

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Cherokee County

Honorable Michael G. Nettles, Circuit Court Judge

MARCUS WILLIS THAMES

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001384

APPENDIX

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ATTORNEYS FOR RESPONDENT

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S.C. SUPREME COURT

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHEROKEE) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE) TRANSCRIPT OF RECORD
5 -vs-) 2016-GS-11-1018
6 MARCUS WILLIS THAMES,) 2016-GS-11-1019
7 DEFENDANT.) 2016-GS-11-1020
) 2016-GS-11-1021
) OCTOBER 10, 2016
) GAFFNEY, SOUTH CAROLINA

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B E F O R E :

THE HONORABLE ROGER L. COUCH, JUDGE.

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

KIM LESKANIC, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

TRACY RACINE, ATTORNEY AT LAW
ATTORNEY FOR THE DEFENDANT

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

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WITNESSES

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(NO WITNESSES CALLED)

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	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-1	C.D.	4	
4	S-2	C.D.	4	
5	S-3	PHOTOGRAPHS	4	
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1 (PROCEEDINGS, OCTOBER 10, 2016)

2 MS. LESKANIC: Marcus Thames.

3 THE CLERK: Please raise your right hand.

4 MARCUS WILLIS THAMES, having been first duly
5 sworn, testified as follows:

6 THE DEFENDANT: Yes, ma'am.

7 THE CLERK: You can put your hand down.

8 (C.D. marked as State's Exhibit No. 1 for
9 identification).

10 (C.D. marked as State's Exhibit No. 2 for
11 identification).

12 (Photographs marked as State's Exhibit No. 3 for
13 identification).

14 (Photographs marked as State's Exhibit No. 4 for
15 identification).

16 (Photograph marked as State's Exhibit No. 5 for
17 identification).

18 (Photograph marked as State's Exhibit No. 6 for
19 identification).

20 (Photograph marked as State's Exhibit No. 7 for
21 identification)

22 MS. LESKANIC: May it please the court?

23 THE COURT: Go ahead.

24 MS. LESKANIC: Before you is Marcus Willis Thames.
25 He is pleading guilty on four indictments.

1 2016-GS-11-1018 is True Billed Indictment for
2 grand larceny.

3 2016-GS-11-1019 is a True Billed Indictment for
4 burglary second degree, violent.

5 2016-GS-11-1020 is a True Billed Indictment for
6 grand larceny.

7 And 2016-GS-11-1021 is a True Billed Indictment
8 for burglary second degree, violent.

9 There is a negotiated sentence in this case, Your
10 Honor. On one of the burglaries there is a fifteen year
11 sentence.

12 On the second burglary, fifteen years, suspended
13 to probation and restitution, consecutive to the first
14 burglary, with both of the grand larcenies being concurrent
15 with those charges.

16 Both of the grand larcenies are third or
17 subsequent property offenses.

18 And the defendant is currently serving time in the
19 North Carolina Department of Corrections and this sentence
20 is to run consecutive to the North Carolina sentence, Your
21 Honor.

22 He is represented by Tracy Racine.

23 THE COURT: This sentence is expected to begin
24 upon the completion of that one?

25 MS. LESKANIC: Yes, Your Honor.

1 THE COURT: Okay.

2 MS. LESKANIC: And he has signed a restitution
3 order waiving his right to a restitution hearing and that
4 has been handed up with the four indictments.

5 THE COURT: All right. You are Marcus Willis
6 Thames?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Is it Thames?

9 THE DEFENDANT: Thames.

10 THE COURT: Thames.

11 Okay. Mr. Thames, there are four charges I
12 believe that I have been presented here and there is one
13 restitution order. I will go over these with you.

14 THE DEFENDANT: Okay.

15 THE COURT: First of all, case number 16-1021.
16 That's a burglary in the second degree of a building. It
17 carries up to fifteen years in prison. Are you aware of
18 that charge?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: That is a violent and a serious
21 offense. Since it's classified in that fashion, it
22 qualifies for what is commonly known as one of your strikes.

23 In the future if you were to ever be convicted of
24 either a violent, serious, or most-serious offense, your
25 plea in this case could be used in conjunction with those

1 future sentences to make the sentences more severe.
2 Possibly it could require a sentence of life imprisonment
3 without ever receiving a parole. Have you talked about that
4 with your lawyer?

5 THE DEFENDANT: Yes.

6 THE COURT: You are aware of that designation?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay. Now, that case did go to the
9 Grand Jury. It was indicted.

10 There is a negotiated sentence, and I believe it's
11 negotiated on all of these cases, is that right?

12 MS. RACINE: Yes, sir.

13 THE COURT: And did she correctly state the
14 negotiations?

15 MS. RACINE: She did, yes.

16 THE COURT: Now, as a negotiated sentence, Mr.
17 Thames, I'll tell you I'm not required to accept that. I
18 have the right to consider the negotiation. If I decide
19 that I can't except it, then I would advise you of that fact
20 and at that time give you an opportunity to withdraw your
21 plea, since I didn't accept your negotiation. Do you
22 understand how I will handle that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Is that how you expected me to handle
25 that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. Now, there is two of those
3 charges I just mentioned, the burglary second degree. One
4 is 2016-11-1019; and then, of course, the one I just
5 mentioned, 1012.

6 Both carry up to fifteen years; both violent and
7 serious; both have been indicted by the Grand Jury; both
8 have a negotiated sentence; and those negotiations are, I
9 believe in the case of one them, fifteen years?

10 MS. LESKANIC: Yes, Your Honor.

11 THE COURT: And then the other one it is fifteen
12 years, it says probation.

13 MS. LESKANIC: Fifteen years, suspended to
14 probation --

15 THE COURT: To probation.

16 MS. LESKANIC: -- and restitution, consecutive to
17 the first burglary of fifteen years, Your Honor.

18 THE COURT: All right. Very good.

19 And then we have two grand larceny charges, cases
20 number 2016-GS-11-1020 and 1018.

21 They are both third, or subsequent, property
22 offenses; both carry a possible ten years; both have been
23 indicted by the Grand Jury.

24 Again, we have consecutive sentences to the, let's
25 see, two indictments, right?

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MS. LESKANIC: Those are actually concurrent.
The grand larceny charges should be concurrent
with the burglary charges, Your Honor.

THE COURT: I see.

Now, the last thing is your restitution order.
The restitution order indicates that you have agreed to pay
to Michael Kors the sum of \$23,612, and to Bose the sum of
18,255.82. Have you agreed to that restitution?

THE DEFENDANT: Yes, sir.

THE COURT: All right.

Now, Mr. Thames, do you suffer from any
conditions, mental, physical, nervous problems, anything
that would affect your ability to reason or to make good
decisions today?

THE DEFENDANT: No, sir.

THE COURT: Have you taken or used any drugs or
medicines that would affect your reasoning abilities today?

THE DEFENDANT: No, sir.

THE COURT: So you know what you are doing?

THE DEFENDANT: Yes, sir.

THE COURT: Able to handle this plea today?

THE DEFENDANT: Yes, sir.

THE COURT: You are hear today with Ms. Racine.
Have you had a chance to consult with her?

THE DEFENDANT: Yes, sir.

1 THE COURT: Are you satisfied with what she's done
2 for you so far?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Is there anything else you feel that
5 you need to talk with her about before we proceed?

6 THE DEFENDANT: No, sir.

7 THE COURT: Is there anything else you feel that
8 she needs to do for you before we proceed?

9 THE DEFENDANT: No, sir.

10 THE COURT: So you are satisfied with your lawyer?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Then as to these charges
13 you have the right to plead either guilty or not guilty.
14 How are you pleading?

15 THE DEFENDANT: Guilty.

16 THE COURT: To all of them?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Counselor, I'm sure that you have
19 consulted with your client about the charges, is that right?

20 MS. RACINE: Yes, sir.

21 THE COURT: Are you satisfied that he understood
22 your advice?

23 MS. RACINE: Yes, sir, I am.

24 THE COURT: I'm sure that you have gone over the
25 charges with him, the penalties that are involved, the offer

1 of the State or negotiations that have taken place, any
2 defenses that he may have had to the charges, and any
3 collateral consequences there might be of these charges?
4 Have you gone over those things with him?

5 MS. RACINE: Yes, sir, we talked about all those
6 things.

7 THE COURT: Are you satisfied that he understood
8 your discussions?

9 MS. RACINE: Yes, sir, I am.

10 THE COURT: He tells me he's made a decision to
11 enter a guilty plea. Do you agree with that decision, based
12 on what you know about his case?

13 MS. RACINE: I do, yes.

14 THE COURT: Sir, you are twenty-nine years of age?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: How far did you go with your
17 education?

18 THE DEFENDANT: GED.

19 THE COURT: Are you married?

20 THE DEFENDANT: No, sir.

21 THE COURT: Children?

22 THE DEFENDANT: Two.

23 THE COURT: What ages?

24 THE DEFENDANT: Six and two.

25 THE COURT: And who do they live with?

1 THE DEFENDANT: Their mother.

2 THE COURT: Okay. And were you working when you
3 got arrested?

4 THE DEFENDANT: No, I was just basically
5 self-employed.

6 THE COURT: When did you last have a job?

7 THE DEFENDANT: Bojangles.

8 THE COURT: And how long ago did you have that
9 job?

10 THE DEFENDANT: This was about four years ago.

11 THE COURT: Okay. Now, has anyone done anything
12 to you, Mr. Thames, in an effort to try to force you to
13 enter a plea?

14 THE DEFENDANT: No, sir.

15 THE COURT: So have you thought about these cases?

16 THE DEFENDANT: Yes.

17 THE COURT: And have you decided that the guilty
18 plea is the best way for you to proceed?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Did you reach that decision of your
21 own free will?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Did anybody promise you anything to
24 get you to plead?

25 THE DEFENDANT: No, sir.

1 THE COURT: Offer you anything?

2 THE DEFENDANT: No, sir.

3 THE COURT: And other than the negotiated sentence
4 in this case, has anybody then promised or guaranteed about
5 such things as pardon, parole, probation, early release,
6 length of sentence? Any promises or guarantees, other than
7 the negotiations?

8 THE DEFENDANT: No, sir.

9 THE COURT: All right. When I accept your plea,
10 sir, you are giving up your Constitutional Rights. I'll go
11 over them with you. If you have a question, ask me, or I'm
12 sure Ms. Racine would be glad to discuss this with you as
13 well.

14 You have a right to have your cases considered by
15 grand juries. That's already happened.

16 You have a Constitutional Right to a lawyer, and
17 she's present and available if you need to talk to her.

18 You have a right to a trial by a jury.

19 Now, at a jury trial you would be presumed to be
20 innocent. That presumption would continue throughout the
21 trial, until such time as the State proved your guilt to the
22 jury, and they would have to prove that guilt to the jury by
23 proof beyond a reasonable doubt, and that's proof of each
24 element of the crime.

25 Did your lawyer go over with you what the State

1 had to prove in order for you to be convicted?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. So if they had proved that
4 beyond a reasonable doubt, then the jury could bring back a
5 conviction. Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Now, at the trial you would not have
8 to prove anything because you are presumed innocent.

9 At the trial you would have the right to have
10 witnesses subpoenaed to require them to attend.

11 You would have the right to question or confront
12 anyone who testified at the trial.

13 You would be given the right to present your
14 defenses at that time, and the right to try to suppress any
15 evidence the State may have against you. That includes
16 statements you might have previously made.

17 Now, at all times you would have the right to
18 remain silent. And if you chose to exercise that right at a
19 jury trial, the judge handling the trial is required to
20 instruct the jury that your silence could not be used
21 against you at all.

22 Now, did you understand the rights I just talked
23 about?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Any questions about them?

1 THE DEFENDANT: No, sir.

2 THE COURT: Do you understand that if I accept
3 your guilty plea, at that time you would have given those
4 rights up?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Does that fact cause you to want to
7 change your plea in any way?

8 THE DEFENDANT: No, sir.

9 THE COURT: Are you pleading guilty to these
10 because you are guilty?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Listen to Ms. Leskanic.
13 I'm going to ask her to go over the facts. When she's
14 finished I'll ask you about what she's told me.

15 Yes, ma'am.

16 MS. LESKANIC: Thank you, Your Honor.

17 The first incident was a burglary at the Michael
18 Kors Outlet at the yellow mall here in Cherokee County.
19 That occurred on September 1st, 2015. There was an alarm
20 call about 1:40 a.m.. There are cameras inside the store
21 and it captured two individuals breaking through an outside
22 window, entering the store, grabbing \$23,000, plus, worth of
23 merchandise in purses; also shattering the case that holds
24 all of the watches and bracelets and stealing all of that
25 merchandise.

1 Police came out. They had already fled the scene,
2 but police were notified.

3 Then on September the 11th, 2015, there is an
4 alarm call at the Bose Store also at the outlets here in
5 Cherokee County about two a.m.. In that case there was
6 about \$9,000 worth of merchandise that was stolen.

7 There's also a video available at the Bose Store,
8 and it appeared that at least one individual, who turned out
9 to be Mr. Thames, was wearing the same jacket and clothing
10 during both of these burglaries, but our investigators still
11 were not sure who these people were.

12 Detective Brian Blanton with the city contacted
13 Michael Kors to let them know, you know, be on the lookout
14 for this and actually found out on September 22nd, 2015,
15 there was another Michael Kors Store hit in Mebane, North
16 Carolina. On that occasion police were able to respond and
17 capture three individuals. Mr. Thames was there, along with
18 a co-defendant, a Mr. Gaines, and a Mr. Newton.

19 Mr. Gaines and Mr. Thames were on the scene and
20 Mr. Newton had fled, but he was apprehended, and all three
21 of those individuals pled guilty in North Carolina to that
22 case.

23 When they searched the vehicle they found two
24 I-Pods in a car that had been rented by Mr. Thames and those
25 two I-Pods had been stolen from the Bose robbery here in

1 Cherokee County.

2 They also found a couple pair of bolt cutters, and
3 there was a picture of Mr. Thames holding these bolt cutters
4 inside the Michael Kors Store here in Cherokee County,
5 wearing the same boots, the same jacket, and so they were
6 able to link them back to both of these cases in Cherokee
7 County.

8 What I would like to turn in, Your Honor, State's
9 Exhibit 1 is a video from the Michael Kors Store showing the
10 robbery in that case.

11 State's Exhibit 2 is a crime scene report and
12 photographs from the Michael Kors robbery, as well as a
13 video from the Bose Store.

14 State's Exhibit 3 contains two photographs; one of
15 the shattered window outside Michael Kors and the display
16 case that was shattered.

17 State's Exhibit 4 consists of two pages containing
18 four photographs. That shows Mr. Thames inside the store
19 with his backpack, and it also shows the bolt cutters in his
20 hand.

21 State's Exhibit 5 came from Mr. Thames cell phone.
22 That was recovered in North Carolina. They did a cell
23 bright on his phone and there were numerous pictures in
24 there of Michael Kors purses and other merchandise possibly
25 stolen from other stores that he was attempting to sell.

1 Got photographs of watches that were on his phone he was
2 attempting to sell, Michael Kors pocketbooks. And also a
3 few text messages talking about hitting the stores like this
4 so that they could sell it.

5 State's Exhibit 6 are two photographs; one from an
6 in-car camera of a Mebane police officer showing Mr. Thames
7 seated where he was placed under arrest wearing the same
8 jacket that he was wearing in the robbery here in Cherokee
9 County. And the second picture is another photograph
10 showing him in the same jacket.

11 And finally State's Exhibit 7 is a photograph of
12 the bolt cutters that were recovered by Mebane Police
13 Department, and the silver pair of bolt cutters matches up
14 to what he was holding in the Michael Kors Store here in
15 Cherokee County.

16 His two co-defendants, Mr. Gaines and Mr. Newton,
17 were charged in Cherokee County as well. However, on the
18 Michael Kors Store there were only two people that we see
19 come in on the video and it's just not clear enough for us
20 to make a positive determination and take someone else to
21 trial; and the Bose video is not of very good quality to be
22 able to identify anyone else.

23 THE COURT: You would think that that would be a
24 good one, being a Bose Store.

25 MS. LESKANIC: You would think, but Michael Kors

1 is better. Hopefully Bose has improved by now. I think
2 they learned.

3 But I discussed with Ms. Racine whether or not Mr.
4 Thames was interested in cooperating. He certainly was not
5 alone, but it's my understanding he did not want to
6 cooperate.

7 I do want the court to know he was eligible for a
8 life sentence. He has prior history, which I'll go over
9 with the court, and that includes two armed robbery
10 convictions out of North Carolina, which does make him
11 eligible for life. We negotiated this sentence pretrial and
12 that's the reason for the negotiation, Your Honor.

13 I'll also hand up -- I know -- if you wanted to
14 look at these now, but 1 and 2 are the videos and all of the
15 photographs from the crime scene.

16 And then I have his prior history.

17 THE COURT: Uh-huh.

18 MS. LESKANIC: 2005, out of North Carolina, four
19 counts of robbery with a dangerous weapon.

20 2010, common law robbery and conspiracy to commit
21 armed robbery.

22 2015, breaking and entering and felony larceny.

23 2016, breaking and entering times two; larceny
24 after breaking, times two; and possession of a firearm by a
25 felon.

1 THE COURT: Thank you, ma'am.

2 MS. LESKANIC: Yes, sir.

3 THE COURT: Mr. Thames, did you hear what she told
4 me about what occurred?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Is what she told me true?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Have you been truthful with me today?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Did anyone tell you how to answer my
11 questions?

12 THE DEFENDANT: No, sir.

13 THE COURT: The answers that you have given me,
14 were they your own?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Is there anything you would like to go
17 back over and change about what you have told me today?

18 THE DEFENDANT: No, sir.

19 THE COURT: I'm going to accept the plea.

20 It is my finding it's been freely and voluntarily
21 given; you are aware of the charges, the penalties, and had
22 the advice of counsel and you are satisfied with that
23 advice. There is a factual basis for the plea.

24 I'll hear from your lawyer and then I'll give you
25 a chance to speak, if you feel you would like to do so.

1 Yes, ma'am.

2 MS. RACINE: Thank you, Your Honor.

3 With this being a negotiated plea I'll just keep
4 it very simple.

5 Mr. Thames tells me that he has a drug problem and
6 he would like to request ATU as part of his sentence.

7 And he also wanted me to let you know that his
8 record would indicate otherwise, but he is not a bad person.
9 He tells me he's really a good person at heart.

10 I just ask that you go along with the negotiation.

11 THE COURT: Thank you.

12 MS. RACINE: Yes, sir.

13 THE COURT: All right, sir, anything that you want
14 to tell me?

15 THE DEFENDANT: Well, just the same as she said.
16 I mean, basically.

17 THE COURT: Okay. You can't claim any credit for
18 time already served.

19 MS. RACINE: Yes, sir. Well, he's been in --

20 THE COURT: He's in North Carolina now, so I don't
21 know. Has he been in on these charges?

22 MS. RACINE: He was served with a warrant right
23 after he was arrested in Mebane on October the 20th of last
24 year.

25 MS. LESKANIC: So he's been serving the North

1 Carolina sentence, Your Honor. He's been --

2 THE COURT: Right.

3 MS. LESKANIC: -- in on North Carolina, so it's my
4 understanding he would not receive credit, since he's
5 already serving time and he's in jail on another charge.

6 THE COURT: Right. Okay.

7 All right. Let me be sure I'm correct. The
8 burglary that was 2016-GS-11-1019, it's a fifteen years
9 negotiation, that's to run consecutive to the sentences in
10 North Carolina?

11 MS. LESKANIC: Yes, Your Honor.

12 THE COURT: All right. And those are to run
13 consecutive to the sentences I'm handing in the other cases,
14 except for the grand larceny?

15 MS. LESKANIC: Yes, Your Honor.

16 THE COURT: So there is -- the other burglary says
17 fifteen years with probation.

18 MS. LESKANIC: Yes, sir, fifteen years, suspended.

19 THE COURT: Suspended to probation for five years,
20 with the probation to begin upon his release from all
21 sentences?

22 MS. LESKANIC: That is correct.

23 THE COURT: Okay.

24 All right, I have accepted the negotiated
25 sentence.

1 The sentence in this case, on the two grand
2 larceny charges, cases number 2016-11-1018 and 1020, in both
3 case the sentence is ten years. I have run those concurrent
4 with the other sentences given on today's date.

5 On case number 2016-GS-11-1019, the sentence is
6 fifteen years. That's run consecutive to the sentences
7 given on today's date, as well as the North Carolina
8 sentence.

9 Restitution is ordered in the other burglary case.

10 I have recommended the Addiction Treatment Unit
11 while he's incarcerated on that charge.

12 This sentence will begin on his release on the
13 North Carolina sentence.

14 On the other burglary case, number 2016-1021, the
15 sentence is fifteen years, suspended to time served, with
16 probation for five years.

17 It is a consecutive sentence to the other
18 sentences given here and the North Carolina sentence.

19 The restitution is ordered in this case of
20 \$41,867.82.

21 Probation will begin upon his release from all
22 sentences that he's currently under.

23 Random alcohol and drug testing would be required
24 during probation.

25 Payment of public defender's fees would be

1 required.

2 Thank you very much, sir.

3 MS. LESKANIC: Thank you, Your Honor.

4 THE DEFENDANT: Thank you.

5 MS. RACINE: Thank you, Your Honor.

6 (END OF REQUESTED TRANSCRIPT OF RECORD)

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CERTIFICATE

1
2 I, the undersigned, Michael R. Watts, Official Court
3 Reporter for the Seventh Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate and complete Transcript of Record of the
6 proceedings had and the evidence introduced in the trial of
7 the captioned case, relative to appeal, in the Court of
8 General Sessions for Cherokee County, South Carolina, on the
9 10th day of October, 2016.

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

12
13
14 February 4, 2017

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17 Michael R. Watts

18 Michael R. Watts
19 Circuit Court Reporter
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FORM 5

STATE OF SOUTH CAROLINA)

County of ~~Cherokee~~ Cherokee)

MARCUS WILLIS THAMES)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

016CP-10806

APPLICATION FOR
POST-CONVICTION RELIEF

FILED IN THE OFFICE
CLERK OF COURT
2016 DEC - 6 AM 11:08
BRANDY W. HOGAN
CHEROKEE COUNTY, S.C.

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legally 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 Albermarle Correctional Institution
2. Name and location of Court which imposed sentence Cherokee County - 125
East Floyd Baker Blvd Gaffney S.C
3. Name(s) of co-defendant(s) (if any) Donavon Gaines Dentavis
Newton
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015A1120200405
 - (b) 2015A1120200408

(c) 2015A1120200413, 2015A1120200414

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

(a) OCTOBER 10, 2015, 2X Sentenced to 15 Years

(b) in S.C. Doc To Run ~~consecutive~~ consecutive

(c) 2X Sentenced to 10 years to run concurrent with over-all

6. Check whether a finding of guilty was made:

15 Year Sentence

(a) after a plea of guilty

(b) after a plea of not guilty

(c) after a plea of nolo contendere

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

No

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

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

i. None

ii. None

iii. None

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

i. None

ii. None

iii. None

(c) the date of each such result:

i. None

ii. None

iii. None

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

i. None

ii. None

iii. None

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2016 DEC - 6 A 11: 08
GRANDY W. HERBEE
CHEROKEE COUNTY, SC

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

(a) I DID NOT KNOW OF SUCH RESOURCES TILL NOW

(b) I WAS THREATEN WITH A LIFE SENTENCE IF CONVICTED OF ONE OF THE CHARGES AGAINST ME 2

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) The evidence shows for two of the charges did not support a conviction neither the time that was given.
 - (b) My lawyer withheld information from me pertaining to the case she was
 - (c) incompetent I was told I would be given credit in my plea agreement

11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) The store cameras did not show in anyway nor state evidence that I was involved in the Boose outlet robbery.
 - (b) My lawyer never told me the cameras did not work, she said she would negotiate a better plea but only insisted I take the plea because of
 - (c) The state of South Carolina served me with a life sentence my record.

12. Prior to this application have you filed with respect to this conviction: Pursuant to section 17-25-4c
- (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. None
 - ii. None
 - iii. None
 - iv. None
- (b) the name and location of the Court in which each was filed:
 - i. None
 - ii. None
 - iii. None
 - iv. None

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 CLERK OF COURT
 2016 DEC -6 A 11:08
 BRANDY W. MOORE
 CHEROKEE COUNTY, SC

(c) the disposition thereof:

- i. NONE
- ii. NONE
- iii. NONE
- iv. NONE

(d) the date of each such disposition:

- i. None
- ii. None
- iii. None
- iv. None

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

- i. None
- ii. None
- iii. None
- iv. None

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. None
- ii. None
- iii. None

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

- i. None
- ii. None
- iii. None

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 CLERK OF COURT
 2018 DEC -6 A 11:08
 BRANDY W. MCREE
 CHEROKEE COUNTY SC

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) Lack of Legal Knowledge
- (b) Hoping That my Lawyer Had my best interest
- (c) A Life Sentence Hanging over my Head

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? NO TRIAL
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO APPEAL
- (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. Tracy Racine
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Plea Arraignment
 - ii. Sentencing
 - iii. _____

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 2016 DEC -6 A 11:08
 BRADY WINDELL
 CHESTER COUNTY, SC

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

Time decrease,
Charges dropped

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

Yes

STATE OF SOUTH CAROLINA)

VERIFICATION

County of ~~Watauga~~ Cherokee)

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

[Signature]

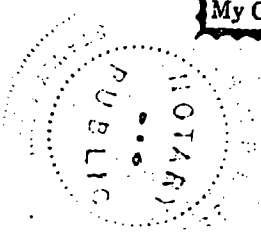
SWORN to and subscribed before me this 1st day of December, 2016.

Deborah B. Bassett (L.S.)
Notary Public

My Commission Expires: 6-1-2019

FILED IN THE OFFICE
CLERK OF COURT
2016 DEC - 6 A 11: 08
FRANCY W. MCBEE
CHEROKEE COUNTY, SC

Deborah B. Bassett
Notary Public
Stanly County
State of North Carolina
My Commission Expires 6-1-2019



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

I, Murphy, 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.

[Signature]
Applicant

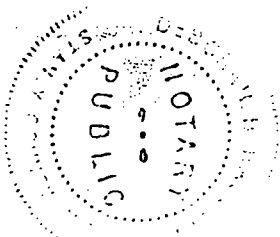
SWORN or affirmed to and subscribed before me this 15th day of December, 2016.

[Signature]
Notary Public

My Commission Expires: 6-1-2019

Deborah B. Bassett
Notary Public
Stanly County
State of North Carolina
My Commission Expires 6-1-2019

FILED IN THE OFFICE
CLERK OF COURT
2016 DEC -6 A 11: 08
BRANDY W. NOBEE
CHEROKEE COUNTY, SC



STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

IN THE COURT OF GENERAL SESSIONS)
FOR THE SEVENTH JUDICIAL CIRCUIT)

State of South Carolina,)

v.)

NOTICE OF LIFE SENTENCE PURSUANT)
TO SECTION 17-25-45 (B))

Marcus W. Thames,)

Defendant.)
_____)

To: The Defendant, Marcus W. Thames, and his attorney, Tracy Racine:

YOU WILL PLEASE TAKE NOTICE that pursuant to Section 17-25-45 (B) and (H) of the South Carolina Code of Laws, 1976, as amended, Defendant will receive a LIFE SENTENCE if he is convicted of Burglary, Second Degree-Violent on indictment 2016-GS-11-1019 or indictment 2016-GS-11-1021 based on his prior criminal record including two or more prior convictions for Armed Robbery. The prior convictions are from North Carolina and are classified in South Carolina as most serious offenses under the law. Burglary, Second Degree-Violent is classified as a serious offense under the law.

Kimberly L. Leskovic
Kimberly L. Leskovic
Assistant Solicitor
Seventh Judicial Circuit
Cherokee County Courthouse
125 East Floyd Baker Blvd.
Gaffney, South Carolina 29340
(864)-487-2576

September ~~22~~ 2016

Cherokee, South Carolina

2016 SEP 22 P 11:42
SEVENTH JUDICIAL CIRCUIT
CHEROKEE COUNTY, SC

Dear, Clerk of Courts

I would first like to thank you so much for your time and consideration. I know you probably have many cases before you. I want make this long.

What separates my case from others is

I'm not my record I've made alot of poor choices

But right is right and wrong is wrong two

15 year sentences one suspended too 5 years

probation only because they want me to pay

28,000.00 in restitution or do another 15 years.

They - South Carolina threaten me with a life sentence

they said they would take two strikes from North Carolina and make the convictions in South Carolina

my third strikes which I feel is not right because

you should already have 3 strikes to get life

not have two and get convicted and automatically

get life. Please look into my case. And once

again thank you and god bless

FILED IN THE OFFICE
CLERK OF COURT
2016 DEC - 6 A 11: 09
BRANDY W. NOBEE
CHEROKEE COUNTY, SC

STATE OF SOUTH CAROLINA)
 COUNTY OF CHEROKEE)
)
)
 Marcus Willis Thames, #223272,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2016-CP-11-0806

RETURN

FILED IN THE OFFICE
 CLERK OF COURT
 2017 MAY 18 A 11:00
 BRADY M. PEELE
 CHEROKEE COUNTY, SC

In response to the post-conviction relief application filed on December 6, 2016, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Cherokee County Clerk of Court's orders of commitment. Applicant was indicted at the August 2016 term of the Cherokee County Grand Jury for two (2) counts of grand larceny (2016-GS-11-01018, -01020) and two (2) counts of burglary, second degree (2016-GS-11-01019, -01021). Tracy Racine, Esquire, represented Applicant. On October 10, 2016, Applicant appeared before the Honorable Roger L. Couch. Applicant pled guilty as indicted to all charges. Judge Couch sentenced Applicant to incarceration for ten (10) years for each count of grand larceny, to run concurrently, and fifteen (15) years for one count of burglary, second degree to run consecutive to the grand larceny sentences. Judge Couch also sentenced Applicant to fifteen (15) years' imprisonment, suspended upon the service of time served and five years' probation, to be served consecutively to all other sentences. Applicant did not appeal his convictions or sentences.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in

custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "The evidence shown for two of the charges did not support a conviction with the time that was given."
 - b. "My lawyer withheld information from me pertaining to the case."
 - c. "She was incompetent I was told would be given credit in my plea agreement"
 - d. "The store cameras did not show in anyway nor state evidence that I was involved in the Boose outlet burglary."
 - e. "My lawyer told me the cameras did not work. She said she would negotiate a better plea but only insisted I take the plea because of my record."
 - f. "The State of South Carolina served me with a life sentence pursuant to Section 17-25-45."

Attached herewith and incorporated by reference are the Cherokee Clerk of Court records, the South Carolina Department of Corrections' records, and the guilty plea transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Applicant claims ineffective assistance of counsel in his application. Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 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, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, 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, 386 S.E.2d at 625, (citing Strickland, 80 L.E.2d 674). Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded 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).

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

IV.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be

considered at the PCR hearing.

V.

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

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

VALERIE GARCIA GIOVANOLI
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

May 16, 2017

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT
COUNTY OF CHEROKEE) CASE NO.: 2016-CP-11-0806

MARCUS WILLIS THAMES)
)
vs.)
)
STATE OF SOUTH CAROLINA)

TRANSCRIPT OF RECORD

FEBRUARY 21, 2018
SPARTANBURG, SOUTH CAROLINA

BEFORE THE HONORABLE MICHAEL G. NETTLES

APPEARANCES:

VALERIE GIOVANOLI, ASSISTANT ATTORNEY GENERAL
COLUMBIA, SOUTH CAROLINA

ATTORNEY FOR THE STATE

RODNEY W. RICHEY, ESQUIRE
SPARTANBURG, SOUTH CAROLINA

ATTORNEY FOR THE APPLICANT

SHIRLEY BROOM
16TH Circuit Court Reporter

I-N-D-E-X

WITNESSES:	DIRECT	CROSS	RE-DIRECT	RE-CROSS
MARCUS WILLIS THAMES				
By Mr. Richey	9			
By Ms. Giovanoli		17		
TRACY RACINE				
By Mr. Richey	24			
By Ms. Giovanoli		30		

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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(NO EXHIBITS)

1 THE COURT - Yes, ma'am.

2 MS. GIOVANOLI - May it please the Court.

3 This is Marcus Thames versus The State of South
4 Carolina, Docket Number 2016-CP-11-0806. We're before the
5 Court on an application for Post-Conviction relief filed
6 December 6th, 2016. Applicant was indicted in August of
7 2016 for two counts of grand larceny and two counts of
8 burglary second degree. Tracy Racine represented applicant
9 and on August -- October 10th, 2016 applicant appeared
10 before The Honorable Roger L. Couch. Applicant pled guilty
11 as indicted to all charges. Judge Couch sentenced
12 applicant to incarceration for ten years for each count of
13 grand larceny and fifteen years for one count of burglary
14 second degree to run concurrently and a consecutive
15 sentence of fifteen years suspended upon the service of
16 five years probation for the second burglary charge. These
17 are all to have run consecutive to a North Carolina
18 sentence he was serving at the time. Applicant did not
19 appeal his convictions or his sentences, but he
20 subsequently filed an application for Post-Conviction
21 relief alleging ineffective assistance of counsel,
22 specifically that he says the evidence shown for two of the
23 charges did not support a conviction with the time he was
24 given, that his lawyer withheld information, that he was
25 told he would be given credit in his plea agreement and

1 that -- then some allegations regarding the evidence, the
2 store cameras did not show he was involved in the
3 burglaries and also that his lawyer told him that the
4 cameras did not work and that she would negotiate a better
5 plea and also that the State of South Carolina served him
6 for the life sentence pursuant to the Section 17-25-45. I
7 believe he's referring to a life without -- a notice of
8 life without parole.

9 The State is present, and we're ready to proceed.
10 Applicant's also present and is represented by Mr. Rodney
11 Richey to whom I will hand it over.

12 THE COURT - All right. Before we get started, do
13 you pronounce your name Thames or Thames?

14 MR. THAMES - Thames.

15 THE COURT - Oh, okay, very good. Never heard it
16 spelled -- that's the way it's spelled, but I've never
17 heard it pronounced that way.

18 All right, Mr. Richey, I'll be glad to hear from
19 you. I'm going to ask, if you could, to enumerate each
20 allegation of ineffectiveness and any other claims that you
21 might have that you plan on going forward with here today.

22 MR. RICHEY - Thank you, Your Honor. Counsel for
23 the Attorney General's office, she outlined the majority of
24 the issues. In terms of the serve with life sentence, it's
25 -- it's going to be -- Mr. Thames' issue was that was used

1 to coerce his guilty plea. He was not advised by the
2 evidence -- and the way -- she framed the issues correctly.
3 I think we might same them differently. Like when she said
4 that the lawyer withheld information from him pertaining to
5 the case, that's an issue we're going to proceed on, so,
6 Your Honor, I think she outlined them and ---

7 THE COURT - I want you to do it. I want you to
8 tell me what you ---

9 MR. RICHEY - Okay.

10 THE COURT - --- what you plan on going forward
11 with.

12 MR. RICHEY - Okay. Okay. We are going forward
13 on (1), that the guilty plea was not free and voluntarily,
14 because the life sentence was induced to get the guilty
15 plea, and, (2), that the lawyer misadvised him or
16 mischaracterized the evidence against him in the case, (3),
17 that pursuant to the agreement to induce the plea, he was
18 offered credit for time that he had served, which he did
19 not get, (4), is that ---

20 THE COURT - Time served for a North Carolina
21 sentence?

22 MR. RICHEY - He had served some of the time on
23 this charge in North Carolina. He was in North Carolina
24 serving time for another charge. He was subsequently
25 received (sic) a warrant for the assault charge while he

1 was incarcerated in North Carolina, and he was informed
2 that he would receive the time that he was in North
3 Carolina as credit against the assault charge.

4 THE COURT - Well, let me ask you this, and I'm
5 asking out of pure ignorance, but isn't the issue with
6 regard to time served something that's handled
7 administratively as opposed to Post-Conviction relief? I'm
8 asking.

9 MR. RICHEY - We're -- we're not saying that --
10 for this purpose we're not saying that we're asking the
11 Court to give us that time credit. We're saying ---

12 THE COURT - You're just saying that he was
13 misinformed of ---

14 MR. RICHEY - The totality and ---

15 THE COURT - Right, okay.

16 MR. RICHEY - --- that was one of the things that
17 induced the plea.

18 THE COURT - All right. What -- was this -- did I
19 understand it correctly that this was a negotiated plea?

20 MR. RICHEY - Yes, sir.

21 THE COURT - And was that a part of the
22 negotiation that was put on the record that he receive time
23 served?

24 MR. RICHEY - No, sir. There was some argument
25 about it on the record, but I don't think it was part of

1 the negotiations. I think that was talk between him and
2 the lawyer and that's his position.

3 THE COURT - Okay. All right.

4 MR. RICHEY - We're ready to go forward, Your
5 Honor.

6 THE COURT - All right, you may call your first
7 witness.

8 MR. RICHEY - We call Mr. Thames.

9 THE COURT - Mr. Thames, please come forward, and
10 I'm going to ask you if you could to place your left hand
11 on the Bible -- let's come this way over here -- and I'm
12 going to allow you to put your paperwork down and stand
13 right there and place your left hand on the Bible. Raise
14 your right hand as I administer the oath.

15 MARCUS WILLIS THAMES, AFTER BEING FIRST DULY
16 SWORN, TESTIFIES AS FOLLOWS -

17 THE COURT - All right, I'm going to ask you if
18 you could to have a seat in that witness chair. Pull up
19 real close to that microphone and I'm going to ask that you
20 speak slowly, clearly and loudly in order that we can hear
21 everything that you have to say and let's start with your
22 full name and spell that last one for us.

23 MR. THAMES - Marcus Thames, last name, Thames, T-
24 h-a-m-e-s.

25 DIRECT EXAMINATION

1 BY MR. RICHEY -

2 Q Marcus, are you currently incarcerated right now?

3 A Yes, sir.

4 Q And where are you incarcerated?

5 A In Kershaw Correctional.

6 Q And for what charges?

7 A Second degree burglary and grand larceny.

8 Q What type of sentence did you receive?

9 A Fifteen years and also another fifteen years suspended
10 to five years probation and two ten years to run concurrent
11 with the fifteen years.

12 Q And who represented you on those charges?

13 A Tracy Racine.

14 Q And -- and did you have a trial or did you plead
15 guilty?

16 A I pled guilty.

17 Q Okay. Did you want a trial at any point in this case?

18 A Yes, sir.

19 Q And did you discuss that with your lawyer?

20 A Yes, sir.

21 Q And did she tell you it would be in your best interest
22 not to have a trial?

23 A Yes, sir.

MARCUS WILLIS THAMES - DIRECT BY MR. RICHEY

10

1 Q Okay. And let's go to the issues here that we have
2 with the Court. It is your position your guilt plea was
3 not voluntary. Correct?

4 A Yes.

5 Q And can you tell me why you believe that your plea was
6 not voluntary?

7 A It's because when I was taking the plea, she told me
8 that I can either go against one life sentence or I can go
9 against two life sentences or I can win both cases and go
10 home, but she said because of my record, that it wouldn't
11 be advised, that she wouldn't advise it, that I would go
12 against it, but it was not the fact that I was guilty or
13 not, it was the fact that my record ---

14 Q Didn't --- go ahead. I'm sorry. Excuse me.

15 A And I felt like that wasn't enough, and I felt like
16 going with that lawyer that I couldn't win.

17 Q Did she ever explain was this life sentence legitimate
18 base on the law of your case? Did y'all discuss that?

19 A Yes, when I looked it -- when I looked it up that one
20 of the charges was conspiracy of armed robbery and it
21 wasn't classified as a most serious offense.

22 Q So you pled -- so did you believe that the life
23 sentence affected your ability to whether you were going to
24 plead guilty or not?

25 A Yes.

1 Q Okay. Also, in terms about the evidence in the case,
2 do you believe that you were fully advised of the evidence
3 against you in this case?

4 A No, sir.

5 Q And what ---

6 A No, sir.

7 Q What evidence were you not advised of?

8 A Well, one evidence was -- because I had two co-
9 defendants, and one of the evidence was the cameras did not
10 even work in one of the stores.

11 Q Well, hold -- let's go back. This was -- this was two
12 burglaries. Correct?

13 A Right.

14 Q Okay. And -- and what stores were they in?

15 A Michael Kors Store and Bose Outlet store.

16 Q Is that what's called the "Yellow Mall" up here?

17 A Yes, sir.

18 Q It's right on the state line. Is that correct? Well,
19 close to it. It's up in Gaffney. Right?

20 A Yes, sir.

21 Q Okay. And this was out of the sequence of those
22 stores and a store over in North Carolina. Is that
23 correct?

24 A Right.

1 Q Okay. And -- and so you're saying that in the store
2 one of the cameras -- go ahead.

3 A They said, um, the DA -- I didn't even notice until we
4 were taking the plea, the DA stated that the cameras in the
5 Bose Outlet Stores did not work, and that they could not
6 see anyone clearly, and then the Michael Kors Store was
7 based on one black male and one white male, but they had
8 gave -- they authorized that Sergeant Blatten (phonetic)
9 said he saw three black males inside the store, and that
10 was the reason why the case was even placed against us.

11 Q Let's talk about the second case. Same case, this
12 evidence, did you -- did you know this evidence at the time
13 you pled guilty?

14 A No, I did not.

15 Q I mean before you pled guilty, did you know the
16 descriptions of the people there?

17 A No, I did not.

18 Q You didn't go over that discovery with your lawyer?

19 A No.

20 Q You have that discovery now.

21 A Yes.

22 Q And so when you got it and you went to jail, is it
23 your testimony you read it then?

24 A Yes.

1 Q Okay. So -- so, at no point did your lawyer sit down
2 with you and tell you what the evidence was?

3 A No.

4 Q Okay. Y'all had no discussions about it.

5 A Not about that one, no.

6 Q How many times did you talk to your lawyer?

7 A Three times. I believe three times.

8 Q Three times? And in those three times, did she have
9 the discovery or no?

10 A Yes, the second time she had the discovery.

11 Q And did she go over it with you?

12 A She went over it briefly, but the whole -- the whole --
13 -- it was not like -- it was like basically she went over
14 it, but she didn't go over it in enough like to do any type
15 of internal investigation like, uh, this is what I see
16 wrong and this is what I see, I can help you with -- this
17 is what -- it was basically, uh, she -- the DA has you and
18 I don't believe you can win. It was not no, uh, how you
19 can fight this, how you can win or nothing like that.

20 Q Well, let me ask you this now. You said she went over
21 the discovery. Right?

22 A Yes, sir, yes.

23 Q And when she went over the discovery, what did she
24 talk about?

1 A She over text messages and pictures that we had in the
2 motion of discovery from my cell phone and from North
3 Carolina.

4 Q So she physically had the discovery with her?

5 A Yes.

6 Q Okay, and you didn't have a copy.

7 A No.

8 Q So she went through the pages with you of the
9 discovery. Is that ---

10 A Yes.

11 Q Was any of those pages different than your
12 recollection of what you have now?

13 A Yes, the one with the Bose Outlet Store, it never said
14 nothing in the Bose Outlet Store that I was involved in
15 anything, and -- but when we went to the DA -- went in
16 front of the DA for the plea hearing, I was wondering, I
17 was like why am I even involved in this, like this store,
18 and it doesn't have any evidence at all, but she had told
19 me, she like, uh, if you -- if you win against one store
20 you still have a life sentence on the other store.

21 Q Well, -- well -- at the time of the plea did you feel
22 you were not guilty?

23 A Right.

24 Q Okay. You did go in front of the judge. Right?

25 A Yes.

1 Q And you answered all the judges' questions about the
2 plea, if -- what you wanted to do and all that. Correct?

3 A Yes, sir.

4 Q And -- and you agreed to this negotiated sentence. Is
5 that correct?

6 A Yes, sir.

7 Q And can you tell me why you would not express your
8 innocence at that point?

9 A Because I felt like she had my best interest and there
10 was several cases -- I mean several scenarios that I felt
11 like that was going to help me, like for (1), where she
12 said I wouldn't have to pay restitution, (2), she said that
13 I will get my time credited, and, (3), she said that, uh,
14 that I would be a non-violent, which none of the -- none of
15 that I received at all, and I know it wasn't written on
16 paper, but I had believed that I would get it, and I had
17 spoke to her, and I was like, why am I -- I spoke to in her
18 ear when we was there, and I was like why didn't I get my
19 credit. She was like, uh, the judge didn't allow you to
20 get it, but it was the main reasons why I even took the
21 plea, because I felt like she's like, you can't win the
22 case but, sure, you'll get out in this amount of time, but
23 I didn't receive anything that was promised.

24 Q So ---

25 THE COURT - When is your release date?

1 MR. THAMES - 2026.

2 Q And so you're saying the inducement of the non-violent
3 time credit, credit for time in North Carolina and not
4 paying restitution.

5 A Right.

6 Q And all three of those did not happen.

7 A No, did not.

8 Q You paid forty-something thousand in restitution.

9 A Right.

10 Q Did you request that she file any kind of motion after
11 the plea in terms of these issues?

12 A No.

13 Q Did you talk to her afterwards?

14 A No.

15 Q Did you -- you didn't have any communication from the
16 time you walked out of the courtroom to now with your
17 lawyer.

18 A I do not believe so. I don't think so.

19 Q You didn't write her or anything and say, hey, what
20 about all this stuff?

21 A No.

22 Q Can you tell me why -- why you wouldn't do that?

23 A Because at first I wasn't going to do anything at all,
24 but a family member told me that you need to file for a
25 PCR. I had -- I had no knowledge of nothing of that and

1 she was like, uh, you need to file for a PCR and I went
2 about it and started going to the law library and started
3 looking up things and cases and things and I came up with
4 all the things I could go back on.

5 Q So at this point you believed it to be in your best
6 interest to go back and face these sentences.

7 A Yes.

8 MR. RICHEY - Okay, thank you. Answer any
9 question of the Attorney General.

10 THE COURT - Ms. Giovanoli.

11 MS. GIOVANOLI - Thank you.

12 Good morning, Mr. Thames.

13 MR. THAMES - Good morning.

14 CROSS EXAMINATION

15 BY MS. GIOVANOLI -

16 Q So you were talking about the discovery in your direct
17 testimony, and you've gotten a chance to review all
18 discovery at this point.

19 A Yes, ma'am.

20 Q Okay, so let's -- let's briefly talk about that. So -
21 --

22 A Well, except -- I'm sorry.

23 Q Yes?

24 A Except for like videos and CDs and pictures, some of
25 the pictures.

MARCUS WILLIS THAMES - CROSS BY MS. GIOVANOLI

18

1 Q Okay. So but you know that there were surveillance
2 videos.

3 A Yes.

4 Q Okay. And the Michael Kors Store was robbed about
5 1:40 a.m. You're aware of that. Right?

6 A Yes.

7 Q And then the Bose Store was robbed about 2:00 a.m.
8 You're ware of that. Right?

9 A Yes, ma'am.

10 Q And they're in the same outlet center. Correct?

11 A Yes.

12 Q Okay. And whenever they were able to search your car,
13 they found two ipods that the Bose Store sold. Is that
14 correct?

15 A It's not my car. It was rented -- it was rent -- we
16 were driving a car, but it was not my car.

17 Q Okay, and who was it rented? (sic)

18 A It was rented to -- I don't know his name, but it
19 wasn't rented to me, but they said in the transcript that
20 it was rented to me, but it wasn't.

21 Q Okay. And you also had photos in your phone of you
22 holding box cutters, bolt cutters, excuse me. Is that
23 correct? Is that correct?

24 A No.

1 Q So there's -- in the discovery there's no photos of
2 you holding bolt cutters.

3 A You said from my phone.

4 Q Well, pictures of you holding bolt cutters.

5 A Not from my phone.

6 Q Okay, but in your discovery.

7 A In my discovery, yeah, there's pictures, but that's
8 not in -- they saying that it was me, but I'm saying that
9 it -- I'm not -- it wasn't me.

10 Q So you're claiming that the photos are not you.

11 A Yes.

12 Q Do you have the photos with you today?

13 A Yes.

14 Q Okay, can we see them?

15 A No, I don't -- they're in the other room.

16 Q Okay, so ---

17 A Page 104 and page 28.

18 Q Okay, so at the time of the plea whenever the
19 solicitor was reciting the facts and said there were photos
20 of you with bolt cutters, you agreed with those facts,
21 didn't you?

22 A Yes.

23 Q Well, why didn't you agree with them at the time of
24 the plea?

1 A Because I -- my whole mind -- my whole mindset was
2 coming come. That was my whole mindset of a life sentence
3 being placed against me. I don't even know -- I know I was
4 thinking clearly but not thinking clearly at the time and
5 having a lawyer who told me that she couldn't win whether
6 we go to trial or anything -- it was like a robot up there,
7 just saying, just answer no, answer yes to this and get it
8 over with, and that's my whole mindset, was get up out of
9 here, get this plea, I'll come home eventually.

10 Q So it's fair to say that you'd rather have taken
11 fifteen years over a life sentence.

12 A Yes.

13 Q Okay, and at any point in time when you felt like a
14 lawyer wasn't fighting for you, did you ever try to hire
15 another lawyer?

16 A I couldn't.

17 Q Did you ever try to move to relieve your lawyer?

18 A No.

19 Q And also the -- the -- in the discovery there was
20 photos on your phone of Michael Kors merchandise that you
21 were attempting to sell. Isn't that correct?

22 A Yes, ma'am.

23 Q And that included watches and handbags, all Michael
24 Kors. Is that correct?

25 A Yes, ma'am.

1 Q During the plea, did you tell the truth?

2 A Yes.

3 Q Okay. And so whenever the Court asked you if any
4 promises were made, you told them that there were no
5 promises made to you, ---

6 A Yes.

7 Q --- other than the negotiated sentence.

8 A I did say that.

9 Q Okay. And, um, I'm going to refer to for the Court's
10 convenience on page 21 and 22, there was actually some
11 discussion about receiving credit for your North Carolina
12 time.

13 A Yes.

14 Q Isn't that correct? Do you remember it?

15 A Yes, ma'am.

16 Q And you remember that the solicitor said that you were
17 not entitled to it?

18 A Yes, I -- then right then I spoke to her, Ms. Racine,
19 in her ear and I was like, I thought you said that I would
20 be allowed to receive that, and she said it's no, the judge
21 said no.

22 Q And today your testimony is that that is the reason
23 why you pled guilty. Is it not?

24 A That's one of the reasons.

1 Q Okay, so why didn't you stop the Court proceedings and
2 ask to withdraw your plea?

3 A I take it back to the fact that of I'm not getting a
4 life sentence. That was the whole fact.

5 Q Okay. What were you arrested in North Carolina for?

6 A For breaking and entering.

7 Q In where?

8 A Into, um, outlet mall.

9 Q A Michael Kors Store.

10 A Yes. That was the whole matter of they saying that
11 these cases are similar.

12 Q Okay, and in 2005 you had a conviction for four counts
13 of robbery with a dangerous weapon?

14 A Yes, ma'am.

15 Q And in 2010 you had a conviction for common-law
16 robbery and conspiracy to commit armed robbery?

17 A Yes, ma'am.

18 Q And in 2015 you had a conviction for breaking and
19 entering and a felony larceny?

20 A Yes, ma'am.

21 Q And in 2016 you had a conviction for breaking and
22 entering times two, larceny after breaking times two and a
23 possession of a firearm by a felon?

24 A Yes, ma'am.

1 MS. GIOVANOLI - All right, I have nothing
2 further. Thank you very much.

3 THE COURT - Any re-direct?

4 MR. RICHEY - No, sir.

5 THE COURT - You may step down, Mr. Thames.

6 And you may call your next witness.

7 MR. RICHEY - We call Ms. Tracy Racine?

8 THE COURT - Racine.

9 MR. RICHEY - Racine.

10 MS. RACINE - Racine.

11 THE COURT - Ms. Racine, if you could please come
12 forward. You can set your paperwork down. Take your time
13 there. Watch your step. Place your left hand on the Bible
14 and raise your right hand as I administer the oath.

15 TRACY RACINE, AFTER BEING FIRST DULY SWORN,

16 TESTIFIES AS FOLLOWS -

17 THE COURT - All right, have a seat in the witness
18 chair and pull up real close to that microphone and speak
19 loudly, clearly and slowly, and let's start with your full
20 name and spell that last one for us. You can spell the
21 first one, too.

22 MS. RACINE - Tracy Racine, T-r-a-c-y R-a-c-i-n-e.

23 THE COURT - Very good.

24 Yes, sir.

25 MR. RICHEY - Thank you, Your Honor.

1 DIRECT EXAMINATION

2 BY MR. RICHEY -

3 Q Ma'am, do you recall representing Marcus Thames? Do
4 you remember that representation?

5 A Yes.

6 Q And were you retained or appointed to represent him?

7 A I was appointed.

8 Q Okay. And you've been in the courtroom and you've
9 heard his testimony, so I want to go through these issues
10 with you. Okay?

11 A Okay.

12 Q You heard Mr. Thames state that he was innocent of
13 these charges, not guilty, innocent.

14 A Yes.

15 Q And did he express that to you?

16 A He never really said he wasn't guilty or he was
17 guilty. I usually don't ask my clients that. I don't
18 really want to know. If they want to plead, they plead.
19 If they tell me they're guilty, then it opens itself up to
20 other issues potentially testifying at trial, so I just --
21 I tell the facts and say, you decide what you want to do
22 and we'll do it.

23 Q But did he ever express to you, I want a jury trial, I
24 do not want to plead guilty?

1 A I'm sure when we first talked at some point that might
2 have come up, and then the solicitor served him with notice
3 of life and then we had a conversation about what that
4 would mean, ---

5 Q Okay.

6 A --- as far as taking it to a jury trial.

7 Q And did you -- did you talk to him about the State's
8 chances or ability to get that life sentence?

9 A I did.

10 Q And from your review of the evidence in the case, do
11 you believe the -- did the State have -- was the evidence
12 there to get a life sentence?

13 A Yes.

14 Q Okay. Well, so, you -- Mr. Thames decided to plead
15 guilty. Correct?

16 A Yes.

17 Q Okay. During your discussions with him -- he
18 testified that you came and saw him and you had the
19 discovery with you. Correct?

20 A Yes.

21 Q And did you -- tell me, did you go over all that
22 discovery with him in detail or ---

23 A Oh, yes, I let him see everything that was in my file.
24 We went over every sheet of paper I had. I had some disks
25 and I sent -- you know, let's look at these disks if you

1 want to look at the disks, and I can't remember if he
2 wanted to look at all of them or not, but I made it
3 available to him just like I do every defendant.

4 Q Okay, so you shared them with him. Did he actually
5 get a copy of the stuff from you, or did you share it with
6 him?

7 A I think I left a copy with him. That's what I usually
8 do. It's been a couple of years, so I can't say for
9 certain, but I usually make -- when I print mine, I just go
10 ahead and make a second copy for my clients and take it
11 with me and give him to them so they can review it.

12 Q So he was -- he was in jail at this time?

13 A Yes.

14 Q Okay. And there was some point -- there was some of
15 this case you had to wait for them to get back from North
16 Carolina and all that. Is that correct or -- you got it
17 after he was brought back to South Carolina.

18 A I got it after he was brought back.

19 Q During your discussions with him prior to the plea,
20 did -- did you ever tell him one of these three things,
21 that the charge would be non-violent, that he would get
22 credit for time in North Carolina and that he would not
23 have to pay the forty-one thousand dollars restitution?

24 A No. The burglary charges are violent. The larceny
25 charges were non-violent, but the burglary charges were,

1 and that was also on the sentencing sheet that we went over
2 before he signed up to plead. Also, I went over the
3 restitution amount with him, and he signed a restitution
4 Order before the plea, so he knew there was restitution.
5 That was the reason for the second fifteen year sentence
6 suspended to five years probation, and with regard to any
7 credit for time served, the standard answer I give all my
8 clients is, you know, it's up to SCDC. Once you get down
9 there, they will get any information about the time you
10 served on these warrants, and they will be the ones that
11 will calculate whatever time you're entitled to, and
12 they'll calculate that as far as your release date goes.

13 Q No, did y'all have any discussions about the time he
14 spent in North Carolina at all? Did y'all have any
15 discussions about that?

16 A Not that I recall, no.

17 Q In terms of the camera surveillance in the stores, do
18 you recall whether one store did not have surveillance?

19 A I think that the Bose Store may have had some problems
20 with their surveillance. I can't remember if it didn't
21 work exactly -- I think it was grainy at best, but with
22 regard to that, there was other evidence tying him to that
23 break-in that I felt even if they didn't have a specific
24 picture of him, I felt like there was enough evidence to
25 tie him to that.

TRACY RACINE - DIRECT BY MR. RICHEY

28

1 Q And what evidence -- do you recall what that evidence
2 was?

3 A Well, in his phone that was subpoenaed, there was a
4 text message at 2:25 a.m. that was sent that said the Bose
5 Store didn't have what you were looking for, I'll see if
6 the next store I go to does.

7 Q And that was a text message from ---

8 A It was a 2:25 a.m. text message, yes.

9 Q From who to who?

10 A It was in his text messages on his phone.

11 Q Oh, okay, from him.

12 A I don't remember who it was to. Yeah. And also the -
13 - there were two ipads or ipods that were stolen in that
14 robbery that were found with him a week or so later when he
15 was arrested in Mebane.

16 Q Do you -- did you -- when you talked to him about this
17 plea, did you feel like he was coerced in any way to plead
18 guilty by this life sentence or was it based on the
19 evidence or was it because he felt he -- the inducement was
20 the life sentence?

21 A I don't feel like he was coerced or any reason. I
22 just -- I explained to him like I do all my clients who are
23 facing life, you know, she's going to have two shots at
24 you. She can try you first off on the Bose, second off on
25 the Michael Kors and if she gets a conviction on either

1 one, it's an automatic life sentence, and, you know, with
2 that I let my clients decide. You know, it's their lives,
3 they're the ones that have to deal with the consequences.
4 You know, I go home at the end of the day, and, you know,
5 it's -- I want them to decide what's best for them.

6 MR. RICHEY - One moment, Your Honor.

7 (WHEREUPON, DISCUSSION IS HELD BETWEEN MR. RICHEY
8 AND MR. THAMES OUT OF THE HEARING OF EVERYONE WHICH WAS NOT
9 REPORTED.)

10 Q Do you know if there's any evidence as Mr. Thames
11 outlined in the initial report whether there was two black
12 guys and one white involved in the burglary of the store?
13 Do you recall any of that information?

14 A I don't recall races at all. There was just video of
15 the -- if you're talking about Michael Kors, there was the
16 video of the break-in and when Mr. Thames was arrested on
17 the crime in Mebane he was wearing the exact same clothing
18 that the individual was wearing in the Michael Kors break-
19 in also.

20 MR. RICHEY - No other questions.

21 THE COURT - Yes, ma'am.

22 MS. GIOVANOLI - Thank you.

23 CROSS EXAMINATION

24 BY MS. GIOVANOLI -

1 Q Just as by way of background, how long have you been
2 practicing criminal law?

3 A Probably about seven years.

4 Q And do you practice criminal law exclusively?

5 A I do.

6 Q And you were appointed to this case but, um, not
7 hired.

8 A Yes, appointed.

9 Q And you received all discovery from the State.

10 Correct?

11 A Yes.

12 Q And you reviewed every bit of it with the applicant.

13 Correct?

14 A Yes.

15 Q And that was prior to him pleading guilty.

16 A Yes.

17 Q And you actually negotiated this sentence on behalf of
18 the applicant. Correct?

19 A Yes.

20 Q When you got served or your client got served with the
21 notice of life without parole, did you research his
22 criminal history?

23 A I did.

24 Q And you determined that that notice was lawful?

25 A Yes.

1 Q As far as the number of meetings, do you recall
2 approximately how many times you met him?

3 A About three times.

4 Q The North Carolina thing, did he ever -- did you ever
5 have a discussion with him in which he expressed that that
6 was really important that he receive time -- credit for the
7 time he served in North Carolina?

8 A Not that I recall, no.

9 Q And I believe it was in your direct testimony, but you
10 never promised him that he was going to get credit for time
11 he was serving in North Carolina.

12 A No, I never promised, no.

13 Q And after the plea, did he ever mention anything to
14 you about, hey, what about that promise you made me about
15 North Carolina credit?

16 A I don't think we spoke after the plea.

17 Q Did he say anything during the plea to you?

18 A Not that I recall.

19 Q There was a little bit of discussion you brought up
20 that there were two ipods that were found with him. They
21 were in his car or on him?

22 A In the car.

23 Q And the car, is it your understanding that was rented
24 to him?

TRACY RACINE - CROSS BY MS. GIOVANOLI

32

1 A That I don't recall. I know he was in the car. It
2 was a car he was in, and I don't know who rented it.

3 Q Okay. Um, ---

4 MS. GIOVANOLI - Okay, I have no further
5 questions. Thank you very much.

6 THE COURT - Any re-direct?

7 MR. RICHEY - No other questions.

8 THE COURT - You may step down.

9 MS. RACINE - Thank you.

10 THE COURT - Any objection to Ms. Racine being
11 excused?

12 MS. GIOVANOLI - Not from the State, Your Honor.

13 MR. RICHEY - None.

14 THE COURT - You're welcome to stay, but you are
15 free to leave if you would like.

16 MS. RACINE - Okay, thank you.

17 THE COURT - You may call ---

18 MR. RICHEY - That's all, Your Honor.

19 THE COURT - All right. Anything additional from
20 the State?

21 MS. GIOVANOLI - Nothing further.

22 THE COURT - All right. Be glad to hear from you,
23 Mr. Richey.

24 MR. RICHEY - Thank you, Your Honor. May it
25 please the Court, Your Honor.

1 I think that Mr. Thames testified that he
2 believed that his plea was involuntary. It's his position
3 that counsel advised him that he would receive a non-
4 violent sentence. I know counsel testified that the
5 larceny was non-violent. He also testified that he thought
6 he would get time credit and that the restitution he
7 wouldn't have to pay. Now, I understand that he did get a
8 suspended sentence to probation, but that was his belief,
9 the inducement for him to plead guilty. He testified that
10 he did not -- that counsel did not go over the discovery in
11 great detail with him and that he did not receive a copy of
12 the discovery. I think counsel testified that that was the
13 normal practice, but it's his position that had he had that
14 information, he would have gone to trial. That's his
15 position, Your Honor. Thank you.

16 THE COURT - Yes, ma'am, Ms. Giovanoli?

17 MS. GIOVANOLI - Thank you, Your Honor.

18 I think this is just a typical buyer's remorse
19 PCR. I think the testimony's pretty clear that it was a
20 negotiated sentence. It was Mr. Thames' decision and his
21 decision alone based on sound advice from counsel. Mr.
22 Thames did not offer any evidence to show that her advice
23 was unreasonable. As far as the life without parole
24 notice, according to information I have, it was lawful and
25 applicant hasn't presented any evidence to show that it was

1 not lawful or it was used in a way to coerce his plea and
2 essentially it boiled down to fifteen years of active
3 prison time versus a life sentence. The evidence was
4 overwhelming against him. Ms. Racine testified that she
5 reviewed all of the discovery with him before he made the
6 decision to plead guilty. I think the applicant's failed
7 to prove both that his plea was involuntary. The record
8 alone supports that his plea was very much voluntary as
9 well as the testimony presented here today, and he's failed
10 to prove that Ms. Racine was deficient in any way, that her
11 advice was unreasonable, and it would be unreasonable to
12 think that he -- absent any alleged deficiencies on the
13 part of counsel that he would go back and face these
14 charges and proceed to a jury trial facing life without
15 parole. So we request that you deny and dismiss this
16 application.

17 THE COURT - Bear with me while I make reference
18 to the plea transcript.

19 (WHEREUPON, BRIEF PAUSE TAKEN)

20 THE COURT - Ms. Giovanoli, I'm going to ask that
21 you prepare an Order denying the application for Post-
22 Conviction relief, and most importantly, the plea
23 transcript addresses all the issues set forth in the
24 application. There's no question but that at the plea the
25 questions were asked whether or not anybody put any

1 pressure on him to enter into this plea; he indicated that
2 they did not. He indicated that he was satisfied with his
3 lawyer. We've heard testimony from Ms. Racine, and I
4 believe her in that she explained that some of the charges
5 were violent, some were non-violent, and that's
6 corroborated when you look at the sentencing sheets and
7 they -- actually in the writing itself indicate which ones
8 are violent and which ones are not. With regard to the
9 restitution Order, Ms. Racine indicated that there was in-
10 depth discussion with regard to that. Not only was there
11 in-depth discussion, he signed a restitution Order which
12 would seem to indicate that he understood that at the time.
13 I've heard the testimony with regard to Ms. Racine
14 concerning the discovery. I do indeed find that she
15 gathered all the discovery and went over it with the
16 defendant, but more-over, even if that had not taken place,
17 the plea transcript addresses those issues. He admitted
18 that he was guilty of it, and the evidence that's set forth
19 in the facts rendered at the plea agreement are indeed
20 overwhelming, particularly the text messages and the facts
21 and circumstances around the burglaries themselves. This
22 indeed was a negotiated sentence. I specifically find that
23 under these circumstances, the life sentence was a valid
24 option for the State if they elected to go forward with
25 that, and I know that the applicant seems to indicate that

1 the life sentence was used to coerce him into entering the
2 plea, but it would be ineffective for Ms. Racine not to go
3 over those issues, because had they gone forward, he needs
4 to be aware of the fact that if he was convicted, there's a
5 good chance that he would get life imprisonment. In order
6 for him to enter a valid plea, that option has to be
7 discussed with the applicant and indeed was. I'm going to
8 ask that -- I specifically find that the plea was
9 voluntary. I specifically find that the defendant was
10 informed that some of the charges were violent, some were
11 non-violent. I specifically find that Ms. Racine explained
12 that she could not, and to some extent, the Judge couldn't
13 determine whether or not time was to be given. Those are
14 matters to be determined by the department of corrections,
15 and if there's a problem with that, you can pursue that
16 through the administrative channels and the administrative
17 court. I do indeed find -- specifically find that
18 discovery was gathered and it was reviewed with the
19 applicant, and based on all these things I deny the
20 application for Post-Conviction relief.

21 Good luck to you, Mr. Thames.

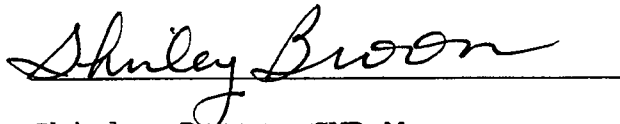
22 (END OF TRANSCRIPT)

23
24
25

C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 36 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of Marcus Willis Thames vs. State of South Carolina, as taken by me in Court of Common Pleas for the Sixteenth Judicial Circuit on February 21, 2018, and provided by me this the 15th day of September 2018.

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



Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

Marcus Willis Thames, #223272,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2016-CP-11-0806

**ORDER OF DISMISSAL
WITH PREJUDICE**

BRANDY W. MCBEE

2018 JUN 25 AM 8:40

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Marcus Willis Thames (Applicant) on December 6, 2016. The State (Respondent) made its return requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on February 21, 2018 at the Spartanburg County Courthouse. Applicant was present and represented by Rodney W. Richey, Esquire. Valerie Garcia Giovanoli, Esquire, of the Office of the Attorney General represented Respondent.

At the hearing, Applicant testified on his own behalf. Tracy Racine, Esquire, (Counsel) also testified. This Court had before it a copy of the Cherokee County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the plea transcript, the PCR application, and Respondent's return.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Cherokee County Clerk of Court's orders of commitment. Applicant was indicted at the August 2016 term of the Cherokee County Grand Jury for two (2) counts of grand larceny (2016-GS-11-01018, -01020) and two (2) counts of burglary, second degree (2016-GS-11-01019, -01021). Tracy Racine, Esquire, represented Applicant. On October 10, 2016, Applicant appeared before the

Honorable Roger L. Couch. Applicant pled guilty as indicted to all charges. Judge Couch sentenced Applicant to incarceration for ten (10) years for each count of grand larceny, to run concurrently, and fifteen (15) years for one count of burglary, second degree to run consecutive to the grand larceny sentences. Judge Couch also sentenced Applicant to fifteen (15) years' imprisonment, suspended upon the service of time served and five years' probation, to be served consecutively to all other sentences. Applicant did not appeal his convictions or sentences.

ALLEGATIONS

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "The evidence shown for two of the charges did not support a conviction with the time that was given."
 - b. "My lawyer withheld information from me pertaining to the case."
 - c. "She was incompetent I was told would be given credit in my plea agreement"
 - d. "The store cameras did not show in anyway nor state evidence that I was involved in the Boose outlet burglary."
 - e. "My lawyer told me the cameras did not work. She said she would negotiate a better plea but only insisted I take the plea because of my record."
 - f. "The State of South Carolina served me with a life sentence pursuant to Section 17-25-45."

At the start of the hearing, Applicant delineated the allegations he would be pursuing at the hearing. Those allegations include: that his plea was involuntary because he was coerced into pleading guilty by way of the notice of intent to seek life without parole ("LWOP"); Counsel misadvised him to plead guilty; and Counsel promised him credit for time he was serving while arrested in North Carolina and that promise induced his plea.

SUMMARY OF TESTIMONY AT PCR

I. Applicant testified to the following:

Applicant testified he wanted a trial and he told Counsel that. Counsel's response was that trial was not in Applicant's best interest. Applicant claimed his guilty plea was not voluntary because Counsel told him he would be risking a life sentence because of his record and advised him he should plead guilty. Applicant believed this advice was only based on his record and not because he was actually guilty. Applicant further believes the LWOP notice was unlawful because his prior conviction for conspiracy to commit armed robbery was not a "most-serious" offense. However, Applicant admitted to having the following criminal convictions: four counts of robbery with a dangerous weapon from 2005; common law robbery and conspiracy to commit armed robbery from 2010; breaking and entering and felony larceny from 2015; and two breaking and entering, two larceny after breaking, and possession of a weapon by a felon from 2016.

Applicant testified the two burglary charges arose from two incidents: one occurring at Michael Kors outlet store and the other at the Bose outlet store. Applicant conceded the stores were in the same shopping center and the burglaries happened at 1:40 AM and 2:00 AM, respectively. Applicant testified he did not know until his guilty plea when the solicitor stated the cameras in the Bose store were not working, that there was not video evidence of that burglary charge. Applicant claimed Counsel never reviewed the discovery involving the second burglary. Applicant testified Counsel met with him three times and at the second meeting she only briefly reviewed his discovery from the first burglary.

Applicant testified Counsel did not sufficiently investigate and did not express any confidence in pursuing a jury trial for him. Applicant testified Counsel promised him a number

of things in order to plead. He alleged Counsel promised he would not have to pay restitution, he would get credit for time he served in North Carolina and he would be pleading to only non-violent offenses. Applicant admitted he was arrested in North Carolina for the same thing, burglarizing a Michael Kors store and that he was serving time in North Carolina for that charge. Applicant also admitted that when he was arrested, two ipods that were of the type stolen from the Bose store were found in the car he was in. However, he denied that the car was rented in his name. Applicant admitted there were various photos in his cell phone of Michael Kors merchandise he was attempting to sell.

Applicant admitted he never tried to contact Counsel after the plea regarding the things he was promised he would receive but did not. Applicant testified he was not going to do anything about it, until a family member told him to file a PCR.

II. Counsel testified to the following:

Counsel has been practicing criminal law exclusively for seven years. Counsel was appointed to represent Applicant. Applicant never told her if he was or was not guilty and she did not ask him. Counsel simply explained to Applicant the evidence against him, the consequences he faced, the likelihood of conviction, and his option to either plead guilty or go to trial. Counsel testified she told Applicant it was solely his decision on what to do. Counsel testified they may have discussed trial in the beginning, but after the State served the LWOP notice, Applicant wanted to plead guilty.

Counsel testified she believes they met approximately three times and went over the discovery in detail with Applicant. She reviewed each sheet of paper, showed it to him and she believed she provided him his own copies, but was not absolutely sure. It is her general practice to provide her clients with their own copy. She also had evidence on discs, which she offered to let him

review, but could not recall if he actually reviewed them or not. Counsel also testified she went over the violent and non-violent categorization of his offenses and Applicant even signed the sentencing sheets prior to the plea with the categorization annotated. Counsel also testified they discussed the restitution and Applicant signed the restitution order prior to his guilty plea. With regard to the credit for time from his North Carolina sentence, she explained to him that it was up to the South Carolina Department of Corrections to determine what time he's entitled to. Applicant never indicated that receiving credit for his NC time was of importance, nor did Counsel ever promise him he would receive the credit.

Counsel recalled the Bose store cameras having problems, possibly producing a grainy video in which you could not positively identify Applicant. However, she believed there was enough other evidence to convict him of the Bose burglary too. That evidence included two ipods that had been stolen from the Bose store found on Applicant at the time of his arrest, Applicant wearing the same clothes when he was caught burglarizing the Michael Kors in NC that he wore the night of the instant burglaries, the temporal proximity of the burglary at Michael Kors and Bose, and a text found in his phone shortly after the Bose burglary, at 2:25 AM, stating, "the Bose store didn't have what you were looking for, maybe the next store will."

Counsel testified she did not coerce Applicant to plead guilty. She did not use the LWOP notice to threaten him, but rather explained to Applicant that the State could have two shots at trying him on the two burglaries and both would give him a life sentence. Counsel reemphasized she always tells her clients it is their decision because it is their lives and they are the one who has to serve the sentence, not Counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the

testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and has weighed their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). Applicant has failed to prove by a preponderance of the evidence that Counsel was deficient or that he was prejudiced by any deficiency.

I. Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 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 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18. With respect to guilty plea counsel, 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).

Applicant also asserts his plea was involuntary because Counsel coerced him. The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton, 376 S.C. 138, 654 S.E.2d at 874 (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A 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 the court and defendant, between the 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)). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, 376 S.C. at 137-38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Id. at 138-39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally

attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record fully supports the knowing and voluntary nature of Applicant's plea. Applicant has failed to give a sufficient reason to be allowed to depart from the truth of his statements made during his guilty plea. Applicant testified during the plea that no one did anything in an effort to force him to plead guilty, no one promised him anything to get him to plead guilty and that he made the decision to plead of his own free will. (Tr. p. 12). He also testified he had a chance to consult with Counsel and was satisfied with her services. (Tr. p. 9-10). With regard to Applicant's allegation he was promised credit for time served in North Carolina, this Court finds that allegation wholly without merit or credibility. Not only was the issue addressed during Applicant's guilty plea, Counsel testimony, that she did not promise him he would receive the credit and that SCDC would determine that, to be credible.

This Court further finds Counsel's testimony credible that she explained to Applicant that some of his charges were violent, which is corroborated by the notations on the sentencing sheet

Applicant signed. Counsel's testimony, that she explained restitution to Applicant, is also credible and corroborated by the signed restitution order. This Court finds Counsel received and reviewed all the discovery in the case with Applicant. Even if she had not, the transcript recites all of the facts which Applicant agreed with and to which he admitted guilt. (Tr. p. 15; 20).

This Court further finds the State was entitled to seek LWOP based on the circumstances of this case and this was not coercive, but rather, lawful. Furthermore, Counsel did not coerce Applicant by advising him of the potential life sentence he faced. It was incumbent upon Counsel to inform Applicant of the potential life sentence and had she not done so, Applicant's decision to plead or go to trial would have been uninformed and involuntary.

This Court finds Applicant's plea was voluntary and knowing. This Court further finds Counsel's advice to plead guilty was sound in light of the evidence the State had against him and the life without parole sentence he was facing.

Applicant has failed to meet his burden of proving his guilty plea was involuntary, that Counsel was deficient or that he was prejudiced by any such deficiencies.

CONCLUSION

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

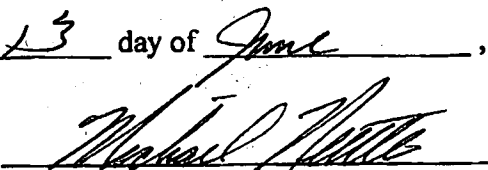
This Court notifies Applicant he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate

review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCR. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

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

AND IT IS SO ORDERED this 13 day of June, 2018.


MICHAEL G. NETTLES
Presiding Judge
Seventh Judicial Circuit

House, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on AUG 11 2015 the
Grand Jurors of Cherokee County present upon their oath:

GRAND LARCENY

That Marcus Willis Thames did in Cherokee County, on or about September
11, 2015, feloniously take and carry away property of Bose, valued at more than
Two Thousand Dollars, but less than Ten Thousand Dollars, with the intent to
deprive the owner permanently of such property. Further, that the Defendant
has at least two (2) or more convictions for Property Crimes, all in violation of
Section 16-13-30 (B), 16-01-0057, THE CODE OF LAWS OF SOUTH CAROLINA,
(1976, as amended).

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

Kimberly Tokanic
ASSISTANT SOLICITOR

DOCK NO. **16-GS-11-01018**

WITNESSES

Gaffney Police Dept.

[Signature]

ARREST WARRANT NUMBER

2015A1120200413

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: 8-11-16

VERDICT

Foreperson of Petit Jury
Date:

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 1 2016

TERM

THE STATE

vs.

MARCUS WILLIS THAMES

Indictment for

GRAND LARCENY

SC Code: 16-13-0030 (B), 16-01-0057

CDR Code: 3587

Class FEL-F

CLERK OF COURT OFFICE

2016 AUG 11 A 9:45

JOE W. NOBEE
CLERK OF COURT
CHEROKEE COUNTY, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on AUG 11 2015 the

Grand Jurors of Cherokee County present upon their oath:

BURGLARY, SECOND DEGREE
(Building)

That Marcus Willis Thames did in Cherokee County on or about September 11, 2015, willfully and unlawfully enter a building belonging to Bose, located at 165 Factory Shops Blvd., Gaffney, South Carolina without consent and with intent to commit a crime therein, and either: (1) the burglary was committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or (2) the entering or remaining occurred in the nighttime, in violation of §16-11-312 (B), THE CODE OF LAWS OF SOUTH CAROLINA, (1976, as amended).

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

Kimberly D. Jackson
ASSISTANT SHERIFF

WITNESSES

Gaffney Police Dept.

[Signature]

ARREST WARRANT NUMBER

2015A1120200414

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury

Date: 8-11-16

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 16-GS-11-01019

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 11 2016

TERM

THE STATE

vs.

MARCUS WILLIS THAMES

Indictment for

BURGLARY, SECOND DEGREE
(BUILDING)

SC Code: 16-11-312(B)

CDR Code: 0086

Class FEL/D

FILED IN THE OFFICE

2016 AUG 11 A 9:45

LINDY W. MCBEE
CLERK OF COURT
CHEROKEE COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on AUG 11 2015 the
Grand Jurors of Cherokee County present upon their oath:

GRAND LARCENY

That Marcus Willis Thames did in Cherokee County, on or about September 1,
2015, with the intent to permanently deprive the owner, take and carry away
property, to wit: merchandise, including purses, watches, and bracelets valued at
ten thousand dollars or more, belonging to Michael Kors. Further, that the
Defendant has at least two (2) or more convictions for Property Crimes, in violation
of §16-13-30 (B), 16-01-0057, 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.

Kimberly S. Tokame
ASSISTANT SHERIFF

WITNESSES

Gaffney Police Dept.

[Signature]

ARREST WARRANT

2015A1120200405

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 8-11-16

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

16-GS-11-01020

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 11 2016

TERM

THE STATE

VS.

MARCUS WILLIS THAMES

Indictment for

GRAND LARCENY

SC Code: 16-13-30 (B), 16-01-0057

CDR: 3421

Class: FEL/E

FILED IN THE OFFICE

2016 AUG 11 A 9:45

W. HOBEE
CHEROKEE COUNTY, SC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHEROKEE)

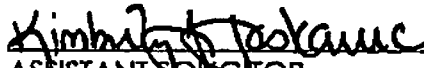
INDICTMENT

At a Court of General Sessions, convened on AUG 11 2015, the
 Grand Jurors of Cherokee County present upon their oath:

BURGLARY, SECOND DEGREE
(Building)

That Marcus Willis Thames did in Cherokee County on or about September 1, 2015, willfully and unlawfully enter a building belonging to Michael Kors, located at 600 Factory Shops Blvd., Gaffney, South Carolina without consent and with intent to commit a crime therein, and either: (1) the burglary was committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or (2) the entering or remaining occurred in the nighttime, in violation of §16-11-312 (B), THE CODE OF LAWS OF SOUTH CAROLINA, (1976, as amended).

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


 ASSISTANT SHERIFF

WITNESSES

Gaffney Police Dept.

[Signature]

ARREST WARRANT NUMBER

2015A1120200408

ACTION OF GRAND JURY

TRUE BILL

[Signature]

Foreperson of Grand Jury

Date: 8-11-16

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

16-GS-11-01021

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 11 2016 TERM

THE STATE

vs.

MARCUS WILLIS THAMES

Indictment for

BURGLARY, SECOND DEGREE
(BUILDING)

SC Code: 16-11-312(B)

CDR Code: 0086

Class FEL/D

FILED IN THE OFFICE

2016 AUG 11 A 9:45

ANDY W. MCBEE
CHEROKEE COUNTY, SC