Suzanne White, Esquire, (Counsel) also testified. This Court had before it a copy of the Spartanburg County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the plea transcript, the PCR application, and Respondent's return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In May 2017, the Spartanburg County Grand Jury indicted Applicant for first-degree burglary (2017-GS-42-2221) and grand larceny (2017-GS-42-2222). Applicant was also charged with accessory after the fact to a felony (2017-GS-42-2708).

Suzanne H. White, Esquire, represented Applicant. Assistant Solicitor Timi Poulos represented the State. On July 24, 2017, Applicant waived presentment to the grand jury and pled guilty to accessory after the fact to a felony before the Honorable J. Mark Hayes, II. The State dismissed the burglary and grand larceny indictments in exchange for Applicant's guilty plea. The State also recommended a sentence concurrent to an unrelated charge for which Applicant was already incarcerated.¹ Judge Hayes sentenced Applicant to five years' incarceration, suspended upon the service of two and a half years and probation for five years. The sentence was to run consecutive to her ten year sentence for which she was already incarcerated. Applicant did not appeal her conviction or sentence.

CLERK OF COURT
 SPANISHBURG COUNTY
 2019 FEB - 8 AM 9:19

ALLEGATIONS

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

1. Involuntary guilty plea
 - a. "I was told one plea and given another at time of sentencing. I did not enter the plea knowingly or intelligently. Boykin v. Alabama, 395 U.S. 238."
 - b. "The plea exceeded the expectations given to me by my public defender with a consecutive sentence instead of a concurrent sentence that I was told I would receive by my public defender. I was not fully advised of the sentence that could be given."

At the start of the hearing, Applicant specifically alleged Counsel advised Applicant that if she pled guilty, she would not receive more time than what she was already serving in the Department of Corrections and that had she known she could receive more time, she would not have pled guilty.

¹ At the time of her plea, Applicant was serving a ten year sentence for distribution of methamphetamine from Union County. (Tr. p. 18).

SUMMARY OF TESTIMONY AT PCR

I. Applicant testified to the following:

Applicant testified she has some college education. She was convicted of possession with the intent to distribute methamphetamine, second offense, in Union County in June and was sentenced to ten years' incarceration. In Spartanburg, she was charged with first degree burglary and grand larceny. Counsel advised her to plead guilty to accessory after the fact and promised Applicant she would not have to serve any more time than what she was already serving for her Union County conviction. Applicant testified she would not have otherwise pleaded guilty because she had a good defense. Applicant explained her defense was that she was not present during the burglary. Applicant claimed her brother, using her phone, found out the victims were out of town and decided to rob their house. Applicant denied telling her brother the victims would be out of town.

Applicant testified she does not know the maximum sentence for her charges. She testified her brother received a ten year sentence, suspended to five years and five years' probation. Applicant also testified her brother wrote a letter stating that Applicant did not tell him anything and did not know anything about the crime.

Applicant could not remember if she had a 2011 prior conviction for giving false information.² Applicant admitted she had prior convictions for shoplifting, possession of methamphetamine, trespassing, driving under suspension, attempt to possess a controlled substance, open container, and manufacturing methamphetamine. Applicant is serving a sentence for a distribution of methamphetamine conviction.

Applicant admitted that she had lived with the victims. She admitted to receiving a call from Christopher Lamb (the other man who robbed the victims' home with Applicant's brother) who

² At her guilty plea, under oath, Applicant agreed with the criminal history provided by the solicitor. (Plea tr. p. 18, 3 of 9)

instructed her to sell the victims' property, but denied knowing the property was stolen. Applicant admitted counsel reviewed the discovery with her, but she did not recall her brother telling law enforcement that Applicant had advised him the victims would be out of town so that he could rob their home.

II. Counsel testified to the following:

Counsel has been an Assistant Public Defender with Spartanburg County since 2015. She has been practicing criminal law since 2009. She was appointed to represent Applicant. She reviewed the discovery with Applicant and discussed the case with her. Counsel believed the evidence against Applicant on the original charges was circumstantial and negotiated with the State to get them to accept a plea to the charge of accessory after the fact. Counsel felt that charge best represented Applicant's involvement in the case. Counsel testified that the state had evidence of cell phone discussions between Christopher Lamb and Applicant about selling the victims' stolen items. Counsel testified she was aware of the letter from the brother saying Applicant did not know anything, but he had previously given an oral statement that Applicant told him the victims' would be out of town and had an opportunity to rob them.

SPARTANBURG COUNTY COURT
2019 FEB 9 AM 9:19

Counsel testified that she advised Applicant of the minimum and maximum sentence she would face for accessory after the fact, as well as for her original charges. Counsel testified she did not recall specifically having a conversation about consecutive sentencing. However, she did express her confidence in Applicant receiving concurrent sentencing based on the State's recommendation. Counsel testified she did not promise or guarantee a concurrent sentence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the

testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and has weighed their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). Applicant has failed to prove by a preponderance of the evidence that Counsel was deficient or that he was prejudiced by any deficiency.

Applicable Law

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). 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 (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. With respect to guilty plea counsel, Applicant must show that there is a

reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability

that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscóe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

19 FEB - 5 AM 9:19
 UNION COUNTY
 COURT

Analysis

In this case, the record refutes Applicant's allegation she was not aware of the sentence that could be imposed. At the guilty plea, the plea judge informed Applicant he could sentence her up to five years, to which Applicant responded she understood. (Tr. pp. 18-19). Applicant further testified that understanding the possible sentence the court could impose, she still wished to enter a plea of guilty. (Tr. p. 19). Not only was Applicant under oath during her guilty plea, she also reasserted the truthfulness of her answers to the plea judge. (Tr. p. 19). Applicant has failed to give a sufficient reason to be allowed to depart from the truth of his statements made during his guilty plea.

This Court finds Counsel was diligent in her review of the case and her negotiations with the State to allow Applicant to plead to the more favorable offense of accessory after the fact to grand larceny, with a recommendation of concurrent sentencing to her Union County sentence. This Court finds Counsel's testimony credible that she did not promise or guarantee a concurrent sentence and that she informed Applicant of the potential sentence she faced. This Court further finds that

Counsel's was not deficient in advising Applicant that she was confident Applicant would receive a concurrent sentence, based on the State's recommendation. This is a reasonable belief to have and share with one's client. Additionally, this Court does not find Applicant's testimony credible. During her guilty plea, she agreed with the State's recitation of the facts and Applicant's criminal history. (Plea tr. pp. 17-18). However, at PCR, she denied knowing about some of the facts and also "could not remember" if she had been convicted of a crime of dishonesty.

This Court notes Applicant only received an additional two and half years of prison time, despite facing life plus ten years. This Court finds it unreasonable and not credible that Applicant would have proceeded to trial instead of pleading guilty had Counsel not promised her concurrent sentencing, especially in light of the fact that there was direct (brother's statement to police) and circumstantial (living with victims and knowing they were out of town) evidence that she, at the very least, was an accessory to the burglary of the victims' home. This Court is confident that Applicant is aware, from her extensive criminal history, that by pleading open to the court, there is no guarantee as to sentencing. This Court finds Applicant received the benefit of the bargain by pleading to a lesser offense and receiving a relatively insignificant amount of time in comparison with her Union County drug conviction sentence.

Considering Applicant was facing a total of life plus ten years, Applicant benefited greatly from Counsel's negotiations. Even though Applicant is unappreciative of Counsel's negotiating efforts and unhappy with her ultimate sentence, she has failed to prove Counsel was deficient in her advice to Applicant or that she was prejudiced by such alleged deficiency. This allegation is denied and dismissed.

2019 FEB 8 AM 9:19
 STATE INDIANAPOLIS COURT

CONCLUSION


Based on all the foregoing, this Court finds and concludes Applicant has not established any violations that would require this Court to grant his application. This Court finds Applicant has failed to prove any deficiencies on the part of Counsel and further, Applicant has failed to prove prejudice from any alleged deficiencies in Counsel's representation of her. Therefore, as Applicant has failed to meet her burden of proof in this post-conviction relief action, her application is denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED THAT:

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

AND IT IS SO ORDERED this 4 day of Feb, 2018.


 MICHAEL G. NETTLES
 Presiding Judge
 Seventh Judicial Circuit

 South Carolina

2018 FEB - 8 AM 9:19
 CLERK OF COURT
 SEVENTH JUDICIAL CIRCUIT

WITNESSES

Sptbg. County Sheriff's Office

Jimmy W. Powers

ARREST WARRANT NUMBER

2017A4210100079

ACTION OF GRAND JURY

True Bill

AE
Foreperson of Grand Jury

MAY 05 2017

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

17-GS-42-2221

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAY 08 2017

TERM

THE STATE

vs.

Michelle Sloan Allison

Indictment for

**BURGLARY, FIRST DEGREE
(Dwelling)**

SC Code: 16-11-0311

CDR Code: 0079

Class: FEL/EXM (V)

*Walle pressed
Defendant pled guilty
to accessory charge
related to this case -*

7/24/17

Tami Poulas

*Asst
Solicitor*

FILED
CLERK OF COURT

2017 MAY 10 AM 10:54

M. J. BARNETT

2017 JUL 25 PM 2:29

CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

MAY 03 2017

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

BURGLARY, FIRST DEGREE

(DWELLING)

That the Defendant, Michelle Sloan Allison, did in Spartanburg County, on or between December 21, 2016, and December 26, 2016, willfully and intentionally enter a dwelling belonging to [REDACTED] located at [REDACTED] South Carolina, without consent and with the intent to commit a crime therein, and that the defendant did enter the dwelling either:

- (1) the Defendant did enter in the nighttime and/or
- (2) armed with a deadly weapon; and/or
- (3) caused physical injury to any person who is not a participant in the crime; and/or
- (4) uses or threatens the use of a dangerous instrument; and/or
- (5) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearms

in violation of Section 16-11-311, Code of Laws of South Carolina (1976) as amended.

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



ASSISTANT SOLICITOR

WITNESSES

SPTBG. CO. SHERIFF'S OFFICE

[Signature]

ARREST WARRANT NUMBER

2017A4210100080

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date:

MAY 05 2017

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. **17-GS-42-2222**

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAY 08 2017

TERM

THE STATE
vs.

Michelle Sloan Allison

Indictment for

GRAND LARCENY

SC Code: 16-13-30 (B)

CDR Code: 3421

Class FEL

*nolle prosequi -
Defendant pled
guilty to other
charge (accessory)
related to this
case -*

FILED
COURT

2017 MAY 10 AM 10:54

M. JONES BLACKLEY

*7/24/17
Tim Podes
Asst.
Solicitor*

2017 JUN 25 PM 2:29

759

WITNESSES

- 1. SENTENCE MADE
- 2. REPORT MADE
- 3. CARD FILLED
- 4. INDEXED
- 5. CHECKED WARRANTS
- 6. CHECKED SIGNATURE
- 7. ASSESSMENT AND FINE CARD MADE
- 8. COLLECTION ACTION COMPLETED

ARREST WARRANT NUMBER

DIRECT INDICTMENT

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. **GS-42-2708**

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAY 08 2017

TERM

**THE STATE
vs.**

Michelle Sloan Allison

**Indictment for
ACCESSORY AFTER THE
FACT TO A FELONY**

SC Code: 16-1-55
CDR Code: 2415
Class FEL/F

Compute

COUNTY OF SPARTANBURG
 STATE VS.
Michelle Sloan Allison
 AKA: _____
 Race: WHITE Sex: F Age: 31
 DOB: SS#:
 Address:
 City, State, Zip:
 DL#: SID#:

INDICTMENT/CASE#: 2017GS4202708
 A/W#: 2017GS4202708
 Date of Offense: 12/21/2016
 S.C. Code § : 16-01-0055
 CDR Code #: 2415

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
 TO: Accessory / Accessory after the fact to Felony E (Grand Larceny) (0-5 years)

in violation of § 16-01-0055 of the S.C. Code of Laws, bearing CDR Code # 2415
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, MSA (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Timi Poulos 70455 Michelle Sloan Allison 78225
POULOS, TIMI SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of 2 1/2 days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5

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

CONCURRENT or CONSECUTIVE to sentence on: to present DOC sentence
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections. 91 days

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
 Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
 Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP once all \$ is paid
 Total: \$ _____ plus 20% fee: \$ _____
 days/hours Public Service Employment

Payment Terms: _____
 Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Publ. Def/Probation)	\$500	\$500.00
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$18.75

TOTAL \$1043.75

Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund

Other: no contact with victims
ATV if possible and available

Appointed PD or appointed other counsel,
 Proviso 61.6 requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Clerk of Court/ Deputy Clerk A Selley
 Court Reporter: Moffett
 SCCA/217 (07/2016)

Presiding Judge _____
 Judge Code: 2132
 Sentence Date: 7/24/17