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STATE OF SOUTH CAROLINA

S.C. SUPREME COURT

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Saluda County

Honorable R. Knox McMahon, Circuit Court Judge

\_\_\_\_\_  
STACY WALKER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001911

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

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South Carolina Commission on Indigent  
Defense  
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ATTORNEYS FOR RESPONDENT

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2012-GS-41-0254

State of South Carolina,

Plaintiff,

V.

Stacy Walker,

Defendant.

Transcript of Record

May 21, 2013  
Saluda, South Carolina

B E F O R E:

The Honorable Thomas A. Russo, Judge

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

Ervin J. Maye, Esquire  
Attorneys for the State

W. Greg Seigler, Esquire  
Attorneys for the Defendant

Hilda M. Jordan, CVR-M  
Circuit Court Reporter

State v. Walker

5/21/13

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I N D E XWITNESS/DESCRIPTIONPAGE NO.

Plea

## EXHIBITS:

No exhibits were marked to this proceeding

Certificate of Court Reporter ..... 11

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1 NOTE: Mr. Walker was sworn and an explanation of rights was  
2 given, along with others waiting to plea, prior to the  
3 taking of Mr. Walker's plea.

4 THE STATE: May it please the Court, Your Honor.

5 THE COURT: Yes, sir.

6 THE STATE: Before you stands Stacy Walker. He is  
7 charged on Indictment 2012-GS-41-254 with burglary in the  
8 first degree. He is represented by his attorney, Mr. Greg  
9 Seigler. He has indicated a willingness to enter a guilty  
10 plea on this charge without negotiations or recommendations  
11 to sentence. He is pleading straight up to burglary first,  
12 but, Your Honor, we are nol prosing Indictment 2012-GS-41-  
13 250 grand larceny and 2012-GS-41-251 grand larceny; 2012-GS-  
14 41-252 a burglary second; 2012-GS-41-255 grand larceny;  
15 2012-GS-41-280 burglary second; 2012-GS-41-281 burglary  
16 second; 2012-GS-41-284 grand larceny; 2012-GS-41-285  
17 breaking and entering a motor vehicle and 2012-GS-41-286  
18 another burglary in the first degree.

19 Your Honor, he had a whole series of charges here in  
20 Saluda County and multiple other jurisdictions. Obviously,  
21 I can't find and have not done anything with regard to the  
22 charges in other jurisdictions. The plea negotiations that  
23 I have with him is in exchange for him pleading guilty to  
24 burglary first degree straight up, I'm going to nol pros  
25 everything else he's got.

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1 MR. SEIGLER: Judge, if I could interject. He's just  
2 going to plea today. There is no sentencing. So we can get  
3 into the other information at a later date.

4 THE STATE: I'm just asking -- one portion of the plea  
5 that we agreed on in this case is that he's going to be  
6 jointly and severally liable for restitution in these other  
7 cases, but we've got multiple victims that indicate they  
8 want to be here for his sentencing, among them people that  
9 we are nol prosing their charges, but we are in agreement  
10 that he's going to be jointly and severally liable for  
11 restitution on all the nol prossed indictments for which he  
12 has at one co-defendant here in Saluda County. We would  
13 like for you to accept the plea today and defer sentencing  
14 until we can get the victims up here at the appropriate time  
15 we'll go through his prior record and the victim impact  
16 information.

17 THE COURT: Okay. So accept the plea and defer the  
18 sentence to a later date. All right. That's great.

19 All right. Sir, you are Stacey Walker; correct?

20 MR. WALKER: Yes, sir.

21 THE COURT: Okay. Mr. Walker, Indictment 2012-GS-41-  
22 0254 is a true billed indictment for burglary in the first  
23 degree and that charge, Mr. Walker, carries a sentence of  
24 not less than 15 years, up to life in prison, and it is  
25 classified as a violent and most serious offense under South

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1 Carolina law. Do you understand that?

2 MR. WALKER: Yes, sir.

3 THE COURT: Mr. Walker, and I'm sure you've talked to  
4 Mr. Seigler about this, the reason I mentioned the  
5 classification of the charge is because that's important  
6 under South Carolina's strike rules that under South  
7 Carolina law if somebody receives a three serious offense  
8 convictions or two most serious offenses and I'll just use  
9 this as an example because this is considered a most serious  
10 offense. If you were to -- after this, if you were to  
11 receive another most serious offense, then the state could  
12 seek life without parole on that second most serious  
13 offense; you understand that?

14 MR. WALKER: Yes, sir.

15 THE COURT: Okay. So this would be considered one  
16 strike under that most serious category; do you understand,  
17 sir?

18 MR. WALKER: Yes, sir.

19 THE COURT: Okay. Understanding the nature of the  
20 charge against you and the possible punishment that's  
21 associated with this offense, how do you plead to this  
22 charge, sir; guilty or not guilty?

23 MR. WALKER: Guilty.

24 THE COURT: Thank you, sir.

25 Mr. Seigler, you represent Mr. Walker?

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1 MR. SEIGLER: Yes, sir.

2 THE COURT: And you've reviewed with him the charge that  
3 he is before the Court on as well as his constitutional  
4 rights?

5 MR. SEIGLER: Yes, sir.

6 THE COURT: Mr. Walker, am I correct that you're 43?

7 MR. WALKER: Yes, sir.

8 THE COURT: 43, and before you got locked up on these  
9 charges what kind of work did you do, sir?

10 MR. WALKER: Wrecker, pulling cars and detailing.

11 THE COURT: Okay. Are you married or single, sir?

12 MR. WALKER: Married.

13 THE COURT: How many children do you have?

14 MR. WALKER: Three.

15 THE COURT: How long have you been locked up on this  
16 charge, Mr. Walker?

17 MR. WALKER: Approximately 14 months.

18 THE COURT: Okay. All right. Mr. Walker, this morning,  
19 am I correct, you were present when I went over the  
20 constitutional rights?

21 MR. WALKER: Yes, sir.

22 THE COURT: Did you understand the rights as I gave them  
23 to you?

24 MR. WALKER: Yes, sir.

25 THE COURT: Do you have any question about those rights,

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1 sir?

2 MR. WALKER: No, sir.

3 THE COURT: Okay. You understand when you enter a plea,  
4 when anyone enters a plea for the purposes of the plea you  
5 give up those rights and you will not have a jury trial; do  
6 you understand that?

7 MR. WALKER: Yes, sir.

8 THE COURT: Okay. Now, my understanding is that in  
9 exchange for your plea here, if I'm correct listening to Mr.  
10 Maye, there are four grand larceny charges, three burglary  
11 second charges, one BAE motor vehicle charges and one  
12 burglary first charge which the state is going to dismiss as  
13 a result of this plea to the charge of burglary first. Is  
14 that your understanding?

15 MR. WALKER: Yes, sir.

16 THE COURT: Okay. Other than the dismissal of those  
17 charges has anyone promised you anything, held out any hope  
18 of reward or threatened you in any way to get you to enter  
19 this plea?

20 MR. WALKER: No, sir.

21 THE COURT: Are you satisfied with your representation  
22 and the advice that Mr. Seigler has provided?

23 MR. WALKER: Yes, sir.

24 THE COURT: Do you have any complaints against him or  
25 any person in his office?

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1 MR. WALKER: No, sir.

2 THE COURT: Have you shared with him everything you know  
3 about this charge that he can look at these matters on your  
4 behalf?

5 MR. WALKER: Yes, I have.

6 THE COURT: Okay. Mr. Walker, as you stand before the  
7 Court here today, are you under the influence of any  
8 substance that would effect your ability to understand what  
9 you are doing?

10 MR. WALKER: No, sir.

11 THE COURT: Are you pleading guilty on this charge on  
12 this charge, burglary first charge, because you are guilty?

13 MR. WALKER: Yes, sir.

14 THE COURT: And is this plea of your own free will?

15 MR. WALKER: Yes, sir.

16 THE COURT: All right. I'm going to get the solicitor  
17 to give me the facts surrounding this charge and ask you to  
18 please listen carefully.

19 Solicitor.

20 MR. MAYE: Your Honor, this occurred here in Saluda  
21 County at [REDACTED]. The resident of Sherry  
22 McIntosh Hedgepath.

23 Your Honor, her home was burglarized on that day,  
24 January 10, 2012, and taken from the residence, Your Honor,  
25 was computer equipment, household goods, jewelry and other

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1 items to include two firearms, Your Honor. A Llama .45  
2 caliber automatic and a Glock 9 millimeter automatic pistol,  
3 Your Honor.

4 The basis of the burglary first, would be that either  
5 upon entering or leaving the residence he became armed with  
6 the handguns, Your Honor. That would be the basis for the  
7 burglary first conviction. That and that it was a residence  
8 of Sherry Hedgepath and it all occurred here in Saluda  
9 County.

10 As to that charge of burglary in the first degree, Your  
11 Honor, that's basically the facts. That he entered, along  
12 with a co-defendant, the residence of Ms. Hedgepath with the  
13 intent to commit the crime of grand larceny, which was  
14 carried out.

15 THE COURT: Mr. Walker, the facts that the solicitor  
16 gave me regarding this charge, are those facts essentially  
17 correct, sir?

18 MR. WALKER: Yes.

19 THE COURT: All right. I find that the state has  
20 provided a substantial factual basis for the charge that Mr.  
21 Walker has pled guilty to. I find that his decision to enter  
22 this plea, that it has been done freely and voluntarily and  
23 intelligently. He has had the advice of counsel, an  
24 outstanding attorney in Mr. Seigler, and Mr. Walker has  
25 indicated to the Court that he is satisfied with that

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1 representation. I am going to accept his plea.

2 Now, Mr. Seigler, obviously based on what we've  
3 discussed earlier, anything that the defense would have with  
4 regard to mitigation at the appropriate time as well as the  
5 state, anything further, but at this point I've qualified  
6 and accepted the plea, and we'll proceed with any further  
7 information once we get everybody back in here.

8 All right. Thank you.

9 (This proceeding was concluded.)  
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State v. Walker

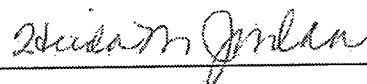
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## C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT REPORTER FOR THE FIRST 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 PLEA IN THE CAPTIONED CAUSE, IN THE COURT OF GENERAL SESSIONS FOR SALUDA COUNTY, SOUTH CAROLINA, ON THE 21 DAY OF MAY, 2013.

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



Hilda M. Jordan, CVR-M

MAY 21, 2015

1 State of South Carolina

2 County of Saluda

Court of General Sessions

3  
4  
5 State )

6 )  
7 v. )

8 Stacy Walker )

9 Defendant. )

Transcript of Record  
12-GS-41-0254

10  
11 May 31, 2013  
Saluda, South Carolina

12  
13 B E F O R E:

14 The Honorable William P. Keesley, Judge.  
15

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

17 Ervin J. Maye, Assist. Solicitor  
Attorney for the State

18  
19 W. Greg Seigler, Assist. Public Defender  
Attorney for the Defendant

20  
21  
22  
23  
24  
25 Stacy L. Sheppard, RPR  
Circuit Court Reporter

## I N D E X

WITNESSESDIRECT CROSS REDIRECT RECROSS

(There were no witnesses.)

## E X H I B I T S

NO.DESCRIPTIONID. EVD.

(There were no exhibits.)

1                   (The following proceedings were held on May  
2                   31, 2013.)

3                   **MR. MAYE:** May it please the Court, Your Honor.

4                   **THE COURT:** Yes, sir.

5                   **MR. MAYE:** Before you stands Stacy Walker.  
6                   Mr. Walker is now charged on indictment  
7                   2012-GS-41-254 with burglary in the first degree.  
8                   Your Honor, his guilty plea was accepted by Judge  
9                   Russo last week. We needed time -- there were a  
10                  multitude of Saluda victims in this case. We  
11                  needed -- we were able to reach an agreement in this  
12                  case in that he was going to plead straight up to  
13                  one count of burglary first and then we were going  
14                  to nol pros another indictment for burglary first of  
15                  Saluda County, indictment 2012-286; indictment  
16                  2012-285, a breaking into a motor vehicle;  
17                  indictment 2012-284, a grand larceny; indictment  
18                  2012-281, another count of burglary, a burglary  
19                  second degree; indictment 2012-GS-41-280, a burglary  
20                  second degree; indictment 2012-GS-41-255, a grand  
21                  larceny; indictment 2012-252, another burglary;  
22                  indictment 2012-GS-41-251, a grand larceny; and  
23                  indictment 2012-GS-41-250, a grand larceny.

24                  Your Honor, we're nol prosing all of those with  
25                  the understanding that he's going to be jointly and

1       severally liable with his co-defendant, Tonnice Pace  
2       that pleaded -- Tonnice Jefferson Pace that pleaded  
3       in front of Judge Russo in February of 2013. He  
4       pleaded guilty at that time, Your Honor, was  
5       sentenced to 22 years suspended on the service of 15  
6       with five years of probation with the understanding  
7       that he was going to be responsible for restitution  
8       on all of those as well. And he also, at that time,  
9       agreed to testify against Mr. Walker in the event  
10      that we were unable to resolve the cases outstanding  
11      against Mr. Walker short of trial.

12             Mr. Walker, Your Honor, faces charges in a  
13      number of other jurisdictions for a number of other  
14      burglaries, Your Honor. Our plea negotiations in  
15      this case doesn't contemplate anything in any other  
16      county other than these Saluda County charges. And  
17      I know he's got charges; we got him over in  
18      Newberry, they were reluctant to release him to us.  
19      They've got a number of charges pending against him,  
20      Your Honor. And it specifically doesn't involve  
21      anything other than Saluda. I've not talked to or  
22      negotiated in any regard with any of the other  
23      jurisdictions that have charges pending against  
24      Mr. Walker.

25             He's going to plead straight up to this

1 burglary first, my understanding. And I think  
2 they're going to argue for the minimum. We're going  
3 to argue for the maximum, Your Honor. And that's  
4 the full extent of any negotiations in this case,  
5 but the restitution with the remaining victims on  
6 all the nol pros ones are fair game for Your Honor  
7 to consider in structuring a sentence for him on  
8 this burglary first.

9 **THE COURT:** So he's already pleaded guilty?

10 **MR. MAYE:** Yes, sir.

11 **THE COURT:** He's already pleaded guilty?

12 **MR. SEIGLER:** Yes, sir.

13 **THE COURT:** The plea's been accepted?

14 **MR. SEIGLER:** Yes, sir.

15 **THE COURT:** Does anybody wish to be heard on  
16 sentencing from the State?

17 **MR. MAYE:** Yes, sir, Your Honor. To give you  
18 some background in this case, Your Honor, the way  
19 Saluda County or the way the whole thing broke  
20 resolving these and other counties, back in March of  
21 2012, Saluda County made an arrest against an  
22 individual named Thomas Tolen {phonetic}. He had  
23 some stolen firearms and electronics that were in  
24 his possession at that time and he cooperated with  
25 law enforcement. Based on the information and the

1 combining of resources with Saluda, Greenwood and  
2 Newberry Counties, along with the information  
3 provided by Thomas Tolen, Greenwood authorities  
4 obtained a court order to place a GPS tracking  
5 system on Stacy Walker's vehicle.

6 Your Honor, between 3/12 of '12 and 3/16 of  
7 '12, Stacy Walker's activities were monitored by  
8 this GPS. They basically tracked him breaking into  
9 residences over in Greenwood County. They executed  
10 search warrants.

11 Saluda deputies took Mr. Pace, his  
12 co-defendant, into custody on 3/19 of '12. At that  
13 point in time, Tonnie Pace began to cooperate with  
14 law enforcement, according to the notes from  
15 Investigator Shorter that I have here. They were  
16 able basically, Your Honor, to resolve a number of  
17 cases in a number of different counties. And I  
18 think it ended up that they took Mr. Pace and  
19 Mr. Walker around just all over Saluda County and  
20 basically resolved a number of outstanding  
21 burglaries, Your Honor, and larcenies in Saluda  
22 County.

23 I know that there are victims here that would  
24 like to be heard. I know that, for the record, and  
25 I'm going to pass up to the Court a listing of all

1 of the victims in this case, the first, Ty  
2 Bouknight, that had a thousand dollars in materials,  
3 radios, T.V.s and VCRs, stolen; Brandon Morris had  
4 \$4,690, computers, jewelry, T.V., merchandise;  
5 Sherry Hedgepath had \$3,425 that included firearms,  
6 computers, household items, jewelry; George Wheeler  
7 had \$4,850 in loss, computers, firearms, farm  
8 equipment, jewelry, money; Dan Wheeler had, I  
9 believe, \$2300.

10 The figure that I have here, the grand total of  
11 the restitution on all these indictments, the one  
12 for which he's pleading and the ones we're nol  
13 prosing, is \$16,315, Your Honor. And I know that  
14 Mr. Pace was made jointly and severally liable for  
15 that amount, \$16,315, Your Honor. And I'm going to  
16 hand up this listing of those. And the victim  
17 advocate for the sheriff's department is going to  
18 recognize the victim that would like to speak to  
19 you.

20 And she would need to come around and place her  
21 name and information on the record.

22 **VICTIM ADVOCATE:** Your Honor, this is  
23 Ms. Bouknight..

24 **THE COURT:** What's your name, ma'am?

25 **MS. BOUKNIGHT:** I'm Ashley Bouknight.

1           **THE COURT:** Spell your first name.

2           **MS. BOUKNIGHT:** A-s-h-l-e-y.

3           **THE COURT:** Last name.

4           **MS. BOUKNIGHT:** B-o-u-k-n-i-g-h-t.

5                           ASHLEY BOUKNIGHT,

6           having been duly sworn, testified as follows:

7           **THE COURT:** What would you like to tell me?

8           **MS. BOUKNIGHT:** I've been here with Tonnie  
9           Pace, and now that Stacy Walker's here, I do feel  
10          like he's the mastermind behind it all, the ring  
11          leader.

12                       First of all, I want to tell you that on  
13          February the 24th, 2012, it was a Friday and it was  
14          not a pretty day at all. It was pouring down rain.  
15          It was a day that anybody would probably want to  
16          stay at home and not get out, but because I work, my  
17          husband works, my kids go to school and day care, we  
18          had to get up and go.

19                       So once I got to school, and this happened  
20          around lunchtime, at first I thought it was a false  
21          alarm and then because we do -- we have an alarm at  
22          home and they, you know, they jerked that out of the  
23          wall and still proceeded in. I did not go when the  
24          police first called because we thought the wind had  
25          blown the door open or something. So when I finally

1        got there and realized what had happened, I just --  
2        I was shattered because my husband and I work hard  
3        to provide for our kids. We have four very small  
4        kids.

5                I had just gone back to work from my last  
6        maternity leave. There's a lot of what ifs, like  
7        what if I had have still been on maternity leave,  
8        would they have still come in on me? What if they  
9        had had more time? What if -- they came right after  
10       lunch when my husband comes home, so what if he  
11       would have come in on them? But those are the what  
12       ifs.

13               But what I do know is that especially my  
14       six-year-old daughter constantly says, Mama, is  
15       Tonnie Pace out of jail, is Stacy Walker out of  
16       jail? Mama, how old am I going to be when Stacy  
17       Walker gets out of jail? Mama, do you think they're  
18       coming back here? I said, Baby, I cannot answer  
19       that for you, hopefully not.

20               I know that that lies in your hands as far as  
21       how long they will spend or he spends in jail.

22               I teach school and something really stuck out  
23       to me last week. My kids, I teach fourth grade and  
24       we're studying the civil war, and we've been  
25       studying how the Union Army, when they came to the

1 South, would take over some of the southern homes  
2 and, of course, the women's husbands would be off to  
3 war. And I asked them, I said, You know, how  
4 would -- What do you think of these Union soldiers  
5 that came in and took over these homes? And, you  
6 know, my kids were like, they were greedy, they were  
7 desperate, they were inconsiderate, they felt  
8 superior to others.

9 And so -- and then I turned the tables and I  
10 said, Well, pretend you are that lady sitting there  
11 and the Union Army comes up to you and says, I'm  
12 taking over your home, how would you feel? And, of  
13 course, they said afraid, scared, you know,  
14 violated, invaded, but the one that stuck out to me  
15 the most was she said, I feel like that wouldn't be  
16 my home anymore. And as soon as she said that, that  
17 rang -- the light went off in my head that that's  
18 the exact way I feel about this. We'd just built a  
19 new home. We had not been in it but a year and then  
20 this happens.

21 And, you know, I try to explain to my kids why.  
22 I don't know why, just being mean and, you know, the  
23 intentions are to do bad. And I tell my kids all  
24 the time, I said, If you choose to do bad things,  
25 bad things are going to happen to you. And we tell

1       them that no matter what you do, whether it's  
2       homework, school, cleaning your room, baseball,  
3       whatever, always give 110 percent, which is what we  
4       try to model for them and then this happens to us.

5             It is my understanding that he has already been  
6       in trouble for this before. And I once -- this is  
7       the last thing I'm going to say. My husband follows  
8       college football and there was a football coach at  
9       the University of Florida one time that said, If you  
10      do something right the first time, you won't have to  
11      do it again. And I feel like his first time was the  
12      first time that he served for this before and  
13      obviously he didn't get it right. So I beg you to  
14      please, maybe this time he's going to get it right,  
15      but please give him the maximum that he can get here  
16      in Saluda County.

17            And the last thing I'm going to say to you is  
18      last week my daughter and I were out in the yard  
19      playing and she looked up and there was a -- clouds  
20      were everywhere and there was one opening in the  
21      clouds and the sun was shining down. And she said,  
22      Mama, when do you think God's going to come down and  
23      get us all? I said, Well, baby, I don't know. You  
24      know, nobody knows that except God. And she said,  
25      Well, when he comes down, is he going to get Tonnie

1 Pace and Stacy Walker? And I said, Well, baby,  
2 that's not left up to us. I said, We all sin, we  
3 all have our faults and I have plenty of work to do  
4 with God myself.

5 But my wish for you, and I do forgive you, I  
6 really do, my wish for you is when you are in  
7 prison, for however long, to please get right with  
8 God and make sure that you know him and that you're  
9 saved so that you can go to heaven also.

10 **THE COURT:** Thank you, ma'am.

11 **MR. MAYE:** Your Honor, prior to sentencing,  
12 he's got a '96 theft by taking that he got a  
13 probationary sentence for back in '96. He then  
14 subsequently violated his probation. He's got a DUS  
15 conviction contemporaneous with that, a possession  
16 of stolen motor vehicles. He got three counts of  
17 assault on a female in 1993; he got two years  
18 suspended on two years probation. He then got a  
19 grand larceny of a motor vehicle, got four years  
20 suspended on six months in 1993. Then had bad  
21 checks, DUS or DUI in 1997, petit larceny, breaking  
22 into automobiles four counts, he got five years at  
23 that time. He then got three counts of grand  
24 larceny and two counts of burglary second.

25 Your Honor, over in Greenwood County, in 1997,

1 he got charged with 11 counts of burglary second,  
2 four counts of burglary third, 11 counts of petit  
3 larceny and two counts of grand larceny. He was  
4 actually convicted of ten counts of burglary, Your  
5 Honor, burglary second nonviolent and two counts of  
6 burglary second violent, Your Honor, and he got 15  
7 years.

8 He then comes back after, apparently he gets  
9 out from serving that, Your Honor, and gets another  
10 round of burglaries and ends up inexplicably from  
11 the progression of upward -- I don't know what these  
12 charges were, but he ended up getting three years  
13 suspended on three years probation for a whole  
14 nother round of burglaries in 2000, Your Honor.

15 He's just a career burglar in the truest sense  
16 of the word. This is about the third round he's had  
17 -- this is the third round that he's had where he  
18 comes before a judge with just a succession of  
19 burglaries.

20 And, Your Honor, he's now pleaded to burglary  
21 in the first degree. You've got the tools at your  
22 disposal to basically end Mr. Walker's reign of  
23 being a career burglar because that's as much as  
24 anybody's record I've ever looked at. I mean,  
25 there's just no other question. When he gets out of

1        prison, he starts breaking into houses. And what  
2        he's got here in Saluda certainly is just the tip of  
3        the iceberg in this round. That's all that is  
4        before you to sentence him on is just for these  
5        Saluda charges or the one single charge before you.  
6        But, Your Honor, I just ask that you give him a  
7        sentence that reflects the gravity of what he's done  
8        in this case and the absolutely atrocious prior  
9        record he has in his history of being a career  
10       burglar.

11                **THE COURT:** Mr. Seigler.

12                **MR. SEIGLER:** Your Honor, Mr. Walker and  
13        Mr. Pace performed the acts that he's pled guilty to  
14        and the charges that they're dismissing here in  
15        Saluda County. But for whatever reason, I'm not  
16        sure if Mr. Maye misunderstood or what, but  
17        Mr. Walker took Investigator Ed Childer (phonetic)  
18        to every location that was burglarized in this  
19        county. He took the Greenwood investigators, he  
20        took the Newberry investigators to every location  
21        that homes or businesses were broken into. He told  
22        them exactly who was with him and admitted that he  
23        was there. He knows that he was wrong.

24                Mr. Maye is incorrect. And Mr. Pace being  
25        required to testify against Mr. Walker was

1 unnecessary. He already admitted to what he did.  
2 He took Mr. Shorter to the location. They wouldn't  
3 have even needed Mr. Pace to testify against him.

4 They offered one term for Mr. Pace {sic} to  
5 plead to burg first. At the time, he didn't have a  
6 lawyer in Greenwood because Carson Henderson was in  
7 the process of getting relieved. I told Mr. Maye  
8 that Mr. Walker was prepared to plea, but he didn't  
9 have counsel in Greenwood and Newberry and I wanted  
10 to talk with them before he pled. That was one  
11 time. And this time he pled. So he's certainly not  
12 jerked anybody around. He's cooperated. He has  
13 numerous burglaries in Newberry and Greenwood that  
14 he has to face at this point.

15 Mr. Pace pled first is the only reason that Mr.  
16 Maye could say that he was going to cooperate,  
17 because his cooperation was unnecessary. Mr. Walker  
18 is the one who cooperated with Mr. Shorter. Mr.  
19 Shorter told Mr. Walker that his cooperation would  
20 definitely be appreciated and be a consideration  
21 when trying to negotiate a plea and certainly in  
22 sentencing. He's agreed to pay any restitution  
23 back.

24 Mr. Pace didn't take these people around like  
25 Mr. Walker did and he got 15 years. I think it

1        would be a travesty when the individual who helped  
2        investigators locate and find these -- or show them  
3        these residences, that the person that didn't  
4        cooperate receive a lesser sentence. Respectfully,  
5        Judge, we ask that he receive 15 years. You can  
6        suspend whatever and put him on probation because he  
7        intends on paying this money back when he gets out.

8                He has a tremendous amount of charges to  
9        address in the Eighth Circuit. His cooperation was  
10       invaluable in this investigation and Mr. Shorter  
11       would confirm that and has confirmed it. So we'd  
12       ask you to give him 15 years. 'I think it's fair,  
13       what the co-defendant got, because he's still got to  
14       face the music in Greenwood and Newberry..

15               **MR. MAYE:** Your Honor, the only thing I'm going  
16       to take issue in this case, I have notes 3/19 of  
17       '12, the first thing that I see is Investigator  
18       Shorter notes, Tonnie Pace begins to cooperate.

19               I negotiated with Mr. Pace. Mr. Pace did agree  
20       to testify. At that point in time, we had no idea  
21       what Mr. Walker would do, whether or not we would  
22       have to resolve these cases by trial or plea. And I  
23       note that Mr. Pace did cooperate. It's confirmed  
24       here in the -- in the notes. I don't know anything  
25       about what Mr. Walker did in the case. I don't

1       doubt that he did go around with Investigator  
2       Shorter, but I know Mr. Pace, as early as March of  
3       2012, was cooperating, was prepared to testify  
4       against Mr. Walker.

5               **MR. SEIGLER:** Judge, I'm not going to get into  
6       an argument with Mr. Maye, but Mr. Shorter himself  
7       has said that, not in notes, but he said it himself.  
8       So I know what Mr. Shorter said, and Mr. Young  
9       talked to Mr. Shorter as well. So I think it's a  
10      significant factor that he cooperated. We just  
11      respectfully ask you to consider it greatly.

12              **THE COURT:** How old is Mr. Pace?

13              **MR. MAYE:** Your Honor, Mr. Pace -- from my  
14      memory, Mr. Pace didn't have anything like the  
15      record like Mr. Walker has. I can go pull that if  
16      that's any question.

17              **MR. SEIGLER:** How old is he?

18              **MR. MAYE:** But he is...

19              **PROBATION AGENT:** I have his birth date,  
20      [REDACTED].

21              **THE COURT:** So he's ten years younger than  
22      Mr. Walker. And what's his record?

23              **MR. MAYE:** The co-defendant's record, Your  
24      Honor?

25              **THE COURT:** Right.

1           **MR. MAYE:** I'm going to see if I have it  
2 contained in this file. We've already dealt with  
3 his previously.

4                   (Pause.)

5           **MR. MAYE:** Your Honor, I can retrieve that.  
6 It's going to take me just a minute. I don't have  
7 Mr. Pace's file in front of me. I do just have the  
8 sentence sheet where Judge Russo sentenced him last  
9 time, but I will obtain his prior record.

10           **THE COURT:** Well, is Mr. Pace the co-defendant  
11 in all those other cases in the other counties?

12           **MR. MAYE:** He had other co-defendants other  
13 than Mr. Pace is my understanding, Your Honor. I  
14 don't have Investigator Shorter with me, but there  
15 was --

16           **MR. SEIGLER:** He's involved in all of these  
17 burglaries, Judge, my under --

18           **MR. MAYE:** The ones here in Saluda, but I don't  
19 know that he was involved in all of the ones in  
20 other counties.

21           **MR. SEIGLER:** He certainly is.

22           **THE COURT:** Do you want to say anything,  
23 Mr. Walker?

24           **DEFENDANT:** Yes, sir, I do. I'd like to  
25 apologize to the victims. I'm sorry. I'm really

1       sorry, you know, I give you my deepest sympathy.

2       I'm sorry.

3               **THE COURT:** Anything else?

4               **DEFENDANT:** No, sir. I'm sorry to the courts,  
5       too, I mean to put everybody through this. I  
6       apologize.

7               **THE COURT:** When did you get out of prison?

8               **DEFENDANT:** In 2010.

9               **THE COURT:** Do you know what month?

10              **DEFENDANT:** I think it was October.

11              **THE COURT:** October of 2010?

12              **DEFENDANT:** Yes, sir.

13              **THE COURT:** And this charge was from January  
14       2011? January 10th, 2011, is what's on the  
15       indictment for the Hedgepath residence.

16              **MR. MAYE:** Your Honor, I have the other  
17       burglary first goes back to November the 10th of  
18       2011, and one in August --

19              **THE COURT:** Ms. Bouknight said hers happened on  
20       February 24th, 2012. This one that he entered the  
21       plea on happened in January, January 10th, 2012 --  
22       2011, it says. I'm sorry. So this spree went on  
23       from January of 2011 into February of 2012 at a  
24       minimum?

25              **MR. MAYE:** Your Honor, I got one on December

1 the 25th of 2011, one on August the 7th of 2011,  
2 November the 10th of 2011, November -- again, a  
3 companion one on November the 25th, January the 10th  
4 of 2012. From shortly after the time he got out,  
5 Your Honor, along into August, the spree went on.

6 And like I said, I can't address what went on  
7 in the other counties, but I know it was an ongoing  
8 thing. I know that the law enforcement officers in  
9 all of these counties were combining their resources  
10 in order to try to -- they knew that they had a ring  
11 of burglaries. And like I said, it was not broken  
12 until Thomas Tolen, who had some stolen goods,  
13 basically named Mr. Walker and Mr. Pace as being the  
14 ones that were committing and doing these burglaries  
15 and they were able to obtain that GPS tracker that  
16 they placed on Mr. Walker's vehicle.

17 And, Your Honor, if you need the information,  
18 it will take me just a minute, but I can get  
19 Mr. Pace's prior criminal history if you need it.

20 **THE COURT:** Do you have anything else, Mr.  
21 Seigler?

22 **MR. SEIGLER:** Your Honor, just that Mr. Pace  
23 was involved in a lot of these. And my  
24 understanding is, in Greenwood, he was involved by  
25 himself on some. So, you know, obviously Judge

1 Russo took all of that in consideration. We think  
2 that 15 years is appropriate here because he's got a  
3 lot more to face in Greenwood and Newberry.

4 **THE COURT:** Do you have anything else to say,  
5 Mr. Walker?

6 **DEFENDANT:** No, sir.

7 **THE COURT:** If there's nothing further, the  
8 Court sentences you to 30 years in the South  
9 Carolina Department of Corrections plus costs and  
10 assessments. You're given credit for any jail time  
11 served under section 24-13-40, that will be  
12 calculated and applied by the department of  
13 corrections. You have to pay \$16,315 in restitution  
14 plus a 20 percent handling fee at a rate set by  
15 Probation, Parole and Pardon Services pursuant to  
16 the attached list.

17 I'm not going to try to get anymore specific  
18 about that with restitution, because, quite frankly,  
19 ma'am, I don't think you're ever going to see it.

20 **DEFENDANT:** Judge, Your Honor, I'd like to say  
21 something, Judge, Your Honor.

22 **THE COURT:** Sure.

23 **DEFENDANT:** I'm kind of confused a little bit,  
24 Judge, Your Honor. I understand that, you know, a  
25 lot went on. And, I mean, by me confabulating

1       {phonetic} with the public defender, I really didn't  
2       get a chance to talk to Mr. Mayes {sic}. But from  
3       what I understand that I -- that I supposed to be  
4       charged the minimum. But, Judge, Your Honor, I  
5       would like to have some time to at least talk to Mr.  
6       Mayes and my lawyer personally on some issues, if  
7       it's -- you see fit.

8               **THE COURT:** Well, I don't know --

9               **DEFENDANT:** Judge, Your Honor, I was -- can I  
10       say something to my lawyer before I actually say --  
11       before you close this sentence out, Judge, Your  
12       Honor? I'm just kind of confused on some things  
13       right now.

14              **THE COURT:** You can talk to your attorney, yes,  
15       sir. But I want you to understand something: South  
16       Carolina -- I don't have no idea what you want to  
17       say. South Carolina did pass a law, I think, in the  
18       last couple of years similar to what the federal  
19       system has, that if you provide substantial  
20       cooperation, there's a means by which somebody can  
21       come back and have his sentence revisited. I don't  
22       know if that's what you've got in mind or not,  
23       substantial cooperation in other crimes other than  
24       what we're talking about, but --

25              **DEFENDANT:** Judge --

1           **THE COURT:** Wait a second. I didn't take your  
2           plea. You could have gotten life in prison, that's  
3           what they were asking for. Your lawyer and you  
4           disagree strongly with me about this being too much  
5           time.

6           You're a career criminal. I'm convinced that  
7           if you get out tomorrow, you're going to go right  
8           back to stealing again. And Lord knows how many  
9           times you're going to break in before they catch you  
10          again. And I hate to say that. Everybody is  
11          redeemable and you certainly could stop doing this  
12          and go the way of the straight and narrow. But you  
13          have demonstrated throughout your entire life that  
14          you're going to break in people's houses and steal  
15          their stuff. Thirty years, in my opinion, is a fair  
16          sentence. I'm sorry if y'all disagree with me on  
17          both sides.

18          **DEFENDANT:** Judge, Your Honor, I would like to  
19          go off on the plea, Judge, Your honor, because I  
20          was --

21          **THE COURT:** No, sir, it's denied.

22          **DEFENDANT:** I was confused. My lawyer told me  
23          he going to -- if I get anything over 15 years, he  
24          said he's going to go off on a plea for me, Judge,  
25          Your Honor. And I just asked him when you were

1       sentencing. He said, No --

2               **THE COURT:** No, sir. I'm not going to sit here  
3       and let you just constantly tell me all this kind of  
4       stuff, try to build up some record. You can take  
5       that up in a proper motion. I didn't take your  
6       plea, Judge Russo did. I imposed your sentence.  
7       It's 30 years. I hope you do well. Good luck to  
8       you, sir.

9

10                               END OF PROCEEDINGS

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## C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF SALUDA

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh 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 the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Saluda County, South Carolina, on the 31st of May, 2013.

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

June 17, 2014

A handwritten signature in cursive script that reads "Stacy L. Sheppard". The signature is written in dark ink and is positioned above the printed name.

Stacy L. Sheppard, RPR  
Circuit Court Reporter

## FORM 5

I, Jackie S. Bowers, Clerk of Court, Newberry, South Carolina, do hereby certify that this is a true copy of the original filed in this office.

OCT 27 2015

Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

STACY WALKER, SDC #242126  
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2015-CP-36-00574

APPLICATION FOR

POST-CONVICTION RELIEF

FILED  
NEWBERRY COUNTY  
2015 OCT 26 PM 1 46  
JACKIE S. BOWERS  
CLERK OF COURT

**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 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 Lee Correctional Institution, Bishopville, South Carolina
2. Name and location of Court which imposed sentence General Sessions - Newberry Co.
3. Name(s) of co-defendant(s) (if any) Tony Jeffery Pace
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 12GS360696 § 16-13-0030(B) & 0697 § 16-11-0311
  - (b) 12GS360724 § 16-11-0311 & 0725 § 16-13-0030(B)
  - (c) 12GS360726 § 16-11-0311 and 0727 § 16-13-0030(B)
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) Nov. 15, 2013 — 5 years and 30 years w/\$24,000 Restitution plus 20% fee (Concurrent)
  - (b) Nov. 15, 2013 — 30 years and 5 years w/\$10,000 Restitution ea. plus 20% fee (Concurrent)

- (c) Nov. 15, 2013 — 30 years and 5 years w/\$3,567 Restitution ea. plus 20% fee (Concurrent)
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty YES
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
N/A
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) When requested, my assigned attorney told me he would take care of it.
- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Appointed Counsel
- (b) N/A
- (c) N/A
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Plea was not knowing, voluntary, intelligently given, violating due process clause.
- (b) N/A
- (c) N/A
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. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (c) the disposition thereof:
- i. N/A
- ii. N/A
- iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

No

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

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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) PCR is first opportunity allowed by the State. (SEE ADDITIONAL PAGE)

(b) N/A

(c) N/A

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? N/A
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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

(a) the name and address of each attorney who represented you:

i. Laura M. Saunders, P.O. Box 731, 102 Church St., Laurens, S.C. 29360

ii. N/A

iii. N/A

(b) the proceedings at which each such attorney represented you:

i. Plea hearing and sentencing.

ii. N/A

iii. N/A

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

Remand back for hearing and consideration to run concurrent with other counties with similar charge.

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

Yes

(ATTACHED SHEET)

Continuation of question 16 on page 4.

My appointed attorney for Saluda County told me to submit this application as soon as possible. Prior to her explaining things to me, I had not done so prior to this due to my understanding that a person was only allowed to have one active case before the courts at any one time. With this being said, I pray that I will receive all the consideration the court can allow me in accepting and processing this request for a PCR hearing.

STATE OF SOUTH CAROLINA )

VERIFICATION

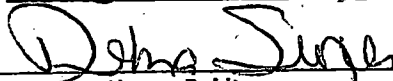
County of LEE )

I, Stacy Walker, 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.



Stacy Walker, #242126  
 Lee C.I. - F5 A157  
 990 Wisacky Hwy.  
 Bishopville, S.C. 29010

SWORN to and subscribed before me this 20  
 day of Oct, 2015.

 (L.S.)  
 Notary Public

My Commission Expires: 11-4-2015

FILED  
 NEWBERRY COUNTY  
 2015 OCT 26 AM 11 46  
 JACKIE S. BOWERS  
 CLERK OF COURT

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

Stacy Walker

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.

Stacy Walker

Applicant

Stacy Walker, #242126

Lee C.I. - F5 A157

990 Wisacky Hwy.

Bishopville, S.C. 29010

SWORN or affirmed to and subscribed before me this  
20 day of Oct, 2015.

Debra Sims

Notary Public

My Commission Expires: 11-4-2015

JACKIE S. BOWERS  
CLERK OF COURT

2015 OCT 26 AM 11 46

NEWBERRY COUNTY

FILED

Stacy Walker, #242126  
Lee C.I. - F5 A157  
990 Wisacky Highway  
Bishopville, SC 29010

October 20, 2015

CLERK OF COURT  
Newberry County  
P.O. Box 278  
Newberry, SC 29108-0228

RE: Filing of Post-Conviction Relief Application

Dear Clerk:

Please find enclosed a copy of my post-conviction relief application.  
Please, clock and date stamp and return a copy of same for my files.... Thank  
You!

Sincerely requested,

Mr. Stacy Walker

FILED  
NEWBERRY COUNTY  
2015 OCT 26 AM 11 46  
JACKIE S. BOWERS  
CLERK OF COURT

|                          |   |                                |
|--------------------------|---|--------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS   |
|                          | ) | OF THE EIGHTH JUDICIAL CIRCUIT |
| COUNTY OF GREENWOOD      | ) |                                |
|                          | ) | 2015-CP-24-01143               |
| Stacy Walker,            | ) |                                |
| S.C.D.C. #242126         | ) |                                |
|                          | ) |                                |
| Applicant,               | ) |                                |
|                          | ) | <b>RETURN</b>                  |
| v.                       | ) |                                |
|                          | ) |                                |
| State of South Carolina, | ) |                                |
|                          | ) |                                |
| Respondent.              | ) |                                |
| _____                    | ) |                                |

In response to the application for post-conviction relief filed by Stacy Walker (Applicant) on November 11, 2015, Respondent would show this Court:

I.

Applicant is presently confined with the South Carolina Department of Corrections pursuant to orders of commitment of the Greenwood County Clerk of Court. Applicant was indicted at the June 2012 term of the Greenwood County Grand Jury for five counts of first-degree burglary (2012-GS-24-988, -991, -994, -995, and -998). Applicant was represented by Joseph St. Pierre, Esquire. On December 20, 2013, Applicant pled guilty before the Honorable Frank R. Addy, Jr., as indicted and was sentenced pursuant to negotiated sentences to concurrent thirty year terms of imprisonment on each charge.

Applicant did not file a direct appeal.

II.

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

1. Ineffective Assistance of Counsel

## 2. Involuntary Guilty Plea

- a. "Plea was not knowing, voluntary, intelligently given, violating due process clause."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCP(a).

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

### III.

Applicant first alleges ineffective assistance of plea counsel. Respondent submits plea counsel rendered effective assistance of counsel. In a Post-Conviction Relief action, the applicant bears the burden of proving the allegations in their 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, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

Respondent submits that Applicant cannot satisfy either 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 further alleges his guilty plea was not voluntarily made. Respondent submits that Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant 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 defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced

by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4<sup>th</sup> Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4<sup>th</sup> Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

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

VI.

WHEREFORE, Respondent requests an evidentiary hearing for the purpose of determining whether the Applicant's plea counsel was ineffective.

[signatures on following page]

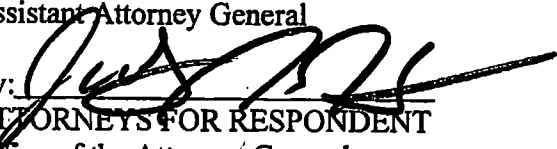
Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

JOHANNA C. VALENZUELA  
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT  
Office of the Attorney General  
P.O. Box 11549  
Columbia, S.C. 29211

may 4, 2016

STATE OF SOUTH CAROLINA )

COUNTY OF GREENWOOD )

IN THE COURT OF COMMON PLEAS

2015-CP-24-1143

STACY WALKER, #242126 )

Applicant, )

vs )

AFFIDAVIT OF SERVICE BY MAIL

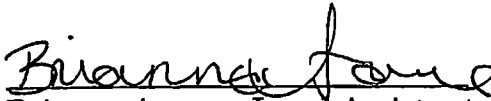
STATE OF SOUTH CAROLINA, )

Respondent. )

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Lance S. Boozer, Esquire  
 The Boozer Law Firm, LLC  
 807 Gervais Street, Suite 203  
 Columbia, SC 29201

DATED this 4<sup>th</sup> day of May, 2016.

  
 Brianna Arnone, Legal Assistant  
 For Respondent

|                          |   |                                |
|--------------------------|---|--------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS   |
|                          | ) | OF THE EIGHTH JUDICIAL CIRCUIT |
| COUNTY OF NEWBERRY       | ) |                                |
|                          | ) | 2015-CP-36-0574                |
| Stacy Walker,            | ) |                                |
| S.C.D.C. #242126         | ) |                                |
|                          | ) |                                |
| Applicant,               | ) |                                |
|                          | ) | <b>SUPPLEMENTAL RETURN</b>     |
| v.                       | ) |                                |
|                          | ) |                                |
| State of South Carolina, | ) |                                |
|                          | ) |                                |
| Respondent.              | ) |                                |
| _____                    | ) |                                |

Stacy Walker (Applicant) filed an application for post-conviction relief on October 26, 2015. Respondent filed a Return on or about August 15, 2016. Upon realizing that one claim was omitted and the application was filed beyond the statute of limitations, Respondent now files this supplemental Return.

# I.

Applicant is presently confined with the South Carolina Department of Corrections pursuant to orders of commitment of the Newberry County Clerk of Court. Applicant was indicted at the June 2012 term of the Newberry County Grand Jury for three counts of First Degree Burglary (2012-GS-36-697, -724, -726) and three counts of Grand Larceny (2012-GS-36-696, -725, -727). Applicant was represented by Laura Saunders, Esquire. On November 15, 2013, Applicant pled guilty before the Honorable William P. Keesley, as indicted and was sentenced pursuant to negotiated sentences to concurrent thirty year terms of imprisonment on each First Degree Burglary charge and five year terms on each Grand Larceny charge.

Applicant did not file a direct appeal.

## II.

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

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea
  - a. "Plea was not knowing, voluntary, intelligently given, violating due process clause."

In Applicant's PCR application, he informs the Court that he did not appeal his guilty plea. Respondent construes his response as asserting a claim under White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974):

1. "When requested, my assigned attorney told me he would take care of it."

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

## III.

Respondent construes Applicant's application to include a claim that counsel was ineffective for failing to effectively procure a direct appeal upon Applicant's request.

Respondent submits that counsel for Applicant was diligent in his representation of Applicant and that he performed within the wide range of reasonable professional assistance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). The decision of the South Carolina Supreme Court, in White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), holds that even though the post-conviction relief court finds that the applicant had never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. However, where an accused establishes in a post-conviction relief hearing that he was

unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected.

Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000). Respondent submits that Applicant cannot satisfy the requirements set forth in the Roe test. However, the allegation of counsel's failure to appeal when requested probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

#### IV.

Respondent submits that Applicant's application, aside from his claim that he was not properly afforded his right to a direct appeal, should be dismissed for failing to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160 (Supp. 2003). S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant pled guilty to the offenses he challenges on November 15, 2013, requiring his

application to be filed on or before November 15, 2014. This Application was filed on October 26, 2015, which was eleven months after the statutory filing period had expired.

Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2003). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings...that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, Respondent requests that this Court dismiss the application for post-conviction relief, aside from the White claim, for failure to file within the time mandated by the Post-Conviction Procedure Act.

*[Signature block on following page]*

V.

WHEREFORE, Respondent requests this Court hold an evidentiary hearing to determine whether Applicant waived his right to a direct appeal, and requests this Court dismiss all other claims.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

JOHANNA C. VALENZUELA  
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, S.C. 29211

September 15, 2016

STATE OF SOUTH CAROLINA  
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

2015-CP-36-0574

STACY WALKER, #242126,

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Supplemental Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ashley A. McMahan, Esquire  
Mac | Vance Attorneys, LLC  
PO Box 5501  
West Columbia, SC 29171-5501

DATED this 15<sup>th</sup> day of September, 2016.

  
Jocelyn Baker, Legal Assistant  
For Respondent

STATE OF SOUTH CAROLINA  
COUNTY OF SALUDA

STACY WALKER, #242126,  
Applicant,

v.

STATE OF SOUTH CAROLINA  
Respondent.

IN THE COURT OF COMMON PLEAS

2014-CP-41-66

AMENDED APPLICATION FOR  
POST-CONVICTION RELIEF

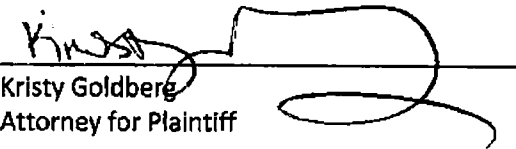
FILED  
2017 NOV -8 PM 1:30  
CLERK OF COURT  
SALUDA CO. S.C.

1. Place of Detention: Lee Correctional Institution.
2. Name and location of Court which imposed sentence: Saluda County Court of General Sessions, Saluda County Courthouse, Saluda, South Carolina.
3. Name(s) of co-defendant(s): Tonnie Pace.
4. The indictment number or numbers upon which and the offense or offenses for which sentence was imposed:
  - a. 2012-GS-41-254 Burglary 1<sup>st</sup> Degree.
5. The date upon which sentence was imposed and the terms of the sentence:
  - a. Plea entered May 21, 2013, Sentence imposed May 31, 2013 – 30 years
6. A finding of guilty was made after a plea of guilty.
7. Did you appeal the judgment of conviction or the imposition of sentence? No.
8. If you answered "yes" to (6), list
  - a. The name of each Court to which you appealed:
    - i. N/A.
  - b. The result in each such Court to which you appealed:
    - i. N/A.
  - c. The date of each such result:
    - i. N/A.
  - d. If known, the citations of any written opinion or orders entered pursuant to such results:
    - i. N/A.
9. If you answered "no" to (7), state your reasons for not so appealing: Trial counsel failed to file Notice of Appeal.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- a. Ineffective assistance of trial counsel – counsel was ineffective for failing to object when the State deviated from their relied upon plea agreement.
  - b. Ineffective assistance of trial counsel – counsel was ineffective for failing to move to compel the State to go along with their relied upon plea agreement.
  - c. Ineffective assistance of trial counsel – counsel was ineffective for failing to file a motion to withdraw plea.
  - d. Ineffective assistance of trial counsel – counsel was ineffective for failing to file a motion to reconsider sentence.
  - e. Ineffective assistance of trial counsel – counsel was ineffective in that he failed to properly explain the sentencing hearing procedure and potential outcome to client, which resulted in the Applicant entering an involuntary, unknowing, and unintelligently entered guilty plea.
11. State concisely and in the same order the facts which support each of the grounds set out in (10).
- a. As described above;
  - b. As described above;
  - c. As described above;
  - d. As described above;
  - e. As described above.
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 petitions in State or Federal Courts for habeas corpus or post-conviction relief? No.
  - c. Any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in # 7? 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: n/a.
  - b. The name and location of the Court in which each was filed: n/a.
  - c. The disposition thereof: n/a.
  - d. The date of each such disposition: n/a.
  - e. If known, citations of any written opinions or orders entered pursuant to each such disposition: n/a.
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No.
15. If you answered "yes" to (14) identify:
- a. Which grounds have been presented: n/a.
  - b. The proceedings in which each ground was raised: n/a.

16. If any ground set forth in (9) 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: All issues in Section (9) are being presented for the first time, in part due to the fact that trial counsel failed to file a motion to withdraw or reconsider.
17. Were you previously represented by an attorney at any time during the course of:
- a. Your arraignment and plea? Yes.
  - b. Your trial, if any? n/a.
  - c. Your sentencing? Yes.
  - d. Your appeal, if any, from the judgment of conviction or imposition of sentence? n/a.
  - e. Preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction which you filed? n/a.
18. If you answered "yes" to one or more parts of (17), list:
- a. The name and address of each attorney who represented you:
    - i. W. Greg Seigler.
  - b. The proceedings at which each such attorney represented you:
    - i. Plea.
19. State clearly the relief you seek in filing this application: Remand for resentencing only.
20. Are you now under sentence from any other court that you have challenged? PCR Applications have been filed in Newberry, Greenwood and Aiken counties related to the conviction and sentence imposed in each county.

Respectfully submitted,

  
 Kristy Goldberg  
 Attorney for Plaintiff

Law Office of Kristy Goldberg, LLC.  
 1720 Main Street, Suite 303  
 Columbia, SC 29201  
 Phone (803) 667-6633  
 kristy@kristygoldberglaw.com

Columbia, South Carolina

This 6<sup>th</sup> day of November, 2017

STATE OF SOUTH CAROLINA  
COUNTY OF SALUDA

STACY WALKER, SCDC # 242126,  
Applicant,

v.

STATE OF SOUTH CAROLINA  
Respondent.

IN THE COURT OF COMMON PLEAS

2014-CP-41-66

CERTIFICATE OF SERVICE

FILED  
2017 NOV -8 PM 1:30  
CLERK OF COURT  
SALUDA CO. S.C.

I certify that on this date I served the Application for Post-Conviction Relief in this case on The State of South Carolina by delivering a copy of this Notice to the State Attorney General's Office, by delivering a copy of this motion via U.S. Mail said copy to the Office of the Attorney General, Post Office Box 11549, Columbia South Carolina 29211.

  
Kristy Goldberg  
Attorney for Plaintiff

Law Office of Kristy Goldberg, LLC.  
1720 Main Street, Suite 303  
Columbia, SC 29201  
Phone (803) 667-6633  
kristy@kristygoldberglaw.com

Columbia, South Carolina

This 16 th day of November 2017

1 State of South Carolina ) In the Court  
2 County of Saluda ) Of Common Pleas  
3  
4 Docket No: 2014CP4100066  
5  
6 Stacy Walker, )  
7 Applicant, )  
8 vs. ) Transcript of Record  
9 State of South Carolina, )  
10 Respondent. )  
11  
12 November 21, 2017  
13 Saluda, South Carolina  
14  
15 B E F O R E:  
16 The Honorable R. Knox McMahon, Judge.  
17  
18 A P P E A R A N C E S:  
19 W. Edgar Salter III, Assistant Attorney General  
20 Attorney for the Plaintiff  
21 Kristy G. Goldberg, Esquire  
22 Attorney for the Defendant  
23  
24 Brenda J. Sigwald, Circuit Court Reporter  
25 To The Honorable Doyet A. Early III  
P.O. Box 206, Jackson, South Carolina 29831

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EXHIBITS

Number

Description

Page

(REPORTER'S NOTE: There were no exhibits  
entered during this hearing.)

POST CONVICTION HEARING

THE COURT: All right. Mr. Salter?

MR. SALTER: Your Honor, the next matter before the Court is Stacy Walker versus the State of South Carolina, 2014CP41066. The Saluda County Grand Jury indicted Mr. Walker, the applicant, back in May of 2012 for burglary in the first degree. Judge Greg Seigler was representing him on the charge.

Where is your client?

MS. GOLDBERG: He's back there. We need to get him in here.

They've got to take that one back before they get him.

MR. SALTER: All right. I'll just wait a second.

THE COURT: Thank you.

(There was a pause in the proceedings.)

(The applicant entered the courtroom.)

THE COURT: All right. Mr. Salter.

MR. SALTER: Again, this is Stacy Walker versus the State of South Carolina 2014CP41-066. The Saluda County Grand Jury indicted Mr. Walker back in May of 2012 for burglary in the first degree. Then Tri-County public defender, Judge Greg Seigler represented him on this charge.

On May 21, 2013, Mr. Walker pled guilty before the

1 Honorable Thomas A Russo. At that point sentencing was  
2 deferred and then on May 31st, 2013, the Honorable William  
3 Keesley sentenced him to a 30 year imprisonment.

4 While Mr. Walker did not make a direct appeal from  
5 his plea, he timely filed a PCR application on March 31st,  
6 2014. The State filed its return on March 9, 2015. His  
7 attorney, Ms. Christy Goldberg filed an amended application  
8 on his behalf on November 6th of 2017, and he now raises  
9 five allegations before this Court.

10 Mr. Walker and Ms. Goldberg are up here in court  
11 and I would turn it over to Ms. Goldberg.

12 THE COURT: Thank you, Mr. Salter.

13 Ms. Goldberg.

14 MS. GOLDBERG: Yes, Your Honor, may it please the  
15 Court. I did recently file an amended application. Does  
16 Your Honor have a copy of that in your file?

17 THE COURT: Amended application filed --

18 MS. GOLDBERG: It was filed November 8, 2016.

19 THE COURT: Yes, ma'am, I do.

20 MS. GOLDBERG: All right. Very good. That's the  
21 one we are proceeding on today, with the Court's  
22 understanding that those are the allegations and I'm ready  
23 to call my first witness.

24 THE COURT: All right. Yes, ma'am.

25 MS. GOLDBERG: At this time, I call Stacy Walker.

Stacy Walker - Direct Examination by Ms. Goldberg

1 THE COURT: Mr. Walker come around and be sworn for  
2 me, please.

3 STACY WALKER, was duly sworn

4 THE CLERK: Have a seat.

5 THE COURT: All right. Ms. Goldberg.

6 MS. GOLDBERG: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MS. GOLDBERG:

9 Q All right. Please state your name for the record.

10 A Stacy Walker.

11 Q Where are you currently housed?

12 A Lee Correctional.

13 Q And what sentence are you serving out of Saluda  
14 County?

15 A Thirty years.

16 Q Okay. Now, for the Court's information you are  
17 serving sentences on several convictions from several  
18 counties; is that right?

19 A That's correct.

20 Q Can you explain how the Saluda one fits into that,  
21 in the whole -- as related to the other counties.

22 A When I was in Greenwood they brought me back down  
23 here --

24 Q Well, let me back up a little bit. Which of your  
25 convictions was first?

## Stacy Walker - Direct Examination by Ms. Goldberg

- 1 A Saluda.
- 2 Q The Saluda conviction is first?
- 3 A Yes, ma'am.
- 4 Q All of the other sentences and all of the other
- 5 convictions that you are currently serving happened after
- 6 the Saluda conviction, correct?
- 7 A Correct.
- 8 Q Okay. What counties are those?
- 9 A Greenwood, Newberry, Aiken.
- 10 Q Now, you understand that we are here today only
- 11 regarding the Saluda conviction?
- 12 A That's correct.
- 13 Q All right. Do you remember what date you were
- 14 arrested?
- 15 A It was 3/13/2012.
- 16 Q All right. March of 2012?
- 17 A Yes, sir.
- 18 Q All right. Does March 16th sound accurate? March
- 19 16th? Does that sound accurate?
- 20 A I didn't hear you. Can you say that again.
- 21 Q March 16th, does that sound accurate to you?
- 22 A No, ma'am.
- 23 Q Okay. You think it was the 13th?
- 24 A It was the 13th. I'm sorry, it was the 12th.
- 25 Q It was the 12th?

## Stacy Walker - Direct Examination by Ms. Goldberg

1 A Yeah.

2 Q What agency or what county arrested you?

3 A Greenwood.

4 Q Greenwood. So after your arrest where were you  
5 taken? To the jail in Greenwood.

6 A Yes, ma'am.

7 Q Since that day, since March 12, of 2012, have you  
8 been incarcerated the entire time?

9 A No, ma'am.

10 Q You bonded out at some point?

11 A You said --

12 Q Have you been incarcerated constantly since March  
13 12th, 2016?

14 A Yes, ma'am.

15 Q Okay. So you've always be in jail or in prison  
16 since then?

17 A Yes, ma'am.

18 Q All right. Your Saluda County warrant, which is a  
19 part of the record in this case states that you were served  
20 with your Saluda County charges on March 30th of 2012.

21 Does that sound accurate?

22 A Yes, ma'am.

23 Q All right. So how were you served with that  
24 warrant? Where were you physically when you were served  
25 with that warrant?

## Stacy Walker - Direct Examination by Ms. Goldberg

1 A Well, Officer Shorter came and picked me up and he  
2 brought me back down here for me to show him the houses  
3 that we broke in.

4 Q When you say he picked you up, he picked you up  
5 from where?

6 A Greenwood.

7 Q The detention center?

8 A Yes, ma'am.

9 Q So Investigator Shorter came to the Greenwood  
10 Detention Center?

11 A Yes, ma'am.

12 Q All right. Did he -- when you first made contact  
13 with him, was the first thing that he did was serve the  
14 warrant on you and hand you the warrant, or what happened  
15 first?

16 A No, he just came and he talked to one of the  
17 investigators and he wanted me to show him some houses  
18 that, you know, we kind of broke in.

19 Q Okay. Did he ask you if you were willing to go  
20 with him?

21 A Well, he didn't ask me, he confirmed with another  
22 investigator and I went -- first I didn't wanted to go.  
23 And I talked to Lawyer Tinsley, supposed to have been  
24 representing me and he said go ahead and go. And that's  
25 when I went with Mr. Shorter.

## Stacy Walker - Direct Examination by Ms. Goldberg

1 Q You went with Investigator Shorter willingly? You  
2 were in his custody when you left the jail that day?

3 A Yes, ma'am.

4 Q Okay. What was your understanding of what you were  
5 supposed to do that day?

6 A My understanding was that if I cooperate with  
7 Greenwood and Saluda and the surrounding counties that they  
8 was going to give me one sentence to all the counties,  
9 going to run the sentences concurrent and get me on 15  
10 years.

11 Q Now, you just said your understanding was if you  
12 cooperated with Greenwood.

13 A Greenwood --

14 Q You understand Investigator Shorter worked for  
15 Saluda County?

16 A Yes, ma'am.

17 Q All right. So what was your understanding of what  
18 you were supposed to be doing with Investigator Shorter  
19 that day?

20 A Well, like I say, he came and picked me up and  
21 wanted me to show him around the houses I broke in.

22 Q And you agreed to do that?

23 A At first I didn't and I confirmed with the lawyer  
24 and he said go ahead. So I did. I went ahead and did it.

25 Q And you're going to show them other houses, what

## Stacy Walker - Direct Examination by Ms. Goldberg

1 does other houses mean?

2 A Well, he took me around and -- to houses, to  
3 houses, to houses, I -- you know, and I told him detail,  
4 details what happened.

5 Q And when you say details of what happened, what  
6 kind of incidents are you talking about?

7 A Breaking and entering --

8 Q So you --

9 A The house and --

10 Q You identified burglary locations?

11 A Yes, ma'am.

12 Q Prior to doing this for Investigator Shorter, did  
13 anyone make you any promises as to what would happen in  
14 your case?

15 A On the way down me and him, we talked. And he said  
16 that he was going to work with me tremendously. He said  
17 that he, you know, I cooperate, he going to be by my side  
18 and he said -- I kept asking him, what you think I'm going  
19 to get? What you think I'm going to get. He said 15  
20 years.

21 Q Did you take that as a promise?

22 A Yes, ma'am. I -- he's a police officer, I...

23 Q Was that before or after you showed him the houses  
24 of the burglaries?

25 A Before.

## Stacy Walker - Direct Examination by Ms. Goldberg

1 Q Before. Was there any further talk about  
2 sentencing or the outcome of your case in this? Or is that  
3 all of it?

4 A That was it.

5 Q After you rode around with Investigator Shorter and  
6 showed him other burglary locations, where did you go next?

7 A To the sheriff's office and it was some guys that I  
8 was selling stuff to and they was, I guess, one of them  
9 went and got the guys. And he wanted me to, basically  
10 interrogate them. Basically saying, look, I need you to  
11 tell them the truth, you know, what I'm saying. Where I  
12 got the stuff at and so forth.

13 Q There were individuals there that you had sold  
14 stolen items too?

15 A Yes, ma'am.

16 Q And Investigator Shorter asked you to talk with  
17 them?

18 A Yes, ma'am.

19 Q Okay. Were you willing to do that?

20 A Yes, ma'am.

21 Q Did you do that voluntarily?

22 A Yes, ma'am, because, you know, they was. They  
23 police officers and I trusted them.

24 Q When Investigator Shorter asked you to talk to  
25 these individuals, did he make any promises for what you

## Stacy Walker - Direct Examination by Ms. Goldberg

1 would receive in exchange? Or did he just ask you to talk  
2 to them?

3 A Just asked me, you know, and what I was thinking  
4 that -- from the beginning, before we even looked at  
5 houses, what he told me. So I took that into  
6 consideration.

7 Q You were still relying on the previous statement  
8 that Investigator Shorter made?

9 A Yes, ma'am.

10 Q After you spoke with these individuals at his  
11 request, what happened next?

12 A He took me to the Saluda County Jail and then they  
13 served the warrants on me.

14 Q At the Saluda County Jail?

15 A Yes, ma'am.

16 Q Was it the day of the bond hearing?

17 A No, ma'am. They just served warrants and he  
18 brought me back later.

19 Q Brought you back to Greenwood?

20 A No. He brought me back to -- after I went back to  
21 Greenwood, he brought me back to Saluda with Tony Pace.

22 Q Are you talking about a different day?

23 A Yes, ma'am.

24 Q Stay on the same day. After you were served with  
25 the warrants, there was no bond hearing?

## Stacy Walker - Direct Examination by Ms. Goldberg

1 A No, ma'am.

2 Q And then he -- and then you were brought back to  
3 Greenwood?

4 A Yes, ma'am.

5 Q Who brought you back to Greenwood?

6 A Shorter.

7 Q Investigator Shorter?

8 A Yes, ma'am.

9 Q Was anything said during that conversation about  
10 the -- about what the outcome of your case would be or any  
11 promises made?

12 A No, ma'am, I can't recall that.

13 Q Nothing significant that you recall about that?

14 A Yes, ma'am.

15 Q All right. So -- All right. The next thing that  
16 happened for the Saluda County charge was what?

17 A Next thing -- what happened is when he -- when --  
18 he didn't come back to pick me up. Someone came in a van  
19 and then transported me and Pace, Tony Pace, my codefendant  
20 back to the jailhouse. And that's when Mr. Shorter took me  
21 and Pace to the bond hearing.

22 Q To the bond hearing?

23 A Yes, ma'am.

24 Q How -- do you have any idea what that date was?

25 The date?

## Stacy Walker - Direct Examination by Ms. Goldberg

1 A No, ma'am, I don't recall the date.

2 Q Do you know how long it was after that first -- we  
3 were talking originally about March 30th. Do you know if  
4 it was a day later, a week later, a month later?

5 A I can't remember.

6 MR. SALTER: Your Honor, could we ask the witness  
7 to speak up a little bit so I can hear him? I don't hear  
8 as well as I used to.

9 MS. GOLDBERG: Okay.

10 BY MS. GOLDBERG:

11 Q Did anything significant happen the day of your  
12 bond hearing?

13 A Yes, ma'am. When Mr. Shorter opened the back door  
14 and me and Pace asked him, Look, you know, we going to get  
15 15 years?

16 He said, Yeah you're going to get 15 years.  
17 Everything all right.

18 Q Did you take that to be a promise?

19 A Yes, ma'am.

20 Q Did you do anything on reliance of that?

21 A Not that day.

22 Q All right. What happened next?

23 A We went inside. They gave us a bond and took us  
24 back to Greenwood.

25 Q Okay. After that, what is the next thing of

**Stacy Walker - Direct Examination by Ms. Goldberg**

1 significance that happened to your Saluda case?

2 A When I -- when I -- they came and got me to bring  
3 me down here to plea.

4 Q All right. So your plea date was the next date  
5 that anything happened?

6 A Yes, ma'am.

7 Q All right.

8 MS. GOLDBERG: And for the record, that -- the plea  
9 is May 21st, 2013.

10 BY MS. GOLDBERG:

11 Q So let me back up a little bit. You were  
12 incarcerated in Greenwood between March of 2012 and May of  
13 2013, correct?

14 A Yes, ma'am.

15 Q All right. Even though you had come down to Saluda  
16 twice, you remained housed in Greenwood the whole time?

17 A Yes, ma'am.

18 Q At what point did you receive an attorney on your  
19 Saluda County charge?

20 A I didn't until I came here. I never got a note. I  
21 didn't know who was my attorney until I came here and they  
22 took me in that room right there.

23 Q Prior to your plea? You never received any  
24 correspondence, letters from any attorney for your Saluda  
25 charge?

## Stacy Walker - Direct Examination by Ms. Goldberg

1 A No, ma'am.

2 Q Did you -- you never received a visit or a phone  
3 call from any attorney on your Saluda County charge?

4 A No, ma'am.

5 Q All right. So then the day of your plea, you're  
6 brought to the Saluda courthouse. What happens first?

7 A That's when I went in that room right there and  
8 that's when I talked to Mr. Seigler and he said they  
9 offered me 15 years, said, Go ahead and take this plea  
10 today. And he said that, that it's going -- me and Tony  
11 was going to plea today. That's what he said.

12 And right when he got ready to step out the room, I  
13 told him, I said, Just reminder, you know, the officers in  
14 this jumped on me and they're going to be investigated.

15 Q Now, you just said the words remind him. Had you  
16 talked to him before this?

17 A No, ma'am. I said -- when he stepped out the --  
18 got ready to walk away, you know, for the plea and I told  
19 him, I said, just to remind you that the officer jumped on  
20 me in Greenwood and SLED is supposed to be investigating my  
21 case.

22 Q And that was a complaint that you had made about a  
23 Greenwood officer, correct?

24 A Yes, ma'am.

25 Q Prior to this conversation you had with

## Stacy Walker - Direct Examination by Ms. Goldberg

1 Mr. Seigler, had he reviewed the discovery materials with  
2 you?

3 A No, ma'am. We just went up for a plea.

4 Q Now, you mentioned to him that there was a SLED  
5 investigation regarding a Greenwood officer. What happened  
6 after you brought that to his attention?

7 A He just went on in the courtroom. And I was  
8 waiting on -- to be, to go up to be sworn in.

9 Q And did he respond to that at all?

10 A No, no, ma'am. He was like -- first he said don't,  
11 then don't take the plea.

12 I said No, we're going to go ahead and do the 15.  
13 And he walked on out. I don't know what happened after  
14 that.

15 Q He came in the courtroom?

16 A Yes, ma'am.

17 Q Did you talk to him again before you went in front  
18 of the judge?

19 A No, ma'am.

20 Q And then you went in front of the judge and entered  
21 your plea that day?

22 A Yes, ma'am.

23 Q All right. Now, you understand -- you read your  
24 transcripts in this case?

25 A Yes, ma'am.

## Stacy Walker - Direct Examination by Ms. Goldberg

1 Q Have you read both the plea and the sentencing  
2 hearing transcript?

3 A Yes, ma'am.

4 Q All right. And you know because you were there, on  
5 that first day you entered your plea, you were not  
6 sentenced that day. You're aware of that?

7 A Yes, ma'am.

8 Q All right. So when you went up to enter your plea,  
9 did you know you were not going to be sentenced that day?

10 A No, I thought I was supposed to be sentenced to 15  
11 years.

12 Q When did you find out that you weren't going to be  
13 sentenced?

14 A When they sent me back to the county jail.

15 Q Did you -- do you know why you weren't sentenced  
16 that day?

17 A No, ma'am. From what I understand me and Pace  
18 supposed to be sentenced the same day.

19 Q Did anyone ever tell you why the sentencing didn't  
20 happen that day?

21 A Say that again, Ms. --

22 Q Did anyone ever tell you why the sentencing didn't  
23 happen that day?

24 A They said it went on recess or something, went to  
25 lunch. And they just took me back.

Stacy Walker - Direct Examination by Ms. Goldberg

1 Q Now, your sentencing was May 31st, which is ten  
2 days after your plea, does that sound correct?

3 A Yes, ma'am.

4 Q Between May 21st and May 31st, did anything happen?

5 A No, ma'am. Until I came in here.

6 Q Did your lawyer come to see you in Greenwood, or  
7 come, talk with you?

8 A No, ma'am.

9 Q You were brought back here on May 31st?

10 A Yes, ma'am.

11 Q So what happened that day?

12 A I was in the County jail and he walked in and he  
13 said you've got to take this.

14 Q You were in the county jail in Saluda?

15 A Yeah, they brought me back to the county jail.

16 Q And this is the same day you went to court, just  
17 earlier in the day or no?

18 A Yes, ma'am.

19 Q Yes?

20 A Yes, ma'am.

21 Q Okay. Mr. Seigler did visit you at the jail in  
22 Saluda?

23 A Yes, ma'am.

24 Q All right. And then what did he say?

25 A You got to take this. I said what is you talking

## Stacy Walker - Direct Examination by Ms. Goldberg

1 about. He said you got to take this. He said -- I can't  
2 tell you exact words, but he said, Got to take this, you  
3 know, this is all they're offering you now.

4 And I said what happened to the 15 years.

5 He just said, You got to take this, you got to take  
6 this. You got to take this deal.

7 And he explained to me that he, that the judge is  
8 not going to give you this -- give you no life sentence and  
9 stuff like that. He said, exact words, he told me, Me and  
10 the judge, we kind of good friends and I believe I can get  
11 you 15 years.

12 I said what happened to the 15 years that we  
13 supposed to get, you know. He never told me what happened.  
14 I never got a chance to talk to the solicitor.

15 Q You mentioned, I think, when you started talking,  
16 and you said that your lawyer said, You've got to take  
17 this. What does that mean?

18 A It was -- it was -- he said, I can't use -- I don't  
19 know his exact words, how he said it. But he said, You got  
20 to take this. This's no more offers on the table,  
21 something like that. You know, he was trying to explain to  
22 me.

23 Q Do you remember anything else about what he  
24 explained to you?

25 A No, ma'am. I know I was under the impression

## Stacy Walker - Direct Examination by Ms. Goldberg

1 either I do it or something going to happen, you know a  
2 jury trial or something happen.

3 Q I think you just said that you never talked to the  
4 solicitor; is that right?

5 A Yes, ma'am, I never, you know, I -- I wish I would  
6 have, but I never got the opportunity.

7 Q Okay. That day, May 31st, you did come here to  
8 court for the sentencing hearing?

9 A Yes, ma'am.

10 Q And what was your understanding of what was going  
11 to happen in court?

12 A My understanding was I was going to get 15 years.  
13 Me and Pace was going to plead to 15 years.

14 Q You still thought that when you came into the  
15 courtroom that day?

16 A Yes, ma'am.

17 Q When did you realize that changed?

18 A When the judge gave me 30 years. I tried my best  
19 to talk to my lawyer and tell him to stop the plea, stop  
20 the plea. And he looked he at me and said no.

21 Q And, in fact, in the transcript, you do tell the  
22 judge that there was a misunderstanding; is that right?

23 A Yes, ma'am.

24 Q After the -- your sentence and after the hearing  
25 was over, did you talk with your lawyer anymore that day?

## Stacy Walker - Direct Examination by Ms. Goldberg

1 A Yes, ma'am, at the end, he -- I was like what's  
2 going on, what happened. He said put in the PCR. You know  
3 I said that's your job and he walked off.

4 Q Did he offer to file a motion to reconsider?

5 A No, ma'am.

6 Q Did he offer to file a motion to withdraw your  
7 plea?

8 A No, ma'am.

9 Q Was there any talk about filing an appeal?

10 A No, ma'am.

11 Q Why did you plead guilty?

12 A Well, for me it's changing. I cooperated with the  
13 police because Mr. Pace didn't cooperate. That's what the  
14 officer was telling me. So that's what -- that's the only  
15 reason why I didn't.

16 Q How does the cooperation relate to the plea in your  
17 mind? Why are the two things related?

18 A Explain to me in a different way.

19 Q I asked you why you pled guilty and you mentioned  
20 that you cooperated.

21 A Yes, ma'am.

22 Q Okay. Tell me why that's your answer. I'm asking  
23 you again, why did you plea?

24 A Because they told me they were going to give me 15  
25 years if I exchange -- if I helped them. They had nothing

**Stacy Walker - Cross-Examination by Mr. Salter**

1 but me and I did everything I could to help them and I'm  
2 the one that got railroaded.

3 Q And that promise was made to you by Investigator  
4 Shorter?

5 A Yes, ma'am.

6 Q And in exchange for that promise, you helped them?

7 A Yes, ma'am.

8 Q Did -- and just to clarify, based on your  
9 conversations with your lawyer, was there anything  
10 different or any reason you shouldn't plea or were you  
11 still relying on the same information?

12 A Explain that to me again, please.

13 Q That's a bad question. Let me withdraw that.

14 MS. GOLDBERG: Beg the Court's indulgence.

15 THE COURT: Yes, ma'am.

16 MS. GOLDBERG: No further questions.

17 THE COURT: Thank you, Ms. Goldberg.

18 Mr. Salter, cross?

19 **CROSS-EXAMINATION**

20 **BY MR. SALTER:**

21 Q Mr. Walker, I'm not sure I understand that. You  
22 said that on the 30th of -- March 30th, 2012, Investigator  
23 Shorter came and picked you up? Right? Y'all went around  
24 and looked at some houses?

25 A Yes, sir.

## Stacy Walker - Cross-Examination by Mr. Salter

- 1 Q Houses that you broke into?
- 2 A Yes, sir.
- 3 Q No question you broke into the houses?
- 4 A No question.
- 5 Q All right. Were those houses in Saluda County or
- 6 Greenwood County?
- 7 A Saluda County.
- 8 Q Oh, they were in Saluda County. Okay.
- 9 And at that time, he supposedly made a promise to
- 10 you or told you that you would get 15 years if you
- 11 cooperated?
- 12 A Yes, sir.
- 13 Q Okay. Did he tell you what authority he had to
- 14 make this promise?
- 15 A No, sir. I mean he's a police officer, I'm not
- 16 knowledgeable with the law.
- 17 Q So you thought because he was police officer he
- 18 could make that decision and you could get 15 years?
- 19 A (Witness nodded head.)
- 20 Q Okay. And he told you again, I believe either
- 21 before or after your bond hearing that you'd get 15 years?
- 22 A When we got out of the back of the van he told me.
- 23 Q All right, sir. And you claim Mr. Seigler, your
- 24 attorney, also promised you that you would get 15 years,
- 25 correct?

## Stacy Walker - Cross-Examination by Mr. Salter

1 A Yes, sir.

2 Q Okay.

3 A The day I went up for the plea, he told me.

4 Q All right. Now, before your guilty plea, how many  
5 times did you meet with Mr. Seigler?

6 A No time. But one time when I came up to the plea.

7 Q Just one time?

8 A Just one time for about three -- probably about  
9 three minutes. He was explained to me 15 years. He was  
10 like you getting 15 years. Let's go in, get swore in.  
11 You know, do this today.

12 Q Did you tell him Shorter had promised you 15 years?

13 A Yeah. I told him -- even my lawyer in Greenwood  
14 had called him, confirmed with him said we suspected 15  
15 years. And he talked to my lawyer.

16 Q All right. Now, you mentioned Greenwood, what --  
17 what resolution was there to the charges in Greenwood?

18 A Can you explain to me a little bit.

19 Q Let me break it down. How much time did the cases  
20 in Greenwood get you?

21 A From what I understand the head investigator there  
22 had called Shorter and that's how -- it kind of started  
23 connecting because I was cooperating.

24 Q And did you plea to those cases in Greenwood?

25 A I haven't been to court to any of them yet.

## Stacy Walker - Cross-Examination by Mr. Salter

1 Q Okay. Didn't you tell Judge Russo that at the time  
2 -- on May 21st of 2013, you went before Judge Russo, right?

3 A Yes, sir.

4 Q And that's when he accepted your plea, right?

5 A Yes, sir.

6 Q And did you tell him at that time you were  
7 satisfied with your lawyer's representation?

8 A Yes, sir.

9 Q And you told him that you didn't have any  
10 complaints about him, right?

11 A Yes, sir.

12 Q Okay. And you also told Judge Russo, did you not,  
13 that you understood his explanation that burglary in the  
14 first degree carries between 15 years and life in prison,  
15 correct?

16 A Yes, sir.

17 Q And didn't you tell him that even understanding the  
18 nature of the charge against you and the possible  
19 punishment you wanted to enter a guilty plea?

20 A Yes, sir.

21 Q Also, didn't you tell him that you understood that  
22 the only promise that had been made to you was in exchange  
23 for your plea that the State would dismiss four grand  
24 larceny charges, three charges of burglary in the second  
25 degree, one charge of breaking and entering a motor vehicle

## Stacy Walker - Cross-Examination by Mr. Salter

1 and one charge of burglary in the first degree?

2 You did tell him that, right?

3 A Yes, sir, I did.

4 Q You told him that was the only agreement you had,  
5 right?

6 A Say that again?

7 Q You told him that was the only promise --

8 A Yes, sir, I did.

9 Q -- to be made to you?

10 A Yes, sir.

11 Q You didn't tell him about a 15 year deal, did you?

12 A No, sir, because I was instructed not to. They  
13 told me when I go up there, they said go along with the  
14 deal. I took my lawyer's word that I was going to get 15  
15 years and that's what I -- that's why I agreed with  
16 everything.

17 Q All right. Your lawyer told you not to tell about  
18 the deal of 15 --

19 A Let me rephrase that. He didn't tell me not to say  
20 that, he just told me how it was going to work out. He  
21 said when you go up there just -- bottom line, I thought I  
22 was getting 15 years. That's what I was suspecting.

23 Q And you weren't under the influence of drugs or  
24 alcohol or anything that morning, were you?

25 A No, sir.

## Stacy Walker - Cross-Examination by Mr. Salter

1 Q The day of your plea, on the 21st that morning?

2 A No, sir.

3 Q And you told Judge Russo you were making your plea  
4 freely and voluntarily; didn't you?

5 A Yes, sir, I did.

6 Q And you didn't mention that 15 year deal at all on  
7 May 21st, did you?

8 A 20 what?

9 Q When you entered the plea in front of Judge Russo?

10 A No, sir.

11 Q And at the time --

12 A It was my understanding that -- my lawyer told me  
13 we're going to plead to 15 years.

14 Q All right. Now, with the exception of the charge  
15 which you pled guilty to, the burglary in the first degree  
16 charge, with the exception of that, the State did dismiss  
17 all the other charges against you, didn't they?

18 A Yes, sir.

19 Q Okay. So you were obviously facing life in prison  
20 on that charge alone, were you not?

21 A They didn't tell me that.

22 Q And in fact --

23 A I wasn't -- my impression was getting 15 years.  
24 Now, the judge had gave me the sentence guideline but I  
25 wasn't worrying about that because my trust was with my

## Stacy Walker - Cross-Examination by Mr. Salter

1 Lawyer.

2 Q But you were told --

3 A My lawyer told me we was getting 15 years.

4 Q But you were told that you could possibly get a  
5 much higher sentence, right?

6 A Yes, sir, the judge told me.

7 Q All right. And you received a 30 year sentence and  
8 now you're not happy by it, but you avoided a lot of time  
9 by entering that guilty plea, did you not?

10 A Yes, sir.

11 Q Okay.

12 A I was really confused though at the end when I got  
13 sentenced though because that wasn't the deal and I wanted  
14 to talk to my solicitor and maybe if I would have talked to  
15 him this wouldn't have happened to me.

16 Q All right. Let me just get this straight again.  
17 You did tell your lawyer at that one meeting you had with  
18 him about all the promises that had been made to you by  
19 Investigator Shorter; did you not?

20 A Yes, sir.

21 Q Okay.

22 MR. SALTER: Nothing, further, Your Honor.

23 THE COURT: Thank you, Mr. Salter.

24 Ms. Goldberg?

25 MS. GOLDBERG: Thank you, Your Honor, may it please

## Stacy Walker - Redirect Examination by Ms. Goldberg

1 the Court.

2 REDIRECT EXAMINATION

3 BY MS. GOLDBERG:

4 Q Mr. Walker, I think you just said, and I wrote it  
5 down to quote, It wasn't the deal; is that right?

6 A That's right.

7 Q You thought you had an actual deal in place?

8 A Yes, ma'am.

9 Q And that deal was?

10 A 15 years.

11 Q And your lawyer related that to you?

12 A Yes, ma'am.

13 Q On the day of your plea?

14 A Yes, ma'am.

15 Q If you did not believe that you had a deal in place  
16 for 15 years, would you have pled guilty that day?

17 A No, ma'am, not at all.

18 Q What are you asking this Court for now?

19 A I just want what they promised me. I'm not saying  
20 I'm not guilty. I cooperated. I'm not trying to get no  
21 free ticket out of jail, I just want my 15 years.

22 Q Do you want your conviction overturned?

23 A No, ma'am, I just want my 15 years. That's all I  
24 ask.

25 Q Because you believe it was actually a part of the

**Stacy Walker - Recross Examination by Mr. Salter**

1 deal you made?

2 A Yes, ma'am.

3 Q And if you hadn't been promised 15 years, would you  
4 have showed the officers about incident locations of the  
5 burglaries?

6 A No, ma'am, not at all.

7 MS. GOLDBERG: No further questions.

8 THE COURT: Recross examination?

9 MR. SALTER: Just briefly, Your Honor.

10 **RECROSS-EXAMINATION**

11 BY MR. SALTER:

12 Q Mr. Walker, do you understand that Judge McMahon  
13 can't give you a time cut, that the only relief you can get  
14 is a new trial?

15 A Yes, yes, sir.

16 Q And you understand if you go back for a new trial,  
17 you could go back on all the Saluda charges you're facing,  
18 not just this one burglary first?

19 A I'd like to talk to my lawyer before I --

20 MS. GOLDBERG: You know, Your Honor, I'd just ask  
21 that he not be required to answer that. I think it's a  
22 legal premise and I think it's an incorrect legal premise.

23 THE COURT: I'm sorry, I wasn't listening fast  
24 enough. I apologize.

25 MS. GOLDBERG: It's okay. I just ask that he not

## Stacy Walker - Recross Examination by Mr. Salter

1 be required to answer. He's asking him a legal question  
2 and I think it's an incorrect legal premise.

3 THE COURT: I'm curious --

4 MS. GOLDBERG: We can argue.

5 THE COURT: What do you think this -- I'm just  
6 curious.

7 MS. GOLDBERG: Right. There's case law that goes  
8 directly towards whether or not pleas rendered on  
9 detrimental reliance on plea agreements, on promises made,  
10 that's the case, cases can be remanded for resentencing  
11 only. So it is within the Court's discretion and power as  
12 an option. So I just don't think that particular issue is  
13 appropriate for my client to talk about. We can argue  
14 such.

15 MR. SALTER: Your Honor, just briefly Your Honor  
16 Bordenkircher v Hayes and Pearce, North Carolina v. Pearce,  
17 if a plea is entered as a result of a plea negotiation,  
18 prosecutor is free to bring back the original charges if  
19 that plea is vacated. I mean if he's not happy -- if he  
20 was planning on some of other deal, he's going to face  
21 those other charges.

22 THE COURT: Well, I guess -- that's always kind of  
23 been my understanding, Mr. Salter, but as a think through  
24 it, from the hip so the speak, but I try not to think from  
25 the hip. But as I think through it, sitting up here now.

**Stacy Walker - Recross Examination by Mr. Salter**

1 I generally tell applicants that the only authority I have  
2 is to grant the PCR. And if it goes back to square one,  
3 and I can predict anything but the future, Mr. Walker, you  
4 understand?

5 And then a prosecutor could bring that charge and  
6 could bring the other charges. However, there could be  
7 certain motions made if it got back to the trial court. As  
8 your attorney says, perhaps detrimental reliance or a  
9 motion to enforce the deal or void the deal or what have  
10 you.

11 MS. GOLDBERG: Well it --

12 THE COURT: But I don't have the authority to --  
13 I've kind of got an up and down authority. I don't have  
14 the authority to do anything in between, for example  
15 resentencing. You understand?

16 THE APPLICANT: I do.

17 MS. GOLDBERG: And, Your Honor, just for the  
18 record, there's specifically Custodio versus State, which  
19 is similar and there's some differences in the facts, but  
20 it's similar in that the defendants -- based on a promise  
21 did ride around with law enforcement to show him some  
22 burglaries, so that part is similar.

23 THE COURT: That a Richland County case?

24 MS. GOLDBERG: That is a Richland County case and  
25 the PCR Court did remand it because, because of the

**Robert Shorter - Direct Examination by Ms. Goldberg**

1 detrimental reliance for proceedings consistent with this  
2 opinion that the -- the State could not assert anything  
3 other than the promised plea agreement. So I don't think  
4 it's necessarily the case that it's all or nothing. And  
5 again, just in the context of -- and we can argue this at  
6 the end as well -- but in the context of my client having  
7 to answer whether he understands, you know.

8 THE COURT: Yes, ma'am.

9 Any other questions, Mr. Salter, Ms. Goldberg?

10 MR. SALTER: None from the State, Your Honor.

11 MS. GOLDBERG: No, Your Honor.

12 THE COURT: Thank you, thank you, Mr. Walker, you  
13 may step down.

14 All right. You may call your next witness.

15 MS. GOLDBERG: Your Honor, at this time I call  
16 Investigator Shorter.

17 THE COURT: All right. If you'd come around  
18 Mr. Shorter and be sworn in.

19 ROBERT SHORTER, was duly sworn.

20 **DIRECT EXAMINATION**

21 **BY MS. GOLDBERG:**

22 Q All right, sir. Can you state your name for the  
23 record, please?

24 A Robert Shorter.

25 Q Mr. Shorter, you're here today based on subpoena

## Robert Shorter - Direct Examination by Ms. Goldberg

1 that I sent on behalf of Mr. Walker, correct?

2 A That's correct.

3 Q And when you received that subpoena, you were aware  
4 it's for Stacy Walker's case specifically?

5 A I was.

6 Q Are you -- do you remember Mr. Walker?

7 A I do.

8 Q Did you review any documentation or bring any  
9 documentation with you today?

10 A I'm no longer affiliated with the sheriff's office.  
11 I don't have any access. I asked you prior to this hearing  
12 to provide me some and you said you had none.

13 Q So you didn't bring anything with you. You haven't  
14 reviewed anything?

15 A I was not subpoenaed to bring anything, nor do I  
16 have access to anything.

17 Q Just asking if you did.

18 A All right.

19 Q All right. Investigator Shorter, do you recall  
20 traveling to Greenwood to pick up Mr. Walker and serve him  
21 with a warrant?

22 A If the paperwork says I did, I did. It's been a  
23 long time ago.

24 Q And I'm really not asking you about any paperwork.  
25 I'm asking you about your personal recollections?

## Robert Shorter - Direct Examination by Ms. Goldberg

1 A No, ma'am, I don't personally recall that trip.  
2 I've made thousands of trips like that.

3 Q So you just don't remember that particular day?

4 A No, ma'am.

5 Q Do you have any recollection of bringing -- picking  
6 him up in Greenwood and bringing him to Saluda for a bond  
7 hearing?

8 A No, ma'am, I don't.

9 Q Do you have any personal memory or recollection  
10 about any conversations you had with Mr. Walker at any  
11 time?

12 A Not the gist of it, no, ma'am.

13 Q What does that mean?

14 A I don't.

15 Q I don't know about the gist of it.

16 A How long we talking? Six years ago?

17 Q About.

18 A No, ma'am, I don't. There's only one thing I can  
19 tell you certainly to reply to what he said?

20 Q Okay.

21 A I don't make promises. Mr. Salter took the words  
22 right out of my mouth. I do not have to authority, nor  
23 does any police officer have the authority to make a deal  
24 with a suspect in a criminal case. That lies with the  
25 judge and the solicitor's office. I never made him a deal.

**Robert Shorter - Cross-Examination by Mr. Salter**

1 I never made anybody a deal. I did not do that.

2 Q That's based on your internal policy?

3 A That's based on me.

4 Q Right.

5 A I've handled thousands of cases like this. I was a  
6 court officer up here. I've presented thousands of cases  
7 to this judge and various other judges and I know better  
8 than to make a deal like that with anybody. You can't do  
9 it. You've got victims involved. You got victim's rights  
10 involved. And you can't do that.

11 Q Notwithstanding that that's your policy, you don't  
12 have any specific recollection of anything said by you or  
13 Mr. Walker during your interactions?

14 A No, ma'am, I don't.

15 THE COURT: Mr. Salter?

16 **CROSS-EXAMINATION**

17 BY MR. SALTER:

18 Q Mr. Shorter, thank you for coming here today.

19 How long were you with the sheriff's office back  
20 then?

21 A From 2001, January of 2001 until November of 2012.

22 Q All right. And what's the standard policy that  
23 someone cooperates, you would tell -- you would tell that  
24 person, I'll bring your cooperation to the attention of the  
25 solicitor?

**Robert Shorter - Cross-Examination by Mr. Salter**

1 A That's true with every case, yes, sir.

2 Q Why would that be?

3 A Well, I mean just based on my experience in court,

4 people that's been cooperative tend to get a better deal.

5 Q But --

6 A And this particular case, he got a sweetheart deal

7 considering what all he did.

8 Q Who had the authority to make the deals?

9 A The solicitor's office.

10 Q All right. And only the solicitors had that

11 authority, correct?

12 A Yes, sir. That's right, yes, sir.

13 Q All right, sir. Do you have any recollection

14 whatsoever of ever promising Mr. Walker that he would

15 receive a 15 year sentence?

16 A No, sir, I do not.

17 Q Would you have done so since you didn't have the

18 authority to make that --

19 A I would not have done so for any other defendant.

20 Q All right.

21 MR. SALTER: I don't believe I have anything else,

22 Your Honor.

23 THE COURT: Redirect, Ms. Goldberg?

24 MS. GOLDBERG: Yes, Your Honor.

25 ///

## Robert Shorter - Redirect Examination by Ms. Goldberg

## REDIRECT EXAMINATION

1  
2 BY MS. GOLDBERG:

3 Q Mr. Shorter -- and I just wanted to clarify exactly  
4 what was said. It was a question about how routinely  
5 things are said to defendants regarding if they cooperate  
6 or not. What was your standard practice of what you would  
7 say with them?

8 A I would tell anybody if you cooperate you tend to  
9 get a better deal.

10 Q You'll tell them if you cooperate, you'll get a  
11 better deal?

12 A That's correct.

13 Q Okay. Did you -- was it your standard practice to  
14 inform defendants as to what their sentencing range would  
15 be?

16 A If they asked, I could. If I knew it. Sometimes I  
17 didn't know. In this particular case he's facing life in  
18 prison times, I don't know how many times, in other  
19 counties. He got a great deal.

20 THE COURT: Recross examination, Mr. Salter?

21 MR. SALTER: Nothing further, Your Honor.

22 THE COURT: Thank you.

23 Thank you, Mr. Shorter.

24 THE WITNESS: Thank you, sir.

25 THE COURT: All right. Ms. Goldberg?

Honorable Greg Seigler - Direct Examination by Mr. Salter

1 MS. GOLDBERG: No further witnesses.

2 THE COURT: Thank you, thank you, Ms. Goldberg.

3 Mr. Salter?

4 MR. SALTER: Your Honor, I would call Judge  
5 Seigler.

6 THE COURT: Call who?

7 MR. SALTER: Judge Seigler.

8 THE COURT: All right. Yes, sir.

9 Judge, if you would come around and be sworn for  
10 us, please.

11 THE HONORABLE GREG SEIGLER, was duly sworn

12 THE CLERK: Please have a seat.

13 THE COURT: All right. Mr. Salter.

14 MR. SALTER: Thank you, Your Honor.

15 **DIRECT EXAMINATION**

16 BY MR. SALTER:

17 Q Where and how are you currently employed?

18 A I'm a family court judge for the 11th Circuit, Seat  
19 One.

20 Q All right. How long have you been there?

21 A This is my fourth calendar year, so about three and  
22 a half years total, I believe.

23 Q All right. Prior to that time where were you  
24 employed?

25 A I was the Tri-County Public Defender from July of

## Honorable Greg Seigler - Direct Examination by Mr. Salter

1 2007 until July of 2014.

2 Q All right. Now, everybody in here knows what the  
3 tri-county public defender's office does, but for the  
4 record, can you kind of explain what that meant?

5 A I was the public defender for McCormick, Saluda and  
6 Edgefield Counties.

7 Q Okay. All right. In that capacity, did you come  
8 to represent Mr. Walker?

9 A I did.

10 Q Prior to representing him, do you have any idea how  
11 many major felony cases you had handled?

12 A A lot. I can't tell you exactly, sir, but I was  
13 the only public defender in three counties for seven years,  
14 so it was a tremendous amount.

15 Q Okay. Do you recall when you first met with  
16 Mr. Walker?

17 A I remember meeting with Mr. Walker, sir, but I  
18 cannot tell you exactly when or where or what time. That's  
19 been many years ago.

20 Q Well, did you meet with him more than once or...

21 A I don't recall.

22 Q You don't recall?

23 A Typically I would have. The only thing I can  
24 testify to is what I typically did. I remember meeting  
25 with Mr. Walker, but I don't remember the specifics. I'm

## Honorable Greg Seigler - Direct Examination by Mr. Salter

1 certainly not going the jeopardize perjuring myself because  
2 I don't remember.

3 Q All right. That's fair.

4 Currently how many cases would you be handling  
5 during this time period?

6 A I don't know, sir. I don't have a specific number  
7 for you.

8 Q More than a hundred?

9 A Well, actually way more than that.

10 Q Okay. But it's been several years, correct?

11 A It's been several years. It's been four, four and  
12 a half.

13 Q Do you remember discussing the case at all with  
14 Mr. Walker?

15 A I remember discussing it with him, but I don't  
16 remember specifics.

17 Q What do you remember? That would be the best way  
18 to do this. What do you remember?

19 A I remember vaguely -- and a lot of this is based on  
20 my review of the file and the transcript. That he had a  
21 number of charges and that ultimately the solicitor agreed  
22 to let him plead to one count and dismiss everything else.  
23 And again, that's based on my review of the sentencing  
24 sheet that clearly indicates that there were no  
25 negotiations or recommendations, simply a plea to burg

## Honorable Greg Seigler - Direct Examination by Mr. Salter

1 first.

2 Q Okay. So you don't recall being presented with any  
3 information about a promise for a 15 year sentence?

4 A No, sir. I do remember, and again based on my  
5 review of the transcript, that Mr. Shorter had indicated  
6 that he cooperated and I did put that on the record for the  
7 judge to consider. And his cooperation would have been  
8 taken into consideration during sentencing.

9 But again, I want you to understand that's based a  
10 lot on my review of the transcript.

11 Q Correct. But you have no reason to doubt the  
12 accuracy of anything related within the transcript, do you?

13 A No, sir.

14 Q All right. What do you recall about the facts of  
15 the case?

16 A I don't recall a whole lot of anything about the  
17 facts of the case other than Mr. Walker had a number of  
18 charges from various different counties that involved a  
19 number of different crimes.

20 Q Do you recall whether or not there was any serious  
21 thought in taking this case to trial?

22 A I don't recall specifically, but this was an  
23 overwhelming amount of evidence including his involvement  
24 with Mr. Shorter and taking him to the locations. So I  
25 don't know whether we ever discussed a serious possibility

## Honorable Greg Seigler - Direct Examination by Mr. Salter

1 of going to trial, but again, I simply don't remember the  
2 specifics.

3 Q Do you recall what Mr. Walker's prior record was  
4 like?

5 A It was long. I know he had a number of different  
6 convictions, but I don't remember the specifics to that as  
7 well.

8 Q If the record reflects that the State had agreed to  
9 not prosecute all the other charges other than the one charge  
10 that he pled guilty and it was a straight-up plea, you  
11 don't have any independent recollection of anything beyond  
12 that, do you?

13 A No, sir.

14 Q Or anything different from that?

15 Do you recall Mr. Walker ever telling you that he'd  
16 been promised a 15 year sentence by Investigator Shorter?

17 A No, sir.

18 Q Or anyone else?

19 A No, sir.

20 Q So you don't recall ever making a representation  
21 that the State had promised him a 15 year sentence, do you?

22 A That's what the sentencing sheet indicates, it's  
23 without negotiations or recommendations. And I've never  
24 promised any of my clients a guaranteed sentence when it  
25 was a straight-up plea. What I probably did was told

## Honorable Greg Seigler - Direct Examination by Mr. Salter

1 Mr. Walker that I would ask the judge to give him the  
2 minimum 15 years, which is exactly what I did. But I would  
3 have also advised him the State would probably be asking  
4 for something different. But, again, I'm not testifying  
5 that I specifically remember that. All I can tell you is  
6 that out of the hundreds and hundreds of people that I've  
7 represented, I would have never guaranteed him anything  
8 unless it was a negotiated plea in writing, which it was  
9 not.

10 Q Because you don't really know what's going to  
11 happen until the judge makes up his mind, or her mind?

12 A Yes, sir, correct.

13 Q Do you recall Mr. Walker ever asking you to file a  
14 motion to withdraw his plea?

15 A No, sir.

16 Q How about a motion for reconsideration of sentence?

17 A No, sir.

18 Q Did y'all ever -- did he ever ask you about an  
19 appeal?

20 A No, sir. I filed many appeals for litigants and I  
21 would have had he asked.

22 Q Were you -- since you don't recall any  
23 conversations, do you recall anything -- there was some  
24 theory, to make a either motion to withdraw the plea or  
25 motion to reconsideration of sentence?

**Honorable Greg Seigler - Cross-Examination by Ms. Goldberg**

1 A No, sir.

2 Q I don't think I have thinking else, Your Honor.

3 THE COURT: Thank you, Mr. Salters.

4 Ms. Goldberg?

5 MS. GOLDBERG: Thank you, Your Honor. May it  
6 please the Court.

7 **CROSS-EXAMINATION**

8 BY MS. GOLDBERG:

9 Q Good afternoon. Judge Seigler, you do have your  
10 file with you today.

11 A I do.

12 Q And this file does have your notes in it as well?

13 A Whatever -- I assume everything's in there. I  
14 can't guarantee. I didn't have custody of the file. It  
15 was in storage and was delivered to me from the current  
16 public defender.

17 Q Can you tell me if, generally speaking, you met  
18 with Mr. Walker prior to the day of his plea on May 21th?

19 A I do not remember.

20 Q Can you tell from looking at your notes?

21 A No, I can't.

22 Q I'm sorry -- are there no notes reflecting any date  
23 prior to May 21st?

24 A The only notes that I have are the notes regarding  
25 the plea that day. Now, that's not to say they weren't in

**Honorable Greg Seigler - Cross-Examination by Ms. Goldberg**

1 there. Again this wasn't in my custody so I can't  
2 guarantee you what's been put in or taken out.

3 Q That's much clearer. So you're not telling me that  
4 you didn't see him before that date?

5 A I certainly did.

6 Q You're telling me that there's nothing reflecting  
7 that in your file?

8 A Yes, ma'am.

9 Q All right. That's different than the first answer.  
10 All right, sir. On May 21st, that was the date  
11 here in court. Do you have notes in your file regarding  
12 your conversations with Mr. Walker?

13 A I don't.

14 Q And you've said you don't have any independent  
15 recollection as to conversations that took place that day?

16 A I do not, no.

17 Q Can you tell me anything you remember about why he  
18 wasn't sentenced that day?

19 A I don't recall. This would be pure speculation,  
20 unless it was involving the other codefendant. I don't  
21 know. I really don't have any notes as to why it was  
22 delayed, so I can't answer that other than pure speculation  
23 that may have involved Mr. Pace pleading or -- I'm not  
24 sure.

25 Q You were aware that he had charges pending in other

## Honorable Greg Seigler - Cross-Examination by Ms. Goldberg

1 counties?

2 A Right.

3 Q Do you recall having conversations with attorneys  
4 in those other counties?

5 A I don't.

6 Q Would it be your normal practice to reach out to  
7 the attorneys in the other counties?

8 A If they were available enough times to discuss the  
9 matter, I certainly would have. But, again, I don't  
10 recall. I may have or may not have. If Mr. Walker asked  
11 me to, I certainly would have. But again, you understand,  
12 ma'am, I could have reached out to them and they not  
13 responded. I simply don't remember.

14 Q You just don't remember?

15 A That's right.

16 Q But you do understand that obviously this charge in  
17 Saluda County was first degree burglary?

18 A Correct.

19 Q And his charges in other counties were also first  
20 degree burglaries. Are you aware of that?

21 A I take your word for it, but again, I don't recall  
22 specifically what he had pending. I just know there was a  
23 number of different charges involving similar activity that  
24 occurred in this county, alledgedly at the time.

25 Q Because this was a first degree burglary, any

**Honorable Greg Seigler - Cross-Examination by Ms. Goldberg**

1 subsequent convictions for most serious charges would  
2 expose him to life without parole potential?

3 A Right.

4 Q You remember discussing that with him?

5 A I typically did with all my clients looking at that  
6 particular situation. But again, you can rephrase it all  
7 you want to. I don't recall specifically what we talked  
8 about.

9 Q I understand that. I'm just making the record as  
10 clear as possible.

11 You don't recall seeking out these other attorneys  
12 or actively doing anything to try and avoid him having that  
13 life without parole exposure in the other counties?

14 A Again, I possibly could have. And I don't recall  
15 whether I did or not. Based on what Mr. Walker said,  
16 vaguely I remember maybe another attorney that was involved  
17 in Greenwood, but I don't recall whether we talked, whether  
18 I reached out to him and he didn't respond or I just  
19 specifically cannot recall. Again, it's been four and a  
20 half years.

21 Q And the -- it appears that Mr. Walker pled guilty  
22 to the one charge with charges dismissed. I assume you  
23 also don't recall if any plea negotiations had taken place  
24 prior to this ultimate plea, such as any negotiations that  
25 had been discussed and abandoned or withdrawn or rejected,

**Ervin Maye - Direct Examination by Mr. Salter**

1 you don't remember?

2 A No, ma'am.

3 MS. GOLDBERG: No further questions.

4 THE COURT: Thank you, Ms. Goldberg.

5 Mr. Salter?

6 MR. SALTER: Nothing further, Your Honor. We'd ask  
7 that he be excused.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: Thank you, thank you for being here  
10 with us.

11 MS. GOLDBERG: And Investigator Shorter should also  
12 be excused from his subpoena.

13 THE COURT: Mr. Shorter, you may be excused. Thank  
14 y'all.

15 All right. Mr. Salter you may call your next  
16 witness.

17 MR. SALTER: All right. I would call Ervin Maye.

18 THE COURT: All right. Solicitor, if you would  
19 come around and be sworn, please.

20 ERVIN MAYE, was duly sworn

21 THE CLERK: Have a seat, please.

22 **DIRECT EXAMINATION**

23 **BY MR. SALTER:**

24 Q Mr. Maye, where and how are you currently employed?

25 A My name is Ervin Maye and I'm currently employed as

**Ervin Maye - Direct Examination by Mr. Salter**

1 an assistant solicitor with the 8th Judicial Circuit. I  
2 work in Laurens, South Carolina. Prior to that time I  
3 served in the 11th Circuit as an assistant solicitor and  
4 subsequently deputy solicitor. I served from August of  
5 1994 until July of this year for the 11th Circuit  
6 Solicitor's Office. I was involved in the prosecution of  
7 Mr. Walker, the applicant for PCR in this case.

8 I handled this case, basically from the outset at  
9 the solicitor's office involvement. This was an unusual  
10 case involving the applicant -- my memory was refreshed by  
11 Investigator Shorter. One of the first times we ever did  
12 application for a GPS tracker where we went before a  
13 certain judge and had a GPS tracker pursuant to statute  
14 installed on the vehicle and that yielded evidence that  
15 resulted, ultimately in these cases being broken and  
16 charged. So it was a highly unusual case, during my time  
17 as an assistant solicitor.

18 THE COURT: What did you just say about this case?

19 THE WITNESS: I had a GPS tracker that was  
20 installed.

21 THE COURT: Did I issue that?

22 THE WITNESS: I don't know if you issued it or  
23 Judge Keesley issued it, Your Honor. I don't recall.

24 THE COURT: Was it like a --

25 THE WITNESS: It was one of those where the

**Ervin Maye - Direct Examination by Mr. Salter**

1 solicitor has to deal with a petition.

2 THE COURT: Was it involved with him going out to  
3 country houses, something like that?

4 THE WITNESS: Could have been, Your Honor. Again,  
5 I can't remember if you issued the GPS tracker order, the  
6 ex parte order, or Judge Keesley did.

7 But for that reason, this case, with my  
8 recollection refreshed, it has more emphasis to me.

9 THE COURT: Ms. Goldberg, I might have issued this.  
10 I just wanted you to know that.

11 MS. GOLDBERG: I appreciate that Your Honor and so  
12 the record's clear, as I briefly discussed earlier,  
13 Mr. Walker is not asserting any sort of innocence claim and  
14 because that's just related to the GPS --

15 THE COURT: I just wanted you to know. I recall  
16 issuing a tracker, a Saluda case that involved multiple  
17 burglaries and multiple counties. That's the only reason I  
18 bring it up.

19 MS. GOLDBERG: Yes, sir. And I think even if it  
20 was you, since you do have a recollection, it would be  
21 okay, but that appears to be the only involvement in this  
22 case.

23 THE COURT: Thank you, Ms. Goldberg.

24 BY MR. SALTER:

25 Q Just briefly, you were kind of going into the facts

**Ervin Maye - Direct Examination by Mr. Salter**

1 when I was going to ask you about that. When did you first  
2 become involved in the case?

3 A Early on in the investigation because this was just  
4 -- having a huge stream of burglaries. It was unusual to  
5 have that kind of burglary activity and because of that,  
6 the sheriff's office had heightened patrols. The  
7 investigators were working overtime and intended to solve  
8 them because they knew that this was some sort of a spree  
9 of unusual activity.

10 They came to me and told me that they needed this  
11 GPS tracker that's got to be issued by the solicitor. I  
12 basically went through and prepared the affidavits and all.  
13 My understanding, from my recollection being refreshed by  
14 Investigator Shorter that this was a GPS tracker case.

15 I certainly have a lot of recollection of the plea.  
16 For one reason, we did it in kind of a bifurcated fashion.  
17 We stopped it. We took it. It was accepted. I had to get  
18 the victim here because it was a straight-up plea, I wanted  
19 the victim to be able, to be able to make their  
20 presentation to the judge prior to sentencing.

21 It involved so many charges in so many different  
22 counties, by coordinating with other prosecutors as this  
23 case was being coordinated for prosecution and I can  
24 remember there were confessions involved in the case.  
25 Mr. Walker was involved in so many, I ultimately brought

## Ervin Maye - Direct Examination by Mr. Salter

1 this to a head because there were charges in so many  
2 jurisdictions that I basically informed the public defender  
3 that he was either going -- we were either going to resolve  
4 these cases by plea or these cases were going to trial and  
5 that I was going to resolve it. Because I knew moving this  
6 case in the 11th Circuit would in all likelihood result in  
7 clearing cases across a multitude of counties.

8 Q All right. You were obviously, familiar with any  
9 cooperation Mr. Walker had given, correct?

10 A Yes, I was informed of cooperation. And we  
11 informed Mr. Walker and the codefendant Mr. Pace -- by  
12 every officer that I was informed of, Mr. Pace was less  
13 culpable, had a less significant record than Mr. Walker. I  
14 would have used him against Mr. Walker if we -- if  
15 Mr. Walker had elected to go to trial. I would have used  
16 him as a cooperating witness against Mr. Walker, but I was  
17 aware that he had taken Investigator Shorter around to  
18 clear up some of the burglaries that he had done, which  
19 would have been to his advantage for them not trickling in  
20 and to resolve them all at one time if he went around and  
21 did that.

22 Now, I never authorized Investigator Shorter to  
23 offer him any sort of plea, plea agreement, time, in any  
24 regard. I never did any discussions with Investigator  
25 Shorter and Investigator Shorter never told me one word

**Ervin Maye - Direct Examination by Mr. Salter**

1 about how he made him plea offers or negotiations in any  
2 regard. I worked with the investigator on a thousand, more  
3 than a thousand cases I would say. And he knew that our  
4 policy was that the only thing that he could inform any  
5 defendant that cooperated was that he would inform the  
6 solicitor's office of the cooperation of the defendant and  
7 we would give that whatever weight that we deemed  
8 appropriate in handling the disposition of the case. I  
9 never knew him at any time to ever go outside, deviate from  
10 what was an absolute policy on the part of our office.

11 If there was any negotiation as to time, they  
12 involved us or any negotiation of reduction of charges or  
13 consolidation of charges, the solicitor's office had to be  
14 involved. And Investigator Shorter on multiple occasions,  
15 of course, contacted me if that was going to be a  
16 situation. But beyond that, the only authority that they  
17 had was to give that blanket instruction that they would  
18 inform us of any cooperation.

19 Q All right. Now, the plea that's reflected in the  
20 record was a straight-up plea?

21 A Absolutely. I refreshed my recollection. I  
22 remember it. But basically, when -- on May 21st of 2013,  
23 before he went up in front of Judge Russo, Judge Russo went  
24 through with Mr. Walker, he was here, present in the  
25 courtroom, swore him, advised him of his rights. I got up

**Ervin Maye - Direct Examination by Mr. Salter**

1 before the Court right from the outset, published the  
2 Indictment Number 2012GS41254, said that he was charged  
3 with burglary in the first degree. Because this was the  
4 resolution of a big number of charges in this case, I  
5 wanted to be absolutely certain that I was building a  
6 record in this case, so one of the first things out of my  
7 mouth is, I said he was represented by Mr. Seigler, he's  
8 going to plea to this burglary first. He has indicated a  
9 willingness to enter a guilty plea on this charge without  
10 negotiations or recommendations as to sentence.

11 Mr. Walker was standing right here in the  
12 courtroom. It was one of the first things out of my mouth.  
13 I wanted to be absolutely certain that the record was clear  
14 in this case. I had a guy who was involved in potentially  
15 being sentenced to multiple life sentences. I took his  
16 cooperation into consideration. I took it down from  
17 multiple charges in this case to one single charge, but my  
18 absolute and clear discussions with the defense in this  
19 case were that he was going to plea straight up to one  
20 count of burglary first and he could get from 15 to life  
21 and that they could argue for the minimum and we could  
22 argue for the maximum, but that was the only negotiation  
23 that we had in the case. I built the record on that. It's  
24 in the transcript. He was here. Clearly said that he was  
25 pleading straight up.

**Ervin Maye - Direct Examination by Mr. Salter**

1 I clearly went through right from the outset on the  
2 21st that we were not going to carry out the sentencing in  
3 this case because this was a straight-up plea, I wanted the  
4 victim present here pursuant to the victim's bill of rights  
5 and also for the victim to give any information that would  
6 be pertinent to sentencing. And I published with  
7 Mr. Walker standing here that we had asked the judge, we'd  
8 like for you to accept the plea today and defer sentencing  
9 until we can get the victims up here at the appropriate  
10 time. Then we will go through his prior record and the  
11 victim impact information.

12 The only reason I did that was because with a  
13 straight-up plea, if it had been a plea where there was any  
14 negotiations with any regard to sentence, I would have  
15 placed that on the record. It's nowhere on the record in  
16 this case and it is clear that we did not have a sentencing  
17 on the 21st, we came back ten days later on the 31st in  
18 front of Judge Keesley and carried out the sentencing in  
19 the case and that was clearly done and published on the  
20 record in front of Mr. Walker so we could get the victim up  
21 here for a straight up plea. It was clear. It was never  
22 anything on the record during that entire first hearing  
23 that indicated that there was going to be any kind of  
24 recommendation as to sentence. It was clear that it was a  
25 straight-up plea.

## Ervin Maye - Direct Examination by Mr. Salter

1 Q Are you -- would you have put any contrary  
2 negotiations on the record?

3 A Absolutely. In a case of this magnitude where  
4 somebody was looking at a minimum of getting a 15 year  
5 sentence and where we knew that we were going to be asking  
6 for basically a life sentence or a maximum sentence in the  
7 case, I would have been absolutely -- I knew it was  
8 absolutely critical to build a record in this case and the  
9 record is absolutely clear on it's face with Mr. Walker  
10 standing here that no such deal or no such information was  
11 ever presented to the Court that we intended to recommend a  
12 15 year sentence in any regard.

13 There's -- in fact, in the record, at the beginning  
14 of the plea on May 31st when we go before Judge Keesley, I  
15 went back through and gave Judge Keesley a recitation of  
16 what had happened up to that point in time, why the plea  
17 had been accepted, why it had been deferred, that we had  
18 the victim here. Mr. Walker was again standing here and I  
19 said clearly, he's going to plea straight up to this  
20 burglary first. I think they're going to argue for the  
21 minimum, we're going to argue for the maximum, Your Honor,  
22 and that's the full extent of any negotiations in this  
23 case.

24 But the restitution with the remaining victims on  
25 the ones that are being nol prosed are fair game for Your

## Ervin Maye - Direct Examination by Mr. Salter

1 Honor to consider in structuring a sentence for him on the  
2 burglary first.

3 Now, not that I thought that this was going to be a  
4 case where restitution would be a real factor, but -- and  
5 out of a sentence of fairness in the case, I wanted all of  
6 the victim's restitution to be considered on this one  
7 single count of indictment that he was pleading to on a  
8 burglary first. But he was here. That was published in  
9 his presence with, you know, exactly -- I anticipated what  
10 would happen, they would ask for the minimum, we would ask  
11 for the maximum and he then went through the entire litany  
12 with Judge Keesley and never was one word mentioned during  
13 that entire proceeding about him ever being promised a 15  
14 year sentence. The record was abundantly clear that he was  
15 going to plead straight up and he could get anything from  
16 15 to life.

17 Q Now, when you walked into the courtroom on the  
18 21st, was it -- was there ever any indication by you that  
19 -- were the parties ever under the impression that there  
20 would be sentencing at that time?

21 A No. When we did so on the 21st, it was clear that  
22 we were just -- basically I was getting ready to try the  
23 case or he was going to plea. We had him in front of the  
24 Court and the only reason we did that was basically to stop  
25 the clock. We were going to go ahead and start a trial and

1 I was prepared to go ahead and begin trying these cases so  
2 that basically stopped the clock. He pleaded. He deferred  
3 sentencing. He's locked in on being guilty and then  
4 there's nothing but sentencing, but we needed time because  
5 he was going to go ahead and plea it would have probably  
6 been during the time during court when we were running  
7 pleas. We usually bring the jury in later and so that  
8 basically resolved it and let us have time to get the  
9 victim up here so that they could be heard for purposes of  
10 this straight up plea.

11 MR. SALTER: Nothing further, Your Honor.

12 THE COURT: Thank you, Mr. Salter.

13 Ms. Goldberg?

14 MS. GOLDBERG: I don't have any questions, Your  
15 Honor.

16 THE COURT: Thank you, thank you very much,  
17 Solicitor. Thank you for being with us today.

18 THE WITNESS: Thank you.

19 MR. SALTER: That would be the State's case.

20 THE COURT: Thank you. Any evidence or testimony  
21 in reply, Ms. Goldberg?

22 MS. GOLDBERG: No, Your Honor, only argument.

23 THE COURT: All right. I'll be glad to hear from  
24 you.

25 MS. GOLDBERG: Thank you Your Honor, may it please

1 the Court. We did hear from four witnesses today.  
2 Mr. Walker, then Mr. Seigler, and Investigator Shorter who  
3 both had very limited recollections of anything taking  
4 place and then Mr. Maye, who other than some background  
5 information generally testified as to what is in the record  
6 from the transcripts.

7 I would argue, Your Honor that Mr. Walker's  
8 testimony today was very credible. I want to point the  
9 Court's attention to the transcript from the sentencing  
10 hearing, if Your Honor has those.

11 THE COURT: From Judge Keesley's hearing?

12 MS. GOLDBERG: Yes, that's right, Your Honor.

13 THE COURT: Yes, ma'am.

14 MS. GOLDBERG: If you will look with me on page 22.

15 THE COURT: 22.

16 MS. GOLDBERG: Yes, sir.

17 THE COURT: Yes, ma'am.

18 MS. GOLDBERG: In that top corner, this is  
19 generally where Mr. Walker starts -- has been sentenced,  
20 realizes what's happened and tries to point out the  
21 situation. And he very clearly says on line 2, But from  
22 what I understand that I was supposed to be charged the  
23 minimum.

24 And when he's saying this, I think is clear. I  
25 mean he doesn't say it in the correct legal terms. He

1 understood that he was going to be sentenced to the  
2 minimum. He's said that immediately at the time of  
3 sentencing, which makes that statement credible as to that  
4 is what he believed. Your Honor, he's testified today that  
5 Investigator Shorter, in his -- Mr. Walker's state of mind  
6 he believes Investigator Shorter promised him 15 years.  
7 Based on reliance of that promise, he did drive -- ride  
8 around with him to show him additional houses that had been  
9 burglarized to his detriment.

10 Then on the day of the plea, he entered a plea in  
11 reliance on his two different statements to Investigator  
12 Shorter, but more importantly statements from his attorney  
13 that he was going to be getting 15 years. I want to point  
14 out that while Investigator Shorter did not have any  
15 specific recollection, he was very, very clear in two  
16 things. One, he specifically stated, and I wrote down his  
17 language, that he would tell defendants that if they  
18 cooperate, they would get a better deal. He did not say he  
19 tells defendants that he'll let the State know or that it  
20 may work in your favor. He did specifically State that  
21 they would get a better deal and he also said he tells  
22 defendants what the sentencing range is.

23 And in this particular case the minimum is 15  
24 years. Mr. Walker has testified that in conversations with  
25 Investigator Shorter that he would get a 15 year deal, that

1 Mr. Walker believed those to be promises, relied on his  
2 promises and that's what he based his -- not only the ride  
3 around, but also the decision to plead guilty on.

4 I do think it's very clear in the record that  
5 Mr. Walker was unsatisfied and confused, didn't understand  
6 what had happened at sentencing. I believe that's on Judge  
7 Seigler to file a motion to withdraw or file a motion to  
8 reconsider sentence if appropriate, which I believe it was  
9 based on the record itself.

10 Your Honor, I do, as we discussed briefly here  
11 earlier; I do want to make clear Mr. Walker's position. It  
12 is not an innocence claim. He believes firmly that he was  
13 promised a 15 year plea agreement by his attorney and by  
14 Investigator Shorter. Now understanding he didn't have any  
15 conversations with the solicitor, so we're not making any  
16 allegations other than the facts as Mr. Walker knows them.  
17 That's what we -- that's all we have. But he believes that  
18 he was trying to accept that plea deal and that the State,  
19 understanding the solicitor, wasn't involved. Mr. Walker  
20 feels like the State did not the follow through on the  
21 promises made to him. He was induced to plea and  
22 detrimentally relied on that, but he very clearly is not  
23 asserting innocence. He does not want his conviction  
24 overturned in whole.

25 What he would ask for is a remand for resentencing,

1 such as if Your Honor does find that a plea agreement did  
2 exist and that Mr. Walker relied on it. A hearing could be  
3 scheduled in general sessions court accordingly. And my  
4 authority for this would be the Custodio case as I cited.

5         There's also Davie v State which is a 2009 case,  
6 which is different factually. It has to do with a plea  
7 offer that was given to defense counsel but never made its  
8 way to the defendant. And the only reason I cite to that  
9 case is because it does remand for -- for resentencing only  
10 to comport with the plea. And actually, it doesn't even, I  
11 believe, require the State to give that plea offer back in  
12 that case, but it does remand for resentencing only so that  
13 those issues can be addressed. So I just want to make it  
14 clear, Your Honor, of what he is asking the Court to do.

15         THE COURT: Thank you. Thank you, Ms. Goldberg.  
16         Mr. Salter.

17         MR. SALTER: Very briefly, Your Honor.

18         It's our position, there's credible evidence as  
19 reflected in the transcript of the plea and transcript of  
20 the sentencing and Mr. Maye's testimony here this  
21 afternoon, is that there was no 15 year promise. I think  
22 the credible evidence is that while Mr. Walker may have  
23 misunderstood some of his conversations with counsel that  
24 the agreement was for the straight up plea. There were so  
25 many charges pending at the time, there was no reason for

1 the State to have offered a 15 year deal on one burglary  
2 first when he could very easily set him up doing life  
3 without parole for any number of other crimes just from  
4 Saluda County.

5 I don't believe that there's anything that occurred  
6 during the plea or sentencing that would have supported a  
7 motion to withdraw the plea or a motion to reconsider the  
8 sentence imposed. I think the sentence is well within the  
9 statutory realm. He did get a benefit from having pled  
10 guilty. He got all these other cases disposed that had  
11 been pending. He didn't make deals on those. Also, one of  
12 the things that the United States Supreme Court has said in  
13 McGill versus Kentucky, and that's at 130 Supreme Court  
14 1473 on page 1485, To obtain relief in this type of claim,  
15 a petitioner must convince the Court that a decision to  
16 reject the plea bargain would have been rational under the  
17 circumstances. He clearly did not have because he had all  
18 those other charges pending, not only in Saluda County, but  
19 in other counties as well.

20 THE COURT: Thank you, thank you, Mr. Salter.

21 I don't have, and perhaps I should have, but I  
22 don't, the transcript of the guilty plea proceedings in  
23 front of Judge Russo. Does that exist?

24 MS. GOLDBERG: It does, Your Honor.

25 MR. SALTER: It should be...

1 MS. GOLDBERG: It should be a part of your record.

2 THE COURT: It's not a part of this record in the  
3 Court's file. I have Judge Keesley's.

4 MR. SALTER: Judge I will --

5 THE COURT: Just make me a copy of it and let me  
6 look at it.

7 MR. SALTER: Yes, Your Honor, I'll do that.

8 THE COURT: All right. An would y'all please  
9 prepare proposed orders simultaneously to yourselves and to  
10 my law clerk, not to me, please, unless you don't want me  
11 to see them, but to my law clerk. How much time do y'all  
12 need? Ms. Goldberg, y'all know how busy y'all are.

13 MS. GOLDBERG: Your Honor, I typically say 30 days,  
14 but we're just about -- we're about up for a big PCR week.  
15 I think 60 is -- with the holidays and the PCR week in  
16 December.

17 THE COURT: All right. 30 days?

18 MS. GOLDBERG: 60.

19 MR. SALTER: That's going to be good with me Your  
20 Honor. I'm going to be involved in the same PCR week.

21 THE COURT: That sounds like the sentence. 60 days  
22 is fine. That's fine.

23 Thank you.

24 The solicitor handed me up a copy --

25 Can I have this copy, Solicitor?

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MR. MAYE: I don't need it.

THE COURT: Thank y'all very much.

\* \* \* \* \* END OF TRANSCRIPT \* \* \* \* \*

1 State of South Carolina )  
2 County of Aiken ) **Certificate of Reporter**

3  
4  
5  
6 I, Brenda J. Sigwald, Official Court Reporter for  
7 the Second Judicial Circuit of the State of South Carolina,  
8 do hereby certify that the foregoing is a true, accurate,  
9 and complete Transcript of Record of the proceedings had  
10 and evidence introduced in the trial of the captioned case,  
11 relative to appeal, in the Court of Common Pleas in and for  
12 the State of South Carolina on the 21st day of November  
13 2017.

14 I FURTHER CERTIFY that I am neither kin, counsel,  
15 nor of interest to any party hereto.

16 IN WITNESS WHEREOF, I have hereunto set my hand and  
17 seal at Aiken County, this 12th day of January 2019.

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25

Brenda J. Sigwald  
Brenda J. Sigwald,  
Court Reporter and Notary Public  
For the State of South Carolina  
My commission expires  
January 4, 2020

STATE OF SOUTH CAROLINA

COUNTY OF SALUDA

Stacy Walker, 242126,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
THE ELEVENTH JUDICIAL CIRCUIT

CLERK OF COURT  
SALUDA CO. S.C. 2014-CP-41-066

**ORDER OF DISMISSAL**

This matter is before the Court by way of a Post-Conviction Relief (PCR) Application filed on March 31, 2014, and an Amended Application dated November 6, 2017. The Court held an evidentiary hearing into the matter on November 21, 2017, at the Saluda County Courthouse. Applicant was present at the hearing and Kristy Goldberg, Esquire, represented him.<sup>1</sup> Senior Assistant Attorney General William Edgar Salter, III, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing and he presented testimony from Robert Shorter. Respondent presented testimony from plea counsel, Greg Seigler, Esquire, and former Eleventh Circuit Assistant Solicitor Ervin Maye. The Court had before it copies of the transcripts of Applicant's May 21, 2013 guilty plea and his May 31, 2013 sentencing; the records of the Saluda County Clerk of Court regarding Applicant's convictions; Applicant's South Carolina Department of Corrections (SCDC) records; and the pleadings in this action. The Court now denies relief and makes the following findings:

**I. PROCEDURAL HISTORY**

<sup>1</sup> Ms. Goldberg was appointed to represent Applicant on April 23, 2014.

Applicant is presently confined in Lee Correctional Institution, of the Department of Corrections, as the result of his Saluda County conviction and sentence. The Saluda County Grand jury indicted him in May 2012 for burglary in the first degree (2012-GS-41-254). The Saluda County Grand Jury also indicted him for another burglary in the first degree (2012-GS-41-286), three charges of a burglary in the second degree (2012-GS-41-252, -280, & -281), four counts of grand larceny (2012-GS-41-250, -251, -255 & -284), and one count of breaking and entering a motor vehicle (2012-GS-41-286). The Honorable W. Greg Seigler, who was then the Tri-County Public Defender, represented him on these charges.

Applicant accepted the State's offer to enter a straight-up guilty plea to the charge of burglary in the first degree in 2012-GS-41-254, with no recommendation as to sentence. In exchange, the State agreed to *nolle prosequere* the remaining charges. On May 21, 2013, Applicant pled guilty before the Honorable Thomas A. Russo. However, sentencing was deferred at that time. On May 31, 2013, he appeared before the Honorable William P. Keesley, who sentenced him to thirty years imprisonment.

Applicant did not appeal his sentence or conviction. However, he filed a PCR Application March 31, 2014. He raised the following claims in his *pro se* Application:

1. Ineffective Assistance of Counsel:
  - a. failure to object to plea judge's deviation from the plea agreement that purportedly stipulated to a fifteen (15) year term of imprisonment; and
  - b. failure to move to withdraw Applicant's plea.

The State filed its Return on March 9, 2015. Applicant thereafter filed his Amended Application, with counsel's assistance.

## II. ALLEGATIONS

Applicant alleged the following grounds for relief in his Amended Application:

- a. ineffective assistance of trial counsel - counsel was ineffective for failing to object when the State deviated from their relied upon plea agreement;
- b. ineffective assistance of trial counsel - counsel was ineffective for failing to move to compel the State to go along with their relied upon plea agreement;
- c. ineffective assistance of trial counsel - counsel was ineffective for failing to file a motion to withdraw the plea;
- d. ineffective assistance of trial counsel - counsel was ineffective for failing to file a motion to reconsider sentence; and
- e. counsel was ineffective in that he failed to properly explain the sentencing hearing procedure and potential outcome to client, which resulted in the Applicant entering an involuntary, unknowing, and unintelligently entered guilty plea.

### III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80.

#### A. The proffer of evidence at Applicant's plea and sentence

Assistant Solicitor Maye proffered the following facts in support of Applicant's May 21, 2013 guilty plea to burglary in the first degree:

MR. MAYE: Your Honor, this occurred here in Saluda County .... [at] [t]he [residence] of Sherry McIntosh Hedgepath.

Your Honor, her home was burglarized on that day, January 10, 2012, and taken from the residence, Your Honor, was computer equipment, household goods, jewelry and other items to include two firearms, Your Honor. A Llama .45 caliber automatic and a Glock 9 millimeter automatic pistol, Your Honor.

The basis of the burglary first, would be that either upon entering or leaving the residence he became armed with the handguns, Your Honor. That would be the basis for the burglary first conviction. That and that it was a residence of Sherry Hedgepath and it all occurred here in Saluda County.

As to that charge of burglary in the first degree, Your Honor, that's basically the facts. That he entered, along with a co-defendant, the residence of Ms. Hedgepath with the intent to commit the crime of grand larceny, which was carried out.

*5/21/2013 Tr. p. 8, line 20 – p. 9, line 14.* Petitioner agreed that these facts were essentially correct. *5/21/2013 Tr. p. 9, lines 15-18.*

The Assistant Solicitor went into further detail at the sentencing proceeding before judge Keesley:

**MR. MAYE:** Yes, sir, Your Honor. To give you some background in this case, Your Honor, ... the way the whole thing broke resolving these and other counties, back in March of 2012, Saluda County made an arrest against an individual named Thomas Tolen {phonetic}. He had some stolen firearms and electronics that were in his possession at that time and he cooperated with law enforcement. Based on the information and the combining of resources with Saluda, Greenwood and Newberry Counties, along with the information provided by Thomas Tolen, Greenwood authorities obtained a court order to place a GPS tracking system on Stacy Walker's vehicle.

Your Honor, between 3/12 of '12 and 3/16 of '12, Stacy Walker's activities were monitored by this GPS. They basically tracked him breaking into residences over in Greenwood County. They executed search warrants.

Saluda deputies took Mr. Pace, his co-defendant, into custody on 3/19 of '12. At that point in time, Tonnie Pace began to cooperate with law enforcement, according to the notes from Investigator Shorter that I have here. They were able basically, Your Honor, to resolve a number of cases in a number of different counties. And I think it ended up that they took Mr. Pace and Mr. Walker around just all over Saluda County and basically resolved a number of outstanding burglaries, Your Honor, and larcenies in Saluda County.

I know that there are victims here that would like to be heard. I know that, for the record, and I'm going to pass up to the Court a listing of all of the victims in this case, the first, Ty Bouknight, that had a thousand dollars in materials, radios, T.V.s and VCRs, stolen; Brandon Morris had \$4,690, computers, jewelry, T.V., merchandise; Sherry Hedgepath had \$3,425 that included firearms, computers, household items, jewelry; George Wheeler had \$4,850 in loss, computers, firearms, farm equipment, jewelry, money; Dan Wheeler had, I believe, \$2300.

The figure that I have here, the grand total of the restitution on all these indictments, the one for which he's pleading and the ones we're [nolle] [prossing], is \$16,315, Your Honor. And I know that Mr. Pace was made jointly and severally liable for that amount, \$16,315, Your Honor. And I'm going to hand up this listing of those. And the victim advocate for the sheriff's department is going to recognize the victim that would like to speak to you.

*5/31/2013 Tr. p. 5, line 17 – p. 7, line 19.*

The Assistant Solicitor thereafter informed the plea judge of Applicant's very extensive prior criminal history:

**MR. MAYE:** Your Honor, prior to sentencing, he's got a '96 theft by taking that he got a probationary sentence for back in '96. He then subsequently violated his probation. He's got a DUS conviction contemporaneous with that, a possession of stolen motor vehicles. He got three counts of assault on a female in 1993; he got two years suspended on two years probation. He then got a grand larceny of a motor vehicle, got four years suspended on six months in 1993. Then had bad checks, DUS or DUI in 1997, petit larceny, breaking into automobiles four counts, he got five years at that time. He then got three counts of grand larceny and two counts of burglary second.

Your Honor, over in Greenwood County, in 1997, he got charged with 11 counts of burglary second, four counts of burglary third, 11 counts of petit larceny and two counts of grand larceny. He was actually convicted of ten counts of burglary, Your Honor, burglary second nonviolent and two counts of burglary second violent. Your Honor, and he got 7 years.

He then comes back after, apparently he gets out from serving that. Your Honor, and gets another round of burglaries and ends up inexplicably from the progression of upward -- I don't know what these charges were, but he ended up getting three years suspended on three years probation for a whole [l]other round of burglaries in 2000, Your Honor.

He's just a career burglar in the truest sense of the word. This is about the third round he's had ... where he comes before a judge with just a succession of burglaries.

*5/31/2013 Tr. p. 12, line 11 – p. 13, line 19.*

**B. Ineffective Assistance of Plea Counsel**

The Supreme Court has held that *Strickland*'s two-pronged test "applies to challenges to guilty pleas based on ineffective assistance of counsel." *Hill v. Lockhart*, 474 U.S. 52, 58, 106 S.Ct. 366, 370 (1985). In order to prevail, a PCR Applicant must first establish " 'that counsel's representation fell below an objective standard of reasonableness.' " *Lafler v. Cooper*, 566 U.S. 156, 162-63, 132 S.Ct. 1376, 1384 (2012) (quoting *Hill*, 474 U.S. at 57, 106 S.Ct. 366). *See also Hill*, 474 U.S. at 56, 106 S.Ct. at 369 ("Where, as here, a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice 'was within the range of competence demanded of attorneys in criminal cases' "); *Strickland*, 466 U.S. at 687-88, 104 S.Ct. at 2064.

"A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.' " *Id.*, 104 S.Ct. 2052 (citation omitted).

Even if an Applicant can establish deficient performance, he must still show prejudice from counsel's performance. To establish *Strickland* prejudice in the context of guilty pleas, an Applicant must prove "that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill*, 474 U.S. at 52, 106 S.Ct. 366. *See also Lafler*, 132 S.Ct. at 1384 (" 'a defendant must show the outcome of the plea process would have been different with competent advice' ") (citing *Missouri v. Frye*, 132 S.Ct. 1399 (2012)).

### C. *Involuntary Guilty Plea.*

The test for determining the validity of a guilty plea is “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *North Carolina v. Alford*, 400 U.S. 25, 31, 91 S.Ct. 160, 164 (1970). See also *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S.Ct. 1709, 1711 (1969). “[A] [guilty] plea’s validity may not be collaterally attacked merely because the defendant made what turned out, in retrospect, to be a poor deal.” *Bradshaw v. Stumpf*, 545 U.S. 175, 186, 125 S.Ct. 2398, 2407 (2005). Rather, “[w]here, as here, a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel’s advice ‘was within the range of competence demanded of attorneys in criminal cases.’ ” *Hill*, 474 U.S. at 56, 106 S.Ct. at 369 (quoting *McMann v. Richardson*, 397 U.S. 759, 771, 90 S.Ct. 1441, 1449 (1970)). Accord *Tollett v. Henderson*, 411 U.S. 258, 93 S.Ct. 1602 (1973). “In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. *Harres v. Leake*, 282 S.C. 131, 318 S.E.2d 360 (1984).” *Wolfe v. State*, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997).

Applying this standard to the claims raised by Applicant, the Court finds that he has not met his burden of proof.

1. **Counsel was not ineffective for failing to object when the State deviated from their relied upon plea agreement or for failing to move to compel the State to go along with their relied upon plea agreement. (Amended claims 10.a & 10.h).**

Applicant’s first two claims concern plea counsel’s failure to enforce a “relied upon plea agreement.” The Court finds that this claim is without merit and that the only credible evidence is that the plea that Applicant entered complied with the agreement reached between the defense and the State.

Applicant testified before this Court that he is serving a thirty year sentence for the burglary in Saluda County, and that he also has convictions from Aiken, Newberry and Greenwood Counties. On March 12, 2012, he was arrested on his Greenwood County charges and he has been incarcerated since that time. On March 30, 2012, Inv. Robert Shorter, who was then employed by the Saluda County Sheriff's Department, picked him up at the Greenwood County Jail. Inv. Shorter and Applicant then went to various places he had burglarized, where the burglaries were unsolved. Inv. Shorter did not ask him if he wanted to go, but he went willingly, on the advice of counsel.

Based upon his conversation with Inv. Shorter, Applicant claimed that his understanding was that if he cooperated with law enforcement, he would receive concurrent sentencing on all of the Saluda County charges and that he would receive a fifteen year sentence. They then went to the Saluda County Sheriff's Office, where he spoke to some people to whom he had sold stolen items and he was served with the Saluda arrest warrants. He claimed that he cooperated based upon the promised fifteen year sentence. Afterwards, Inv. Shorter returned him to the Saluda County Jail. Inv. Shorter subsequently transported Applicant and his co-defendant, Tonnie Pace, to a bond hearing. When Applicant asked if he was going to receive a fifteen year sentence for his charges of burglary in the first degree, Inv. Shorter replied he would.

Applicant entered his plea on May 21, 2013. Applicant testified that he never had any contact with plea counsel Seigler, until he was transported to Saluda County. Counsel met with him at the jail and advised him to take the plea. In their meeting, counsel likewise told him that counsel thought he would receive a fifteen year sentence. Applicant claimed that he only pled guilty because he thought that he would receive a fifteen year sentence based on his cooperation with the Sherriff's Department, and that he would not have pled guilty without this "deal."

Following his sentencing, counsel did not file a motion for the sentencing judge to reconsider the thirty year sentence and counsel did not move to withdraw his plea.

Mr. Robert Shorter testified that he was an investigator, with the Saluda County Sheriff's Department at the time of Applicant's arrest and plea. However, he no longer is employed by the Sheriff's Department and he did not have access to any documents he generated in this case. He remembered dealing with the Applicant but he did not remember specific conversations. He testified that it was his typical practice to tell an individual he arrested that if they cooperate they "will get a better deal." However, he emphatically testified that he could not have made a deal with Applicant and he would not have made any promise as to a sentence because the policy in Saluda County was that only the Solicitor had the authority to make a promise as to what sentence an accused could receive.

The Honorable Greg Seigler testified that he has been a family court judge in the Eleventh Judicial Circuit for the past three and one-half years. Prior to his appointment to the bench, he was the Tri-County Public Defender<sup>2</sup> for seven years, and he had tried many major felonies during those seven years. While he did not have any independent recollection or knowledge about the case, he agreed that the plea and sentencing transcripts would accurately reflect any negotiations that were had. Also, he testified that he would never promise his clients a specific sentence if there was a straight-up plea.

Ervin Maye, Esquire, testified that he is currently employed as an Assistant Solicitor in the Eighth Judicial Circuit. He was an Assistant Solicitor in the Eleventh Judicial Circuit from August 1994 until July 2017. In that capacity, he was responsible for prosecuting Applicant. He explained that he coordinated this case with prosecutors in other jurisdictions because Applicant

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<sup>2</sup> The three counties he was responsible for were Saluda, McCormick and Edgefield Counties.

had a number of charges in other counties. Consistent with his representations to the plea judge and to the sentencing judge, he testified that the agreement he reached with plea counsel was for straight-up plea to burglary in the first degree. Walker agreed to be jointly and severally liable for restitution to all of the victims (both the victim in the burglary indictment for which he was pleading guilty and the victims covered by the other indictments). Although the State would not make a recommendation of sentence, the State agreed to *nolle prosequere* the remaining Saluda County charges. The State ultimately *nolle prossed* the other charges, as promised.

Mr. Maye never told plea counsel or Applicant that he would agree to a fifteen year sentence or make any recommendation of sentence. Instead, he told counsel that if Applicant did not agree to the plea bargain that was ultimately reached, the case was going to trial. He also denied the claim that Inv. Shorter would have promised a fifteen year sentence to Applicant. He explained that the policy in place while he was the Assistant Solicitor in Saluda County was that only the Solicitor's Office had the authority to negotiate a plea with an accused and make any promises as to what sentence an accused would receive if he or she pled guilty. Mr. Maye had worked thousands of cases with Inv. Shorter by the time of the charges against Applicant, Inv. Shorter was well aware of this policy, and he had never violated it in the other cases.

The Court finds that Applicant has failed to prove counsel rendered deficient performance under *Strickland* because the Court finds that there is no credible evidence that anyone promised Applicant that he would receive a fifteen year sentence on a guilty plea to the charge of burglary in the first degree if he cooperated with law enforcement. Applicant is asking the Court to accept, as plausible, that both counsel and former Inv. Shorter promised him that he would receive the minimum punishment for burglary in the first degree<sup>3</sup> if he cooperated with

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<sup>3</sup> See S.C. Code Ann. § 16-11-311(B) (Supp. 2017).

law enforcement, despite his extensive criminal history and even though in Saluda County, alone, he had pending charges of another burglary in the first degree, three counts of burglary in the second degree, four counts of grand larceny and one count of breaking and entering a motor vehicle. Additionally, his co-defendant was cooperating with the State and had agreed to testify against Applicant. The Court does not find Applicant's claim credible.

To the contrary, the Court finds that there is no credible evidence that counsel promised Applicant that he would receive a fifteen year sentence if he cooperated with law enforcement. Although counsel had no specific recollection of the plea negotiations in this case, the Court finds that the plea transcript reflects that counsel did not correct the Assistant Solicitor when he informed the plea judge of the parameters of the agreement that the parties had reached, including that it was a straight-up plea to burglary in the first degree and that the State was not making a sentencing recommendation. *5/21/2013 Tr. p. 3, line 6 – p. 6, line 18*. Also, the Court accepts as credible that, consistent with his standard practice, Mr. Seigler would not have promised a specific sentence, since Applicant was entering a straight-up plea.

The Court likewise finds that Applicant's claim former Inv. Shorter promised him a fifteen year sentence if he cooperated is simply not credible. Initially, the Court finds that it would have been unnecessary for Inv. Shorter to make such a promise because the credible evidence is that Applicant was arrested on the Saluda charges based upon information provided by his co-defendant, Tonnice Pace, and that Mr. Pace had agreed to testify against him. Further, the Court finds that the testimony of Assistant Solicitor Maye and Mr. Shorter is credible and that the policy in Saluda County at the time Applicant was prosecuted was that law enforcement lacked the authority to promise a sentence to an accused. Rather, only the Eleventh Circuit Solicitor's Office had the authority to enter into plea negotiations. The Court further finds that

Inv. Shorter was well aware of this policy and would not have made a promise to Applicant that he knew he did not have the authority to make.

Based upon Assistant Solicitor Maye's testimony and the record from Applicant's guilty plea and sentencing, the Court finds that the only agreement between the parties was that Applicant would enter a straight-up plea to the charge of burglary in the first degree in indictment 2012-GS-41-254, he agreed to be jointly and severally liable for restitution to all of the victims (both the victim in the burglary indictment for which he was pleading guilty and the victims covered by the other indictments), and the State would not make a recommendation of sentence. Additionally, the State agreed to *nolle prosequere* the remaining Saluda County indictments. Whatever subjective hope for a fifteen year sentence that Applicant may have had, the Court finds that neither the Solicitor's Office, law enforcement, nor counsel promised him that he would receive a fifteen year sentence on a plea to burglary in the first degree if he cooperated with law enforcement.

The Court further finds that Applicant received the benefit of the plea bargain to which the parties had agreed. Therefore, the Court finds that his plea was freely, voluntarily and intelligently entered, with a full understanding that there was no guarantee as to the sentence he would receive. Also, the Court rejects Applicant's reliance on *Custodio v. State*, 373 S.C. 4, 11, 644 S.E.2d 36, 39 (2007). In *Custodio*, the petitioner had been "charged with numerous counts of burglary and grand larceny in connection with a string of at least seventy-five burglaries in Richland and Kershaw Counties." *Id.* at 7, 644 S.E.2d at 37. The evidence presented at the PCR hearing was that plea counsel and the State had negotiated a plea agreement that if petitioner cooperated and returned items that he had stolen, there would be a fifteen year cap on his sentence. The petitioner cooperated with law enforcement. *Id.* at 9-10, 644 S.E.2d at 38.

However, he received an aggregate term of forty-five years' imprisonment for the burglaries and concurrent five year terms for the grand larcenies at sentencing. *Id.* at 7, 644 S.E.2d at 37.

The Supreme Court found that "[b]ecause petitioner could have enforced the plea agreement under the detrimental reliance exception and counsel failed to take this action, counsel failed to render reasonably effective assistance. Accordingly, counsel was ineffective in failing to have the plea agreement enforced based on the detrimental reliance exception." *Id.* at 12-13, 644 S.E.2d at 40. In the present case, however, there was no credible evidence before the Court that Applicant was promised a fifteen year sentence in exchange for his cooperation with law enforcement. Accordingly, the Court finds that *Custodio* is inapposite.

In denying relief on these claims and the remaining allegations raised by Applicant, the Court is mindful of the United States Supreme Court's decision in *Blackledge v. Allison*, 431 U.S. 63, 97 S.Ct. 1621 (1977), where the Court explained that "the guilty plea and the often concomitant plea bargain are important components of this country's criminal justice system." The advantages that guilty pleas provide to all concerned "can be secured ... only if dispositions by guilty plea are accorded a great measure of finality." *Id.* at 71, 97 S.Ct. at 1627-28. Accordingly, the Court in *Blackledge* explained that:

... [T]he representations of the defendant, his lawyer, and the prosecutor at such a hearing, as well as any findings made by the judge accepting the plea, constitute a formidable barrier in any subsequent collateral proceedings. Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.

*Blackledge*, 431 U.S. at 73-74, 97 S.Ct. at 1629. See also *Christian v. Ballard*, 792 F.3d 427, 444 (4<sup>th</sup> Cir. 2015).

In sworn responses to questioning at the time of his plea, Applicant assured the plea judge that:

- He understood that indictment 2012-GS-41-054 as a true billed indictment for burglary in the first degree and that the punishment for burglary in the first degree was "not less than 15 years, up to life in prison, and it is classified as a violent and most serious offense under South Carolina law;"
- He understood that under South Carolina's strike rules that under South Carolina law if somebody receives a three serious offense convictions or two most serious offenses, the State could seek life without parole, and he understood that he receives another most serious offense, then the state could seek life without parole on that charge;
- Understanding the nature of the charge against him and the possible punishment that was associated with burglary in the first degree, he was pleading guilty.

*5/21/2013 Tr. p. 4, line 21 – p. 5, line 23.*

The plea judge briefly addressed counsel, who stated that he had reviewed the charge and Applicant's constitutional rights with Applicant. *5/21/2013 Tr. p. 5, line 25 – p. 6, line 5.* The plea judge then resumed his colloquy with Applicant, who indicated that:

- He was forty-three years old;
- He was married and had three children;
- That before his arrest, he was employed as a tow truck driver and he detailed cars;
- He had been incarcerated on the current charges for fourteen months;
- He was present when the plea judge had reviewed his constitutional rights;
- He understood those rights as they were explained and he did not have any question about those rights
- He understood that by pleading guilty, he was giving up his constitutional rights and that he would not receive a jury trial;
- He swore that the plea judge correctly understood that the charges against him included four counts of grand larceny, three counts of burglary in the second degree, one count of breaking and entering a motor vehicle and

one count of burglary in the first degree. The State was going to dismiss these other charges "as a result of this plea to the charge of burglary first;"

- Other than the dismissal of those charges no one had promised him anything, held out any hope of reward or threatened him in any way to get him to enter his plea;
- He was satisfied with the representation and advice that counsel had provided to him;
- He did not have complaints against counsel or any person in counsel's office;
- He had shared with counsel everything that he knew about the charge against him, so that counsel could "look at these matters on [his] behalf;"
- He was not under the influence of any substance that would affect his ability to understand what he was doing;
- He was pleading guilty to the charge of burglary in the first degree because he was guilty of the charge;
- His plea was of his own free will; and
- He agreed that the Assistant Solicitor's proffer of facts was essentially correct.

*5/21/2013 Tr. p. 6, line 6 – p. 9, line 18.*

Based upon these sworn responses, the plea judge found as follows:

THE COURT: All right. I find that the state has provided a substantial factual basis for the charge that Mr. Walker has pled guilty to. I find that his decision to enter this plea, that it has been done freely and voluntarily and intelligently. He has had the advice of counsel, an outstanding attorney in Mr. Seigler, and Mr. Walker has indicated to the Court that he is satisfied with that representation. I am going to accept his plea.

*5/21/2013 Tr. p. 9, line 19 – p. 10, line 1.*

This Court finds that Applicant has not presented sufficient reason for allowing him to depart from these sworn responses or from the plea judge's finding that he entered his guilty pleas freely, voluntarily, and intelligently. *Blackledge*, 431 U.S. at 73-74, 97 S.Ct. at 1629.

Finally, the Court finds that Applicant cannot meet the prejudice prong under *Hill*. The United States Supreme Court has also explained that "... to obtain relief on this type of claim, [an] [applicant] must convince the court that a decision to reject the plea bargain would have been rational under the circumstances." *Padilla v. Kentucky*, 559 U.S. 356, 372, 130 S.Ct. 1473, 1485 (2009). "The challenger's subjective preferences, therefore, are not dispositive; what matters is whether proceeding to trial would have been objectively reasonable in light of all of the facts." *United States v. Fugit*, 703 F.3d 248, 260 (4<sup>th</sup> Cir. 2012), *cert. denied*, 134 S. Ct. 999 (2014). The Court finds that going to trial in this case "would [not] have been objectively reasonable in light of all of the facts," *id.*, since he faced the possibility of a sentence of life without the possibility of parole (LWOP) if convicted on the charge in 2012-GS-41-254. Additionally, even assuming that he was convicted but did not receive an LWOP sentence on this charge, he faced a possible mandatory LWOP sentence upon conviction for the burglary in the first degree in 2012-GS-41-286. See S.C. Code Ann. § 17-25-45(A) & (C)(1) (Supp. 2017). Further, there was overwhelming evidence of Applicant's guilt and no contention that he had a plausible defense to the charges against him.

**2. Counsel was not ineffective for failing to move for reconsideration of sentence or for failing to move to withdraw Applicant's plea. (Amended claims 10.c & 10.d).**

The Court further finds that counsel was not ineffective under *Strickland* for failing to move for reconsideration of sentence or for failing to move to withdraw Applicant's plea. "The rule that a plea must be intelligently made to be valid does not require that a plea be vulnerable

to later attack if the defendant did not correctly assess every relevant factor entering into his decision.” *Brady v. United States*, 397 U.S. 742, 757, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970). “A defendant is not entitled to withdraw his plea merely because he discovers long after the plea has been accepted that his calculus misapprehended the quality of the State's case or the likely penalties attached to alternative courses of action.” *Id.* As a result, “[t]he withdrawal of a guilty plea is generally within the sound discretion of the trial judge.” *State v. Riddle*, 278 S.C. 148, 150, 292 S.E.2d 795, 796 (1982); *State v. Thomason*, 355 S.C. 278, 283, 584 S.E.2d 143, 146 (Ct. App. 2003) (“[O]nce a defendant enters a guilty plea, whether to allow withdrawal of the plea is left to the sound discretion of the circuit court.”); *State v. Gilliam*, 274 S.C. 324, 325-26, 262 S.E.2d 923, 924 (1980) (“It is a well established rule in this State that the granting of a motion to withdraw a guilty plea is a matter within the discretion of the trial judge before whom the plea is entered”). Also, “[a] judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed.” *State v. Hicks*, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008).

Again, the Court finds that the credible evidence in this case - including Applicant's sworn admissions to the plea judge, see *Blackledge*, 431 U.S. at 73-74, 97 S.Ct. at 1629 - Applicant received the benefit of the plea agreement that counsel and the State had reached, and that he freely and voluntarily entered his guilty plea with an understanding that it was a straight-up plea without any recommendation as to the sentence that he would receive. Also, “a [guilty] plea's validity may not be collaterally attacked merely because the defendant made what turned out, in retrospect, to be a poor deal.” *Bradshaw v. Stumpf*, 545 U.S. at 186, 125 S.Ct. at 2407. Further, the plea judge heard counsel's emphatic argument that Applicant deserved to receive a

fifteen year sentence because (1) he had fully cooperated with law enforcement in Saluda and Greenwood Counties, by taking officers to every home or business he had burglarized; (2) it was unnecessary for Pace to testify against him because he had admitted his crimes and taken Inv. Shorter to the various locations; (3) he and Pace had committed the crimes together; (4) the State had given Pace a deal for a fifteen year cap, even though Pace had not taken officers to the crime scenes; (5) he had agreed to make full restitution and planned to do so when released from custody; and (6) he was sorry for the he had committed. *5/31/2013 Tr. p. 14, line 12 – p. 16, line 14.*

Under these circumstances, there was no good faith basis on which plea counsel could have moved for either reconsideration of the sentence imposed or for withdrawal of Applicant's guilty plea. *Strickland* does not require counsel to make a frivolous objection or motion and, at worst, reviewing courts have found no prejudice from counsel's failure to make a frivolous objection. See *United States v. Wright*, 573 F.2d 681, 684 (1st Cir. 1978) ("Counsel is not required to waste the court's time with futile or frivolous motions"); *Werts v. Vaughn*, 228 F.3d 178, 203 (3rd Cir. 2000) ("counsel cannot be ineffective for failing to raise a meritless claim"); *Krist v. Foltz*, 804 F.2d 944, 946-47 (6<sup>th</sup> Cir. 1986) (trial counsel is not required to make frivolous objections to avoid a charge of ineffective representation); *Hough v. Anderson*, 272 F.3d 878, 897 (7<sup>th</sup> Cir.2001) ("If evidence admitted without objection was admissible, then the complained of action fails both prongs of the *Strickland* test: failing to object to admissible evidence cannot be a professionally 'unreasonable' action, nor can it prejudice the defendant against whom the evidence was admitted"). Indeed, the Court in *United States v. Cronin*, 466 U.S. 648, 657 n. 19, 104 S.Ct. 2039, 2046 n. 19 (1984), explained that "... the Sixth Amendment does not require that counsel do what is impossible or unethical. If there is no bona fide defense

to the charge, counsel cannot create one and may disserve the interests of his client by attempting a useless charade.”

3. **Applicant’s guilty plea was not involuntary based upon counsel’s failure to properly explain the sentencing hearing procedure and potential outcome to Applicant. (Amended claim 10.e).**

Finally, the Court finds that Applicant’s guilty plea was not involuntary based upon counsel’s failure to properly explain the sentencing hearing procedure and potential outcome to Applicant. Counsel has a duty to independently investigate the facts, circumstances, pleadings, and law, in order to offer his or her client an informed opinion as to what plea should be entered. *Von Moltke v. Gillies*, 332 U.S. 708, 721, 68 S.Ct. 316, 322 (1948) (“Prior to trial an accused is entitled to rely upon his counsel to make an independent examination of the facts, circumstances, pleadings and laws involved and then to offer his informed opinion as to what plea should be entered”). However, the credible evidence before this Court supports the inescapable conclusion that counsel satisfied that requirement here. As discussed, the credible evidence - including Applicant’s sworn admissions to the plea judge, *see Blackledge*, 431 U.S. at 73-74, 97 S.Ct. at 162 - is that Petitioner was fully aware of his right to a jury trial and the rights inherent therein, he understood the possible sentence that he could receive, and he understood the plea agreement that counsel had reached with the State. Understanding all of this, he freely and voluntarily made the decision to avail himself of the plea bargain, even though there was no recommendation as to sentence. Finally and for the reasons stated in connection with his Grounds 10.a & b, the Court finds that he cannot satisfy *Hill*’s prejudice prong because he has failed to prove that going to trial in this case “would have been objectively reasonable in light of all of the facts.” *Fugit*, 703 F.3d at 260. Therefore, the Court denies relief on each of Applicant’s claims.

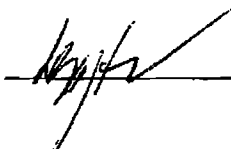
The Court notes that Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant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

**IT IS THEREFORE ORDERED THAT:**

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant is remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 29 day of Sept, 2018.

  
\_\_\_\_\_  
R. KNOX MCMAHON  
Presiding Circuit Court Judge

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

|                            |                                   |  |
|----------------------------|-----------------------------------|--|
| STATE OF SOUTH CAROLINA )  | IN THE COURT OF COMMON PLEAS      |  |
| COUNTY OF SALUDA )         | FOR THE ELEVENTH JUDICIAL CIRCUIT |  |
| Stacy Walker, #242126, )   | C/A No.: 2014-CP-41-66            |  |
| Applicant, )               | MOTION TO ALTER/AMEND             |  |
| v. )                       | JUDGMENT                          |  |
| State of South Carolina, ) |                                   |  |
| Respondent. )              |                                   |  |

2018 JUL 16 PM 12:47  
CLERK OF COURT  
SALUDA CO. S.C.

This matter came before the Court by a *pro se* application for post-conviction relief filed March 31, 2014. Assistant Attorney General Walt Whitmire made a return dated March 19, 2015. An Amended Application was filed by the Applicant's counsel on November 6, 2017. On November 21, 2017, Applicant presented his claims in an evidentiary hearing in Saluda County. Counsel for both parties submitted proposed orders<sup>1</sup> in January, 2018.

Counsel for the Applicant has received the Order of the Court Dismissing Applicant's claims for Post-Conviction Relief on July 9, 2018. Pursuant to South Carolina Rule of Civil Procedure Rule 59(e) the Applicant hereby requests this Court consider Altering or Amending the current Judgement based upon the following argument:

The Order of Dismissal relies heavily on the testimony of Solicitor Ervin Maye who had no personal knowledge of any conversations which occurred between the Applicant and Investigator Shorter or the Applicant and his counsel. The testimony of Solicitor Maye is not controlling or dispositive in this matter. The Order of Dismissal also relies heavily on a purported "policy" in Saluda County which "prevented" law enforcement from entering into plea negotiations with the accused. Despite the existence or non-existence of any such policy, that is not evidence of what actually occurred between the individual witnesses in this case.

<sup>1</sup> The Applicant filed a copy of his proposed order with the Clerk of Court to preserve all arguments made therein.

The Applicant would argue that the testimony presented by Investigator Shorter and trial counsel was not credible based on their own admitted poor recollection of what conversations actually occurred. The testimony of the Applicant, in conjunction with the statements the Applicant made at the time of sentencing stating his misunderstanding of the process, should be found to be credible, as no credible evidence was submitted to contest the Applicant's allegations. The determination as to whether or not the Applicant entered into a knowing and voluntary plea agreement should be made with consideration as to the Applicant's state of mind.

In light of the Applicant's objection to this Court's determinations regarding credibility, the Applicant would reaffirm and resubmit every argument presented in the previously submitted proposed order to grant Post-Conviction Relief and ask this Court to reconsider its judgement. The Applicant hereby asserts that all allegations offered in his Post-Conviction Relief application and during the hearing were valid claims for Post-Conviction Relief that were sufficiently addressed on the record and in the submitted proposed order. Applicant does not have any additional argument and intends to file a Notice of Appeal regarding the Court's decision on those grounds upon the final conclusion of this case after a ruling on this Motion to Alter/Amend Judgment is received.

  
\_\_\_\_\_  
Kristy Goldberg  
Attorney for Defendant

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Columbia, South Carolina

This 12<sup>th</sup> day of July, 2018

STATE OF SOUTH CAROLINA  
COUNTY OF SALUDA  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014-CP-41-00066

Stacy Walker, #242126

State of South Carolina

2018 OCT 17 AM 11:45

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

CLERK OF COURT  
SALUDA CO. S.C.Attorney for: ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

## DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);  
☐ Rule 43(k), SCRCP (Settled); ☐ Other \_\_\_\_\_
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other \_\_\_\_\_
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

## ORDER INFORMATION

This matter came before the court on a motion to reconsider an Order issued by Judge McMahon on June 28, 2018. The motion was timely filed pursuant to Rule 59(e), SCRCP. Judge McMahon retired effective June 30, 2018 prior to the filing of the motion to reconsider. The issues raised in the motion relate to the findings of fact based upon the evidence presented to Judge McMahon. In making those evidentiary findings of fact, Judge McMahon determined the credibility of the witnesses. Based upon those findings, this Court denies the motion for reconsideration.

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

## INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled |
|-------------------------------------------|---------------------------------------|--------------------------------|
|                                           |                                       | \$                             |
|                                           |                                       | \$                             |
|                                           |                                       | \$                             |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge



Judge Code 2118

Date

10/9/2018

**For Clerk of Court Office Use Only**

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This judgment was entered on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

Kristy Goldberg, Esq.

Ed Salter, Esq.

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**

**Court Reporter** \_\_\_\_\_

WITNESSES

SCSO

QUATTLEBAUM

DOCKET NO. 2012-GS-41- 254

The State of South Carolina

County of SALUDA

COURT OF GENERAL SESSIONS

MAY TERM 2012

THE STATE

vs.

STACEY WALKER

AKA

STACY WALKER

ARREST WARRANT NUMBER

M765413

ACTION OF GRAND JURY

TRUE BILL

*Donna G. Berry*

Foreperson of Grand Jury

Date:

MAY 09 2012

VERDICT

CDR#0079

Indictment for

BURGLARY  
1<sup>ST</sup> DEGREE

(Violent/Most Serious)

Foreperson of Petit Jury

Date:

DONALD V. MYERS, SOLICITOR

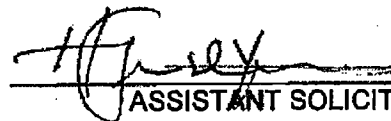
STATE OF SOUTH CAROLINA )  
COUNTY OF SALUDA )

INDICTMENT FOR  
BURGLARY  
1<sup>ST</sup> DEGREE  
(Violent/Most Serious)

At a Court of General Sessions, convened on May 9, 2012 the Grand Jurors of Saluda County present upon their oath

That STACEY WALKER aka STACY WALKER, did in Saluda County on or about January 10, 2011, willfully and unlawfully enter, without consent and with the intent to commit a crime therein, the residence of Sherri Macintosh Hedgepath, and while therein became armed with one or more firearms, in violation of §16-11-311(A), South Carolina Code of Laws, as amended, with penalties provided for in 16-11-311(B), South Carolina Code of Laws, 1976, as amended.

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

  
ASSISTANT SOLICITOR

## STATE OF SOUTH CAROLINA

COUNTY OF  
STATE

Saluda

VS.

Stacey Walker

AKA:

Race:

Sex: M

Age:

42

DOB:

SS#:

Address:

City, State, Zip:

Saluda, SC 29138

DL#:

SID#:

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was  
TO: Burg 157In violation of 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0079☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Low Act) ☐ §17-23-45The 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:

Solicitor

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 30 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.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 PTUPTotal: \$ 16,315 (plus 20% fee) \$ \_\_\_\_\_

Payment Terms:

☒ Set by SCDPPPSRecipient: SEE ATTACHED LIST

\*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA217 (03/2011)

## IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS4100254A/W#: M765413Date of Offense: 1/10/2012S.C. Code §: 16-11-0311CDR Code #: 0079

## SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

\_\_\_\_\_ 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: Pay Court Costs @ \$25/mo.BEGINNING 150 DAYS AFTER RELEASE  
FROM ARREST CONTINGENT ON ARREST☐ Appointed PD or appointed other counsel,  
§ 47.12 requires \$500 be paid to Clerk  
during probation.

ACCEPTED BY: \_\_\_\_\_

Presiding Judge

Judge Code: 2141Sentence Date: 5-21-2013SENTENCED BY: William P. Clancy  
2013