

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Spartanburg County

Honorable Robin B. Stilwell, Circuit Court Judge

JAMES BROWN, JR.

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001340

APPENDIX

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INDEX

INDEX	i
PLEA HEARING TRANSCRIPT (FEBRUARY 10, 2016)	1
APPLICATION FOR POST-CONVICTION RELIEF	44
RETURN.....	59
POST-CONVICTION RELIEF HEARING TRANSCRIPT (JUNE 28, 2017)	64
ORDER OF DISMISSAL WITH PREJUDICE	82
INDICTMENT.....	89
SENTENCE SHEET.....	91

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
3
4 The State,)
5 -vs-) TRANSCRIPT OF RECORD
6 James Brown, Jr.,) 2015-GS-42-5301
7 Defendant.) February 10, 2016
8) Spartanburg, South Carolina
9)

10 B E F O R E :

11 HONORABLE J. DERHAM COLE, JUDGE
12
13

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

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16 Attorney for the State
17 E. JOSHUA SCHULTZ, ESQUIRE
18 MATTHEW WILLIAM SHEALY, ESQUIRE
19 Attorneys for the Defendant
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INDEX

Guilty plea -- page 3.

No sworn testimony; no exhibits entered into evidence.

1 MR. ANTHONY: Judge, before you is James Brown, Jr.
2 He's represented by Mr. Schultz. He's here on Indictment
3 2015-5301. It's for shoplifting enhanced. The state's not
4 making a recommendation in this case, Judge.

5 THE COURT: You're James Brown, Jr.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you want to plead guilty to this
8 shoplifting case?

9 THE DEFENDANT: I guess so.

10 THE COURT: Well, you can have a jury trial. I've got
11 a jury waiting on us down here. Do you want a jury trial?

12 THE DEFENDANT: No, sir. I ain't trying to continue,
13 so.

14 THE COURT: Sir?

15 THE DEFENDANT: No. I guess not, sir -- I guess. My
16 family told me to go ahead and plead.

17 THE COURT: Well, they're not going to be doing any
18 time if you get any. So I need to know what you want to
19 do.

20 As I say, you can plead guilty or you can have a jury
21 trial. If you're going to have a jury trial -- they've
22 been waiting on us since 2:30. I'm going to bring them
23 down there, because I'm not going to waste their time any
24 more.

25 THE DEFENDANT: No, sir, no, sir. I'll go ahead and

1 plead guilty. Yes, sir.

2 THE COURT: You want to plead guilty. Are you sure?

3 THE DEFENDANT: I'll go ahead and plead guilty, sir.

4 THE COURT: All right. Will you tell the jury that
5 they can be excused. Call back after 6:00 tonight.

6 (Pause.)

7 THE COURT: All right. You're James Brown, Jr.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Mr. Schultz is your lawyer.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You're charged in this indictment with
12 shoplifting.

13 The state alleges that occurred back on March the
14 4th of 2015. They allege on that date that you took, stole
15 and carried away some merchandise that was offered for sale
16 by the Fast Friendly Cash Today. I guess that's a pawn
17 shop.

18 They allege you took that merchandise into your
19 possession. You did not pay for it. And when you took it
20 in your possession you didn't intend to pay for it and that
21 it was a Memphis amplifier valued at less than \$2,000.

22 Ordinarily, shoplifting of property valued at less
23 than \$2,000 would carry up to 30 days in jail, but you
24 apparently have a criminal history that serves to enhance
25 the punishment that can be imposed in this case from 30

1 days to ten years in jail. Do you understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Have you discussed this indictment with
4 Mr. Schultz?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Did he go over it with you?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Did y'all agree to amend the date of the
9 event from that of March the 14th to that of March the 4th?

10 THE DEFENDANT: Did we do what? Amend it?

11 THE COURT: Yeah. In other words, the indictment says
12 March the 14th of 2015. I'm told that they claim it
13 actually happened on March the 4th and that you and Mr.
14 Schultz were aware of the date that they allege that it
15 occurred.

16 THE DEFENDANT: No, sir.

17 MR. SCHULTZ: Your Honor, if I could, Mr. Anthony
18 brought this to my attention a couple of minutes ago. I
19 didn't have a chance to discuss this with Mr. Brown. Could
20 I do that?

21 THE COURT: Oh, yeah, sure.

22 (Pause for defendant to confer with counsel.)

23 THE DEFENDANT: Yes, sir.

24 MR. ANTHONY: Judge, it'd also be the state's position
25 the original indictment said on or about March 4th. It's

1 primarily in those documents. I think it would be
2 sufficient too.

3 THE COURT: Said on or about March 14th.

4 MR. ANTHONY: That's correct. I'm sorry.

5 THE COURT: I know, but if you have an alibi defense
6 that's critical, or can be. I don't know if we have one in
7 this case.

8 MR. SCHULTZ: I did not file an alibi defense, Your
9 Honor.

10 THE COURT: Sir?

11 MR. SCHULTZ: I did not file an alibi defense in this
12 case, Your Honor.

13 THE COURT: Okay. All right, Mr. Brown, so what I'm
14 saying is the state's asked me to amend the indictment to
15 reflect March the 4th instead of March 14th. You've talked
16 to Mr. Schultz about that?

17 THE DEFENDANT: He just talked to me about it, sir.

18 THE COURT: Well, do you need to talk to him some
19 more?

20 THE DEFENDANT: well, do I need to talk some more to
21 him?

22 THE COURT: I said do you need to.

23 (Pause for defendant to confer with counsel.)

24 THE DEFENDANT: I got you.

25 THE COURT: All right. Mr. Brown, what do you want to

1 do?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: What do you want to do?

4 THE DEFENDANT: Yes, sir. He said about amending the

5 indictments, yes, sir.

6 THE COURT: All right. You agree to it.

7 THE DEFENDANT: Yeah, I guess, yes, sir, yes, sir.

8 THE COURT: Okay. So you know what the state charges

9 you with.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand what kind of sentence

12 can be imposed if I accept your plea of guilty?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Have you discussed with Mr. Schultz

15 anything and everything you know about the allegations that

16 they've made against you?

17 THE DEFENDANT: Discussed them somewhat, yes, sir.

18 THE COURT: Somewhat?

19 THE DEFENDANT: I discussed them with him, yes, sir.

20 THE COURT: Well, do you need any more time to talk to

21 him about that?

22 THE DEFENDANT: He said today I've got to go forward

23 with trial or the plea.

24 THE COURT: Oh, we are going forward today. If you

25 need to talk to him, I'll let you talk to him. But we're

1 going forward, yeah.

2 THE DEFENDANT: Yes, sir. I'm saying I think we can
3 talk.

4 THE COURT: You think you've talked enough?

5 THE DEFENDANT: I think so, yes, sir.

6 THE COURT: Okay. Well, you explained to him
7 everything you know about the allegations that they have
8 made against you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And did you and he after that discussion,
11 did you and he determine whether or not you have a defense
12 to the charge of shoplifting?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you have one?

15 THE DEFENDANT: I had one, yes, sir.

16 THE COURT: What is it?

17 THE DEFENDANT: What was it?

18 THE COURT: What is it?

19 THE DEFENDANT: Well, it's about the force of the tape
20 showing me putting everything on me.

21 THE COURT: About what?

22 THE DEFENDANT: About the -- the video tape.

23 THE COURT: What about it?

24 THE DEFENDANT: That was my defense at first until we
25 started talking, and then we started talking about my

1 record and stuff like that, saying that more than likely I
2 would probably get ten years if I don't take a plea. So I
3 am saying I wasn't trying to take the ten years.

4 THE COURT: Well, you understand you can get ten years
5 on a plea.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: well, do you think the video tape
8 establishes your innocence? Is that what I'm
9 understanding?

10 THE DEFENDANT: That's what I was -- that's what I was
11 thinking, but I'm saying they're saying that they got
12 witnesses, a witness, something, that they -- they got this
13 property. This what happened. They got this property from
14 this other guy.

15 THE COURT: Okay.

16 THE DEFENDANT: And then he saying that he got this
17 property from me.

18 THE COURT: Right.

19 THE DEFENDANT: So therefore they gave me a
20 shoplifting charge and I was -- my defense would'a been --
21 was that was that if I'm getting a shoplifting charge, then
22 I -- then there's nowhere showing me with that in my
23 possession. His name -- everything was signed for him, not
24 mine, not my -- my name.

25 The only thing is he told them that I gave it to him.

1 THE COURT: Okay.

2 THE DEFENDANT: And my defense was I did not give it
3 to him. But I'm saying going by my record and what we
4 discussed or whatever, saying it'd be more than likely that
5 I'd get convicted, and I am saying, so I'm just trying
6 to -- just trying to -- to minimize my time or whatever.
7 Try to.

8 THE COURT: All right. Do you understand that when
9 you plead guilty to a crime that you have some defense to,
10 that when you plead guilty to it you give your right to
11 assert that defense? In other words, a defense if
12 established or if it created reasonable doubt --

13 THE DEFENDANT: Yes, sir.

14 THE COURT: -- would result in you being found not
15 guilty.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: But if you plead guilty where you have a
18 defense, in other words, you're giving up your right to
19 assert the defense, because when you plead guilty you
20 authorize me to impose a sentence just as if you pled
21 guilty without a defense and admitted your guilt or just as
22 if a jury had considered all the evidence and found you
23 guilty.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Well, is that what you want to do?

1 THE DEFENDANT: Well, my defense would have been
2 probably about --

3 THE COURT: Probably?

4 THE DEFENDANT: My defense -- defense, not probably,
5 would have been like the part of us carrying and taking
6 away and possession, I wasn't -- I was never in possession
7 of it or nothing like that. That's -- that would have been
8 my defense.

9 THE COURT: Okay.

10 THE DEFENDANT: Because his name is right on the
11 ticket and all that stuff, not mine.

12 THE COURT: All right.

13 THE DEFENDANT: That would have been my defense.

14 THE COURT: All right. Well, do you want to present
15 that defense to a jury?

16 THE DEFENDANT: But he's saying going by my record --
17 Judge Cole, he's saying that more than likely that -- you
18 know what I'm saying -- chances are going by my record that
19 I probably wouldn't have a good chance.

20 THE COURT: All right.

21 THE DEFENDANT: Even though I had a defense, they said
22 I probably wouldn't have had a good chance.

23 THE COURT: All right. Well, do you want to give up
24 your right to assert that defense to a jury and plead
25 guilty?

1 THE DEFENDANT: Yes, sir, probably, what I'm saying,
2 because going by my best solution with my lawyer --

3 THE COURT: Obviously, he's got to give you advice.
4 That's why you hired him, but he can't make that decision
5 for you because he doesn't have to suffer any consequence
6 of a conviction. You do.

7 THE DEFENDANT: Yes, sir, I know, but he's trying
8 to -- he's trying to make sure that -- well, he's telling
9 me so many words. His job is trying to make sure that --
10 that I don't get the most time or whatever -- whatever --
11 but really going by my record or whatever.

12 THE COURT: Well, you understand I have to consider
13 your record --

14 THE DEFENDANT: Yes, sir. I know.

15 THE COURT: -- whatever it might be.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: If you have a record, you have to consider
18 it. In fact, your record is what makes this a 10-year
19 offense as opposed to a 30-day offense.

20 THE DEFENDANT: Yes, sir, yes, sir, yes, sir. That's
21 what he's getting to me with about my record. And -- and,
22 you know, listening to my attorney and my family, you know,
23 saying that probably wouldn't have a good chance.

24 THE COURT: You talked to your family about it?

25 THE DEFENDANT: I talked to my family a little bit

1 about it.

2 THE COURT: Who did you talk to?

3 THE DEFENDANT: To my aunt; to my mother.

4 THE COURT: And you talked to them about whether you
5 ought to plead guilty or have a jury trial?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And did they -- what did they decide?
8 what did they think you ought to do?

9 THE DEFENDANT: They think that, what I am saying, if
10 you didn't do it, then you need to go ahead forward with
11 it.

12 THE COURT: Right.

13 THE DEFENDANT: But the thing is --

14 THE COURT: But they don't know if you it or not, do
15 they?

16 THE DEFENDANT: But it -- sir?

17 THE COURT: I saw they don't know if you did it or
18 not.

19 THE DEFENDANT: No, sir. But it's saying with my
20 record that, you know what I'm saying, the jury probably --
21 probably would convict me.

22 THE COURT: Okay. Well, of course, you know, if you
23 don't testify during the trial they won't know about your
24 record.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you understand that?

2 THE DEFENDANT: I just -- I just found it out.

3 THE COURT: Okay. Well, yeah, they can't introduce
4 your record unless you testify, but if you testify they can
5 introduce certain types of convictions that relate to a
6 jury's prerogative in determining credibility of your
7 testimony. But the rules provide what type of convictions
8 can be used for that purpose. Not just any kind can be
9 used.

10 For instance, our Supreme Court has said that an armed
11 robbery conviction can't be used for that purpose. But it
12 also said a shoplifting conviction can, or a larceny
13 conviction or a perjury conviction.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Filing false information conviction.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Things like that.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. So, now, do you want to go
20 forward with your plea or do you want to have a jury trial?

21 THE DEFENDANT: Well, I'm saying I'm going to take my
22 lawyer's advice.

23 THE COURT: Okay. And he thinks it's in your best
24 interest to plead guilty?

25 THE DEFENDANT: It worries me because of my record.

1 THE COURT: All right. But you understand he can give
2 advice but you have to make the decision.

3 THE DEFENDANT: Yes, sir. I got you.

4 THE COURT: So what's your decision?

5 THE DEFENDANT: Like I said, I guess I'm going to go
6 ahead and plead.

7 THE COURT: Go ahead and plead guilty?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. Has anybody promised you anything
10 that caused you to make that decision?

11 THE DEFENDANT: Yes, sir. One of the things was that
12 I won't get -- probably won't get ten years.

13 THE COURT: Who promised you that?

14 THE DEFENDANT: Well, he said -- I guess going through
15 the courts or whatever that for this particular charges or
16 whatever that probably -- probably like sentencing range he
17 was telling me about it's like five -- three to five years.

18 THE COURT: All right. And that's what he would hope
19 that the outcome would be, I guess. Is that true?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. But you understand that he doesn't
22 get to make that decision.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: That he can hope for that -- and there's
25 nothing wrong with that -- but I'm going to make the

1 decision.

2 THE DEFENDANT: Yes, sir, yes, sir.

3 THE COURT: And I might give you ten years.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: So you still want to go forward?

6 THE DEFENDANT: Yes, sir, I guess so, yes, sir.

7 THE COURT: All right. Well, now, so while
8 Mr. Schultz has told you that he hopes to influence me and
9 to encourage me and to get me to give you some sentence
10 like three to five years, you understand I don't have to do
11 that.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And you understand that that's not a
14 promise that anybody can make. I mean, I can make it, but
15 I'm not going to make such a promise. Nobody else can make
16 that promise.

17 So if somebody's promised you an outcome, you need to
18 tell me what it is, because I don't know about it. Nobody
19 has talked to me about an outcome. So if you've been
20 promised some particular outcome or result, you need to
21 tell me about it because I don't know about it. I'm not in
22 on it.

23 Has anybody promised you an outcome?

24 THE DEFENDANT: Yeah. I was under the impression like
25 three to five years.

1 THE COURT: You thought that was a guarantee?

2 THE DEFENDANT: Yeah. They saying that if I --
3 instead of going to trial if I go today on a plea that I
4 probably can get somewhere, ten, and get about, probably
5 about, three to five or something like that.

6 THE COURT: Okay. And I'm sure that's what
7 Mr. Schultz is hoping that'll happen. But you understand
8 I'm not in agreement with on that. I've got to make the
9 decision.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And I haven't promised anybody that you're
12 going to get three to five years.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And I haven't said that you're going to
15 get three to five years. I haven't even decided what I'm
16 going to give you --

17 THE DEFENDANT: Yes, sir.

18 THE COURT: -- because I haven't heard anything yet.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: I'm trying to get there.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. So nobody has promised you any
23 particular outcome. Is that true?

24 THE DEFENDANT: Like you say, you said -- well, I
25 just -- you say, well -- I'm saying according to what my

1 lawyer was telling me. That's the only thing I was
2 promised.

3 THE COURT: In other words, did he promise that you
4 that you were going to get what --

5 THE DEFENDANT: No, sir, he didn't promise me.

6 THE COURT: Okay. Well, that's what I'm saying.

7 THE DEFENDANT: He just said -- he just said that
8 probably.

9 THE COURT: That's what he hoped.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Yeah. All right. Has anybody threatened
12 you into pleading guilty?

13 THE DEFENDANT: Except for what I've been hearing.

14 THE COURT: What have you been hearing?

15 THE DEFENDANT: I been scared about getting the whole
16 ten years and stuff.

17 THE COURT: Well, but you can get that.

18 THE DEFENDANT: Yeah.

19 THE COURT: I mean, that's not really a threat.

20 That's just -- that's just an actual fact. That can
21 happen.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Anybody forced you into pleading guilty?

24 THE DEFENDANT: No, sir.

25 THE COURT: Did Mr. Schultz explain to you that you do

1 have a right to remain silent? which means you don't have
2 to say anything and you don't have to answer any questions
3 about this case.

4 THE DEFENDANT: Yes, sir, yes, sir.

5 THE COURT: But you have to give that up if you want
6 to plead guilty. Do you want to give that right up and
7 plead guilty or not?

8 THE DEFENDANT: Yes, sir, yes, sir.

9 THE COURT: What?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Yes, sir, what?

12 THE DEFENDANT: Say I want to give my rights up and
13 plead guilty.

14 THE COURT: And plead guilty.

15 Okay. Did Mr. Schultz explain to you that you have a
16 right to confront and to examine witnesses in court that
17 would offer evidence against you?

18 By that I mean you've got a right to require the
19 state -- Mr. Anthony over here -- to prove your guilt in
20 court, to call their witnesses, put them on the witness
21 stand, have them testify under oath in your presence in
22 front of a jury so you can see who they are, you can hear
23 what they have to say.

24 Your lawyer can examine them in order to test their
25 credibility and the reliability of the information they're

1 providing.

2 The jury makes that determination as to who's telling
3 the truth and who's not or whether or not -- or whether
4 there's a reasonable doubt about the truth or the facts of
5 the case and whether or not you're guilty.

6 But you have a right to confront those witnesses, but
7 when you plead guilty you have to give that right up
8 because we're not going to have a trial if you plead
9 guilty. Do you understand?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you want to give that right up?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And of course you also have a right to
14 have a jury trial. You've got a right to have 12 jurors
15 that you help select sit over in that jury box, to listen
16 to the testimony, consider all of the evidence, and the
17 jury will decide the facts from the evidence. The jury
18 will decide whether or not you've been proven guilty.

19 The state has the burden of proving your guilt, so
20 they'll have to call some witnesses.

21 You can testify if you want to and/or present any
22 defense that you want to. But nobody can make you testify
23 because, as I've already told you, you have the right to
24 remain silent. So you can call any other witness even if
25 you don't testify yourself.

1 You could introduce evidence without testifying. Do
2 you understand your right to have a jury trial?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you want to give it up in order to
5 plead guilty?

6 THE DEFENDANT: I guess so.

7 MR. SCHULTZ: You have to answer yes or no.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. Now, I'm going to ask the
10 solicitor to tell me about the facts that relate to your
11 case. In other words, he's going to tell me what he would
12 prove or try to prove if your case came to court before a
13 jury.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: He's going to tell me what the evidence
16 is.

17 You listen to what he tells me, because when he's
18 through I'm going to ask you if you agree or disagree with
19 his version of those facts.

20 They'll also tell me about any prior criminal history
21 that you have.

22 MR. ANTHONY: Thank you, Your Honor. May it please
23 the Court.

24 This incident occurred on March 4th at the Friendly
25 Fast -- the Fast Friendly Cash Today Pawn Shop located on

1 Asheville Highway, Judge.

2 The witness I would call named Brady Rhodes had been
3 given a ride to a David Carpenter and Mr. James Brown --
4 gave him a ride to this location at which time -- this is
5 captured on video -- the defendant along with Mr. Carpenter
6 entered quickly followed by Mr. Rhodes.

7 On that video, Judge -- I watched it several times.
8 There's a good I.D. on what I believe would be the
9 defendant. Also, Mr. Rhodes later confirmed that it was,
10 in fact, the defendant who --

11 THE COURT: All right. Hang on right there.
12 They've got a video. You said you've seen it?

13 THE DEFENDANT: Yes, sir, I seen it.

14 THE COURT: Are you on the video?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. Continue.

17 MR. ANTHONY: Judge, so, essentially, they -- they
18 walk around the store -- Mr. Brown and Mr. Carpenter. They
19 see -- see that there's cameras there. They proceed to
20 take an amplifier. Mr. Brown does. Mr. Carpenter does not
21 take the amplifier. Mr. Brown takes the amplifier off the
22 shelf. It's about this big, Judge -- a Memphis amplifier.

23 He then proceeds to open his coat, tuck the amplifier
24 underneath his armpit and proceeds to walk out of the store
25 with one hand in his pocket while swinging the other arm,

1 Judge, which would indicate to me that it was still there.
2 You see him leave the store.

3 He then gets into the car with Mr. Rhodes and
4 Mr. Carpenter. Mr. Rhodes was going to testify that he
5 then sees Mr. Brown take the amplifier out from underneath
6 his coat.

7 Mr. Rhodes is claiming he did not know of the
8 shoplifting at the time. Mr. Rhodes then did pawn the item
9 at a store down the street for which he was charged and
10 convicted, Judge, through no workings with the state.

11 But that's the long and short of the facts, Judge. It
12 was captured on video. I watched it several times, and it
13 was -- it was a pretty good shoplifting to where I thought
14 I did have to watch it a few times.

15 THE COURT: And Mr. Rhodes pled guilty to what?

16 MR. ANTHONY: He pled guilty to obtaining and, I
17 believe, breach of trust.

18 THE COURT: Obtaining money by false pretenses?

19 MR. ANTHONY: Yeah, a misdemeanor. I mean, it's a
20 misdemeanor, Judge -- his record -- but, yes, sir, it was
21 obtaining.

22 THE COURT: All right. You heard what he told me
23 about the facts. Do you agree with that or disagree with
24 it?

25 THE DEFENDANT: Well, see, the amplifier -- I

1 didn't -- I didn't take it. I didn't get it.

2 THE COURT: All right. Do you understand that that's
3 what they claim happened? They claim you stole the
4 amplifier and you gave it to Mr. Rhodes and he took it to
5 the pawn shop, a different pawn shop, and pawned it.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Now, you know -- I'm sure Mr. Schultz has
8 explained to you -- but you can be found guilty of stealing
9 it, shoplifting it, or you can be found guilty of aiding,
10 abetting, assisting and participating Mr. Rhodes
11 shoplifting. But, now, in order to be found guilty under
12 that theory you'd have to know that he was shoplifting and
13 you would have to be acting with him. Do you understand
14 that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Well, you've heard what the solicitor told
17 me about the facts.

18 Do you think if your case went to trial before a jury
19 that there's a significant likelihood you'd be found guilty
20 of shoplifting?

21 THE DEFENDANT: Well, the way I looked at it, Your
22 Honor, I really couldn't -- I really can't -- I really as
23 far as me being in -- like I say, I was in possession of
24 something in that store when I was in that store, but as
25 far as like taking anything out of there, no.

1 THE COURT: You were in possession of something that
2 was stolen in the store?

3 THE DEFENDANT: Yeah. I don't -- looking at it, but
4 they're saying because of my record that that would get me.

5 THE COURT: Okay. We've been through that. But what
6 I'm asking you is do you think if your case did go to trial
7 before a jury that there is some reasonable probability
8 you'd be found guilty of shoplifting.

9 MR. SCHULTZ: Your Honor, if I may.

10 THE COURT: Well, no. You can't explain this one to
11 him. I've got to explain it.

12 THE DEFENDANT: Yeah. I'm saying.

13 THE COURT: What?

14 THE DEFENDANT: He explained it to me about it, yes,
15 sir.

16 THE COURT: Yes, sir, what?

17 THE DEFENDANT: Saying he explained it to me.

18 THE COURT: Explained what to you?

19 THE DEFENDANT: About the -- the case, about as far as
20 the shoplifting part. But I understand.

21 THE COURT: Well, I understand. You heard what
22 Mr. Anthony said. That's what he's going to offer.

23 THE DEFENDANT: But like when I was -- like I was
24 telling my attorney, as far as the element of -- of -- of
25 like as far as me, uh, uh -- what you call that -- carrying

1 and taking away --

2 THE COURT: Right.

3 THE DEFENDANT: -- his name and stuff was on that
4 stuff, not mine.

5 THE COURT: I understand if you're at a pawn shop.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Nobody's name was on it in the Fast
8 Friendly Pawn Shop.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: His name was at the pawn shop where he
11 pawned it. He pled guilty to that.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You know, what I'm talking about here is
14 you.

15 THE DEFENDANT: Yes, sir, yes, sir.

16 THE COURT: You know what the evidence is.

17 THE DEFENDANT: Saying --

18 THE COURT: Do you think you'd be found guilty if you
19 went to trial?

20 THE DEFENDANT: Going by my record, because, yes, sir,
21 I think I probably would have been guilty.

22 THE COURT: Okay. And you think you'd be found guilty
23 so you want to plead guilty, or not?

24 THE DEFENDANT: Plead guilty, yes, sir, about my
25 record.

1 THE COURT: Tell me about his history.

2 MR. ANTHONY: Judge, perhaps it'd be better if I put
3 that video into evidence for this plea.

4 THE COURT: Well, you can make it as an exhibit,
5 whatever that's worth, but he's admitted that's him on the
6 video.

7 MR. ANTHONY: Your Honor, it's 1990, assault and
8 battery, simple; 1990, resisting arrest; 1991, simple
9 assault and battery; 1992, shoplifting and driving under
10 suspension; 1993, C.D.V.; 1995, C.D.V. and malicious injury
11 to personal property and resisting arrest; 1998, third or
12 subsequent property offense; 2001, third or subsequent
13 property offense; 2004, third or subsequent property
14 offense, open container, shoplifting, petty larceny; 2005,
15 unlawful carrying of a weapon and failure to stop; 2006,
16 shoplifting, simple assault and battery and malicious
17 injury to personal property, as well as two counts of third
18 or subsequent property offenses, Judge; 2007, shoplifting;
19 2008, shoplifting; 2009, fraudulent check and five counts
20 of shoplifting and malicious injury to personal property.

21 THE COURT: Five counts of shoplifting when?

22 MR. ANTHONY: That was the 2009, Judge. And I believe
23 that was the one where he received the 20-year sentence.

24 THE COURT: Okay. From what I -- if I counted
25 correctly, that's 12 previous shoplifting convictions?

1 THE DEFENDANT: Twelve. I pled to, yes, sir.

2 THE COURT: Is that right?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. Do you still want me to accept your
5 plea of guilty?

6 THE DEFENDANT: I guess so, yes, sir.

7 THE COURT: We can't guess about it. You've got to
8 tell me.

9 THE DEFENDANT: Going on what my lawyer -- yeah, I
10 guess.

11 THE COURT: You guess, or, yes, you want to plead
12 guilty?

13 THE DEFENDANT: Yes, yes.

14 THE COURT: Well, are you going to guess about it, or
15 are we going to just do it?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: What?

18 THE DEFENDANT: I plead, I guess, yes, sir.

19 THE COURT: Okay. All right. Now, I noticed
20 Mr. Shealy is here. And I understand you've got another
21 case that's pending, hasn't been indicted yet. That hasn't
22 been to the grand jury, I think. Has it?

23 MR. ANTHONY: No, Your Honor.

24 MR. SHEALY: It has not, Your Honor.

25 THE COURT: Okay. Mr. Shealy is here. But do you --

1 do you want to take care of that case today in conjunction
2 with this one, or would you prefer to wait until after that
3 case gets indicted before you have to do anything about it?

4 THE DEFENDANT: Wait until it gets indicted.

5 THE COURT: Okay.

6 MR. SHEALY: Judge, we're also missing a video in that
7 case.

8 MR. ANTHONY: That's correct, Your Honor.

9 THE COURT: What do you mean, you're missing a video?

10 MR. SHEALY: I don't have a video, and there's also
11 some statements, I believe, I do not have.

12 THE COURT: Do you want to talk to Mr. Schultz? Yeah.
13 Sure.

14 (Pause for defendant to confer with counsel.)

15 MR. SCHULTZ: Judge, if I could be heard, at the
16 request of Mr. Brown -- if Mr. Anthony chooses to put
17 the -- this video in evidence my client is asking that the
18 Court take a look at the video. But I'm doing this on
19 behalf of my client.

20 THE COURT: Well, I understand. You understand.

21 But I'm not trying the case, Mr. Brown. If you plead
22 guilty, I don't care what the evidence is, quite frankly,
23 if you're pleading guilty to it. But I'm not -- if you
24 want to try the case, we'll have to get the jury in here.
25 Or you can have a bench trial. If you want me to try it,

1 you want me to decide whether or not you're guilty, we'll
2 do that. But, I mean, you've just got so many choices.
3 But we've got to make a choice, got to make a decision.

4 THE DEFENDANT: A bench trial that'll make -- you can
5 look at the thing yourself too, the video?

6 THE COURT: Yeah. I can.

7 THE DEFENDANT: Yes, sir. That's what I think.

8 THE COURT: So you want to have a bench trial?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right.

11 THE DEFENDANT: I'm saying that'd be the same thing as
12 this right here basically, right?

13 THE COURT: No. It's not the same thing.

14 It's a -- when you plead guilty, you plead guilty.

15 When you have a bench trial, we have a trial.

16 In other words, they've got to call their witnesses.
17 They've got to -- it's just like a trial except we don't
18 have a jury. I just do it. Or you can have a jury trial.
19 The jury will be back there tomorrow. You can have a jury
20 look at it.

21 THE DEFENDANT: What I'm saying that's -- that would
22 be part of my defense.

23 THE COURT: I understand. That's what you told me
24 earlier. You told me you wanted to give up your right to
25 assert it. You don't?

1 THE DEFENDANT: I'm talking about -- I'm saying,
2 because when he said that -- he asked can he put it into
3 evidence, right, the tape, right, and then I thought about
4 it. And I said, well, if you're going to put it into
5 evidence maybe you can look at it and you can see what I'm
6 talking about.

7 THE COURT: All right. Well, if I look at it what --
8 what good is it going to do me since you're pleading
9 guilty?

10 THE DEFENDANT: It'd probably help you determine if
11 I -- as far as my punishment or whatever if you think I was
12 guilty or not.

13 THE COURT: Well, I'm not deciding that. If you plead
14 guilty you've decided that.

15 The only way you can be found not guilty is to have a
16 jury trial.

17 (Pause for defendant to confer with counsel.)

18 THE COURT: Yeah. Talk to him. Talk to Mr. Shealy
19 too if you want to.

20 (Pause for defendant to confer with counsel.)

21 MR. SCHULTZ: Your Honor, could I address the Court?

22 THE COURT: Sure.

23 MR. SCHULTZ: I had a brief conversation with
24 Mr. Brown.

25 Mr. Brown indicates to me that he wishes me to argue

1 in mitigation the -- and what the video shows and what the
2 video doesn't show.

3 However, I want to make sure that we're not asserting
4 that defense and we are giving up that defense at this
5 time.

6 Could I address my client?

7 THE COURT: Well, let me address him first.

8 MR. SCHULTZ: Yes, sir.

9 THE COURT: Mr. Brown --

10 THE DEFENDANT: Yes, sir.

11 THE COURT: -- you say -- I guess you told
12 Mr. Schultz -- and I think you told me -- that you want me
13 to look at the video.

14 Well, the reason I said that really doesn't make any
15 difference to me is because you're pleading guilty.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: If I look at the video and -- and -- and
18 it -- and I thought, well, I don't see him taking anything,
19 looks like he didn't do anything to me, that doesn't make
20 any difference to anybody in this room, because what's
21 going to happen is the solicitor is going to say, okay,
22 don't plead guilty, we'll get a jury in the morning and
23 we'll let the jury look at the video and they'll decide if
24 you're guilty or not. And then if the jury finds you
25 guilty, then, see, again, it doesn't matter what the video

1 shows from my perspective. The jury would be the one that
2 has found you guilty, and then I'd have to sentence you
3 just as if you'd admitted everything.

4 Those are the kind of choices that you have. You
5 know, you either plead guilty to it or you have a jury
6 decide whether or not you are. And if the jury has it,
7 then of course they will look at the video.

8 (Pause for defendant to confer with counsel.)

9 THE DEFENDANT: Your Honor, I think I'll just plead,
10 go on and plead, guilty.

11 THE COURT: Sir?

12 THE DEFENDANT: I'm going to plead, like he just read
13 to me.

14 THE COURT: Is that what you want to do?

15 THE DEFENDANT: Yeah.

16 THE COURT: Is that your final answer?

17 THE DEFENDANT: I ain't got no choice really but I
18 guess --

19 THE COURT: Of course you've got a choice.

20 THE DEFENDANT: I've got a choice. I've got a choice,
21 but I think it'd probably be in my best interest.

22 THE COURT: So you've had plenty of time to think
23 about it now?

24 THE DEFENDANT: Talking back to Mr. Schultz, yes, sir.

25 THE COURT: All right. And you've come to the

1 conclusion that you want to do what?

2 THE DEFENDANT: I guess I'll go ahead and just plead,
3 even though I think I probably have -- he said he was going
4 to try to argue about getting -- bringing my mitigating --
5 mitigating factors or whatever about the tape to you. You
6 know what I'm saying. Yes. He's going to let you know in
7 my mitigating thing about --

8 THE COURT: Well, I understand, but I hope you can
9 appreciate the fact that if you're going to try to convince
10 me that you're not guilty -- you know, if somebody was not
11 guilty, I would never sentence them to anything, because
12 they're not guilty. But I don't get to make that decision.
13 The jury makes that decision.

14 You're saying you want to plead guilty. You know,
15 some people do plead guilty even though they're not guilty
16 because they think they'll be found guilty by a jury.
17 They're trying to mitigate or cut their losses, so to
18 speak, in other words get a reduced sentence based on
19 whatever consideration you want to base it on. For
20 instance, one, of course, would be any prior criminal
21 history.

22 But, I mean, you can't plead guilty and then ask me to
23 look at a video to convince me that you're not guilty in
24 the hopes that I'll mitigate the sentence, because when you
25 plead guilty I have to sentence you. I mean, that's just

1 the way it works.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: But if you have a jury trial and show them
4 that video, the jury may find you not guilty. Then you
5 won't get any kind of sentence. And if they do find you
6 guilty, then you'll be right here where you are now.

7 So what do you want to do?

8 (Pause for defendant to confer with counsel.)

9 THE DEFENDANT: Yes, sir.

10 THE COURT: What?

11 THE DEFENDANT: Plead guilty.

12 THE COURT: Are you sure?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You're satisfied now?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Certain that's what you want to do?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. But you do still -- don't want to
19 fool around -- fool with that other case? You don't want
20 to have that case handled at the same time?

21 THE DEFENDANT: No, sir.

22 THE COURT: Okay. I'll accept your plea and hear from
23 you and Mr. Schultz and anybody else that you'd like for me
24 to hear from.

25 MR. SCHULTZ: Thank you, Your Honor. May it please

1 the Court.

2 Mr. Brown is my client, well, since last year here.

3 Your Honor, I've had several conversations with
4 Mr. Brown about -- about his -- about his plea. And,
5 obviously, his prior record is lengthy. But, at the same
6 time, I want to let the Court know what kind of person he
7 is.

8 He's always come to my office on time. He's been at
9 roll call over here on Monday, as well as reported to my
10 office every day that -- of this trial term.

11 I represented him at his preliminary hearing as well
12 where we tested the state's case. Obviously, that's based
13 upon a probable-cause standard and not reasonable doubt.

14 THE COURT: Did the -- did the magistrate look at the
15 video?

16 MR. SCHULTZ: We didn't have the video at that time,
17 Your Honor. But, nevertheless, probable cause was
18 determined at the preliminary hearing of Mr. Brown.

19 Of course, Your Honor, Mr. Brown has indicated to me
20 -- me and him and his family -- had a look at the video
21 several times.

22 I know Mr. Brown went to, I believe, the solicitor's
23 office there and looked at the video. I believe it was on
24 Friday. We looked at several angles of it.

25 And I believe while Mr. Brown finds it difficult to or

1 found it difficult to take a guilty plea with this, would
2 be that in my opinion, and I think Mr. Brown's opinion, is
3 that the video does not clearly show everything that the
4 state contends it does.

5 But, at the same time, I believe the state with the
6 video and also the testimony of witnesses, as well as
7 officers, could have enough to convict him. And I say that
8 a weak -- certainly not a defense in a guilty plea, Your
9 Honor, but I'm merely saying this in mitigation.

10 The video itself is a collection of, basically, still
11 shots, and it -- there is a -- it's not one continuous
12 stream of video there. So that's -- that's why when
13 Mr. Brown and I looked at the video we had some questions
14 about that.

15 At the same time, Your Honor, Mr. Brown has some
16 medical difficulties there. I would only ask that the
17 Court take leniency upon him here.

18 He is accepting responsibility in this. I believe he
19 should be given credit for that.

20 His family is here, and they wish to address the
21 Court, I believe, at the appropriate time.

22 THE COURT: All right. Let me go over one thing.

23 Mr. Brown, I didn't ask you about your age and so
24 forth.

25 You're 46 years old.

1 THE DEFENDANT: Yes, sir.

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

3 THE DEFENDANT: Eighth grade.

4 THE COURT: Are you able to read and write?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you understand fully what you're doing
7 here today?

8 THE DEFENDANT: I think I've got a pretty good idea,
9 yes, sir.

10 THE COURT: And you've understood all of my questions?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You've understood your discussions with
13 your lawyer?

14 THE DEFENDANT: Yes, sir. I understand them.

15 THE COURT: Are you married?

16 THE DEFENDANT: No, sir.

17 THE COURT: Do you have any children?

18 THE DEFENDANT: Yeah. I've got two.

19 THE COURT: What kind of work have you done?

20 THE DEFENDANT: Was doing like ejection molding work.

21 THE COURT: Okay. Who do you want me to hear from?

22 THE DEFENDANT: My mother.

23 THE COURT: Okay.

24 THE DEFENDANT: My mother right there. That's her.

25 THE COURT: What's mama's name?

1 THE DEFENDANT: Rebecca.

2 THE COURT: Rebecca -- Rebecca Brown?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. Ms. Brown, what do you want to
5 tell me?

6 REBECCA BROWN: Yeah. That's it. My name is Rebecca
7 Brown. I'm James Brown's mother. And James have did good
8 in the past. He'll work. He helps. He stays -- he lived
9 up -- at the moment he lives with me, been living with me
10 for about a couple of years now. And he helps me around
11 the house and stuff. And I do take him to see about jobs,
12 and he did find a job, but I don't know what happened. He
13 lost his job.

14 THE COURT: You said he's done good in the past. He
15 told me he had 12 shoplifting convictions.

16 THE DEFENDANT: Yeah. But, see, before I -- I
17 probably going back farther than that, I guess. He have
18 had a job working at Plastic Injectors. He have had his
19 own place. He had three vehicles that was paid for. He
20 maintained his bills and stuff. He worked third shift at
21 that molding place, set molds and stuff. He worked and he
22 worked. He worked -- he worked third shift, and he didn't
23 get in no trouble. And I guess he lost his job, and I
24 guess things went --

25 THE COURT: Do you think that's when it all spiraled

1 down hill?

2 REBECCA BROWN: Yes, yes, sir.

3 THE COURT: Okay. Anything else you'd like to tell
4 me?

5 THE DEFENDANT: No. I'd like for you to have leniency
6 on my son.

7 THE COURT: Okay. Thank you, ma'am.

8 MR. SCHULTZ: I believe there would be one more, Your
9 Honor, one more family member that wishes to address the
10 Court. She tells me she has a migraine headache and she
11 does not wish to address the Court but I would wish that
12 the Court --

13 THE COURT: I understand how she got that.

14 MR. SCHULTZ: Yes, sir.

15 THE COURT: Anything else?

16 MR. SCHULTZ: No, sir.

17 THE COURT: All right. Mr. Brown, what do you want to
18 tell me?

19 THE DEFENDANT: well, I want to tell you that I
20 wish -- that I'm taking responsibility, even though I
21 really don't agree with half the stuff, but I'm taking
22 responsibility because I am trying to reduce -- you know,
23 trying to not get no long sentence or ten years or
24 whatever.

25 THE COURT: what happened to you last time, last time

1 were convicted of shoplifting? You had five of them at one
2 time?

3 THE DEFENDANT: Yeah. But I pled to a few of them
4 things that I didn't do.

5 THE COURT: You didn't do those either?

6 THE DEFENDANT: No, no. I didn't say I didn't do all
7 of them. I said a few of them I didn't do.

8 THE COURT: You didn't?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And what kind of sentence did you get?

11 THE DEFENDANT: I got 20 years.

12 THE COURT: What kind of time did you serve?

13 THE DEFENDANT: I served like six and a half.

14 THE COURT: Six and a half?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: So you're on parole now?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: When did you get out?

19 THE DEFENDANT: I got out 2014, I think.

20 THE COURT: Okay. Anything else you want to tell me?

21 THE DEFENDANT: I'm saying, like, some of the evidence
22 prior to that as far as me about -- I'm saying about like
23 you said, if I hadn't pled guilty everybody could have seen
24 the tape and all of this little stuff here. And they could
25 make a determination. And that would have been my defense

1 about this case. But I'm just trying to, like, you know,
2 not take my chance like I did and get a big long sentence
3 and hoping you have some kind of leniency on me, because,
4 saying, told me something, like, you know, just trying to
5 do what I need to do right now. I think it's probably.

6 THE COURT: All right. On Indictment 2015-5301,
7 Sentence of the Court is you, James Brown, Jr., be confined
8 to the South Carolina Department of Corrections for a
9 period of eight years. Good luck to you.

10 END OF REQUESTED TRANSCRIPT OF RECORD

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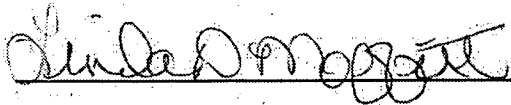
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 10th day of February 2016.

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

November 11, 2016

A handwritten signature in cursive script, appearing to read "Linda D. Moffitt", written over a horizontal line.

Linda D. Moffitt
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF)

2016-CP-42-3572

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

James Brown Jr, #274845)
v.)

APPLICATION FOR

State of South Carolina)

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 Walden / Stevenson C/E, Walden, Stevenson C/E, 4340 Broad River Rd, Columbia S.C. 29210
2. Name and location of Court which imposed sentence Spartanburg Gen. Sess.
3. Name(s) of co-defendant(s) (if any) Bobby Rhoads
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015 A 4210100960
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 2/10/16
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. X _____
- ii. X _____
- iii. X _____
- (b) the result in each such Court to which you appealed:
- i. X _____
- ii. X _____
- iii. X _____
- (c) the date of each such result:
- i. X _____
- ii. X _____
- iii. X _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. X _____
- ii. X _____
- iii. X _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) First "PCR"
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: 1) Ineffective Assistance of Counsel
2) Failure to Object
3) Due Process Violation

- (a) Ineffective Assistance of Counsel
- (b) Failure to Object
- (c) Due Process

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

- (a) See Amendment Attached
- (b) See Amendment Attached
- (c) See Amendment Attached

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

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

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. X
- ii. X
- iii. X
- iv. X

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

- i. X
- ii. X
- iii. X
- iv. X

(c) the disposition thereof:

- i. X
- ii. X
- iii. X

iv. X

(d) the date of each such disposition:

i. X

ii. X

iii. X

iv. X

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

i. X

ii. X

iii. X

iv. X

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?

 N/A

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

(a) which grounds have been presented:

i. X

ii. X

iii. X

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

i. X

ii. X

iii. X

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) Eight "PCR"

(b)

(c)

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

- (a) your arraignment and plea? NO
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Imposition of sentence
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Amendment Attached
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- SCHULTZ Law Firm
 - 184 North Daniel Morgan Ave
 - Spartanburg S.C 29306
- (b) the proceedings at which each such attorney represented you:
- Per Trial
 - Sentencing
 - Sentencing
19. State clearly the relief you seek in filing this application:
To Vacate sentence and conviction
20. Are you now under sentence from any other court that you have not challenged?
NO

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

James Brown Jr # 274845

SWORN to and subscribed before me this 22nd
day of September, 2016

Michael Brown (L.S.)
Notary Public

My Commission Expires: 8/30/2026

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

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

James B. [Signature] #274845
Applicant

SWORN or affirmed to and subscribed before me this
22nd day of September, 2 010

[Signature]
Notary Public

My Commission Expires: 8/30/2026

State of South Carolina

In The Court of Common Pleas

County of Spartanburg

James Brewer Jr. #274345

Applicant

C/A

V.

Rev. Amendment to the Post Conviction Relief Application

State of South Carolina

Respondent

This Matter Comes Before this Honorable Court Pursuant to An Application
For Post-Conviction Relief

{ Presentation of The Issue }

- 1) Ineffect Assistance of Counsel / 2) Failure to Object
- 3) Counsel was Ineffective for Coercing Applicant to take responsibility for a crime that his Co-Defendant was in possession of.
- 4) Counsel was Ineffective when He fail to Object and Motion the Courts for a Direct Verdict because the Element of Value could not be proven.

Counsel was Ineffective for not Objecting and allowing his Due Process rights to be Violated.

(Argument)

the Rule 5 Discovery will conclusively show That Co-Defendant Brady Rhodes had full control of the property and signed the Pawn Shop Contract stating the property wasn't stolen and was his to sell and also shows where he received the \$40.00 from the Pawn Shop (see Exhibit (A) 3rd paragraph) Supplement which in (page 4 of Exhibit (A)) First Cash #105 Pawn Shop Ticket with seller's signature also Review (Exhibit (C)) where Mr. Rhodes stated that he was unaware of T.B. stealing any items from the pawnshop (Exhibit (C)) Supplement Pages 1 Page 6 of 9. See Case Peters v. Knott Corp 472 S.E.2d 193, it wasn't a shoplifting Charge until they went back to the Knott and attempted to return the merchandise that was in their Possession. The facts are there's nothing showing me knowingly taking possession of / depriving business trust. (Making Reference to S.C. Code of Law Title 16 section 13-112 Elements of Shoplifting. It's not even any video Nor still shots of me giving anyone any property Nor was I apprehended with any unexplained goods in my possession. (see Exhibit (C)) the still shot. of caught inside or outside anyone's premises with anything. See case State v. Daniel Webster Williams, Jr. June 24, 2004 in S.E. 2d. also see case State v. Lewis 478 (S.E. 2d) 696 there strikes and your out Statute is clear and unambiguous property crimes in which the term of imprisonment is contingent upon the value of property involved.

Counsel was in error for coercing me and assisting me in this because I didn't have a value and I should not have been placed within this Three Strike Statute S.C. Code of Laws Title 14-5-7 also the conviction is in violation of the laws and Treaties of the United States Constitution Due Process because State Law wasn't followed and I'm being held in State Custody on an unlawful sentence and conviction.

Conclusion

Applicant contends his Counsel's performance was deficient for coercing him to Plead guilty and Enhancement that was based on value of property involved in crime of another person and not disclosing the statement that was in my favor to the courts was unreasonable under professional Norms of CHERRY 281 S.E. 2d 625 Citing Strunkland Second Counsel's performance prejudiced Applicant because he should not have been placed in this Enhancement Statute S.C. Code of Law Title 14 section 14-5-7 because he didn't have any value also the statement would have brought questions of the Inconsistency in his story also had it not been for Counsel's unprofessional Errors the Proceedings would have been different CHERRY 281 S.E. 2d 625 Applicant would not have plead guilty, but would have insisted on going to Trial ~~fully back Hart~~ 136 S.C. 366 (1985) Applicant contends he has satisfied the requirements under state law K. Washington and Requests An Evidentiary Hearing be held and to Appoint Counsel to prove Applicants Allegations see Shaffer v State 305 S.E. 2d 247 He has been trying to get my Transcript from Attorney Mr. Schwartz, V. Luck in doing so. If I can get my Transcript before I get the Hearing and allow me a chance to Amend my Test that I feel that has need in my case to assure me that the Appellate will be very much appreciated.

Respectfully, submitted,

* James Brown Jr. #271845

A-1

Deputy Report for Incident 15031697

Page 4 of 6

Supplement Walsh M
INVESTIGATION REPORT
Spartanburg County Sheriff's Department

Case Number: 15031697

Investigator: Walsh

03/30/2015

While investigating case 15030290 it was determined that Brady Rhodes sold a stolen Memphis PR400 amplifier to First Cash Pawn #105 on 03/04/2015.

I made contact with First Cash Pawn #105 and spoke with an employee. She told me the amplifier had been sold by Brady on 03/04/2015. However, she stated the amplifier was purchased by another person on 03/13/2015. I requested that she pull the records of these transactions and she stated she would. The original ticket number was 215493. Christina Moya provided me with the original sales paperwork. An Evidence form was completed and the documents were placed in Evidence with the appropriate paperwork.

I then made contact with Brady and he agreed to come to the Sheriff's Office to speak with me. Upon his arrival, I brought Brady to an interview room. I reviewed a pre-interrogation waiver with him and he signed the waiver with full knowledge and understanding. Brady asked what we were going to talk about and I told him I wanted to talk about a stolen amp. He immediately stated he knew what I meant without any further elaboration on my part.

Brady admitted to driving James Brown, (JB), and David Carpenter around on 03/04/2015. He stated James and David sold marijuana and heroin and would give him marijuana to drive him places. He stated James stole the amplifier from the victim business by concealing it beneath his jacket. Once they got into the car, James told Brady to drive down Asheville Hwy to the next pawn shop, First Cash Pawn, so they could sell the amplifier for money. Brady stated James asked him to sell the amp because he did not have an ID. Brady stated he agreed; he entered the pawn shop and sold the amplifier for \$40.00. He signed the ticket, indicating that the property was not stolen and was his own property and his to sell. Brady then gave the money to James.

Brady admitted to knowing the amplifier was stolen when he took possession of it. He also admitted to knowingly selling the stolen amplifier to First Cash Pawn. Brady also told me James Brown was the suspect who originally stole the amplifier. Brady stated James was a B/M in his forties who lived in Spartanburg. Brady stated he was familiar with James and would recognize him if he saw him again or a photograph of him. I performed a local Spillman search and located a subject who matched the description given by Brady. I printed a picture of this subject and showed it to Brady. He immediately affirmed that the subject in the picture was the same James Brown who stole the amp and asked him to sell it afterwards. Brady signed the photograph and placed the time and date. He also noted how he knew the subject on the photograph.

I ran Brady's criminal history and found that he did not have any previous convictions for property crimes based on value. I spoke with Judge Moore in regards to this case and he agreed that probable cause did exist. Arrest Warrant 2015A4210100965 for Obtaining Property Under False Pretenses < \$2,000.00 was issued for Brady. The warrant was signed and left in the Magistrate's Office.

C | EXH. 1

07/14/2015 Page 6 of 71

Deputy Report for Incident 15030290

Page 6 of 9

Supplement Piggins D

***** (lwmmain15365403302015)**

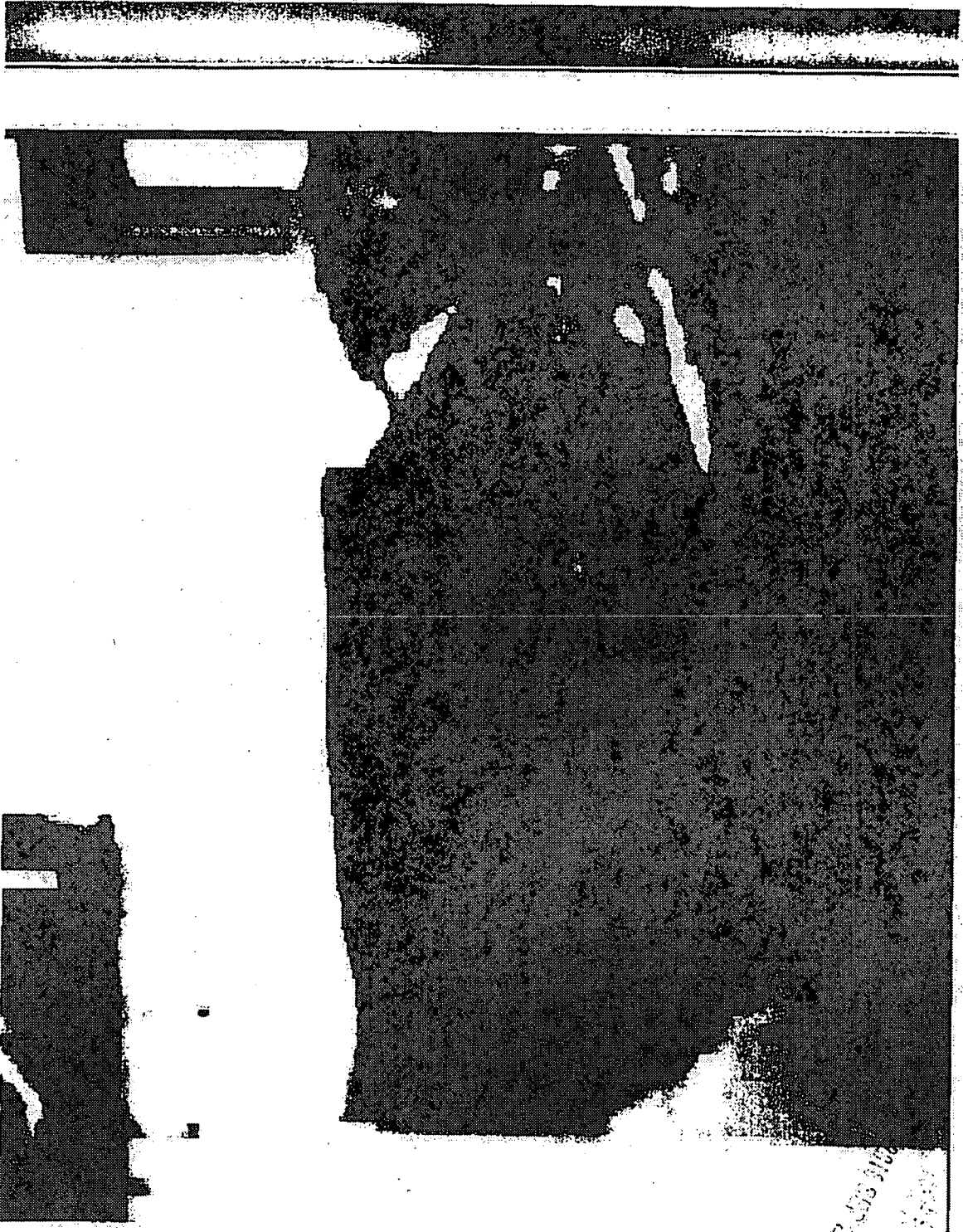
I responded to Fast & Friendly Pawn in regards to a larceny suspect. On scene I was met by Mr. Rhodes who informed me that he brought a black male, known only as "J.B." to the pawn shop. Mr. Rhodes stated that J.B. is his marijuana dealer and that by giving him a ride, he is able to pay for his marijuana. Mr. Rhodes stated that he was unaware of JB stealing any items from the pawnshop. He did state that he knows that he lives on Caulder Ave. in the City of Sartanburg but could not provided an address. He went on to say that he is familiar with JB's house.

***** (lwmmain15365403302015)--

04-01-15

Exhibit D

Still Shot



1-15-12 12:51:51 PM

The Honorable M. Hope Blackley
P.O. Box 3483
Spartanburg S.C. 29210

Ms. Blackley

I'm mailing my Post Conviction Relief Application and Amendments to your Office along with 3 copies to be clocked stamped, and if you would please, send Attorney General and copy, and send me back a copy. Thanks again for your help and your Time. I appreciate it very much.

THANKS

Date Sept. 23, 2016

James Brown Jr, #274845
James Brown Jr,
Walden, Stevenson C.I. W4-318
4340 Broad River Road
Columbia S.C.
29210

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
James Brown, Jr., #274845,	)	Case No.: 2016-CP-42-3572
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the application for post-conviction relief ("PCR") filed September 27, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the December 2015 term of the Spartanburg County Grand Jury for shoplifting (2015-GS-42-5301). Applicant was represented by E. Joshua Schultz, Esquire. On February 10, 2016, Applicant pleaded guilty before the Honorable J. Derham Cole as indicted. Judge Cole sentenced Applicant to imprisonment for eight (8) years. Applicant did not appeal his conviction or sentence.

II.

In his PCR application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that;
 - i. "Counsel was ineffective for coercing Applicant to take responsibility for a crime that his codefendant was in possession of";
2. Failure to object;

- i. Counsel failed to "object and motion the courts for a direct verdict because the element of value could not be proven";
- 3. Due process violation;
 - i. "Counsel was ineffective for not objecting and allowing his due process rights to be violated."

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

III.

Respondent construes Applicant's first and second allegations as allegations of ineffective assistance of counsel and submits they are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The applicant "must first demonstrate that counsel was deficient and then must also show the deficiency resulted in prejudice." Walker v. State, 407 S.C. 400, 404-05, 756 S.E.2d 144, 146 (2014). "The two-part test adopted in Strickland also applies to challenges to guilty pleas based on ineffective assistance of counsel." Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011).

First, the applicant must show that counsel's performance "fell below an objective standard of reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, he would not have [pleaded] guilty, but would have insisted on going to trial." Thompson v. State, 340 S.C. 112, 116, 531 S.E.2d 294, 297 (2000).

Respondent submits that Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant alleges that he was denied due process of law. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50. In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing that would entitle him to relief before an evidentiary hearing will be scheduled and

held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. Furthermore, this allegation is so vague that it is impossible for the State to respond.

V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code Ann. § 17-27-10 *et seq.*; Rule 71.1, SCRCP. All claims should be made well in advance of the PCR hearing. Because Applicant has been appointed an attorney, the attorney is the only individual authorized to file amendments to this application, and filings by Applicant will not be considered at the PCR hearing. See Rule 11, SCRCP. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. Rule 15(a), SCRCP.

VI.

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

[Remainder of page left intentionally blank]

VII.

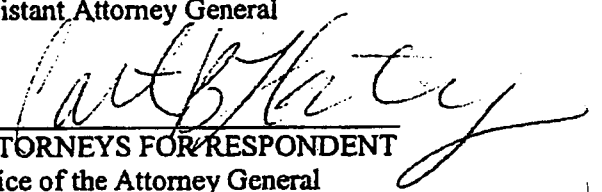
WHEREFORE, having made its Return, Respondent requests that an evidentiary hearing be held solely on the claims of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

CAITLIN BAZAN HASTINGS
Assistant Attorney General

By: 

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

February 6th, 2017

1 MS. GIOVANOLI: We're on the record with James
2 Brown, Jr. vs. The State of South Carolina, case
3 number 2016-CP-42-3571. We're before the court on a
4 application for post-conviction relief filed on
5 September 27th, 2016. The applicant is presently
6 incarcerated. He was indicted in case number 2015
7 for shoplifting. Applicant was represented by Joshua
8 Shultz and on February 10th, 2016, Applicant pled
9 guilty before the honorable J. Durham Cole.

10 Judge Cole sentenced Applicant to imprisonment
11 for eight years and Applicant did not appeal his
12 conviction or his sentence. The State is present and
13 ready to proceed. Applicant is also present
14 represented by Ms. Susannah Ross to whom I will hand
15 it over.

16 THE COURT: Ms. Ross.

17 MS. ROSS: Thank you, may it please the Court?

18 THE COURT: Yes, ma'am.

19 MS. ROSS: He would challenge first under
20 17-27-70, the reply was not filed within a timely 30
21 days as required by the statute so we move for
22 summary judgment for the defense based on that,
23 initially.

24 THE COURT: Okay. Can the Applicant articulate
25 any prejudice from any alleged delay?

1 MS. ROSS: I don't believe so.

2 THE COURT: Okay. All right, then I'll
3 respectfully deny that motion.

4 MS. ROSS: He's also going forward with
5 ineffective assistance of counsel. If you review the
6 plea transcript you can see that he was attempting to
7 show the judge a video that he believed would show
8 his innocence of the charge. But he also wanted to
9 plead guilty. I did not get that video for this
10 hearing. If you feel that it would make a difference
11 in determining the outcome of this hearing, I will be
12 happy to get the video or ask for a continuance to do
13 that, but.

14 THE COURT: I'll listen to his testimony and if
15 I think it's relevant, I'll keep the matter opened
16 for purpose of reviewing the video.

17 MS. ROSS: All right. At this point we'll call
18 James Brown, Jr.

19 THE COURT: Mr. Brown, if you'd come on up,
20 please. Yeah, come around this way. The first thing
21 you need to do is take the oath. So, I know you walk
22 slowly with that but when you get over here, just put
23 your papers down and put your left hand on the Bible
24 and raise your right hand. Come on, see the Bible,
25 put your left hand on that and to the extent you can,

JAMES BROWN-DIRECT BY MS. ROSS

1 raise your right hand.

2 James Brown, after being duly sworn, testified
as follows.

3 THE COURT: Take a seat, Mr. Brown, state your
4 full name for the record if you will, please.

5 THE WITNESS: James Brown, Jr.

6 DIRECT EXAMINATION

7 BY MS. ROSS:

8 Q Okay, Mr. Brown, do you realize at
9 post-conviction relief, the relief you get is to be put
10 back in the position you were in before your guilty plea,
11 do you understand that?

12 A Yes, ma'am.

13 Q And it is your -- would you like to proceed?

14 A Uh-huh.

15 Q Okay. What you've alleged ineffective
16 assistance of counsel that resulted in due process
17 violations and your pleading guilty when you never would
18 have done so otherwise. What is the basis for that?

19 A The basis with the due process violation, would
20 be that he had me to plead to -- to a shoplifting, when
21 somebody else was in possession of the property.

22 Q Okay.

23 A And I was put in it by another man's statement
24 instead of being within the elements of the crime,
25 possession of the goods.

JAMES BROWN-DIRECT BY MS. ROSS

1 Q Okay. And you've had some exhibits to
2 demonstrate that, didn't you?

3 A Oh, yes.

4 Q Okay.

5 If I can approach.

6 I'm handing you four piece of paper, do you
7 recognize those papers?

8 A Uh-huh.

9 Q What are those?

10 A Exhibit A would be -- it would show where he had
11 the -- Exhibit A would be talked about -- what he saying
12 he had no knowledge of me taking this property or
13 whatever.

14 Q Okay. And where did you get these exhibits?

15 A I got it from my motion of discovery.

16 Q Okay. What's Exhibit B?

17 A Exhibit B would be the pawnshop ticket which he
18 signed his name saying that he was -- the property was his
19 and it wasn't stolen.

20 Q What's Exhibit C?

21 A Exhibit C where he gave, what you call it, an
22 investigative report saying that he was unaware of
23 Mr. Brown taking any property from his pawnshop.

24 Q All right. What's Exhibit D.

25 A That would be the still shot showing me doing

JAMES BROWN-DIRECT BY MS. ROSS

1 nothing.

2 MS. ROSS: All right, I would ask these be
3 marked as Plaintiff's Exhibits.

4 MS. GIOVANOLI: No objection.

5 THE COURT: Okay. Go ahead and mark them.

6 MS. ROSS: Okay I ask they be marked and moved
7 into evidence.

8 THE COURT: Okay, the same should be admitted as
9 Applicant's Exhibits.

10 You may mark them, madam court reporter. You
11 can mark them.

12 THE WITNESS: Do I need to read my application
13 into to record?

14 THE COURT: No, you're good. Your application
15 has been filed already and I've got it in front of me
16 right here.

17 THE WITNESS: Okay. Okay. So, the motion for
18 the video tape to show that I was never in possession
19 of no unpurchased goods or whatever?

20 THE COURT: You're testifying to that right now.
21 So, you're getting all that in the record.

22 THE WITNESS: Okay.

23 MS. ROSS: Right.

24 THE COURT: Okay, let's be quiet for a second
25 and let the court reporter mark all the exhibits.

JAMES BROWN-DIRECT BY MS. ROSS

1 You need to mark them?

2 THE COURT REPORTER: Yes, sir.

3 THE COURT: Okay.

4 THE COURT REPORTER: Separately or collectively?

5 MS. ROSS: Either. Collectively is fine.

6 (WHEREUPON, Applicant's Exhibit No. 1 was marked
7 for identification and received into evidence.)

8 BY MS. ROSS:

9 Q Okay, Mr. Brown, now these exhibits and the
10 video, these are all evidence that you believe would have
11 proved that you were not guilty, correct?

12 A Uh-huh.

13 Q Yet, you pled guilty, what induced you to plead
14 guilty?

15 A Because I didn't want -- going by my counsel's
16 advice, if I go to trial, going by my prior record and all
17 that stuff there, I'm probably going to be losing big. If
18 I lose big then that means I probably -- I was already on
19 parole. That means that 10 years would have been a
20 consecutive sentence but his advice was to very pleading
21 guilty and go on and take the eight.

22 Q Now, how was that advice wrong?

23 A How was it wrong? Because I never had any
24 property. That's what I kept telling him the whole time.
25 I never had anything.

JAMES BROWN-DIRECT BY MS. ROSS

1 Q All right. Did he talk to you about doing
2 what's called an Alford plea? Did he mention that to you?

3 A No, ma'am.

4 Q And how many charges were you facing? How many
5 charges were dismissed because you pled guilty to this one
6 shoplifting?

7 A Didn't nare one of them get dismissed.

8 Q All right. So, that was the only charge --

9 A They came up with two of them. But the other
10 one they had like a continuance or something and I had to
11 go back again but I didn't. They wanted me to plead to
12 that charge based on not seeing a film and all. All
13 that's in the transcript.

14 Q All right.

15 A Not seeing a film and all this stuff right here
16 with no evidence.

17 Q Now, you also allege that your attorney had a
18 conflict of interest? What were you talking about there?

19 A Well, when I said conflict of interest, I was
20 talking about -- it would have been something like that he
21 know that the time Mr. Rhodes wun't [verbatim] a credible
22 witness, you know what I'm saying, me going and telling
23 the officers that. I gave him property because he had a
24 prior burglary charge.

25 Q Okay.

JAMES BROWN-DIRECT BY MS. ROSS

1 A And that was a crime of dishonesty. Therefore,
2 help shouldn't have been -- he should've challenged his
3 credibility. I shouldn't have been impeached by what this
4 man said. My credibility.

5 Q Okay. But Mr. Rhodes, had he been represented
6 by your plea lawyer before?

7 A I think he have because he told me so, yes.

8 Q Okay. Now, going back to -- how many times did
9 you meet with your lawyer before this plea?

10 A About three, four times. About two, three --
11 about three, four times.

12 Q And it looks like you were pleading, you were
13 about to go to trial?

14 A I was wanting to go to trial. But the last
15 minute, that's when he came to this deal here.

16 Q Had he gone over discovery with you? Had your
17 lawyer gone over--

18 A I never seen it, he just read it out to me, what
19 all he had.

20 Q And had he prepared for trial?

21 A Well, that's what we was supposed to be doing.
22 But at the last minute, they told me say, you know,
23 Mr. Brown, probably want to go ahead and just take the
24 offer because if you go to trial you're going to lose big.

25 Q All right. And did you feel that you wouldn't

JAMES BROWN-CROSS BY MS. GIOVANOLI

1 have lost big if you had gone to trial?

2 A I wouldn't have lost because I didn't never have
3 anything. It's written all through the discovery.

4 Q Now, if he hadn't told you all that you were
5 going to lose big, would you have ever pled?

6 A If I would have thought maybe he was going to be
7 like trying to work and help me, I would have never pled,
8 no.

9 MS. ROSS: Okay, I've got no further
10 questions --

11 Q Well, it's your PCR, do you have anything else
12 you'd like to put on the record?

13 A No, not to think of. I think you probably been
14 crossing over from here to there, so no. I wanted to read
15 off some stuff but he say it's already in the record, so.

16 Q Well, you had asked my about filing an amended
17 application, what did--

18 A That was under due process.

19 Q To add the due process argument?

20 A Yeah.

21 MS. ROSS: Okay. All right. Well then, I've
22 got no further questions, if you can answer any
23 questions the attorney general has for you.

24 MS. GIOVANOLI: Thank you.

25 CROSS-EXAMINATION

JAMES BROWN-CROSS BY MS. GIOVANOLI

1 BY MS. GIOVANOLI:

2 Q Good morning, Mr. Mr. Brown.

3 A Good morning, how you doing?

4 Q Okay. You were facing a lot of time on this
5 case because of your criminal record; is that correct?

6 A More than what 10 years, wun't it?

7 Q Right. And so, that was because you had 12
8 prior shoplifting convictions?

9 A Uh-huh.

10 Q Correct?

11 A Yeah.

12 Q Okay. You stated on direct that you pled guilty
13 because your counsel, Mr. Schultz, advised you that you
14 probably want to take this plea --

15 A Uh-huh.

16 Q Is that correct?

17 A Uh-huh.

18 Q So, he never told you that you had to take this
19 plea, right?

20 A No, he said probably need to take this plea
21 because if you go to trial and you lose, you're going to
22 lose big. I was already on parole at the time, I think
23 until 2027. So, what a 10 year sentence consecutive to
24 that would be 20, 35. He made that plain to me once I got
25 tried and [indiscernible] 20, 35 to eight years, eight

JAMES BROWN-CROSS BY MS. GIOVANOLI

1 years versus 20, 35, I think you did the best thing.

2 Q Okay. So based on that advice you decided to
3 plead guilty?

4 A Yes, ma'am.

5 Q He didn't force you to plead guilty?

6 A No, his advice was to do it, yep.

7 Q You talked a little bit about a conflict of
8 interest. Mr. Shultz previously represented the State's
9 witness against you; is that correct? Mr. Rhodes?

10 A Uh-huh.

11 Q Okay. He informed you that he had represented
12 Mr. Rhodes prior to this?

13 A When we was at the thing he said he was
14 wondering, he kept saying his name or something. He said,
15 Yeah, I know Mr. Rhodes. And, I guess, he had represented
16 him or something before me.

17 Q Okay. Were you okay with that at the time?

18 A Yeah. He -- the way he was saying but he was
19 talking like he was going to be like for me. He was going
20 to get up there and cross-examine this man and all this.
21 But at the last minute, he gets me up here, he wanted me
22 to plead.

23 Q Okay.

24 A Everything -- all the tactics we came up with at
25 his office, it was totally different when we got up here.

JAMES BROWN-CROSS BY MS. GIOVANOLI

1 Q But you agree that it was your decision whether
2 you wanted to take this to a jury trial or plead guilty?

3 A Well, I didn't want really want to go to no jury
4 trial, every time I did, I told him. It's in the
5 transcript, I said, Well, I want to take a nonjury. Like
6 a bench trial. I was talked out of that because I wanted
7 to -- I wanted that video tape to be heard, to be seen.

8 Q So, why didn't you insist?

9 A Because he said he instead of letting that be
10 seen, he want to put that in a mitigating factors. He
11 going to tell them the facts that was on the tape.
12 Instead of allowing it to be seen so I could plead guilty.
13 And I didn't want to do that but I just went on with what
14 he said.

15 MS. GIOVANOLI: Okay, I have no further
16 questions. Thank you.

17 THE COURT: All right.

18 MS. ROSS: No redirect, Your Honor.

19 THE COURT: Okay, thank you, Mr. Brown, you may
20 step down, I appreciate your being here to testify
21 this morning.

22 Anything further from The Applicant, Ms. Ross?

23 MS. ROSS: No, Your Honor.

24 THE COURT: Okay.

25 Anything from The State?

1 MS. GIOVANOLI: Your Honor, first and foremost,
2 The State would move for a directed verdict on this
3 case. There's been absolutely no evidence of
4 ineffective assistance of counsel. The Applicant has
5 basically alleged that he decided to plead guilty
6 based on the advice of his counsel. That advice,
7 according to the record, is not incorrect. He was
8 facing a lot more time than the time he actually pled
9 to, the eight years. He accepted that benefit of the
10 bargain, it was knowing and voluntary. So, at this
11 point The State would move for a directed verdict.

12 THE COURT: All right.

13 Ms. Ross, any argument that you would like to
14 make, ma'am?

15 MS. ROSS: Only what Mr. Brown presented from
16 the stand that he felt that his lawyer was not
17 prepared for trial and that was the basis for him
18 pleading guilty.

19 THE COURT: Okay. all right. I don't ordinarily
20 grant a directed verdict in PCR applications because
21 I like everyone to have the opportunity to fully vet
22 the issues that are before the court. But in this
23 instance, I just don't know that we're going to do
24 anything productive by proceeding. I take judicial
25 notice of the transcript of the guilty plea on

1 February 10th, 2016. That transcript is comprised of
2 42 pages. And I suspect after reading it, that
3 hearing probably took the better part of half an
4 hour. And I see that the same issues that Mr. Brown
5 is discussing today, were the issues they had
6 discussions about over and over and over. And he
7 took a long time to get to the actual acceptance of
8 the plea because Judge Cole was circumspect and
9 reluctant to take the plea because this potential
10 defense continuously was being either asserted or not
11 asserted and he couldn't ascertain which one it was.

12 The video tape was discussed. And I believe the
13 video tape was there and it was present. It was
14 given any number of opportunities to either go to
15 trial before a jury or to accept a bench trial. But
16 the judge was very, very clear to Mr. Brown on the
17 record, that if you plead where you have a defense,
18 in other words, you're giving your right to assert a
19 defense. Because when you plead guilty, you
20 authorize me to impose a sentence just as if you pled
21 guilty without a defense and admitted your guilt or
22 just as if a jury considered all the evidence and
23 found you guilty.

24 Yes, sir.

25 Well, is that what you want to do?

1 And then there's as colloquy. And ultimately,
2 at the very, not the very end, but on Page 33 those
3 are the kind of choices you have to make, you know,
4 you either plead guilty or have to go to a jury,
5 whether or not you are. And if the jury hasn't, of
6 course, they will look at the video.

7 Your Honor, I think I'll just plead. Go on and
8 plead guilty.

9 And in the end, again, on Page 35, Plead guilty,
10 are you sure?

11 Yes, sir.

12 You're satisfied now?

13 Yes, sir.

14 Certain that's what you want to do?

15 Yes, sir.

16 So, all of the issues regarding the video,
17 the -- all of the evidence, all of the potential
18 legal defenses were outstanding at the time. And
19 Mr. Brown, you -- the record demonstrates clearly
20 that you chose to waive then. Now, you were some
21 deal reluctant to waive those defenses, I understand
22 that. But, ultimately, you did. But that was the
23 point in time which you either had to get off the pot
24 or do otherwise. And you chose to accept the plea.
25 It's clear from the record. I know you have

1 misgivings now, I recognize that, it's very clear to
2 me. But we can't go back and re-litigate this case.
3 All of that was available to you at the time and you
4 chose not to.

5 I'm sorry, in retrospect if you regret that
6 decision but there's nothing I can do about it now.
7 I'm confined to the record here. And Judge Cole was
8 very thorough about it. And it's clear that you
9 freely and voluntarily entered the plea and you gave
10 up those defenses. It won't do me any good to look
11 at the video. It would simply be academic for me at
12 this time. Because the video was there and available
13 and at the time was evidence. All right.

14 So, without any ill will towards you, Mr. Brown,
15 and while wishing you good luck, I'm going to
16 respectfully deny your application, okay. I wish you
17 luck, sir.

18 If you'd draft me an order.

19 MS. GIOVANOLI: Yes, Your Honor.

20 THE COURT: Thank you.

21 (WHEREUPON, the proceedings were concluded.)
22
23
24
25

CERTIFICATE OF REPORTER

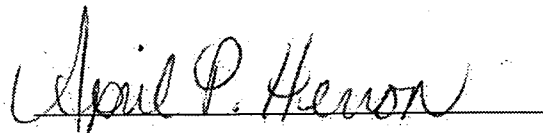
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth 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 in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Spartanburg County, South Carolina, on the 28th day of June, 2017.

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

October 1, 2018



APRIL P. HERRON, Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS	
COUNTY OF SPARTANBURG	)	IN THE SEVENTH JUDICIAL CIRCUIT	
James Brown, Jr., #274845,	)	Case No.: 2016-CP-42-3572	
Applicant,	)		
v.	)	ORDER OF DISMISSAL	
State of South Carolina,	)	WITH PREJUDICE	
Respondent.	)		

CLERK OF COURT
SPARTANBURG COUNTY
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M. HOPE BLACKLEY

This matter comes before the Court by way of an application for Post-Conviction Relief (PCR) filed on September 27, 2016. Respondent made its Return on or about February 6, 2017, requesting an evidentiary hearing be convened. An evidentiary hearing into the matter was convened on June 28, 2017, at the Spartanburg County Courthouse. Susannah C. Ross, Esquire, represented Applicant. Valerie Garcia Giovanoli, Esquire, of the South Carolina Office of the Attorney General, represented Respondent.

At the hearing, Applicant testified on his own behalf. This Court had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, the transcript from Applicant's guilty plea, the PCR application, Respondent's Return and Applicant's records for the Department of Corrections.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the December 2015 term of the Spartanburg County Grand Jury for shoplifting (2015-GS-42-5301). Applicant was represented by E. Joshua Schultz, Esquire. On February 10, 2016, Applicant pleaded guilty before the Honorable J. Derham Cole as indicted. Judge Cole

sentenced Applicant to imprisonment for eight (8) years.¹ Applicant did not appeal his conviction or sentence.

In his PCR application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that;
 - i. "Counsel was ineffective for coercing Applicant to take responsibility for a crime that his codefendant was in possession of";
 - ii. Counsel failed to "object and motion the courts for a direct verdict because the element of value could not be proven";
 - iii. "Counsel was ineffective for not objecting and allowing his due process rights to be violated."

CLEARINGHOUSE
 SPARTANBURG COUNTY
 2017 OCT -4 PM 1:05
 M. HOPE BLACKLEY

SUMMARY OF TESTIMONY

I. Applicant testified to the following:

Applicant claims actual innocence. Applicant testified his due process rights were violated because he pled guilty to a shoplifting where the State could not prove he was in possession of the stolen goods. Applicant admitted a collective exhibit of documents from his discovery as Applicant's Exhibit 1. Applicant testified the discovery items and video prove he is innocent. Applicant testified Counsel told him he was facing a possible 10 year sentence if he went to trial and was convicted but could possibly take 8 years if he pled guilty. Applicant felt this was incorrect advice because he never had the stolen property in his possession.

Applicant also complained that Counsel knew one of the State's witnesses, Applicant's co-defendant, was not credible. Applicant believes Counsel should have challenged his credibility. Applicant testified he wanted to go to trial until he accepted a last minute deal from the State. Applicant testified that Counsel was supposed to prepare for trial, but Counsel also told him, "you probably want to take this plea."

¹ Applicant's sentence was enhanced based on 12 prior shoplifting convictions.

137

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After Applicant's testimony, Respondent moved for a directed verdict on the basis that Applicant did not present evidence sufficient to meet his burden of proving the allegations in his application. This Court agrees. This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witness presented at the hearing, and can weigh his testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

Ineffective Assistance of Counsel

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler.

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms."

Cherry, 300 S.C. at 117 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E. 2d 417, 419 (2001) (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, 474 U.S. at 56. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969).

This Court takes judicial notice that Applicant's guilty plea transcript consists of 42 pages and appears to have been a half hour hearing. The same issues discussed here in this PCR hearing were exhaustively discussed at the guilty plea hearing. The plea judge gave Applicant a number of opportunities to exercise his right to a jury trial or a bench trial. But, Applicant chose to proceed with his guilty plea after knowingly waiving any defense he believes he may have. Applicant demonstrated some reluctance to waive his rights during the guilty plea, but his ultimate decision was to accept the plea. Furthermore, Applicant has not provided any reason

139

2017 OCT -4 PM 3:05
 M. HOE BLACKLEY
 SPARTANBURG COUNTY
 CLERK OF COURT

why he should be allowed to depart from the truth of his statements made under oath at the time of his guilty plea.

PCR is not a venue for re-litigating criminal cases. Everything Applicant now complains of was available to him prior to trial. Applicant has failed to establish Counsel was deficient in any way. His advice regarding the possible sentences he could receive going to trial versus pleading guilty was reasonable advice. The record is dispositive on the issue that Counsel did not coerce Applicant to plead guilty. Any allegation or testimony from Applicant otherwise is not credible. The record is also clear that Counsel did not promise Applicant anything to plead guilty. It is apparent from the record, Applicant was simply unhappy with the potential sentence he was facing and ultimately unhappy that he did not get the sentence he had hoped for.

Applicant has failed to meet his burden to prove Counsel was deficient or that Applicant was prejudiced by any deficiency. Therefore, his application is denied and dismissed with prejudice.

CONCLUSION

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

This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's

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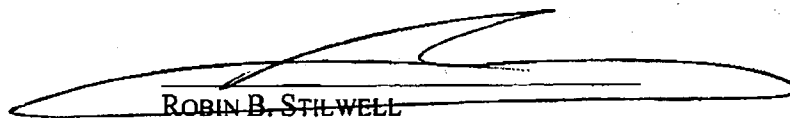
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M. HOPE BLANCHET
SPARTANBURG COUNTY
CLERK OF COURT

assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCRCP. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

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

AND IT IS SO ORDERED this 2 day of Oct, 2017.


 ROBIN B. STILWELL
 Presiding Judge
 Seventh Judicial Circuit

Gulf, South Carolina

CLERK OF COURT
 SPARTANBURG COUNTY
 2017 OCT -4 PM 1:05
 M. HOPE BLACKLEY

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483



Phone (864) 596-2591
Fax (864) 596-2239

M. Hope Blackley
Clerk of Court

October 4, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

7TH JUDICIAL CIRCUIT

CASE # *2016CP42-3572*

James Brown, Jr.
Applicant *#274845*

CERTIFICATE OF SERVICE

VS

Shirley
Respondent

I certify that, on this date, I served a copy of the

In this action dated

10-4

2017

on

10-4-17

Order Dismissed w/ prejudice

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Valerie Giordano
Wesley McCoy
Susanah Ross

CLERK OF COURT
SPARTANBURG COUNTY
2017 OCT -4 PM 1:26
M. HOPE BLACKLEY

10-4-17

(Date)

Carol Lee
(Signature)

WITNESSES
SPARTANBURG COUNTY SHERIFF

1. SENTENCE MADE

2. REPORT ENDED

3. CARD FILED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND

FINE CARD MADE

TRAFFIC VIOLATION COPY

2015A4210100966

COMPUTER

COMPUTER

ARREST WARRANT NUMBER

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET **15-68-42-5301**

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

DEC 14 2015

TERM

THE STATE
vs.

JAMES BROWN, JR.

Indictment for
SHOPLIFTING

SC Code: 16-13-110(A), 16-1-57
CDR Code: 2877
Class FEL/E

CLERK
SPARTANBURG

2015 DEC -9

M. HOPE BLANCHARD

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

DEC 04 2015

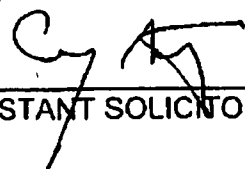
At a Court of General Sessions, convened on _____, the

Grand Jurors of Spartanburg County present upon their oath:

SHOPLIFTING

That JAMES BROWN, JR. did in Spartanburg County on or about MARCH 4TH 2015, take possession of or carry away merchandise displayed, held, stored or offered for sale by any store or other retail mercantile establishment with the intention of depriving the merchant of the possession, use or benefit of the merchandise without paying the full retail value, being less than Two Thousand Dollars, to-wit: a Memphis amplifier, offered for sale by Fast Friendly Cash Today, 1118 Asheville Hwy, in Spartanburg County, in violation of §16-13-0110(A); §16-1-57, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

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



ASSISTANT SOLICITOR

GRAY ANTHONY

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
 STATE VS.
James Brown Jr
 AKA: _____
 Race: BLACK Sex: M Age: 46
 DOB: [REDACTED] SS#: [REDACTED]
 Address: [REDACTED]
 City, State, Zip: [REDACTED]
 DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: Shoplifting / Value \$2000 or less (Enhancement per 16-01-0057)

INDICTMENT/CASE#: 2015GS4205301
 A/W#: 2015A4210100966
 Date of Offense: 3/4/2015
 S.C. Code §: 16-13-0110(A)
 CDR Code #: 2877

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-13-0110(A) of the S.C. Code of Laws, bearing CDR Code # 2877
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
 ATTEST: C. Jones 101661 James Brown Jr E. Jones 74518
 ANTHONY, GRADY B. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center.
 for a determinate term of 8 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended probation for

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

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

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
 Total: \$ plus 20% fee: \$
 Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$
 § 14-1-206 (Assessments 107.5 %) \$
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$
 § 56-5-2995 (DUI Assessment) \$12 \$
 § 56-1-286 (DUI Breath Test) \$25 \$
 Proviso 47.9 (Public Def/Prob) \$500 \$
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 § 14-1-213 (Drug Court Surcharge) \$150 \$
 § 50-21-114 (BUI Breath Test Fee) \$50 \$
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
 Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
 3% to County (if paid in installments) \$ 3.90
 TOTAL \$ 133.90

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

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk C. Jones

Court Reporter LaMoffitt

SCCA-217 (03/2011)

Presiding Judge [Signature]

Judge Code: 2053

Sentence Date: February 10, 2016

SCANNED