

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
J. Derham Cole, Circuit Court Judge

RECEIVED

MAY 29 2012

S.C. Supreme Court

TIMOTHY YOUNG,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG

2009-GS-42-5318

THE STATE of SOUTH CAROLINA

-vs-

TIMOTHY YOUNG,

Defendant.

TRANSCRIPT OF RECORD

October 28 & 30, 2009
Spartanburg, South Carolina

Ordered: August 3, 2010
Delivered: October 1, 2010

B E F O R E:

THE HONORABLE J. MARK HAYES, II, Presiding Judge.

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

MR. ZACHARY ELLIS, Esquire
Assistant Solicitor for the State

MR. JAMES CHEEK, Esquire
Public Defender for the Defendant

PROBATION AGENT
Spartanburg County Probation Parole and Pardon Services

Pamela Faucette
Circuit Court Reporter

1 October 28, 2009

QUALIFICATION

10:24 a.m.

2 (Off-the-Record Comments)

3 MS. JORDAN: Your Honor, would you like to qualify a
4 group now?

5 THE COURT: (Nods affirmatively.) Did we send Mr.
6 Whelchel's back?

7 MS. MOORE: Your Honor, I'm going to probably talk
8 to Mr. Whelchel about sending that one downstairs.

9 THE COURT: All right.

10 (Brief Pause)

11 THE COURT: All right. As I call your name, and
12 you're in the gallery area, I need for you to please come
13 forward and take a seat. What is your name?

14 THE DEFENDANT: Noah Brown.

15 THE COURT: Mr. Brown?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Mr. Brown, will you move down to the end
18 down here?

19 (The Defendant complied with the Court's request.)

20 THE COURT: Thank you, sir. We have Vashaun
21 Stewart?

22 (The Defendant complied with the Court's request.)

23 THE COURT: Charles Smith?

24 (The Defendant complied with the Court's request.)

25 THE COURT: James Clark?

1 (The Defendant complied with the Court's request.)

2 THE COURT: Donald Norwood?

3 (The Defendant complied with the Court's request.)

4 THE COURT: Help me with Catheart's first name.

5 MR. MCCARTY: Ticobie, your Honor.

6 THE COURT: Ticobie Catheart?

7 (The Defendant complied with the Court's request.)

8 THE COURT: Casey Tyler?

9 (The Defendant complied with the Court's request.)

10 THE COURT: All right. Gentlemen ---

11 MS. JORDAN: Your Honor, there's one more at the
12 very top of the list, a Reynaldo Marriquin (phonetic).

13 THE COURT: Is Mr Marriquin...?

14 (The Defendant stood.)

15 THE COURT: Yes, sir, come on around.

16 (The Defendant complied with the Court's request.)

17 THE COURT: All right. Gentlemen, I have been
18 advised that each of you has one or more matters that are
19 presently pending in the Court of General Sessions.

20 And I've also been told that each one of you has
21 expressed a desire or an intent to want to enter a plea
22 to those matters.

23 I need to let you know that we are making a
24 recording of everything that happens here. This lady who
25 sitting right beside me is a court reporter. She is

1 taking out everything that is said.

2 I tell you that because, if ever during this process
3 or when you're up in front of me individually, you need
4 to speak -- I need you to speak loud enough, so, that
5 both she and I can hear you. If we cannot hear you, we
6 cannot take your plea.

7 Now, gentlemen, in just a moment, I'm going to ask
8 you a series of questions. And I'm going to ask you
9 these questions as a group.

10 But I do not want you to think or conclude that
11 simply because I'm asking you these questions as a group
12 that these questions are not important because they are
13 important.

14 The questions and your answers to the questions help
15 me determine whether or not I can, in fact, accept your
16 plea. So, I need you to listen to the questions.

17 If you need to respond, I will ask that you stand;
18 just don't speak out but stand up and I will call on you
19 individually.

20 Now, in just a moment, I'm going to call the names
21 of everyone who has -- that is on my list of people who
22 intend to enter a plea today.

23 When I call your name, I need for you to stand up
24 and I need for you to remain standing because, after
25 everyone's name is called and the court reporter has all

1 of your names down, the clerk of court is, then, going to
2 swear you in.

3 So, I need for you to listen to the clerk of court
4 and respond out loud when she ask you to do so.

5 Now, gentlemen, if ever during this process or later
6 today you wish to speak to your lawyer, you just let me
7 know and I will allow you to talk to your lawyer in
8 private.

9 Now, here are the names of the people that I have:
10 we have Timothy Young. Just stand up.

11 (The Defendant complied with the Court's request.)

12 THE COURT: Thank you, sir. Lathan Wood?

13 (Defendant stands in response.)

14 THE COURT: We have Terrence Williams?

15 (Defendant stands in response.)

16 THE COURT: Timothy McSwain?

17 (Defendant stands in response.)

18 THE COURT: Walter Lyles?

19 (Defendant stands in response.)

20 THE COURT: Victor Copeland?

21 (Defendant stands in response.)

22 THE COURT: Fabian Collins?

23 (Defendant stands in response.)

24 THE COURT: Noah Brown?

25 (Defendant stands in response.)

1 THE COURT: Latoshman Bobo?
2 (Defendant stands in response.)
3 THE COURT: Casey Tyler?
4 (Defendant stands in response.)
5 THE COURT: Ticobie Catheart?
6 (Defendant stands in response.)
7 THE COURT: Donald Norwood?
8 (Defendant stands in response.)
9 THE COURT: James Clark?
10 (Defendant stands in response.)
11 THE COURT: Charles Smith?
12 (Defendant stands in response.)
13 THE COURT: Vashaun Stewart?
14 (Defendant stands in response.)
15 THE COURT: And Reynaldo Marriquin?
16 (Defendant stands in response.)
17 THE COURT: Thank you. If you would, please, raise
18 your right hand and allow the clerk of court to swear you
19 in.
20 (Whereupon, all Defendants including
21 TIMOTHY YOUNG
22 testified as follows:)
23 THE COURT: Thank you. You may be seated.
24 (Defendants complied with the Court's request.)
25 THE COURT: Gentlemen, during the last twenty-four

1 (24) hours, or over the last twenty-four (24) hours, have
2 you consumed any type of substance that is adversely or
3 negatively affecting your ability to understand what
4 we're doing today?

5 If you have, then, I need for you to, please, stand
6 at this time.

7 (No Response)

8 THE COURT: If you have ever been treated for any
9 type of drug or alcohol abuse in the past, then, I need
10 for you to please stand at this time.

11 (Defendants stood in response to the Court's
12 inquiry.)

13 THE COURT: All right. You are...?

14 THE DEFENDANT: Reynaldo Marriquin.

15 THE COURT: And what were you treated for, drugs
16 alcohol or both?

17 THE DEFENDANT: For marijuana.

18 THE COURT: And do you remember where you receive
19 that treatment.

20 THE DEFENDANT: At ASAP.

21 THE COURT: Is that here in Spartanburg County?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And you remember about when that was?

24 THE DEFENDANT: It was about two years ago.

25 THE COURT: And was it successful at the time?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Thank you, Sir. You may be seated.

3 (Defendants complied with the Court's request.)

4 THE COURT: Yes, sir, your name?

5 THE DEFENDANT: Donald Norwood.

6 THE COURT: And Mr. Norwood, did you receive
7 treatment for alcohol drugs or both?

8 THE DEFENDANT: Both.

9 THE COURT: And do you remember where?

10 THE DEFENDANT: Phoenix Counseling (phonetic) in
11 Cleveland County.

12 THE COURT: About how long ago?

13 THE DEFENDANT: I'm currently in there now.

14 THE COURT: Thank you, sir. You may be seated.

15 (Defendant complied with the Court's request.)

16 THE COURT: Yes, sir, your name?

17 THE DEFENDANT: James Clark.

18 THE COURT: Mr. Clark, did you receive treatment for
19 drugs, alcohol or both?

20 THE DEFENDANT: Alcohol.

21 THE COURT: And where did you receive the treatment?

22 THE DEFENDANT: It was a rehab place in Maldon. I
23 can't think of the name right now. It's been a while.

24 THE COURT: Approximate how long ago?

25 THE DEFENDANT: Approximately five (5) years.

1 THE COURT: Was it successful at the time?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Thank you, sir. You may be seated.

4 Yes, sir, your name?

5 THE DEFENDANT: Charles Smith.

6 THE COURT: And, Mr. Smith, did you receive
7 treatment for alcohol, drugs or both?

8 THE DEFENDANT: Both at SEDAC.

9 THE COURT: How long ago?

10 THE DEFENDANT: About five (5) years ago.

11 THE COURT: Was it successful at the time?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Thank you, sir. You may be seated.

14 (Defendant complied with the Court's request.)

15 THE COURT: Yes, sir, your name?

16 THE DEFENDANT: Lathan Wood.

17 THE COURT: Mr. Wood, did you receive treatment for
18 drugs, alcohol or both?

19 THE DEFENDANT: Alcohol.

20 THE COURT: Do you remember where?

21 THE DEFENDANT: Rehab in Greenwood, South Carolina.

22 THE COURT: About how long ago?

23 THE DEFENDANT: '92.

24 THE COURT: Was it successful at the time?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Thank you, sir. You may be seated.

2 (Defendant complied with the Court's request.)

3 THE COURT: If you are satisfied with the work that
4 your lawyer has done for you, then, I need for you to
5 please stand at this time if you are satisfied with the
6 work at your lawyer has done for you.

7 (Defendants stood in response to the Court's
8 inquiry.)

9 THE COURT: All right. Let the record reflect that
10 everyone stood. Thank you very much. You may be seated.

11 (Defendants complied with the Court's request.)

12 THE COURT: If you have been threatened in any way
13 or promised anything in order to get you to make the
14 decision to enter plea, then, I need for you to please
15 stand if anyone has threatened or promised you anything

16 (Defendants stood in response to the Court's
17 inquiry.)

18 THE COURT: If the decision has been made by you
19 freely and voluntarily to enter the plea today, then, I
20 need for you to please stand this time is a free and
21 voluntary decision.

22 (Defendants stood in response to the Court's
23 inquiry.)

24 THE COURT: Thank you very much. You may be seated.

25 Let the record reflect that everyone stood. I need for

1 you to understand that under the law you are presumed
2 innocent of every charge that is presently against you.
3 And you are entitled to have a jury trial on any charge
4 that is presently against you.

5 At any jury trial that would take place, it would be
6 the State that has the burden of proof. And the State
7 would have to convince all twelve (12) members of a jury
8 that you are, in fact, guilty beyond a reasonable doubt
9 of the charge or charges that are presently against you.

10 Now, gentlemen, in order to enter a plea however,
11 you have to give up your right to that jury trial. But
12 if you wish to have a jury trial on any of the charges
13 against you, that is fine. We will simply schedule a
14 jury trial for you.

15 If you wish to have a jury trial on any of the
16 charges against you, then, I need for you to please stand
17 at this time if you wish to have a jury trial.

18 **(No Response)**

19 **THE COURT:** In addition to giving up your right to a
20 jury trial, there are other very important constitutional
21 rights you have to give up in order to enter a plea.

22 You have to give up your right to confront and
23 cross-examine the State's witnesses. You also have to
24 give up your right to present evidence that you or your
25 lawyer may feel establish a defense some type of the

1 defense to the charge or charges against you.

2 And you have to give up your right of subpoena. And
3 you have to give up your right to remain silent.

4 Now, if you understand all your constitutional
5 rights and you wish to proceed with entering the plea
6 today, then, I need for you to please stand at this time.

7 (Defendants stood in response to the Court's
8 inquiry.)

9 THE COURT: Let the record reflect everyone stood.
10 Again, if ever during this process today you wish to
11 speak your lawyer, you let me know I will allow you to
12 speak your lawyer.

13 Those of you that came the gallery you may now
14 return to the gallery. Thank you.

15 (Defendants complied with the Court's request.)

16 (Whereupon, the proceeding concluded at 10:30 a.m.)

17 P-R-O-C-E-E-D-I-N-G October 30, 2009

18 (Off-the-Record Comments)

19 MR. ELLIS: Judge, may I approach?

20 (Whereupon, a bench conference was had.)

21 MR. ELLIS: Timothy Young?

22 (The Defendant stepped forward with his attorney.)

23 (Off-the-Record Comments)

24 MR. ELLIS: May it please the Court, your Honor.

25 The State calls Timothy Young, indictment 2009-5318,

1 indicated for burglary second-degree violence. Your
2 Honor, he is pleading guilty without negotiations or
3 recommendations. James Cheek represents him.

4 (Brief Pause)

5 THE COURT: You are Mr. Young?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And, sir, you were previously qualified
8 and sworn?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: No, sir, I need to remind you that you
11 remain under oath. Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: When -- what -- when were you -- when
14 were you sworn and when did we go through that series of
15 questions?

16 THE DEFENDANT: Tuesday.

17 THE COURT: All right. Sir, since that time, has
18 anybody come to you and threatened you in any way or made
19 you any promises?

20 THE DEFENDANT: No, sir.

21 THE COURT: The decision to enter this plea remains
22 a free and voluntary act?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And, sir, within the last twenty-four
25 (24) hours, have you consumed any type of substance that

1 is adversely affecting your ability to understand what
2 we're doing today?

3 THE DEFENDANT: No, sir.

4 THE COURT: How old are you?

5 THE DEFENDANT: Forty-two (42).

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

7 THE DEFENDANT: About the eleventh (11th) grade.

8 THE COURT: Did you ever receive your GED?

9 THE DEFENDANT: No, sir.

10 THE COURT: Are you married, single, divorced,
11 widowed?

12 THE DEFENDANT: Married.

13 THE COURT: Which one?

14 THE DEFENDANT: I'm married.

15 THE COURT: You're married?

16 THE DEFENDANT: Yeah.

17 THE COURT: All right, sir. Mr. Young, I need to
18 remind you that we are making a recording of everything
19 that happens here today. You are speaking awfully soft.
20 The Court reporter and I both need to be able to hear
21 you. Okay?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Thank you. And, if ever you can't hear
24 me or any of the lawyers, you let me know and I'll have
25 them speak up as well, all right?

1 THE DEFENDANT: All right.

2 THE COURT: How many children do you have?

3 THE DEFENDANT: None.

4 THE COURT: Do you have a -- prior to your arrest,
5 did you have a job outside the home?

6 THE DEFENDANT: No, sir. I am disabled.

7 THE COURT: As determined by the Social Security
8 Administration?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: When you worked, what type of work did
11 you do?

12 THE DEFENDANT: I built houses -- I built houses.

13 THE COURT: You built houses?

14 THE DEFENDANT: Yes, uh-huh (affirmative). I built
15 houses.

16 THE COURT: Thank you. All right. And ever serve
17 in the military?

18 THE DEFENDANT: No, sir.

19 THE COURT: On this particular charge, how long have
20 you been in jail?

21 THE DEFENDANT: About four (4) months.

22 MR. CHEEK: Your Honor, we're kind of looking at the
23 date he came into the jail. I'm sorry.

24 THE COURT: All right.

25 MR. CHEEK: He was -- he was revoked on October the

1 second on a probation matter, Your Honor, and has been
2 held by the Department of Corrections. We're going to
3 get the other -- the other date.

4 THE COURT: All right.

5 (Brief Pause)

6 MR. CHEEK: It was probably August 13th, Your Honor.
7 I'll compute from that time, Your Honor.

8 THE COURT: All right. Sir, if you would, the
9 gentleman that is standing over here to your far right,
10 he is a solicitor. And he is going to give us the facts
11 behind the case. I need for you to please listen to him,
12 sir.

13 THE DEFENDANT: Yes, sir.

14 MR. ELLIS: Thank you, Your Honor. This occurred on
15 August 29th of two thousand and seven (2007). On that
16 date, officers from the City Police Department responded
17 to a break-in at the firm of Scott, Taylor, White, and
18 Wingo (phonetic), which is located at
19 Street here in Spartanburg, Your Honor.

20 Employees had arrived that morning around 7:50 a.m.
21 and discovered a window had been smashed. The business
22 had been intact when they left the previous day at 5:00
23 p.m., Your Honor.

24 Officers located blood in three different locations
25 inside the business, Your Honor, after the burglar

1 appeared to have cut himself climbing through the broken
2 window.

3 Swabs were collected from all three locations. And,
4 when those swab samples were entered into CODIS
5 (phonetic) at SLED, Your Honor, there was a CODIS hit
6 from a DNA profile of this defendant.

7 This defendant was later located on August 13th, two
8 thousand, nine (2009) and arrested, Your Honor.

9 The State does -- had not even had an opportunity to
10 get a control sample from him. He was actually scheduled
11 for a *Smurkberg* (phonetic) hearing this morning, Your
12 Honor.

13 THE COURT: A what hearing?

14 MR. ELLIS: A *Smurkberg* hearing this morning, Your
15 Honor, to obtain buccal swabs.

16 THE COURT: Oh.

17 MR. ELLIS: But obviously he is here pleading
18 instead. As -- as a result of that, Your Honor, there
19 has not been a controlled sample to compare the swabs.

20 The victims were advised of this plea, Your Honor.
21 They did not wish to attend or share anything with the
22 Court. They do not need any restitution.

23 (Brief Pause)

24 THE COURT: Were you able to hear what the solicitor
25 told me in regards to the facts?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Now, do you believe that, as he stated
3 the facts, he is substantially correct?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Sir, you do understand that on this
6 charge that I could sentence you today up to fifteen (15)
7 years at the Department of Corrections?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And with that under -- and, sir, do you
10 also understand that this charge is a burglary second-
11 degree violent charge and therefore it is classified
12 under the law as both a violent offense and also as a
13 serious offense?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And have -- have you been able to talk
16 to your lawyer as to the consequences and ramifications
17 of this offense being classified as both a violent and
18 serious offense?

19 THE DEFENDANT: Yes.

20 THE COURT: And, understanding those classifications
21 and ramifications and the consequences of those
22 classifications, you still wish to enter this plea?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Sir, are you, in fact, guilty of
25 burglary in the second degree violence?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Have you been able to hear all of my
3 questions?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Have all of your answers been truthful
6 and honest?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Discovery has been shared with the
9 Defense?

10 MR. ELLIS: Yes, sir.

11 THE COURT: Prior record?

12 MR. ELLIS: Yes, Your honor. In 1986, possession of
13 a controlled substance; 1988, petit larceny; 1989, petit
14 larceny; 1991 attempted burglary; 1992, petit larceny;
15 1995, two counts of burglary, two counts of destruction
16 of city property, trespassing; 1999, voluntary
17 manslaughter.

18 THE COURT: No restitution from the victim even
19 though they have a smashed window?

20 MR. ELLIS: Yes, sir, that is correct.

21 THE COURT: All right. And they have nothing else
22 to add?

23 MR. ELLIS: No, sir.

24 THE COURT: Anything else from the State on Mr.
25 Young?

1 MR. ELLIS: No, sir, your Honor.

2 THE COURT: Yes, sir?

3 MR. CHEEK: Your Honor, it appears that Mr. Young
4 has been in -- in custody about sixty-eight (68) days on
5 this charge, Your Honor.

6 And, Your Honor, I will tell the Court that he was
7 revoked on probation on October the 2nd of this year and
8 to be serving a three-year sentence in the Department of
9 Corrections.

10 Your Honor ---

11 THE COURT: Do you know -- and excuse me for
12 interrupting, but while we're on that point ---

13 MR. CHEEK: Yes, sir?

14 THE COURT: --- do you know what he was revoked for
15 because his last sentence was in 1999, voluntary
16 manslaughter?

17 PROBATION AGENT: He was revoked for burglary non-
18 violent second-degree. And that's indictment 95-GS-42-
19 03 and 95-395 (phonetic).

20 MR. CHEEK: Your Honor, that is what had happened --
21 I'm sorry. Apparently it started, Your Honor, after he
22 completed his sentence.

23 A probationary sentence started after he completed
24 his sentence on the voluntary manslaughter conviction,
25 Your Honor.

1 THE COURT: All right.

2 MR. CHEEK: Because it all happened about the same
3 period of time.

4 THE COURT: And he was violated on the burglary --
5 on the burglary ---

6 PROBATION AGENT: Second.

7 THE COURT: --- second for having been arrested on
8 this charge?

9 PROBATION AGENT: For failing to report, changed his
10 residence and failure to pay monetary obligations. He
11 basically absconded supervision.

12 THE COURT: All right. Okay. All right. Thank
13 you. Yes, sir?

14 MR. CHEEK: Your Honor, I have explained to my
15 client and I'm asking him to acknowledge on the record
16 that we talked about continued criminal behavior and
17 activity that would result in him going to prison for the
18 rest of his life under the strike provisions, Your Honor.

19 I believe he understands and appreciates that beyond
20 any mental problems he might have. He has had a history
21 of mental illness, Your Honor.

22 I'm very familiar with Mr. Young. Mr. Young's
23 cousin was my secretary for a number of years, about
24 fifteen (15) or twenty (20) years. He was little boy
25 then and he lived in New York and would come back and

1 forth visiting and things like that then -- then.

2 He has a cousin who is a member of the bar. His
3 name is Lundy Wynn Small (phonetic) who is his cousin.
4 And, so, he is a not unfamiliar with ways to comport your
5 behavior in the community.

6 Your Honor, the voluntary manslaughter charge
7 resulted in there being some drug activity involving
8 himself and his wife at that time. And she wound up
9 getting killed. But they were both having problems back
10 then, Your Honor, with their drug addictions.

11 We just ask the Court to take into consideration
12 that he has a long history of mental illness. And, Your
13 Honor, it is noted in his previous convictions.

14 He's actually gone to one of the units at the
15 Department of Corrections. There is a specified unit for
16 mental health inmates at the Department of Corrections.

17 Your Honor, we just ask the Court to take into
18 consideration that he is on medications; that -- that,
19 when he is on his medications, he has done very well.

20 He has never denied that he did this. When I talked
21 with him about it at the jail he said that there was a
22 whole lot of blood everywhere and he ran.

23 But he got -- he was cut very severely, injured very
24 severely and he self inflicted this by going through that
25 window, Your Honor.

1 We just ask the Court to consider that he's got to
2 serve some time. He's got to go to the Department of
3 Corrections.

4 The family has always tried to work with him with
5 his mental health issues. The Department of Corrections
6 tried to work previously with his mental health issues.
7 And there is no question there is a problem.

8 But I -- I haven't had any problem with him as far
9 as competent -- competency is concerned and his
10 participation in helping to prepare a defense because he
11 has acknowledged that there is no defense for what he
12 did.

13 But he does know right from wrong. He knows that
14 you cannot go into people's property. He knows he cannot
15 keep doing this or he's going to wind up in the
16 Department of Corrections for the rest of his life, Your
17 Honor.

18 We ask for mercy and leniency today particularly
19 regarding sentencing with the issue of his mental health
20 issues and just allow him to get himself back oriented
21 and see what he can do looking in the future.

22 **THE COURT:** Were you able to hear what your lawyer
23 just said to me?

24 **THE DEFENDANT:** Yes, sir. Yes, sir.

25 **THE COURT:** Do you agree with what he stated to me?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Mr. Young, is there anything you would
3 like to say or -- or would like for me to know or
4 consider?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: I'll be more than happy to hear from
7 you.

8 THE DEFENDANT: The night -- the night that I did
9 the thing I had no medication. The Pardon or the
10 Probation wouldn't help me.

11 I couldn't a job with the manslaughter on my record.
12 I couldn't get nothing. And no one would give me a
13 chance, so, I broke in the place.

14 I didn't want to steal or nothing. I only go
15 because me and my girlfriend got in an argument and I
16 didn't want to hit her because I wanted to kill somebody.

17 So, I go over to the place to get some anger out.
18 And I'm very sorry that I did it. But I just can't -- I
19 just got -- I just got a bad temper. I'm violent.

20 And I try -- I try to calm me down, but medication
21 is the only one that do that.

22 They got a program at Kirkland (phonetic) called the
23 ICS program and I haven't been in it ever since I've been
24 in there when I was in for murder. And it helped me.

25 You know, all I ask is one more chance. Thank you.

1 THE COURT: Do you -- you want to go back into that
2 program?

3 THE DEFENDANT: Yes, sir, before I get out from
4 doing -- doing my time.

5 THE COURT: And what is the name of that program
6 again?

7 THE DEFENDANT: ICS.

8 THE COURT: ICS?

9 THE DEFENDANT: Yeah, it's to help and it has too,
10 at Kirkland.

11 THE COURT: ICF as in Frank?

12 THE DEFENDANT: Yeah.

13 MR. CHEEK: No, Your Honor, ICS.

14 THE COURT: ICS as in South.

15 MR. CHEEK: Yes, sir, ICS.

16 (Brief Pause)

17 THE COURT: I'll find that there is a substantial
18 factual basis for the plea. I'll find that the
19 Defendant's decision to enter the plea has been made
20 freely, voluntarily, knowingly, and intellectually by
21 him.

22 I'll find that he has received the services from a
23 very competent and able legal counsel, services he has
24 indicated to the Court he is satisfied with and has
25 relied on in reaching the decisions that he's made.

1 Therefore, I will accept the plea.

2 May I see the lawyers for a moment?

3 (Whereupon, a bench conference was had with both
4 attorneys present.)

5 THE COURT: All right. Mr. Young, I appreciate your
6 what they call stepping up to the plate and accepting
7 responsibility.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: It speaks very well of you. You
10 definitely have contributed to likening -- or to
11 lessening the burden on the system, as well as on these
12 victims of having not to go through the process of -- of
13 the trial. I weighed that factor in your favor.

14 Mr. Young, I'm -- I have to impose a substantial
15 sentence based upon the facts that are behind this and
16 your record and also the statements that have been made
17 to me.

18 But I want to encourage you, sir. And I think this
19 is a -- probably a good sentence for you. I am going to
20 impose a twelve (12) year sentence.

21 I'm going to give you credit for the time that --
22 that you have served.

23 I've indicated on the sentencing sheet that there
24 are mental health issues. I have recommended that you go
25 back into the program of ICS.

1 I've indicated that you should maintain the
2 medications that your doctors are prescribing and that,
3 in the event there is some type of release at some point,
4 that you should not have any contact with any of these
5 victims. Good luck to you, sir.

6 MR. CHEEK: Thank you, your Honor.

7 MR. ELLIS: Thank you, your Honor.

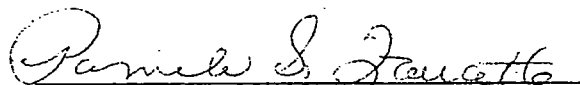
8 (Whereupon, the proceeding concluded.)
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REPORTER'S CERTIFICATE

I, the undersigned **PAMELA FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the Court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 28, were transcribed by me and represent a complete and accurate transcription of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

September 29, 2010



Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit

FORM 5

STATE OF SOUTH CAROLINA)
COUNTY OF Spartanburg)

IN THE COURT OF COMMON PLEAS

Timothy Yarna # 227364
Full name and prison number
(if any) of Applicant

2010-CP-42- 3533

APPLICATION FOR
POST-CONVICTION RELIEF

-vs-

Spartanburg County (James Clark)
Name of Respondent

FILED
CLERK OF COURT
SPARTANBURG COUNTY
M. HOPE BLACKLEY
2010 JUL - 8 AM 8:38

Instructions - Read Carefully

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or type-written), 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 it clear to which question any such continued answer refers.

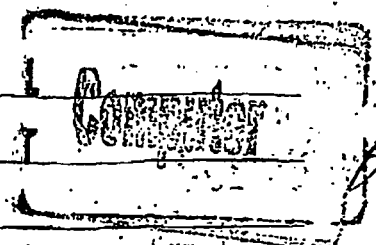
Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

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 applicant was convicted.

1. Place of detention Allendale Correctional Institution

2. Name and location of Court which imposed sentence General Sessions
Spartanburg County

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 09-G.S.-42-5318
 - (b) _____
 - (c) _____



ATTORNEY GENERAL'S OFFICE

RECEIVED JUL 13 2010

ADMINISTRATIVE INSTRUCTIONS

FILE OPEN END

HAVE _____ COPIES MADE

ROUTE TO _____

ORDER: _____ TRANSCRIPT

PEN RECORDS _____ CLERK RECORDS

OTHER: _____

4. The date upon which sentence was imposed and the terms of the sentence

(a) October 30th, 2009

(b) 12 years (violent) with credit of 68 days, conder-

(c) ment

5. 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 _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

No

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. _____

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result

i. _____

ii. _____

iii. _____

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CLERK OF COURT
SPARTANBURG COUNTY
2010 JUL - 8 AM 9:38
M. HOPE BLACKLEY

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i _____
- ii _____
- iii _____

8. If you answered "no" to (b), state your reasons for not so appealing.

- (a) Post-Conviction Relief is my first response to the decision of the
- (b) Court after a plea of guilty.
- (c)

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

- (a) Ineffective Assistance of Counsel.
- (b)
- (c)

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) Plead guilty and sentenced while under the influence of Class III narcotic (Italdol).
- (b) Counsel was aware of prior plea agreement with solicitor and probation officer to drop charge to 3rd burglary run concurrent with
- (c) probation violation.

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No
- (d) any other petitions, motions or applications in this or any other Court? No

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 SPARTANBURG COUNTY
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12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

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 SPARTANBURG COUNTY
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 M. HOPE BLACKLEY

... been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Ineffective Assistance of Counsel. PCR application is final effectual remedy.
- (b) _____
- (c) _____

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 SPARTANBURG COUNTY
 2019 JUL - 8 AM 9:38
 M. HOPE BLACKLEY

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

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

17. If you answered "yes" to one or more parts of (16), list

... attorney who represented you:

- i. James A. Cheeks Spartanburg Co. Public Defenders office, 366 N. Church Street Suite 3000
- ii. Spartanburg SC 29303
- iii. _____

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

- i. Plea
- ii. Sentencing
- iii. _____

18. State clearly the relief you seek in filing this application.

Vacated Sentence

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

No

STATE OF SOUTH CAROLINA)
COUNTY OF _____)

VERIFICATION

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

Timothy Young

SWORN to and subscribed before me this 23 day of June, 2010

Heidi P. Lawrence (L.S.)
Notary Public

My Commission Expires: 5/18/14

FILED
CLERK OF COURT
SPARTANBURG COUNTY
A. HOPKINS
2010 JUL -8 AM 8:38

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 therefor.

Timothy Young
Applicant

SWORN or affirmed to and subscribed before me this

23
day of June 2010

Helen P. Preema

Notary Public

My Commission Expires 5/18/14

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 JUL -8 AM 8:38
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Timothy Young, #227364,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2010-CP-42-3533

RETURN

The Respondent, making its Return to the application for post conviction relief (PCR) filed July 8, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the October 2009 term of the Spartanburg County Grand Jury for burglary – 2nd degree (09-GS-42-5318). Applicant was represented by James A. Cheek, Esquire. On October 30, 2009, the Applicant pled guilty as indicted. Applicant was sentenced by the Honorable J. Mark Hayes II to confinement for a period of twelve years. The Applicant did not appeal his conviction or sentence.

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

II.

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

1. Ineffective assistance of counsel, in that;
 - a. "Pled guilty and was sentenced while under the influence of Class III narcotic (Haldol);" and
 - b. "Counsel was aware of prior plea agreement with Solicitor and Probation Officer to drop charge to Burglary - 3rd degree and run concurrent with probation violation."

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced 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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

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

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

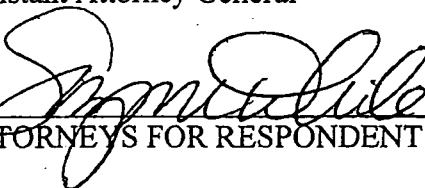
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

[signatures continued on next page]

SUZANNE H. WHITE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

February 15, 2011.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
)
 Timothy Young, #227364)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

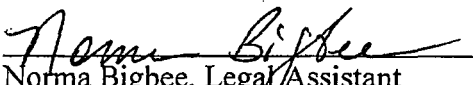
2010-CP-42-3533

AFFIDAVIT OF SERVICE BY MAIL

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

Kenenth Phillip Shabel, Esquire
 104 N. Daniel Morgan Ave., Ste. 201
 Spartanburg, SC 29306

DATED this 15th day of February, 2011.


 Norma Bigbee, Legal Assistant

1 STATE OF SOUTH CAROLINA)
) IN THE COMMON PLEAS COURT
 2 COUNTY OF SPARTANBURG)
 3
 4 Timothy Young,)
) TRANSCRIPT OF RECORD
 5 Applicant,) 2010-CP-42-3533
)
 6 -vs-)
) April 7, 2011
 7 The State.) Spartanburg, South Carolina

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B E F O R E:

HONORABLE J. DERHAM COLE, JUDGE

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

KENNETH P. SHABEL, ESQUIRE
Attorney for the Applicant

SUZANNE H. WHITE, ESQUIRE
Attorney for the State

Linda D. Moffitt
Circuit Court Reporter

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WITNESSES

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TIMOTHY YOUNG (AW)

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
A-1	Medical information		4
A-2	Medical summary		4

Timothy Young
Direct examination by Mr. Shabel

1 THE COURT: This is Timothy Young.

2 MS. WHITE: Yes, Your Honor.

3 THE COURT: Mr. Shabel, you represent him.

4 MR. SHABEL: I represent Mr. Young, Your Honor.

5 THE COURT: Are y'all ready to proceed on the
6 application?

7 MR. SHABEL: We are ready when you are.

8 THE COURT: Okay. Call your first witness.

9 MR. SHABEL: May it please the Court.

10 First of all, Your Honor, I've shown these exhibits to
11 opposing counsel, Applicant's Exhibit No. 1 which we've
12 agreed to come into evidence is a medical release form dated
13 January 29th of 2007, and Applicant's Exhibit No. 2 are a
14 series of S.C.D.C. Mental Health Services records, the file
15 date being January 6th of 2011. Those will be respectfully
16 Applicant's Exhibit No. 1 and Applicant's Exhibit No. 2.

17 (Medical information marked Applicant's Exhibit No. 1;
18 medical summary marked Applicant's Exhibit No. 2.)

19 MR. SHABEL: With that, Your Honor, I would call
20 Mr. Young to the stand.

21 TIMOTHY YOUNG, having been
22 first duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MR. SHABEL

24 MR. SHABEL: May it please the Court.

25 Q Mr. Young, how old are you?

Timothy Young
Direct examination by Mr. Shabel

- 1 A Forty-three.
- 2 Q And what's the highest level of education you
3 completed?
- 4 A I would think nine -- nine -- ninth grade.
- 5 Q Ninth grade. And can you read and write?
- 6 A No.
- 7 Q Where are you currently incarcerated?
- 8 A Where incarcerated?
- 9 Q What facility?
- 10 A Allendale.
- 11 Q You're in Allendale. And do you know what charge you
12 are in Allendale for at this time?
- 13 A Burglary.
- 14 Q That's second burglary, is that correct?
- 15 A Yes.
- 16 Q Who was your lawyer for that case?
- 17 A James Cheeks.
- 18 Q And was -- did you ultimately plead guilty to that
19 charge, or did you have a trial?
- 20 A I never pleaded guilty.
- 21 Q Let me rephrase the question.
22 In October of 2009 did you come to court to plead
23 guilty to a violation of probation?
- 24 A Yeah.
- 25 Q At that hearing did they also mention this burglary

Timothy Young
Direct examination by Mr. Shabel

1 charge?

2 A No, sir.

3 Q To your knowledge did you ever come in and plead
4 guilty to a burglary charge?

5 A No, sir.

6 Q Do you have a history with the department of
7 corrections? Have you been in the correct -- department
8 before? Have you been incarcerated before?

9 A Yeah.

10 Q Okay. Tell the Court a little bit about your mental
11 health history.

12 A I hear voices, and without the medication I get -- I
13 get violent. I hit stuff.

14 Q Okay. Now, this has been going on for --

15 A For years.

16 Q For years. This is nothing new, correct?

17 A No.

18 Q Okay. Now, do you take medication for it?

19 A Yeah.

20 Q Do you know what the medication is called?

21 A Haldol.

22 Q Okay. And how many pills do you take a day for it?

23 A Two.

24 Q At the department of corrections are you given your
25 medication on a normal basis?

Timothy Young
Direct examination by Mr. Shabel

- 1 A Na, sometimes, no, they don't give it to me.
- 2 Q When you are not in -- when you were not in the
3 department of corrections were you able to get your
4 medication?
- 5 A I had trouble getting it.
- 6 Q Okay. Would it be fair to say that you did not have
7 it on a regular basis?
- 8 A No.
- 9 Q When you were arrested for this incident, this
10 burglary charge, had you been taking your medication
11 regularly?
- 12 A The county made sure I got it.
- 13 Q Okay. But when you got arrested -- before you got
14 arrested when this incident occurred had you been taking
15 your medication regularly?
- 16 A Yeah.
- 17 Q Now, did you discuss your mental health history with
18 Mr. Cheek?
- 19 A Yes.
- 20 Q What was his comment? What was his reaction?
- 21 A I'm going to try to get you a mental record.
- 22 Q Okay. Did he indicate to you that he was going to
23 pursue that?
- 24 A Yeah.
- 25 Q Did he indicate to you that he was going to actively

Timothy Young
Direct examination by Mr. Shabel

1 work on it, on a mental-health defense, on your behalf for
2 this charge?

3 A Yeah.

4 Q Did he ever explain to you that you were going to
5 plead guilty to a second degree burglary?

6 A He never explained it to me.

7 Q From your review of the file does that appear that's
8 what happened to you?

9 A Yeah.

10 Q When you came into court in October of 2009 did
11 Mr. Cheek discuss with you the elements of second degree
12 burglary?

13 A No.

14 Q What is it that you were alleged to have done that led
15 to this burglary charge?

16 A You gotta explain it a little better.

17 Q Okay. You were arrested and charged with burglary,
18 correct?

19 A Yeah.

20 Q What did they say you did?

21 A They said -- they said that I entered into a building,
22 but I never entered into the building.

23 Q Okay. Did you hit a glass?

24 A I hit the glass.

25 Q Okay. And did the glass break?

Timothy Young
Direct examination by Mr. Shabel

1 A Yeah, outside, yeah.
2 Q But you never went inside.
3 A Never touched, went inside the building at all.
4 Q Did you ever tell anybody you went inside?
5 A No, sir.
6 Q Did you ever see any evidence from either Mr. Cheek or
7 from a police officer that said you actually went inside?
8 A No, sir.
9 Q Did Mr. Cheek ever explain to you whether what you did
10 met -- or let me start over, because I didn't understand
11 the question. Did Mr. Cheek ever explain to you what it
12 meant by second degree burglary, what that meant?
13 A No, sir.
14 Q Do you believe to this day that what you did
15 constituted second degree burglary?
16 A No.
17 Q Do you believe Mr. Cheek did a good enough job of
18 explaining to you what the law is and why what you did did
19 or did not apply to it?
20 A He told me don't say nothing.
21 Q Okay. What did he tell you you were going into court
22 for on the 28th of October of 2009?
23 A Plead guilty for 18 months to run with the 18 months.
24 Q Okay. Now, what were you pleading guilty to to get
25 those 18 months?

Timothy Young
Direct examination by Mr. Shabel

1 A Second degree burglary.

2 Q Okay. But was it your understanding before you went
3 into court that day that you were there for a probation
4 violation?

5 A Yeah.

6 Q And do you freely admit you violated the terms of your
7 probation?

8 A Yes.

9 Q Okay. So you were prepared for that 18 months.

10 A Yeah.

11 Q You knew that was coming.

12 A Yes.

13 Q Did you know beforehand that the burglary plea was
14 coming?

15 A No.

16 Q Okay. When you were in court talking to the judge
17 that day did you have a real understanding of what was
18 going on?

19 A You talking about the probation?

20 Q I'm talking about when you came into court that day,
21 yes.

22 A No.

23 Q Okay. Do you believe you pled guilty freely and
24 voluntarily to second degree burglary?

25 A I was on medication, yes, then.

Timothy Young
Direct examination by Mr. Shabel

1 Q Okay. Do you believe that Mr. Cheek adequately
2 advised you about a second-degree-burglary charge?

3 A He didn't tell me nothing.

4 Q Do you think he did his homework at all?

5 A No.

6 Q Do you think he did any kind of investigation?

7 A No.

8 Q Do you think he did any kind of research in your
9 mental health history to help prepare a defense for you?

10 A No, sir.

11 Q Do you think he did anything --

12 A No.

13 Q -- other than work out a deal on a probation violation
14 toward the second degree burglary?

15 A No, sir.

16 Q Are you now serving a 12-year violent sentence for
17 burglary second?

18 A Yes, sir.

19 Q And are you asking this Court to grant you post
20 conviction relief and to give you a new trial on that
21 burglary conviction, on that burglary arrest?

22 A Yes, sir.

23 Q Please answer any other questions opposing counsel or
24 the Court may have for you.

25

Timothy Young
Cross-examination by Ms. White

1 CROSS-EXAMINATION

2 BY MS. WHITE

3 Q Mr. Young, you're testifying that you weren't aware
4 that you were going to court to plead guilty to burglary
5 second.

6 A No, sir.

7 Q Were you aware that you had been arrested for that
8 charge?

9 A Yeah.

10 Q Okay. So you knew you'd been arrested for that
11 charge. And the judge went through during the guilty plea
12 of the indictments what you were there for, is that
13 correct?

14 A I couldn't understand what he's doing.

15 Q So when the judge or the solicitor said that they were
16 calling your case for burglary second degree violent you
17 didn't understand that?

18 A No.

19 Q Okay. And when the judge asked you if you understood
20 the potential sentence and you said, "Yes, sir," you
21 weren't telling the truth then or --

22 A You talking about when he asked me?

23 Q When he said you're facing a burglary charge -- and
24 you were facing up to 15 years at the department of
25 corrections.

Timothy Young
Cross-examination by Ms. White

1 A He didn't tell me.

2 Q You said, "Yes, sir."

3 A He didn't tell nothing like that.

4 Q Okay. If the transcript reflects that would you agree
5 that maybe he did say that during the plea?

6 A At the time I really couldn't understand at all
7 because I was on medication.

8 Q Okay. And page 19, I believe, for reference sake, the
9 judge went through and said, "Do you understand that I can
10 sentence you today up to 15 years to the department of
11 corrections?"

12 And you said, "Yes, sir."

13 And he also said, "You understood that this charge is
14 a burglary second degree violent and it's classified as
15 both violent and serious offenses."

16 A Yes.

17 Q And you agreed.

18 A Yes, ma'am.

19 Q And, and also he said, "Have you talked with your
20 attorney about the charges and about it being classified as
21 violent?"

22 And you said, "Yes".

23 And he said, "Knowing that, do you still want to enter
24 a plea?"

25 And you said, "Yes, sir."

Timothy Young
Cross-examination by Ms. White

1 So your testimony is you weren't aware of any of the
2 things you were saying that day?

3 A I was on medication, and the medication that I be on
4 makes you say anything.

5 Q Now, earlier you testified that the medication helped
6 you not hear the voices and not be violent.

7 A Yes. It do.

8 Q But is it your testimony that the medication actually
9 harms you because it makes you just say anything?

10 A The medication -- it -- the most of the medication,
11 it, it takes my, takes me.

12 If you ask me a question and I'm on medication I
13 answer your question, but it's really not me because the
14 medication really slows me down and makes me stutter and
15 makes my, my mind relax.

16 You know, at the time when he asked me about the
17 burglary, yes, you know. I know I have made mistakes in my
18 life and I know that I didn't mean to did what I did, you
19 know, and I know that I'm not perfect, you know, but all,
20 all I'm asking for is -- you know, I lost everything that I
21 had, you know what I'm saying. I am very sorry for what I
22 did. And, you know, I know that medication -- without the
23 medication I do get violent. I like to tear up stuff, yes,
24 I do. I know that's wrong, you know, but I --

25 Q Well, let me ask you, Mr. Young.

Timothy Young
Cross-examination by Ms. White

1 You did acknowledge and they did find samples or they
2 did find blood from where you hit through the glass.

3 A Yeah.

4 Q And they matched that with you.

5 A Yes.

6 Q You don't deny that you hit through the glass.

7 A No, no.

8 Q Okay. In regards to agreeing to plead or Mr. Cheek's
9 knowledge of your mental health, Mr. Cheek spoke on your
10 behalf at your guilty plea, didn't he?

11 A Yes.

12 Q And, in fact, he -- he stated that he had known you
13 for a very long time, is that right?

14 A No. He didn't know me.

15 Q Okay. So when he said he's very familiar with you,
16 that your cousin was his secretary for a number of years --

17 A Yes. I know that, but he never knowed of me. This is
18 the first time he ever helped me.

19 Q Okay. It's is the first time he's ever helped you.

20 Now, he also told the Court you had a long history of
21 mental illness, is that right?

22 A Yes, yes, he did that.

23 Q Okay. And he asked them to take into consideration
24 the fact that you had been on medications and that you had
25 admitted that you had broken into the window --

Timothy Young
Cross-examination by Ms. White

1 A Yes, I did -- yes, I did.

2 Q -- of this building, right?

3 Okay. And he also testified or spoke on your behalf
4 and said that y'all had spoken about this and that you
5 admitted you were doing it and you knew right from wrong
6 and you felt bad and you knew that that was wrong. Okay.

7 A Yes, ma'am.

8 Q And, in fact, you spoke and did agree that you weren't
9 going to steal but you did break the window.

10 A Yes, ma'am.

11 Q You had gotten into an argument.

12 A Yes.

13 Q Okay. And, in fact, you -- you actually told the --
14 the judge that the medication is the only thing that helps
15 you --

16 A Yes, ma'am.

17 Q -- and you wanted to -- that once you got back in the
18 jail or the prison that they had -- they could get you on
19 the medication. That there was a program I believe called
20 the I.C.S. and that helped you.

21 A Didn't put me in that program.

22 Q Okay. But you had told the judge there that that was
23 a program you had been in previously.

24 A I been in there before.

25 Q And that it'd helped, is that right? Okay. In

Timothy Young
Cross-examination by Ms. White

1 regards to the previous -- you're testifying you didn't
2 know anything about burglary second or the charges. You
3 were actually there for a probation revocation on a
4 burglary second, is that not right?

5 A Violation.

6 Q Right. So you had previously been arrested and served
7 some time on a burglary second.

8 A Yes, ma'am.

9 Q Okay. And you also had served time -- just to kind of
10 clarify with your record -- you had several -- you had an
11 attempted burglary, you've had two previous counts of
12 burglary. And then, unfortunately, you also had a
13 voluntary manslaughter, is that correct?

14 A (No response.)

15 Q Okay. So you'd -- you'd served time and you had been
16 involved with the judicial system before where you had gone
17 before a judge and either pled guilty or proceeded to
18 trial, is that right?

19 A (No response.)

20 Q Okay.

21 MS. WHITE: That's all the questions I have at this
22 time, Your Honor.

23 THE COURT: Mr. Young, let me be sure I understand.

24 The day that you went to court in October of 2009 you
25 said you were taking your medication properly?

Timothy Young

1 THE WITNESS: Kirkland gave me a needle.

2 THE COURT: In October of 2009, the date that they say
3 you pled guilty --

4 THE WITNESS: Kirkland gave me a needle. From R & E
5 they gave me a needle.

6 THE COURT: But you were in jail at the time in October
7 of 2009?

8 THE WITNESS: Yes, sir.

9 THE COURT: And so you were properly taking your
10 medication.

11 THE WITNESS: They gave it to me. When I came up here
12 I was on the needle, the Haldol.

13 THE COURT: All right. That's what I'm saying. You
14 were taking prescribed medication --

15 THE WITNESS: Yes, sir.

16 THE COURT: -- that some doctor prescribed for you --

17 THE WITNESS: Yeah.

18 THE COURT: -- based upon your condition.

19 THE WITNESS: Yes, sir.

20 THE COURT: All right. And you're taking that same
21 medication today?

22 THE WITNESS: Yes, sir.

23 THE COURT: You're still under a regimen of medication.
24 In other words, the doctor still sees you regularly and
25 prescribes medication for your condition.

Timothy Young

1 THE WITNESS: Yes, sir. They don't -- they don't see
2 me too much in the department of corrections. They don't
3 see me at all. You gotta, you gotta request to see them.

4 THE COURT: Well, how do you get the medication if
5 nobody's seeing you?

6 THE WITNESS: I sign. Kirkland really helped me out
7 and got the medication. But where I'm at right now you
8 barely see the doctor, you know. Say, if you got a problem,
9 you got a problem, you know, if you jump on somebody and
10 they put you in lockup or if you get violent or something.

11 THE COURT: Well, you're taking -- are you taking the
12 same medication now that you were taking back in October of
13 2009?

14 THE WITNESS: For years I'm taking the same medication.

15 THE COURT: All right. Any other questions?

16 MR. SHABEL: No questions, Your Honor. Thank you.

17 THE COURT: Okay. Have you got any other complaints
18 you want to make?

19 THE WITNESS: No.

20 THE COURT: Okay. Thank you. Have a seat with your
21 lawyer.

22 MR. SHABEL: Your Honor, I have no other witnesses to
23 testify, but I would ask the Court to take judicial notice
24 of page 18 of the plea transcript wherein it's referenced
25 that Mr. Young was also scheduled to be there on that day

1 for a Smurfburg (sic) hearing which is, in essence, to take
2 blood-sample swabs from him for the purpose of investigation
3 of the case.

4 We rest, Your Honor.

5 THE COURT: Anything further?

6 MS. WHITE: Your Honor, the state would offer an
7 argument, but the state has nothing further at this time.

8 THE COURT: Okay. What would you like to argue?

9 MS. WHITE: The state would just offer that it's clear
10 that Mr. Young has failed to meet his burden of proof based
11 on the transcript in the record. We would rely on that.

12 He -- it's clear he is aware of burglary second. He
13 was there. He told the judge he was agreeing that he was
14 there to plead guilty and he was guilty of that charge and
15 he was pleading freely and voluntarily.

16 I believe that there's no evidence of ineffective
17 assistance of counsel based on reviewing the record. And I
18 would ask that you rely on that and dismiss the application.

19 THE COURT: All right.

20 MR. SHABEL: In response if I may.

21 THE COURT: Mr. Shabel.

22 MR. SHABEL: Your Honor, Mr. Young's clear testimony is
23 he went into the courtroom that day thinking one thing was
24 going to happen, and he gets blindsided with something else
25 based upon, merely upon, the fact that Mr. Cheek didn't do

1 his job and didn't give him appropriate and effective
2 assistance of counsel.

3 I disagree with opposing counsel. I believe that my
4 client has indeed met his burden of proof and would ask the
5 Court to grant him a new trial and the post conviction
6 relief. Thank you, Your Honor.

7 THE COURT: I'll review the record and issue an order.

8 END OF REQUESTED TRANSCRIPT OF RECORD

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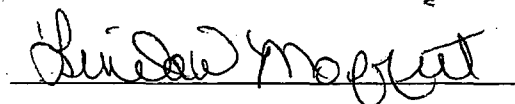
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 7th day of April 2011.

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

December 21, 2011



Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Timothy Young, #227364,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2010-CP-42-3533

ORDER OF DISMISSAL

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 SPARTANBURG COUNTY
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 M. HOPE BLACKBLY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 8, 2010. The Respondent made its Return on or about February 16, 2011. An evidentiary hearing into the matter was convened on April 7, 2011, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Kenneth P. Shabel, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

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

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the October 2009 term of the Spartanburg County Grand Jury for burglary – 2nd degree (09-GS-42-5318). Applicant was represented by James A. Cheek, Esquire. On October 30, 2009; the Applicant pled guilty as indicted. Applicant was sentenced by the Honorable J.

COMPUTER

286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 188, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Applicant alleged that he was under the influence of a prescribed narcotic when he pled guilty and that there was a plea agreement to drop the charge to a burglary – 3rd degree that was not honored. Applicant testified that because he hears voices and is violent, he takes two Haldol daily. In support of his testimony regarding his mental illness, Applicant entered into evidence two documents from SCDC regarding his medical history. (Exhibits #1 & #2). Applicant testified that when he is not incarcerated in SCDC, he has trouble getting and receiving his medications on a regular basis. However, Applicant testified that at the time of this arrest, he had been taking his medications regularly, but he had gotten into an argument and had hit the glass of the window in this building and the glass broke. Applicant testified that he never

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entered the building. Applicant testified that Counsel never explained that Applicant was pleading guilty to burglary – 2nd degree and never explained the elements of that charge. However, Applicant also acknowledged that he also faced a probation violation at the same time of his guilty plea for a previous charge of burglary – 2nd degree. Applicant also acknowledged that he was taking his prescribed medication on the day of his guilty plea.

This Court finds that Applicant has failed to meet his burden of proof as to any claim of ineffective assistance of counsel. The record directly contradicts Applicant’s testimony as to some points regarding his medication and his understanding of the charge he was facing at the time. It is clear that Applicant and Counsel had a history of working together in the past and Counsel was well aware of Applicant’s mental issues, and made the Court aware of those issues as well. Applicant failed to present any testimony or evidence regarding any plea agreement. Therefore, this Court finds that this claim should be denied and dismissed.

Summary

This Court finds in regards to the allegation of ineffective assistance of counsel, Applicant’s testimony has failed to establish any meritorious claim sufficient to grant this application. This Court further finds the record reflects that counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in their representation, and that counsel’s conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in his representation of the Applicant.

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M. HOPE BEACHLEY

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel’s performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

CONCLUSION

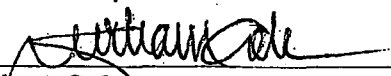
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel’s assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant’s behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 8 day of September, 2011.


 J. Derham Cole
 Presiding Judge

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 M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on Oct 23 2009 the Grand Jurors of Spartanburg County present upon their oath:

BURGLARY, SECOND DEGREE
(BUILDING)

That the Defendant, Timothy Young, did in Spartanburg County, on or about August 28, 2007, willfully and intentionally enter the building belonging to Scott, Taylor and White located at _____, Spartanburg, South Carolina without consent and with the intent to commit a crime therein, and when, in effecting enter or while in the building or in immediate flight, he or a participant in the crime:

- (1) the Defendant did enter or remain in the nighttime and/or
- (2) armed with a deadly weapon; and/or
- (3) caused physical injury to any person who is not a participant in the crime; and/or
- (4) uses or threatens the use of a dangerous instrument; and/or
- (5) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearms; and/or
- (6) the Defendant has a prior record of two or more convictions for burglary or housebreaking or a combination of both:

in violation of Section 16-11-312, Code of Laws of South Carolina (1976) as amended.

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


ASSISTANT SOLICITOR

WITNESSES

Spartanburg Public Safety Department

J. H. [Signature]

1. SENTENCE MADE

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

ARREST WARRANT NUMBER

M016075

7. ASSESSMENT AND FINE CARD MADE

8. TRAFFIC VIOLATION COPY

ACTION OF GRAND JURY

Tomie Bell

A. [Signature]

Foreperson of Grand Jury

Date: *10/28/09*

VERDICT

Foreperson of Petit Jury

Date:

09-GS-42-0010

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

OCT 28 2009

TERM

THE STATE

VS.

Timothy Young

Indictment for

BURGLARY, SECOND DEGREE
(BUILDING)

SC Code: 16-11-0312

CDR Code: 0086

Class: FEL/D (V)

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MARC KITCHENS