

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Mark Hayes, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KEVIN MCDANIELS,

APPELLANT

APPELLATE CASE NO. 2018-000070

RECORD ON APPEAL

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KEVIN MCDANIELS,

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CERTIFICATE OF SERVICE

I certify that a copy of the Record on Appeal in the above-referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 4th day of January, 2019.

Tyler Cheney
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 4th day of January, 2019.

(L.S.)
Notary Public for South Carolina

My Commission Expires July 26, 2028.

1
2 **DEFENDANT WAS PLACED UNDER OATH PRIOR TO TAKING OF PLEA**

3 **NO EXHIBITS WERE ENTERED INTO THE RECORD OF THIS CASE**

4 **MR. BARNETTE: MAY IT PLEASE THE COURT.**

5 **THE COURT: YES SIR, MR. BARNETTE.**

6 **THE COURT: YOUR HONOR, THIS IS THE MATTER OF THE STATE**
7 **VERSUS KEVIN McDANIELS. HE IS PLEADING UNDER ALFORD TO FOUR**
8 **CHARGES. THE FIRST IS 2009-GS-42-1746, WHICH IS GRAND LARCENY,**
9 **BETWEEN A THOUSAND TO FIVE THOUSAND DOLLARS; 2008-GS-42-1745,**
10 **WHICH IS GRAND LARCENY, BETWEEN A THOUSAND AND FIVE THOUSAND**
11 **DOLLARS; 2008-GS-42-1744, WHICH IS BURGLARY, SECOND DEGREE,**
12 **NONVIOLENT; AND 2008-GS-42-1743, WHICH IS BURGLARY, FIRST DEGREE.**
13 **THESE HAVE ALL BEEN TRUE-BILLED BY THE GRAND JURY.**

14 **HE IS REPRESENTED BY MR. ROBERT HALL, YOUR HONOR. THIS IS A**
15 **NEGOTIATED SENTENCE.**

16 **WE HAVE THE KIMBRELL FAMILY WITH US. ME AND MS. THOMPSON**
17 **TALKED WITH THEM A LONG TIME THIS MORNING. WE EXPLAINED TO THEM**
18 **THAT HE IS FACING A LIFE WITHOUT PAROLE SITUATION. AND WE WENT**
19 **THROUGH THE FACTS OF THE CASE WITH THEM AND TALKED WITH THEM**
20 **ABOUT IT. THEY FEEL LIKE THIS IS A JUST RESOLUTION OF THIS CASE,**
21 **RECOMMENDING FIFTEEN YEARS NEGOTIATED SENTENCE, PLUS THERE IS**
22 **FEDERAL TIME IN THIS SITUATION.**

23 **I WANTED TO LET THE COURT KNOW THAT. AND OF COURSE, THEY**
24 **WILL BE GLAD TO ADDRESS THE COURT AT THE APPROPRIATE TIME.**

25 **THE COURT: VERY WELL. THANK YOU, SOLICITOR.**

1 MR. BARNETTE: YOUR HONOR, MS. THOMPSON WILL BE GIVING THE
2 FACTS OF THE CASE.

3 THE COURT: THANK YOU. YOU ARE KEVIN McDANIELS?

4 MR. McDANIELS: YES SIR, YOUR HONOR.

5 THE COURT: MR. McDANIELS, YOU ARE PRESENT TODAY WITH MR.
6 HALL. IS HE YOUR LAWYER?

7 MR. McDANIELS: YES, HE IS, YOUR HONOR.

8 THE COURT: HE REPRESENTS YOU ON ALL FOUR OF THESE
9 INDICTMENTS?

10 MR. McDANIELS: YES, YOUR HONOR.

11 THE COURT: HAVE YOU HAD THE OPPORTUNITY TO DISCUSS WITH HIM
12 THE NATURE OF THESE CHARGES?

13 MR. McDANIELS: YES SIR, I SURE HAVE, YOUR HONOR.

14 THE COURT: YOU'VE HAD THE OPPORTUNITY TO REVIEW THE
15 INVESTIGATION THAT HE'S CONDUCTED ON YOUR BEHALF?

16 MR. McDANIELS: YES SIR, YOUR HONOR.

17 THE COURT: IT APPEARS FROM THE SENTENCING SHEET THAT YOU
18 ARE DESIROUS OF ENTERING A PLEA TO EACH OF THE INDICTMENTS. IS THAT
19 CORRECT?

20 MR. McDANIELS: YES SIR, TO RUN CON CURRENT WITH MY FEDERAL
21 SENTENCE, YOUR HONOR.

22 THE COURT: AND YOU REQUESTED THAT HE NEGOTIATE FOR YOU THE
23 BEST SENTENCE THAT HE THOUGHT HE WAS ABLE TO GET. IS THAT
24 CORRECT?

25 MR. McDANIELS: YES SIR, YOUR HONOR.

1 THE COURT: AND THAT'S WHAT YOU BELIEVE IS REPRESENTED BY
2 THE DOCUMENTS I HAVE, THE SENTENCING SHEETS?

3 MR. McDANIELS: YES, YOUR HONOR.

4 THE COURT: YOU'VE FULLY DISCUSSED WITH HIM MY OPTIONS
5 NEGOTIATED SENTENCE?

6 MR. McDANIELS: YES, YOUR HONOR.

7 THE COURT: YOU UNDERSTAND THAT UNLIKE A RECOMMENDATION,
8 MY VIEW IS A NEGOTIATED SENTENCE, AFTER I HEAR IT ALL, MY OPTIONS
9 ARE EITHER TO ACCEPT IT OR REJECT IT?

10 MR. McDANIELS: YES SIR, YOUR HONOR.

11 THE COURT: I CANNOT MODIFY IT IN ANY RESPECT. DO YOU
12 UNDERSTAND THAT?

13 MR. McDANIELS: YES SIR, YOUR HONOR.

14 THE COURT: HAVE YOU ALSO DISCUSSED WITH HIM WHAT AN
15 ALFORD PLEA MEANS?

16 MR. McDANIELS: YES SIR.

17 THE COURT: THERE ARE SOME VAGARIES, BUT LET ME TELL YOU
18 WHAT MY UNDERSTANDING OF IT IS. WHILE ALFORD, THE CASE ITSELF, THE
19 PERSON WAS UNABLE TO INTELLIGENTLY MAKE A STATEMENT WHETHER
20 WAS GUILTY OR NOT, MY CONCEPT OF THE ALFORD PLEA, AND THAT CASE
21 AND ITS PROGENY, IS BASICALLY YOU'RE TELLING ME, I DIDN'T DO THESE
22 CHARGES, I DIDN'T DO THIS

23 MR. McDANIELS: THAT'S CORRECT, YOUR HONOR.

24 THE COURT: BUT, BASED ON WHAT THE STATE'S PREPARED TO PROVE,
25 IT'S MY OPINION IF I GO TO TRIAL THERE IS A PROBABILITY THAT A JURY

1 WILL FIND ME GUILTY BEYOND A REASONABLE DOUBT. IS THAT YOUR
2 UNDERSTANDING?

3 MR. McDANIELS: YES SIR, YOUR HONOR.

4 THE COURT: YOU HAVE BEEN OFFERED A BENEFIT OF WHICH YOU
5 WANT TO AVAIL YOURSELF AND AVOID A TRIAL. IS THAT TRUE?

6 MR. McDANIELS: YES SIR, YOUR HONOR.

7 THE COURT: AND THE BENEFIT IS A FIFTEEN-YEAR SENTENCE TO RUN
8 CONCURRENT.

9 MR. McDANIELS: WITH MY FEDERAL SENTENCE.

10 THE COURT: WITH YOUR FEDERAL SENTENCE.

11 MR. McDANIELS: YES SIR, YOUR HONOR.

12 THE COURT: YOU REALIZE AND UNDERSTAND THAT IN THE FUTURE,
13 NOTWITHSTANDING AN ALFORD PLEA, THAT THIS WILL BE ON YOUR RECORD
14 AND IT'S TREATED JUST THE SAME AS IF THE JURY WERE TO CONVICT YOU.
15 DO YOU UNDERSTAND THAT?

16 MR. McDANIELS: YES, YOUR HONOR.

17 THE COURT: UNDERSTANDING THAT ON INDICTMENT 2008-1743, WHICH
18 IS AN INDICTMENT THAT CHARGES YOU WITH BURGLARY IN THE FIRST
19 DEGREE, THAT IF I ACCEPTED THE PLEA I WOULD SENTENCE YOU TO FIFTEEN
20 YEARS, PLACE ON THE SENTENCING SHEET THAT IT IS TO RUN
21 CONCURRENTLY WITH YOUR FEDERAL SENTENCE, GIVE YOU CREDIT FOR
22 TIME THAT YOU'VE SERVED, WHAT IS YOUR PLEA? GUILTY UNDER ALFORD?

23 MR. McDANIELS: YES SIR, YOUR HONOR. NORTH CAROLINA VERSUS
24 ALFORD.

25 THE COURT: OKAY.

1 MR. McDANIELS: I'VE SERVED APPROXIMATELY TWO AND A HALF
2 YEARS ALREADY, YOUR HONOR

3 THE COURT: ALL RIGHT, SIR. INDICTMENT 2008-1744, IS AN
4 INDICTMENT THAT CHARGES YOU WITH THE OFFENSE OF BURGLARY IN THE
5 SECOND DEGREE. DO YOU UNDERSTAND THAT CONSISTENT WITH YOUR
6 NEGOTIATED SENTENCE, IF I ACCEPTED IT, I WOULD SENTENCE YOU TO
7 FIFTEEN YEARS, GIVE YOU CREDITED FOR THE TIME THAT YOU'VE SERVED,
8 AND RUN IT CONCURRENTLY WITH YOUR FEDERAL SENTENCE, AND
9 CONCURRENT WITH THE PREVIOUS INDICTMENT? WHAT IS YOUR PLEA?
10 GUILTY UNDER ALFORD?

11 MR. McDANIELS: YES SIR, YOUR HONOR, NORTH CAROLINA VERSUS
12 ALFORD.

13 THE COURT: OKAY.

14 MR. McDANIELS: YES, YOUR HONOR

15 THE COURT: INDICTMENT 2008-1746 IS AN INDICTMENT CHARGING YOU
16 WITH GRAND LARCENY, MORE THAN A THOUSAND BUT LESS THAN A FIVE.
17 YOUR LAWYER'S EXPLAINED TO YOU THAT I COULD SENTENCE YOU UP TO
18 FIVE YEARS? CONSISTENT WITH YOUR NEGOTIATED SENTENCE, I WOULD
19 SENTENCE YOU TO FIVE YEARS, RUN IT CONCURRENT WITH THE PREVIOUS
20 INDICTMENTS AND WITH YOUR FEDERAL SENTENCE. HOW DO YOU PLEAD,
21 SIR?

22 MR. McDANIELS: NORTH CAROLINA VERSUS ALFORD, YOUR HONOR

23 THE COURT: GUILTY UNDER THAT PRINCIPLE?

24 MR. McDANIELS: YES, YOUR HONOR, UNDER THAT PRINCIPLE, UNDER
25 THAT CASE LAW.

1 THE COURT: INDICTMENT 2008-1745 IS AN INDICTMENT CHARGING
2 YOU WITH GRAND LARCENY, MORE THAN A THOUSAND, LESS THAN FIVE
3 THOUSAND. AGAIN, IF I ACCEPT THE NEGOTIATED SENTENCE, YOU
4 UNDERSTAND THAT I WOULD SENTENCE YOU TO FIVE YEARS, RUN IT
5 CONCURRENTLY WITH ALL OTHER INDICTMENTS, AS WELL AS YOUR
6 FEDERAL SENTENCE. HOW DO YOU PLEAD? GUILTY UNDER NORTH
7 CAROLINA VERSUS ALFORD?

8 MR. McDANIELS: YES SIR, YOUR HONOR, GUILTY UNDER NORTH
9 CAROLINA VERSUS ALFORD.

10 THE COURT: ARE YOU SATISFIED WITH YOUR LAWYER?

11 MR. McDANIELS: YES, YOUR HONOR.

12 THE COURT: ANY COMPLAINTS AT ALL ABOUT THE WAY HE'S
13 HANDLED YOUR CASE OR REPRESENTED YOU IN THIS MATTER?

14 MR. McDANIELS: NO SIR.

15 THE COURT:

16 MR. McDANIELS: YES, YOUR HONOR.

17 THE COURT: MR. HALL, YOU-- FIRST OF ALL, HAS THE SOLICITOR
18 ACCURATELY STATED THE TERMS OF THE NEGOTIATED SENTENCE?

19 MR. HALL: YES SIR, HE HAS, YOUR HONOR.

20 THE COURT: AS YOUR CLIENT HAS ALREADY INDICATED TO ME, THAT
21 IS BASICALLY THE RESULT OF THE CONVERSATIONS YOU'VE HAD WITH HIM
22 WHERE HE REQUESTED, INDICATING TO YOU AFTER HE REVIEWED THE
23 RESULTS OF YOUR INVESTIGATION THAT HE WANTED TO ENTER A PLEA BUT
24 REQUESTED THAT YOU NEGOTIATED THE BEST DEAL YOU COULD FOR HIM.

1 MR. HALL: YES SIR. WE WERE EITHER GOING TO TRIAL TODAY IF WE
2 COULDN'T WORK THIS OUT, AND WE WERE ABLE TO WORK IT OUT.

3 THE COURT: AND IN THAT REGARD, WE HAD A DISCUSSION
4 YESTERDAY. YOU HAD BEEN PREPARING FOR TRIAL, AS MOST ATTORNEYS
5 DO AND ARE REQUIRED TO DO, AND YOU WERE PREPARED TO GO TO TRIAL IF
6 NECESSARY.

7 MR. HALL: YES SIR.

8 THE COURT: DO YOU AGREE WITH THAT, MR. McDANIELS?

9 MR. McDANIELS: YES SIR, YOUR HONOR.

10 THE COURT: WITH MY CONFERENCES WITH HIM IT WAS QUITE
11 EVIDENT THAT HE WAS PREPARED; THAT HE HAD DONE THE WORK ON YOUR
12 BEHALF AND WAS READY TO TRY THE CASE, SHOULD THAT BE NECESSARY.

13 MR. McDANIELS: YES SIR, YOUR HONOR.

14 THE COURT: BASED ON YOUR INVESTIGATION AND YOUR
15 DISCUSSIONS WITH YOUR CLIENT, DO YOU BELIEVE THAT THIS SENTENCE IS
16 IN YOUR CLIENT'S BEST INTEREST?

17 MR. HALL: YES SIR, I DO.

18 THE COURT:

19 MR. McDANIELS: YES, YOUR HONOR.

20 THE COURT: YOU HAVE ADVISED HIM OF THE CONSEQUENCES OF MY
21 ACCEPTING THE NEGOTIATED PLEA?

22 MR. HALL: YES SIR. HE FULLY UNDERSTANDS THAT, UNDERSTANDS
23 BETTER THAN MOST I'VE ADDRESSED IN THE PAST SEVERAL MONTHS.

24 THE COURT: HE UNDERSTANDS THE RIGHTS THAT HE WILL BE
25 RELINQUISHING?

1 MR. HALL: YES SIR, HE DOES.

2 THE COURT: BASED ON YOUR INVESTIGATION, ARE YOU IN
3 AGREEMENT WITH HIS ASSESSMENT THAT IF THE STATE PRESENTED ITS
4 CASES, BASED ON WHAT YOU KNOW, THERE IS A PROBABILITY THAT A JURY
5 WOULD FIND HIM GUILTY BEYOND A REASONABLE DOUBT?

6 MR. HALL: YES SIR, YOUR HONOR. I KNOW MOST OF THE PEOPLE
7 INVOLVED IN THIS CASE FROM MY YEARS. I DON'T KNOW THE RICHLAND
8 COUNTY OFFICERS, BUT I HAVE EVEN SPOKEN WITH A RELATIVE WHO IS A
9 CAPTAIN OF THE RICHLAND'S COUNTY OFFICERS. AND NOT ONLY THAT, AND
10 MR. McDANIELS' TOO. AND I FEEL THERE'S A SUBSTANTIAL LIKELIHOOD IF
11 WE WENT TO TRIAL THAT THIS WOULD VERY MUCH GO AGAINST US.

12 THE COURT: OKAY. YOU HAVE EXPLAINED TO HIM THE SIGNIFICANCE
13 OF A VIOLENT OFFENSE AND A MOST SERIOUS OFFENSE?

14 MR. HALL: YES SIR.

15 THE COURT: AND HE UNDERSTANDS THAT AS WELL?

16 MR. HALL: YES SIR.

17 THE COURT: MR. McDANIELS, IS THAT TRUE?

18 MR. McDANIELS: YES SIR, YOUR HONOR.

19 THE COURT: AND I UNDERSTAND FROM CONFERENCES THAT WE'VE
20 HAD, STATUS CONFERENCES THAT WE'VE HAD PRIOR TO THIS PLEA, THAT
21 ONE OF YOUR CONCERNS, OF COURSE, IS THAT YOU NOT CHANGE YOUR
22 LOCATION WHERE YOU ARE PRESENTLY HOUSED. IS THAT CORRECT?

23 MR. McDANIELS: YES, YOUR HONOR.

24 THE COURT: DO YOU UNDERSTAND THAT WHILE I'M GOING TO
25 STRUCTURE THE PLEA CONSISTENT WITH, IF I ACCEPT IT, CONSISTENT WITH

1 WHAT YOUR AGREEMENT IS, THAT I MAKE NO GUARANTEE THAT THAT WILL
2 HAPPEN. DO YOU UNDERSTAND THAT?

3 MR. McDANIELS: YES, YOUR HONOR.

4 THE COURT: AND THAT'S NOT MOTIVATING YOU IN THIS PLEA,
5 BECAUSE I DON'T HAVE ANY CONTROL OVER THAT. DO YOU UNDERSTAND
6 THAT?

7 MR. McDANIELS: YES, YOUR HONOR.

8 THE COURT: I WANT TO BE SURE YOU UNDERSTAND THAT BECAUSE I
9 DON'T WANT LATER YOU TO COME BACK AND SAY, WAIT A MINUTE, THE
10 JUDGE DIDN'T TELL ME THAT I WAS GONNA BE MOVED, BECAUSE IF I WAS
11 MOVED, THEN I WOULDN'T HAVE ENTERED THE PLEA.

12 MR. McDANIELS: YES SIR.

13 THE COURT: MY UNDERSTANDING IS YOU HOPE THAT IT DOESN'T, BUT
14 YOU KNOW THERE'S NO ASSURANCE THAT THAT'S GONNA HAPPEN.

15 MR. McDANIELS: YES SIR.

16 THE COURT: OKAY.

17 MR. McDANIELS: AS LONG AS IT'S RUN CONCURRENT LIKE I---

18 THE COURT: SIR, THE WORDING, IF I ACCEPT IT, I'M GOING TO PUT
19 THAT WORDING. BUT I DON'T CARE WHAT WORDS YOU WANT---

20 MR. McDANIELS: RIGHT.

21 THE COURT: ---AND WHAT WORDS YOU AGREE TO..

22 MR. McDANIELS: YES SIR.

23 THE COURT: I HAVE NO CONTROL OVER WHAT HAPPENS ONCE YOU
24 LEAVE THIS COURTROOM. DO YOU UNDERSTAND THAT?

25 MR. McDANIELS: YES SIR.

1 THE COURT: IS THERE ANY QUESTION IN YOUR MIND ABOUT THAT?

2 MR. McDANIELS: NO SIR.

3 THE COURT: AND THAT DOESN'T DETER YOU FROM ENTERING YOUR
4 ALFORD PLEA?

5 MR. McDANIELS: NO SIR.

6 THE COURT: THAT'S YOUR DESIRE, TO STILL GO FORWARD WITH THIS
7 ALFORD PLEA?

8 MR. McDANIEL: YES SIR.

9 THE COURT: DO YOU UNDERSTAND THAT IF I ACCEPT YOUR PLEA
10 UNDER YOUR NEGOTIATED SENTENCE THAT YOU WILL NOT HAVE A JURY
11 TRIAL ON ANY OF THESE CHARGES?

12 MR. McDANIEL: YES SIR, YOUR HONOR.

13 THE COURT: DO YOU UNDERSTAND THE STATE WOULD HAVE TO
14 PROVE YOU GUILTY BEYOND A REASONABLE DOUBT?

15 MR. McDANIELS: YES, I DO, YOUR HONOR.

16 THE COURT: AND YOU UNDERSTAND YOU DON'T HAVE TO PROVE
17 YOUR INNOCENCE?

18 MR. McDANIELS: YES SIR, YOUR HONOR.

19 THE COURT: YOU WOULD HAVE A CHANCE TO CONFRONT THOSE
20 WITNESSES. MR. HALL COULD CROSS-EXAMINE THEM ON YOUR BEHALF. DO
21 YOU REALIZE THAT?

22 MR. McDANIELS: YES SIR, YOUR HONOR.

23 THE COURT: YOU WON'T HAVE THAT CHANCE NOW, BECAUSE UNDER
24 ALFORD, WE'RE NOT GOING TO HAVE A JURY TRIAL. DO YOU UNDERSTAND
25 THAT?

1 MR. McDANIELS: YES, YOUR HONOR.

2 THE COURT: NOTWITHSTANDING YOUR FIRST PRINCIPLE, THAT YOU
3 SAY YOU'RE NOT GUILTY, YOU REALIZE THAT?

4 MR. McDANIELS: YES SIR, YOUR HONOR.

5 THE COURT: YOUR LAWYER HAS TALKED TO YOU ABOUT WHAT IT
6 MEANS TO HAVE A VIOLENT OFFENSE?

7 MR. McDANIELS: YES SIR, YOUR HONOR.

8 THE COURT: AND YOU UNDERSTAND MOST SERIOUS IS A STRIKE. AND
9 IF YOU HAVE TWO MOST SERIOUS OFFENSES, THEN IT'S POTENTIAL LIFE
10 WITHOUT PAROLE. DO YOU UNDERSTAND THAT?

11 MR. McDANIELS: YES SIR, YOUR HONOR.

12 THE COURT: YOU REALIZE THAT IN ENTERING A PLEA UNDER ALFORD
13 THAT YOU ARE GIVING UP YOUR CONSTITUTIONAL RIGHT TO REMAIN
14 SILENT?

15 MR. McDANIELS: YES SIR, YOUR HONOR.

16 THE COURT: HAS ANYONE THREATENED YOU IN ANY WAY, MR.
17 McDANIELS, TO ENTER THIS PLEA UNDER ALFORD?

18 MR. McDANIELS: NO SIR, NOBODY HAS.

19 THE COURT: OTHER THAN THE PROMISES WHICH ARE CONTAINED IN
20 THE NEGOTIATED SENTENCE WHICH IS IN THE RECORD IN THIS PROCEEDING
21 NOW, ANY OTHER PROMISES BEEN MADE TO YOU TO GET YOU TO PLEAD
22 GUILTY UNDER ALFORD?

23 MR. McDANIELS: NO SIR.

24 THE COURT: ARE YOU SURE OF THAT, SIR?

25 MR. McDANIELS: YES SIR, YOUR HONOR.

1 THE COURT: LISTEN TO THE SOLICITOR, NOW, AS SHE TELLS ME THE
2 FACTS. I'LL NEED TO ASK YOU SOME QUESTIONS ABOUT IT.

3 SOLICITOR, IF YOU WOULD, I'LL BE HAPPY TO HEAR FROM YOU NOW.

4 MS. THOMPSON: THANK YOU, YOUR HONOR. ON MARCH 11, 2006, THE
5 DEFENDANT WAS DETAINED IN RICHLAND COUNTY BASED ON SUSPICIOUS
6 ACTIVITY. HE'D BEEN ARRESTED FOR CDV. AFTER HIS ARREST, HE
7 ADMITTED TO THE RICHLAND COUNTY OFFICERS THAT HE BROKE INTO ■■■
8 SOUTHLAND AVENUE IN BOILING SPRINGS, THE HOME OF ONE AMY
9 KIMBRELL. SPARTANBURG COUNTY WAS THEN NOTIFIED.

10 THE DEFENDANT WAS THEN BROUGHT UP TO SPARTANBURG COUNTY
11 WHERE HE ADMITTED TO SPARTANBURG COUNTY OFFICERS THAT HE BROKE
12 INTO A HOUSE AT ■■■ HIGHWAY 9, IN CAMPOBELLO.

13 THE ITEMS TAKEN FROM THE FIRST HOUSEHOLD INCLUDED GUNS AND
14 WEAPONS, PERSONAL EFFECTS AND JEWELRY. AND THE SECOND HOME
15 INCLUDED JEWELRY, MONEY AND CAMERAS AND OTHER PERSONAL
16 EFFECTS.

17 THE COURT: MR. McDANIELS, THAT'S A BRIEF RECITATION. YOU
18 UNDERSTAND THAT?

19 MR. McDANIELS: YES SIR.

20 THE COURT: BUT YOU BELIEVE THE STATE'S PREPARED TO PROVE
21 THOSE FACTS WHICH THE SOLICITOR HAS JUST STATED TO ME; THAT IS,
22 CALL WITNESSES WHO WILL TESTIFY TO THOSE FACTS?

23 MR. McDANIELS: YES SIR.

24 THE COURT: AND YOU BELIEVE THAT ONCE A JURY HEARS THE ENTIRE
25 CASE THEY MOST PROBABLY WOULD FIND YOU GUILTY?

1 MR. McDANIELS: YES SIR, YOUR HONOR.

2 THE COURT: SOLICITOR, I'LL BE HAPPY AT THIS POINT TO HEAR FROM
3 ANY AND ALL THE VICTIMS. THANK YOU FOR BEING HERE. I'M SORRY THAT
4 YOU HAVE TO BE HERE UNDER THESE CIRCUMSTANCES. I JUST ASK THAT IF
5 YOU CHOOSE TO SPEAK THAT YOU GIVE ME YOUR FULL NAME, PLEASE, FOR
6 THE RECORD.

7 MS. KIMBRELL: MY NAME IS JANE CHRISTINE KIMBRELL.

8 THE COURT: YES, MS. KIMBRELL.

9 MS. KIMBRELL: THE THINGS HE TOOK FROM MY HOME WERE THE
10 ONLY THINGS I HAD LEFT OF MY HUSBAND. I REALIZE THAT JEWELRY AND
11 THINGS I WILL NEVER SEE AGAIN. HE TOOK A LAPTOP THAT WAS THE LAST
12 SIX MONTHS OF HIS LIFE. IF THERE'S ANY WAY HE POSSIBLY REMEMBER
13 WHERE HE MIGHT HAVE LEFT THIS LAPTOP, I DON'T EXPECT TO GET IT BACK,
14 BUT WHOEVER MAY HAVE PURCHASED IT FROM A PAWN SHOP OR
15 SOMETHING, MAY HAVE THE HEART TO LET ME HAVE A COPY OF WHAT WAS
16 ON THE LAPTOP. IF HE CAN REMEMBER, IT WOULD BE A WONDERFUL,
17 WONDERFUL THING FOR HIS CHILDREN TO HAVE IT BACK.

18 THE COURT: I WILL CERTAINLY LET HIM TALK WITH HIS LAWYER
19 ABOUT THAT AND MAYBE THEY CAN RESPOND. I DON'T KNOW THAT. AND I
20 CERTAINLY UNDERSTAND WHY IT'S IMPORTANT. IT HAS NOTHING TO DO
21 WITH THE VALUE OF THE COMPUTER AND I UNDERSTAND THAT FULLY. IT'S
22 WHAT YOU JUST STATED.

23 IT'S ONE OF THE THINGS THAT YOU EARLY ON IN THIS JOB-- AND I
24 REALIZED IT WHEN I WAS DOING WHAT THE SOLICITOR'S DOING AND MR.
25 HALL'S DOING. BUT IT TAKES A DIFFERENT PERSPECTIVE FROM THIS SIDE OF

1 THE BENCH. BUT IT'S ONE OF THE REASONS THAT I CONSIDER BREAKING
2 INTO SOMEONE'S HOME, WHETHER IT'S BURGLARY, FIRST OR BURGLARY,
3 SECOND; DOESN'T MAKE ANY DIFFERENCE. IT'S ONE OF THE WORST CRIMES
4 AS FAR AS I CONCERNED.

5 AND I'M NOT TRYING TO SAY MURDER IS NOT SIGNIFICANT. BUT WHEN
6 YOU TAKE FROM PEOPLE SOMETHING AS CRITICAL I THINK IN THIS COUNTRY
7 AS THE LAST BASTION, YOUR LAST PLACE THAT YOU CAN GO TO BE SAFE.
8 WHEN YOU TAKE THAT FROM SOMEBODY, YOU'VE TAKEN SOMETHING MUCH
9 MORE THAN PROPERTY. AND I UNDERSTAND THAT.

10 AND GIVEN THE FACTS IN THIS CASE, IT'S EVEN MORE SIGNIFICANT.
11 AND I'M SORRY THAT YOU HAVE TO BE HERE. I'M SORRY, AS I KNOW THAT
12 YOU ARE, AND IT'S EMPTY WORDS, BUT PLEASE KNOW THEY'RE HEARTFELT
13 OF WHAT YOU'RE HAVING TO ENDURE FOR THE SACRIFICES THAT YOU, YOUR
14 FAMILY AND EVERYONE HAS MADE, AND MOST IMPORTANTLY HE MADE FOR
15 ALL OF US.

16 I JUST THANK YOU FOR BEING HERE, MA'AM. ANYONE ELSE?

17 (NO RESPONSE)

18 MR. HALL: YOUR HONOR, WE APPRECIATE IT. LIKE I SAID, WE TALKED
19 A LONG TIME ABOUT THIS AND NEVER CAME UP WITH ANY WAY WE COULD
20 GET ANYTHING BACK.

21 THE COURT: THANK YOU. I UNDERSTAND THAT. MR. McDANIELS.

22 MR. McDANIELS: YES SIR, YOUR HONOR.

23 THE COURT: THE PROCEEDING THAT WE HAVE RIGHT NOW, OF
24 COURSE, IS-- AGAIN, I HAVE TO MAKE A DETERMINATION OF WHETHER I
25 WANT TO ACCEPT OR NOT. AND I UNDERSTAND YOU AND I HAVE TALKED

1 ABOUT THE FIRST PRINCIPLE OF THIS PLEA IS THAT I DIDN'T DO THIS. IS IT
2 STILL YOUR DESIRE, SIR, THAT WE GO FORWARD WITH THIS PLEA? IS IT
3 STILL YOUR DESIRE THAT I ACCEPT YOUR NEGOTIATED SENTENCE, SIR?

4 MR. McDANIELS: YES SIR, YOUR HONOR.

5 THE COURT: AND YOU'VE BEEN TRUTHFUL IN RESPONDING TO ALL MY
6 QUESTIONS HERE THIS MORNING, SIR?

7 MR. McDANIELS: YES SIR, YOUR HONOR.

8 THE COURT: DO YOU REALIZE AND UNDERSTAND THAT I WILL BE
9 RELYING ON YOUR RESPONSES WHEN I MAKE MY DECISION AS TO WHETHER
10 OR NOT I CAN ACCEPT THIS PLEA?

11 MR. McDANIELS: YES SIR, YOUR HONOR.

12 THE COURT: VERY WELL. MR. HALL, I FIND FIRST OF ALL THAT MR.
13 McDANIELS CERTAINLY UNDERSTANDS THE SIGNIFICANCE OF AN ALFORD
14 PLEA. AND THANK YOU FOR YOUR COUNSEL IN EXPLAINING THAT TO HIM.
15 HE'S DEMONSTRATED THAT BY HIS RESPONSES IN EVERY RESPECT.

16 I FIND THAT HE HAS HAD THE BENEFIT OF COMPETENT COUNSEL AND
17 HE FULLY UNDERSTANDS THE CONSEQUENCES OF HIS PLEA, INCLUDING THE
18 CONSEQUENCE THAT HE WOULD LOSE HIS RIGHT TO A JURY TRIAL, THE
19 RIGHT TO CONFRONT THE WITNESSES AGAINST HIM, AND HIS RIGHT TO
20 REMAIN SILENT.

21 NOW, SIR, I'LL BE HAPPY TO HEAR FROM YOU AND FROM ANYONE AS
22 TO WHY I SHOULD ACCEPT AND IMPOSE THE NEGOTIATED SENTENCE.
23 THANK YOU, SIR.

1 MR. HALL: YOUR HONOR, KEVIN'S HERE TODAY. HIS MOTHER IS
2 PRESENT. SHE IS QUITE FAMILIAR WITH THE SITUATION. I DON'T KNOW IF
3 SHE WILL ADDRESS THE COURT.

4 I DO WANT TO TOUCH BASE WITH THE RETURN OF PROPERTY. I SPOKE
5 WITH MS. KIMBRELL THIS MORNING AND TOLD HER KEVIN WISHES HE
6 COULD REPLACE THE PROPERTY AND TELL THEM WHERE IT WAS, BUT HE
7 DOESN'T KNOW WHERE THE PROPERTY WAS.

8 THIS WAS AN ILL-CONCEIVED PLAN TO STOP WHAT WAS GOING ON AT
9 A CRACK DEALER'S HOUSE INVOLVING PROSTITUTING YOUNG GIRLS IN
10 RICHLAND COUNTY. IN HIS MIND AT THE TIME, OUR POSITION WOULD BE,
11 RICHLAND COUNTY, HE GAVE THEM INFORMATION ABOUT THIS BURGLARY,
12 PARTICULARLY THE KIMBRELL BURGLARY. HE SAID HE TOOK THINGS FROM
13 A POLICE OFFICER'S HOUSE TO THIS CRACK DEALER'S HOUSE AND THEY
14 WOULD IMMEDIATELY GO RAID THE HOUSE, WHICH THEY DID. THEY DID
15 NOT CATCH ANYBODY IN PROSTITUTION, BUT DID FIND SOME UNDERAGE
16 YOUNG GIRLS THERE, BUT NONE OF THE PROPERTY FROM THIS.

17 HE REGRETS THE PAIN THAT HE'S CAUSED TO THE KIMBRELL FAMILY
18 BY THIS SCHEME HE HATCHED. I THINK THAT THE NEGOTIATED SENTENCE
19 IN THIS CASE FOR THIS PLEA IS VERY REASONABLE, GIVEN ALL THE
20 CIRCUMSTANCES, SAVING BOTH OF THESE FAMILIES FROM HAVING TO GO
21 THROUGH THE TRIAL.

22 WE DO ASK THE COURT TO ACCEPT THE NEGOTIATED SENTENCE.

23 THE COURT: OKAY. MR. McDANIELS, IS THERE ANYTHING YOU WISH
24 TO SAY, SIR?

1 MR. McDANIELS: YES SIR. MAY IT PLEASE THE COURT. I APPRECIATE
2 MR. HALL SPEAKING OUT FOR ME AND EXPLAINING WHAT HAPPENED THERE
3 AS FAR AS THE CRIME AND STUFF. I FEEL AS THOUGH AFTER SPEAKING WITH
4 MY ATTORNEY, AND THAT WE WERE SCHEDULED FOR TRIAL TODAY.

5 THE COURT: YES SIR.

6 MR. McDANIELS: AND I SPOKE WITH MY MOTHER WHEN SHE WAS
7 HERE WITH MY FATHER, ABOUT THE SITUATION. WE HAVE ACCEPTED THE
8 NEGOTIATED SENTENCE.

9 I'M REALLY ASKING THE COURT HERE TODAY, WHAT I'M ASKING THE
10 COURT TO DO-- LIKE I SAY, I CHANGED MY PLEA FROM NOT GUILTY TO AN
11 ALFORD PLEA. I'M ASKING THIS HONORABLE COURT TO PLEASE ACCEPT
12 THAT, TO SENTENCE ME IN THIS STATE, AND SENTENCE ME CONCURRENT IN
13 MY CURRENT SENTENCE, WHICH I AM CURRENTLY SERVING A FIFTEEN-YEAR
14 SENTENCE IN THIS STATE, FOLLOWED BY A SEVENTEEN-YEAR SENTENCE IN
15 THE FEDERAL BUREAU OF PRISONS.

16 I ASK THIS COURT TO RUN IT CONCURRENT WITH MY FEDERAL
17 SENTENCE, NOT MY STATE SENTENCE. THANK YOU, YOUR HONOR.

18 THE COURT: JUST SO YOU UNDERSTAND, IT'S MY UNDERSTANDING
19 THAT ONCE I SENTENCE, ONCE I IMPOSE THE SENTENCE, IT LEAVES ME, IT
20 BECOMES MORE OF A PART OF THE EXECUTIVE BRANCH, AND THAT IS THE
21 ADMINISTRATIVE ASPECT WITH THE DEPARTMENT OF CORRECTIONS. WE
22 CAN PUT WHATEVER WE WANT, BUT ANY SENTENCE IMPOSED, THE
23 SENTENCE THAT YOU ARE PRESENTLY SERVING IN SOUTH CAROLINA,
24 UNLESS I PUT CONSECUTIVE, IT'S MY UNDERSTANDING IT IS TO BE SERVED

1 CONCURRENTLY. SO, THERE'S NO QUESTION THAT'S GONNA HAPPEN. DO
2 YOU UNDERSTAND THAT?

3 MR. McDANIELS: YES SIR, YOUR HONOR.

4 THE COURT: OKAY. I WISH THERE WAS SOME WAY I COULD
5 ACCOMPLISH WHAT THE VICTIM WANTS, BUT IT'S NOT, AND I'M SORRY. I
6 WISH IT WAS MORE THAT I COULD TO DO RESTORE EVERYTHING, BUT
7 THERE'S NOT.

8 I THINK THAT GIVEN ALL THE FACTS AND CIRCUMSTANCES IN THIS
9 CASE, AND GIVEN THE CANDOR THAT'S BEEN DEMONSTRATED ON BOTH
10 SIDES, THIS PROBABLY IS THE BEST RESOLUTION. AS WE TALKED
11 YESTERDAY, THE TRAUMA OF A TRIAL, AND TO GO THROUGH WITH IT
12 AGAIN, WITH WHAT YOU, THE TRAUMA THAT YOU'VE HAD TO ENDURE, TO
13 HAVE THAT AGAIN, I'M GLAD THAT YOU WON'T HAVE THAT. I THINK
14 THERE'S SOMETHING TO BE SAID FOR THAT AS WELL.

15 I WILL ACCEPT THE NEGOTIATED SENTENCE. THE SENTENCE IS AS
16 FOLLOWS, MR. McDANIELS:

17 ON INDICTMENT 2008-1743, THE SENTENCE IS YOU BE COMMITTED TO
18 THE DEPARTMENT OF CORRECTIONS FOR A TERM OF FIFTEEN YEARS.
19 YOU'RE GIVEN CREDIT FOR TIME SERVED, AND THEY WILL MAKE THAT
20 COMPUTATION AT THE DEPARTMENT OF CORRECTIONS. THIS SENTENCE IS
21 ALSO TO RUN CONCURRENTLY WITH THE FEDERAL SENTENCE YOU'RE
22 PRESENTLY SERVING, AND I HAVE WRITTEN THAT ON THE SENTENCING
23 SHEET.

24 2008-1744, THE SENTENCE IS FIFTEEN YEARS. IT IS CONCURRENT.
25 YOU'RE GIVEN CREDIT FOR THE TIME THAT YOU'VE SERVED AND THE

1 DEPARTMENT WILL COMPUTE. THIS SENTENCE IS ALSO TO RUN
2 CONCURRENTLY WITH THE FEDERAL SENTENCE YOU'RE PRESENTLY
3 SERVING.

4 THE SENTENCE OF THE COURT ON 2008-1745, IS FIVE YEARS. THAT
5 SENTENCE IS CONCURRENT. YOU'RE GIVEN CREDIT FOR TIME SERVED. AND
6 THIS SENTENCE IS ALSO TO RUN CONCURRENTLY WITH THE FEDERAL
7 SENTENCE YOU'RE PRESENTLY SERVING.

8 THE SENTENCE OF THE COURT ON 2008-1746, IS FIVE YEARS. IT IS
9 CONCURRENT. YOU'RE GIVEN CREDIT FOR TIME SERVED. AND THIS
10 SENTENCE IS TO RUN CONCURRENTLY WITH THE FEDERAL SENTENCE THAT
11 YOU'RE PRESENT SERVING.

12 GOOD LUCK TO YOU, SIR.

13 MR. HALL: THANK YOU, YOUR HONOR.

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CERTIFICATE

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I, THE UNDERSIGNED PHYLLIS S. BARRETT, OFFICIAL COURT REPORTER FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE HEARING HELD IN THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR THE SEVENTH JUDICIAL CIRCUIT, SPARTANBURG COUNTY, SOUTH CAROLINA, ON THE 26TH DAY OF AUGUST, 2008.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO. "


PHYLLIS S. BARRETT

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF GENERAL SESSIONS

The State,

-vs-

Kevin McDaniels,
Defendant.

TRANSCRIPT OF RECORD
2008-GS-42-1743-1746

December 14, 2017
Spartanburg, South Carolina

B E F O R E :

HONORABLE J. MARK HAYES, JUDGE

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

DERRICK BRUCE BULSA, ESQUIRE
Attorney for the State

ROBERT B. HALL, ESQUIRE
Attorney for the Defendant

Linda D. Moffitt
Circuit Court Reporter

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Motion -- page 3.
No sworn testimony.

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
D-1	Statement dated March 15, 2006		4
D-2	Pre-interrogation waiver form		4
D-3	Copy of warrants		4
D-4	Copy of warrants		4

1 (Statement dated March 15, 2006 marked Defendant's
2 Exhibit No. 1; pre-interrogation waiver form marked
3 Defendant's Exhibit No. 2; copy of warrants marked
4 Defendant's Exhibit No. 3; copy of warrants marked
5 Defendant's Exhibit No. 4.)

6 THE COURT: All right. Yes. We're here on the matter
7 of the State vs. Kevin Wayne McDaniels. I believe this is
8 Mr. Hall's motion.

9 MR. HALL: That's correct, Your Honor. Do you have a
10 copy of the motion?

11 THE COURT: I know I do, but let me have it.

12 Yes, sir.

13 MR. HALL: May it please the Court, Your Honor.

14 Back in 2008 when Mr. McDaniels pled guilty we had
15 occasion to negotiate a 15 concurrent with other sentences
16 and his federal sentence. At that time he pled in front of
17 Dennis Markley of Charleston.

18 In the state's presentation Enree [sic] Thompson was
19 assisting then Deputy Solicitor Barnette and presented it,
20 and her presentation that he was arrested March 11th of
21 2016 -- 2006 in Richland County and confessed to at least
22 one of these crimes.

23 The exhibits I have, the first one is a long
24 typed-written confession involving this, these charges, and
25 some others in another jurisdiction that he confessed to

1 on, I think, the 15th of March of that year. The next day
2 he was with Spartanburg County, March 16th, went around,
3 and he confessed to these offenses that he pled on.

4 The last exhibit I have are two sets of warrants
5 dated -- issued March 31st of 2006.

6 What Mr. McDaniels is asking is that he should get
7 credit from the time that he confessed, or at least the
8 time they issued the warrants. And the warrants weren't
9 served for about 15 months. And that does make a great
10 deal of difference in his time calculation, the start-out
11 date.

12 It's not -- we understand that the Department of
13 Corrections has to calculate the time and what credits to
14 give him and those type things and release dates, but the
15 start date for the sentence, I think the -- there was an
16 administrative order a year or two ago, State vs. Hall,
17 where the Supreme Court says the Department of Corrections
18 can't hold warrants and then serve them and start over
19 again. And we think that would be the -- in essence,
20 what's happening here.

21 The -- Spartanburg County had the warrants. They knew
22 about it. He had given statements. And then they didn't
23 serve the warrants until 2006, I mean, 2008, June of 2008.
24 And he's just asking that we have an order backdating the
25 start date for his credit to March of 2006.

1 THE COURT: All right. So if I understand correctly,
2 the -- your legal basis is state vs. Hall?

3 MR. HALL: Yes, sir. I think it's an administrative
4 order that Chief Justice Toal issued and said that, you
5 know, the Department of Corrections had a policy of putting
6 warrants, holding warrants for a while or a period of time
7 before they served them and that's just not fair that they
8 should get credit for that. And it's just a fairness
9 argument.

10 They had the warrants. If they had served them he
11 would have gotten the time, but they held them for 15
12 months before they were served.

13 THE COURT: Yes, sir.

14 MR. BULSA: Your Honor, I actually object to the
15 hearing of this case because Judge Markley Dennis was the
16 sentencing judge, and he's still available. He can hear
17 this himself.

18 Secondly, this computation of sentences comes through
19 the Department of Corrections, not the solicitor's office.
20 They should be the party to decide this. Mr. Hall has not
21 brought them here to explain how they came up with their
22 calculations.

23 He's not cited the statute under which he's going,
24 which I presume is 24-13-40. That's the computation of
25 time served by prisoners. I've not been provided with a

1 copy of State vs. Hall, his supposed legal argument.

2 Your Honor, this defendant was arrested in Lexington
3 County and was awaiting trial in Lexington County back in
4 2006 for grand larceny and carbreaking. He was --
5 whatever -- Richland -- Lexington.

6 Your Honor, he was sentenced in October of 2007 on
7 those charges, grand larceny and breaking into motor
8 vehicle. So whatever time he served down there awaiting a
9 trial or sentencing should go towards that sentence.

10 He was not served with the Spartanburg County warrants
11 until June of 2007. So he was, in essence, already serving
12 time on another case while he was awaiting service of these
13 warrants and prosecution. But I don't see why Judge Dennis
14 would not be the one to hear this.

15 THE COURT: All right. He says that Judge Dennis
16 should be the one hearing this.

17 MR. HALL: Well, Your Honor, it's -- we can do it in
18 front of Judge Dennis. I don't know that Judge Dennis will
19 be up here, but that'll require going where he is and
20 transporting Mr. McDaniels to where he is, possibly the
21 solicitor here transport him there if there's any question
22 that comes up for him.

23 I think it would be much more expedient for the
24 administrative judge in this circuit than sentencing to
25 hear it.

1 And as far as the Department of Corrections, I'm
2 not -- I'm not saying they don't get to calculate the time
3 and say when he's out. But the start date I think is
4 something for the Court to determine, not the Department of
5 Corrections.

6 THE COURT: And, Mr. Bulsa, do you have a citation to
7 State vs. Hall?

8 MR. BULSA: No, sir, I don't. I haven't been provided
9 that.

10 MR. HALL: I apologize, Your Honor. It's an
11 administrative order, I think, January of 2015.

12 MR. BULSA: Was it a case? It's not a case?

13 MR. HALL: Yeah. The judge -- the chief justice
14 issued the order that said there's a -- the policy is they
15 get credit for the time. They can't -- the Department of
16 Corrections can't hold warrants and then serve them. They
17 get credit for when they have them basically.

18 THE COURT: I guess maybe my question is -- maybe Mr.
19 Bulsa's at the same question.

20 Is it the administrative order, is your basis for
21 authority, or is it State vs. Hall, or is it that State vs.
22 Hall interpreted the administrative order?

23 MR. HALL: State vs. Hall is the administrative order,
24 said we're going to handle this administratively and issue
25 an order the Department of Corrections can't just hold

1 warrants on inmates.

2 And I'm not saying the Department of Corrections held
3 warrants, but this time the State of South Carolina through
4 Spartanburg County held warrants for 15 months before they
5 served them on him, even though they could have served them
6 on him at any time. He was in custody the whole time.

7 And it's just -- it's just a fairness argument, Your
8 Honor, that, you know, if the -- you know, that -- his
9 arrest date should be considered when they couldn't
10 simply -- they transport warrants all of the time.

11 MR. BULSA: That's one of the reasons I bring up Judge
12 Dennis.

13 We don't know what kind of discussions were held
14 during the negotiation phase of this case. This goes back
15 to 2006.

16 He was -- he benefited from this case tremendously.
17 He was looking at a life-without-parole sentence. They
18 withdrew that and allowed him to plead to the minimum of 15
19 years on a burglary first.

20 So I don't know. I wasn't the prosecutor on the case.
21 I don't know what was said.

22 MR. HALL: I just assumed --

23 MR. BULSA: I'm sure there was probably some
24 discussion about when the case was going to start and when
25 the service of the sentence was going to start.

1 MR. HALL: I didn't know -- I did not know Mr.
2 Barnette would not be here.

3 We did not discuss beyond what Ms. Thompson put on the
4 record that he was arrested in Richland County on
5 March 11th of 2006.

6 He confessed and he gave a written statement and he
7 gave Spartanburg County a written statement. And that all
8 happened in a period of a week, less than a week.

9 But the warrants were issued on March the 31st, 2006.
10 That's what I think would be reasonable, that he get credit
11 from March 31st of 2006. There was no discussion saying
12 we're going to set it at this date or that date.

13 THE COURT: So, but Mr. Balsa makes the point that
14 this was a negotiated sentence that, from life without the
15 possibility of parole to --

16 MR. HALL: That is correct, Your Honor.

17 THE COURT: -- a minimum 15-year sentence?

18 MR. HALL: Negotiated 15 concurrent with his other
19 sentences and the federal sentence.

20 THE COURT: So we don't know what precipitated the
21 agreement.

22 MR. HALL: There was some issues with the case, Your
23 Honor, about timeframes, and Deputy solicitor Barnette and
24 I had worked the case out to that before. And before I got
25 to speak with Mr. McDaniels about it the then solicitor

1 said no.

2 And then when we came for the trial the offer was
3 remade with solicitor Gowdy's approval. And Mr. McDaniels
4 was allowed to talk with his mother, and he decided to
5 accept the plea, and he came in in front of Judge Dennis
6 and pled.

7 THE COURT: So the Spartanburg case ran concurrent
8 with the Lexington case?

9 THE DEFENDANT: Federal case.

10 MR. HALL: It ran -- Mr. McDaniels' big concern was
11 running concurrent with the federal cases because he had
12 federal time and he did not want to get in limbo where he'd
13 have to do state time and then go back and do federal time.
14 And everybody worked with us to get that done.

15 And this issue, quite frankly, did not come up at that
16 time. But the sentencing sheet -- nothing was checked
17 consecutive. So everything was concurrent on the other
18 sentences.

19 THE COURT: So the issue, if I understand you
20 correctly, the issue of credits or the issue of when the
21 sentence would start was not raised at all.

22 MR. HALL: No, sir, not -- not to my memory. And
23 looking at the -- my memory from seeing the transcript at
24 the P.C.R., it was not. That was not raised.

25 It was -- the big concern was does it run with his

1 federal time. And I specifically remember reading Judge
2 Dennis, saying I can order it but I can't do anything about
3 the federal system and the bureau of prisons. I hope they
4 do run it together with you. And that's what happened. He
5 went in federal custody, and then he got released and he's
6 doing the remainder of his state time.

7 THE COURT: Anything else, Mr. Bulsa?

8 MR. BULSA: Your Honor, I've been looking at the rap
9 sheet.

10 I do show a charge out of Lexington County from July
11 of 2007. And I'm confused as to how that would happen when
12 he was served with these warrants in June. But he was
13 convicted according to the rap sheet on Lexington County
14 charges in October of 2007.

15 So that's -- I think we need the Department of
16 Corrections here if Your Honor is inclined to entertain
17 changing this sentence. I think we need the Department of
18 Corrections here to explain to the Court as to how they
19 came up with these calculations.

20 MR. HALL: We're not trying to change the sentence.
21 We're trying to change the start date.

22 MR. BULSA: Well, that's the same thing.

23 THE COURT: All right. I will -- I mean, I don't have
24 State vs. Hall. I do not have a recollection of State vs.
25 Hall, so I need to review that.

1 MR. HALL: I apologize, Your Honor.

2 THE COURT: I need to review the statute. So I have
3 no indication, Mr. Bulsa, if I have an inclination to
4 change it or not. I just don't know right now.

5 MR. BULSA: Yes, sir.

6 THE COURT: But I think I understand everybody's
7 position. So I'll let you know.

8 MR. HALL: All right. Thank you, Your Honor.

9 MR. BULSA: Thank you, Judge.

10 END OF REQUESTED TRANSCRIPT OF RECORD

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 State of South Carolina)
)
 Plaintiff)
)
 vs.)
)
 Kevin Medaniels)
)
 Defendant)

IN THE GENERAL SESSIONS COURT
 SEVENTH JUDICIAL CIRCUIT
 MOTION TO GIVE JAIL CREDIT

Charge(s): Burglary / Burglary (After June 20, 1985) - First degree; Larceny / Grand Larceny, value more than \$1,000 but less than \$5,000 (2 Counts); Burglary / Burglary (Non-Violent) - Second degree
 Indictment(s): 2008GS4201743, 2008GS4201744, 2008GS4201745, 2008GS4201746
 Date of Arrest: June 21, 2007

To: Barry Barnette, Solicitor, Seventh Judicial Circuit

YOU WILL PLEASE TAKE NOTICE, that the undersigned attorney for the Seventh Judicial Circuit Public Defender Office, on behalf of the aboved-named Defendant, will move immediately before the Court on December 11, 2017 or as soon thereafter as counsel may be heard, for an amendment of the sentence handed down on August 26, 2006 on indictment(s): 2008GS4201743, 2008GS4201744, 2008GS4201745, 2008GS4201746. Specifically, to have his begin date as March 11, 2006, the date he confessed to the above offenses while in custody.

Respectfully submitted,

R. B. Hall
 Robert B. Hall, Assistant Public Defender
 Seventh Judicial Circuit Public Defender Office
 Spartanburg, South Carolina

Date: 12-11-17

Service Accepted by:
Courtney K. Petty
 Solicitor's Office, Seventh Judicial Circuit

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2017 DEC - 11 PM 4:31
 M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

STATE,)
)
)
v.)
Kevin McDaniels,)
)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
FOR THE SEVENTH JUDICIAL CIRCUIT

Order Denying Jail Credit

2008-GS-42-1743-1746

2017 DEC 27 PM 3:51
CLERK OF COURT
SPARTANBURG COUNTY

This matter came before the Court on a motion by the defendant seeking credit for jail time served in Richland County prior to being arrested on Spartanburg County charges for Burglary and Grand Larceny. A hearing was held on December 14, 2017. The defendant was represented by Robert Hall of the Spartanburg County Public Defender's office. The State was represented by Derrick Balsa of the Spartanburg County Solicitor's Office.

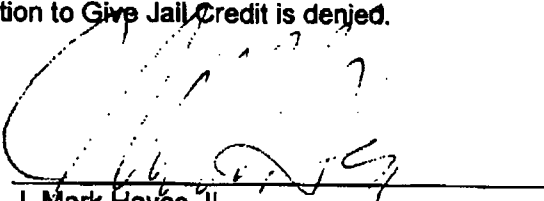
It appears that the defendant was incarcerated in the Richland County jail on March 11, 2006 for charges pending from that jurisdiction. Spartanburg County investigators were investigating burglaries occurring in Spartanburg County in January 2006. Investigators from Spartanburg met with the defendant on March 11, 2006 and the defendant confessed to the Spartanburg crimes. The defendant remained in Richland County pending the disposition of his Richland County charges. Warrants were obtained in Spartanburg County on March 31, 2006 and the defendant was served with those warrants in June 2007 when released from the Richland County charges.

Prior to appearing in Spartanburg County for trial, the defendant received a federal sentence. In August 2008, when he appeared for trial in Spartanburg, a plea was negotiated where the defendant would receive a 15 year sentence to be run concurrent with his federal sentence. A notice for life without parole was withdrawn by the State at the time of the plea negotiations. Judge Markley Dennis was the presiding judge for the plea and sentencing.

Argument was presented by the Defense and the State. The Court reviewed all the documents, including Hall v. State, Order number 2015-01-28-01 (SC Supreme Court) and 24-13-40, Code of Laws of South Carolina, 1976, as amended. After considering the arguments, this Court declines to grant the motion. Due to the circumstances surrounding the reduced plea and lack of information or explanation of the negotiations, the Court lacks confidence to not interfere with the original intent of the parties.

IT IS THEREFORE ORDERED that the Motion to Give Jail Credit is denied.

IT IS SO ORDERED.



J. Mark Hayes, II
Circuit Judge

December 27, 2017

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
Kevin Wayne McDaniels, #254398)	Case No.: 2014-CP-42-0506
Applicant,)	
v.)	ORDER OF DISMISSAL
State of South Carolina,)	
Respondent.)	

This matter comes before the Court by way of an application for post-conviction relief ("PCR") filed February 10, 2014. Applicant filed an initial PCR application¹ on June 16, 2009, with an amendment filed April 22, 2010. Respondent filed an Amended Return and Motion to Dismiss Without Prejudice on October 2010. Because Applicant was housed outside of the state in a federal facility, the Court dismissed the application without prejudice with leave to file when Applicant returned to state custody.

Respondent filed its Return to the current application on September 11, 2014, requesting that an evidentiary hearing be held. An evidentiary hearing into the matter was convened at the Spartanburg County Courthouse before the undersigned on January 11, 2016. Applicant was present at the hearing via telephone and was represented by J. Brandt Rucker, Esquire. Alicia A. Olive, Esquire, represented Respondent.

Q361

At the evidentiary hearing, Applicant testified via telephone on his own behalf. Nancy Griffin, Applicant's mother, also testified. The State presented testimony from Robert B. Hall, Esquire. This Court also had before it the records of the Spartanburg County Clerk of Court

¹ Case No. 2009-CP-42-3350

2016 MAY 14 AM 9:04

SPARTANBURG COUNTY

regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the pleadings.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections ("SCDC") pursuant to orders of commitment of the Spartanburg County Clerk of Court.² Applicant was indicted at the March 2008 term of the Spartanburg County Grand Jury for first degree burglary (2008-GS-42-1743), second degree burglary (2008-GS-42-1744), and two counts of grand larceny between \$1,000 and \$5,000 (2008-GS-42-1745, 1746). He was represented by Robert Hall, Esquire ("Counsel"). On August 26, 2008, the Applicant pleaded guilty to the charges as indicted pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), before the Honorable R. Markley Dennis, Jr. Pursuant to a negotiated sentence, Judge Dennis sentenced Applicant to confinement for concurrent terms of fifteen years on each burglary charge and five years on each grand larceny charge. Applicant did not appeal his plea or sentence.

Allegations

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

1. "Miscarriage of justice for not granting a continuance"
2. Ineffective assistance of counsel for failure to pursue a one hour continuance
3. Actual innocence, in that: "I was not in the state when the crime was committed."
4. "Police coercion—involuntary confession" "police coerced me into confession of crimes I did not commit."

RSC

M. HOPE BENTLEY
2016 MAR 11 9 07 AM
SPARTANBURG COUNTY

² Although Applicant is classified as an SCDC inmate, he is currently housed in the Federal Prison in Spartanburg, South Carolina as a result of separate federal convictions.

II. SUMMARY OF TESTIMONY PRESENTED

Applicant testified that his case was on the docket for a jury trial on the date that he pleaded guilty, August 26, 2008. Applicant testified that Counsel met with him only once before his scheduled trial. Applicant testified he could not have been guilty of the charges because he was in Newport, Florida at the time the crimes were alleged to have been committed. Applicant testified that he had sixteen affidavits from individuals who would attest that he was out of the state at the time, as well as photographs of him in Florida. He testified that he had alibi witnesses that were planning to testify at his trial and that he and Counsel discussed these witnesses. Applicant testified that his father was one of his alibi witnesses. Applicant testified his father was not present to testify at the PCR hearing but that he had expected him to testify. Applicant testified that he was being pressured with a life sentence and that Counsel abandoned him. Applicant testified his father and stepmother were on their way to the courthouse the morning that the trial was scheduled to begin and that he asked Counsel to request a one hour continuance but Counsel refused to do so. Applicant alleged that these individuals were going to testify that he was in Florida at the time the crimes were committed.

Nancy Griffin, Applicant's mother, testified that she was prepared to testify on the day of trial. Griffin testified that she, Applicant, and Counsel spoke in the conference room in the rear of the courtroom on the day Applicant's trial was scheduled to begin. She testified that the prosecuting attorney was present during their conference.

Counsel testified he did not move for a continuance because a continuance was not necessary. Counsel testified that another attorney, Joshua Schultz, Esquire, was initially appointed to represent Applicant. Counsel testified that his first contact with Applicant was on June 4, 2008, which was within days after Counsel became employed as a public defender. Counsel testified that James

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right after the plea, but that there was no need for a continuance because even if the case had gone to trial, the fact that the witnesses were running an hour late was not an issue.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, and closely pass upon their credibility. This Court has weighed their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

As a matter of general impression, this Court finds Counsel's testimony to be more credible than Applicant's testimony.

A. Ineffective Assistance of Counsel

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 an application alleges ineffective assistance of counsel, 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

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APPELLATE COURT
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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).

This Court finds Applicant has failed to establish his burden of proving either prong of Strickland. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that is expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977). This Court finds that Counsel adequately conferred with Applicant in preparation for his plea. During these conferences with Applicant, Counsel discussed the pending charges, the elements of the charges and what the State was required to prove, the potential penalties, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof. This Court further finds that Counsel conducted a proper investigation and provided thorough representation. This Court finds the

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ATTORNEY

record also reflects that the plea judge reviewed questions with Applicant and Applicant understood the nature of the charges against him and knew what evidence the State had against him. Applicant told the plea court that he spoke with his mother when she was there with his father, and that he had accepted the negotiated sentence and changed his plea from not guilty to an Alford plea. Applicant told the plea court that no one had threatened him or promised him anything to plead guilty, and the record reflects that Applicant fully understood the terms of the plea. Counsel discussed all potential witnesses, including alibi witnesses, with Applicant, investigated those witnesses, and contacted those witnesses that would have been helpful for the defense. Counsel testified he was prepared to try the case if Applicant had decided he wished to proceed. This Court finds that Applicant was facing serious charges and a sentence of life without parole if he was convicted of first degree burglary. Counsel successfully negotiated a favorable plea offer for Applicant. Therefore, this Court finds Applicant failed to satisfy his burden of proving that Counsel rendered deficient performance with respect to this allegation.

Applicant alleged that Counsel was ineffective because he failed to request a one hour continuance on the basis that Applicant's witnesses were running late. In order to show that counsel was ineffective for failing to move for a continuance, Applicant must show what benefits would accrue from additional preparation. See Skeen, 325 S.C. 210, 481 S.E.2d 129 (finding applicant failed to show counsel was ineffective for failing to request a continuance where he offered no evidence as to what benefits additional preparation would have yielded). Counsel testified there was no need to request a continuance. Applicant decided to plead guilty on the morning of his scheduled trial date. The trial proceedings had not yet begun. The witnesses were only delayed by an hour and would not have been prevented from testifying had the case gone to trial regardless of whether a

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continuance was requested. Applicant produced only one additional witness, his mother, at the PCR hearing. Neither has provided testimony to persuade this Court that a motion to continue was necessary. As a result, Applicant has failed to show that Counsel was deficient for not requesting a one hour continuance.

Applicant has failed to show that but for any alleged deficiency of Counsel, he would not have pleaded guilty but would have insisted on going to trial. Applicant was facing a sentence of life without parole if a jury had convicted him of first degree burglary. By entering a plea, he obtained the benefit of a negotiated, concurrent, fifteen year sentence on both burglary charges. Furthermore, Applicant confessed to committing the burglaries. Accordingly, this Court finds Applicant has failed to show there was any deficiency in Counsel's performance or that any alleged deficiency prejudiced him. Therefore, this Court denies and dismisses Applicants allegations of ineffective assistance.

B. Involuntary Guilty Plea

Applicant alleged that he was coerced to confess and was threatened with life without parole and therefore he was coerced to plead guilty. This Court interprets this as a claim that his plea was involuntary. This Court finds that Applicant has failed to show that his plea was involuntary.

In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v.

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STATE OF SOUTH CAROLINA
CLERK OF COURT

State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)).

An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Statements "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

This Court finds that the record fully supports the knowing and voluntary nature of Applicant's guilty plea. At Applicant's plea, Applicant told the plea judge that no one had threatened him in any way to get him to plead. Applicant told the plea judge that Counsel discussed with him what an Alford plea meant and agreed with the judge's explanation of what it meant. Applicant told the judge that he had requested that Counsel negotiate the best sentence for him. Applicant also told the judge that on the day of the plea, he had spoken to his mother and Counsel and that he had changed his plea from not guilty to an Alford plea, and he specifically asked the judge to accept it.

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 SPARTANBURG

plea and sentence him and give him concurrent sentencing. Applicant has presented no evidence or valid reasons why he should be allowed to depart from his statements made at the guilty plea hearing.

Applicant was served with notice of life sentence on August 13, 2008. Regardless, the offense of burglary first carries up to life imprisonment upon conviction. S.C. Code Ann. § 16-11-311(B). Counsel advised Applicant concerning the potential penalty he faced if he was convicted of that charge. The record plainly reflects that Applicant knew that he would receive a negotiated sentence of fifteen years when he pleaded guilty pursuant to Alford. Had Applicant gone to trial, he was facing a sentence of life without parole if convicted, and as a result of pleading, he obtained the benefit of a significantly reduced sentence of concurrent terms of fifteen years.

Similarly, Applicant failed to present any evidence to show that he was coerced to give a confession. Rather, based on the testimony at the PCR hearing and Counsel's comments to the plea judge during mitigation, Richland County deputies had detained Applicant in connection with charges in that county, and at that time he gave a statement to law enforcement with the intent that his confession would induce officers to raid a house where Applicant believed prostitution was occurring. Applicant also confessed to burglarizing another home.

Applicant has failed to show that Counsel's performance was deficient in any regard, or that any alleged deficiency prejudiced him. The record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. Therefore, this Court finds Applicant has failed to show that his plea was involuntary, and this claim is denied and dismissed with prejudice.

C. Actual Innocence

This Court finds Applicant's claim of actual innocence should be summarily dismissed for

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SPARTANBURG, SC

failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.... S.C. Code Ann. § 17-27-20 (1976).

The allegation presented by Applicant raises direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). PCR is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973).

Additionally, the PCR court cannot consider the sufficiency of the evidence against a convicted defendant. S.C. Code Ann. § 17-27-20(a)(6) (1985). The Uniform Post-Conviction Procedure Act is not a substitute for remedies that were available before ~~and~~ during the original trial or by review on motion for a new trial or on appeal. Irick v. State, 264 S.C. 632, 216 S.E.2d 545

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(1975); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975). Therefore, this Court finds this allegation must be denied and dismissed.

D. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

IV. CONCLUSION

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

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

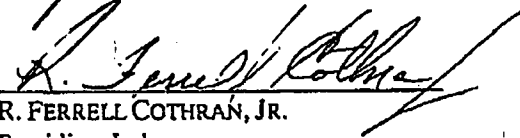
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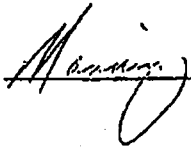
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SPARTANBURG, SC

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 29 day of April, 2016.


 R. FERRELL COTHRAN, JR.
 Presiding Judge
 Seventh Judicial Circuit

, South Carolina

SPARTANBURG COURT
 2016 MAY -4 AM 9:05
 M. HOPE BLACKLEY

DOCKET NO.

08-GS-42-1746

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAR 31 2008

TERM

THE STATE
vs.

Kevin McDaniels

Indictment for
GRAND LARCENY

SC Code: 16-13-30(B) (2)
CDR Code: 479
Class FEL-E

WITNESSES

Spartanburg County Sheriff's Office

REPORT ENDED

Computer

CARD FILLED

INDEXED

CHECKED WARRANTS

CHECKED SIGNATURE

ASSESSMENT AND
JWB CARD MADE

Computer

VIOLATIONS COPY

ARREST WARRANT

K109809

ACTION OF GRAND JURY

Kevin Bill

Foreperson of Grand Jury

Date: 3-22-08

MARK KITCHENS

2008 APR -3 AM 11:29

SPARTANBURG COUNTY
CLERK OF COURT

FILED

WITNESSES

DOCKET NO.

08-GS-42-1743

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAR 31 2008

TERM

THE STATE

vs.

Kevin McDaniels

Indictment for

BURGLARY, FIRST DEGREE
(Dwelling)

SC Code: 16-11-0311

CDR Code: 0079

Class: FEL/EXM (V)

Spartanburg County Sheriff's Office

REFERENCE MADE

REPORT ENDED

CARD PULLED

INDEXED

CHECKED WARRANTS

CHECKED SIGNATURE

ARREST WARRANT NUMBER

K109808

VIOLATIONS COPY

Computer

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ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: 3-27-08

VERDICT

MARC KITCHENS

Foreperson of Petit Jury

Date:

2008 APR -3 AM 11:29
CLERK OF COURT
SPARTANBURG COUNTY
FILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

MAR 27 2008

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

BURGLARY, FIRST DEGREE

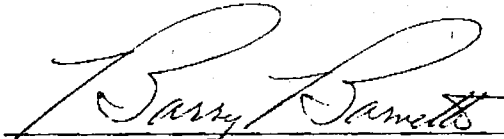
(DWELLING)

That the Defendant, Kevin McDaniels, did in Spartanburg County, between January 13, 2006 and January 14, 2006, wilfully and intentionally enter the dwelling belonging to Christine Kimbrell located at [redacted] Southland Avenue, Boiling Springs, South Carolina without consent and with the intent to commit a crime therein, and either:

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

In violation of Section 16-11-311 and Section 16-1-57, 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.


DEPUTY SOLICITOR

WITNESSES

DOCK

08-GS-42-1744

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAR 31 2008

TERM

THE STATE

vs.

Kevin McDaniels

Indictment for

BURGLARY, SECOND DEGREE

(Dwelling)

SC Code: 16-11-0312

CDR Code: 80

Class FEL-D

1. SENTENCE MADE

Computer

Spartanburg County Sheriff's Office

2. CARD PULLED

3. INDEXED

4. CHECKED WARRANTS

5. CHECKED SIGNATURE

7. ASSESSMENT AND FINE CARD MADE

Computer

ARREST WARRANT NUMBER

K109811

ACTION OF GRAND JURY

Tove Bill

Foreperson of Grand Jury

Date: 3/27/08

VERDICT

MARC KITCHENS

2008 APR -3 AM 11:29

CLERK OF COURT
SPARTANBURG COUNTY

Foreperson of Petit Jury

Date:

WITNESSES

SENTENCE MADE

REPORT ENDED

Spartanburg Co. Sheriff Dept.
 CARD FILLED

INDEXED

CHECKED WARRANTS

CHECKED SIGNATURE

ASSESSMENT AND
FINE CARD MADE

Computer

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TRAFFIC VIOLATIONS COPY

ARREST WARRANT NUMBER

K109810

ACTION OF GRAND JURY

Touc Bill

[Signature]

Foreperson of Grand Jury

Date: 3/27/08

VERDICT

MARC KITCHENS

2008 APR -3 AM 11:29

FILED
CLERK OF COURT
SPARTANBURG COUNTY
Date:

DOCKET NO.

08-GS-42-1745

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAR 31 2008

TERM

THE STATE

vs.

Kevin McDaniels

Indictment for

GRAND LARCENY

SC Code: 16-13-30 (B) (1)

CDR Code: 0478

Class FEL-F

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG STATE VS.

Kevin Mcdaniels

AKA:

Race: W Sex: M Age: 39

DOB: SS#:

Address: ROEBUCK, SC 02937600

DL#: 99999999 SID#:

IN THE COURT OF GENERAL SESSIONS

Computer

59

INDICTMENT/CASE#: 2008GS4201746

A/W#: K109809

Date of Offense: 6/21/2007

S.C. Code § : 16-13-0030(B)

CDR Code #: 0478

SENTENCE SHEET

Mc as Above

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Larceny / Grand Larceny, value more than \$1,000 but less than \$5,000

in violation of § 16-13-0030(B) of the S.C. Code of Laws, bearing CDR Code # 0478

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

BARNETTE, BARRY Defendant Attorney for Defendant SC Bar# 2596

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP days/hours Public Service Employment

Total: \$ plus 20% fcc: \$ 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

Payment Terms: set by SCDPPPS Other: The sentence is to run concurrently with the 2nd sentence he is presently serving

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 35.13 (Public Def/Prob) \$500, § 73.3, 1B TP (Law Enforce. Funding) \$25, § 33.7, 1B TP (Drug Court Surcharge) \$100, § 50-21-114(BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40:ea, 3% to County (if paid in installments) \$ 3.75, § 90.11 TP (SCCJA Surcharge) \$5, TOTAL \$ 133.90

Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE Judge Code: 2 Sentence Date: 8/26/08

COURT OF SPARTANBURG VS. Kevin Mcdaniels
Race: W Sex: M Age: 39
DOB: [redacted] SS#: [redacted]
Address: ROEBUCK, SC 02937600
DL#: 99999999 SID#: [redacted]

Computer

INDICTMENT/CASE#: 2008GS4201743
A/W#: K109808
Date of Offense: 6/21/2007
S.C. Code § : 16-11-0311
CDR Code #: 0079

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Burglary / Burglary (After June 20, 1985) - First degree

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury. (Defendant initial)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] BARNETTE, BARRY Defendant [Signature] R.B. Hall Attorney for Defendant 2596 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 15 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 with probation for _____ 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.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 set by SCDPPPS _____

*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	\$
§ 35.13 (Public Def/Prob)	\$500	\$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25.00
§ 33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ 3.75
§ 90.11 TP (SCCJA Surcharge)	\$5	\$ 5.15
TOTAL		\$ 133.90

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: This sentence is also to run concurrently with the Fed sentence he is presently serving.

Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk [Signature]
Court Reporter: [Signature]

PRESIDING JUDGE [Signature]
Judge Code: 2
Sentence Date: 8/26/08

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
STATE VS.

Kevin McDaniels

AKA:

Race: W Sex: M Age: 39

DOB: [REDACTED] SS#: [REDACTED]

Address: ROEBUCK, SC 02937600

DL#: 99999999 SID#: [REDACTED]

IN THE **Computer** GENERAL SESSIONS 89

INDICTMENT/CASE#: 2008GS4201744

A/W#: K109811

Date of Offense: 6/21/2007

S.C. Code § : 16-11-0312

CDR Code #: 0080

SENTENCE SHEET

NC vs Allford

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Burglary / Burglary (Non - Violent) (After June 20, 1985) - Second degree

in violation of § 16-11-0312 of the S.C. Code of Laws, bearing CDR Code # 0080

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury. (Defendant initial) *15 years concurrent w/ Federal Sentence*

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

B. Barnett BARNETTE, BARRY Defendant *R. B. Hall* Attorney for Defendant *2596* SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 15 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 with probation for _____ 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.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment

Total: \$ _____ plus 20% fee: \$ _____ Obtain GED _____

Payment Terms: _____ Attend Voc. Rehab. or Job Corp. _____

set by SCDPPPS _____ May serve W/E beginning _____

Recipient: _____ Substance Abuse Counseling _____

*Fine: \$ _____ Random Drug/Alcohol testing _____

§ 14-1-206 (Assessments 107.5 %) \$ _____ Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00 pmts. of \$ _____ beginning _____

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ \$ _____ paid to Public Defender Fund

§ 56-5-2995 (DUI Assessment) \$12 \$ _____ * Other: *This sentence is also to run*

§ 35.13 (Public Def/Prob) \$500 \$ _____ *concurrently with the sentence to Adult*

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00 *Fed. Sentence has is presently*

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____ *serving*

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____ Appointed PD or appointed other counsel, §35.13 TP

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____ Requires \$500 be paid to Clerk during probation.

3% to County (if paid in installments) \$ _____ \$ 3.75

§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.15

TOTAL \$ 133.90

R. Barnett
Clerk of Court/Deputy Clerk

Court Reporter: *P. Barnett*

PRESIDING JUDGE *[Signature]*
Judge Code: 2
Sentence Date: 8/26/08

STATE OF SOUTH CAROLINA

COUNTY OF 62 SPARTANBURG
STATE VS.

Kevin Mcdaniels

AKA: _____

Race: W Sex: M Age: 39

DOB: _____ SS#: _____

Address: _____

ROEBUCK, SC 02937600

DL#: 99999999 SID#: _____

IN THE COURT OF GENERAL SESSIONS

Computer

INDICTMENT/CASE#: 2008GS4201745

A/W#: K109810

Date of Offense: 6/21/2007

S.C. Code §: 16-13-0030(B)

CDR Code #: 0478

SENTENCE SHEET

*News
Allford*

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Larceny / Grand Larceny, value more than \$1,000 but less than \$5,000

in violation of § 16-13-0030(B) of the S.C. Code of Laws, bearing CDR Code # 0478

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. Concurrent with Federal Sentence w/minor 1st or Lewd Act) (Defendant initial)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: *[Signature]* BARNETTE, BARRY Defendant *[Signature]* Attorney for Defendant *[Signature]* SC Bar# 2596

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment

Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____ Obtain GED _____

set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____

Recipient: _____ May serve W/E beginning _____

*Fine: \$ _____ Substance Abuse Counseling _____

§ 14-1-206 (Assessments 107.5 %) \$ _____ Random Drug/Alcohol testing _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ \$ _____ paid to Public Defender Fund

§ 56-5-2995 (DUI Assessment) \$12 \$ _____ Other: the sentence is to run concurrently with the Fed sentence that he is presently serving

§ 35.13 (Public Def/Prob) \$500 \$ _____ Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ 3.75
§ 90.11 TP (SCCJA Surcharge) \$5: \$ 5.15
TOTAL \$ 133.90

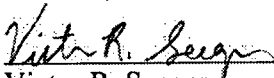
[Signature]
Clerk of Court/Deputy Clerk
[Signature]
Court Reporter:

PRESIDING JUDGE *[Signature]*
Judge Code: 2 10 1 0 1 0 1 0 1 0
Sentence Date: 8/26/08
SCCA/217 (07/2008)

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,



Victor R. Seeger
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 4th day of January, 2019.

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,



Victor R. Seeger
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 4th day of January, 2019.

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SC Court of Appeals