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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Horry County

Honorable Brooks P. Goldsmith, Circuit Court Judge

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MIGUEL ANGEL GARCIA,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001914

---

APPENDIX

---

VICTOR R. SEEGER  
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON  
Attorney General

JOHNNY ELLIS JAMES, JR.  
Assistant Attorney General  
Rembert Dennis Building  
1000 Assembly Street  
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY ) 2014-GS-26-01276

STATE OF SOUTH CAROLINA, )

Plaintiff, )

Transcript of Record

vs. )

November 3, 2014

MIGUEL GARCIA, )

Defendant. )

**B E F O R E:**

Honorable John C. Hayes, III  
Horry County Courthouse  
Conway, South Carolina

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

Thomas G. Terrell, III, Esquire  
Attorney for Plaintiff

Thurmond Brooker, Esquire  
Attorney for Defendant

Kay H. Richardson  
Circuit Court Reporter

State v. Garcia - 2014-GS-26-01276  
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11

12

13 E X H I B I T S

14 No. ID EV

15

16 (No Exhibits were admitted.)

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25

State v. Garcia - 2014-GS-26-01276  
MOTION

3

1 (NOVEMBER 3, 2014 - 10:42)

2 MOTION:

3 MR. TERRELL: Your Honor, this is the State of South  
4 Carolina versus Miguel Angel Garcia Garcia charged with true-  
5 billed indictment 2014-1274, 75, 76 and 77, those would be for  
6 assault and battery first degree, kidnapping, burglary first  
7 degree and armed robbery.

8 He is with his attorney Mr. Thurmond Brooker. This is a  
9 motion for -- to relieve Mr. Brooker as his attorney made by  
10 the Defendant, Your Honor.

11 THE COURT: All right. Mr. Brooker, we had a brief in  
12 chambers conference regarding this matter and I also received  
13 a letter sent to myself and to Judge John from Mr. Garcia  
14 wherein he indicated that he was seeking to have you relieved  
15 as counsel.

16 Mr. Garcia, I -- you, of course, have a right to remain  
17 silent, you don't have to say anything. Anything you say is  
18 being taken down and recorded and could be later used against  
19 you. But since you have said in the letter that you are  
20 dissatisfied with Mr. Brooker's representation, I need you to  
21 state for the record exactly what your grounds are for having  
22 -- asking that Mr. Brooker be relieved. Now, before you say  
23 that, I understand that Mr. Brooker is retained and that he is  
24 not appointed. So, what's the concern about?

25 MR. GARCIA: Your Honor, I just feel like he hasn't

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MOTION

4

1 prepared me properly for my trial. I've been trying to  
2 contact him on numerous occasions since August to get him to  
3 come talk to me and -- cause I had evidence that could  
4 possibly help me in my case and he never returned any of my  
5 family's phone call or haven't come to see to prepare me for  
6 this trial, Your Honor.

7 THE COURT: Mr. Brooker, anything you want to say?

8 MR. BROOKER: The only thing I would like to say, Your  
9 Honor, is that I believe that we did satisfy our obligation to  
10 Mr. Garcia. Obviously, that we have Rule 5 and Brady  
11 discovery that we received in connection with this case and we  
12 shared with him every bit of evidence that we've received. We  
13 explored any potential defenses that he has discussed. But,  
14 with all that being said, what I would say to the Court is  
15 that I have absolutely no opposition to being relieved as  
16 counsel for Mr. Garcia if he chooses that.

17 THE COURT: All right. Mr. Garcia, I'm gonna talk to you  
18 just a minute and then I'm gonna give you overnight till at  
19 least noon tomorrow to make a decision as to whether or not  
20 you wish to go forward with this motion because I have certain  
21 obligations to relate to you to help you in making your final  
22 decision.

23 First, if Mr. Brooker is relieved as your attorney, then  
24 you have no attorney. You are what you call pro se, that is  
25 appearing without an attorney. Appearing without an attorney

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MOTION

5

1 is extremely risky and dangerous because you're not an  
2 attorney, I don't believe. Are you an attorney? Do you have  
3 a law degree?

4 MR. GARCIA: No, sir.

5 THE COURT: If you're not an attorney, it would be very  
6 dangerous for you to represent yourself because you will not  
7 know the rules of evidence, certain motions, even though the  
8 Judge would relate to you your constitutional rights, you may  
9 not have the depth of understanding that an attorney would  
10 regarding the rights to your benefit. And for those same  
11 reasons, that because you are not versed in the law, just the  
12 benefit of having an attorney, an attorney would know certain  
13 motions to make about issues that may have some valid reason  
14 for them to be brought before the Court on your behalf. So,  
15 you would lose the opportunity to have an attorney and have  
16 Mr. Brooker, who has prepared this case, represent you and it  
17 would be dangerous for you to proceed without an attorney.  
18 Now, you, of course, could hire another attorney, there's no  
19 prohibition against that but I need to tell you that I have  
20 talked with the Solicitor in Mr. Brooker's presence and based  
21 on the scheduling that they have in Horry County, your case  
22 has to be tried in December -- no later than December of this  
23 year. So, that gives you a month to obtain a new attorney and  
24 for that attorney to get up to speed to represent you properly  
25 in your trial because you will be up for trial in December of

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MOTION

6

1 this year either with or without an attorney. You do have a  
2 right, if I relieve Mr. Brooker, to obtain another attorney  
3 but since you have hired an attorney, it would appear to me  
4 and I would not be the one to ultimately address this, but it  
5 would appear to me that since you hired an attorney, you have  
6 sufficient funds to not have an appointed attorney. I can't  
7 make that determination because that's not before me. And you  
8 could perhaps apply for a public defender or an appointed  
9 attorney but whether or not that would be granted is not for  
10 me, that's up to another judge. But even it was, that  
11 attorney will only have a month to get ready to try your case  
12 because your case is being called for trial in December. Do  
13 you understand all that?

14 MR. GARCIA: Yes, sir.

15 THE COURT: All right. Well, you can talk with your  
16 family, if you have an opportunity, I don't know the jail  
17 rules around here but I will give you till tomorrow at noon.  
18 If you still want to go forward with relieving Mr. Brooker, he  
19 has no opposition, by stating that he obviously has no  
20 opposition to continue to represent you. So, I'll leave him  
21 on your case at this time and let you tell me tomorrow around  
22 midday whether or not you wish -- still wish to relieve Mr.  
23 Brooker and be your own attorney or that window of time,  
24 thirty to forty-five days at the most to have another  
25 attorney. Do you understand all that?

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BY THE COURT

7

1 MR. GARCIA: Yes, sir. Can I ask my family a question  
2 real quick before I proceed with this?

3 THE COURT: Yeah, as long as security is available, yeah.  
4 You can step over there a little closer to them. We don't  
5 want to hear what you have to -- it's not our business as to  
6 what you ---

7 (REPORTER'S NOTE: Defendant confers with family.)

8 THE COURT: All right. You've had an opportunity to talk  
9 to your family, would you like to talk to Mr. Brooker just a  
10 moment?

11 MR. GARCIA: Yes, sir.

12 MR. BROOKER: Your Honor, may we approach?

13 (REPORTER'S NOTE: A bench conference was held off the  
14 record.)

15 (RECESS - 10:54 A.M.)

16 \*\*\*\*\*OFF THE RECORD\*\*\*\*\*

17 (On the Record - 11:18 A.M.)

18 BY THE COURT:

19 MR. TERRELL: This is the State of South Carolina versus  
20 Miguel Angel Garcia Garcia. He's going to be pleading guilty  
21 on true-billed indictment 2014-GS-26-1276. That being for  
22 burglary in the first degree. He's pleading to a negotiated  
23 fifteen years in conjunction with this the State will be  
24 dismissing all current pending charges in our office.

25 THE COURT: All right. You're gonna bring Mr. Garcia

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MIGUEL GARCIA - BY THE COURT

8

1 around and have him sworn?

2 CLERK: Yes, sir. Would you please stand and raise your  
3 right hand?

4 MIGUEL ANGEL GARCIA GARCIA, HAVING  
5 BEEN DULY SWORN, TESTIFIES AS FOLLOWS:

6 THE COURT: Mr. Garcia, how old are you? Please remain  
7 standing.

8 MR. GARCIA: Twenty-three.

9 THE COURT: And how far did you go in school?

10 MR. GARCIA: Tenth grade, Your Honor.

11 THE COURT: All right. You are represented by Mr.

12 Brooker, we talked earlier about your situation with him and  
13 your letter to Judge John and the discussion with me about  
14 relieving him but you have not decided to keep him on as your  
15 attorney?

16 MR. GARCIA: Yes, yes, sir, Your Honor.

17 THE COURT: You're charged with burglary in the first  
18 degree. The indictment alleges that this occurred here in  
19 Horry County on or about December 31st of last year, 2013.  
20 You entered the dwelling of Christopher Parr (spelled  
21 phonetically) without consent with the intent to commit a  
22 crime therein and that while in the dwelling or fleeing from  
23 the dwelling, you or someone else, if there was someone else  
24 involved in the crime, were harmed or cause physical injury to  
25 a non-participant of the crime or you showed or displayed what

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MIGUEL GARCIA - BY THE COURT

9

1 appeared to be or what was a knife or a firearm. Do you  
2 understand that charge?

3 MR. GARCIA: Yes, sir, Your Honor.

4 THE COURT: This carries up to life imprisonment with a  
5 minimum of fifteen years. It is a most serious offense and  
6 most serious offense is a type of offense which if in one's  
7 lifetime they or you receive three -- two most serious  
8 offenses or a combination of three serious and most serious  
9 offenses, you'd be subject to be incarcerated to life without  
10 parole. Burglary first is a violent offense. That means that  
11 you would while incarcerated not be entitled to certain  
12 programs that are available for non-violent offenders. It's a  
13 parole ineligible offense, that means that you would have to  
14 serve at least eighty-five percent of your sentence before you  
15 would be eligible for an early release program. If you were  
16 released into an early release program, it would be -- you'd  
17 do one that has supervision, called community supervision  
18 similar to parole or probation. You would be in this program  
19 for two years. If you violated a condition of that community  
20 supervision you could be re-incarcerated for up to year and  
21 that pattern could continue until you had served the entire  
22 sentence you would receive. Do you understand all that?

23 MR. GARCIA: Yes, sir, Your Honor.

24 THE COURT: How long you been in jail?

25 MR. GARCIA: Since August 20th, Your Honor.

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MIGUEL GARCIA - BY THE COURT

10

1 THE COURT: I'll ask somebody to figure out how many days  
2 that was.

3 How do you plead to this charge?

4 MR. GARCIA: Guilty, Your Honor.

5 THE COURT: Other than the recommendation of a fifteen  
6 year sentence, has anyone made any other promise or threats to  
7 cause you today to enter your plea -- well, sentence and the  
8 dropping of the other charges, has anyone made any other  
9 promises, threats to cause you today to give your plea of  
10 guilt?

11 MR. GARCIA: No, sir, Your Honor.

12 THE COURT: Are you, today, Mr. Garcia, under the  
13 influence of anything that would cause you to be intoxicated?

14 MR. GARCIA: No, sir, Your Honor.

15 THE COURT: Are you entering today your plea to the  
16 charge freely and voluntarily?

17 MR. GARCIA: Yes, sir.

18 THE COURT: Mr. Garcia, you have a right to a trial by  
19 jury on this charge and you are presumed innocent of this  
20 charge until such time as the State is able to prove if it can  
21 your guilt beyond a reasonable doubt. To the charge, you have  
22 the right to remain silent, the right to confront the  
23 witnesses against you and you have the right to have your  
24 witnesses made to come to court to testify. Do you understand  
25 you have these rights?

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MIGUEL GARCIA - BY THE COURT

11

1 MR. GARCIA: Yes, sir.

2 THE COURT: Do you have any questions about them?

3 MR. GARCIA: No, sir.

4 THE COURT: I advise you that when you enter a plea of  
5 guilt you give up these rights, you also give up any defense  
6 that you might have to the charge; do you understand that?

7 MR. GARCIA: Yes, sir.

8 THE COURT: Knowing all those things, I ask again, how do  
9 you plead to burglary on December 31st of last year?

10 MR. GARCIA: Guilty.

11 THE COURT: All right. The State complied with the  
12 victim's rights act?

13 MR. TERRELL: Yes, sir, Your Honor.

14 THE COURT: Any restitution?

15 MR. TERRELL: No, sir.

16 THE COURT: All right. Tell me the facts.

17 MR. TERRELL: Yes, sir. On December 31st of last year,  
18 this Defendant and two other Codefendants went to Christopher  
19 Parr's residence down in the Myrtle Beach section of Horry  
20 County. While they were there, two of the Defendants went in  
21 with masks. One had a gun and the other had a crowbar. The  
22 victim in this case was hit with a crowbar in the arm. When  
23 they were on their way out of the residence, they took with  
24 them an Xbox, some money, other various personal goods and  
25 left. The two Codefendants came forward after the fact and

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BY MR. BROOKER

12

1 told North Myrtle Beach officers what had gone on. The --  
2 this Defendant was on a GPS monitor at the time and that's how  
3 they were able to pin him down at the house, Your Honor, as  
4 well as with the Codefendants' statements.

5 THE COURT: Do you agree with that, Mr. Garcia?

6 MR. GARCIA: Yes, sir, Your Honor.

7 THE COURT: Mr. Garcia, I accept your plea. I find it's  
8 freely, voluntarily, knowingly and intelligently entered and  
9 with competent counsel. I find the facts support your plea.  
10 You have signed a plea of guilt. We have that you have served  
11 seventy-six days and I'll give you credit for that. But I'll  
12 be glad now, first, to hear from your attorney and then from  
13 you.

14 BY MR. BROOKER:

15 MR. BROOKER: Thank you, Your Honor. Your Honor, Miguel  
16 is twenty-three years of age, he is of age, he is single. He  
17 actually has his first child that is on the way. His  
18 significant other is in the courtroom and obviously is -- she  
19 is anticipating, at least, I think within the next couple of  
20 months or so to give birth to his first child. With respect  
21 to his criminal record, he does have some criminal record.  
22 Obviously, you know, at the age of twenty-three, this  
23 obviously, the charges that he is pleading guilty before you  
24 today, Your Honor, are obviously very serious charges and he  
25 understands they are. He has a tenth grade education which

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BY MR. BROOKER

13

1 obviously subjects him to some disadvantage. You know,  
2 unfortunately a lot of young kids like him end up dropping out  
3 of school, you know, when they do drop out of school, without  
4 a high school education, it leaves them at a tremendous  
5 disadvantage where they cannot compete with the rest of  
6 society. Recently, about a year or so ago, listening to --  
7 and they were talking about how competitive, at least, the job  
8 market has become. And it used to be that when you had a  
9 Bachelor's degree, of course, that was something that was  
10 distinguished. As of now, today, a Bachelor's degree is  
11 equivalent to having a high school diploma back into the 1950s  
12 and 60s. And for an individual like him who does not have a  
13 high school diploma, high school dropouts, is that his  
14 competitiveness within this economy is greatly diminished.  
15 Now, that is not an excuse for his conduct. It is not an  
16 excuse for his conduct whatsoever. He understood at the time  
17 in which he engaged in that conduct that it was in violation  
18 of the law and he intended to commit a crime anyway. But I  
19 guess the only reason why I stress that, Your Honor, is to say  
20 is that obviously his life is quite different from ours. I  
21 think he's gonna struggle for the rest of his life. I hope  
22 during the period of time that he's incarcerated have allowed  
23 him to at least gain at least some perspective and hopefully  
24 realize the only way that he's gonna have a chance within our  
25 society is if when he gets out he seeks some additional

State v. Garcia - 2014-GS-26-01276  
BY MR. BROOKER

14

1 education and prepare himself to compete, you know, with the  
2 rest of us within our society.

3 But I don't think he's a bad person. I've had the, you  
4 know, the opportunity to spend a great deal of time with him  
5 and I've talked with him a lot and I don't consider him to be  
6 innately an evil person or a bad person. I consider him to be  
7 a disadvantaged individual who obviously is -- has  
8 unfortunately sought a way to deal with his disadvantage in a  
9 way in which is not fruitful for anybody and specifically not  
10 him. I mean and the only way he's ever gonna be able to put  
11 himself in a position to where he's ever gonna be able to  
12 provide for himself and his family and that is to obtain an  
13 education. And I do think that he realizes that now. I hope  
14 he takes advantage of this time but I would just simply ask  
15 the Court to -- based on that to accept the recommendation or  
16 at least the negotiated plea that's been reached. And I'd  
17 also ask, Your Honor, is that I know -- I think you  
18 calculated, Your Honor, it was seventy-six, I think, days ---

19 THE COURT: That was from the time of his arrest. I  
20 don't know if he served any time before then. He'd certainly  
21 be entitled for credit for that.

22 MR. BROOKER: Okay, Your Honor. I think we have him as  
23 being arrested, I think, on January 1 of 2014 and I think it  
24 was March 12 of 2014 that he was released on home detention  
25 along with electronic monitoring. Obviously, with the change

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BY THE COURT

15

1 in the law it's within Your Honor's discretion to give him  
2 credit for time that he was served and obviously we would  
3 respectfully request, Your Honor, that you consider giving him  
4 time ---

5 THE COURT: I'm gonna give him time served for  
6 everything.

7 MR. BROOKER: Okay. And I think -- in our calculation,  
8 Your Honor, we calculated it at something like 305, 305 days.

9 THE COURT: All right.

10 MR. BROOKER: Starting from January 1, 2014 up until  
11 today.

12 Thank you, Your Honor.

13 BY THE COURT:

14 THE COURT: Mr. Garcia -- does anyone on his family want  
15 to speak?

16 MR. PEREZ: I would like to speak.

17 THE COURT: Stand up and tell us your name.

18 MR. PEREZ: My name is Roberto Perez. I'm his older  
19 brother.

20 COURT REPORTER: I need your name again, please.

21 MR. PEREZ: My name is Roberto Perez. I'm his older  
22 brother. What I would like to say is that, like his lawyer  
23 said, we had a rough childhood growing up, you know, it hasn't  
24 really been easy. Our dad hasn't been there and stuff. And  
25 he's just been through a lot. You know, we make wrong

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SENTENCE OF THE COURT

16

1 choices, you know, wrong decisions. I don't even know what to  
2 say right now, to be honest. Just thank you for letting his  
3 attorney -- letting him the opportunity to start...

4 THE COURT: All right. Thank you.

5 Mr. Garcia, anything you want to say?

6 MR. GARCIA: No, sir, Your Honor.

7 SENTENCE OF THE COURT:

8 THE COURT: All right. The sentence is fifteen years.  
9 I'll give you credit for 305 days. Thank you.

10 MR. BROOKER: Thank you, Your Honor.

11 (ADJOURNED - 11:30 A.M.)

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ORIGINAL

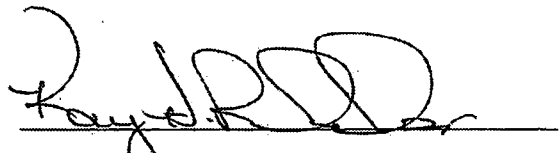
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CERTIFICATE OF COURT REPORTER

17

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus Miguel Garcia, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on November 3, 2014.

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



Kay H. Richardson

Official Court Reporter

October 15, 2015.-

## FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

Miguel Garcia #339203

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

20 15 CP26 6311

v.

APPLICATION FOR

State of South Carolina Attorney  
General office

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McComick Corr Inst
2. Name and location of Court which imposed sentence General Sessions
3. Name(s) of co-defendant(s) (if any) Austin and Cavender
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2014A 2610200028
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) 11/3/14
  - (b) \_\_\_\_\_

- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty YES
- (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 "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. NA
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. NA
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. NA
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NA
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Counsel Advise me that there was NO merits
- (b) on Direct of Appeal
- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) 6th  
 (b) 14th  
 (c) see Attachment PCR

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

- (a) ineffective assistance of trial counsel  
 (b) Due process of law  
 (c) "support of Memorandum of Law PCR"

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

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

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. NA  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_  
 iv. \_\_\_\_\_  
 (b) the name and location of the Court in which each was filed:  
 i. NA  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_  
 iv. \_\_\_\_\_  
 (c) the disposition thereof:  
 i. NA  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_

- iv. \_\_\_\_\_
- (d) the date of each such disposition:
- i. NA
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. NA
- 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?
- NA
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. NA
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the proceedings in which each ground was raised:
- i. NA
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) see Attachment support PCR
- (b) \_\_\_\_\_
- (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? NA
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NA
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. Thurmond Brooker
- ii. Sc Barr
- iii. Florence County
- (b) the proceedings at which each such attorney represented you:
- i. Guilty Plea
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
19. State clearly the relief you seek in filing this application:  
Vacate Conviction and sentences
20. Are you now under sentence from any other court that you have not challenged?  
NA

STATE OF SOUTH CAROLINA )

County of McCormick )

VERIFICATION

20 15 CP26 6311

I, Miguel Garcia, 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.

Miguel Garcia

SWORN to and subscribed before me this 17  
day of August, 2015.

JC Franklin (L.S.)  
Notary Public

My Commission Expires: 12/6/2015

HENRY COUNTY  
2015 AUG 25 AM 8:35  
NOTARY PUBLIC

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

20 15 CP26 6311

I, Miguel Garcia, 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.

Miguel Garcia  
Applicant

SWORN or affirmed to and subscribed before me this  
17 day of August, 2015.

J. Franklen  
Notary Public

My Commission Expires: 12-16-2019

HENRY COUNTY  
2015 AUG 25 AM 8:36  
CLERK OF COURT

state of South Carolina ) In The Court of Common  
 County of Horry ) ~~Plays~~ 2015 0826 6311  
 CA#

Miguel Garcia #239203,

Applicant

Attendant of Service

VS

state of South Carolina,  
 Respondent

To: Respondent:

I Miguel Garcia Hereby serving  
 true copy of Post-Conviction Relief  
 Application, along with Summons, and  
 memorandum of Law support Post-  
 Conviction Relief Application by placing  
 a true copy in the United States mail  
 address below.

Ms Melanie Huggins ward  
 clerk of court  
 P.O. Box 677.  
 Conway, SC. 29528-0677

s/ Miguel Garcia  
 Miguel Garcia  
 386 Redemption Way  
 McCormick, SC 29879

Sworn before me this  
 Day 17 of 8 (August) 2015  
 Notary Franklin  
 Expires 12/16/2019

● cover Letter 2015: 1126 6311

Miguel Garcia #339203

386 Redemption Way

McCormick, S.C. 29899

Date \_\_\_\_\_ 2015

Re PCR / \_\_\_\_\_

Dear Honorable Clerk of Court  
Ms. Melanie Huggins Ward:

Enclosed Please Find the original  
copy of Post-conviction Relief App-  
lication, and Summons, and Affidavit  
of service.

Please Find my Request for  
a clocked-Dated stamped copy.

cc: M.G.

cc: H.C.C.M.H.W.

Respectfully Submitted

~~of Miguel Garcia~~

Miguel Garcia #339203  
386 Redemption Way  
McCormick, S.C. 29899

2015 AUG 25 AM 8:37  
HORRY COUNTY

state of South Carolina  
 County of Henry  
 Miguel Garcia

Applicant

VS

state of South Carolina  
 Respondent

In the Court of Common  
 Pleas

2015 Case # 6311

Summons

Rule 12.(2) SCRPC

To: Respondent's

YOU ARE HEREBY summoned and requested to answer the Post-conviction Relief Application, herein, a copy of which is hereby served upon you, and to serve a copy of your answer to this Post-conviction Relief Application upon the subscriber, at the address shown below, within sixty (60) days after service hereof, exclusive of the day of such service, and if you fail to answer the Post-conviction Relief Application, Judgment by default will be rendered against you for the relief demanded in the Post-conviction Relief Application.

McCormick SC 29899

Date 2015

st Miguel Garcia  
 Miguel Garcia  
 306 Redemption Way  
 McCormick, SC 29899

HENRY COUNTY  
 2015 AUG 25 AM 8:30

state of South Carolina, In the Court of Common Pleas  
 County of Horry

C/ 2015 CP266311

Miguel Garcia #339203  
 Applicant

Memorandum of Law in  
 Support of Post-conviction  
 Relief Application

Y  
 state of South Carolina  
 Respondent

HORRY COUNTY  
 2015 AUG 25 AM 8:35  
 CLERK OF COURT

To Respondent's

This matter comes before this Honorable  
 Court pursuant to post-conviction Relief  
 Application pursuant to S.C. Code of Law  
 Ann 17-27-10, And 17-27-90).

STATEMENT OF THE CASE

The applicant was charged with A Burglary  
 occurred on December 31, 2013, During day  
 time hours, at location 166 Tibton circle  
 located in the myrtle Beach section of  
 Horry county. The applicant Plea guilty  
 Burglary First, and was sentences to  
 fifteen (15) years before Judge John C.  
 Hayes.

## Argument 1

Trial Counsel prejudice applicant by Not conduct Pre-trial investigation by Not bringing to my attention that DNA didn't match my blood during state investigation. Had he would have brought it to my attention, "I would Never Plea guilty. DNA Forensic Evidence report of the blood that was smeared on victim bedroom door didn't match mine." DNA blood belong to one of the suspect. Pursuant to motion Discovery does Not show a copy of chain of custody report involve in this case to determine who was the person that handle evidence DNA that was transport.

The applicant submits that he recieved ineffective assistance of counsel prior to and during his guilty Plea. The sixth Amendment to the united states constitution Guarantees that every criminal defendant is entitled to the effective assistance of counsel in presenting their defense, see also, S.C. Const. Art. 1 Section 14. The Supreme court has stated, "The right to counsel is a fundamental right of criminal defendants, it assures the fairness, and thus the Legitimacy, of our adversary process." Kimmelman V. Morrison, 477 U.S. 365 (1986) Furthermore, The Supreme court has reconised that "The right to counsel is the right to effective assistance of counsel." McMann V. Richard, 397 U.S. 759 771 (1970)

To see whether counsel has fallen below the minimum standard needed for effective assistance of counsel under the sixth Amendment to the Constitution, a two prong test must be met. In Strickland v Washington, 466 U.S. 668, 688-694 (1984), the Supreme Court held that a determination of ineffective assistance of counsel would be conditioned on two factors:

- (1) Counsel's performance must have fallen below an objective standard of reasonableness; and
- (2) There must be a reasonable probability that but for counsel's errors, the results of the proceeding would probably have been different.

South Carolina has adopted the Strickland standard. See, e.g., Cherry v State, 386 S.E.2d 624 (1989). The right to effective assistance of counsel if the error is sufficiently egregious and prejudicial. Murry v Carrier, 477 U.S. 478 (1986), "It is the client's right to expect that his lawyer will use every skill, expend every energy, and tap every legitimate resource in the exercise of independent professional judgment on behalf of the client and in undertaking representation of the client's interests." Frazer v United States

18 F.3d 778, 785 (9th Cir 1994), "Defense Counsel must do his utmost to bring his Legal acumen to bear on behalf of the defendant; Keep the defendant fully informed of Developments in the case and consult with the defendant on all major Decisions to be made; conduct A reasonable Pre-trial investigation, which should include contacting Potential Witnesses; Prepare Adequate, and professionally for trial; conduct the trial to the best of his Ability; And at the bottom, serve as a Vigorous and Devoted advocate of the Defendant's cause" United States ex Rel Pardee v Lane, 926 F.2d 694, 702 (7th Cir 1991).

(A) Counsel was ineffective for failing to conduct An Adequate Pretrial investigation pursuant to Henry County Police Department Report of investigation by investigating officer: Michael Kathman pursuant to Page 2 of 6 Verify Evidence quote. The victim advised that the blood that was smeared on his bed-

room door did not belong to him and stated it belong to one of the suspects 14 zip ties used to tie the victim up and a blood swab DNA sample were collected and transported to HCRD evidence. see exhibits (A)(U) of (b) at pg(2) of (b) the on coming shift supervisor came and assisted me with evidence collection / transport.

## II Law / ANALYSIS

"[T]his court has long held a party offering into evidence fungible items such as drugs or blood samples must establish a complete chain of custody as far as practicable." State v Sweet, 374 S.C. 1, 664 S.E.2d 202, 205 (2007); see also Benton v Pellum, 232 S.C. 26, 33, 100 S.E.2d 537 (1957) (stating "it is generally held that the party offering such specimen is required to establish, at least as far as practicable a complete chain of evidence").

The court of Appeals acknowledged that South Carolina case Law provides

that the chain of custody need be established only "as far as is reasonably practicable" and that each person handled the evidence is not required to testify, but Nevertheless stated that "South Carolina courts, have consistently held that all persons in the chain of custody must be identified and the manner of handling the evidence must be demonstrated." *Id.* at 377, 681 SE2d at 928 (emphasis added).

*Id.* at 629, 614 SE2d at 646 (emphasis added) (footnote omitted) see also State v. Kahan 268 S.C. 240; 244-45, 233 SE2d 293, 294 (1977) holding the standard stated in Benton v. Pellum had been met where the evidence transported in accordance with Normal protocol, even though every person who may have handle it was not personally identified and there was no testimony regarding the care and handling of the item for an interval when it was being stored).

AS The supreme court also recognized in Strickland "counsel Bears a duty to make A reasonable investigation of the law and facts in his client's case." Strickland 466 U.S. At 691, Additionally, the A.B.A. standards Relating to the administration of criminal Justice Provide:

It is the duty of lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case, and the penalty in the event of conviction. The investigation should always include efforts to secure information in the possession of the prosecutor and law enforcement authorities. The duty to investigate exist regardless of the accused admissions, or statement to lawyer or facts constituting guilt or the accused stating desire to plead guilty.

A defendant right to effective assistance of counsel confers a duty on counsel to conduct an adequate pre-trial investigation. When a lawyer fails to conduct a substantial investigation into any of his clients plausible lines of defense, the lawyer has failed to render effective assistance of counsel Cobbs v State 408 S.E.2d 223 (1991). Pre-trial preparation, principally because it provides a basis upon which most of the defense case must rest, is perhaps, the most critical stage of a lawyer's preparation. A failure to investigate evidence that would be helpful to the defense is also an indication of ineffective assistance of counsel. Id.

## ARGUMENT (2)

Trial Counsel prejudice applicant by advise applicant Plea guilty, And Failure to adequately investigate, And re-search and interview victim, And evaluate his case.

ON December 31, 2013 the victim gave written statement to officer David Langlais responded to a home invasion at 166 Tibton Circle and spoke with the victim Christopher Parra reported that two male suspects forcibly entered his home before he was assaulted, tied up, And robbed. Parra identified one of the suspect as Miguel Angel Garar. Garar, Langlais completed an incident report that included the following Narrative.

In the applicant Garar case, counsel prejudice applicant by advise Applicant Plea guilty but insisted the applicant want to go trial and the applicant had advise counsel that he had received text message from the victim that day that he had \$760, a motorcycle title, a spare motorcycle Key, a black x box 360, and various baseball caps were taken from his residence by the suspects.

The applicant and the victim both was in a relationship with Emily Sullivan.

Counsel prejudice applicant by advise applicant Plea guilty and Failure to adequately investigate, and re-search and interview victim that gave inconsistent statement written Affidavit admit that the applicant did not commit the crime of First degree Burglary see probative evidence to support claim, By Victim Christopher Parr AKA Kiso, Date ~~Jan~~ 2014, Exhibits (B), (C)

In a post-conviction relief (PCR) proceeding, the burden is on the applicant to prove the allegations in his application, and if there is any probative evidence to support the finding of the PCR Judge, those findings must be upheld; likewise, a PCR Judge's findings should not be upheld if there is no probative evidence to support them. Thompson v State (S.C. 2000) 340 S.C. 112, 531 S.E.2d 294.

Trial counsel's Failure to properly utilize witness prior inconsistent statements for impeachment purpose constitutes ineffective assistance. see cite at Driscoll v Delo 71 Fed

701 (8th Cir 1985; see cite at U.S. ex Rel McCall v Ograd 714 F. Supp 374 (NO) 111 1989) United States v Tucker; 716 F2d 576 9th Cir 1983; And the applicant was denied effective assistance of counsel by Failure to interview the victim of the crimes with which he was charged, even though the victim had gave exculpatory affidavit on behalf of the applicant before the applicant Plea guilty in the year of 2014).

see cite similar to Garcia v State, similar to Thorne v State S.C. 1993) 310 S.C. 306 426 SE2d 764, The defendant was not denied effective assistance by his counsel's Failure to interview the victim of the crimes with which he was charged, even though the victim later gave exculpatory testimony on behalf of the defendant at his post-conviction relief hearing, where (1) such testimony was made years after the original incident, (2) the victim

impact statement gave no indication of the exculpatory testimony, and (3) No proof was offered that the victim would have given the exculpatory information to the attorney at the time.

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonable probability that, but for counsel's errors the defendant would not have pled guilty but would have insisted on going to trial. [FN 5] Hill v Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985).

To prove ineffective assistance of counsel, a criminal defendant initially must show that his attorney's performance was deficient. Strickland v Washington 466 U.S. 668, 687. 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984). The proper measure of attorney performance is reasonableness under prevailing professional norms. Id.

at 688; 104 S.Ct. at 2064. A criminal defendant also must show that was prejudiced because, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.* at 694, 104 S.Ct. at 2068.

In applicant case counsel was so prejudiced by advise applicant plea guilty and did not take any best interest in the applicant case to conduct any legal research or go over any legal material motion discovery. see legal letter to Honorable Judge Steven H. John Date Nov 3rd 2014, Exhibits (D)

### Argument 3

Trial counsel prejudice applicant by failing to file a Timely Direct of Notice of Appeal.

Applicant advise trial counsel to file timely Direct of Notice of Appeal to challenged his guilty plea which the applicant did not knowingly and voluntarily waived my right to timely Direct of Appeal pursuant to my conviction and sentences which the Applicant was

threat to plea guilty to the charged of First degree Burglary, and counsel was advise that victim had written a statement that the applicant was the wrong person, and the applicant should be entitled to belated direct appeal.

"Ineffective assistance when counsel failed to file timely Notice of Appeal," see cite at Williams v Lockhart, 849 F2d 1134, 1137-38 (8th Cir 1988). Applicant entitled to evidentiary hearing on ineffective assistance when claimed applicant asked trial counsel to file Notice of Appeal and counsel did not. see cite at Strickland v Washington 466 U.S. at 692.

### conclusion

Wherefore applicant conviction and sentences should be vacate and a evidentiary hearing should be granted.

Date \_\_\_\_\_ 2015

McCormick S.C.

SI Miguel Garcia  
Miguel Garcia # 339203

exhibits (A) (1) of (6)



# HORRY COUNTY POLICE DEPARTMENT

*Dedicated to Providing Comprehensive, Quality Law Enforcement*

Johnny E. Morgan  
Chief of Police

2560 North Main Street, Suite 7 - Conway, SC 29526 - Tel: 843-915-5350 - Fax: 843-248-1886

## Report of Investigation

**Investigating Officer: Michael Kathman**

|                  |                                                                                                 |
|------------------|-------------------------------------------------------------------------------------------------|
| <b>Case No:</b>  | <b>13120794</b>                                                                                 |
| <b>Offense:</b>  | <b>Burglary 1<sup>st</sup> degree, Kidnapping, Assault 1<sup>st</sup> degree, Armed Robbery</b> |
| <b>Date:</b>     | <b>12/31/2013</b>                                                                               |
| <b>Suspect:</b>  | <b>Miguel Angel Garcia Garcia, John David Austin, Russell Allen Cavender</b>                    |
| <b>Location:</b> | <b>████ Tibton Circle Myrtle Beach, SC</b>                                                      |
| <b>Victim:</b>   | <b>Christopher Parra</b>                                                                        |

On December 31, 2013 Officer David Langlais responded to a home invasion at █████ Tibton Circle and spoke with the victim, Christopher Parra. Parra reported that two male suspects forcibly entered his home before he was assaulted, tied up, and robbed. Parra identified one of the suspects as Miguel Angel Garcia Garcia.

Langlais completed an incident report that included the following narrative:

*On 12/31/13 I responded to the above location in the Myrtle Beach section of Horry County in reference to an armed robbery. Upon arrival the victim was standing in his driveway with several of his friends who he stated were already on there way over to his residence before this incident occurred. The victim stated that the suspect entered his residence by breaking the window by his front door. The victim stated that he recognized the suspect because he spent time with him in jail and the suspect is also currently dating his ex girlfriend. The victim stated that the white male that was with suspect 1 was wearing a mask. The victim stated that suspect 1 struck him in the right arm with a crow bar then pointed a handgun, possibly a revolver at him, then proceeded to tie his wrists and his legs together. The victim stated that the two*

*suspects then went threw all of his belongings, room by room, each time moving the victim to another room. The victim stated that \$760, a motorcycle title, a spare motorcycle key, a black Xbox 360, and various baseball caps were taken from his residence by the suspects. The victim stated that he was held against his will for approximately 1 hour. The victim had a laceration on his right arm and refused EMS treatment. The victim stated that he has no idea why the suspect(s) came to his residence and everything that occurred was a surprise to him. During the course of this investigation it was observed that many items had been moved, including the victim's bed being made by the victim. When asked about this the victim stated that he was "trying to clean up so I can go out, its new year's).*

*The victim advised that the suspect is currently on home detention. Dispatch later advised that suspect 1 is currently on the home detention program with the HCSO. The victim advised that the blood that was smeared on his bedroom door did not belong to him and stated that it belong to one of the suspect's. 14 zip ties used to tie the victim up and a blood swab DNA sample were collected and transported to HCPD evidence. The victim wrote a voluntary statement about this incident, which will be attached. The on coming shift supervisor came and assisted me with evidence collection/transport.*

On January 2, 2014 Detective Michael Kathman was assigned this case and reviewed the incident report and the attached written statement provided by the victim. Kathman then spoke with Deputy Scotty Jordan at the Horry County Sheriff's Office in reference to Garcia's home detention status. Jordan advised that Garcia was currently on home detention and also that he was scheduled to check in at their office later in the day. Jordan stated that he would research Garcia's home detention tracking and advise of his findings. Kathman later spoke with Jordan by phone and Jordan advised that he had mapped Garcia's movements on the incident date and that he would forward a copy of the results to Kathman via email. Kathman subsequently received the email and the information indicated that Garcia had been at the victim's residence on the incident date. Jordan had also advised that he would contact Kathman when Garcia arrived at the Sheriff's Office. Kathman later received a phone call from Jordan and he stated that Garcia was at their office. Kathman then

spoke with Detective Brian Wilson and briefed him on the details of this case. Wilson advised that he had previously spoken with North Myrtle Beach Detective John Griffin about information Griffin had gathered regarding suspicious activity involving Garcia that may be related to this case.

Kathman spoke with the victim, Christopher Parra aka Kiso, by phone and discussed this case. Parra advised that he and Garcia had been in prison together about three years ago in Trenton, SC. He stated that Garcia was dating his ex girlfriend, Emily Sullivan. He stated that he was unable to identify the suspect who accompanied Garcia during the crime and that the suspects drove away in what appeared to be a silver in color, four door Acura.

Wilson subsequently spoke with Griffin by phone and advised him of the known details of this case. Griffin advised Wilson that he would attempt to gather further information and advise.

Kathman and Wilson responded to the Home Detention office and met with Jordan and Garcia. Garcia was subsequently interviewed and in a post Miranda statement denied any involvement with a home invasion at the victim's residence. He essentially stated that on December 31, 2013 he had gone to a friend's house in North Myrtle Beach whom he only knew as John. Garcia stated that he left the location alone and went to the home of another friend known as Kiso. He stated that his real name was Chris and that they had been incarcerated together in the past at Trenton. He said that he went to Kiso's house because Kiso was trying to sell him a motorcycle. Garcia showed text messages from Kiso on his phone from the evening of December 31, 2013 and morning/ afternoon of January 1, 2014 that indicated that Kiso was trying to sell him a motorcycle. Garcia stated that the motorcycle was stolen. Garcia advised that there had been no dispute, argument, or fight while he was at Kiso's home. He stated that the only source of any issue between the two would be the fact that he, Garcia, is dating Kiso's ex girlfriend. Garcia consented to providing a DNA sample

and a buccal swab was collected. The interview was recorded and a copy is attached to this case file. Also, Jordan provided additional GPS documentation regarding Garcia's home detention.

Wilson spoke with Griffin and he advised that he had two individuals at the North Myrtle Beach Department of Public Safety who were admitting to their roles in this case. Wilson and Kathman then responded to the NMBDPS where they met with Griffin. Griffin advised that he had received information on December 31, 2013 that Garcia was seen arriving at the apartment of John Austin and had what appeared to be a mask. The information continued that Garcia, Austin, and Russell Cavender had left the apartment and Garcia was observed with a handgun in his waistband. Griffin advised that surveillance was started on Garcia, Austin, and Cavender but had been terminated. Griffin stated that they were later observed returning to Austin's apartment and were observed carrying a laundry basket into the residence.

Griffin advised that after speaking with Wilson he had gone to the home and spoken with Austin and Cavender and that property had been recovered from their apartment. Austin and Cavender were interviewed and both admitted to their roles in the crime in post Miranda statements. They essentially stated that Garcia had arrived at the home before the three of them left together and Garcia took a revolver from the home when they left. They stopped nearby and dropped off Garcia's white in color Durango and borrowed a silver in color Acura which they then used for transportation. They went to Dick's Pawn Shop where Cavender bought bullets for the revolver, a .38. Garcia then purchased a crow bar from Harbor Freight Tools across the street. They arrived at the victim's home where Cavender remained in the car while Garcia and Austin entered the residence after breaking a front window. Once inside Austin had the handgun and entry was made into the victim's bedroom where he was located. Once inside the bedroom Garcia struck the victim with the crow bar and the victim was restrained with zip ties. At some point a female, believed to be Stephanie Debaggis, arrived at the home and was also restrained with zip ties. Property from inside the home was put into a laundry basket before Austin and Garcia exited the home, entered the car driven by Cavender,

and left the location. Written statements were obtained from both Austin and Cavender and are attached to this case file. The interviews were also video/ audio recorded at the NMBDPS but copies have not yet been obtained.

Kathman then contacted the victim by phone and requested that he respond to the NMBDPS to identify property that had been recovered.

The victim later arrived at the NMBDPS and identified the property recovered from Austin and Cavender as property that had been stolen from his home. The property was returned to him at that time.

The victim also interviewed and questioned about the text messages that Kathman had viewed between he and Garcia. The victim stated that he had sent the texts regarding selling a motorcycle and had told Garcia about him being robbed. He stated that Garcia had convinced him that he was not involved. This interview was also video/ audio recorded at NMBDPS but a copy has not yet been obtained.

The handgun used, ammunition, zip ties, and a glove recovered were relinquished by NMBDPS detectives to Kathman and were later placed into evidence at HCPD.

Arrangements were made for Austin and Cavender to turn themselves in at the J. Reuben Long Detention Center on January 3, 2014 in reference to this case.

Kathman and Wilson subsequently responded to the area of Highway 15 and located Garcia where he was taken into custody. He was transported from the location by a uniformed patrol officer.

On January 3, 2014 Kathman spoke with Stephen Grooms at the Solicitor's Office about this case and a determination was made regarding the appropriate charges. Kathman later presented this case to Judge Christopher Arakas who found probable cause to issue the following arrest warrants:

2014A2610200027 Armed Robbery—Garcia  
2014A2610200028 Burglary, 1st deg—Garcia  
2014A2610200029 Kidnapping—Garcia  
2014A2610200030 A&B, 1st deg—Garcia  
2014A2610200031 Burglary, 1st deg—Austin  
2014A2610200032 Kidnapping—Austin  
2014A2610200033 Armed Robbery—Austin  
2014A2610200034 Armed Robbery—Cavender  
2014A2610200035 Burglary, 1st deg—Cavender

Austin and Cavender turned themselves in and were taken into custody and served with the warrants for their arrest. Garcia was served with the warrant for his arrest and requested to speak with Kathman. In a post Miranda interview Garcia asked how he could help himself. He stated that John Austin, Russell Cavender and he had gone to the victim's home. His story changed at various times throughout the interview but he essentially stated that he had gone to the location to look at the motorcycle and that Austin and Cavender had committed the crime. He did state that Cavender had purchased the bullets and he admitted to buying the crow bar at Harbor Freight Tools. He stated that John had the gun and had broken the window and zip tied the victim. He stated that Hayden struck the victim with the crow bar and had stolen the zip ties from the Gator Hole Walmart. Garcia stated that an Xbox, shoes, hats, an unknown amount of money and drugs had been stolen from the home. He stated that he drove the vehicle to and from the location. A copy of the interview is attached to this case file.

Michael Kathman

Detective Michael Kathman  
Horry County Police Department  
Criminal Investigations Division

Exhibits (B) (B)



# HORRY COUNTY POLICE DEPARTMENT

Dedicated to Providing Comprehensive, Quality Law Enforcement

2560 North Main Street, Suite 7 -- Conway, SC 29528 -- Tel: 843-915-5250 -- Fax: 843-248-1886

Case# 13128794

Johnny E. Morgan  
Chief of Police

## Voluntary Statement

Time: 5:09 Date: 12/31/13 Location: My Home Page 1 of 1  
 I, Christopher Pardo am 24 years old, my date of birth is: [REDACTED]  
 my Social Security # is: [REDACTED]; my phone number is: [REDACTED]  
 my address is: [REDACTED]

I am giving this statement to [REDACTED] of the Horry County Police Department.  
 I volunteer to give the following information of my own free will, for whatever purpose it may serve.

I was laying down in my room when I heard someone entering my home and then knocked on my main door and I saw two men, one was white and unmasked and the other was a Hispanic male named Miguel Garcia around 21 5'10", and he chopped me with a Brooker Bar in my right arm and took me up by my legs and arms and put a Gun to my head and asked me where my money was. I was tied up and had a gun pointed at me for at least an hour and they took \$760 outta my room, my X-Box, Pitted caps, shoes, my Bike tire and some keys. Left me tied up and left. I then called 911...

I have read each page of this statement, consisting of \_\_\_\_\_ pages, each of which bears my signature and correction, any if, bear my initials and I certify that the facts contained herein are true and correct.

SIGNATURE:

WITNESS:

Date: Sept 1<sup>st</sup> 2014 Exhibits (C)

To: Whom it may Concern...

I Couldn't live with myself if I sent the wrong person to jail so I have to get this off my chest...

The day of the incident which took place Dec, 31<sup>st</sup>, 2013 I had Miguel come to my house to look at a bike I had. Had arrived with 2 Friends and checked the bike out. He thought my bike was stolen after not having keys for it and since we couldn't back the handle bars loose so he didn't buy it. They left and I shut the Garage and layed down to take a nap.

I woke up to my door being kicked in and two masked men came in one who hit me in my arm with a crow bar and the other with a Gun who held it to my head. They ripped apart my house and took my things...

The thought it was Miguel who hit me with the bar but I feel as if it could've been someone of ~~equal~~ equal stature. I based it on how he walked and talked but I can't say it was Miguel for sure and don't need that on my conscience.

to and Subscribed Before Me,  
his \_\_\_\_\_ Day of \_\_\_\_\_  
Signed: \_\_\_\_\_  
Notary Public of South Carolina  
My Commission Expires February 15, 2017

Christopher Papp

exhibits D

Dear Honorable Steven H. John,

I am Miguel Angel Garcia Garcia. My attorney is Thurmond Brooker. My trial date is November 3<sup>rd</sup>, 2014. He is representing me on;

2014A2610200028 Burglary 1<sup>st</sup> Degree

2014A2610200029 Kidnapping

2014A2610200030 A&B 1<sup>st</sup> Degree

HERNANDO COUNTY  
CLERK OF COURT  
OCT 29 PM 3:55  
APPROVED - WAND

I am well aware of the severity of my charges and based on my experience with attorney Brooker I do not feel he is advising nor representing me to my best interest. Through out our attorney/client relationship we have had communication issues, stemming from early on. Mr. Brooker has not made any attempt to answer or respond to multiple calls. I asked to review my discovery and he failed to reply to my request. My family and I have made numerous calls to his office and still nothing. He has put no effort towards going over my case with me or updating me on my case status. I have no assurance that he will even be present at my trial. I would like to formally ask for relief from counsel.

Thank you in advance for your time.

Miguel Angel Garcia

STATE OF SOUTH CAROLINA )  
 COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
 OF THE FIFTEENTH JUDICIAL CIRCUIT

Miguel Angel Garcia,  
 S.C.D.C. No. 339203,

Case No.: 2015-CP-26-6311

Applicant,

**RETURN**

v.

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed August 25, 2015 the Respondent would show this Court:

**I.**

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Horry County Clerk of Court's orders of commitment. The Horry County Grand Jury indicted the Applicant at the March 2014 term for first-degree burglary (2014-GS-26-01276). Thurmond Brooker, Esquire represented the Applicant.

On November 3, 2014 the Applicant pled guilty as indicted. The Honorable John C. Hayes, III sentenced the Applicant to a negotiated sentence of fifteen (15) years' imprisonment. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Horry County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript.

**II.**

In his application for post-conviction relief, the Applicant alleges he is being held in

custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
  - a. "Trial counsel prejudice applicant by failing to filed a timely direct of notice of appeal"
2. Involuntary guilty plea.
  - a. "Trial counsel prejudice applicant by advise applicant plea [sic] guilty, and failure to adequately investigate and research and interview victim, and evaluate his case."
  - b. "Trial counsel prejudice applicant by not conduct pre-trial investigation by not bring to my attention that DNA didn't match my blood during investigation. Had he would have brought it to my attention, I would never plea [sic] guilty."
3. Violation of Due Process

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCP.

Attached to this return and incorporated herein are the records of the Georgetown County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

### III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

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 on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305

S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

#### IV.

The Applicant's assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial." Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and

any mandatory minimum penalty, and the nature of the constitutional rights being waived.” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant’s knowing and voluntary waiver of statutory or constitutional rights in a guilty plea “must be established by a complete record, and may be accomplished by colloquy between court and defendant, between 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)).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Respondent submits the record fully supports the knowing and voluntary nature of the Applicant’s plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

#### V.

Applicant also alleges due process violations. These allegations appear to be merely recitations of her grounds for ineffective assistance of counsel. Therefore, Respondent submits these allegations are without merit and incorporates its response in Part III, supra.

In the event Applicant alleges independent claims of due process violations, Respondent submits

such claims are likewise without merit. A due process violation only occurs "when a defendant in a criminal trial is denied the fundamental fairness essential to the concept of justice." State v. Hornsby, 326 S.C. 121, 129, 484 S.E.2d 869, 873 (1997) (citing 21 Am.Jur.2d, Criminal Law § 640 (1981)). Respondent submits the record fully demonstrates Applicant's plea procedures fully complied with the requirements of due process. Accordingly, Respondent submits this allegation should be dismissed pursuant to Rule 12(b)(6), SCRCF.

VI.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VII.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

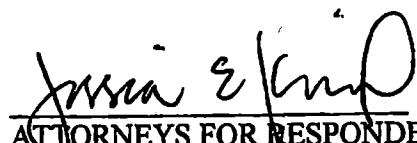
Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. MCINTOSH  
Deputy Attorney General

JESSICA E. KINARD  
Assistant Attorney General

By:

  
ATTORNEYS FOR RESPONDENT  
Post Office Box 11549  
Columbia, South Carolina 29211  
Telephone: (803) 734-3737

January 29, 2016

STATE OF SOUTH CAROLINA )

COUNTY OF HORRY )

MIGUEL ANGEL GARCIA, #339203 )

Applicant, )

vs )

STATE OF SOUTH CAROLINA, )

Respondent. )

IN THE COURT OF COMMON PLEAS

2015-CP-26-6311

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** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Steven W. Fowler, Esquire  
1019 Highway 17 South #222  
North Myrtle Beach, SC 29582**

DATED this 29<sup>TH</sup> day of January, 2016.

  
Norma Bigbee, Legal Assistant  
For Respondent

1 STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**  
2 COUNTY OF HORRY ) CASE NO: 2015-CP-26-06311

3 PCR HEARING  
-----

4  
5 **B E F O R E:** The Honorable Brooks Goldsmith  
November 15, 2016  
-----

6  
7 MIGUEL ANGEL GARCIA GARCIA,

8 Petitioner/Applicant,

9 vs.

10 STATE OF SOUTH CAROLINA,

11 Respondent.  
-----

12  
13 APPEARANCES:

14 Steven Fowler, Esq.  
15 For the Petitioner.

16  
17 Jessica Kinard, Esq.  
18 For the Respondent.  
Attorney General's Office

19  
20  
21 Court Reporter:  
Natalie Dahl, RPR  
22  
23  
24  
25

1 I-N-D-E-X

2 **APPLICANT'S WITNESSES**

3 MIGUEL ANGEL GARCIA GARCIA

4 Direct Examination by Mr. Fowler..... 3  
5 Cross-Examination by Ms. Kinard..... 24  
6 Redirect Examination by Mr. Fowler..... 26

7 **RESPONDENT'S WITNESSES**

8 THURMOND BROOKER, ESQ.

9 Direct Examination by Ms. Kinard..... 28  
10 Cross-Examination by Mr. Fowler..... 46  
11 Redirect Examination by Ms. Kinard..... 53

12

13

14

15

16

17 E-X-H-I-B-I-T-S

18

19 EXHIBITS

MARKED & ADMITTED

20 (NO EXHIBITS MARKED)

21

22

23

24

25

## MIGUEL GARCIA - DIRECT EXAMINATION

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

1  
2 MS. KINARD: This is the matter of Miguel Garcia,  
3 Case No. 2015-CP-26-6311. We're before the Court on  
4 an application for post-conviction relief filed  
5 August 25, 2015. The Applicant is currently  
6 incarcerated with the South Carolina Department of  
7 Corrections pursuant to the Horry County Clerk of  
8 Court's orders of commitment. Mr. Garcia was indicted  
9 at the March 2014 term of the Horry County Grand Jury  
10 for first degree burglary. He was represented by  
11 Thurmond Brooker.

12 On November 3, 2014, he pled guilty as indicted  
13 before Honorable John C. Hayes and was sentenced to a  
14 negotiated sentence of 15 years. He did not appeal.  
15 The State is present and ready to proceed. The  
16 Applicant is present and represented by Steven Fowler.

17 MR. FOWLER: Yes, sir. I would like to call  
18 Mr. Miguel Garcia to the stand, please. Can I have a  
19 moment, Your Honor?

20 (MIGUEL GARCIA, having been duly sworn,  
21 testified as follows:)

## DIRECT-EXAMINATION

22  
23 BY MR. FOWLER:

24 Q Would you please state your full name for the  
25 Court, please?

## MIGUEL GARCIA - DIRECT EXAMINATION

1 A Miguel Angel Garcia Garcia.

2 Q And where are you currently incarcerated?

3 A McCormick Correctional Institution.

4 Q And what's your SCDC number?

5 A 339203.

6 Q And do you understand the process of what we're  
7 doing here today, what this type of hearing is for?

8 A Yes, sir.

9 Q And in your own words, could you explain it to  
10 the Court, please.

11 A Hold up. Say that again.

12 Q Could you explain to us what your thoughts are on  
13 today's hearing? You understand it is a  
14 post-conviction relief hearing?

15 A Yes, sir.

16 Q And in your mind, what is a post-conviction  
17 relief hearing?

18 A Basically, like an appeal on me pleading guilty.

19 Q And it relates to you lawyer's performance?

20 A Oh, yeah, ineffective assistance of counsel.

21 Q And you prepared a memorandum that you sent to  
22 the court and filed that is a lot of your argument,  
23 correct?

24 A Yes, sir.

25 Q And it goes over specifics that are your concerns

## MIGUEL GARCIA - DIRECT EXAMINATION

1 of why you feel that, in your opinion, your lawyer's  
2 performance was deficient; is that correct?

3 A Yes, sir.

4 Q Let me ask you a few questions here and we'll  
5 proceed. I know you spelled out several arguments in  
6 that memorandum. One of your arguments relates to the  
7 DNA and discovery and chain of custody. Is it correct  
8 that you advised counsel to conduct a pretrial  
9 investigation?

10 A Yes, sir.

11 Q Tell me a little bit about that.

12 A Like what specific are you trying....

13 Q I guess my question to you is this: Did you and  
14 your attorney go over discovery much in this case?

15 A No, sir.

16 Q Strike that. Let me start out generally and  
17 we'll get more specific.

18 Did you and your attorney go over your discovery  
19 in this case?

20 A No, sir.

21 Q In your opinion, or in your knowledge, why did  
22 you not go over discovery with your attorney before you  
23 pled?

24 A I couldn't contact him.

25 Q Did you make any efforts to contact him?

## MIGUEL GARCIA - DIRECT EXAMINATION

1 A I was currently incarcerated, but my family made  
2 multiple attempts to contact him.

3 Q By phone or letter?

4 A By phone. Pretty much that's it because his  
5 office is in Florence, so they didn't want to just show  
6 up and him not be there.

7 Q So it was a concern of yours that you did not  
8 have discovery, correct?

9 A Yes, sir. I still never received any from him.

10 Q As of today?

11 A Yeah, as of today.

12 Q But did you ever ask him to do any kind of  
13 pretrial or pre-plea investigation of the facts of this  
14 case or what the solicitor's office had against you?

15 A Well, the reason I asked him about the DNA is  
16 because when I was first questioned by the detective,  
17 he asked me -- he said that the victim stated there was  
18 DNA that was in the room that did not match his. I  
19 voluntarily gave my DNA. I never saw any results from  
20 that, you know what I'm saying? So that's why I asked  
21 him about the DNA. I mean, whose DNA was it?

22 Q So you are saying that you gave a DNA sample?

23 A Yes, sir.

24 Q And you are -- how did you find out that there  
25 was a conflict in the DNA that was found in the room

## MIGUEL GARCIA - DIRECT EXAMINATION

1 and yours?

2 A That is what Mr. Kathman, which I believe was the  
3 investigating detective, he stated there was DNA in the  
4 room, that the victim stated did not match him.

5 Q Was that a concern to you?

6 A I mean, if it's not mine and I supposedly went in  
7 his house, whose DNA is it?

8 Q Well, if that's the case and there was a conflict  
9 with the DNA that was found in the house or room, how  
10 did that relate to your attorney's performance in this  
11 case?

12 A Excuse me?

13 Q By there being a DNA potential issue, how did  
14 that -- did your attorney go into that? Did he  
15 investigate that further?

16 A No.

17 Q How do you know that?

18 A Because I have yet to hear anything about it.

19 Q And you asked him, correct?

20 A Yeah.

21 Q Did he do any kind of pretrial investigation, to  
22 your knowledge, about the issues in your matter?

23 A Not that I know of, no.

24 Q And you asked him specifically to investigate  
25 more about the DNA?

## MIGUEL GARCIA - DIRECT EXAMINATION

1 A Yeah.

2 Q And to your knowledge, he never did that?

3 A Huh-huh.

4 Q Did that make an impact on your decision to plead  
5 before the Court?

6 A Yes, sir.

7 Q How so?

8 A Because if it didn't match mine, whose blood was  
9 it if it's not the victim's? Whose is it? It's not  
10 mine; I didn't go in there.

11 Q How did that -- well, strike that.

12 Did he ever bring that to the attention to the  
13 Court, any DNA problem?

14 A No, sir.

15 Q Did you encourage him to take it to the court or  
16 how did that --

17 A I encouraged him to disclose my whole entire  
18 evidence -- whatever evidence they had against me, I  
19 encouraged him to disclose it with me, and it was never  
20 done.

21 Q So you're saying there was a lack of  
22 communication between you and him?

23 A A lack of a lot of things.

24 Q Such as communication?

25 A Communication. I mean, even before my trial was

## MIGUEL GARCIA - DIRECT EXAMINATION

1 scheduled, I was in the county jail for like two months  
2 trying to contact him. He showed up for court -- I  
3 mean he showed up to see me like three days before I  
4 was scheduled to go to trial and talk about a plea.  
5 You know what I'm saying? We never got prepared for  
6 anything. We never disclosed anything. No type of  
7 communication at all.

8 Q So you are saying that you felt like his  
9 performance and -- how would you describe his  
10 performance?

11 A Slack.

12 Q Is it correct you would have never pled guilty if  
13 you found out more about the DNA evidence against you,  
14 or lack of it, lack of DNA against you?

15 A Yes, sir.

16 Q Why do you say that?

17 A Because, like I said, if I'm being accused of  
18 entering a dwelling, which the DNA did not belong to  
19 the victim, I mean, whose is it then? It's not mine.  
20 It's not his. Probably belonged to who did go in the  
21 property.

22 Q If that's the case, did he encourage you to pled  
23 guilty, or how did the guilty plea come around if there  
24 was an issue with the DNA?

25 A Well, he encouraged me to plead guilty on the day

## MIGUEL GARCIA - DIRECT EXAMINATION

1 I came to court because he stated that if I went to  
2 trial, I would lose because there were people in the  
3 lobby ready to testify against me.

4 Q Were you familiar with who those people were?

5 A No, sir. I never saw anyone.

6 Q Did he basically use his influence over you to  
7 get you to plead?

8 A Yes, sir. I'm doing what my lawyer advised me to  
9 do, which was to plead guilty.

10 Q And you did ask him questions about potential  
11 defenses?

12 A I asked him questions about the DNA defenses, the  
13 statement the victim wrote stating that he wasn't sure  
14 that it was, you know what I'm saying, me. Everything.

15 Q You are saying that there was another -- is it  
16 true that there was another suspect?

17 A Two others codefendants.

18 Q So it could -- that DNA could have belonged to  
19 the others?

20 A And their charges got dismissed.

21 Q So their charges got dismissed and you pled  
22 guilty, correct?

23 A Uh-huh. Their charges got dismissed right after  
24 I caught my time.

25 Q Was that in conjunction with your plea?

## MIGUEL GARCIA - DIRECT EXAMINATION

1 A I have no knowledge of that.

2 Q Let me ask you about the chain of custody. Was  
3 there any issues with the chain of custody as to the  
4 DNA or any other potential evidence in this matter?

5 A In the paperwork that I had received, there is no  
6 chain of custody, who transported the DNA, none of  
7 that, you know what I'm saying? So I have no knowledge  
8 of that.

9 Q Did you receive any information about a chain of  
10 custody, or are you saying --

11 A No, sir.

12 Q Let me ask you this way. Are you saying that you  
13 never received any kind of information about any kind  
14 of chain of custody?

15 A No, sir.

16 Q With that being said, how does that chain of  
17 custody issue relate to your attorney's performance in  
18 this case? Do you feel like he should have followed up  
19 on it?

20 A He should have followed up on it and did his job  
21 and investigated more thoroughly what was going on.

22 Q Are you saying that your counsel advised you to  
23 plead guilty without investigating?

24 A Obviously, because he still has yet provided the  
25 information that I have asked him for.

## MIGUEL GARCIA - DIRECT EXAMINATION

1 Q And you requested that several times?

2 A Yes, sir. And I have proof of that, too.

3 Q What kind of proof do you have? You can tell the  
4 Court.

5 A I wrote him a letter giving him 60 days to send  
6 me a copy of any information he had pertaining to my  
7 case, and it never -- 60 days passed, a year passed and  
8 nothing showed up.

9 Q So in your opinion, why has he not given you --

10 A I don't know.

11 Q Did you get a report of investigation by the  
12 investigating officer, Michael Kathman? Are you  
13 familiar with the name Michael Kathman?

14 A Yeah. That's one of the investigating  
15 detectives.

16 Q Did you ever get any kind of report from him or  
17 anything along those lines?

18 A No, sir.

19 Q Do you think that if you had received a report --

20 A If I would see my motion of discovery, I mean, I  
21 would have never pled guilty.

22 Q So you are saying that because your attorney  
23 never contacted you, you never received discovery,  
24 correct?

25 A Yeah. And because I couldn't get ahold of him, I

## MIGUEL GARCIA - DIRECT EXAMINATION

1 couldn't fire him, you know what I'm saying? When I  
2 came to court to fire him, which I wrote the judge a  
3 letter weeks before I showed up for court, he said,  
4 yes, he would give me a continuance for ineffective  
5 assistance of counsel, but, yet, I had less than a  
6 month to get ready for trial, and if I did or did not  
7 have an attorney, I would have to be pro se and defend  
8 myself. I spoke to other attorneys and they weren't  
9 going to take my case and said they wouldn't be ready  
10 for trial in less than a month. So, I mean, logically,  
11 anyone would sign 15 years over 30 years that the  
12 lawyer is saying they are going to get.

13 Q You are saying that in court the day you pled  
14 there was -- I don't know what word to use -- confusion  
15 about your plea; is that correct? I mean, did you  
16 discuss that with the Court?

17 A About what?

18 MR. FOWLER: Can I approach the witness?

19 THE COURT: You may.

20 Q (MR. FOWLER) Do you recognize this document?

21 Page 4, Line 17. Did you have discussions with the  
22 Court? You see where the Court says, All right? Can  
23 you read that?

24 A Mr. Garcia, I'm going to talk to you just a  
25 minute and then I'm going to give you overnight to --

## MIGUEL GARCIA - DIRECT EXAMINATION

1 to at least noon tomorrow to make a decision as to  
2 whether or not you wish to go forward with this motion  
3 because I have certain obligations to relate to you to  
4 help you make your final decision.

5 Q Continue reading.

6 A First, if Mr. Brooker is relieved as your  
7 attorney, then you have no attorney. You are what you  
8 call pro se. That is appearing without an attorney --  
9 appearing without an attorney.

10 Q And continuing on to the other page.

11 A It is extremely risky and dangerous because  
12 you're not an attorney, I don't believe. Are you an  
13 attorney? Do you have a law degree, Mr. Garcia?

14 No, sir.

15 Q Continue reading on Page 5, that line.

16 A If you're not an attorney, it would be a very  
17 dangerous -- it would be very dangerous for you to  
18 represent yourself because you will not know the rules  
19 of evidence. Certain motions, even though the judge  
20 would relate to you your Constitutional rights, you may  
21 not have the depth of understanding that an attorney  
22 would have regarding the rights of your benefit. And  
23 for those same reasons, because you are not versed in  
24 the law, just the benefit of having an attorney, an  
25 attorney would know certain motions to make about

## MIGUEL GARCIA - DIRECT EXAMINATION

1 issues that may have some valid reason for them to be  
2 brought before the Court on your behalf. So you would  
3 lose the opportunity to have an attorney and have  
4 Mr. Brooker.

5 MS. KINARD: I'll object. It is all in the  
6 record before Your Honor.

7 THE COURT: I sustain. I read all of that. It  
8 is in the record.

9 MR. FOWLER: I just wanted -- we got lengthy  
10 there.

11 Q But the point I want to get to is you and the  
12 Court had a discussion that day?

13 A Yes, sir.

14 Q And that, basically, spelled out that you were  
15 interested in getting another attorney?

16 A Yes, sir.

17 Q And the Court did not give you an option to have  
18 another attorney?

19 A No, sir. It was either -- I mean, I could fire  
20 him, but I wasn't eligible for another attorney because  
21 I supposedly had money to pay for the first one, and I  
22 had less than a month to get ready for trial.

23 Q So you are saying to me that you, in your  
24 heart -- well, it appeared that you really wanted to  
25 have another attorney.

## MIGUEL GARCIA - DIRECT EXAMINATION

1 A Yes, sir. I had several attorneys that I can  
2 contact now and they will tell you I was trying to hire  
3 them.

4 Q And you were denied -- or you were denied --  
5 strike that.

6 Basically, the Court said you either go with your  
7 current attorney, or you go pro se?

8 A Yeah. That was my only two options.

9 Q Do you believe that fair or --

10 A I was cornered.

11 Q How so?

12 A Because the Court is telling me this, my lawyer  
13 is saying if you go to trial I'll lose.

14 Q But you are saying that you did not have -- you  
15 did not see the discovery to make your own mind up  
16 about if you were going to --

17 A Whether or not I wanted to go to trial or not.

18 Q But you did make a decision to continue with  
19 Mr -- with your counsel, correct?

20 A Yeah. If my attorney -- I was told if I fired  
21 him, I would have to defend myself. I chose to keep  
22 him and continue.

23 Q But it was, basically, a decision you regret  
24 today?

25 A Yes, sir. Very much.

## MIGUEL GARCIA - DIRECT EXAMINATION

1 Q One of the arguments you mentioned, Argument 2,  
2 you said trial counsel prejudiced you by advising you  
3 to plead guilty and failure to adequately investigate  
4 and research and interview the victim and evaluate this  
5 your case. Was there an opportunity for your attorney  
6 to interview the victim, or what do you mean by that  
7 statement in your memorandum that your attorney failed  
8 to interview the victim or any person in this matter?

9 A Excuse me?

10 Q On Page 8 of your memorandum, it says, And  
11 research and interview victim and evaluate his case.  
12 All right. So you are saying that your attorney did  
13 not conduct any interviews of any personnel or persons  
14 affected by this --

15 A I mean, my victim was trying to write a statement  
16 saying I didn't do it, you know what I'm saying?  
17 That's part of why my bond got revoked.

18 MS. KINARD: Objection, hearsay.

19 A He did write a statement stating I did not do it  
20 and got to the notarized.

21 THE COURT: Overruled.

22 Q (MR. FOWLER) So you are saying there was a  
23 statement presented?

24 A Yes, sir, to my attorney, which he did not  
25 present to the Court.

## MIGUEL GARCIA - DIRECT EXAMINATION

1 Q And it was not sent to the Court's file in any  
2 way?

3 A I believe it was.

4 Q So you are saying there was a statement by the  
5 victim saying you did not do the act or?

6 A I mean, the victim initially said that he seen my  
7 face, and three statements later he said, no, he lied,  
8 he could not see -- he didn't see anyone's face. He  
9 said he identified me by how I walked.

10 Q And that was later recanted by the victim?

11 A No. I mean, that was the last statement he  
12 wrote.

13 Q You mentioned in the memorandum, which is part of  
14 the Court's file, that there was a text message from  
15 the victim saying he had \$750, a motorcycle title --

16 A My reason being, in going to his house, which I  
17 showed Detective Kathman in my phone, was an open  
18 invitation, him telling me, hey, come over, I have a  
19 motorcycle which is stolen, I changed the vin number on  
20 it and I'm trying to sell it to you for, I believe,  
21 \$750. That was my reason being in going to his house.

22 Q You are saying that that was tangible information  
23 that your attorney did not use?

24 A No.

25 Q Who is Officer Langlais?

## MIGUEL GARCIA - DIRECT EXAMINATION

1 A That is the other investigating detective.

2 Q Was he with the Horry County Police, or who was  
3 he with?

4 A I don't know. I only saw him, like, twice.

5 Q But he completed an incident report that included  
6 a narrative about --

7 A The text messages and people going in and out of  
8 the house at the time that I was supposedly robbing  
9 him.

10 Q And that was never presented to the Court?

11 A Never.

12 Q Did you ever see that report with your attorney?

13 A Me and him initially -- I knew about that because  
14 when he came and got the DNA swab from me from home  
15 detention, he said, Well, I don't know how he is saying  
16 you robbed him, because at the time he stated you were  
17 robbing him, I went through his phone and seen that he  
18 had people coming in and out of the house buying dope.

19 MS. KINARD: Objection, hearsay.

20 A It is on paper.

21 MR. FOWLER: Is that part of the police record?

22 A Yes, sir, it is in the paperwork.

23 MR. FOWLER: I apologize, Your Honor.

24 THE COURT: Do you know where that is?

25 MS. KINARD: I don't believe we ever received a

## MIGUEL GARCIA - DIRECT EXAMINATION

1 copy of it, which means it would not be in your  
2 packet.

3 THE COURT: I'll sustain the objection.

4 Q (MR. FOWLER) You are saying you were led to  
5 believe there were documents out there that showed  
6 your potential innocence, correct?

7 A Yes, sir.

8 Q And these were done by law enforcement officers?

9 A Yeah, which told me that they seen these.

10 Q Who is Emily Sullivan?

11 A The person I was with at the time. She's the  
12 mother of my son.

13 Q What is her connection to this matter?

14 A She is the ex-girlfriend of my alleged victim.

15 Q You are saying that your attorney never  
16 investigated any of her -- he never interviewed her on  
17 your behalf, correct?

18 A Not pertaining to this case, no.

19 Q Do you think he should have done that?

20 A Yes. Because they -- I mean, he really felt some  
21 type of way when me and her had a son together. The  
22 guy has multiple CDVs against this girl already, you  
23 know what I'm saying? So it was like an, okay, I'm  
24 going to get you out of the way type of thing, you know  
25 what I'm saying?

## MIGUEL GARCIA - DIRECT EXAMINATION

1 Q You are saying if he would have interviewed her,  
2 that it might would have helped your case?

3 A Yes, sir.

4 Q You are saying -- do you have any kind of  
5 evidence that would -- by Christopher Parra?

6 A Parra (phonetic)?

7 Q Yeah, exactly.

8 A His statement.

9 Q How did you receive a copy of that?

10 MS. KINARD: Your Honor, I'm going to object to  
11 this as well. Ultimately, we're here based on a  
12 guilty plea during which the Applicant waived any  
13 opportunity to challenge the sufficiency of the  
14 evidence. And while I understand he's trying to  
15 present a failure to investigate claim, I don't  
16 believe that delving into all of these items that were  
17 not ever ultimately presented is truly beneficial to  
18 the Court.

19 MR. FOWLER: Well, Your Honor, if I may, I think  
20 the thing about it is we're showing there were several  
21 persons, several documents, several potential  
22 investigative reports that serve as an accumulative  
23 effect on this. It is not just one item that my  
24 client is indicating that had a problem, it was a  
25 series of items. We're not entering them into

## MIGUEL GARCIA - DIRECT EXAMINATION

1 evidence, just mentioning them to the Court and asking  
2 for my client's recollection on them.

3 MS. KINARD: The State does not recognize  
4 accumulative evidence when it comes to ineffective  
5 assistance.

6 THE COURT: I'll sustain the objection, then.

7 MS. KINARD: Thank you, Your Honor.

8 Q (MR. FOWLER) Was there anything else that your  
9 attorney did not do that frustrated you in this case?

10 A I believe he failed to appeal my plea offer after  
11 I signed it. I believe that is one of my rights.

12 Q Did you indicate to him that you wanted that  
13 done?

14 A Yes, sir.

15 Q How did you indicate that to him?

16 A I told him.

17 Q Verbally?

18 A Yeah, while we were sitting here.

19 Q Did you do any kind of -- did you contact him  
20 after the plea?

21 A I mean, I couldn't get in contact with him when  
22 he was my attorney. I couldn't get in contact after  
23 the fact either.

24 Q Did you try to get in touch with him?

25 A Yeah. I wrote him a letter.

## MIGUEL GARCIA - DIRECT EXAMINATION

1 Q When did you write the letter; do you know?

2 A The letter asking him for my motion, which he is  
3 yet to reply to.

4 Q And you are saying -- when you say "motion," you  
5 mean the actual discovery?

6 A All of my evidence.

7 Q Did he indicate to you that he was going to  
8 have -- file the appeal at any time? Did he say he was  
9 going to appeal your plea to another court?

10 A I don't really -- everything happened too fast,  
11 because right after I signed the plea, they sentenced  
12 me and I was taken out pretty fast, you know what I'm  
13 saying? We did not talk after that.

14 Q Is there anything -- you have your memorandum,  
15 which has several exhibits in the back of -- you know,  
16 law enforcement documentation and what have you. Is  
17 there anything else that you feel that is pertinent to  
18 this case that you feel might be worthy to mention to  
19 the Court?

20 A Besides the facts that are on that paper, no.

21 Q Very good.

22 MR. FOWLER: I have nothing further, Your Honor.

23 THE COURT: Cross-examination.

24 MS. KINARD: Thank you, Your Honor.

25

## MIGUEL GARCIA - CROSS-EXAMINATION

## CROSS-EXAMINATION

1

2 BY MS. KINARD:

3 Q Just a few questions. You stated that you never  
4 received a copy of your discovery from your attorney;  
5 is that correct?

6 A Yes, ma'am.

7 Q How are you getting all of this information that  
8 you are providing today regarding DNA and other things  
9 if you never received discovery?

10 A Because, like I said, the detective, when he  
11 initially investigated me, he told me there was DNA  
12 that the victim stated that did not match him, and he  
13 asked me for a voluntary swab, which I gave him.

14 Q That was before your plea?

15 A Yes, ma'am. Way before I even got incarcerated.

16 Q Did you understand that as part of pleading  
17 guilty, you waived the right to challenge the evidence  
18 that could be presented against you?

19 A No, ma'am.

20 Q In preparing for your trial or plea, did you  
21 provide any names of potential witnesses to your  
22 attorney?

23 A My victim.

24 Q Is that the only witness name you provided?

25 A That's the most important one. Yeah.

## MIGUEL GARCIA - CROSS-EXAMINATION

1 Q So you didn't have any alibi witnesses?

2 MR. FOWLER: Objection, Your Honor. Relevance to  
3 his lawyer's performance in this matter.

4 MS. KINARD: I believe it's relevant to the  
5 investigation which he has been speaking of.

6 THE COURT: Overrule the objection. Go ahead.

7 A Question again?

8 Q (MS. KINARD) Did you ask him to interview any  
9 alibi witnesses on your behalf?

10 A No.

11 Q During your plea, as you stated earlier, you  
12 asked the Court to relieve Mr. Brooker as your  
13 attorney; is that correct?

14 A Yes, ma'am.

15 Q Ultimately, I believe you testified that you did  
16 not relieve him because you did not want to proceed pro  
17 se; is that correct?

18 A Yes, ma'am.

19 Q And you did not believe that whether it was at a  
20 plea that day or at a trial, that in approximately a  
21 month-and-a-half that you could represent yourself  
22 adequately; is that correct?

23 A Me or any attorney. Because I spoke to several  
24 attorneys and they told me they couldn't take my case  
25 and be ready for trial in a month.

## MIGUEL GARCIA - REDIRECT EXAMINATION

1 Q So based on that, you chose to plead to a  
2 negotiated sentence?

3 A Based on my lawyer telling me I will lose the  
4 trial if I went to trial so, yeah, I signed a 15-year  
5 plea.

6 Q Is that the minimum this charge carries?

7 A Yes, ma'am.

8 Q So he was a retained attorney?

9 A Yes, ma'am.

10 Q So, basically, you trusted your attorney's advice  
11 in pleading guilty?

12 A Yes, ma'am.

13 MS. KINARD: No further questions. Thank you.

14 THE COURT: Anything else?

## 15 REDIRECT-EXAMINATION

16 BY MR. FOWLER:

17 Q You mentioned you talked with the detective  
18 investigating the case?

19 A Uh-huh.

20 Q You did a voluntary swab?

21 A Yes.

22 Q Was that before or after you pled?

23 A That was the first time I ever even seen him.  
24 Like they never even took me to jail --

25 Q Seen "him," the detective?

## MIGUEL GARCIA - REDIRECT EXAMINATION

1 A Yes. That was just the first time they were  
2 interviewing me about the case, because they  
3 interviewed me, I gave them a cotton swab and I left.  
4 They let me go, know what I'm saying?

5 Q And you never got the results?

6 A Never. I didn't know who carried it where,  
7 nothing.

8 Q So to be clear, you never got a copy of the DNA  
9 from your lawyer?

10 A Yes, sir.

11 Q In terms of you alibi witnesses that Counsel  
12 mentioned, you are not a lawyer?

13 A No.

14 Q And the lawyer's responsibility -- is it, in your  
15 mind, the lawyer's responsibility to give you a  
16 checklist of things you need to provide to him for your  
17 defense?

18 A Absolutely.

19 Q Did he do that?

20 A No, sir.

21 Q And the reason -- she mentioned you went forward  
22 pro se. Like you said earlier on direct examination,  
23 you felt like you were cornered?

24 A Yes, sir.

25 Q You had no further options?

## THURMOND BROOKER - DIRECT EXAMINATION

1 A Yes, sir.

2 Q Before the plea date or the day before, did you  
3 mention to your attorney that you wanted to have him  
4 relieved as counsel?

5 A I could not contact him to fire him from being my  
6 attorney. He saw me two, three days before I was  
7 scheduled to go to trial saying, okay, let's go to  
8 trial or take a 15-year plea. How am I going to go to  
9 trial when I'm not prepared. I don't know what is  
10 going on.

11 Q So because he visited you a few days before, you  
12 felt you were hamstrung for time; is that correct?

13 A Yeah.

14 MR. FOWLER: No further questions.

15 MS. KINARD: No recross.

16 THE COURT: Thank you. You may step down. Call  
17 your next witness.

18 MR. FOWLER: That's it, Your Honor.

19 MS. KINARD: State calls Thurmond Brooker.

20 (THURMOND BROOKER, having been duly sworn,  
21 testified as follows:)

22 DIRECT-EXAMINATION

23 BY MS. KINARD:

24 Q How long have you been practicing law?

25 A I think roughly 16, 17 years. I think I was

## THURMOND BROOKER - DIRECT EXAMINATION

1 admitted into the bar in -- I think in January of '99.

2 Q How much of that practice has been in criminal  
3 law?

4 A I think over the 15 to 16 years I've been  
5 practicing, I think 15 of it -- at least 15 of it is  
6 criminal practice.

7 Q Do you recall how you became involved in this  
8 case?

9 A I do.

10 Q Tell the Court, please.

11 A I was actually hired by Mr. Garcia, and this was  
12 actually in connection with a different case in which  
13 he had charges pending. I think all of this occurred  
14 in December of 2013. I think Mr. Garcia and his  
15 girlfriend, I think her name was Emily at that  
16 particular time, had been arrested, I think, and  
17 charged -- I think he was charged with distribution of  
18 heroin and then also trafficking heroin, 14 to 28  
19 grams. And, of course, also he was charged with, I  
20 think, felony possession of a firearm. That was  
21 December -- I think he was arrested December 16 -- I  
22 think December 16, 2013.

23 He originally hired me for that particular case  
24 to represent him in connection with those trafficking  
25 charges. Roughly, I think, December 31, 2013 is when

## THURMOND BROOKER - DIRECT EXAMINATION

1 this home invasion took place, roughly, two weeks  
2 after he was bonded out on the trafficking in heroin  
3 charges. Of course, I then assumed representation of  
4 those charges as well.

5 Q Regarding these particular charges, do you recall  
6 how he was arrested or the circumstances around the  
7 arrest?

8 A I do. Mr. Garcia was actually bonded out in  
9 connection with the trafficking in heroin charges, is  
10 that the magistrate judge placed him on a GPS monitor.  
11 So he was wearing a GPS monitor at that particular  
12 period of time. The home invasion took place on  
13 December 31, 2013. At that particular period of time,  
14 he was still wearing the GPS monitor, and of course the  
15 GPS monitor, obviously, tracked him to the house at the  
16 time in which the crime was taking place. And of  
17 course is -- and I think what initiated the arrest  
18 was --

19 MR. FOWLER: Your Honor, at this point I think I  
20 would like to object to this. This is just background  
21 information. It doesn't relate to his interaction  
22 with my client as to the relevant points of what we're  
23 here for today.

24 MS. KINARD: I'm using this to develop some  
25 background and talk to Mr. Brooker about how he

## THURMOND BROOKER - DIRECT EXAMINATION

1 developed his defense.

2 THE COURT: I'll overrule the objection. You may  
3 proceed.

4 MS. KINARD: Thank you, Your Honor.

5 A And I think how he was arrested was is -- is that  
6 the victim in that case was Christopher Parra. That  
7 Mr. Parra, I think, gave a statement to law  
8 enforcement, that when they responded to the home  
9 invasion, Mr. Parra advised law enforcement that he  
10 recognized one of his attackers. There was two, I  
11 think he indicated in his written statement. He said  
12 that, obviously, is that the attacker was Mr. Garcia  
13 and he recognized Mr. Garcia because they had served  
14 time together and he was familiar with Mr. Garcia.

15 MR. FOWLER: Objection, hearsay.

16 A Well -- yes, that is hearsay.

17 (Laughing)

18 THE COURT: Sustained.

19 A I apologize.

20 MR. FOWLER: Stricken, Your Honor.

21 THE COURT: Stricken from the record.

22 Q (MS. KINARD) Similarly to that, I believe  
23 Mr. Garcia testified several statements were provided  
24 by the victim; do you recall that?

25 A Mr. Garcia I think did testify that several

## THURMOND BROOKER - DIRECT EXAMINATION

1 statements were provided by the victim, and of course  
2 is that if Your Honor will allow me to develop the  
3 reason why at least we found that those statements  
4 would not assist him in connection with the case and  
5 the reason why we recommended that the plea would be  
6 within his best interest, because there was  
7 overwhelming evidence against him.

8 He did indicate to me that the victim in  
9 connection with that case, Mr. Parra, wanted to change  
10 his testimony. Of course he also indicated to me --  
11 Mr. Garcia -- that the two other codefendants in that  
12 case, that they may also want to at least revise their  
13 statements. The other two other codefendants, to my  
14 understanding, never revised their statements, and of  
15 course their statements was a part of the record, and  
16 of course their statements implicated themselves and  
17 also Mr. Garcia.

18 With regards to Mr. Parra, the victim in that  
19 case, I had a conversation with Mr. Garcia in  
20 reference to Mr. Parra, and of course he advised me  
21 that Mr. Parra, the victim, wanted to change his  
22 statement. I advised Mr. Garcia in that particular  
23 period of time that any contact that he might have  
24 with Christopher Parra, the victim, might violate his  
25 bond because he was under an order not to contact

## THURMOND BROOKER - DIRECT EXAMINATION

1 Mr. Parra. He indicated to me, I think, that because  
2 they were long-time friends, knew each other, served  
3 time together, that he believed that he could convince  
4 him to change his statement.

5 As a result of that, Mr. Garcia, Mr. Parra and  
6 his girlfriend, Emily, presents to my office one day.  
7 Of course I sat down and talked with Mr. Parra who  
8 presented at my office. I can't say what Mr. Parra  
9 told me, but apparently my impressions were -- from  
10 that statement is that I was being -- I never took  
11 Mr. Parra's statement or took a statement from  
12 Mr. Parra because, from my understanding or my  
13 impression, from that conversation, that interview I  
14 had with Mr. Parra at my office, is that it appeared  
15 to me that it was being suggested -- or at least being  
16 suggested to me as to how I could assist them in  
17 changing the statement and what would be a credible  
18 change to that particular statement. I then became  
19 concerned that I was being asked to do something that  
20 might be illegal itself, and so I did not take  
21 Mr. Parra's statement. Soon after they left my  
22 office, Mr. Parra then contacted the police  
23 department, advised -- contacted the police department  
24 and of course is -- and Mr. Garcia then was arrested  
25 because it was alleged that he violated the conditions

## THURMOND BROOKER - DIRECT EXAMINATION

1 of his bond, that he made contact with Mr. Parra.

2 We came before the Court on a motion to vacate  
3 the bond, and of course at that motion to vacate the  
4 bond, of course it was -- there was testimony that --  
5 and of course testimony from the victim that the  
6 contact was not warranted and he violated the bond,  
7 and of course that is the reason why Mr. --

8 MR. FOWLER: I would like to object to this. It  
9 is not relevant to the actual plea of guilty in this  
10 matter. I mean, there is several things that could be  
11 background information, but in my opinion, it does not  
12 relate to the actual guilty plea of March of 2014 --  
13 the day of the plea, excuse me.

14 MS. KINARD: I believe it is to determine whether  
15 there was a defense present, whether it was in Mr.  
16 Garcia's best interest to plead, and all of these are  
17 facts presented to Mr. Brooker as to what helped him  
18 make that decision and advise Mr. Garcia.

19 THE COURT: Agree. Overruled.

20 A The reason why I provided that information is I  
21 think Mr. Garcia testified on direct examination that I  
22 made no contact -- I made no, at least, attempt to  
23 contact one witness, which was the victim, Mr. Parra.  
24 I had contact with Mr. Parra. I did interview  
25 Mr. Parra at my office, and of course based upon the

## THURMOND BROOKER - DIRECT EXAMINATION

1 concern that I had with what they were -- at least in  
2 my perception -- wanting me to do, I did not take his  
3 statement because I didn't think it would have been  
4 appropriate for me to do so. Of course, I also had  
5 concerns with respect to whether or not -- even if I  
6 had taken the statement, whether or not I would be able  
7 to use him as a witness in any potential trial based on  
8 my perception of what it appeared that I was being  
9 asked to do. With respect to the discovery, we went  
10 over his discovery numerous times in my office.

11 Mr. Garcia originally -- when he was originally  
12 arrested in connection with these charges -- I think  
13 that was the first of January of 2014 -- of course he  
14 was denied bond by the magistrate judge. We took him  
15 before a circuit court judge and convinced him to  
16 grant bond, and he was granted bond. I think he was  
17 released in February of 2014. Of course he was out on  
18 -- he was out of jail until, I believe, August of 2014  
19 when his bond was revoked for making contact with the  
20 victim.

21 Between that period of time, Mr. Garcia and his  
22 girlfriend were at my office many times. We went over  
23 the discovery in connection with this case on multiple  
24 occasions. I advised him on multiple occasions why I  
25 thought that his case was complicated and why I

## THURMOND BROOKER - DIRECT EXAMINATION

1 thought that there was an extreme amount of evidence  
2 that the prosecutor had at his disposal, that I  
3 thought the jury would be convinced he was guilty. If  
4 you would like me to explain my rationale for making  
5 that recommendation to him, it was based upon the  
6 evidence we had in the file.

7 Q At this time, though, am I correct in hearing you  
8 characterize it as extreme and overwhelming evidence  
9 against him?

10 A It was extreme and overwhelming evidence against  
11 him. Like I said, something I already mentioned, one  
12 was based upon the fact that he was wearing a GPS  
13 monitor.

14 MR. FOWLER: Objection. The terminology "extreme  
15 and overwhelming" I believe is -- serves as a red  
16 herring in this case. He's not in a position to  
17 categorize or quantify it, so I would like to object  
18 to it and have it stricken. I object to that  
19 statement being entered.

20 THE COURT: Overruled.

21 Q (MS. KINARD) Can you give a number of times that  
22 you met with Mr. Garcia?

23 A I met with Mr. Garcia and his girlfriend -- I  
24 want to be fair to him -- I think at least on four  
25 occasions, if not more. And that is being -- and that

## THURMOND BROOKER - DIRECT EXAMINATION

1 is being conservative. I talked with him also on  
2 numerous of times by telephone. I think Mr. Garcia  
3 testified that he requested his discovery and sent a  
4 letter to us. I think what he is referring to is -- is  
5 that after he pled guilty, he was convicted, he filed a  
6 post-conviction relief petition and I think -- I think  
7 what he's referring to is requesting a written copy of  
8 his discovery at that particular period of time.

9 Prior to him pleading guilty, we went over his  
10 discovery on numerous occasions and discussed, at  
11 least in my opinion, what I thought was the  
12 complications with this particular case.

13 Q Did you discuss the indictments and the elements  
14 of each offense that he faced?

15 A I did.

16 Q Did you review the possible punishments for each  
17 charge?

18 A We did.

19 Q Did he seem to understand all of that?

20 A He did.

21 Q Did you discuss any collateral consequences?

22 A We did.

23 Q Did you discuss the implications of pleading  
24 guilty with him, including the Constitutional rights  
25 that he would give up?

## THURMOND BROOKER - DIRECT EXAMINATION

1 A Yes.

2 Q Did you discuss the State's burden of proof if  
3 you would have gone to trial?

4 A Yes.

5 Q Did you discuss his version of the case?

6 A Yes.

7 Q What did he tell you, briefly?

8 A Basically, is that -- initially, what he told me  
9 is that -- is that the codefendants in connection with  
10 the case that he said that he went over to the home  
11 with those codefendants, that he had actually sent some  
12 e-mails -- there was an exchange of e-mails between him  
13 and the victim in connection with that case in  
14 reference to him purchasing a motorcycle.

15 MR. FOWLER: Objection. There is no proof of  
16 that that is being entered into evidence, and we would  
17 like to see any tangible evidence of any e-mails that  
18 he's referring to, so I would object to this being  
19 entered.

20 THE COURT: Overruled.

21 MS. KINARD: Thank you, Your Honor.

22 A Yes. And I think Mr. Garcia even said this in  
23 his testimony, that there was an exchange of e-mails  
24 between him and Mr. Parra in reference to the purchase  
25 of a motorcycle. And so he said that when he went over

## THURMOND BROOKER - DIRECT EXAMINATION

1 with the two codefendants in connection with the case,  
2 that it was for the purposes of -- purpose of him  
3 looking at the bike and trying to make a determination  
4 as to whether or not he would purchase the bike from  
5 the victim, that he made a determination that he would  
6 not purchase the bike because the victim did not have a  
7 title to the bike, and he indicated to me it must have  
8 been at that particular period of time that the two  
9 codefendants that he rode to the victim's house with,  
10 that they could have robbed him at that particular  
11 period of time, and he was not aware of the fact that  
12 his two codefendants had robbed the victim, and he was  
13 simply there to take a look at the bike.

14 Q (MS. KINARD) So he would have left before the  
15 codefendants committed the robbery?

16 A No. He rode with the codefendants.

17 Q Did you discuss any potential fact witnesses or  
18 alibi witnesses with Mr. Garcia?

19 A We did. We discussed the testimony of the two  
20 codefendants and their statements that was contained in  
21 the discovery. We discussed the written statement  
22 given by the victim in this case, and we also discussed  
23 the two statements that he had been given, and of  
24 course the last one that he had been -- last statement  
25 that he gave to the investigator after he was arrested

## THURMOND BROOKER - DIRECT EXAMINATION

1 and that was alleged to have been at least under  
2 Miranda. In that particular statement, he indicated to  
3 law enforcement that he was there when the robbery took  
4 place. He explained exactly what happened during the  
5 robbery. He explained the items that were taken and,  
6 of course, I think he alleged that, at least to the  
7 officer at that particular period of time, that he was  
8 the driver but that he was not the one who carried the  
9 gun and struck the victim with the crowbar that was  
10 used in connection with the crime. We discussed all of  
11 that.

12 Q Moving towards the court proceeding itself, were  
13 you planning on going to trial that day?

14 A Yes. We had planned on going to trial. We  
15 already had prepared our voir dire questions, and I  
16 went through the regular routine I normally go through  
17 in anticipation of a trial because I understand --  
18 because I have talked with Mr. Garcia in reference to  
19 the offer that the State made and that offer was that  
20 the negotiated 15 years, that the armed robbery would  
21 be dismissed, that the kidnapping would be dismissed,  
22 that the other charges would be dismissed and also that  
23 the trafficking in heroin, 14 to 28, that that would be  
24 dismissed along with the other drug charges, and so  
25 that was all a part of all that plea. I discussed that

## THURMOND BROOKER - DIRECT EXAMINATION

1 with him, and even after discussing that with him that  
2 the drug charges, trafficking and distribution charges  
3 would be dismissed, that were pending, and all the  
4 other accompanying charges to the first degree burglary  
5 would be dismissed, and that was negotiated 15 years.

6 I understood at that period of time, when we  
7 discussed it, that he still had reservations, and I  
8 think he instructed me at that particular period of  
9 time whether or not I could get a better deal. I did  
10 went (sic) back to the prosecutor and tried to  
11 negotiate a better deal and, of course is -- and I  
12 advised him I didn't think it would be possible  
13 because, in my opinion, I thought the prosecutor was  
14 very confident with the case they had and that it was  
15 a strong case. But I talked with him, and even on the  
16 day of the plea, he instructed me to go back to him  
17 again, and I went back to him again and tried to  
18 negotiate with him on the day of the plea to see if he  
19 would relent and reduce the amount of time that was  
20 involved in the negotiated plea. He would not, so I  
21 instructed him at that particular period of time --  
22 and we talked -- that I was prepared to go to trial,  
23 that he could accept the agreement or he could go to  
24 trial and do whatever he wanted.

25 His family was there on that particular day, I

## THURMOND BROOKER - DIRECT EXAMINATION

1 talked with his family because he wanted me to talk  
2 with them, and he suggested to the judge that he  
3 wanted to remove me, and I was definitely fine with  
4 that. I told him I was absolutely fine with that. I  
5 gave him my professional opinion and I suggested to  
6 him and told him that I thought, and there was a  
7 substantial chance, that with the evidence they had,  
8 that being the two codefendants and their confessions  
9 implicating themselves and Mr. Garcia. Mr. Garcia's  
10 own two statements that he gave, the statement of  
11 Mr. Parra, and also is that there was a GPS tracking  
12 evidence that they had because he was wearing a GPS  
13 device that proved he was at the residence at the time  
14 the crime took place. In addition to that, there was  
15 a law enforcement agency, I think North Myrtle Beach  
16 Police Department, who were also potential witnesses  
17 who I think could testify to the fact that the  
18 codefendants in that case were under observation, and  
19 of course is that the detective from the North Myrtle  
20 Beach Police Department saw the three defendants  
21 leaving Defendant Austin's apartment and then, of  
22 course, saw them return with a laundry basket and, of  
23 course, that was the same laundry basket that was made  
24 reference to carrying items outside of the house.

25 So I thought it was a strong case against him,

## THURMOND BROOKER - DIRECT EXAMINATION

1 but I advised him at that particular period of time it  
2 is his case, he has to make that decision. If he  
3 wanted to go to trial, we can, but that was my  
4 assessment.

5 Q And in making that assessment, you did so through  
6 the conduction of a thorough pretrial investigation?

7 A We did. And of course with respect -- with  
8 reference to the DNA evidence that he's referring to is  
9 that law enforcement, I think, indicated in their  
10 reports they had taken DNA evidence or taken a swab of  
11 what appeared to be blood at the scene, and I think  
12 they did take a swab of DNA evidence or a DNA sample  
13 from Mr. Garcia for purposes of comparison. But my  
14 understanding was that that comparison was never made.  
15 And because the initial discovery we received in  
16 connection with the case, we went over with Mr. Garcia  
17 is that there was no reports that the DNA evidence was  
18 tested, and we never received one. But in the absence  
19 of that, even regardless of that, I instructed  
20 Mr. Garcia at that particular period of time that it  
21 didn't matter what the DNA evidence said, the other  
22 evidence was overwhelming with two witnesses, tracking  
23 devices, with his own statements that would implicate  
24 himself, and then of course with the corroborating  
25 information from the law enforcement officers down at

## THURMOND BROOKER - DIRECT EXAMINATION

1 North Myrtle Beach who witnessed them allegedly leaving  
2 the codefendant's apartment, returning to the  
3 codefendant's apartment that was involved in connection  
4 with the home invasion. That is, if that DNA evidence  
5 came back and said it did not belong to Mr. Garcia, it  
6 still did not acquit him in any way because it still  
7 would not override the strength of the evidence of the  
8 codefendants and, of course, Mr. Parra's statement and  
9 the GPS.

10 Q One last question that would be: Did you ever  
11 speak to Mr. Garcia about filing an appeal?

12 A No. And, obviously, when I heard Mr. Garcia  
13 testify to that, I was a little taken aback by it.  
14 Mr. Garcia never asked me to file an appeal for him.  
15 If he asked me to file an appeal, I would have. It is  
16 my practice that if my clients don't ask me to file an  
17 appeal, I don't do it automatically. The only time I  
18 may do an appeal automatically, even if my client does  
19 not ask me to do it, is in a situation where that  
20 client went to trial and was found guilty on extremely  
21 serious charges, and of course is maybe a homicide or  
22 CSC first degree and was looking at life or something  
23 like that, and of course is we did not have time to at  
24 least discuss it and so sometimes outside of an  
25 abundance of caution, file it. But that is the only

## THURMOND BROOKER - DIRECT EXAMINATION

1 time that I may do it even when I'm not asked;  
2 otherwise, unless my client instructs me to do it, I  
3 don't do it, and he did not instruct me to file an  
4 appeal on his behalf.

5 Q Anything else you would like the Court to know  
6 about your representation of your Mr. Garcia?

7 A The only thing I would add is -- of course is  
8 and -- some of it may be redundant, is that the  
9 discovery in this case, one, we went over this  
10 discovery multiple times. Of course, I think he  
11 indicated to me that his potential girlfriend, I think  
12 Ms. Emily Sullivan, was a potential witness in  
13 connection with the case, and of course is that just  
14 about each and every time Mr. Garcia presented to my  
15 office, he presented to -- with Ms. Sullivan, because  
16 Ms. Sullivan was a codefendant in the drug case. Of  
17 course is I had an opportunity to talk with  
18 Ms. Sullivan, and my understanding is that Ms. Sullivan  
19 was not present during the home invasion and did not  
20 have any information about the home invasion, at least  
21 to my understanding. But I had an opportunity to speak  
22 with her on a number of occasions because every time he  
23 presented to my office, they were together.

24 She also acted as his liaison, which means for  
25 the last two months, I think, prior to him pleading,

## THURMOND BROOKER - CROSS-EXAMINATION

1 when he was incarcerated, she called my office  
2 consistently sometimes to ask questions, et cetera, et  
3 cetera.

4 MS. KINARD: Thank you. Answer any questions Mr.  
5 Fowler or the Court may have.

## 6 CROSS-EXAMINATION

7 BY MR. FOWLER:

8 Q You mentioned that DNA may have been exculpatory  
9 in terms of my client not being there; is that correct?

10 A I can explain to you why I don't --

11 Q I guess my question --

12 A No.

13 Q You did not pursue the DNA aspect of this matter;  
14 is that correct?

15 A No.

16 Q So you did not pursue it, correct?

17 A No. Because my understanding is that they never  
18 did the analysis.

19 Q All right. Why did they not do the analysis?

20 A I think they didn't do the analysis is because  
21 they had that -- and I'm only -- I can't get into their  
22 minds and tell you, is that because they had like three  
23 or four different sources to place Mr. Garcia at the  
24 scene, one was GPS monitoring that he was wearing.

25 Q Right. But you are saying that you didn't find

## THURMOND BROOKER - CROSS-EXAMINATION

1 out why the DNA aspect of this was not pursued,  
2 correct?

3 A No, I did not.

4 Q And you also said that there might have been some  
5 other witness that could have stunted the DNA, but that  
6 -- strike that.

7 You are also saying that he did a DNA swab test  
8 in regards to DNA testing in this matter; is that  
9 correct?

10 A That's correct.

11 Q Did you ever get a report of the DNA testing?

12 A No, I did not. I don't know whether or not it  
13 was made, but it's not contained within the discovery  
14 we received.

15 Q So you did not pursue that as far as a potential  
16 innocence matter that my client might be innocent or  
17 not; is that correct?

18 A That's correct.

19 Q Couple other things. In terms of revising the  
20 statements, in terms of -- did you keep a log of how  
21 often you and my client met in terms of at your office  
22 or J. Reuben Long or any other facility?

23 A I didn't keep a log, that's why I gave a  
24 conservative estimate.

25 Q Did you or did not?

## THURMOND BROOKER - CROSS-EXAMINATION

1 A Did not.

2 Q So there is no tangible evidence or any kind of  
3 writing to show how often you met?

4 A The only thing would be my memory.

5 Q In terms of law enforcement, how closely did you  
6 work with them in terms of this matter? Did you get  
7 any statements from them or anything along those lines?

8 A Let me make sure I understand. Did I get any  
9 statements from law enforcement?

10 Q What did you get from law enforcement in regards  
11 to statements -- what kind of discovery did you  
12 indicate that you received in this case?

13 A The discovery I received in connection with this  
14 case is that, one, law enforcement did a complete  
15 narrative of their complete investigation from  
16 beginning to the end, and so we got the complete  
17 narrative. We got all the incident reports. We got  
18 all of the warrants. We got the voluntary statement  
19 that was given by the two codefendants. We got the  
20 voluntary statement that was given by the victim, and  
21 we also got photographs. I think, also, if my memory  
22 serves me correctly, we got an audio. I think it was  
23 an audio statement of the statement that had been taken  
24 from Mr. Garcia. We got I think -- obviously we got  
25 the NCIC or NCIS background checks on Mr. Garcia. We

## THURMOND BROOKER - CROSS-EXAMINATION

1 got some collection of evidence forms indicating they  
2 had collected I think some blood at the scene, I think  
3 some blood swabs of blood they had taken at the scene,  
4 and I think, if memory serves me correctly, zip ties or  
5 something like that.

6 Q So you are indicating that you received a lot of  
7 information; is that correct?

8 A That's correct.

9 Q When, specifically, did you share this with my  
10 client?

11 A We shared this with Mr. Garcia on multiple  
12 occasions, and this would have been long before -- if  
13 you allow me to finish giving my statement -- long  
14 before I think he pled guilty. I think he was released  
15 from jail, I think, in February of 2014. And of course  
16 it would have been at least sometime in March or  
17 sometime -- you know, maybe April -- March or April I  
18 guess that we met at my office, that we went over this  
19 discovery, and of course that is where -- that's where  
20 we went over Mr. Parra's statement, the victim in this  
21 case, I think is when, at some point in time, he  
22 advised me that he spoke with the victim and he thought  
23 that he could have that statement or that the victim  
24 wanted to revise it.

25 Q Did you ever mail any of that information to him

## THURMOND BROOKER - CROSS-EXAMINATION

1 as a hard copy, or did you just -- did you ever mail it  
2 to him in any form?

3 A Never mailed it to him in any form. He was only  
4 incarcerated I think like two months prior to this.  
5 But the entire time -- the entire time, except for I  
6 think about the last two months before he actually pled  
7 guilty, is that he was out and we met on numerous  
8 occasions and went over his discovery on numerous  
9 occasions.

10 Q But you never gave him a hard copy of the  
11 discovery?

12 A No. He never asked me at that particular time.

13 Q But as the attorney, regardless of what he said  
14 or wanted, you never provided a copy of this discovery  
15 in a hard paper copy form to him?

16 A I did not. I only do it as a practice unless my  
17 clients ask me to.

18 Q On the day of the plea, you indicated -- he  
19 indicated to the Court that he wanted another attorney;  
20 is that correct?

21 A That's correct.

22 Q Why did that happen? Why, in your opinion, did  
23 he want another attorney?

24 A In my opinion is because my advice was that I  
25 thought they had a strong case against him, and I

## THURMOND BROOKER - CROSS-EXAMINATION

1 suggested to him that it would be within his best  
2 interest to take the plea.

3 Q Getting back to my earlier question. The DNA  
4 segment of this case was never pursued by you to prove  
5 his innocence potentially; is that correct? You never  
6 went down that road as a potential way to get him out  
7 of these charges, correct?

8 A Are you -- you are --

9 Q It is reiteration of my earlier question. You  
10 never pursued the DNA as a potential opportunity for  
11 him to prove his innocence, is that correct, as you  
12 said earlier?

13 A And, of course -- did I ever pursue the DNA  
14 evidence as a way of -- sorry, let me -- you are asking  
15 me did I pursue the DNA evidence as a way of proving  
16 his innocence?

17 Q Correct.

18 A Okay. No, I never followed up on the DNA.

19 MR. FOWLER: If I may have a moment?

20 THE COURT: All right, sir.

21 (A brief pause in the proceedings.)

22 Q That DNA evidence includes any forensic evidence  
23 of blood that was smeared on the victim's bedroom door;  
24 is that correct?

25 A I don't remember off the top of my head where

## THURMOND BROOKER - CROSS-EXAMINATION

1 they took the smear from, but I know they took a smear  
2 of DNA evidence from the victim's residence.

3 Q You are saying there was a report -- or  
4 December 31, 2013 the victim gave a statement to  
5 Officer Langlais, L-A-N-G-L-A-I-S? Is that correct,  
6 that there was a statement given to David Langlais in  
7 regards to the home invasion; is that correct?

8 Are you familiar with a report given by the  
9 victim for David Langlais from approximately  
10 December 2013?

11 A I am.

12 Q What was the status of that, based on your  
13 recollection, the report, what was that about? Was it  
14 about the home invasion, or something else?

15 MS. KINARD: I'll object as far as relevance. I  
16 don't think it has any bearing on anything that has  
17 been testified to.

18 MR. FOWLER: Your Honor, it is a situation where  
19 there is a report out there that might have proved my  
20 client's innocence and that might have been another  
21 aspect of innocence that could be pursued.

22 THE COURT: You are asking what he recalls about?

23 MR. FOWLER: Apparently, there was a report.

24 THE COURT: You are asking him what he remembers  
25 about a report that he would have read some years ago?

## THURMOND BROOKER - REDIRECT EXAMINATION

1 MR. FOWLER: Exactly. I'm just asking if he's  
2 familiar with a report given to Officer David  
3 Langlais. He remembers dates and times when he met  
4 with my client, I'm assuming he would remember this as  
5 well.

6 THE COURT: Ask him if he remembers the report.  
7 You asked what you remember about it.

8 MR. FOWLER: I'll rephrase. Thank you. I  
9 apologize.

10 Q Do you remember a report given to David Langlais  
11 about this matter?

12 A Just for clarification, are we talking about the  
13 narrative? If we're talking about the long narrative  
14 that contains a report of the entire investigation,  
15 yes, I do remember that report.

16 MR. FOWLER: Hold on a moment.

17 Nothing further, Your Honor.

## 18 REDIRECT-EXAMINATION

19 BY MS. KINARD:

20 Q Regarding the DNA, if there was no DNA ever  
21 mentioned in this case, do you still believe there  
22 would be enough evidence to convict Mr. Garcia?

23 A Yes. And I can give you my rationale as to why  
24 my thoughts were that as well, if you want me to  
25 explain.

## CLOSING ARGUMENTS

1 Q I believe you have, I just wanted you to ask that  
2 question succinctly.

3 MS. KINARD: Thank you. Nothing further.

4 THE COURT: You may step down.

5 MS. KINARD: State rests.

6 THE COURT: From the defense.

7 MR. FOWLER: Closing arguments?

8 THE COURT: Any witnesses.

9 MR. FOWLER: No more witnesses.

10 THE COURT: I'll be glad to hear argument.

11 MR. FOWLER: Your Honor, Counsel -- one of the  
12 major tenements, in my opinion, was the DNA evidence.  
13 My client in several discussions on this matter, his  
14 testimony today and former attorney's testimony, my  
15 client assisted in terms of trying to do DNA testing  
16 to prove his innocence. The lawyer said there were  
17 other possibilities that could prove his guilt, but  
18 the attorney is not the final arbiter of guilt or  
19 innocence. He is to put up in evidence, in  
20 communication with his client any avenue -- any  
21 reasonable avenue that would prove his client's  
22 innocence in a case like this. The DNA evidence,  
23 according to the testimony today of my client's former  
24 attorney basically said he did not pursue that avenue  
25 of testing on this. There was a swabbing taken of my

## CLOSING ARGUMENTS

1 client. There was a smearing of it at the house at no  
2 small place. In turnout, the attorney can say, well,  
3 there is four things against him, and the fifth thing  
4 I didn't pursue that because I think the other four  
5 things might be problematic. Well, it's a lawyer's  
6 responsibility to pursue any avenue that is reasonable  
7 to determine his client's innocence, and in this case,  
8 DNA testing perhaps would have proved that my client  
9 was innocent in this matter. In my opinion, my  
10 client's former attorney -- in fact, basically he said  
11 on the stand that he did not pursue that.

12 With that being said, I think this meets the  
13 Strickland criteria, that but for him not presenting  
14 that testimony and not presenting evidence and not  
15 adequately going over with my client, that there may  
16 have been a different outcome of this.

17 That is our case, Your Honor, and we feel that  
18 we've met our burden of proof.

19 THE COURT: All right. Thank you.

20 MS. KINARD: Thank you, Your Honor. The State  
21 completely disagrees with everything the Applicant  
22 presented regarding DNA. In this matter, DNA evidence  
23 could only be inculpatory rather than exculpatory,  
24 meaning that had the Applicant's DNA been found at the  
25 scene, it could certainly include him in a defendant

## CLOSING ARGUMENTS

1 pool. However, if his DNA was tested and was not  
2 found at the scene, it would be one piece of evidence  
3 that didn't point to him, combined with several others  
4 that did in an overwhelming and extreme fashion.

5 For these reasons, the fact that the DNA evidence  
6 was not pursued, simply is not enough to carry any  
7 sort of standard regarding reasonableness or  
8 professional conduct. Among all of the other  
9 testimony that Mr. Brooker presented, the State  
10 believes that he conducted a thorough pretrial  
11 investigation. He had many productive meetings with  
12 the Applicant and researched and interviewed and  
13 negotiated on the Applicant's behalf and came up with  
14 a very satisfactory outcome and got dropped all the  
15 other charges against him in exchange for a plea to a  
16 minimum sentence on this one charge.

17 The Applicant himself testified that he took the  
18 15 rather than risking anything else, and that is a  
19 valid reason to plead guilty. For these reasons --  
20 for an involuntary guilty plea, that certainly is not  
21 the case, and as far as ineffective assistance of  
22 counsel, the Applicant did not meet any of the burdens  
23 required by the Strickland test. Mr. Brooker  
24 certainly acted in the Applicant's interest, to the  
25 best of his professional abilities, and was not

## CLOSING ARGUMENTS

1 ineffective or prejudicial by any means; therefore, we  
2 ask the Court to deny any relief that the Applicant  
3 may seek.

4 THE COURT: I find the Applicant has failed to  
5 meet his burden of proof in this case. I agree with  
6 the argument and position stated by the Attorney  
7 General and I deny the application.

8 We need an order within 30 days.

9 MS. KINARD: Thank you, Your Honor.

10 (Whereupon, the proceedings concluded.)  
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1  
2  
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4 CERTIFICATE OF REPORTER  
5

6 State of South Carolina)

7 County of Horry )  
8

9 I, Natalie Dahl, Official Court Reporter for the  
10 State of South Carolina, do hereby certify that the  
11 foregoing is a true, accurate and complete Transcript  
12 of Record of the proceedings had and evidence  
13 introduced in the matter of the captioned case,  
14 relative to appeal, in the Court of Common Pleas for  
15 Horry County, South Carolina, on the 15th day of  
16 November, 2016.

17 I do further certify that I am neither of kin,  
18 counsel, nor interest to any party hereto.  
19

20 November 24, 2018  
21

22   
23

24 Natalie Dahl, RPR

25 Court Reporter

|                          |   |                                    |
|--------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS       |
|                          | ) | FOR THE FIFTEENTH JUDICIAL CIRCUIT |
| COUNTY OF HORRY          | ) |                                    |
| Miguel Angel Garcia,     | ) | Case No.: 2015-CP-26-06311         |
| S.C.D.C. No. 339203,     | ) |                                    |
|                          | ) |                                    |
| Applicant,               | ) |                                    |
|                          | ) | <b>ORDER OF DISMISSAL</b>          |
| v.                       | ) |                                    |
|                          | ) |                                    |
| State of South Carolina, | ) |                                    |
|                          | ) |                                    |
| Respondent.              | ) |                                    |

This matter comes before the Court by way of an application for post-conviction relief filed by Miguel Angel Garcia ("Applicant") on August 25, 2015. Respondent made its return on or about January 29, 2016. The Court convened an evidentiary hearing into the matter on Tuesday, November 15, 2016, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by Steven W. Fowler, Esq. Jessica E. Kinard, Esq., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Thurmond Brooker, Esq. ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Horry County Clerk of Court regarding the subject convictions, and the pleadings. The Court finds as follows:

### **I. PROCEDURAL HISTORY**

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the March 2014 term of the Horry County Grand Jury for burglary, first degree (2014-GS-26-01276). Thurmond,

Brooker, Esq. represented Applicant, and Thomas G. Terrell, III, Esq., of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On November 3, 2014, Applicant pled guilty as above indicted.<sup>1</sup> The Honorable John C. Hayes, III, accepted terms negotiated between Applicant and the State and sentenced Applicant to imprisonment for a term of 15 years. Applicant did not appeal his plea or sentence.

### **Present Application**

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

1. Ineffective assistance of counsel, in that:
  - a. "Trial counsel prejudice applicant by not conduct[ing a] pre-trial investigation by not bringing to my attention that DNA didn't match my blood during state investigation[.]"
  - b. Counsel failed to research and interview the victim and his statements to law enforcement;
  - c. "Trial counsel prejudice applicant by failing to [file] a timely . . . notice of appeal."

Applicant requests relief as follows:

- "Vacate Conviction and Sentences"

### **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

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<sup>1</sup> Applicant was additionally indicted for assault and battery, first degree (2014-GS-26-01274); kidnapping (2014-GS-26-01275); and armed robbery (2014-GS-26-01277). These indictments were dismissed *nolle prosequi* as part of his guilty plea.

### A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her 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, he or she 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." Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test 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 at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry at 117-18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694). With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 696-97.

#### *1. Failure to Investigate: DNA Evidence*

Applicant alleges Counsel was ineffective for failing to investigate DNA evidence found at the scene of the crime. In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283,

288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C 210, 214, 481 S.E.2d 129, 132 (1997)).

Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

At the evidentiary hearing, Applicant testified that during his interrogation by law enforcement, the detective indicated there was DNA found at the scene that did not match the Victim. Applicant thereafter volunteered a DNA sample, which law enforcement took. Applicant posited it was not his and questioned whose DNA was found. Applicant testified he brought Counsel's attention to the issue, but Counsel never followed upon the subject. Applicant complained Counsel did not communicate with him. Applicant also asserted there was no chain of custody for the DNA evidence in the paperwork he received. Applicant additionally testified he tried to relieve Counsel, but was unable to find another attorney willing and able to take his case and be prepared for the trial already set to occur the following month. Faced with the choice of proceeding with Counsel and proceeding *pro se*, Applicant opted to stick with Counsel, accepted his advice that he would likely be convicted if he went to trial, and took the plea deal based upon Counsel's advice.

Counsel acknowledged a swab was taken of what appeared to be blood at the scene, and a swab was taken from Applicant for comparison, but no comparison was ever made. No report of DNA testing was ever provided in discovery. Counsel recalled telling Applicant that the DNA evidence was irrelevant as the case against him was overwhelming: two witnesses, a GPS tracking device, Applicant's own inculpatory statements, and evidence to show Applicant's working with the two co-defendants. Counsel also testified to Applicant's version of events, namely that Applicant and the co-defendants had been invited to Victim's house for the purpose



of inspecting and possibly purchasing a motorcycle, and that the co-defendants must have robbed Victim after Applicant left. Counsel asserted that even if the DNA was tested and was not Applicant's, it would not acquit him. As such, he advised Applicant to plead guilty.

The Court finds no deficiency on the part of counsel, nor any prejudice to Applicant. First, no testing or reports were introduced at the evidentiary hearing; as such, the Court is left with only speculation as to what, if anything, such testing would have revealed. Second, Counsel articulated clear reasoning as to why he did not pursue further investigation of the DNA evidence—doing so would not have been helpful to the cause of acquitting his client in light of the other evidence against Applicant. Third, because Applicant's testimony provides that he pled based on Counsel's advice, and Counsel testified his advice would not have changed on the DNA evidence even if it were tested and did not match Applicant, the Court finds there would have been no change in outcome had the DNA evidence been tested. For all of these reasons, Applicant cannot meet his burden as to either prong of Strickland, and his request for relief by way of this allegation is **DENIED**.

## ***2. Failure to Investigate: Victim's Statements***

Applicant alleges Counsel was ineffective for failing to investigate Victim's desire to change his statement inculcating Applicant. Much of the same law as set forth in Section II.A.1, above, applies here as well.

At the evidentiary hearing, Applicant testified the Victim in the matter was seeking to write an additional statement indicating Applicant was not the perpetrator, recanting his original statements to law enforcement. Applicant asserted Victim did ultimately write a notarized statement to that effect and presented it to Counsel, who did not present the statement to the court. Applicant speculated that Victim originally identified him because Applicant fathered a



child by Victim's girlfriend, and that Victim wished to get Applicant "out of the way." As previously noted, Applicant testified to his reasons for pleading guilty—he relied on Counsel's advice to do so.

Counsel testified Victim gave a statement to law enforcement after they responded to the scene. Victim told law enforcement he recognized one of his attackers as Applicant because they had served time together. Counsel recalled Applicant informed him that Victim, as well as the co-defendants, wished to revise their statements to Applicant's benefit. Counsel noted the co-defendants never so revised their statements. Counsel advised Applicant that contact with Victim would violate conditions of his bond, but Applicant believed he could convince Victim to change his statement. Applicant, Victim, and Victim's girlfriend appeared in Counsel's office one day; after speaking with Victim, Counsel became concerned that he was being asked to do something that might be illegal, so Counsel declined to take Victim's statement. Victim thereafter contacted law enforcement and Applicant was arrested for violating the conditions of his bond. Counsel recalled reviewing discovery with Applicant, including the Victim's statement.

The Court finds no deficiency on the part of Counsel, nor any prejudice to Applicant. First, Applicant did not offer the Victim as a witness, nor any new statement from Victim, such that this Court is left with only speculation as to what, if anything, he would have said to benefit Applicant. Second, Counsel articulated a clear and valid reason to not further pursue a revised statement from Victim—Counsel was justifiably concerned about witness tampering. Third, the evidence presented would appear to discredit any suggestion that Victim would have been cooperative to Applicant's defense—Victim caused Applicant's bond revocation shortly after Counsel declined to take a statement, which is hardly the act of somebody friendly to the

defense. Fourth, the Court finds Counsel did review the existing Victim statement, along with all other discovery, with Applicant, and did investigate the lead until such time as he properly determined it was improper. Fifth, as noted in the prior section, Counsel advised Applicant to plead guilty due to the overwhelming evidence in the State's case, and Applicant relied upon that advice. There is nothing to show Counsel would have advised differently had he further pursued this line of "investigation." Finally, the Court finds Applicant's testimony largely not credible. For all of these reasons, the Court finds Applicant has failed to meet his burden as to either prong of Strickland, and his request for relief by way of this allegation is **DENIED**.

### ***3. Failure to File Notice of Appeal***

Applicant alleges Counsel was ineffective in failing to file a notice of appeal after his guilty plea. Though counsel is required to make certain that a defendant is made fully aware of his or her right to appeal after a *trial*, a different standard applies to a guilty plea:

Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.

Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (citations omitted). Therefore, in a collateral action attacking a guilty plea, the "bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief." Jones v. State, 382 S.C. 589, 598, 677 S.E.2d 20, 23-24 (2009) (quoting Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)).

At the evidentiary hearing, Applicant testified he verbally indicated to Counsel that he wished for Counsel to file an appeal immediately after signing the plea offer. Counsel denied the claim, and instead testified they never discussed an appeal and Applicant never asked for an appeal. Counsel testified if Applicant had asked for an appeal, he would have filed one.

The Court finds no deficiency on the part of Counsel, or any prejudice to Applicant. Having closely observed the witnesses at the evidentiary hearing, and after considering the evidence presented, the Court finds Counsel's testimony credible and Applicant's testimony not credible. The Court accepts Counsel's version of events, and finds Counsel and Applicant did not discuss the subject of an appeal and that Applicant never requested an appeal. As such, Applicant has failed to meet his burden, and his request for relief by way of this allegation is **DENIED.**

*[Conclusion and signature on following page]*

A handwritten signature in dark ink, appearing to be a stylized name, located in the bottom right corner of the page.

### III. CONCLUSION

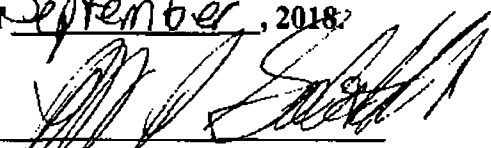
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

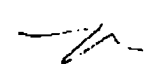
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

#### IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 28 day of September, 2018.

  
BROOKS P. GOLDSMITH  
Presiding Judge  
Fifteenth Judicial Circuit

  
\_\_\_\_\_, South Carolina

**WITNESSES**

Michael Kathman Horry County Police Department

DOCKET NO. 2014-GS-26-01276

**The State of South Carolina**  
**County of Horry**

Thomas Groom Terrell, III  
14H00120

**COURT OF GENERAL SESSIONS**

**MARCH, 2014 TERM**

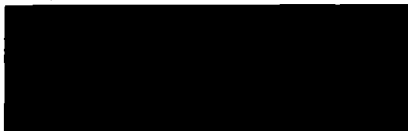
**ARREST WARRANT NUMBER**

2014A2610200028  
CDR: 0079 16-11-0311  
DOA: 1/3/2014

**THE STATE**

**vs.**

Miguel Angel Garcia Garcia  
/ M



**ACTION OF GRAND JURY**

MAR 20 2014  
Foreperson of Grand Jury  
Date:

**ATTORNEY: Galmore, James Cullen**

**VERDICT**

**Indictment for**

**BURGLARY, FIRST DEGREE**

**Jimmy A. Richardson, II, Solicitor**

Foreperson of Petit Jury  
Date:

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF HORRY )

# INDICTMENT

At a Court of General Sessions, convened on March 20, 2014, the Grand Jurors of Horry County present upon their oath:

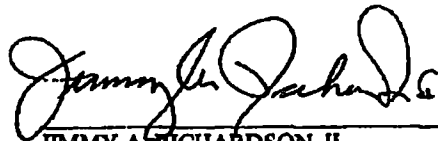
## BURGLARY, FIRST DEGREE

CDR: 0079 16-11-0311

That Miguel Angel Garcia Garcia and/or a codefendant did in Horry County, on or about December 31, 2013, enter the dwelling of Christopher Parra without consent and with the intent to commit a crime therein and when in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime was armed with a deadly weapon, and/or caused physical injury to non-participant in the crime, and/or used or threatened use of dangerous instrument, and/or displayed what was or appeared to be a knife or firearm, in violation of Section 16-11-0311(A), S. C. Code of Laws, 1976, as amended.

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

FILED  
 HURRY COUN  
 2014 NOV -3 PM 4:30  
 MELANIE HUGGINS-WARD  
 CLERK OF COURT  
 COURT DATE  
 PLED GUILTY/TRIAL



JIMMY A. RICHARDSON, II  
 FIFTEENTH CIRCUIT SOLICITOR