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STATE OF SOUTH CAROLINA

No Respondent's Brief Filed

In The Court of Appeals

NO DEFENDANT'S BRIEF RECEIVED

APPEAL FROM WILLIAMSBURG COUNTY

Clifton Newman, Circuit Court Judge

APR 07 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

v.

Walter Louis Brown, III,

APPELLANT

APPELLATE CASE NO 2015-001774

RECORD ON APPEAL

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State of South Carolina )  
 )  
County of Williamsburg )  
 )

Walter Louis Brown, III  
Plaintiff

Guilty Plea  
2011-DR-45-00119

vs.

The State of South Carolina,  
Defendants

November 2, 2012  
Kingstree, S.C.

Before the Honorable Clifton Newman, Judge.

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

Ms. Kimberly V. Barr,  
Assistant Solicitor for the State

Mr. Doward Harvin,  
Attorney for Defendant

Margaret T. Sullivan,  
Court Reporter

1 THE COURT: Ms. Barr.

2 MS. BARR: Walter Brown. Indictment No.  
3 2011-GS-45-119. The State versus Walter Louis  
4 Brown, III. Your Honor, this is an indictment for  
5 burglary in the first degree and grand larceny.  
6 The defendant is entering a guilty plea to  
7 burglary in the second degree, and he is  
8 represented by Mr. Harvin.

9 THE COURT: Burglary first degree is the  
10 charge. And you are pleading to burglary second  
11 degree nonviolent?

12 MS. BARR: Yes, sir.

13 THE COURT: And that carries up to 10 or  
14 years.

15 MS. BARR: 15.

16 THE COURT: Up to 15.

17 MS. BARR: Yes, sir. This happened in 09.

18 THE COURT: And the previous law. And,  
19 Mr. Harvin, you are in an agreement with his  
20 decision to plead guilty?

21 MR. HARVIN: Yes, Your Honor. We went  
22 over discovery, and before he made this decision.

23 THE COURT: And, Mr. Brown, are you guilty  
24 of burglary?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And you understand it carries  
2 up to 15 years in prison?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Now as you stand before me at  
5 this moment and time, you're presumed to be not  
6 guilty of this charge. You have the right to have  
7 a jury trial on this charge. Do you understand  
8 that?

9 THE DEFENDANT: Yes, sir, I do.

10 THE COURT: If you are to have the jury  
11 trial, you would have the right to remain silent.  
12 The State would have to convince a jury of your  
13 guilt beyond a reasonable doubt. You'd have the  
14 right to challenge any incriminating statements  
15 you may have made, and incriminating evidence the  
16 State may offer against you. You'd have the right  
17 to summon any witnesses that you may have to  
18 testify on your own behalf, and to present any  
19 defense you might have to this charge. Do you  
20 understand?

21 THE DEFENDANT: Yes, sir, I do.

22 THE COURT: Do you want to waive his  
23 rights?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And plead guilty.

1 THE DEFENDANT: Yes, sir, I do.

2 THE COURT: And are you guilty, did you  
3 say?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And what makes you guilty of  
6 burglary?

7 THE DEFENDANT: I was an accomplice with  
8 two other co-defendants that burglarized a  
9 residence and stole several items from there.

10 THE COURT: Are on probation or parole at  
11 this time?

12 THE DEFENDANT: No, sir.

13 THE COURT: Are you already in SCDC?

14 THE DEFENDANT: Yes, sir. I just came  
15 from SCDC.

16 THE COURT: For doing what?

17 THE DEFENDANT: I was -- this charge right  
18 here violated my old probation that I finished.

19 THE COURT: Ms. Barr.

20 MS. BARR: Your Honor, please the court,  
21 this incident happened back on February 25th of  
22 2009, on New Zion Road in Lake City, which is  
23 located in Williamsburg County. The victim in the  
24 case, William McClendon, who is in the courtroom,  
25 called to report that his daughter had gotten home

1 from school; walked in the house noticed, first of  
2 all, noticed the front garage door open, and  
3 noticed several items thrown about in the rooms in  
4 the house.

5 She immediately left the residence and  
6 called her dad. Dad came home. They had a camera  
7 missing, a firearm missing, and other items of  
8 personal property were missing from the residence.  
9 The investigator who handled the case, eventually  
10 spoke first, I guess with an individual by name of  
11 the Steven Riles who is also one of co-defendants  
12 charged. Gave a statement to the police saying  
13 that he, Levy, Murphy and Walter Brown, were the  
14 individuals who broke into the home. He correctly  
15 identified the items that were stolen. And he  
16 even took the sheriff's deputies back to the house  
17 and confirmed that that was the one that he went  
18 into.

19 He said that they had a scheme is what you  
20 would call it, going, where they would knock on  
21 the door to try to first find out whether or not  
22 anybody was home. And if no one was home, then  
23 they would break into the residence and take the  
24 items. Mr. Riles claims to be the lookout and  
25 claims that was his role. He said that on this

1 day, he a had cell phone and he would basically,  
2 his job was to call back and tell Mr. Brown that  
3 the were homeowners were coming home, or somebody  
4 was there. That was his Q to them that they  
5 needed to leave out of the residence. Judge,  
6 that's essentially my case.

7 (Whereupon the defendant is sworn.)

8 THE COURT: And all that's true you said.

9 THE DEFENDANT: Some of it is true, Your  
10 Honor.

11 THE COURT: What part is not true?

12 THE DEFENDANT: The part about him saying  
13 what he did and what I did. And also some of the  
14 things he said. Just about how he looked out and  
15 what not.

16 THE COURT: Yes, sir. You are  
17 Mr. McClendon.

18 MR. MCCLENDON: Murray McClendon.

19 THE COURT: Murray McClendon. Yes, sir,  
20 Mr. McClendon. Well first, let me hear his prior  
21 criminal record.

22 MS. BARR: Judge, Mr. Brown as convicted  
23 of burglary in the second degree from Berkeley  
24 County in 2004. He received a suspended YOA  
25 sentence. It looks like it was later revoked. He

1 was convicted for failure to stop for a school  
2 bus, and resulted in bodily injury in 2004. He  
3 had a burglary third in 2005, in North Charleston.  
4 He was convicted in 05, for burglary second  
5 degree.

6 THE COURT: How many burglar -- he had got  
7 a lot of burglaries?

8 MS. BARR: He does. He was convicted in  
9 05 for financial transaction card fraud. Had a  
10 hit and run with great bodily injury conviction.  
11 Convicted of grand larceny in Georgetown in 07.  
12 Had a burglary third degree in 2007. He had a  
13 burglary second degree in Williamsburg County in  
14 2007. And I think that is it. So he has three  
15 prior burglary second degree convictions.

16 THE COURT: Are you on -- you said you are  
17 not on parole now?

18 THE DEFENDANT: No, sir.

19 THE COURT: I will accept the guilty plea.  
20 And, Mr. McClendon, yes, sir.

21 MR. MCCLENDON: My only reason for being  
22 here is to try to give you some added details. He  
23 says he broke in or the three of broke in. I've  
24 got kids that won't even stay at the house by  
25 their self. I've got kids that -- if my wife

1 opens the door if he doesn't say her name loudly  
2 and quickly, then they go under the bed. We, you  
3 know, we're still having issues with some of our  
4 four children in connection to this, whatever you  
5 want to call it. But the main thing is, I mean I  
6 think you've heard what a blight to the community  
7 he is.

8 But the first defendant that turned  
9 everybody in, got 8 years. The second one, got 15  
10 years. He got the full 15 years. I don't see any  
11 way that he wouldn't get the full 15 years. And  
12 you've just heard what he's done. And I just  
13 thought he'd get six years if somebody stole a  
14 pack of cigarettes. And this guy, he broke into,  
15 what you don't know, and I know I can't prove  
16 this, but he broke in three houses that day.  
17 There's two more in Florence County that are  
18 pending against him.

19 I mean this, you know, this is just a, and  
20 I believe she told he attacked a prison guard, is  
21 why he had to stay a little longer in prison. So  
22 there's no doubt he has some violence to him. He  
23 could have easily if my kids had been home when he  
24 got there, of course I understand you can't take  
25 that, you know, that's not anything you can prove.

1 But this is blight to the community. That's  
2 exactly what this is. He has no business being  
3 anywhere around Williamsburg, Berkeley, Florence,  
4 any county, anytime in the next 15 years.

5 THE COURT: He needs to be in prison.

6 MR. MCCLENDON: He needs to be -- we need  
7 to worse than that, but he needs to prison since  
8 that's all we do to them.

9 THE COURT: Well he can get life parole on  
10 some of these. If someone else decides---

11 MR. MCCLENDON: Amen.

12 THE COURT: ---to pursue it that's what he  
13 can get. He might be history at age 23, if  
14 someone pursues life without parole. If he has --  
15 if he qualifies based on these prior burglaries.

16 MR. MCCLENDON: I mean, Steven Riles  
17 hasn't had quite as bad a background. And we  
18 tried to see if he would do a little better. But  
19 he's already been paroled when they let him out,  
20 and he's scampered off, you know. And they've  
21 caught him since then. But you can't rehabilitate  
22 somebody like this. You just heard three or four  
23 things a year. What did he get away with. I mean  
24 what did he get away with that you didn't find out  
25 about. That's what we know. And all those things

1 are plea bargained down one step to keep from  
2 putting -- you know have him go to trial.

3 That's bad for the community is all I got  
4 to say.

5 THE COURT: okay. Yes, sir, I appreciate  
6 it. Mr. Harvin.

7 MR. HARVIN: May it please the court, I'm  
8 going to start from the end and kind of work back  
9 to the beginning. I just pulled up the public  
10 index. There are no pending charges in Florence  
11 County on Walter Brown. He has not been convicted  
12 of anything in the prison system. So I don't know  
13 what's that about. I don't know, maybe the  
14 solicitor heard.

15 THE COURT: I won't hold any of that  
16 against him.

17 MR. HARVIN: I don't know where that's  
18 coming from. Maybe the solicitor heard that and  
19 told the victim. I think that Levy Murphy got 10  
20 years and not 15. He was the second guy. And if  
21 the solicitor's office could confirm that instead  
22 of 15. He got -- my client thinks he got a YOA.  
23 Steven Riles got the YOA. And I guess Levy Murphy  
24 go the 10 years. And notwithstanding that, the  
25 record that was read is actually kind of

1 confusing, Your Honor. Because it's basically a  
2 charge, and then there's a revocation. So the  
3 charge repeats itself several times. And I hand  
4 up a copy of that to the court so you that can see  
5 it for yourself. But it's confusing. I was  
6 sitting down with the Department of Probation,  
7 just trying to figure out what actually was the  
8 new charge. Because it has custody received.  
9 Custody received. Custody received. And it's a Y  
10 sentence.

11 And so as Your Honor knows usually the Y,  
12 if you do something wrong, they send you back.  
13 But how his record is read, it kind of looks like  
14 something, and I don't know that it is. So if the  
15 court would like to see a copy of that record so  
16 you can analyze it for yourself. And the markings  
17 were made by the solicitor's office and not  
18 myself.

19 In addition, Your Honor, Mr. Brown tells  
20 me that, yes, he has been in prison. But during  
21 that time, he's taken just about every class I  
22 think you probably can take in prison, from  
23 becoming a certified electrician to taking victim  
24 impact classes and drug rehab. And also work keys  
25 for employment. He used to work at Santee Cooper

1 with his father. He's also certified in auto body  
2 and collision and carpentry. And I understand the  
3 victim's pain in this matter. And I think  
4 through victim impact classes, Mr. Brown has  
5 appreciation more now than ever for how his crimes  
6 impact people.

7 He's been in jail for 46 months. That is  
8 the time he had served currently. He has one son  
9 that's three years old. And his mother who wanted  
10 to be here, who lives in North Carolina, they  
11 couldn't make it. She asked me, and I told her I  
12 would ask the court. If you would, call her  
13 during the proceedings to discuss what she felt  
14 about the case, and I told her I would make that  
15 request to you. And also I believe Mr. Brown  
16 would like to address the court as well.

17 THE COURT: Yes, sir, Mr. Brown.

18 THE DEFENDANT: Yes, Your Honor. First  
19 I'd just like to ask if it's possible if I can  
20 apologize to the victim. And I know due to the  
21 situation, with the person that got arrested first  
22 and told him his side of the story, you can ask  
23 probably the solicitor and my lawyer both, that  
24 his statements are very inconsistent about what  
25 happened. And I was on drugs real bad at the

1 time. And they paid me in drugs to use my  
2 vehicle, to steal them things out of the house.  
3 But I have taken a victim impact class, so I know  
4 what he's going through.

5 Also since I've been incarcerated, my  
6 house has been broken into. So my family is going  
7 through the same thing. I know what's he's going  
8 through, and all I want to do is apologize about  
9 that. I really don't -- I know I can't never make  
10 that feeling go away. But I know that my  
11 situation in this case was just to drive and use  
12 my vehicle and get paid in drugs for it. Which  
13 doesn't, I mean, that doesn't excuse the matter.  
14 But I've been in prison almost four years. And my  
15 little son has been born without me. And  
16 currently back and forth between my mother and my  
17 father. And I just want to try to get home---

18 THE COURT: You have been in prison for  
19 four years?

20 THE DEFENDANT: Yes, sir. Almost.

21 THE COURT: Well the date of offense is  
22 2/25/09.

23 THE DEFENDANT: Yes, sir. It's about  
24 45 months.

25 THE COURT: Go ahead.

1           THE DEFENDANT: I've taken every class  
2 possible that I could take on wanting to better  
3 myself while I was there. And I've tried to get  
4 in, you know, back and forth with the court here.  
5 And I know how packed it is. But I just wanted  
6 to -- my main thing is to just to apologize to the  
7 victim, and hope throughout this case that you  
8 understand what my part in the case was. And that  
9 Steven Riles is the just the first one they talked  
10 to. They never even spoken with me at all. And I  
11 would have been apologized to them if I could  
12 legally. But it's against the law for me to have  
13 contact with them. But I am very sorry.

14           THE COURT: Ms. Barr.

15           MS. BARR: Your Honor, I was looking in  
16 the -- in my file to try to figure out when the  
17 warrant was served on him. You mentioned he's  
18 been in jail for 46 months. And my folder  
19 indicates that he -- the arrest warrant was served  
20 on April 18th of 2011. Now he could have been  
21 under a detainer. But and if he was prior to that  
22 day, then that's fine. I just wasn't sure whether  
23 the 46 months that he's been incarcerated within  
24 the last 3 or 4 years, were solely related to this  
25 offense.

1           But, Judge, Mr. Harvin raises a good point  
2 about the convictions on the record. And that's  
3 one of the reasons why I sent off to Berkeley  
4 County and to Charleston County to make sure and  
5 confirm that the prior burglaries were separate  
6 and distinct offenses. And he was convicted in  
7 Williamsburg in 2007, for burglary second degree.  
8 And that is July 16th 2007. He had a second  
9 burglary nonviolent conviction in December 13th of  
10 2011. So just this past year, in Berkeley County.  
11 And then he had a previous one in Charles -- I  
12 mean in Berkeley County in 04, for burglary in the  
13 second degree. Then he had a burglary third  
14 degree in Charleston back in early 2000.

15           So he has got at least four burglaries on  
16 his record. And the -- Mr. -- the co-defendant  
17 did receive a 10-year-sentence.

18           THE DEFENDANT: Can I say something, Mr.  
19 Newman?

20           THE COURT: Yes, sir.

21           THE DEFENDANT: On my record, I just want  
22 to say that on the Berkeley County charges, they  
23 were the same. But what happened on the admission  
24 dates that are different is I got a conviction,  
25 and got incarcerated. And then they came and took

1 me to court later for a different county. They  
2 happened at the same exact day, the same exact  
3 time. They just held me while I was in prison,  
4 and then waited until I finished to come take me  
5 to court.

6 THE COURT: This original indictment was  
7 for burglary first degree. What time of day or  
8 night was the burglary first?

9 MS. BARR: It was daytime. The stealing  
10 of the weapon made it burglary first.

11 THE COURT: So the offense that you  
12 committed was burglary first degree. At the time  
13 you committed burglary either armed or steal a  
14 weapon it says, first degree burglary, which  
15 carries 15 years to life imprisonment. And the  
16 plea bargain as Mr. McClendon mentions and where  
17 cases are often pled down to something else. You  
18 have now pled guilty to burglary second degree  
19 where it's 0 to 15. But the offense clearly is  
20 burglary first degree. And you have gotten a  
21 break from the State in the plea itself. And I  
22 certainly have to consider your criminal history.

23 Now I'm not going to call his mother to  
24 hear what she has to say. I'm assuming she's  
25 going to say nice things about her son. I'm not

1 going to call her to speak with her.

2 MR. HARVIN: And, Your Honor, and this one  
3 thing that I want to clear up. And I am going to  
4 hand you the incident report so you don't think I  
5 am lying. The incident report says the gun was  
6 found on the front porch. It also says that the  
7 camera was found in the house as well. So I don't  
8 whether there was two guns or there's something  
9 that we missed. But it's in the incident report  
10 on the last paragraph, that a scope rifle was  
11 found on the front porch.

12 THE DEFENDANT: I didn't have any gun,  
13 Your Honor. Or I didn't use things in the  
14 property.

15 THE COURT: A 22 Ruger pistol and a 22  
16 Marlin rifle were missing from the gun case.

17 MS. BARR: And the rifle was found in the  
18 yard, on the front porch.

19 THE COURT: Mr. McClendon, do you want to  
20 clarify anything as to what was stolen from your  
21 house?

22 MR. MCCLENDON: Yes. There was a 22  
23 short pistol that I had. My father had given me,  
24 you know, that I had for 50 years. Or he had  
25 before I was born. So 50 years. I want to say

1 40, 50 years. It was stolen. The 22 rifle, you  
2 know, a long rifle, was left on the front porch.  
3 So there was one gun stolen and one gun just  
4 moved. Evidently they decided it was maybe too  
5 big. The police says they are too hard to pawn  
6 off or sell long guns versus a pistol.

7 THE DEFENDANT: I didn't see any weapon,  
8 Your Honor, so I can't say. I just picked the---

9 THE COURT: What was role in the burglary?

10 THE DEFENDANT: I drove my vehicle, and  
11 picked them up when they finished. And they paid  
12 me in drugs, crack cocaine and money.

13 THE COURT: Anything else? Regarding the  
14 credit for time served, how much credit for time  
15 served do you think you are entitled to?

16 THE DEFENDANT: Well, Your Honor, I was  
17 going to say that. But they did serve me the  
18 warrant from 2009 when I got pulled over. I was  
19 working for Santee Cooper. And this violated my  
20 my parole. That's why I had the warrant  
21 outstanding. And I working in North Myrtle Beach,  
22 North Carolina area with permission. And when I  
23 got pulled over for a driving situation, they had  
24 served me with a warrant from North Carolina.

25 THE COURT: When were you served the

1 warrants? What day?

2 THE DEFENDANT: May of 2005. Or March 5th  
3 or May 5th 2009, I'm sorry. I've been  
4 incarcerated since March 4th of 2009.

5 THE COURT: And the warrants that you were  
6 served with were the warrants in this murder?  
7 This robbery, this burglary, I'm sorry.

8 THE DEFENDANT: Yes, sir, burglary.

9 MS. BARR: Judge, I am looking at the  
10 arrest warrants, and I believe he is right. It  
11 looks like on the left hand side of the warrant,  
12 it says this warrant is certified for service in  
13 Berkeley County on 5/5/09. But the return has it  
14 being served 4/18/2011. I am reading a  
15 Supplemental Incident Report dated 5/9/2009. And  
16 it indicates that Investigator Lail said this  
17 agency was notified by Columbus County Sheriff's  
18 Office located in Columbus County, North Carolina;  
19 that the individuals Walter Brown and Levy Murphy  
20 had been arrested. Both of them had denied  
21 extradition to the State of South Carolina. And  
22 as a result a governor's warrant from South  
23 Carolina had to be issued. But I am not sure of  
24 the date they brought him back.

25 THE COURT: He's entitled to time served

1 from March 5th 2009. Today is 1,338 days. With  
2 regard to the sentence, Mr. Brown, when I have a  
3 victim that come into court and they tell me about  
4 the pain and trauma and lingering effects of the  
5 burglary, and the scarring that it has on their  
6 family lives.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And they ask for the maximum  
9 sentence. And I'm going to factor what they  
10 request. And I am going to factor what the  
11 defendant requests. And I am going to look at the  
12 defendant's prior incidences in which they have  
13 been given leniency and breaks and all of that.  
14 If I am going to have one person leave the court  
15 disappointed, that person is not going to be the  
16 defendant and not the victim.

17 THE DEFENDANT: Yes, sir, I understand. I  
18 just ask that you realize that my situation that  
19 is on my record happened at the same time, Your  
20 Honor.

21 THE COURT: I understand. Well, you  
22 know, for every offense that you commit, you  
23 expose yourself to a consecutive sentence.

24 THE DEFENDANT: Yes, sir, I know.

25 THE COURT: Not, you know, if you commit a

1 crime that you---

2 THE DEFENDANT: Yes, sir.

3 THE COURT: ---one set a time, and then go  
4 someplace and do another time, you know, those are  
5 all can be consecutive sentences.

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: You are getting the benefit, a  
8 substantial number of days that you're in jail for  
9 committing other crimes.

10 THE DEFENDANT: Yes, sir, Your Honor.

11 THE COURT: You're getting credit for  
12 crime. But as it relates to this crime, I am  
13 going to follow what the victim is seeking, and I  
14 am going to sentence you to 15 years in the  
15 Department of Corrections. I am going to give you  
16 credit for the 1,338 days. It is a nonviolent  
17 crime. So that will be -- that's another benefit  
18 of this plea bargain, because it wasn't indicted  
19 as a nonviolent, was it, Ms. Barr? So you have  
20 gotten about as much break as you can get out of  
21 this. But the sentence is 15 years, and I wish  
22 you the best.

23 MR. HARVIN: Thank you, Your Honor.

24 ---End of Requested Transcript of Record---

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

I, Margaret T. Sullivan, Court Reporter, for the Third Judicial Circuit of the State of South Carolina, do hereby Certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced on November 2, 2012, in the General Sessions Court, Williamsburg County, Kingstree, South Carolina.

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

2014-15  
DATE

Margaret T. Sullivan  
COURT REPORTER  
My Commission expires: 9/7/2021



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

STATE OF SOUTH CAROLINA)
STATE, )

TRANSCRIPT OF RECORD
11-GS-45-119

v. )

WALTER L. BROWN, III, )
DEFENDANT. )

April 2, 2015
Kingstree, South Carolina

BEFORE :

THE HONORABLE CLIFTON B. NEWMAN, JUDGE

APPEARANCES:

KIMBERLY V. BARR, ESQ.
Assistant Solicitor

DOWARD K. HARVIN, ESQ.
Attorney for Defendant

FRANCES B. RAY, RPR
Circuit Court Reporter

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(There were no exhibits submitted.)

1 THE CLERK OF COURT: Place your left hand  
2 on the Bible, raise your right hand.

3 WHEREUPON,

4 **WALTER BROWN,**

5 having been duly sworn by the Clerk of Court,  
6 testified as follows:

7 MS. BARR: The next matter before you is  
8 indictment number 2011-GS-45-119. It is the State  
9 versus Walter Louis Brown, III. Judge, this was an  
10 indictment for burglary first degree and grand  
11 larceny. The defendant was before the Court back on  
12 November 2nd of 2012. He entered a guilty plea to  
13 the lesser included offense of burglary in the  
14 second degree nonviolent, and Judge, I think I  
15 dismissed the grand larceny charge. He was  
16 sentenced by you to 15 years in the Department of  
17 Corrections, and he was given credit for a little  
18 over a thousand days for the time that he served  
19 awaiting his court date. We are now before the  
20 Court on defense's motion for reconsideration of  
21 that sentence.

22 THE COURT: All right.

23 MR. HARVIN: May it please the Court, Your  
24 Honor, the sentence that you imposed on Mr. Brown  
25 was a sentence of 15 years in the Department of

1 Corrections with credit for 1,338 days. He tells me  
2 -- when he came to court he was actually coming from  
3 prison because he had been incarcerated for  
4 something that had happened prior, I believe, in  
5 parole violation out of Manning, correct? Out of  
6 Berkeley County. And so one thing he tells me, and  
7 this is just a collateral issue, is that -- and I  
8 don't know if there's anything you can do about it  
9 -- and when you gave him credit for time served,  
10 somehow it's being looked at as credit in the County  
11 Detention Center versus the time he actually served  
12 in prison. And I don't really know if there's  
13 anything -- I never had anybody ask specifically for  
14 the judge or the court to make it time served  
15 credit, prison time served credit, versus Detention  
16 Center time served credit. But nonetheless, the  
17 motion was filed based upon the fact that during  
18 that, during his sentencing hearing the victim made  
19 some statements that were erroneous about what type  
20 of charges he had pending, and Mr. Brown felt as  
21 though that was used against him in making the  
22 original sentence. In addition, the motion was  
23 filed based upon the issue that codefendants got  
24 substantially lesser sentences than he did, and they  
25 were the individuals who actually went into the

1 houses doing, during this burglary spree. One of  
2 the co-defendants, Mr. Steven Ryles, he got a YOA  
3 sentence not to exceed six years with restitution  
4 being ordered, credit for time served for the  
5 offense of burglary in the second degree, and the  
6 grand larceny was dismissed. Mr. Levy Murphy, who  
7 was also sentenced with this crime, received a ten  
8 year sentence to the offense of burglary in the  
9 first degree, credit for time served of six months,  
10 where he had a burglary first degree dismissed.  
11 Mr. Brown feels as though his sentence was  
12 substantially greater, and he believes that it  
13 should not have been -- that one of the other  
14 issues, Judge, is that originally there was a  
15 recommendation from the State of 11 years, 12 years.  
16 He says that that recommendation wasn't placed on  
17 the sentencing sheet, nor was it articulated to the  
18 Court on his sentencing hearing. For those reasons  
19 he believes that the Court should revisit his  
20 sentence.

21 THE COURT: All right. Mr. Brown.

22 THE DEFENDANT: Yes, sir, Your Honor, I  
23 don't mean to bother you. Like I say, first I'd  
24 like to apologize for anything I had to do with  
25 this crime, to the victims, I don't know if they're

1 here today. But also, I just felt -- I'm sorry  
2 about my voice, I had a cold. I just felt like I  
3 took a plea arrangement. It was just a  
4 recommendation, and I understand I don't have to  
5 take it. That's -- I took a plea recommendation,  
6 and we had to wait for the victim to come the next  
7 court term either prior week to be present at the  
8 time in 2012 so we couldn't go through with the  
9 recommended (sic) plea. Then when I did go  
10 through with it, nothing was said about a  
11 recommendation, and on my sentencing sheet it said  
12 without recommendation so I was kind of lost on that  
13 situation. But I do know since I've been  
14 incarcerated I've been almost now seven years now;  
15 this is my seventh year. And I've had a very drug  
16 dependence on the street. When this trial took  
17 place it was just my vehicle that was used, and I  
18 understand it couldn't have happened without that  
19 vehicle. The same person Steven Ryles who did the  
20 crime wrote statements against me, or two different  
21 statements against me; but if it was both different,  
22 as came back, wrote two statements for me  
23 implicating that my, the part that I played in was  
24 not what he said originally. And I have those  
25 statements, they were notarized, and I turned them

1 in. I just ask you if you go for a lesser or at  
2 least a recommended time that I, that the Court  
3 give with my plea, if possible.

4 THE COURT: All right. Ms. Barr.

5 MS. BARR: Judge, the victim in the case  
6 is Mr. Millan Clinton. He is not here. We notified  
7 him by letter that we would be handling this matter  
8 today. Judge, the burglary happened in the Lake  
9 City community of Williamsburg County back in  
10 February of 2009. The victim's teenage daughter had  
11 come home from school and noticed that someone had  
12 broken into the house. She immediately left and  
13 called her dad. When her dad came home he noticed  
14 that several things was missing, including a camera  
15 and a couple of guns. One of the co-defendants in  
16 the case gave a statement, I believe that was  
17 Mr. Murphy, gave a statement implicating himself --  
18 I'm sorry, Mr. Ryles was the co-defendant, gave a  
19 statement implicating himself along with Mr. Murphy  
20 and the defendant. And he indicated that it was the  
21 defendant along with Mr. Murphy that went into the  
22 house and that he saw them come out with guns.

23 Judge, it's important to note that prior  
24 to his guilty plea in May of 2012 the State served  
25 the defense and the defendant with notice of its

1 intent to seek a sentence of life without parole.  
2 The defendant was charged in the indictment for  
3 burglary first degree based on two factors: One,  
4 that a firearm was taken during the commission of  
5 the burglary; and two, that he had two or more  
6 serious crime convictions on his record. Judge, I  
7 do recall that I offered to make a recommendation of  
8 a 12 year sentence, and the defendant did not want  
9 to accept that recommendation and instead elected to  
10 plead straight up to the lesser charge of burglary  
11 in the second degree. The victim was here at the  
12 time of sentencing and voiced a lot of concern with  
13 the fact that his daughter could have been home when  
14 this happened, and he thought that he should get  
15 more than 15 years. He was not happy with the fact  
16 that I had actually reduced it from burglary first  
17 to burglary second and asked the Court to give him  
18 the maximum sentence. And I believe, Judge, at that  
19 time you told the defendant and the victim that both  
20 of them -- the victim wanted the max, the defendant  
21 wanted leniency, somebody was gonna leave the  
22 courtroom unhappy, it was gonna be the defendant,  
23 not the victim.

24 Judge, the defendant, just so you know,  
25 right now I believe he is maybe 25 years old and at

1 his — 25, 26. At his tender age he was convicted  
2 of burglary second degree in 2004. He a got YOA  
3 sentence. He was convicted of failure to stop for a  
4 school bus resulting in bodily injury in 2005. He  
5 had a hit and run with great bodily injury  
6 conviction and his probation was revoked on the  
7 burglary 2005; he went to SCDC for a period of time.  
8 He was convicted again in 2005 for financial  
9 transaction card fraud. He was convicted in 2007  
10 for another burglary second degree, and he had a  
11 conviction in 2007 for a burglary third and a grand  
12 larceny. And I believe at the time he was serving a  
13 sentence for one of the burglary charges, I believe  
14 out of Georgetown County if I'm not mistaken.

15 But Judge, more telling than all of this,  
16 he pled guilty in November. Based upon the SCDC  
17 website he would have become parole eligible in  
18 December, just a month after his plea here. Since  
19 that time he's gotten various disciplinary actions  
20 for possession or attempt to possess a cell phone,  
21 creating a social network while in prison. It looks  
22 like he had a disciplinary write-up for a use of a  
23 narcotic substance, and it looks like — it's  
24 marijuana. There's an abbreviation, but it looks  
25 like marijuana. He's got, several times he had

1 canteen privileges revoked, telephone privileges  
2 revoked. He's had lost good time credit. And he  
3 essentially based on his behavior while in SCDC,  
4 went from being eligible for parole within a month  
5 of him, of his guilty plea, to now his projected  
6 release date is in 2020. I think sometimes people  
7 have to be careful what they ask for because, again,  
8 the State had noticed him for life. And Judge, we  
9 would just vehemently oppose the motion for  
10 reconsideration of his sentence. He has shown you  
11 us through his wrap sheet that he is not going to be  
12 a law abiding citizen while he's out, and he has  
13 shown us through his SCDC records that he's gonna  
14 continue while he's incarcerated.

15 THE COURT: All right. Yes, sir.

16 THE DEFENDANT: If I may, can I clear a  
17 couple of things up. One being my whole record with  
18 the wrap sheet, I had one burglary and one count and  
19 one burglary in another county. As soon as I was  
20 convicted of a YOA I had to finish that time and  
21 come back home and go to another county and be  
22 convicted again. It was all one spree of burglaries  
23 at one time it happened; it's irreplaceable. That's  
24 why the record speaks like it is. As far as what  
25 she read you about my parole ---

1 THE COURT: So you have burglaries in  
2 Berkeley County, Georgetown County ---

3 THE DEFENDANT: I live right on the line.

4 THE COURT: ---and Williamsburg County?

5 THE DEFENDANT: Yes, sir. This right here  
6 is Williamsburg County.

7 THE COURT: Those are the three counties  
8 you have burglaries in or?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Florence?

11 THE DEFENDANT: No, sir, just ---

12 THE COURT: Charleston?

13 THE DEFENDANT: Towards town. Berkeley  
14 County and Williamsburg.

15 THE COURT: Berkeley County and  
16 Williamsburg.

17 THE DEFENDANT: I live right on the line.

18 THE COURT: Georgetown and Williamsburg,  
19 okay.

20 THE DEFENDANT: I live right on the line,  
21 right beside Georgetown. I live right in the  
22 middle, by Saint Stevens area, Russellville,  
23 Macedonia. And I caught the Georgetown and Berkeley  
24 back to back. It's irreplace-- they didn't sentence  
25 me at once.

1           THE COURT: Williamsburg burglary is  
2 towards Lake City, towards Florence County.

3           THE DEFENDANT: Yes, sir. With the fate  
4 of my projected parole date, I've been to parole  
5 twice already so I don't understand what information  
6 she's relying on. I cannot go to parole -- when I  
7 came down for November I cannot go to parole in  
8 December 'cause I went to R&A Kirkland evaluation  
9 center. You cannot go to parole from there. I went  
10 as soon as I came to my prison, I was at Evans  
11 Correctional. I been to parole twice already. The  
12 charges she's reading out to you, the possession of  
13 a cell phone and social networking site, I was  
14 charged by having a Facebook page before I came to  
15 penitentiary. And every cell phone charge and every  
16 picture of me on the page is all one charge. I just  
17 had it remanded through the administrative law court  
18 to get my time back and I have won that case. It's  
19 pending now. I was in lockup before all my  
20 privileges were taken. I got all my privileges back  
21 and been released from lockup. The case is being  
22 remanded for my good time.

23           THE COURT: Okay.

24           THE DEFENDANT: I haven't gotten in  
25 anymore trouble than that. Took victim impact

1 courses, drug courses, on my own because they  
2 wouldn't give me any in court. I've been very  
3 dependent on drugs. Every crime I've ever committed  
4 I was on drugs, and I've never been on drug  
5 probation, drug court, drug program in prison,  
6 nothing. So I had took my own drug courses when I  
7 could and victim impact courses.

8 THE COURT: All right. Yes, ma'am,  
9 Ms. Barr.

10 MS. BARR: And Judge, if I could just hand  
11 you his SCDC report, and it was printed today.

12 THE COURT: All right.

13 MR. HARVIN: Judge, obviously I don't want  
14 to hold this for too long, but I do know that he has  
15 family here who wasn't here at the original  
16 sentencing. If the Court would here from them, they  
17 are to my left.

18 THE COURT: Okay.

19 MR. HARVIN: Please step up.

20 MS. APRIL BROWN: Hi, Judge, I'm April  
21 Brown, I'm his sister. I haven't seen him in six  
22 years. I couldn't come to the last one 'cause I had  
23 to work but I tried, but I couldn't get off but I  
24 was able to get off for this one. I just wanted to  
25 come on his behalf and like, you can judge him off

1 of his wrap sheet. At that time period he was a  
2 boy, what, 18 years old, 17, 18. He's 27. You  
3 can't, like -- he is grown, you can't judge someone  
4 off of what they did six years ago. And in jail  
5 people can judge him as much as they want about his  
6 in-jail crime or whatever, but you have to fight in  
7 jail, like, you have to -- he has to protect  
8 himself. And I understand in some cases he should  
9 try not to, but there's only so many things that  
10 been thrown at him his whole entire life. I just,  
11 just, I don't know.

12 THE COURT: Okay, all right.

13 MS. APRIL BROWN: And he has a five year  
14 old son that wants desperately to see him. That's  
15 it. Thank you.

16 THE COURT: All right, thank you.  
17 Anything else?

18 MR. HARVIN: Anything you want to add?

19 THE DEFENDANT: No, sir.

20 MR. HARVIN: Judge, and he would like for  
21 you to see one of the statements that was written by  
22 his codefendant. It actually came from the  
23 Solicitor's office in discovery. If it's something  
24 that Your Honor is willing to look at.

25 THE COURT: All right.

1           MR. HARVIN: I'll pass it forward. This  
2 is from Mr. Stevens Ryles as reported to have come  
3 from Mr. Steven Ryles.

4           THE COURT: He said, "Walter Brown had  
5 nothing to do with it. I don't know how his name  
6 was brought up originally other than him being an  
7 associate of mine. I was coerced into confessing  
8 and implicating Mr. Brown. I was told by the  
9 investigator Brown had confessed and brought my name  
10 up so I was going to testify against him -- no,  
11 against me. He was going to testify against me. I  
12 gave a false confession which implicated myself,  
13 Mr. Brown, and another codefendant."

14           All right, Mr. Brown, which way is it,  
15 were you in the burglary or not in the burglary?

16           THE DEFENDANT: I never went in the house,  
17 Your Honor. The only way I was involved is my truck  
18 was involved; my father's truck was involved.

19           THE COURT: What were you doing? You were  
20 driving?

21           THE DEFENDANT: I let them use my vehicle  
22 to commit the crime.

23           THE COURT: And were you there?

24           THE DEFENDANT: No, I was not with them.

25           THE COURT: So you, you didn't want a jury

1 trial?

2 THE DEFENDANT: I took the recommendation  
3 'cause I already had almost four years in the  
4 Department of Corrections. Within 12, 11 years  
5 I ---

6 THE COURT: You had a right to a jury  
7 trial, but you were facing life without parole.

8 THE DEFENDANT: I understand, but those  
9 weren't made -- when I first convicted, when I first  
10 had warrants put on me, the statement wasn't made,  
11 they were made many years later. That's one of,  
12 that's one of several statements that was made by  
13 him. He just, he was meaning that statement is  
14 going in house.

15 THE COURT: What happened to him? He said  
16 he gave a false confession. He ---

17 THE DEFENDANT: He went, he did ten months  
18 and went home. He's home now. He's been violated a  
19 few times.

20 THE COURT: So is he lying in this  
21 statement about his own involvement? He said he  
22 wasn't involved either.

23 THE DEFENDANT: No, he wrote two  
24 statements saying he did do it.

25 THE COURT: Was this guy, did he do the

1 burglary, the robbery?

2 THE DEFENDANT: Yes, sir. He admitted to  
3 doing it. In both his statements he said he did do  
4 it.

5 THE COURT: No, he said he gave a false --  
6 he said, "I gave a false confession which implicated  
7 myself, Brown, and another co-defendant."

8 THE DEFENDANT: Well, Your Honor, what he  
9 mean, what he did at the beginning he did a written  
10 statement for the investigator on my case, and the  
11 same week he did a taped statement to the  
12 investigator on my case and they were both  
13 different.

14 THE COURT: All right. Okay, well, I'll  
15 take the whole matter under consideration and I'll  
16 issue a written decision.

17

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

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**C E R T I F I C A T E   O F   R E P O R T E R**

STATE OF SOUTH CAROLINA)  
 COUNTY OF Florence        )

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 3rd day of February, 2016.

*S/Frances B. Ray*

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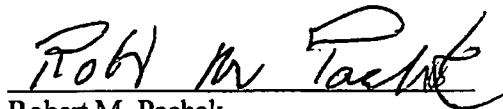
FRANCES B. RAY, RPR



## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

April 7, 2016



Robert M. Pachak  
Appellate Defender

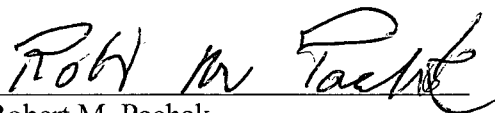
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