

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

—————
Certiorari to Lexington County

Honorable Brooks P. Goldsmith, Circuit Court Judge
—————

ROBERT D. MCGUFFIN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001422
—————

APPENDIX
—————

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
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ALAN WILSON
Attorney General

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Assistant Attorney General
Rembert Dennis Building
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ATTORNEYS FOR RESPONDENT

RECEIVED

May 12 2020

S.C. SUPREME COURT

INDEX

INDEX i

PLEA HEARING TRANSCRIPT DATED OCTOBER 18, 2017 1

INDICTMENTS 20

SENTENCE SHEETS 26

APPLICATION FOR POST-CONVICTION RELIEF 29

RETURN..... 39

AMENDED POST-CONVICTION RELIEF APPLICATION 45

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JUNE 27, 2019 48

ORDER OF DISMISSAL..... 89

State of South Carolina) In the Court of General Sessions
) Eleventh Judicial Circuit
 County of Lexington) 2017-GS-32-3679, -3680, -3684

State of South Carolina,)
)
 Plaintiff,)
)
 vs.)
)
 Robert D. McGuffin,)
)
 Defendant.)
)
 _____)

October 18, 2017

Aiken, South Carolina

B e f o r e :

The Honorable William Keesley, Judge

A p p e a r a n c e s :

Melanie Graham, Esquire
 Attorney for the Plaintiff

Ola Johnson, Esquire,
 Attorney for the Defendant

Bonnie H. Kelly, CVR
 Circuit Court Reporter

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NO.</u>
Direct Examination/The Court	3
Recitation of Facts/Ms. Graham	7
Direct Examination/The Court	10
Statement of Investigator Skeen	12
Mitigation/Mr. Johnson	13
Sentence by the Court	16
Certificate Page	19

EXHIBITS

-- NO EXHIBITS ENTERED --

DIRECT EXAMINATION BY THE COURT - ROBERT D. MCGUFFIN 3

1 COURT CLERK: Robert McGuffin, 2017-GS-32-3680, *State*
2 *vs. Robert McGuffin*. Indicted for petty larceny, \$2000 or
3 less. He is pleading as charged.

4 2017-GS-32-3679, *State vs. Robert McGuffin*. Indicted
5 for forgery less than \$10,000. He is pleading as charged.

6 2017-GS-32-3684, *State vs. Robert McGuffin*. Indicted
7 for grand larceny between 2 and \$10,000. He is pleading as
8 charged.

9 He is waiving presentment to the grand jury and
10 represented by Mr. Johnson.

11 (To the Defendant) Raise your right hand, please.

12 THE DEFENDANT: Yes, ma'am.

13 ROBERT D. MCGUFFIN, having been
14 first duly sworn, testifies as follows:

15 DIRECT EXAMINATION

16 BY THE COURT:

17 Q You're Robert D. McGuffin, sir?

18 A Yes, sir, Your Honor.

19 Q Were you in drug court?

20 A No, sir, Your Honor.

21 Q How do I know you? You been in front of me?

22 A No, sir, Your Honor.

23 Q You sure?

24 A I believe so, Your Honor. I think you set my bond.
25 You set a bond for me a couple months back.

1 Q Okay. I have an indictment that charges that in
2 Lexington County, on or about June 26, 2017, you took and
3 carried away property consisting of four tire rims and
4 tires without the consent of the owner, with the intent to
5 deprive the owner permanently of it, valued at \$600, you,
6 being convicted on two prior occasions of property crimes
7 where the penalty's contingent on the amount of property
8 taken.

9 Upon your arraignment, it appears you wish to plead
10 guilty to petty larceny, \$2000 or less, under the
11 enhancement statute; is that right?

12 A Yes, sir, Your Honor.

13 Q Another indictment charges that in Lexington County,
14 on or about February 4, 2017, you participated in the
15 forgery of a instrument valued at less than \$10,000. Upon
16 your arraignment on this charge, it appears you wish to
17 plead guilty?

18 A Yes, sir, Your Honor.

19 Q Another indictment charges that in Lexington County,
20 on or about March 23, 2017, you unlawfully committed
21 larceny of property valued at more than 2,000 but less than
22 \$10,000. Upon your arraignment, it appears you wish to
23 plead guilty; is that right?

24 A Yes, sir, Your Honor.

25 THE COURT: Mr. Johnson, have you fully explained to

DIRECT EXAMINATION BY THE COURT - ROBERT D. MCGUFFIN 5

1 your client the nature and elements of the offenses, the
2 possible punishment, and his constitutional rights
3 including trial by jury?

4 MR. JOHNSON: Yes, sir.

5 THE COURT: Are you satisfied there's a factual basis
6 for his pleas?

7 MR. JOHNSON: Yes, sir.

8 THE COURT: You agree with his decision to enter the
9 pleas?

10 MR. JOHNSON: Yes, sir.

11 BY THE COURT:

12 Q Mr. McGuffin, today you under the influence of any
13 medicine, alcohol, drug, anything affecting your thinking?

14 A No, sir, Your Honor.

15 Q Do you have any physical or mental problems that
16 affect your thinking?

17 A No, sir, Your Honor.

18 Q You're clear headed, you know what you're doing?

19 A Yes, sir, Your Honor.

20 Q When you plead guilty, you give up important rights
21 including your right to remain silent and your right to a
22 jury trial. You know that?

23 A Yes, sir, Your Honor.

24 Q If you want a jury trial, you're presumed to be
25 innocent. The State has to prove you guilty beyond a

1 reasonable doubt to convict you; and you get to see, hear,
2 and have your lawyer cross-examine every witness against
3 you. You understand?

4 A Yes, sir, Your Honor.

5 Q By pleading guilty you give up all those rights. You
6 give up defenses, you give up challenges to evidence, you
7 admit the charge is true. You understand that?

8 A Yes, sir, Your Honor.

9 Q You want a jury trial?

10 A No, sir, Your Honor.

11 Q Petty larceny, under the enhancement statute, is a
12 felony that carries up to 10 years in prison. You know
13 that?

14 A Yes, sir, Your Honor.

15 Q Forgery is a felony that carries up to five years in
16 prison. You understand that?

17 A Yes, sir, Your Honor.

18 Q Grand larceny is a felony that carries up to five
19 years in prison. You understand that?

20 A Yes, sir, Your Honor.

21 Q These cases have not been to the grand jury. If you
22 want the grand jury to review them, at least 12 of the 18
23 grand jurors have to agree you're probably guilty or the
24 case stops there. You understand?

25 A Yes, sir, Your Honor.

1 Q The papers indicate you're giving up that right. Is
2 that your own decision made of your own free will?

3 A Yes, sir, Your Honor.

4 Q I need you to listen to the Solicitor, please.

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

7 On February 4, 2017, at the Bank of America, located
8 at 4300 St. Andrews Road, in the Columbia area of Lexington
9 County, the Defendant presented and passed a stolen and
10 forged check in the amount of \$2,500. The check was drawn
11 on Palmetto Sterling Bank. The account belonged to T.K.
12 and Julie Green. The victims reported that they had their
13 checkbook stolen. The bank did not debit their account for
14 the fraudulent transaction.

15 The Defendant was also charged with one count of bank
16 fraud. That count is being dismissed in exchange for the
17 plea here today. There is no restitution in that case, and
18 the victim was notified of the proceeding here today.

19 On March 23, 2017, the Defendant, along with two co-
20 defendants, were pictured on video surveillance stealing a
21 trailer from Extra Space Storage on St. Andrews Road in
22 Lexington County. The trailer was valued at 3,500 and the
23 laddervator inside the trailer was valued at 1,800.

24 The Defendant -- the co -- the Defendant's co-
25 defendant, who pled before you earlier this morning, Your

1 Honor, did place those items for sale on Facebook. Based
2 upon this post, law enforcement was able to recover the
3 trailer, but the laddervator was not recovered.

4 The Defendant admitted -- co-defendant admitted, under
5 Miranda, that he and Mr. McGuffin had been using meth that
6 day, driving around looking for property to steal, and they
7 intended to split the money once they were able to sell the
8 trailer.

9 The victim in that case was contacted about the plea
10 here today. He, quite frankly, said that he never wants to
11 see the Defendant ever, but he does want the restitution
12 for his laddervator, and that would be joint and several
13 with the other two co-defendants.

14 On June 26, 2017, the Defendant was captured on video
15 surveillance at 3422 Augusta Road, here in Lexington
16 County, stealing four tire rims and four tires valued at
17 \$600. The theft was also witnessed by another customer at
18 the business.

19 The rims and the tires were valued at \$600, Your
20 Honor. Those items were eventually recovered from -- from
21 law enforcement, and they are holding onto those items to
22 return to the victim.

23 The victim was contacted with regard to the plea and
24 declined to be here today. I do have Investigator Skeen,
25 and would like him to address the Court, if that is

1 acceptable to Your Honor. We're prepared to read the prior
2 record at the appropriate time.

3 THE COURT: Go ---

4 MS. GRAHAM: We'd also like to be heard with regard to
5 sentencing.

6 THE COURT: Go ahead about the record. Tell ---

7 MS. GRAHAM: He's got two ---

8 THE COURT: --- me his record.

9 MS. GRAHAM: --- 2000 hit and run, 2001 ABHAN, he got
10 10 years suspended to 5 years probation. 2006, probation
11 violation; 2006, petty larceny; 2006, forgery more than
12 \$10,000, FTC theft and FTC fraud. He received 18 months on
13 that.

14 2009, forgery; he received two years suspended to time
15 served and two years probation. 2011, forgery; he received
16 9 months on that.

17 2013, CDV first. That was a 30 day sentence, Your
18 Honor. 2013, unlawful neglect of a child. That was two
19 counts. He received 30 months to run concurrent.

20 2015, probation violation. 2016, shoplifting. 2016,
21 breach of trust with fraudulent intent. That was more than
22 2,000 but less than 10,000. One count of bank fraud and
23 one count of financial identity fraud. He received two
24 years concurrent on those charges.

25 And a 2016 possession of meth. He received 12 months

1 for that, Your Honor.

2 DIRECT EXAMINATION (Continues)

3 BY THE COURT:

4 Q You admit you're guilty of these three charges, Mr.
5 McGuffin?

6 A Yes, sir, Your Honor.

7 Q Anybody forced you, threatened you, coerced you in any
8 way to get you to plead against your will?

9 A No, sir, Your Honor.

10 Q Any plea bargain the State made with you they have to
11 tell me about, on the record, in open court, or you lose
12 what they haven't told me. You understand?

13 A Yes, sir, Your Honor.

14 THE COURT: Mr. Johnson, are all the plea agreements
15 on the record?

16 MR. JOHNSON: Yes, sir.

17 Q Other than what's on the record, has anybody promised
18 you anything or offered you any hope of reward to get you
19 to plead, Mr. McGuffin?

20 A No, sir, Your Honor.

21 Q Are you fully satisfied with your lawyer?

22 A Yes, sir, Your Honor.

23 Q Anything you want him to do on the case he hasn't
24 done?

25 A No, sir, Your Honor.

1 Q Any complaint against your attorney, law enforcement
2 officials, or anybody whose dealt with your cases?

3 A No, sir, Your Honor.

4 THE COURT: Mr. McGuffin's made a free, knowing,
5 voluntary, and intelligent decision to waive presentment to
6 the grand jury and plead guilty. He has done so upon the
7 advice of counsel with whom he's fully satisfied. There's
8 a factual basis for his plea.

9 What else to you want to tell me?

10 MS. GRAHAM: Thank you, Your Honor. The State
11 believes that a 10-year sentence would be appropriate in
12 this case.

13 This matter was originally scheduled for a bond
14 revocation, Your Honor. You'll recall earlier we had a
15 young man, Joshua Shelley, before the Court. Quite
16 frankly, Your Honor, the State in that case moved for the
17 revocation, not only to protect members of the community to
18 -- but to protect Mr. Shelley as well.

19 Mr. McGuffin is a different case. When you look at
20 Mr. McGuffin's record, Mr. McGuffin has had several
21 opportunities to know better; but he just hasn't done
22 better, and the result of that is just continuous property
23 crime victims. And it's time, I believe, for Mr. McGuffin
24 to do some serious, serious time at SCDC.

25 I would like you to hear from the investigator in this

1 case, Your Honor.

2 THE COURT: Yes, sir.

3 INVESTIGATOR SKEEN: If it please the Court, Your
4 Honor?

5 THE COURT: Yes, sir. Tell me your name again? I'm
6 sorry.

7 INVESTIGATOR SKEEN: Joshua Skeen, S-k-e-e-n. I'm
8 employed with Lexington County Sheriff's Department.

9 THE COURT: Yes, sir.

10 INVESTIGATOR SKEEN: Your Honor, after Mr. McGuffin's
11 original charges stemming from February, 2017, he did re-
12 offend on four separate occasions. Two of those occasions
13 Ms. Graham did bring to the attention of the Court, the
14 grand larceny from March 23, as well as the petty larceny
15 with criminal enhancement from June 26.

16 However, the -- I would bring to the attention of the
17 Court Mr. McGuffin was also charged on 8/3/17 for identity
18 fraud. He was stopped for a traffic violation and did
19 present a South Carolina driver's license depicting his
20 picture, but also depicting the information of a "Joshua
21 Martin" with all of his pertinent DL information. He was
22 also charged for driving under suspension which was handled
23 in the lower courts.

24 Mr. McGuffin did become cooperative with me. He did
25 return the -- the rims to me from the aforementioned case

1 after being arrested. And during that time, Mr. McGuffin
2 also was found to have re-offended on 8/29/17.

3 While at 1720 Bush River Road, Mr. McGuffin was
4 captured on video surveillance stealing a T.V. from a
5 hotel. Due to Mr. McGuffin's cooperation with us, he was
6 only charged in the lower courts and not hit with the
7 criminal enhancement. That is all, Your Honor.

8 THE COURT: Thank you. Mr. Johnson.

9 MR. JOHNSON: Thank you, Your Honor. I've represented
10 Mr. McGuffin before couple years back. I will state he's
11 got three children, minor children, that he has joint
12 custody of. He worked for SCE&G as a lineman, and states
13 he has employment waiting for him upon release with SCE&G.
14 He graduated high school in Swansea. He's 38 years old.

15 He's got a bad drug addiction problem, Your Honor,
16 methamphetamine, that was mentioned on his rap sheet. He's
17 -- he's just been dealing with this for years.

18 I would point out to the Court -- and Your Honor was
19 made aware of this before lunch, I think -- you took a plea
20 from co-defendant. That co-defendant had a rap sheet that
21 went back at least more than 12 years and was violating his
22 probation with his plea; and it was a property crime where
23 my client was co-defendant on one of these charges here.

24 He received a probationary sentence. I believe he did
25 80 days and -- and had some in-patient treatment and then -

1 - you ordered that, along with a half-way house following
2 that inpatient treatment.

3 That's exactly what my client needs. The solution
4 with a drug addiction, obviously, is gonna be -- gonna have
5 to be some serious treatment. And as with his co-
6 defendant, Mr. McGuffin needs that as his co-defendant
7 needed that. And I ask the Court to please kind of feed
8 them both out of the same spoon.

9 I know there are differences in their rap sheets, but
10 as I said, co-defendant did have a long rap sheet as well
11 that dated back more than a decade. He violated his
12 probation.

13 Mr. McGuffin is not on probation, so he is not
14 violating and I would point that out, Your Honor. And just
15 ask -- ask for some leniency given his -- his need to -- to
16 address this problem with the drugs and anything else you
17 might have.

18 THE COURT: Do you want to say anything, sir?

19 THE DEFENDANT: Your Honor, I was trying to get in
20 before to drug court. I didn't know how that worked. I
21 know that I -- and if I'm right, I was told that you run
22 the one in Edgefield and my parents -- my grandparents hold
23 residency down there.

24 I would -- I would like drug court, but I mean, I know
25 that's what I need. I mean, like she said, I've been in

1 and out of prison and -- and it seemed like I should have
2 learnt my lesson by then, you know, and -- and I hadn't.
3 But I mean, I know it was -- it was not me trying to sell,
4 me being a user; and from me being a user, I can't be the
5 father I am to my children. So yes, I do -- I do need
6 rehab. I -- I know that for a fact.

7 I do have a pretty decent job. They kinda put up with
8 me with a felony. Working for SCE&G, they kinda hold off
9 of that. I work for a contractor, that subs only SC&G
10 [sic], as a lineman. I've been climbing for the last --
11 past eight years, and I'm trying to get back to the same
12 job.

13 Like I say, I got three kids and I got joint custody
14 of them. So I'm just trying to get my life straight, but
15 on the drugs, I can't be the father I'm supposed to be for
16 my children. I can't be.

17 MR. JOHNSON: Also, Your Honor, I -- I just point out,
18 I -- it looks like he went in August 29, and has done 51
19 days since then. But that was for that petty larceny
20 enhancement indictment ending 3680. But he also had
21 additional credit on the indictment ending 3684. I think
22 he had two days from his original arrest on that. And on
23 the forgery, indictment ending 3679, he had one day in
24 addition to the 51 days just for the record, Judge.

25 THE COURT: Do you have anything else -- anything

1 else, Mr. McGuffin?

2 THE DEFENDANT: No, sir, Your Honor.

3 THE COURT: Probation officer sent me a note that
4 states that you were sentenced by me in June of 2006, for
5 financial transaction card theft, financial transaction
6 card fraud.

7 (Brief pause.)

8 THE COURT: You appointed, Mr. Johnson?

9 MR. JOHNSON: Yes, sir.

10 (Brief pause.)

11 THE COURT: If there's nothing else, the Court accepts
12 the pleas.

13 With regard to the co-defendant, I -- I assess their
14 situations to be materially different.

15 Sentence of the Court on indictment 3680 under the
16 enhancement statute is that you be committed to the South
17 Carolina Department of Corrections for eight years plus
18 cost and assessments. Restitution is deferred.

19 On indictment 3679, the sentence is five years plus
20 cost and assessments.

21 Those sentences run concurrently. You're given credit
22 for jail time under Section 24-13-40 to be calculated and
23 applied by the Department of Corrections.

24 Pay your court cost as provided on indictment 3684.
25 That is the indictment for grand larceny, greater than

1 \$2,000, less than \$10,000. The sentence on that is that
2 you be committed to the South Carolina Department of
3 Corrections for five years, provided that upon the payment
4 of the costs and assessments, the balance is suspended with
5 five years probation.

6 You're subject to the standard conditions of
7 Probation. This sentence is consecutive to indictments
8 3679 and 3680. Probation is tolled while you're
9 incarcerated.

10 You have to pay \$1,800 in restitution plus a 20
11 percent handling fee at a rate set by Probation, Parole,
12 and Pardon services for James Branham. It's joint and
13 several with your co-defendant.

14 Your probation may end after one year if you've paid
15 all your money and you're in compliance. The other
16 conditions of probation are that you complete substance
17 abuse counseling, pass random drug and alcohol screenings,
18 and pay your Public Defender fee and your court costs at a
19 rate set by Probation, Parole and Pardon services.

20 The sentence is that you got an active prison term --
21 or where you got an active prison term, I'm recommending
22 the addictions treatment unit for you while you're
23 incarcerated. You understand?

24 THE DEFENDANT: Yes, sir, Your Honor.

25 THE COURT: Good luck.

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MS. GRAHAM: Thank you, Judge.

-- END OF TRANSCRIPT OF RECORD --

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CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Eleventh Circuit Court for Lexington County, South Carolina, on the 18th day of October, 2017.

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

E/Bonnie H. Kelly

Bonnie H. Kelly, CVR
Official Court Reporter

Columbia, South Carolina
December 12, 2018

WITNESSES

Lexington County Sheriffs Department

Jason K Burbage

Law Enforcement Case #: 17002474

MFG

ARREST WARRANT NUMBER

2017A3210800078

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS3203679

The State of South Carolina
County of Lexington

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2017

THE STATE
vs.

Robert D McGuffin

CDR #: 3436

Indictment for

Forgery, value less than \$10,000

§ 16-13-0010(A)

S.R. Hubbard III, SOLICITOR

After being fully advised as to my legal rights, I hereby waive my rights to presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness

E.C.C. PLS. and G.S.

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Forgery, value less than \$10,000
§ 16-13-0010(A)

At a Court of General Sessions, convened on November 2017, the Grand Jurors of Lexington County present upon their oath:

That Robert D McGuffin did in Lexington County, South Carolina, on or about February 4, 2017, falsely make, forge, or counterfeit; cause or procure to be falsely made, forged, or counterfeited; or wilfully act or assist in the false making, forging, or counterfeiting of any writing or instrument of writing; and did utter or publish as true any false, forged, or counterfeited writing or instrument of writing; such having a value of less than ten thousand (\$10,000) dollars, in violation of §16-13-0010 of the South Carolina Code of Laws of 1976, as amended

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


ASSISTANT SOLICITOR

A TRUE COPY


Lex. Co. C.C.C.P., G.S. & F.C.

WITNESSES

Lexington County Sheriffs Department

Joshua E Skeen

Law Enforcement Case #: 17012474

MFG

ARREST WARRANT NUMBER

2017A3210700135

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS3203680

The State of South Carolina
County of Lexington

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2017

THE STATE

vs.

Robert D McGuffin

CDR #: 3596

Indictment for

Petit Larceny, \$2,000 or less
(Enhancement)

§ 16-13-0030(A)

S.R. Hubbard III, SOLICITOR

After being fully advised as to my legal rights, I hereby waive my rights to presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness

C.C.C. PLS. and G.S.



A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.O.

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

INDICTMENT FOR
Petit Larceny, \$2,000 or less (Enhancement)
§ 16-13-0030(A)

At a Court of General Sessions, convened on November 2017, the Grand Jurors of Lexington County present upon their oath:

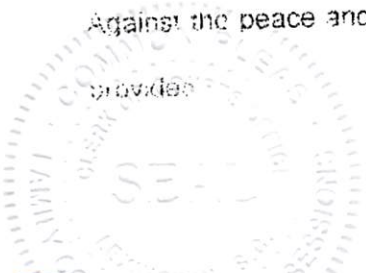
That Robert D McGuffin did in Lexington County, South Carolina, on or about 6/26/2017, take and carry away with property consisting of four tire rims and four tires belonging to Ali Abbas without Ali Abbas's consent with the intention of permanently depriving Ali Abbas of said property. Said tires and rims were located at 3422 Augusta Road, in Lexington County South Carolina, and were valued at \$600.00. The Defendant was convicted of two prior property crime convictions contingent upon the value of the property on December 1, 2015 and February 1, 2016, in violation of § 16-13-0030(A) and § 16-1-57 of the South Carolina Code of Laws of 1976, as amended.

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


ASSISTANT SOLICITOR

A TRUE COPY


Lex. Co. C.C.C.P., G.S. & F.C.



WITNESSES

Lexington County Sheriffs Department

Joshua E Skeen

Law Enforcement Case #: 17005493

MFG

ARREST WARRANT NUMBER

2017A3210800248

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS3203684

The State of South Carolina
County of Lexington

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2017

THE STATE
vs.

Robert Daniel McGuffin

CDR #: 3420

Indictment for

Grand Larceny, value more than \$2,000
but less than \$10,000

§ 16-13-0030(B)

S.R. Hubbard III, SOLICITOR

After being fully advised as to my legal rights, I hereby waive my rights to presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness
C.C.C. PLS. and G.S.

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

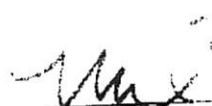
INDICTMENT FOR
Grand Larceny, value more than \$2,000 but less
than \$10,000

§ 16-13-0030(B)

At a Court of General Sessions, convened on November 2017, the Grand Jurors of Lexington County present upon their oath:

That Robert Daniel McGuffin did in Lexington County, South Carolina, on or about March 23, 2017, unlawfully commit a larceny of goods, chattels, instruments, or other personalty, such property having a value of more than two thousand (\$2000) dollars but less than ten thousand (\$10,000) dollars, in violation of §16-13-0030(b) of the South Carolina Code of Laws of 1976, as amended.

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


ASSISTANT SOLICITOR

A TRUE COPY


Lex. Co. C.C.C.P., G.S. & F.C.

Not more than 5 years

STATE OF SOUTH CAROLINA)
 COUNTY OF Lexington)
 STATE VS.)
Robert D McGuffin)
 AKA:)
 Race: Sex: M Age: 38)
 DOB: SS#:)
 Address:)
 City, State, Zip:)
 DL #:)
 CMV Yes No Hazmat Yes No

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS3203679
 A/W#: 2017A3210800078
 Date of Offense: 2/4/2017
 S.C. Code § : 16-13-0010(A)
 CDR Code #: 3436

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was TO: Forgery / Forgery, value less than \$10,000

CONVICTED OF or PLEADS

in violation of § 16-13-0010(A) of the S.C. Code of Laws, bearing CDR Code # 3436
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45 (CSC w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
 ATTEST:

Malcolm Graham 161527
 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 5 days/months/years or under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

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

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 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
 Total: \$ plus 20% fee: \$ days/hours Public Service Employment
 Payment Terms: Obtain GED
 Set by SCDPPPS Attend Voc. Rehab. or Job Corp.
 Recipient: May serve W/E beginning
 Substance Abuse Counseling
 Random Drug/Alcohol testing

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$

TOTAL: \$1250.00
 Clerk of Court/Deputy Clerk:
 Court Reporter:
 SCCA/717 (07/2016)

A TRUE COPY

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
 \$ paid to Public Defender Fund
 Other: Payment costs as provided on 2017-62-32-03484

Appointed PD or appointed other counsel, § Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.
 Presiding Judge: William P. Blodgett
 Judge Code: 205D
 Sentence Date: Oct. 18, 2017

Not more than 10 years

STATE OF SOUTH CAROLINA)
 COUNTY OF Lexington)
 STATE VS.)
Robert D McGuffin)
 AKA:)
 Race: White Sex: M Age: 38)
 DOB: [REDACTED] SS#: [REDACTED])
 Address: 117 [REDACTED] e)
 City, State, Zip: [REDACTED] SC 29170)
 DL#: [REDACTED] SID#:)
 *CDL Yes No CMV Yes No Hazmat Yes No

IN THE COURT OF GENERAL SESSIONS
 INDICTMENT/CASE#: 2017GS3203680
 A/W#: 2017A3210700135
 Date of Offense: 6/26/2017
 S.C. Code § : 16-13-0030(A)
 CDR Code #: 3596

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Larceny / Petit or Simple Larceny - \$2,000 or less (Enhancement per 16-1-57)

in violation of § 16-13-0030(A) of the S.C. Code of Laws, bearing CDR Code # 3596
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45 (CSC w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. AR (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Mel Melonic Ardure 101529 [Signature] [Signature]
 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 8 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; ~~the balance is suspended 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 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 Set by SCDPPPS _____

Recipient: _____
 days/hours Public Service Employment
 Obtain GFD
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing

*Fine:		\$
§ 14-1-206 (Assessments 107.5%)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BU) Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
3% to County (if paid in installments)		\$

TOTAL: \$ 125.00
 Clerk of Court/Deputy Clerk: [Signature]
 Court Reporter: Bonnie Kelly
 Presiding Judge: William P. Slushy
 Judge Code: 2050
 Sentence Date: Oct. 18, 2017

A TRUE COPY

Not more than 5 years

STATE OF SOUTH CAROLINA)
 COUNTY OF Lexington)
 STATE VS.)
Robert Daniel McGuffin)
 AKA:)
 Race: White Sex: M Age: 38)
 DOB: [REDACTED] SS#: [REDACTED])
 Address: [REDACTED])
[REDACTED] SC 29223-4263)
 DL#: [REDACTED] SID#: SC01072990)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS3203684
 A/W#: 2017A3210800248
 Date of Offense: 3/23/2017
 S.C. Code §: 16-13-0030(B)
 CDR Code #: 3420

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was
 TO: Larceny / Grand Larceny, value more than \$2,000 but less than \$10,000

CONVICTED OF or PLEADS

in violation of § 16-13-0030(B) of the S.C. Code of Laws, bearing CDR Code # 3420
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
 (CSC w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
 ATTEST:

Wm McLean Graham 161529 Solicitor SC Bar# [REDACTED] Defendant [REDACTED] Attorney for Defendant SC Bar# 09563

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____ provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5

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: 2017-GS-32-03679 + 03680
 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 (Domestic
 Violence) to ship, transport, possess, or receive a firearm or ammunition. *PROBATION TOLLED WHILE INCARCERATED*

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
 Total: \$ 1,800 (plus 20% fee) \$ _____

Payment Terms:
 Set by SCDPPPS

Recipient: JAMES GRAHAM

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$500.00
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(L) (Vehicle Assessment)	\$40/ea	\$

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

TOTAL \$2425.00

Clerk of Court/ Deputy Clerk [REDACTED]
 Court Reporter: Bonnie Keld
 SCCA/217 (07/2016)

PTUP PROBATION MAY END AFTER 1 yr. IF ALL MONEY PAID & OCT. 15 IN COMPLIANCE
 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 PD FEE & C. COSTS @ RATE
SET BY SCDPPPS

Appointed PD or appointed other counsel,
 §Proviso 61.6 requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Presiding Judge William P. Hooding
 Judge Code: 2050
 Sentence Date: Oct 18, 2017

A TRUE COPY
[Handwritten signatures and initials]

2018CP3203545

FORM 5
FILED

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

2018 OCT } 7 PM 2:33 IN THE COURT OF COMMON PLEAS

Robert D McByffin
#319351
Full name and prison number (if any) of Applicant.

LISA H. COMER
CLERK OF COURT
LEXINGTON SC

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Allendale Correctional Inst 1057 Revolutionay trail, Fairfax SC 29827
2. Name and location of Court which imposed sentence Lexington County 205 East main st Lexington SC 29021
3. Name(s) of co-defendant(s) (if any) Kevin Zeman, Bryan Hinsley
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2017 A3210800248 - GS 32 3684 G/A
 - (b) 2017 A3210800078 - GS 32 3679 Forgry
 - (c) 2017 A3210700135 - GS 32 3680 Petit larceny enhancement
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Oct 18, 2017, 8 years, 5 years Concurrent
 - (b) non-violet, 5 year Probation to run consecutive PT4P

A TRUE COPY

Revised 3/2003

Lisa Comer
Lex. Co. C.C.C.P., G.S. & F.O.

- (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence? **No.**
 I tried to but lawyer never filed it. I tried in the 10 days but do to lawyer never filing, I lost my right, to a motion for reconsideration.

8. If you answered "yes" to (7), list:

- (a) the name of each Court to which you appealed:
 - i. N/A
 - ii. _____
 - iii. _____
- (b) the result in each such Court to which you appealed:
 - i. N/A
 - ii. _____
 - iii. _____
- (c) the date of each such result:
 - i. N/A
 - ii. _____
 - iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. _____
 - iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) lawyer did not do as asked of,
- (b) I could not file because I had counsel
- (c) lawyer would never get in contact with my family, in time, nor did he ever return calls.

10. State concisely the grounds on which you base your allegation that you are being held in return custody unlawfully:

- ① ineffective Ass ist of Counsel USCA 6 - see attached
- ② Denial of Due Process USCA 14 - see attached

- (a) _____
- (b) _____
- (c) _____

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

- (a) see attached
- (b) 11
- (c) 11

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. 11
- iii. 11
- iv. 11

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

- i. N/A
- ii. 11
- iii. 11
- iv. 11

(c) the disposition thereof:

- i. N/A
- ii. 11
- iii. 11

- iv. _____
- (d) the date of each such disposition:
 - i. N/A
 - ii. 1/1
 - iii. 1/1
 - iv. 1/1
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. N/A
 - ii. 1/1
 - iii. 1/1
 - iv. 1/1

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. 1/1
 - iii. 1/1
- (b) the proceedings in which each ground was raised:
 - i. N/A
 - ii. 1/1
 - iii. 1/1

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) Olga Johnson didn't file the appeal that
- (b) I ask him to file after court, and by
- (c) letter within the 10 days. He took my

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

YES

to contact my family or me I wrote several times.

Revised 3/2003

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Olga Johnson
Lex. Co. C.C.O.P., G.S. & F.O.

- (a) your arraignment and plea? YES
- (b) your trial, if any? NO - no trial
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

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. OIA Johnson Att at law
 - ii. Pobox 549
 - iii. Lexington, S.C. 29071
- (b) the proceedings at which each such attorney represented you:
 - i. Plea + sentencing on Oct 18, 2017
 - ii. 11:00am Wed
 - iii. _____

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

PCR -> see bottom of page to answer 19.

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

NO

19. I hope to get my sentence lower, and get my charge dropped the enhancement; my counsel misled me into Pleaing out knowing he never even spoke with the solicitor. I feel like I got told a lot of misled things, and I feel like that the solicitor thought I was being like I didn't care. For one reason is because I was at court that day to have my bonds revoked, but I took a plea cause my counsel lied to me, I know for sure that he would file my reconsideration

A TRUE COPY

Lex. Co. C.O.C.P. 18-1183

34 He knew I would bring that out in the appeal, but he wouldn't file it, and I lost that right. I was instructed by Honorable Judge W. P. Keesley to file this PCR. I even have that in letter from him. Please help me. Please point me legal counsel and file this.

Robert McBuffin # 319351

Robert McBuffin # 319351

F1

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

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

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

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

Robert Maff #219351
Applicant

SWORN or affirmed to and subscribed before me this
9 day of October, 2018.

Virginia Smith
Notary Public

My Commission Expires: 12/12/22



2018-CP-32-Q3545

Additional Pages 1 of 2

The Applicant sets forth this cause of action pursuant to S.C. Code 17-27-20 (i) (6), as a collateral attack upon any grounds of alleged error here to fore available under South Carolina Code of law, that are being submitted or amended.

The applicant asserts that in addition to these grounds raised here in the Applicant does not have the aid of the proper records to fully establish all of his Constitutional Claims, namely his Court transcript, complete discovery including any forensics reports and investigative reports.

Pursuant to the South Carolina rules of Civil procedure (S.C.R.C.P.) rule 71. d (e) which state that the burden of proof is on the Applicant to show his entitlement for relief, it would be at this time chronologically

2018-CP-32-Q3545

Additional pages 2 of 3
impossible for the applicant to
carry such a burden without
the aid of proper Counsel
and records to establish his
constitutional claims.

The applicant request that
this court have forwarded
the aforementioned records
and appoint Counsel to the
applicant.

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

Additional Pages

3 of 3

The applicant moves this Honorable Court to South Carolina Code 17-27-90; To grant leave to file amended application in this Cause of action and the right to amend this application upon the receipt of any relevant material (s) do to the lack of records and Counsel.

The Applicant seeks this court's approval of this application so that his right to a P.C.R. will not be deemed abandoned as the applicant has only one (1) year to file this application from the date of the Conviction or final order.

Respectfully Submitted
Robert D McBuffin
Robert D McBuffin #319951

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
)	
Robert D. McGuffin, #319351,	)	Case No.: 2018-CP-32-03545
)	
Applicant,)	
	)	RETURN AND MOTION FOR A MORE
v.	)	DEFINITE STATEMENT
)	
State of South Carolina,)	
)	
Respondent.)	
)	

Respondent, making its Return to the application for post-conviction relief filed on October 17, 2018, would respectfully show this Court:

I. Procedural History

Robert D. McGuffin (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. On October 18, 2017, Applicant appeared before the Honorable William P. Keesley, waived presentment to the grand jury for one count of forgery, less than \$10,000 (2017-GS-32-03679); one count of petit larceny, \$2,000 or less (2017-GS-32-03680); and one count of grand larceny, more than \$2,000 but less than \$10,000 (2017-GS-32-03684), and pled guilty to each charge. Ola A. Johnson, Esquire, represented Applicant on these charges. Assistant Solicitor Melanie F. Graham, of the Eleventh Circuit Solicitor’s Office, prosecuted the case. Judge Keesley accepted the pleas and sentenced Applicant to a term of imprisonment of five years for forgery, less than \$10,000; a concurrent term of imprisonment of eight years for petit larceny, \$2,000 or less; and a consecutive term of imprisonment of five years for grand larceny, more than \$2,000 but less than \$10,000. Applicant did not appeal his pleas or sentences.

II. Factual History

On February 4, 2017, at the Bank of America on St. Andrews Road, Applicant presented and passed a stolen and forged check in the amount of \$2,500 to the teller. Tr. 7. The check was drawn on Palmetto Sterling Bank, and the account belonged to T.K. and Julie Green. Tr. 7. Mr. and Mrs. Green, however, had reported their checkbook stolen, so the bank did not debit their account for this transaction. Tr. 7.

Thereafter, on March 23, 2017, Applicant and two co-defendants stole a trailer from Extra Space Storage on St. Andrews Road and were caught on a surveillance camera. Tr. 7. After stealing the trailer, one of Applicant's co-defendants attempted to sell the trailer on Facebook. Tr. 7-8. The trailer was valued at \$3,500, and the laddervator, which was inside the trailer, was valued at \$1,800. Tr. 7.

Subsequently, on June 26, 2017, Applicant stole four tire rims and four tires from a store on Augusta Road. Tr. 8. He was again caught on video surveillance, and a customer at the store also witnessed Applicant steal the rims and tires. Tr. 8. The rims and tires were valued at \$600.

III. Current Application

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on:

1. Ineffective Assist [sic] of Counsel USCA 6 – see attached; [and]
2. Denial of Due Process USCA 14 – see attached.¹

Applicant wholly fails to set forth any facts to support these general allegations.

Attached to this Return and incorporated by reference are the records of the Lexington

¹ In said attachment, Applicant does not lay out any specific allegations, but rather merely states: “[I]t would be at this time chronologically impossible for the applicant to carry such a burden without the aid of proper counsel and records to establish his constitutional claims.

County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the post-conviction relief application; a full copy of the transcript from Applicant's guilty plea proceeding will be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

Additionally, Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in this post-conviction relief application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See also* Rules 15(a)-(b), SCRCPP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCPP. *Pro se* filings will not be considered at the post-conviction relief hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. *See* Rule 15(a), SCRCPP.

IV. Ineffective Assistance of Counsel

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

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland v. Washington*, 466 U.S. 668. First, Applicant must prove counsel's performance was deficient. *Id.*; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the *Strickland* test, particularly in light of Applicant's complete failure to list any facts to support his general allegation. However, the allegation of ineffective assistance of counsel probably raises questions of fact 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).

V. Due Process

Applicant also alleges he was denied due process of law. However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina

(1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965).

Applicant has failed to state with any specificity the specific facts giving rise to this allegation. Additionally, this allegation is not supported by any other additional information in the application. Respondent moves pursuant to Rule 12(e), SCRCF, to require Applicant to provide a more definite statement of his allegation of a due process violation. The Uniform Post-Conviction Procedure Act requires applicants to “specifically set forth the grounds upon which the application is based.” S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Furthermore, Rule 8(a), SCRCF, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Applicant’s allegations are so vague and ambiguous that Respondent cannot be reasonably required to frame a responsive return. Therefore, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application.

VI. Motion for More Definite Statement

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth any facts to “support each ground” or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires Applicant to “*specifically set forth the grounds upon which the application is based.*” S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so

that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VII. Denial of All Other Claims

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VIII. Conclusion and Request for Evidentiary Hearing

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

KELLY OPPENHEIMER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
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December 21, 2018

McMAHAN & TAYLOR
ATTORNEYS^{LLC}

June 17, 2019

Lexington County Clerk of Court
Attn: PCRs
205 East Main Street, Suite 128
Lexington, SC 29072

Re: Robert D. McGuffin, #319351v. State of South Carolina
2018-CP-32-03545

Dear Ms. Huggins:

Please find enclosed for filing an Amended PCR Application for the above-referenced individual. (Please note, that since this is a PCR matter, it cannot be filed electronically as there is no ability to select PCR as a choice when filing online.) Kindly clock in these documents.

Should you have any questions, I can be reached at the number and address listed below.

Best regards,



ASHLEY A. McMAHAN
ATTORNEY AT LAW

AAM

Enclosure

cc: Robert D. McGuffin
Asst. AG Taylor Z. Smith (via email)

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOR THE 11 th JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	Case No.: 2018-CP-32-03545
Robert D. McGuffin, #319351,)	
)	
Applicant,	)	AMENDED POST-CONVICTION
	)	RELIEF APPLICATION
v.)	
)	
State of South Carolina.)	
_____)	

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on October 17, 2018, to add the following:

1. Ineffective Assistance of Counsel as to Ola Johnson:
 - a. Counsel failed to file a motion to reconsider the sentence.
 - b. Counsel failed to appeal the Applicant’s conviction and sentence.
 - c. Applicant was at court the day of the guilty plea for a bond revocation hearing, not a guilty plea hearing, and counsel coerced the Applicant into “getting it over with” and pleading guilty that day.
 - d. Counsel told the Applicant he could not get more than 5 years for the enhanced petit larceny and that he would most likely get the same sentence the co-defendant received earlier that day; Applicant pled guilty based on this advice.
 - e. Counsel was ineffective for failing to review the State’s evidence with the Applicant.

Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. *See Simpson v. Moore*, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



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SC Bar No. 71676

ATTORNEY FOR APPLICANT

June 17, 2019

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Taylor Z. Smith
Assistant Attorney General
tsmith@scag.gov

This 17th Day of June, 2019.



ASHLEY A. MCMAHAN, ESQUIRE

Attorney for Applicant

1 State of South Carolina)
 2 County of Lexington)
 3 Robert McGuffin,)
 4 Applicant/Plaintiff,)
 5 vs.)
 6 State of South Carolina,)
 7 Respondent/Defendant.)
 8 _____)

In the Court
 Of Common Pleas
 Case No.: 2018-CP-32-03545

Transcript of Record

June 27, 2019

Lexington, South Carolina

BEFORE:

The Honorable Brooks P. Goldsmith, IV, Judge

APPEARANCES:

Ashley A. McMahan, Esquire
 Attorney for the Applicant/Plaintiff

Taylor Z. Smith, Assistant Attorney General
 Attorney for the Respondent/Defendant

ALSO PRESENT:

Robert McGuffin

1	INDEX		
2	PCR HEARING		
3	WITNESS		PAGE
4	ROBERT McGUFFIN		
5	Direct Examination by Ms. McMahan		5
6	Cross Examination by Mr. Smith		10
7	Redirect Examination by Ms. McMahan		13
8	Recross Examination by Mr. Smith		14
9	OLA JOHNSON		
10	Direct Examination by Mr. Smith		15
11	Cross Examination by Ms. McMahan		25
12	Redirect Examination by Mr. Smith		33
13	RESPONDENT/DEFENDANT RESTS		31
14	ROBERT DENNY McGUFFIN		
15	Direct Examination by Ms. McMahan		31
16	APPLICANT/PLAINTIFF RESTS		32
17			
18	Certificate of Reporter		41
19			
20	EXHIBITS		
21	NO. DESCRIPTION	ID	EVDS.
22	NONE		
23			
24			
25			

1 Thereupon, the following proceedings were had,

2 THE COURT: Mr. Smith, whenever you're ready.

3 MR. SMITH: Yes, Your Honor. May it please the
4 Court. This is the case of Robert D. McGuffin v. State
5 of South Carolina. Case number 2018-CP-32-03545. Mr.
6 McGuffin is presently confined in SCDC pursuant to orders
7 of commitment of the Lexington County Clerk of Court. On
8 October 18th, 2019 he appeared before the Honorable
9 William Keesley, waived presentment to the grand jury on
10 one count of forgery less than 10,000, one count of petit
11 larceny 2000 or less, and one count of grand larceny more
12 than 2000 but less than ten. He pleaded guilty to each
13 charge. Ola Johnson represented applicant at the time.
14 Judge Keesley accepted the pleas and sentenced Mr.
15 McGuffin to a term of imprisonment of five years for
16 forgery years, eight years for petit larceny, and five
17 years for grand larceny with the sentences running
18 concurrently. He did not appeal his pleas or sentences.

19 Mr. McGuffin then filed his application for PCR on
20 October 17th, 2018. He is present today and is
21 represented by Ms. Ashley McMahan. It appears that Mr.
22 McGuffin raised multiple issues in his original
23 application, that his plea counsel failed to file an
24 appeal at his request, plea counsel mislead him, and that
25 plea counsel never discussed the case with the Solicitor.

1 Ms. McMahan has since filed an amended application
2 and puts forth the following allegations. Counsel failed
3 to file a motion to reconsider the sentence. Counsel
4 failed to appeal the conviction of the sentence.
5 Applicant was in court the day the plea for bond
6 revocation hearing and counsel coerced him into getting
7 it over with and pleading guilty; that counsel told Mr.
8 McGuffin he could not get more than five years for
9 enhanced petit larceny and that he would most likely get
10 the same sentence as his co-defendant who had just been
11 sentenced the same day, and that applicant pleaded guilty
12 based on this faulty advice. And the final allegation
13 raised is that counsel was ineffective for failing to
14 review the State's evidence with Mr. McGuffin.

15 Your Honor, before taking testimony, I would ask
16 that Ms. McMahan put forth on the record the allegations
17 upon which Mr. McGuffin will proceed today.

18 THE COURT: Ms. McMahan.

19 MS. McMAHAN: Yes, Your Honor. We would call
20 Mr. McGuffin, and if it's okay with you, I'll put my
21 allegations, they're written, I'm just gonna go through
22 all of those and I have already written the amended
23 application.

24 THE COURT: As stated a moment ago by the Attorney
25 General?

1 MS. McMAHAN: Yes.

2 THE COURT: Okay.

3 MS. McMAHAN: We would call Mr. McGuffin.

4 Thereupon,

5 ROBERT MCGUFFIN

6 after having been first duly sworn, testified as follows,

7 DIRECT EXAMINATION

8 BY MS. McMAHAN:

9 Q. Would you state your name for the record please.

10 A. Robert McGuffin.

11 Q. Did you file this PCR application?

12 A. Yes, ma'am.

13 Q. And I filed the amendment on your behalf; is that
14 correct?

15 A. Yes, ma'am.

16 Q. Okay. So in your original application you talk
17 about how Mr. Johnson didn't file an appeal for you after you
18 had your guilty plea. Will you tell the Court about that
19 please?

20 A. Yes. I was told I could file an appeal. I asked
21 him to file an appeal on my behalf and it didn't get filed so
22 I wrote him a letter from Kirkland twice trying to get him to
23 file an appeal or a reconsideration, and also at the same time
24 I had my father call him and try to get in touch with him, but
25 we never received a phone call back and I never received a

1 letter back.

2 Q. So to your knowledge was an appeal ever filed?

3 A. No, ma'am. I was told that by William Keesley. I
4 wrote to the judge and he said he looked on the court
5 documents and he said there was nothing filed.

6 Q. So that's how you found out no appeal was filed?

7 A. Yes, ma'am.

8 Q. All right. And so the other issues that with Mr.
9 Johnson, did he ever move to reconsider your sentence?

10 A. No.

11 Q. Did you want him to do that?

12 A. Yes.

13 Q. Did you talk to him about it?

14 A. Yes.

15 Q. What did you guys talk about?

16 A. I just, after court, he asked me, do you want me to
17 file an appeal? I said yes because, I mean, I got eight years
18 for petty larceny. I mean, I know I have a record, but I just
19 felt like that was a whole lot of time considering my
20 co-defendant got four years of rehab.

21 Q. Did he talk to you about any prior record you may
22 have had?

23 A. He said I had a little of a record, but he said, you
24 know, so did my co-defendant.

25 Q. Did he talk to you about whether or not that prior

1 record were property offenses that could be used to enhance
2 what you pled to?

3 A. No.

4 MS. McMAHAN: 1B, Your Honor, we obviously just
5 addressed because that was also in the PCR application so
6 that was the failure to file an appeal.

7 BY MS. McMAHAN:

8 Q. 1C talked about the day of the guilty plea for bond
9 revocation hearing and not a guilty plea hearing. Tell me
10 about what happened that day.

11 A. I was not up to come to court for to take a plea. I
12 was up there to come for a bond revocation. Once I was
13 explained that I wouldn't get no more time than my
14 co-defendant and I should get the same sentence, then he
15 recommended me to move forward, that it would get off the
16 court docket, off his case load so I took that as to go ahead
17 and get it over with because I wanted to get back to my
18 family. Like I said, I have kids. My father's got cancer.
19 My grandfather's got cancer. So I took the plea that day and
20 I think she even noted on the record and on the file that I
21 was not there to take a plea. I was there for a bond
22 reduction.

23 Q. So what was the discussion you had with Mr. Johnson
24 about getting it over with that day?

25 A. He said if I got over with that day, that would -

1 that would get off his case load and also that would, I
2 shouldn't get no more time than my co-defendant.

3 Q. And your co-defendant had like time suspended to
4 rehab?

5 A. He got five years suspended, six months rehab, and
6 four years probation. And mine and his record was pretty much
7 the same. He just had drug offenses on his and I don't have
8 none.

9 MS. McMAHAN: So, Your Honor, we're kind of segueing
10 into 1D here. This all sort of goes together.

11 BY MS. McMAHAN:

12 Q. So you were there for bond revocation. Had you met
13 with Mr. Johnson before you had come to court for the bond
14 revocation?

15 A. Just once. Just once and him letting me know he was
16 my lawyer and he coming to Lexington County.

17 Q. So when you showed up that day, did you have a
18 conversation with Mr. Johnson about what would happen at a
19 bond revocation hearing?

20 A. No.

21 Q. But did he tell you that -- Well, obviously you knew
22 that you were going to be there for a bond revocation?

23 A. Yes, ma'am.

24 Q. So at what point while you're sitting there waiting
25 for your hearing did he approach you and say, hey, this is

1 what the State wants to do?

2 A. After my co-defendant went up.

3 Q. Was your co-defendant there for a bond revocation --

4 A. No, ma'am.

5 Q. -- or to plead guilty?

6 A. He was there to plead guilty.

7 Q. So what was the conversation between you and Mr.
8 Johnson about -- I know you have kind of alluded to this
9 earlier, but do you remember specifics of what Mr. Johnson
10 told you about what the plea offer was?

11 A. Well, no. He just said the charge didn't carry no
12 more than five years so I figured I couldn't get no more than
13 five years, but after hearing what my co-defendant got, he got
14 five years suspended, four years probation, six months rehab,
15 I figured I would go forward with it since like I said mine
16 and his record were kind of the same.

17 Q. Yeah. So he told you that your enhanced petty
18 larceny offense would not carry more than five years?

19 A. Right.

20 Q. Okay. So when did you -- So it wasn't until you got
21 sentenced that you found out it carried more than five?

22 A. Yeah.

23 Q. Okay. Is that the reason why you asked him to
24 appeal it and reconsider the sentence?

25 A. Yes.

1 Q. All right. Did you ever sit down with him and look
2 over the evidence that the State had against you?

3 A. No, ma'am.

4 Q. So you never saw your discovery?

5 A. No, ma'am.

6 Q. Do you know if Mr. Johnson had your discovery?

7 A. I don't know if he did or not.

8 Q. Did he tell you what was in the discovery without
9 you looking at it?

10 A. No.

11 Q. Is there anything else you want to tell the Court
12 today about Mr. Johnson and what you feel like he should have
13 done differently?

14 A. No.

15 MS. McMAHAN: Answer any questions Mr. Smith has.

16 THE COURT: Mr. Smith, cross examination.

17 CROSS EXAMINATION

18 BY MR. SMITH:

19 Q. Mr. McGuffin, at your plea hearing didn't Judge
20 Keesley tell you that because of the enhancement that the
21 petty larceny could carry up to 10 years?

22 A. I don't remember. I don't remember, sir.

23 Q. You don't remember that. Okay.

24 MR. SMITH: Your Honor, may I approach the witness?

25 THE COURT: You may.

1 BY MR. SMITH:

2 Q. Okay. All right. Will you confirm for me that this
3 is the transcript from your case on October 18th, 2017?

4 A. Yes.

5 Q. Okay. We're looking on page 6, and let's look at
6 about line 11. What does Judge Keesley ask you?

7 A. Petty larceny is an enhanced charge. It is a felony
8 that carries up to 10 years in prison.

9 Q. So he asked you did you know that it carries up to
10 10 years?

11 A. Yes, sir.

12 Q. And what did you answer?

13 A. I said yes, sir.

14 Q. Okay. And then the Solicitor laid out the State's
15 allegations against you and went into them about, you know,
16 taking the trailer and the tires and all that and Judge
17 Keesley asked you if you were guilty. Did you tell him you
18 were guilty?

19 A. Yes, sir, Your Honor.

20 Q. Okay. He asked you had anybody forced you,
21 threatened you, coerced you in any way to get you to plead
22 guilty against your will, right?

23 A. Right.

24 Q. And you told him no?

25 A. Right.

1 Q. Okay. And at your hearing didn't your attorney ask
2 for a lighter sentence?

3 A. I mean, he asked that we get fed out of the same
4 spoon.

5 Q. Right. Okay. So he was telling the judge we hope
6 you give him a light sentence. He said that, didn't he?

7 A. Yeah.

8 Q. Okay. And didn't you tell Judge Keesley that you
9 were satisfied with everything your attorney had done for
10 you?

11 A. Before I was sentenced. Yes, sir.

12 Q. You told him he had done everything you wanted him
13 to do?

14 A. Yes, sir.

15 Q. And you didn't say anything to him about, Judge, I
16 actually want to go to trial. I'm not supposed to be here
17 today?

18 A. No. I didn't say I wanted to go to trial.

19 Q. How many times did you meet with your attorney
20 before your plea hearing?

21 A. Once.

22 Q. Were you hoping that by pleading guilty that same
23 day that you would get a sentence like your co-defendant
24 did?

25 A. Correct. That's what was explained to me by Ola

1 Johnson.

2 Q. Okay. When was it that you asked him to appeal your
3 case?

4 A. Right after we went back next door to the
5 courtroom.

6 MR. SMITH: Thank you. No more questions, Your
7 Honor.

8 THE COURT: Redirect?

9 MS. McMAHAN: Yes, Your Honor.

10 REDIRECT EXAMINATION

11 BY MS. McMAHAN:

12 Q. So was the issue in your case not that you were
13 guilty of what had happened, but that you were told the wrong
14 amount of time that you were going to serve by Mr. Johnson?

15 A. Correct.

16 Q. And prior to being sentenced, you were satisfied
17 with his representation, but once you realized that you were
18 gonna get more than five, that's when you were like I'm not
19 happy with what he did?

20 A. Yes.

21 Q. Okay. And you said earlier, well, Mr. Smith said
22 you had hoped you would get the same sentence as your
23 co-defendant. Was it more like you hoped to get it or that
24 you were told that you were gonna get this?

25 A. I was told I was gonna get it. That's the only

1 reason I took the plea that day.

2 Q. Okay. And so then when Judge Keesley said the 10
3 years and you didn't correct him, is there a reason for that?
4 Were you nervous? Were you scared?

5 A. Yes, ma'am.

6 MS. McMAHAN: I have nothing further, Your Honor.

7 THE COURT: Any recross?

8 MR. SMITH: Just one question, Your Honor.

9 RECROSS EXAMINATION

10 BY MR. SMITH:

11 Q. Mr. McGuffin, did Judge Keesley ask you has anybody
12 promised you anything or offered you anything to get you to
13 plead guilty?

14 A. Yes, sir.

15 Q. And you told him no, right?

16 A. Correct.

17 MR. SMITH: Okay. Thank you. No more questions,
18 Your Honor.

19 THE COURT: Thank you. You may step down.

20 MS. McMAHAN: Your Honor, the applicant rests.

21 THE COURT: The applicant rests.

22 MR. SMITH: Yes, Your Honor. The State would call
23 Mr. Ola Johnson.

24 Thereupon,

25 OLA JOHNSON

1 after having been first duly sworn, testified as follows,

2 DIRECT EXAMINATION

3 BY MR. SMITH:

4 Q. Mr. Johnson, where do you work now?

5 A. Lexington, South Carolina. I'm in private
6 practice.

7 Q. Okay. How long have you been practicing law?

8 A. Since 2001.

9 Q. Okay. Did you represent Mr. McGuffin in his case
10 that we are here about today?

11 A. Yes.

12 Q. And how did you come to represent him?

13 A. I was appointed in September of that year, 2017. I
14 believe it was a conflict case where he was conflicted from
15 the Public Defender's Office.

16 Q. Okay. How many times did you meet with Mr. McGuffin
17 before his plea hearing?

18 A. I met with Mr. McGuffin at the jail September 29th.
19 Talked about his charges. Uhm, I think I represented him
20 before so I knew him and we went over some of the details of
21 his case. I did not have full discovery. I was provided full
22 discovery by the Solicitor a couple of days prior to the plea
23 date so I came down to the courthouse here on his date where
24 they were doing, the Solicitor was trying to revoke his bond,
25 get his bond revoked. We met in the middle courtroom. I gave

1 him all of his discovery and it's the same discovery I have
2 here today, pages 1 through 69, pages 1 through 45, and it
3 looks like pages 1 through 117 on the three separate cases. I
4 gave him all of that discovery. I went back and forth between
5 plea court in the far courtroom where I was working on other
6 cases and coming back and then talking to him. Told him to
7 review his discovery. Gave him his own copies. He read
8 through it. I asked him if he had any questions. He didn't
9 seem to have any questions.

10 I explained there were two disks provided. One had
11 I think 10 photos on it from the grand larceny case showing a
12 broken fence and an empty lot where the trailer was stolen.
13 There was a disk with a 911 call that was related to the petty
14 larceny where the owner of the business called in and said
15 that a former customer had witnessed someone fitting the
16 defendant's description standing out there stealing rims and
17 some things. It looked like a robbery was taking place so
18 they took down the tag number. I explained to Mr. McGuffin I
19 had a laptop computer in my truck. Be happy to play those
20 disks for him. He said he reviewed discovery. He did not
21 want to look at those.

22 I asked him if he had any questions. He did not
23 have any questions. Took several hours going back and forth
24 between plea court and coming back to this middle courtroom
25 here on the third floor. Talked to Mr. McGuffin. I asked him

1 if he had time to review everything. He said he did. I
2 explained the Solicitor's position. I think her name is Ms.
3 Graham. She made it clear that the only offer was a straight
4 up plea; that she wanted him to go to prison, and if he pled
5 guilty, that was gonna be her position with the judge. She
6 was gonna ask for time, and he made it clear to me that he
7 obviously wanted to go home and that he wanted probation and
8 so I explained to him on a straight up plea the judge can give
9 him whatever the judge wants to give him. That we would ask
10 for him to get the same sentence as the co-defendant, but it's
11 not guaranteed. I showed him the sentencing sheets. He
12 signed them. I explained what the sentencing sheets meant as
13 far as a straight up plea. There were no negotiations, no
14 recommendations checked because the judge was free to do
15 whatever the judge wanted to do, and he said he wanted to do
16 it. His exact words were he wanted to put it all behind him
17 and just plead guilty so we did. And do you want me to
18 continue?

19 Q. Did he tell you why he wanted to get it over with
20 and go home?

21 A. Well, he said, I went through some of that
22 mitigation on the record with him having kids. I think he had
23 issues. Obviously he wanted to see his family. I think he
24 had a sick family member he said and he had children and he
25 had a job. He worked as a lineman with I think SCE&G. So he

1 had a bad addiction problem and he wanted to get back out and
2 get to work. So I said, well, I can explain to the judge his
3 problem with addiction and that he should get treatment and
4 argue that so that the judge can structure some treatment for
5 him to get out and have that since I think the co-defendant
6 got some probation with some treatment and made it very clear
7 to him that once he pleads guilty, they accept the plea. We
8 talked about it. Told him the rules about the deadline for
9 filing notice of appeal, for filing a motion to reconsider and
10 we reviewed that before the plea and after the plea so he said
11 he wanted to do it and he wanted to try to get probation and
12 try to get out.

13 Q. Okay. Is that why you asked the judge for
14 probation?

15 A. Yeah. I asked the judge for what he wanted. He
16 said he wanted to talk about and I told him I was gonna tell
17 the judge about the drug addiction and I think I represented
18 him before so I knew that he had a problem going on for years.
19 I talked to his father and it was clear that he had a drug
20 problem so we explained that to the judge and tried to get him
21 the same sentence that he had just given the co-defendant who
22 I believe had a rap sheet going back 10 or 12 years. I told
23 the judge about that and the fact that the co-defendant, I
24 think the co-defendant actually violated probation and got a
25 lighter sentence so I explained that to the judge, but the

1 judge didn't give it to him.

2 Q. All right. Did you explain to him potential
3 sentences?

4 A. We went over that and the fact the 10 year felonies
5 and up to five year felonies and the enhancement. He had
6 plenty of convictions on his rap sheet to enhance that petty
7 larceny. I explained why that was enhanced zero to 10 year
8 felony. Of course, the larceny and then the forgery and we
9 reviewed everything. I think the forgery they had photographs
10 from the security cameras at the bank. We talked about
11 statements he had made to the officer. I think he was on the
12 transcript talking about it. The police officer said
13 Mr. McGuffin cooperated and talked to the officer and I think
14 gave the rims back or gave back some property. He clearly
15 confessed to the crimes.

16 Q. Okay. Were all of these crimes committed on the
17 same day?

18 A. No. These were three separate events and that's why
19 I had three packets of discovery that I gave him.

20 Q. Okay. Did you think there were complex issues
21 involved in the case?

22 A. I don't think it was as complex as some cases. This
23 wasn't a case - this wasn't a murder case. This was a series
24 of property crimes that obviously he was committing according
25 to him to support a drug habit. They weren't overly complex I

1 don't think.

2 Q. Was there any discovery that you did not go over
3 with him?

4 A. The only discovery that I had that I believe that he
5 did not physically see was the 10 photos on that disk and then
6 listening to the 911 call which is why I always tell them I've
7 got my laptop in my truck. Happy to play it for you. I
8 described what was in the 911 and why that was linked to the
9 petty larceny and what the photos were of the lot and the
10 broken fence. He said he was ready to go. Didn't want to see
11 it. He had his discovery. I asked him if he read it. He
12 said he read it and he understood it and he wanted to do the
13 guilty plea.

14 Q. Okay. Did you promise him any kind of particular
15 sentence?

16 A. Nope. I said it's a straight up plea. I explained
17 the sentencing sheets to him. We looked over them. I told
18 him he can ask for what he wants. The judge is gonna give him
19 what the judge wants to give him. The Solicitor clearly was
20 gonna ask for prison time which I made clear to him that's
21 what she was gonna do and that's what she did and the judge I
22 believe gave him less than what she was asking for, but still
23 gave him prison time which was a risk of going forward and he
24 chose to do that.

25 Q. Did you promise him that he would get the same

1 sentence as his co-defendant?

2 A. No, sir. Did not promise that.

3 Q. Were you hoping for a lighter sentence?

4 A. I was hoping to get a lighter sentence. I have seen
5 judges that will -- Since the co-defendant had a rap sheet and
6 had violated and got in trouble, I just thought, you know,
7 there's a chance. I've seen co-defendants get similar
8 sentences, but it's a risk. Since there's no negotiation I
9 explained the fact that to get an exact sentence he would have
10 to do a negotiated plea and it would be negotiated on the
11 sentencing sheet, the judge would have to explain it, and I
12 explained it, and after he checked off on that sentencing
13 sheet, there was no negotiation, there was no recommendation
14 so the plea was a risk. I explained the risks. Going to
15 trial is a risk. He said he wanted to go forward and enter a
16 guilty plea and put it all behind him so...

17 Q. Okay. Did you at any point tell him you wanted him
18 to plead to get your case off the case load?

19 A. No. I said if you want to plea, you can do it
20 today, but it was my impression from the Solicitor that she
21 was not going to change her offer. Of course, if he had
22 waited, there's a potential that could have happened. There's
23 a potential a lot of different things could have happened, but
24 since, you know, we reviewed the discovery and the officer
25 made it clear that he had made statements confessing to these

1 crimes and they had some evidence where, you know, some of it
2 with a picture of him and him saying he did it, you know, that
3 was his choice, but I didn't push him one way or the other. I
4 said it's up to you. Make a decision about what you want to
5 do. I came back and checked with him several times to make
6 sure he had time to read the discovery that he took with him.
7 He had copies of everything except the disks and that was our
8 conversation.

9 Q. Did you complain to him about your case load --

10 A. No, sir.

11 Q. -- or anything like that?

12 A. No, sir.

13 Q. Okay. Did he ask you to file a motion to
14 reconsider?

15 A. No, sir. We had a conversation prior to the plea
16 and after the plea. After the plea was over, we went back to
17 the center courtroom where they were keeping inmates to my
18 recollection, told him the same thing as I told him before.
19 If you want me to file a motion to reconsider, you have to
20 tell me. If you want to file a notice of appeal, you've got
21 to tell me. That's got to be done within ten days. He told
22 me the only thing I want you to do is call my dad and tell him
23 what happened. I said all right. Make it clear, what do you
24 want me to do? He said call my dad. I said, well, that's all
25 I'm gonna do. So after the plea, I called his dad, you know,

1 had a conversation and that was it.

2 After the plea was over, I received letters from the
3 defendant several motions after the plea, but I didn't receive
4 any phone calls or letters within the ten days. I believe a
5 couple of months after the plea I think I talked to his father
6 over the phone one time. He called and identified himself. I
7 remember him saying, well, my son is asking about an appeal,
8 but this was several months after the plea so I explained
9 again the rule about ten days and there was nothing I could
10 file so...

11 Q. Okay. So he didn't ask you to appeal or file a
12 motion to reconsider?

13 A. Not until several months after the plea was over.

14 Q. Okay. And you mentioned getting letters from him.

15 A. Yes.

16 Q. Did you also get letters from his family members?

17 A. No. I'm showing, I think I just have letters from
18 him. I have a copy of a letter where he mailed Judge Keesley
19 and I don't think I have anything from his family. I've got
20 one where he wrote, Dear Judge Keesley. Looks like Judge
21 Keesley. That was post marked April 25th and I've got one
22 looks like this is post marked --

23 Q. What's the year on that letter?

24 A. Oh, this one to Judge Keesley was April 25th,
25 2018.

1 Q. Was that a letter he wrote to Judge Keesley?

2 A. It appears and then they sent me a copy of it.

3 Q. So what year was that again?

4 A. April, post marked April 25th, 2018.

5 Q. And his plea hearing was in October of 2017?

6 A. Correct. October 18th.

7 Q. Did either he or any of his family members ask you
8 within the ten day window to file an appeal?

9 A. No, sir. I have got two other letters here. If you
10 want me to read you the dates, I can. One from him December
11 21st, 2017 which was more than two months after the plea and
12 he sent me, May 4th, 2018 which was several months after.
13 That's what I've got.

14 Q. Okay. But you did advise him that you could appeal
15 if he wanted it?

16 A. I advised him at the time we did the plea that I
17 could file the notice of appeal and that he had to tell me to
18 do it within ten days of the plea. He did not.

19 Q. How many times did you discuss his case with the
20 Solicitor before his plea hearing?

21 A. A couple times we talked, emailed. The day before,
22 uhm, this is - they - basically the Solicitor made it quite
23 clear that she was going to ask for 10 years. Said she wants
24 him to get time. She was gonna communicate that to the Court,
25 but we talked a couple of times and we communicated and she

1 just consistently said she was not gonna offer any negotiated
2 recommendation or anything. She wanted to do straight up.
3 She wasn't going to give him probation. I made that request
4 to her I believe in person, too. I obviously wanted him to go
5 home, but he had some time served credit, not a lot of time
6 served credit. He had been in a little bit. But I talked to
7 her on several occasions. We emailed and she made it clear
8 what she wanted. She wasn't changing her offers.

9 Q. And did you relay that information to Mr.
10 McGuffin?

11 A. Yes. I did.

12 Q. Whose decision was it to plead guilty?

13 A. Mr. McGuffin's.

14 Q. Okay. Did you coerce him in any way?

15 A. No, sir.

16 Q. If he had asked you to file an appeal, what would
17 you have done?

18 A. I would have filed a notice of appeal.

19 MR. SMITH: No more questions. Thank you.

20 THE COURT: Cross examination.

21 CROSS EXAMINATION

22 BY MS. McMAHAN:

23 Q. So, Mr. Johnson, you said you have represented
24 Mr. McGuffin before. In your prior representation of him, did
25 he ever seem to not understand proceedings or anything that

1 was going on?

2 A. Not that I can recall. He had been through the
3 system many times.

4 Q. Do you remember how many times you represented him
5 before?

6 A. I don't. I think just once, but I don't really
7 remember the date or the charge.

8 Q. Was the issue with him not really so much that he
9 was guilty of it but the amount of time he was going to
10 serve?

11 A. Well, are you asking me was that his concern?

12 Q. Yeah.

13 A. Yeah. He wanted to go home, and I told him, well,
14 the Solicitor is gonna ask the judge to put you in prison for
15 10 years and she made it pretty clear she's gonna ask for
16 prison time and he wanted to go home so I said, well, we can
17 do a straight up plea. You can ask for what you want. It's
18 up to the judge. I believe he got less than the 10, but he
19 had a long rap sheet. I explained to the judge that the
20 co-defendant had a rap sheet I think going back 12 years. I
21 think I put that on the record as well, but that was his
22 concern. He obviously wanted to go home.

23 Q. Is it common for the Solicitor's Office in Lexington
24 to do negotiated pleas?

25 A. It is not common. I have been told by some

1 Solicitors, well, I'm not allowed to negotiate which basically
2 depends on the Solicitor. I have run into Solicitors here
3 that say they can give a negotiated if they want to. All of a
4 sudden they have the ability to do it. When they don't want
5 to, they say they can't. The reality is that I think Ms.
6 Graham, the Solicitor could have offered a negotiation or
7 recommendation. She just made it clear to me she was not
8 wanting to do that, but it's not common to get that really.
9 In Lexington it's just not common.

10 Q. So is it more of a practice here that they will
11 agree to like dismiss a couple charges in exchange for a
12 straight up plea?

13 A. That's very common in Lexington. Usually I just
14 don't get a lot of negotiated sentences or plea deals in
15 Lexington. So I think they dismissed the charge on this one
16 and the officer had indicated that there were some other
17 incidents where they didn't enhance charges, but part of this
18 deal I think they dismissed something related to that forgery.
19 I think it was conspiracy or something they dismissed.

20 Q. What was the issue that violated his bond that was
21 going to be there that day.

22 A. It was his re-arrest I believe. I've got a copy, I
23 think, of the motion. The Solicitor pursued this. Motion to
24 revoke bond. They gave it to the defendant. It says in here
25 signed by Melanie Graham, Solicitor, filed August 29th, 2017

1 listing that on April 8th, 2017, Robert McGuffin was arrested
2 for forgery. It went into the details of that. August 3rd,
3 2017 Robert McGuffin arrested for identity fraud, grand
4 larceny, so I guess the related case, released on bond April
5 8th and says violated both state violations under the
6 authority of Section 17-15-55 the State hereby petitions the
7 Court to revoke defendant's bond, require him to remain in
8 custody. So Ms. Graham clearly wanted to keep him in jail
9 because he had been re-arrested.

10 Q. How long had he been out on bond, do you recall?

11 A. Well, it says he had been out -- He was arrested
12 April 8th and then he was arrested, on August 3rd he was
13 arrested so that was from April to August. I don't know the
14 exact bond out date from April. I have to look it up. This
15 indicates that he bonded out. April 8th was for forgery. And
16 if you want me to I can look for the forgery warrant and tell
17 you the bond out date and do the math for you.

18 Q. Well, when was the bond motion, the revocation
19 motion filed?

20 A. This was filed August 29th, 2017. I was appointed
21 and went and saw him in September and then he came down. I
22 saw him again here at the courthouse in October for the plea.
23 Well, for this hearing and then she made it clear what her
24 offer was and he chose to enter a plea.

25 Q. So he got arrested in August. She made the motion

1 in August, I guess, shortly thereafter. Was he in the
2 detention center when you went to see him in September or was
3 he out?

4 A. Yes. I believe he was in Lexington County jail.

5 Q. Was he out at the time of the guilty plea?

6 A. No. He was still in because she had filed this and
7 I believe they brought him over.

8 Q. So you represented him on the August charges, the
9 April charges, and what else? You said there were three.

10 A. Petty larceny, June 2017 and that was that one.
11 Then there was February 4th, 2017 was the forgery. Then there
12 was a grand larceny which I will have to dig through here and
13 give you the incident date on that.

14 Q. I was just curious. So we're going back to at least
15 April on the incidents and the arrests. Is it common for you
16 not to get appointed until way kind of, it seems sort of late
17 in the game I guess, until September?

18 A. Well, I guess when they discovered there was a --

19 Q. Conflict?

20 A. -- conflict, I got the paperwork and went and saw
21 him after that, but I didn't have full discovery. So when I
22 got discovery, I think I got this less than a week before the
23 plea date and hearing date so...

24 Q. So I'm not trying to beat a dead horse here, but so
25 September you get appointed. You go visit him. You didn't

1 have all the discovery at the time. You get the discovery a
2 few days later. When you guys meet here in October for the
3 bond revocation hearing is sort of when you guys went over
4 everything; is that correct?

5 A. Correct. Correct.

6 Q. All right. Do you recall if he had an assigned
7 public defender prior to you being appointed?

8 A. I don't know. They just, I got a letter from Robert
9 Madsen appointing me and I get appointed when it's a conflict
10 and that's all they really tell me. They don't tell me the
11 details.

12 Q. So they didn't tell you what the conflict is. They
13 just say we've got a conflict?

14 A. Right. And there's, clearly he did an intake sheet
15 with the Public Defender's Office. The Public Defender's
16 Office, looks like he did an intake in April 2017. I got a
17 letter appointing me, let's see, September.

18 Q. Okay. So do you recall if the Public Defender
19 represented the co-defendant?

20 A. I don't know. They don't -- they just -- I know it
21 looks like Ms. Beth Fullwood had filed a Rule 5 and she's over
22 there so I guess she represented him.

23 Q. Is there anything else the Court needs to know today
24 about this case?

25 A. Well, just I did everything he asked me to do and I

1 called his daddy and it's a tragic situation related to
2 drugs.

3 MS. McMAHAN: No further questions, Your Honor.

4 MR. SMITH: No more questions, Your Honor.

5 THE COURT: Thank you. You may step down.

6 MR. SMITH: Your Honor, that's the State's case.

7 MS. McMAHAN: Your Honor, could I have a moment
8 please? I might have a possible reply witness if I could
9 just talk to him.

10 THE COURT: Sure. We will be at ease for a few
11 moments.

12 (Short break.)

13 MS. McMAHAN: Your Honor, I have a brief reply
14 witness, Mr. McGuffin's father very briefly.

15 THE COURT: Sure.

16 MS. McMAHAN: I call Mr. McGuffin to the stand.
17 Thereupon,

18 ROBERT DENNY MCGUFFIN

19 after having been first duly sworn, testified as follows,

20 DIRECT EXAMINATION

21 BY MS. McMAHAN:

22 Q. Would you state your full name for the record
23 please.

24 A. Robert Denny McGuffin.

25 Q. You are the father of Mr. McGuffin sitting over

1 here?

2 A. Yes.

3 Q. And right after the guilty plea, did you ever get
4 any phone calls from Mr. Johnson?

5 A. No.

6 Q. Did you ever have any phone conversations with Mr.
7 Johnson?

8 A. No.

9 Q. Okay. Did you try to contact Mr. Johnson?

10 A. Yes. I did. I left two messages on his phone and
11 he never returned my calls.

12 MS. McMAHAN: Nothing further, Your Honor. Answer
13 any questions Mr. Smith may have.

14 THE WITNESS: Yes, ma'am.

15 THE COURT: Cross examination.

16 MR. SMITH: No questions, Your Honor.

17 THE COURT: Thank you. You may step down.

18 MS. McMAHAN: Your Honor, the applicant rests now.

19 THE COURT: Anything else?

20 MR. SMITH: Your Honor, may I recall Mr. Johnson
21 briefly?

22 THE COURT: Sure. Mr. Johnson, you're still under
23 oath.

24 MR. JOHNSON: Yes, Your Honor.

25 REDIRECT EXAMINATION

1 BY MR. SMITH:

2 Q. Mr. Johnson, you testified earlier that you did call
3 Mr. McGuffin, Senior after the sentencing at Mr. McGuffin,
4 Junior's request?

5 A. Yes.

6 Q. What did you talk about?

7 A. I told him what happened and I spoke to him and it
8 says here, I made notes of it to record what I did, I gave the
9 date, said I talked to the defendant. I made note here that I
10 had talked to him after the plea asking if he wanted to file
11 an appeal, motion to reconsider. He did not. And that I
12 called Robert, defendant's dad at 803-354-3982. I called and
13 a man who identified himself as his father answered and said
14 -- I mean, I can tell you what he said.

15 Q. What was the date of that call?

16 A. The date of the plea.

17 Q. Okay.

18 A. I mean, I called, I remember calling him, I thought
19 it was either - I've got the date of the plea up here. It was
20 either the day of the plea or the day after. I thought I
21 remembered calling him the next day. This says 10/18/17 at
22 the top so it may have been the day of the plea I called
23 him.

24 Q. Did he tell you to appeal?

25 A. His father?

1 Q. Yes.

2 A. No. I mean, I'll tell you what he said if you want
3 me to.

4 Q. That's okay.

5 A. He just expressed frustration over the situation.
6 I'll say that. But no. Nobody asked me to file an appeal. I
7 called his father at that number and nobody asked me to file
8 an appeal.

9 MR. SMITH: No further questions.

10 MS. McMAHAN: I have no questions, Your Honor.

11 THE COURT: All right. Thank you, sir. You may
12 step down.

13 MR. SMITH: Your Honor, I would ask if Mr. Johnson
14 may be excused?

15 MS. McMAHAN: No objection.

16 THE COURT: You may be excused, Mr. Johnson.

17 MR. JOHNSON: Thank you, Judge.

18 THE COURT: Hang around if you wish. All right.
19 I'll be glad to hear argument.

20 MS. McMAHAN: Your Honor, I would just ask that, you
21 know, you take all of this matter under advisement and
22 review everything including all the written materials and
23 consider what Mr. McGuffin's father said. Just also for
24 the record they're not Junior and Senior. He's Robert
25 Denny and he's Robert Daniel, the same initials but

1 slightly different names. And then just rule. Obviously
2 his father said that he never talked to Mr. Johnson so we
3 have some credibility issues between the two.

4 THE COURT: Well, I prefer to hear argument of
5 counsel. Do you need a few minutes to think about it to
6 prepare? We can take a break if you want to do that?

7 MS. McMAHAN: I may need a little break. I don't
8 know that I can do all this on the fly.

9 THE COURT: Okay. All right. We're gonna be at
10 ease for a few minutes. We'll take a ten minute recess.
11 We've got another matter that we'll hear later.

12 MR. SMITH: We do, Your Honor, and I would ask for,
13 after this case for a little break so that I can meet
14 with the witnesses and we can discuss the case.

15 THE COURT: Okay. All right. Court's in recess for
16 ten minutes.

17 (Short break.)

18 THE COURT: Back on the record. Whenever you're
19 ready.

20 MS. McMAHAN: Your Honor, it's brief, you know,
21 because it's sort of on the fly. Just to wrap it all up,
22 number 1, the applicant testified that he asked for an
23 appeal right afterwards in the courtroom I'm assuming so
24 next door, and at the same time asked for a motion to
25 reconsider. You know, he's got more on the line than Mr.

1 Johnson does here. He basically wanted the appeal
2 because he was told by Mr. Johnson that he would probably
3 get somewhere around the same as the co-defendant and
4 that was the basis and the impetus for wanting the appeal
5 and motion to reconsider.

6 You heard the father's testimony that he never
7 talked to Mr. Johnson even though Mr. Johnson testified
8 that he had talked to the dad, and then also the issue
9 with him wanting to get it over with was because the
10 applicant thought he was gonna be getting close to five
11 years which as you know ultimately he would probably
12 serve close to three given credit for time served, you
13 know, good time credit and all that kind of thing.
14 Did not think at any point he was gonna end up with eight
15 or more years at that time. Again, circling back to
16 number 1 which is why he wanted the appeal.

17 He also said, I mean, trial counsel all said that he
18 gave the discovery to the defendant, but he didn't
19 actually sit and explain it and go over it with him. He
20 just waited for Mr. McGuffin to ask him questions about
21 it and because he said he was going back and forth
22 between the two courtrooms at the time when he was going
23 over all that discovery with him and it was only at the
24 day of the bond revocation and not the date of the guilty
25 plea and so that's basically my argument, Your Honor.

1 THE COURT: All right. And for the State.

2 MR. SMITH: Yes, Your Honor. There were several
3 issues in this case that I believe allegations raised by
4 Mr. McGuffin that are refuted today by the testimony of
5 Mr. Johnson and by the record at the time. For example,
6 he raises the issue of that he wasn't shown the State's
7 evidence, that they didn't review the evidence, and that
8 he wasn't told that the sentence would be, you know,
9 could be up to 10 years with enhancement.

10 Your Honor, you heard from Mr. Johnson today that he
11 showed all of the discovery to Mr. McGuffin, that he went
12 over it with him, and Mr. McGuffin didn't have any
13 questions. I believe the only discovery he didn't show
14 him according to his testimony were some photographs on a
15 CD, and his testimony was that he offered to show that to
16 him. But nevertheless he still explained the contents.

17 And this case, Your Honor, is not a complex case.
18 It's did you steal these things and, you know, there are
19 eye witnesses and video camera footage. It's not a hard
20 case. And you've hear from Mr. McGuffin today that his
21 main concern was not whether he would be innocent or
22 guilty, but how much time he would do which indicates to
23 me that there wasn't a whole lot of concern about what
24 the facts were of the case or the evidence.

25 So on those issues I would point to Mr. Johnson's

1 testimony and also hearing the fact that the judge
2 explained what the sentence could be, it could be up to
3 10 years. Mr. McGuffin understood that. That's what he
4 told the judge at the time. He didn't have any
5 complaints against Mr. Johnson at the time and I believe
6 his statement to the judge indicates that he was ready to
7 plead and get it over with. That may not have been the
8 reason he was in court that day, but certainly indicates
9 he was willing to go forward. He expressed that to the
10 judge under oath and Judge Keesley made a finding about
11 the voluntary nature of the plea hearing and that
12 Mr. McGuffin understood the consequences of it and the
13 sentencing ranges.

14 As far as I believe what the bigger issues are in
15 this case, the motion to reconsider and the failure to
16 file an appeal, that's gonna come down to who you
17 believe, Your Honor. You have Mr. Johnson here who
18 testified that he explained the issue to Mr. McGuffin and
19 with both of those and that Mr. McGuffin didn't ask for
20 that in the ten day window. Perhaps he did later in
21 these letters he sent to him months down the road. As a
22 matter of fact, the plea hearing was in 2017 and
23 Mr. Johnson testified that he got letters in 2018.

24 You also heard from the applicant's father
25 Mr. McGuffin. And I apologize for the senior and junior.

1 I did not mean any offense to them by calling them that
2 if that's not their names, but Mr. Johnson testified that
3 he did call Mr. McGuffin's father at the applicant's
4 request either the day of the hearing or the day
5 afterwards and explained the situation and that he also
6 did not ask for a plea hearing. So based on his memory
7 and the notes he had written down from the call that was
8 his testimony today.

9 I would just ask the Court to look at the testimony
10 today and consider that on that issue, the credibility of
11 the parties. I understand that Mr. McGuffin is not happy
12 with the sentence. It was on the upper side of the
13 range. That's for sure. And he expressed today that he
14 was hoping he would get probation like his co-defendant
15 was, like his co-defendant did. And I'll point out Mr.
16 Johnson also expressed that during sentencing that, Your
17 Honor, we hope we get something similar to this
18 co-defendant, but the fairness of it is not the issue
19 before this Court. That was before Judge Keesley and
20 that was his decision.

21 Before the Court today are these issues of what
22 happened before and what happened after the plea hearing
23 and, Your Honor, I just would ask you to make your
24 decision based on the credibility of the parties and the
25 testimony offered by the parties here today and by both

1 Mr. McGuffin and Mr. Johnson during the sentencing
2 hearing. Thank you, Your Honor.

3 THE COURT: Any reply?

4 MS. McMAHAN: No, Your Honor.

5 THE COURT: All right. Having considered the
6 testimony today as well as the record in the case I do
7 note that as it's been explained that the trial judge
8 told the defendant before he pled guilty that he, the
9 trial judge could give him 10 years. If he thought it
10 was gonna be or could be something different than that,
11 he could have withdrawn or not gone forward with the
12 plea. I also note that at sentencing the trial attorney
13 asked for the same sentence the co-defendant got. The
14 judge denied it saying that he saw the situation of the
15 co-defendant different than that of Mr. McGuffin.

16 I further find that based on the testimony that the
17 testimony of Mr. Johnson, the trial attorney, was very
18 credible based on his memories and the notes he had in
19 his file, therefore, I find that the applicant has failed
20 to meet the applicant's burden of proof and the Court is
21 therefore compelled to deny the application for post
22 conviction relief. Mr. Smith, will you prepare an order
23 consistent with that ruling?

24 MR. SMITH: I will, Your Honor.

25 THE COURT: In 20 days.

1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON)

4

5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of Common Pleas in and for the
10 State of South Carolina on the 27th day of June, 2019.

11 I FURTHER CERTIFY that the forgoing 40 pages
12 constitute a true and accurate record of said proceedings.

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

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Lexington County, this 17th day of November, 2019.

17

18

19 By:s/Steven E. LeBlanc

20

21 Steven E. LeBlanc, Sr., R.P.R.
22 Eleventh Circuit Court Reporter
23 State of South Carolina.

24

25

STATE OF SOUTH CAROLINA)
 COUNTY OF LEXINGTON)
 Robert D. McGuffin, #319351,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No. 2018-CP-32-03545

ORDER OF DISMISSAL

FILED
 2019 AUG 13 AM 9:20
 CLERK OF COURT
 LEXINGTON COUNTY, SOUTH CAROLINA

This matter comes before this Court by way of an Application for Post-Conviction filed on October 17, 2018, by Robert D. McGuffin (Applicant). The State (Respondent) filed its Return and Motion for a More Definite Statement on December 31, 2018. Applicant filed an Amended Post-Conviction Relief Application on June 20, 2019. An evidentiary hearing in the matter was held before the undersigned on June 27, 2019, at the Lexington County Courthouse. Applicant was present and was represented by Ashley A. McMahan, Esquire (PCR Counsel). Respondent was represented by Assistant Attorney General Taylor Z. Smith of the South Carolina Attorney General’s Office. At the hearing, Applicant and his father testified on Applicant’s behalf, and Ola A. Johnson, Esquire, (Counsel) testified on behalf of Respondent. Following a thorough review of the record in its entirety and the testimony and evidence presented at the evidentiary hearing, this Court finds that Applicant has failed to meet his requisite burden of proof and denies this application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. On October 18, 2017, Applicant appeared before the Honorable William P. Keesley, waived presentment to the grand



jury for one count of forgery, less than \$10,000 (2017-GS-32-03679); one count of petit larceny, \$2,000 or less (2017-GS-32-03680); and one count of grand larceny, more than \$2,000 but less than \$10,000 (2017-GS-32-03684), and pleaded guilty to each charge. Counsel represented Applicant on these charges. Assistant Solicitor Melanie F. Graham, of the Eleventh Circuit Solicitor's Office, prosecuted the case. Judge Keesley accepted the pleas and sentenced Applicant to a term of imprisonment of five years for forgery, less than \$10,000; a concurrent term of imprisonment of eight years for petit larceny, \$2,000 or less; and a consecutive term of imprisonment of five years for grand larceny, more than \$2,000 but less than \$10,000. Applicant did not appeal his pleas or sentences.

CURRENT PROCEEDING

On October 17, 2018, Applicant filed an Application for Post-Conviction Relief, in which he made the following allegations:

1. "Ineffective Assist [sic] of Counsel USCA 6 – see attached"; and
2. "Denial of Due Process USCA 14 – see attached".¹

On June 20, 2019, Applicant filed an Amended Post-Conviction Relief Application, in which he raised the following allegations:

1. Ineffective Assistance of Counsel:
 - a. "Counsel failed to file a motion to reconsider the sentence."
 - b. "Counsel failed to appeal the Applicant's conviction and sentence."
 - c. "Applicant was at court the day of the guilty plea for a bond revocation hearing, not a guilty plea hearing, and counsel coerced the Applicant into 'getting it over with' and pleading guilty that day."
 - d. "Counsel told the Applicant he could not get more than 5 years for the enhanced petit larceny and that he would most likely get the same sentence the co-defendant received earlier that day; Applicant pled guilty based on

¹ In the attachment to the Application, Applicant does not lay out any specific allegations, but merely states that he "carry such a burden" without the aid of appointed counsel.

- this advice.”
- e. “Counsel was ineffective for failing to review the State’s evidence with the Applicant.”

At the start of the evidentiary hearing, Respondent requested that Applicant specify for the record the grounds upon which he intended to move forward in the PCR action. Applicant, through PCR Counsel, specified that he intended to move forward upon only the allegations and grounds raised in the Amended Post-Conviction Relief Application. Because the allegations in the amended application are the only grounds upon which Applicant moved forward at the evidentiary hearing, all other grounds are deemed to be waived and will not be addressed in this Order of Dismissal.

SUMMARY OF TESTIMONY AT PCR HEARING

Applicant's testimony

Applicant testified Counsel met with him only on one occasions before his PR hearing. He testified Counsel told him to plead guilty and “get it over with” so that Counsel’s caseload would get easier. He testified Counsel would not review all of the discovery in the case with him. He testified Counsel did not inform him that his prior criminal record would affect his sentence. He testified he did not know that the criminal offenses to which he pleaded guilty before Judge Keesley carried potential sentences greater than five years until after he had already been sentenced. He testified he asked Counsel to file an appeal after he was sentenced by Judge Keesley. He testified he mailed two letters to Counsel in which he repeated his request that Counsel file an appeal. He testified he asked his father to call Counsel on Applicant’s behalf in order to relay his request that Counsel file an appeal.

Robert McGuffin's testimony

Robert McGuffin (Father) testified he is Applicant’s father. He testified he did not receive any phone calls from Counsel following Applicant’s sentencing.

Counsel's testimony

Counsel testified he has practiced law in private practice since 2001. He testified he was appointed to represent Applicant in the underlying criminal cases in September of 2017 after Applicant's previous attorney had been conflicted out of representation. He testified he believed that Elizabeth C. Fullwood, Esquire, had been Applicant's public defender because her name was on the discovery motion that had been filed in the case prior to Counsel's appointment. He testified he had represented Applicant in a matter prior to the underlying criminal cases.

He testified the solicitor had filed for Applicant's bond revocation in August of 2017 after Applicant had been arrested again. He testified he did not receive all discovery from the solicitor until approximately one week before Applicant's bond revocation hearing. He testified he met with Applicant on September 29, 2017. He testified this was the only occasion on which he met with Applicant other than on the day of Applicant's bond revocation hearing. He testified he reviewed discovery with Applicant, explained the elements of the crimes for which Applicant had been charged, discussed potential defenses with Applicant, and told Applicant that he could be facing up to ten years' imprisonment for petit larceny due to the sentencing enhancement that applied because of Applicant's prior criminal record. He testified the evidence in the case was not complex and that the facts of the case were relatively straightforward. He testified Judge Keesley had given Applicant's codefendant a favorable sentence on the day of the bond revocation hearing. He testified Applicant decided to go ahead and plead guilty at the bond revocation hearing because he hoped to get a similarly favorable sentence from Judge Keesley.

He testified Applicant was mostly concerned about the length of the sentence that he would receive for his crimes and not necessarily whether or not he would be found guilty because Applicant believed that, based upon the evidence in the case, he would likely be found



guilty at trial. He testified the solicitor did not offer a sentencing recommendation at Applicant's plea hearing because the solicitors in Lexington County do not usually do so. He testified that, after the plea hearing, he explained to Applicant his right to appeal the plea and sentence and that Applicant did not request that he move for reconsideration of the sentence or file a Notice of Appeal. He testified Applicant did not indicate that he wanted to appeal and directed Counsel to talk to Applicant's father about the matter. Counsel testified he called Robert McGuffin, Applicant's father, within the ten-day window for filing a Notice of Appeal and explained Applicant's right to an appeal, but testified that Applicant's father did not indicate that Counsel should appeal or move for reconsideration.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented at the evidentiary hearing, which allowed the Court to scrutinize the credibility of all witnesses presented. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that trial counsel was constitutionally ineffective, he must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result." Strickland, 466 U.S. at 686



In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Petitioner 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 pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985). The "prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial." Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an



ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Id. at 697. Therefore, the function of the post-conviction relief court is to determine if “in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance” required of a criminal defense attorney. Id. at 690.

“A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed.” Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977)). “Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea.” Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see Jamison v. State, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that “guilty plea[s] must be treated as final in the vast majority of cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”).

Based on this standard set forth above, the testimony that is summarized above, and the reasoning below, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel. The allegations are addressed fully below:



“Counsel failed to file a motion to reconsider the sentence.”

A sentencing court has discretion to sentence within the legal limits. State v. Sidell, 262 S.C. 397, 398, 205 S.E.2d 2, 3 (1974). Applicant alleges he asked that Counsel move for a reconsideration of Applicant’s sentence. Counsel’s testimony that neither Applicant nor Father requested that Counsel move for reconsideration is more credible than Applicant’s testimony. At his plea hearing, before the court issued its sentence or accepted Applicant’s pleas, Applicant affirmed to Judge Keesley that he understood that petit larceny carried a potential sentence of up to ten years, that forgery carried a potential sentence of up to five years, and that grand larceny carried a potential sentence of up to five years. This Court finds that Counsel was not constitutionally ineffective for failing to move for a reconsideration of Applicant’s sentence since Applicant has not shown any deficiency in Counsel’s performance or resulting prejudice. As such, this ground is denied and dismissed with prejudice.

“Counsel failed to appeal the Applicant’s conviction and sentence.”

Applicant testified he asked Counsel to file a Notice of Appeal to Applicant’s pleas and sentences within the ten-day window, but that Counsel did not do so. Counsel testified he advised Applicant within the ten-day window of his right to a direct appeal, but that Applicant did not indicate that he wanted to appeal. He testified he called Father and explained that Applicant had the right to a direct appeal, but that Father did not indicate that Counsel should appeal on Applicant’s behalf. Father testified he never got a phone call from Counsel.

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 (2000). When counsel has consulted with the defendant



regarding the right to appeal, “Counsel performs in a professionally unreasonable manner only by failing to follow the defendant’s express instructions with respect to an appeal.” *Id.* at 478 (emphasis added). In order to establish he was prejudiced by counsel’s failure to file an appeal, Applicant must show he would have appealed absent counsel’s deficient performance. *See Id.* at 484.

This Court finds that Counsel’s testimony that he advised Applicant and Applicant’s father of Applicant’s right to a direct appeal is credible. Further, this Court finds that neither Applicant nor his father requested that Counsel file a Notice of Appeal. This Court finds that Counsel appropriately advised Applicant of his right to an appeal and that Counsel did not receive instructions to file an appeal; therefore, Applicant knowingly and voluntarily waived his right to a direct appeal. This Court finds that Counsel was not constitutionally ineffective for failing to appeal Applicant’s pleas or sentences since Applicant has not shown any deficiency in Counsel’s performance or resulting prejudice. As such, this ground is denied and dismissed with prejudice.

“Applicant was at court the day of the guilty plea for a bond revocation hearing, not a guilty plea hearing, and counsel coerced the Applicant into ‘getting it over with’ and pleading guilty that day.”

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial’s errors, the defendant would not have pleaded guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). To find that a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274

(1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

The testimony from both Applicant and Counsel is in agreement that Applicant was in court on October 18, 2017, for a bond revocation hearing. Although Applicant now testifies that he did not have adequate time to consider the consequences of pleading guilty and that Counsel rushed him into pleading to make Counsel's workload easier. Applicant and Counsel agree that Applicant's codefendant had been sentenced shortly before Applicant's bond revocation hearing, and received what they both considered to be a favorable sentence. Counsel testified that, in light of the evidence against him, and with the hope that Judge Keesley would give Applicant a similarly favorable sentence, Applicant decided to plead guilty. Counsel asked for a similar sentence in mitigation during Applicant's plea hearing, but Judge Keesley stated that the situations of Applicant and his codefendant were materially different. Counsel's testimony was that there was nothing further in the case that Applicant had asked him to do that had been left undone. During his plea hearing, Applicant affirmed to Judge Keesley that he wished to plead



guilty, affirmed that he understood his trial rights and wished to waive them by pleading guilty, affirmed that he was guilty of the crimes as described by the solicitor, affirmed that he was pleading guilty of his own free will, affirmed that he was happy with Counsel's representation of him, and affirmed that Counsel had done everything that Applicant had wanted. Applicant could have stopped or delayed the plea hearing if he felt that he needed additional time or was being coerced into entering a plea; instead, Applicant made the knowing and voluntary decision to plead guilty. This Court finds that Counsel's testimony that he did not rush Applicant or coerce him into pleading guilty is more credible than Applicant's testimony. This Court finds that Counsel was not constitutionally ineffective for rushing Applicant or coercing him to plead guilty since Applicant has not shown any deficiency in Counsel's performance or resulting prejudice. As such, this ground is denied and dismissed with prejudice.

"Counsel told the Applicant he could not get more than 5 years for the enhanced petit larceny and that he would most likely get the same sentence the co-defendant received earlier that day; Applicant pled guilty based on this advice."

This Court finds that Applicant's testimony that he did not know that he could get a greater sentence than five years lacks credibility in light of his testimony during his plea hearing and Counsel's testimony at the evidentiary hearing. At the plea hearing, before the court issued its sentence or accepted Applicant's pleas, Applicant affirmed to Judge Keesley that he understood that petit larceny carried a potential sentence of up to ten years, that forgery carried a potential sentence of up to five years, and that grand larceny carried a potential sentence of up to five years. Applicant also affirmed to Judge Keesley that he understood that the petite larceny sentence would be enhanced. Counsel affirmed to Judge Keesley that he had informed Applicant of the possible punishment he could face if he pleaded guilty. This Court finds that Applicant was properly advised that he could be sentenced to imprisonment for as much for ten years for petit larceny, and that he nevertheless knowingly pleaded guilty. This Court finds that Counsel



was not constitutionally ineffective for improperly advising Applicant as to the potential sentences he was facing since Applicant has failed to show any deficiency in Counsel's performance or resulting prejudice. As such, this ground is denied and dismissed with prejudice.

"Counsel was ineffective for failing to review the State's evidence with the Applicant."

Applicant testified that Counsel did not show him all of the State's evidence in the case and review it with him. Counsel testified that he reviewed all of the State's evidence with Applicant except for a security camera video that showed Applicant carrying out the criminal offenses to which he pleaded guilty. Counsel believed the video to be harmful to Applicant's defense. Counsel testified that he reviewed the video and summarized its contents to Applicant, but that Applicant declined Counsel's offer to show the video to Applicant because Counsel's corroborated the acts that Applicant had performed in furtherance of his crimes. At his plea hearing, Applicant affirmed that he was guilty of the crimes as described by the solicitor, that he was happy with Counsel's representation of him, and that Counsel had done everything that Applicant had wanted

A defense attorney has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. *Id.* at 691. Thus, "[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Moreover, counsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). "[C]ounsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation



decisions. . .” Strickland, 466 U.S. at 691. “[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed as of the time of counsel’s conduct.” Id. at 690; Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (Ct. App. 2014). A defense attorney’s “[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.” Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (citing Kibler v. State, 267 S.C. 250, 227 S.E.2d 199 (1976)). An applicant alleging that his attorney failed to prepare for the case must show how additional preparation would have resulted in a different outcome. Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997).

Counsel’s testimony as to his review of the evidence with Applicant is more credible than Applicant’s testimony. Furthermore, Applicant’s own testimony at the plea hearing undermines Applicant’s testimony at the evidentiary hearing. This Court finds that Counsel sufficiently reviewed the State’s evidence with Applicant and that Applicant has failed to demonstrate how his case would have benefitted from more time spent in reviewing the evidence. This Court finds that Counsel was not constitutionally ineffective for failing to adequately review the evidence with Applicant since Applicant has failed to show any deficiency in Counsel’s performance or resulting prejudice. As such, this ground is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds Applicant has failed to demonstrate any deficiency in Counsel’s performance that induced Applicant to plead guilty when he would otherwise have proceeded to trial, and that Applicant has not established any constitutional



violations or deprivations that would require this Court to grant his Application for Post-conviction Relief. Therefore, this application is denied and dismissed with prejudice.

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

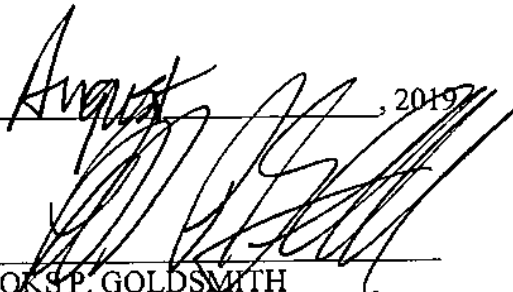
IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 6 day of August, 2019.



_____, South Carolina



 BROOKS P. GOLDSMITH
 Presiding Judge