

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

**Aug 21 2020**

S.C. SUPREME COURT

—————  
Certiorari to Chesterfield County

Honorable Brooks P. Goldsmith, Circuit Court Judge

—————  
WILLIAM S. PEGUES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-002007

—————  
APPENDIX  
—————

ROBERT M. DUDEK  
Chief Appellate Defender

ALAN WILSON  
Attorney General

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

CHELSEY MARTO  
Assistant Attorney General  
Rembert Dennis Building  
1000 Assembly St.  
Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

**INDEX**

INDEX ..... i

TRANSCRIPT OF GUILTY PLEA HEARING HELD JANUARY 10, 2017 .....1

TRANSCRIPT OF SENTENCING HEARING HELD JANUARY 11, 2017.....19

APPLICATION FOR POST-CONVICTION RELIEF .....24

STATE’S RETURN.....30

TRANSCRIPT OF POST-CONVICTION RELIEF HEARING  
HELD AUGUST 21, 2019.....37

ORDER OF DISMISSAL.....78

INDICTMENTS .....88

State of South Carolina)  
 )  
County of Chesterfield )

In Circuit Court of the  
Fourth Judicial Circuit  
2016-GS-13-0077, 0078,  
0079

The State, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
William S. Pegues, )  
 )  
Defendant. )  
 )  
\_\_\_\_\_ )

Transcript of Record

Chesterfield, South Carolina  
January 10, 2017

B E F O R E:

The Honorable Paul M. Burch

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

Mrs. Mary Thomas-Johnson Lee, Esquire  
Attorney for Plaintiff

Mrs. Ashley McIntyre, Esquire  
Attorney for Defendant

Hattie Gordon  
Circuit Court Reporter

Transcribed by:  
Lisa S. Carter

I N D E X

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

WITNESSES

PAGE

(NO WITNESSES INTRODUCED DURING HEARING)

(NO EXHIBITS INTRODUCED DURING HEARING)

1 MRS. JOHNSON-LEE: May it please, the Court? Your  
2 Honor, this is the State versus William Sarragarra ---

3 MR. PEGUES: Sarragarra.

4 MRS. JOHNSON-LEE: Sarragarra Andre Pegues, 2016-GS-  
5 13-077, indictment for burglary first-degree; 2016-GS-13-  
6 078, assault and battery of a high and aggravated nature;  
7 and, 2016-GS-13-079, possession of a weapon during the  
8 commission of a violent crime. All three of these were  
9 true billed on March 15, 2016. He is pleading guilty to  
10 each of these as indicted. As far as sentencing it is a  
11 negotiated fifteen (15) on the burglary first. I checked  
12 negotiated on the weapon charge but that's actually a  
13 mandatory five (5) and then negotiated seven (7) concurrent  
14 on the ABHAN.

15 Your Honor, he has, through his attorney, has spoken  
16 with me regarding pleading today and having sentencing  
17 tomorrow. I've advised his attorney I have no objection to  
18 that. However, if I do that the negotiated part of that  
19 sentence is contingent on his showing backup to court, if  
20 he did not -- if, Your Honor, does allow him to come back  
21 later for sentencing that negotiated part is off the table  
22 if he does not appear which means he's looking at fifteen  
23 (15) to life.

24 THE COURT: Okay. Mr. Pegues, you're 43?

25 MR. PEGUES: Yes, sir.

1 THE COURT: From Cheraw?

2 MR. PEGUES: Yes, sir.

3 THE COURT: What is your education?

4 MR. PEGUES: Tenth grade.

5 THE COURT: And where do you work?

6 MR. PEGUES: No where.

7 THE COURT: It's looks like we've got three  
8 different indictments here. You have discussed these with  
9 your attorney?

10 MR. PEGUES: Yes, sir.

11 THE COURT: Satisfied with her help?

12 MR. PEGUES: Yes, sir.

13 THE COURT: Answered all your questions?

14 MR. PEGUES: Yes, sir.

15 THE COURT: First one I come to is 2016-77 it's for  
16 burglary first-degree for which you could receive up to  
17 life on or a minimum sentence of fifteen (15) years. The  
18 allegations are that on or about January 11, 2016, you  
19 entered a dwelling of Ricky Bullock on Hickory Road in  
20 Chesterfield, South Carolina without consent with intent to  
21 commit a crime, therein, and that you did so in the  
22 nighttime while armed with a deadly weapon. All in  
23 violation of Section 16-11-0311 of the Code of Laws of  
24 South Carolina, 1976, as amended. The next indictment I  
25 have is possession of a weapon during a violent crime,

1 January 11, 2016 in Chesterfield County and that speaks for  
2 itself. You had a firearm during the commission of the  
3 burglary and you can receive up to five (5) years on that,  
4 how do you plead?

5 MR. PEGUES: I plead guilty.

6 THE COURT: And then the last indictment is 2016-78  
7 for assault and battery of a high and aggravated nature  
8 which you could receive up to twenty (20) years on. The  
9 allegations are that on January 11, 2016, you unlawfully  
10 injured, Ricky Bollock, the act was accomplished by mean  
11 likely produce death of great bodily harm, correction,  
12 great bodily injury with that you did fired several shots  
13 inside the victim's bedroom too frightened and intimidate  
14 the victim and you did also pistol whip said victim during  
15 the burglary at [REDACTED] Hickory Road in the Chesterfield area.  
16 All right. We will note that on the assault and battery of  
17 a high and aggravated nature that is considered or is  
18 classified as a violent, serious offense. The weapon  
19 possession is classified as non-violent and, of course, the  
20 burglary is classified as a violent, most serious. So your  
21 attorney, if she hasn't already done so, will explain the  
22 indications of that. You've heard all of those indictments  
23 and allegations, how do you plead to these?

24 MR. PEGUES: I plead guilty.

25 THE COURT: And you understand by doing so that you

1 are waiving your constitutional right to a jury?

2 MR. PEGUES: Yes, sir.

3 THE COURT: If you had a jury trial the State would  
4 have to prove your guilt beyond a reasonable doubt and  
5 convince twelve jurors unanimously of your guilt, you  
6 understand that?

7 MR. PEGUES: Yes, sir.

8 THE COURT: You would have a right to cross examine  
9 the State's witnesses. Put up your own defenses and  
10 witnesses. You could testify at your own defense or you  
11 could invoke your Fifth Amendment Right and remain silent,  
12 elect not to testify. If you did, it couldn't be held  
13 against you and I would tell the jury that. Do you  
14 understand that?

15 MR. PEGUES: Yes, sir.

16 THE COURT: You are presumed innocent and that  
17 presumption of innocence would stay with you throughout any  
18 trial and would only end if the jury convicted you and if  
19 the jury did convict you'd have a right to appeal just as  
20 you can appeal a guilty plea sentence as long as you file a  
21 notice of appeal within ten (10) days of sentencing. Those  
22 are your basic rights. Any questions?

23 MR. PEGUES: No, sir.

24 THE COURT: You understand them?

25 MR. PEGUES: Yes, sir.

1 THE COURT: Are you under the influence of any  
2 drugs, alcohol, or medication today?

3 MR. PEGUES: No, sir.

4 THE COURT: Do you suffer from any condition mental  
5 or physical or a combination of both that could be  
6 effecting your understanding?

7 MR. PEGUES: No, sir.

8 THE COURT: Has anybody promised you anything or  
9 threaten you in any way in order to get you to plea?

10 MR. PEGUES: No, sir.

11 THE COURT: Are you entering this plea of your own  
12 free will and accord?

13 MR. PEGUES: Yes, sir.

14 THE COURT: You understand everything I've gone  
15 over?

16 MR. PEGUES: Yes, sir.

17 THE COURT: Do you understand everything your  
18 attorney has gone over?

19 MR. PEGUES: Yes, sir.

20 THE COURT: Do you have any questions?

21 MR. PEGUES: No, sir.

22 THE COURT: I find your plea is freely, voluntarily  
23 any intelligently entered into. You've had the service of  
24 a competent attorney with whom you say you're satisfied  
25 with. The plea is accepted.

1           MRS. JOHNSON-LEE:    Your Honor, if this case had gone  
2 to trial the evidence would have shown as follows:  On  
3 January 11, 2016 at approximately 9:35 PM a 911 call came  
4 in regarding an active home invasion.  Tim Hutchinson of  
5 the Chesterfield County Sheriff's Office was the first to  
6 arrive.  Standing at the front door waiting his arrival was  
7 victim, Ricky Bullock, who is seated in the jury box.  He  
8 was bleeding from the top of his head.  Upon entry into the  
9 residence, Officer Hutchinson saw William Pegues lying on  
10 the floor on his stomach bleeding from his head.  The  
11 victim, Gary Foreshee, he was near the couch and had blood  
12 on him.  The two victims advised that the male on the floor  
13 along with another male who jumped through a window to exit  
14 the home tried to rob them.

15           According to Ricky Bullock he was in bed asleep when  
16 he heard a noise and then heard shots.  He said he then  
17 heard someone yelling for him to give it up or get it all.  
18 He then saw a figure come into the room wearing a black  
19 scarf around the face.  He recognize the voice as being  
20 William Pegues and actually called out to William asking  
21 what he was doing.  Mr. Pegues said, I'm not William, get  
22 it all and he fired three to four warning shots into the  
23 floor of the wall area.  The gun then jammed.  Mr. Bullock  
24 left from the bed, bull rushed, basically, the defendant  
25 grabbing him.  The defendant pistol whipped him in the

1 head. The victim did have to have staples put in his head  
2 as a result of getting pistol whipped. The co-defendant  
3 left through a glass window and escaped the scene. Mr.  
4 Bullock yelled for Mr. Foreshee to come assist as they were  
5 fighting. Mr. Foreshee came in, the two of them fought  
6 with the defendant from the bedroom into the kitchen area  
7 at which time a baseball bat which was grabbed by Mr.  
8 Bullock was able to make contact with the defendant's head.  
9 The defendant was knocked unconscious. He later gained  
10 consciousness and try to run for the front door, they  
11 tackled him again and were able to subdue him and hold him  
12 there until law enforcement arrived. I beg the Court's  
13 indulgence.

14 Your Honor, as far as a prior record, he's has some  
15 cases dismissed in North Carolina. As far as actual  
16 convictions in South Carolina in 2009, some vehicle  
17 offenses such as failure to maintain insurance and seatbelt  
18 violations and a DUI, 2011 and he's been to prison in 1999  
19 on two drug charges.

20 THE COURT: Anything you'd like to say?

21 MR. BULLOCK: The thing I would like to say to  
22 William is that I forgive him for what he did. And I guess  
23 the court will lay a judgment on you. You know you still  
24 family and you know your brother is family. He'd call me  
25 on the phone and asked me what happened. I can't give him

1 no answer. From my heart, I tell you that I forgive you  
2 and I'm just glad judgment is on them. That's all I've got  
3 to say.

4 THE COURT: I appreciate you being here.

5 MR. BULLOCK: Yeah.

6 MRS. McINTYRE: Thank you, Your Honor. My client is 43  
7 years old. He lives in Cheraw, South Carolina. Today,  
8 shows support, is his father Mr. William Pegues, Sr. He  
9 has a wife and a daughter. His daughter I think is three  
10 now, is that right?

11 MR. PEGUES: Mmm, hmm.

12 MRS. McINTYRE: He is unemployed. His last job was in  
13 Charlotte at the airport. His wife and daughter were in a  
14 severe accident right before this occurred which landed  
15 them both in the hospital and his wife was in a coma.  
16 Because he was in and out of the hospital he lost his job  
17 at the airport. Highest level of education is tenth grade.  
18 Your Honor, I think it's important to note that my client  
19 gave a statement to the police and if you look over all the  
20 statements that were given, he's the only one that told the  
21 truth and the full truth. He admitted his involvement  
22 fully. He came clean and told them why he was there. What  
23 he was did when he was there. Who was there with him. And  
24 I think that speaks volumes even Officer Tubbs said at the  
25 end that, you know, he was the only one who was truthful

1 and that she would make sure that was known to the  
2 solicitor's office that he fully cooperated. A lot of  
3 other things were going on in the story that no one but my  
4 client was willing to come out and say. Mr. Ricky Bullock  
5 I'm pretty sure all this had to do with drugs. The other  
6 co-defendant in this case in his statement says, yeah, I go  
7 there and get my drugs. I, you know, I went there that  
8 night because I wanted to smoke a joint. And when my  
9 client was knocked out with the bat, he was in and out of  
10 consciousness and at that time other people were called  
11 over to the house before the cops to try to hide any drugs  
12 or any other incriminating evidence that might be on the  
13 scene. At which time he recalls hearing a discussion about  
14 what they should do with him and there was someone that  
15 came to the house who had left before the cops got there  
16 said, if it were me I would kill him and, you know, throw  
17 him out back. And I truly believe that, that was Mr.  
18 Bullock's full intention when he got that bat and kept  
19 hitting my client in the head even after he was knocked  
20 out. I truly believe he intended with every part of his  
21 body, even though they already had him apprehended, to kill  
22 him that night. And the only thing that, and my client  
23 will tell, the only thing that saved his life is the other  
24 victim in this case who said, hey I've already called the  
25 cops, they're on the way. My client is very remorseful for

1 his involvement in this. He knows that what he did was  
2 wrong. He knows that he could have been killed that night.  
3 I mean, he was on the brink of death and I think that has  
4 caused him to have a lot of reflection about this that he  
5 wouldn't, otherwise, have. We'd just ask that you go along  
6 with the recommendation. He knows that what he did was  
7 wrong. He has to serve the time. Unfortunately, I don't  
8 think the whole truth will ever come out in the story and I  
9 don't think that everyone else's criminal activity will  
10 ever, you know, see the light of day to have justice  
11 towards it but that's neither here nor there. We just hope  
12 that you go along with the recommendation. My client did  
13 serve fourteen (14) days in jail.

14 THE COURT: Mr. Pegues?

15 MR. PEGUES: Yes, sir.

16 THE COURT: Anything you would like to say?

17 MR. PEGUES: Sir?

18 THE COURT: I'll glad to hear from you.

19 MR. PEGUES: Yeah, I'm just saying it's just a lot  
20 of other stuff that went on that night, you know what I'm  
21 saying, but I'm willing to take my, what I'm saying, to  
22 deal with what's coming to me. Even though there's been a  
23 lot of stuff that's been said, a lot of stuff has been hid  
24 and covered up. But maybe later on in the future maybe  
25 things will work out. It will work itself out.

1 THE COURT: Mr. Pegues, Sr., would like to say  
2 anything?

3 MR. PEGUES, Sr. I'm just here to support him.  
4 I'm here to support his decisions that he has made.  
5 (Whereupon, the audio was inaudible to the rest of the  
6 father's answer)

7 THE COURT: All right. Now, who's on his bond?  
8 What's the situation there?

9 MS. McINTYRE: Blair Bonding.

10 MRS. JOHNSON-LEE: Yes, sir. And as far as the bond  
11 the conditions were not to leave the county without consent  
12 of the court. No contact with co-defendants or victims.  
13 And he's own house arrest from 8 PM to 6 AM. Any violation  
14 is, I believe, to be picked up and put back into custody to  
15 the matters resolved by the court.

16 THE COURT: All right. In order to go along with  
17 what y'all are requesting you've got to make sure that  
18 Blair will stay on the bond until we complete this  
19 tomorrow.

20 MRS. JOHNSON-LEE: Yes, sir. Can we have him sit  
21 aside for a moment and then we'll ....

22 THE COURT: Let's ensure that. And then you can go  
23 home and you can get everything straight. We'll set a  
24 time.

25 MRS. JOHNSON-LEE: Your Honor, Monty Bell, with our

1 office, spoke with Woodrow Blair of Blair Bail Bonding,  
2 he's not willing to stay on the bond until tomorrow because  
3 the defendant is looking at fifteen (15) years and so ....

4 THE COURT: I accepted his plea so the bond is now  
5 lifted so somebody is going to have to go on a bond, if not  
6 you'll have to be taken into custody. We won't be  
7 transporting anywhere until we complete the sentencing as  
8 agreed upon, but I can't let him walk out of here with the  
9 plea actually being accepted. This is about the first time  
10 that's ever happened. Normally, the bond company will  
11 continue on it.

12 MRS. JOHNSON-LEE: That's the first time I've ever  
13 seen it happen.

14 THE COURT: Take him out of here. Let we talked to  
15 counsel about this situation.

16 (Whereupon, a conference was held in chambers)

17 THE COURT: Mr. Pegues, Sr., I've known you a long  
18 time.

19 MR. PEGUES, SR.: Right.

20 THE COURT: I'm going to work this to where he's  
21 going to be released in your custody until he reports  
22 tomorrow, okay?

23 MR. PEGUES, SR.: I'll have him here.

24 THE COURT: Y'all just heard what I said ---

25 MR. PEGUES, SR.: Right.

1 THE COURT: --- on Mr. Jones.

2 MR. PEGUES, SR.: the same thing applies. But this  
3 is in enhance to a certain degree because what I'm going to  
4 do I'm sentencing you today Mr. Pegues, Mr. William Pegues  
5 on the assault and battery of a high and aggravated nature  
6 that's fifteen (15) years. I need a jail credit time, did  
7 we discuss that?

8 MRS. McINTYRE: Fourteen (14) days, Your Honor.  
9 Fourteen (14) days.

10 THE COURT: Fourteen (14) days.

11 MRS. JOHNSON-LEE: Your Honor, if I may? I think it  
12 was a negotiated seven (7) on the ABHAN and fifteen (15) on  
13 the burglary.

14 THE COURT: In order to make this work we've got to  
15 do it this way.

16 MRS. JOHNSON-LEE: Yes, sir.

17 THE COURT: Well, not necessarily. I'll go along  
18 -- that's a negotiation, I can't -- that's corrected. This  
19 is negotiated, seven (7) years. Fourteen (14) days credit.  
20 What was the agreement for him to report tomorrow?

21 MRS. JOHNSON-LEE: I believe what we actually  
22 discussed was holding off sentencing on the burglary first  
23 until tomorrow. Sentence today on the ABHAN and the  
24 possession of a weapon. Have him report back to the court  
25 in the morning for sentencing on the burglary first and

1           then....

2           THE COURT:       All right.  We're going to need to let  
3           the jail know to keep from making two trips to hold up on  
4           Mr. Jones until we get this complete.  All right.  Seven  
5           (7) years on the assault charge.  Credit for fourteen (14)  
6           days.  That's concurrent.  And what was the negotiation on  
7           the pistol or weapon?

8           MRS. McINYRE:  Five (5) years concurrent

9           MRS. JOHNSON-LEE:  It's five (5) years mandatory.

10          THE COURT:       All right.  That's a concurrent  
11          sentence of five (5) years.  We can go ahead and dispose of  
12          that.  Concurrent.  Credit for fourteen (14) days.  And  
13          what we will complete tomorrow will be the burglary with  
14          the understanding that if you do not appear back here at  
15          ten in the morning to complete this, this can be a life  
16          sentence.  Okay?

17          MR. PEGUES:       Yes, sir.

18          THE COURT:       So you will be in your father's custody  
19          and you'll report back in the morning and then we will  
20          complete it, hopefully, as agreed upon.

21          MR. PEGUES:       Yes, sir.

22          THE COURT:       Fair enough?

23          MR. PEGUES:       Fair enough.

24          THE COURT:       Okay.

25          MRS. McINTYRE:  Thank you, Your Honor.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MRS. JOHNSON-LEE: Thank you, Your Honor.  
(CONCLUSION OF THE HEARING ON JANUARY 10, 2017)



STATE OF SOUTH CAROLINA )  
 ) COURT OF GENERAL SESSION  
COUNTY OF CHESTERFIELD ) 2016-GS-13-00077  
 ) 2016-GS-13-00078  
 ) 2016-GS-13-00079

STATE OF SOUTH CAROLINA )  
 ) PLAINTIFF )  
 vs. ) TRANSCRIPT OF RECORD )  
 ) SENTENCING )  
 WILLIAM S. PEGUES )  
DEFENDANT )

January 11, 2017  
 Chesterfield, South Carolina

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE.

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

MARY THOMAS JOHNSON LEE, ASSISTANT SOLICITOR  
 Attorney for the State

ASHLEY MCINTYRE, PUBLIC DEFENDER  
 Attorney for the Defendant

HATTIE O. GORDON  
 Circuit Court Reporter

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

Colloquy . . . . .	4
Certificate of Reporter . . . . .	5

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

EXHIBITS

NO EXHIBITS WERE MARKED OR ADMITTED INTO THE RECORD

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

COLLOQUY

MS. JOHNSON LEE: This is William Pegues. He's back today for sentencing. He was sentenced yesterday on A.B.H.A.N. on 2016-GS-13-078, and a possession of a weapon during the commission of a violent crime on 2016-GS-13-079.

Sentencing on the burglary first which is 2016-GS-13-077 was withheld until today. He did plead on that yesterday.

THE COURT: Is there anything further?

MS. McINTYRE: Nothing further, Your Honor.

MS. JOHNSON LEE: Nothing from the State, Your Honor.

THE COURT: And it was negotiated 15 years, correct?

MS. JOHNSON LEE: That is correct, Your Honor.

THE COURT: Okay. 15 years concurrent. Credit for 14 days. Thank you very much.

MS. McINTYRE: Thank you, Your Honor.

MS. JOHNSON LEE: Thank you, Your Honor.

THE COURT: Good luck.

END OF TRANSCRIPT OF RECORD



COUNTY OF CHESTERFIELD

William S. Pegues #261269

CIVIL ACTION COVERSHEET

Plaintiff(s) 2017 APR 28 AM 11: 53

2017 -CP-13 - 252

vs.

Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

State of South Carolina

Defendant(s)

Submitted By: William S. Pegues #261269

SC Bar #: n/a

Address: Perry Corr. Inst. 430 Oaklawn Rd. Pelzer, SC. 29669

Telephone #:

Fax #:

Other:

Applicant, pro-se

E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
NON-JURY TRIAL demanded in complaint.
This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), General (130), Breach of Contract (140), Fraud/Bad Faith (150), Failure to Deliver/Warranty (160), Employment Discrim (170), Employment (180), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20 -NI-, Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Assault/Battery (370), Slander/Libel (380), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Forclosures (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Administrative Law/Relief: Reinstate Drv. License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Confession of Judgment (770), Petition for Workers Compensation Settlement Approval (780), Other (799)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Comm. (990), Employment Security Comm (991), Other (999)
Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Sexual Predator (510), Permanent Restraining Order (680), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Pre-Suit Discovery (670)

Submitting Party Signature: William S. Pegues

Date: 4-24-2017

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FORM 5

STATE OF SOUTH CAROLINA )

2017 APR 28 AM 11:55 ) COURT OF COMMON PLEAS

COUNTY OF CHESTERFIELD )

William S. Pegues #261269  
Full name and prison number (if any) of Applicant:

Wanda C. Miles  
CLERK OF COURT  
CHESTERFIELD COUNTY, S.C.

v. )

APPLICATION FOR

State of South Carolina )

POST-CONVICTION RELIEF

**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention Perry Corr. Inst. 430 Oaklawn Rd. Pelzer, SC.29669
2. Name and location of Court which imposed sentence Chesterfield County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) Marcus McManus
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: 2016-GS-13-0077; 0078; 0079
  - (a) Burglary first degree 15-years
  - (b) ABHAN 7-years
  - (c) weapons offense 5-years
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) January 11, 2017
  - (b) same as above

- (c) same as above
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty 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. n/a
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. n/a
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. n/a
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. n/a
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) no appeal was taken
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) ineffective assistance of counsel

- (b) involuntary guilty plea
- (c) ~~denial~~ of due process
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) ~~counsel failed~~ to adequately investigate
- (b) ~~counsel was unwilling~~ to adequately assist me had
- (c) I chosen not to take counsel's erroneous advice and
12. Prior to ~~this application~~ went to trial to prove my innocence have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. n/a
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
- i. n/a
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (c) the disposition thereof:
- i. n/a
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (d) the date of each such disposition:

i.   n/a  

ii.       

iii.       

iv.       

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

i.   n/a  

ii.       

iii.       

iv.       

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?

first filing for post conviction relief

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

(a) which grounds have been presented:

i.   n/a  

ii.       

iii.       

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

i.   n/a  

ii.       

iii.       

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) ~~first~~ first filing for post conviction relief

(b)       

(c)       

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

(a) your arraignment and plea? yes

(b) your trial, if any? n/a

(c) your sentencing? yes

- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?   n/a
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?   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. Ashley D. McIntyre, Chesterfiled County Bar
  - ii. ~~same~~ as above.
  - iii.
- (b) the proceedings at which each such attorney represented you:
- i.   plea and sentencing
  - ii.
  - iii.
19. State clearly the relief you seek in filing this application:  
vacate sentences and convictions and remand for new trial
20. Are you now under sentence from any other court that you have not challenged?  
  no

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) FOR THE FOURTH JUDICIAL CIRCUIT  
COUNTY OF CHESTERFIELD )

William S. Pegues, ) Case No.: 2017-CP-13-00252  
S.C.D.C. No. 261269, )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

**RETURN AND MOTION FOR  
MORE DEFINITE STATEMENT**

Wanda C. Miles  
CLERK OF COURT  
CHESTERFIELD COUNTY, S.C.

2017 DEC -6 AM 10:54

In response to the application for post-conviction relief filed by William S. Pegues (Applicant) on April 28, 2017, Respondent would show this Court:

**I.**

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Chesterfield County Clerk of Court. Applicant was indicted at the March 2016 term of the Chesterfield County Grand Jury for burglary, first degree (2016-GS-13-00077), assault and battery of a high and aggravated nature (2016-GS-13-00078), and possession of a weapon during the commission of a violent crime (2016-GS-13-00079). The State's summation of the underlying crime was previously presented to the Court as follows:

On January 11, 2016[,] at approximately 9:35 PM[,] a 911 call came in regarding an active home invasion. Tim Hutchinson of the Chesterfield County Sheriff's Office was the first to arrive. Standing at the front door waiting his arrival was [the] victim, Ricky Bullock, who is seated in the jury box. He was bleeding from the top of his head. Upon entry into the residence, Officer Hutchinson saw William Pegues lying on the floor on his stomach bleeding from his head. The victim, Gary Foreshee, he was near the couch and had blood on him. The two victims advised that the male on the floor along with another male who jumped through a window to exit the home tried to rob them.

According to Ricky Bullock he was in bed asleep when he heard a noise and then heard shots. He said he then heard someone yelling for him to give it up or get it all. He then saw a figure come into the room wearing a black scarf around the face. He recognize[d] the voice as being William Pegues and actually called out to William asking him what he was doing. Mr. Pegues said, I'm not William, get it all and he fired three to four warning shots into the floor of the wall area. The gun then jammed. Mr. Bullock left from the bed, bull rushed, basically, the defendant grabbing him. The defendant pistol whipped him in the head. The victim did have to have staples put in his head as a result of getting pistol whipped. The co-defendant left through a glass window and escaped the scene. Mr. Bullock yelled for Mr. Foreshee to come assist as they were fighting. Mr. Foreshee came in, the two of them fought with defendant from the bedroom into the kitchen area at which time a baseball bat which was grabbed by Mr. Bullock was able to make contact with the defendant's head. The defendant was knocked unconscious. He later gained consciousness and try to run for the front door, they tackled him again and were able to subdue him and hold him there until law enforcement arrived.

Tr. 8-9.

Ashley D. McIntyre, Esq. represented Applicant, and Mary T. Johnson-Lee, of the Fourth Circuit Solicitor's Office, prosecuted the case. On January 10, 2017, Applicant pled guilty as indicted. Applicant indicated satisfaction with the performance of counsel. Tr. 4, ll. 7-14. Pursuant to terms negotiated between Applicant and the State, the Honorable Paul M. Burch sentenced Applicant to imprisonment for concurrent terms of 7 years for the ABHAN, and 5 years for the weapon charge. Applicant again appeared before the Court on January 11, 2017, at which time Judge Burch sentenced him to a concurrent term of 15 years for the burglary.

Applicant, by and through counsel, filed a timely notice of appeal wherein plea counsel indicated that she was "not aware of an appellate issue preserved for appeal. I only filed this Notice of Appeal because my client requested such." By order dated February 16, 2017, the South Carolina Court of Appeals dismissed the appeal for want of a sufficient explanation as

required by Rule 203(d)(1)(B)(iv), SCACR. State v. Pegues, S.C. Ct. App. Order filed February 16, 2017. The Remittitur was issued on March 6, 2017.

## II.

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

1. “ineffective assistance of counsel”
  - a. “counsel failed to adequately investigate”
2. “involuntary guilty plea”
  - a. “counsel was unwilling to adequately assist me had I chosen not to take counsel’s erroneous advice and went to trial to prove my innocence”
3. “denial of due process”

Attached to and incorporated herein are the records of the Chesterfield County Clerk of Court regarding the subject convictions, Applicant’s records from the South Carolina Department of Corrections, the plea transcript, Applicant’s appellate records, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

## III.

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

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386

S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced 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 (1985).

Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### IV.

Applicant further claims his plea was not entered knowingly or voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392

(1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)). Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

## V.

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth sufficient facts to "support each ground" or to explain with sufficient specificity the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). To wit: Applicant does not indicate precisely what it was that plea counsel should have investigated. It is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

## VI.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC; Mangal v. State, Op. No. 27726 (S.C.Sup.Ct. refiled October 4, 2017) (Shearouse Adv.Sh. No. 38 at 12). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VII.

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

VIII.

WHEREFORE, Respondent respectfully requests that this Court grant its motion for a more definite statement and thereafter convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

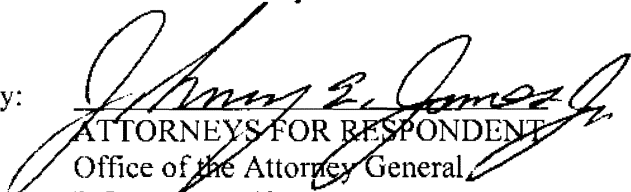
Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.  
Assistant Attorney General

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

2017 DEC -6 AM 10:54  
Wanda C. Miller  
CLERK OF COURT  
CHESTERFIELD COUNTY, S.C.

4 Dec, 2017

State of South Carolina	)	Court of Common Pleas
	)	Fourth Judicial Circuit
County of Chesterfield	)	Case No. 2017-CP-13-00252
	)	
William S. Pegues,	)	
	)	
Applicant,	)	
	)	
-vs-	)	Transcript of Record
	)	
The State of South Carolina,	)	
	)	
Defendant.	)	
	)	

---

August 21, 2019  
Chesterfield, South Carolina

B E F O R E:

The Honorable Brooks P. Goldsmith, Judge

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

L. Sherril Alford, Esquire  
Attorney for the Applicant

Jacob A. Isenberg, Esquire  
Attorney for the State

Hattie O. Gordon  
Official Circuit Court Reporter

Transcribed by:  
Krystal J. Smith  
Official Circuit Court Reporter

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
William S. Pegues	
Direct by Ms. Alford.....	6
Cross by Mr. Isenberg.....	15
Ashley D. McIntyre	
Direct by Ms. Alford.....	22
Cross by Mr. Isenberg.....	27
Redirect by Ms. Alford.....	36
Applicant Rests.....	37
Arguments of Counsel.....	37
Ruling.....	39
Court Reporter Certification.....	41

E X H I B I T S

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
------------	--------------------	------------	------------

(No Exhibits Presented)

COURT REPORTER LEGEND

dashes --	intentional or purposeful interruption or change in thought
ellipses . . .	trailing off
[ph]	phonetically written
[sic]	written as said

1 AUGUST 21, 2019

2 THE COURT REPORTER: I'm ready.

3 THE COURT: The captain is ready. Defense, are you  
4 ready?

5 MS. ALFORD: Yes, Your Honor.

6 THE COURT: Okay.

7 MS. ALFORD: I'm sorry.

8 THE COURT: You may proceed.

9 MR. ISENBERG: Your Honor, this is the State of South  
10 Carolina versus William Pegues.

11 MS. ALFORD: Pegues.

12 MR. ISENBERG: Pegues. Case Number 2017-CP-13-00252.  
13 Mr. Pegues filed his application on April 28<sup>th</sup> of 2017. He's  
14 currently confined in the South Carolina Department of  
15 Corrections pursuant to orders of commitment of the  
16 Chesterfield County Clerk of Court.

17 He was indicted at the March 2016 term of the  
18 Chesterfield County Grand Jury for burglary in the first  
19 degree, assault and battery of a high and aggravated nature,  
20 and possession of a weapon during the commission of a violent  
21 crime. Ashley McIntyre represented him, and Mary Johnson-Lee  
22 of the Fourth Circuit Solicitor's Office prosecuted the case.

23 On January 10<sup>th</sup>, 2017, he pled guilty as indicted and the  
24 judge sentenced him to the mandatory minimum for first-degree  
25 burglary and concurrent terms totaling in 15 years. The

1 applicant filed a timely notice of appeal where plea counsel  
2 indicated that she was not aware of an appellate issue  
3 preserved for appeal.

4 By order dated February 16<sup>th</sup>, 2017, the South Carolina  
5 Court of Appeals dismissed it for want of a sufficient  
6 explanation required by Rule 203. The remittitur was issued  
7 on March 6<sup>th</sup>, 2017.

8 To the best of the State's knowledge, applicant's  
9 current allegations are a failure to investigate and  
10 involuntary guilty plea based upon the fact that he -- the  
11 applicant wanted to take it to trial and prove his innocence,  
12 and a denial of due process. And if there are no questions,  
13 the applicant will let opposing counsel proceed with their  
14 opening statement.

15 THE COURT: Ms. Alford?

16 MS. ALFORD: Thank you. May it please the Court, Your  
17 Honor. My name is Sherril Alford. I represent the  
18 applicant, Mr. William Pegues.

19 In his post-conviction relief application, Mr. Pegues is  
20 alleging that counsel failed to adequately investigate. He  
21 stated that he was -- he had just gotten out of the hospital  
22 and Attorney McIntyre constantly just focused on getting him  
23 to enter into a plea.

24 He also stated that counsel was unwilling to adequately  
25 assist him as far as coming up with a defense for his case to

WILLIAM PEGUES - DIRECT BY MS. ALFORD

1 proceed to trial. He also states that he chose not to take  
2 trial -- trial counsel's advice and he wanted to prove his  
3 innocence in trial.

4 I believe there is also an amendment that was filed by  
5 his previous PCR attorney, which states that the applicant  
6 only pled guilty because he thought if he went to trial and  
7 was found guilty, he would automatically receive a life  
8 sentence through incorrect information that he was given,  
9 provided with by his defense counsel.

10 THE COURT: All right. Are you ready to call your first  
11 witness?

12 MS. ALFORD: Your Honor, I'd call Mr. William Pegues.

13 THE COURT: Do you swear or affirm the evidence you are  
14 about to give in this case is the truth?

15 THE APPLICANT: Yes, sir.

16 THE COURT: Please be seated right here.

17 WILLIAM PEGUES, being first  
18 duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. ALFORD:

21 Q: Mr. Pegues, please state your full name for the record?

22 A: William Sagarria [ph] Andre Pegues.

23 Q: And where are you incarcerated?

24 A: Lieber Correctional Institution.

25 Q: On what convictions?

WILLIAM PEGUES - DIRECT BY MS. ALFORD

1 A: I think a burglary, assault of a high and aggravated  
2 nature, and possession of a firearm during a violent crime, I  
3 think is what it is.

4 Q: Okay. And what is the length of your current sentence?

5 A: Fifteen years, I think.

6 Q: Were these convictions -- did they arise out of a trial  
7 or did you enter into a plea?

8 A: Plea.

9 Q: Okay. Who were you represented by on these charges and  
10 during your plea?

11 A: Ms. Ashley McIntyre.

12 Q: Was she your attorney for the entire time?

13 A: Well, one time I think she had left and then they -- Sam  
14 Thomas had come in and then something went wrong and then I  
15 ended up getting her back.

16 Q: Okay. So was she your attorney for most of this  
17 process?

18 A: Yeah, pretty much.

19 Q: So about how long? How many months or years?

20 A: Maybe -- I know it's been probably over -- it was over a  
21 year.

22 Q: Okay. All right. Let's go through your PCR  
23 application. In your application, you alleged ineffective  
24 assistance of counsel, obviously. You say that counsel  
25 failed to adequately investigate. Tell the Court about that?

## WILLIAM PEGUES - DIRECT BY MS. ALFORD

1 A: Yes. Because I was trying to prove to them that the --  
2 that the guy that got me in here -- it was -- it was other  
3 people at his house that helped beat me, and I was telling my  
4 lawyer that he was bringing these people to court with him.

5 Q: Hold on, Mr. Pegues. Back up a little bit. And by  
6 them, who do you mean? You said I was telling them.

7 A: Well, I had told her and I had told the sheriffs. You  
8 know what I'm saying? I forgot the lady's name that was on  
9 my case. That it was more people in the house.

10 Q: Okay. So you stated as far as Ms. McIntyre goes that  
11 she failed to adequately investigate. So explain to the  
12 Court exactly what you wanted her to do as far as an  
13 investigation?

14 A: Well, I had wanted her to show the police that he had  
15 other people leave the house before the police got there,  
16 that other people that helped him assault me, and then when  
17 he was coming to court, he was bringing the same guy that  
18 helped him beat me in the house and, you know, been  
19 threatening me and was threatening my family. And I thought  
20 that she was going to, like, subpoena him to come to court to  
21 prove that he was the one of the people that had left the  
22 scene of the crime.

23 Q: Did Ms. McIntyre visit the scene of the crime?

24 A: I don't know.

25 Q: Did she interview these other witnesses that you're

## WILLIAM PEGUES - DIRECT BY MS. ALFORD

1 describing now?

2 A: No, not that I know of.

3 Q: Okay. So to your knowledge, she never -- well, let me  
4 back up. Let me rephrase the question. So did she ever  
5 discuss with you that she had visited the scene?

6 A: No.

7 Q: Or had conversations with the individuals that you're  
8 speaking about?

9 A: No.

10 Q: And is that what you mean by failure to adequately  
11 investigate?

12 A: Yes.

13 Q: Okay. So when was the first time you spoke with Ms.  
14 McIntyre after you found out she was your attorney?

15 A: I think it was when I had a court appearance. I think I  
16 went over to her office and talked to her the day after my  
17 court appearance.

18 Q: Had you been released? Were you out on bond?

19 A: Yes. I got out on a \$10,000 bond.

20 Q: Okay.

21 Q: I mean a \$100,000 bond. Excuse me.

22 Q: During the -- the ordeal -- the ordeal you were talking  
23 about when you were in the house, were you injured?

24 A: Yes. They split my head open with an aluminum baseball  
25 bat where I had to get 28 staples in the top of my head.

## WILLIAM PEGUES - DIRECT BY MS. ALFORD

1 Q: Okay. Were you hospitalized?

2 A: Yes.

3 Q: Okay. What was the extent of your injuries?

4 A: What you mean extent?

5 Q: How severe?

6 A: Well, you could -- right now, I still got two deep dents  
7 in the top of my skull and you can still see the mark where I  
8 had the staples in my head where they had to put 28 staples  
9 in my head.

10 Q: How long were you in the hospital?

11 A: They did -- they -- they brought me from the hospital  
12 that night and took me to the county jail, which the next day  
13 when I fell out in the county jail and they had to take me  
14 back to the hospital.

15 Q: Did Ms. McIntyre call you during this period or contact  
16 you in any way?

17 A: No.

18 Q: Okay. Did you have a -- do you recall having a  
19 discussion with her once you were recently released from the  
20 hospital?

21 A: Just when I was coming to court.

22 Q: Okay. So you only spoke with her in court?

23 A: Yes. And then until -- not the day I got out the  
24 hospital. On another situation where I had to go to court  
25 and that's when she was calling me, you know, basically

WILLIAM PEGUES - DIRECT BY MS. ALFORD

1 telling me to take the plea, and I was letting her know I  
2 didn't want to take the plea, that I wanted to prove that it  
3 was more to my case than what went on and what was presented.

4 Q: So other than seeing her during scheduled court  
5 appearances, about how many times did you meet with her to  
6 discuss your case?

7 A: I'd say maybe two times, maybe three at the most, but I  
8 remember probably, like, twice.

9 Q: So maybe two times for about how long?

10 A: I can't quite say. Now, it's been a while. I can't.  
11 You know what I'm saying? There's been so much been going  
12 on.

13 Q: Okay. And back to you said she told you you should take  
14 a plea. What was the offer?

15 A: Their first offer I think I was supposed to have been  
16 getting, like, 12. They were trying to get me, like, 12  
17 years.

18 Q: Uh-huh.

19 A: But I was trying to let her know that I didn't -- I  
20 didn't break into the house, into the residence. I was  
21 trying to prove that I wasn't guilty of a burglary, you know,  
22 even though they had me for some other stuff. I was trying  
23 to prove I was defending myself because three people jumped  
24 on me in the house and took my cell phone to where I couldn't  
25 call the police.

WILLIAM PEGUES - DIRECT BY MS. ALFORD

1 Q: Did you tell Ms. McIntyre that you wanted a jury trial?

2 A: Yes.

3 Q: And what was her response?

4 A: She basically was telling me that -- basically, she was  
5 really saying -- like, I don't know if she was saying that  
6 she couldn't beat it or what, but she was telling me, boy,  
7 you better take this. You better take this. You know you're  
8 facing a life sentence.

9 Q: So she told you you were facing a life sentence and that  
10 you had to take the plea?

11 A: Basically, I was thinking I basically didn't have no  
12 other choice because I told her that I was going to ask the  
13 judge for another attorney and she told me the judge would  
14 not do that.

15 Q: So you said to Ms. McIntyre that you were going to  
16 request another public defender; is that correct?

17 A: Well, I was just telling her I was going to tell the  
18 judge --

19 MR. ISENBERG: Objection, Your Honor. I would say this  
20 is outside the scope of the allegations. He didn't allege  
21 failure to file a motion for relief, and I'd like to keep  
22 this hearing within the scope of the allegations presented.

23 THE COURT: All right. I understand the motion. I'm  
24 going to deny the motion. Go ahead and proceed.

25 BY MS. ALFORD:

WILLIAM PEGUES - DIRECT BY MS. ALFORD

1 Q: So you did let -- at some point let her know that you  
2 wanted a new attorney?

3 A: Yes. Because I feel like she wasn't trying to help  
4 prove what I was telling her. So I would let her know I was  
5 going to ask the judge for somebody else who was going to try  
6 to help me.

7 Q: And her -- what was her response?

8 A: She just told me the judge probably wasn't going to get  
9 me another lawyer because I had her for so long.

10 Q: Okay. And can you clarify for the Court? In your  
11 application you stated that counsel was unwilling to  
12 adequately assist me. What exactly do you mean by that?

13 A: Because I was basically letting her know that this guy  
14 had people to leave the scene of the crime.

15 Q: Uh-huh.

16 A: But when he -- when he would come into court, he was  
17 bringing these people with him that I -- that helped him beat  
18 me, and I was showing her that, like, look, these people were  
19 there at the house too.

20 Q: Okay.

21 A: So I was wondering why she wasn't trying to get their  
22 names and subpoena them to come to court to show the -- show  
23 the judge that this guy is not being truthful with everything  
24 that he's telling them, that there was more people in the  
25 house that he had to leave the scene of the crime.

WILLIAM PEGUES - DIRECT BY MS. ALFORD

1 Q: And when you -- again, back to when you told Ms.  
2 McIntyre that you wanted a jury trial, she -- did she just  
3 say no? What did -- what was her response?

4 A: Well, actually, she was trying to tell me, well, I don't  
5 think we can win. So obviously, I just want to let the judge  
6 know that I want another attorney, and she said -- she told  
7 me that she don't think the judge would give me another  
8 attorney because I had done had her for so long.

9 Q: Okay. In your amendment to your PCR application, your  
10 previous attorney, Mr. Boozer, on your behalf said that you  
11 pled guilty because you thought if you went to trial and were  
12 found guilty, you would automatically receive a life  
13 sentence; is that correct?

14 A: Well, I really just pled guilty because I feel like I  
15 didn't have no other choice. I feel like either I was going  
16 to take the 15 years or either I'm going to get a life  
17 sentence because I had already been -- I was already -- had  
18 thought about in my mind that I wouldn't have a chance to  
19 have another lawyer to help me because I had wanted another  
20 attorney, somebody that was going to try to help me, but I  
21 feel like I couldn't get another attorney because that's what  
22 she had told me.

23 Q: Were you ever able to discuss a possible sentence if you  
24 went to trial with your attorney, Ms. McIntyre?

25 A: No. The only thing she just told me -- she just said,

WILLIAM PEGUES - CROSS BY MR. ISENBERG

1 you know, you're facing a life sentence.

2 MS. ALFORD: No further questions, Your Honor.

3 Please answer any questions Mr. Isenberg may have.

4 THE COURT: Mr. Isenberg, cross-examination.

5 CROSS-EXAMINATION

6 BY MR. ISENBERG:

7 Q: Good morning.

8 A: Good morning.

9 Q: How are you doing?

10 A: I'm doing all right.

11 Q: Good. So you testified on direct that you believe your  
12 counsel didn't adequately investigate; correct?

13 A: Yes, sir.

14 Q: Okay. And you're saying that you believe she did not  
15 get sufficient facts from the witnesses who were at the house  
16 on the night of the incident; correct?

17 A: Correct.

18 Q: And you remember the plea hearing; correct?

19 A: Yes, very much.

20 Q: And you remember during her mitigation at the plea  
21 hearing she mentioned over the course of an entire page sort  
22 of the facts from -- sort of the facts of this case; correct?  
23 From the perspective of the people inside of the house;  
24 correct?

25 A: Well, not really because before all this happened, I

WILLIAM PEGUES - CROSS BY MR. ISENBERG

1 remind you I had just got out of the hospital. I hadn't been  
2 out of the hospital a month. I had had two slight strokes  
3 and a slight heart attack. So I still didn't realize what  
4 really was going on because I had been in a coma for 11 days  
5 when this -- when I had got out. This was after the other  
6 incident, but when I took this plea, I hadn't been out the  
7 hospital a month. I had been in the hospital.

8 Q: Right.

9 Q: You know what I'm saying? So I --

10 Q: But you would agree that she did -- in her mitigation,  
11 she did present the facts from your perspective, that there  
12 were people in the house who said some improper things while  
13 you were knocked unconscious; correct?

14 A: Well, the day that I took the plea, she kind of, like,  
15 told the judge something like that right there.

16 Q: Right.

17 A: But before then, nothing much had been said about it.

18 Q: And those were the facts that you wanted investigated;  
19 correct?

20 A: Yes. There's a lot of things that I had wanted  
21 investigated.

22 Q: Okay. So she -- she mentioned in her mitigation the  
23 facts that you wanted investigated. I just wanted to make  
24 sure we're on the same page.

25 A: Say what now?

## WILLIAM PEGUES - CROSS BY MR. ISENBERG

1 Q: She mentioned in her mitigation statement the facts that  
2 you wanted investigated; correct?

3 A: Did she mention that I wanted it investigated? I'm  
4 saying that's what I'm asking you.

5 Q: All right. I'll move on. So you believe that the  
6 people in the house showed up to your court hearing; correct?

7 A: I know they did.

8 Q: And do you --

9 A: The guy that helped beat me because he sat by my father  
10 and my sister in the courtroom.

11 Q: Okay. And you let your counsel know; correct?

12 A: I sure did.

13 Q: And you said, hey, go talk to those people because they  
14 were in the house that night; correct?

15 A: I told her. I said that's one of the guys that helped  
16 beat me.

17 Q: Okay. So you do admit that you were in the house;  
18 correct?

19 A: That I admit I was in the house?

20 Q: Yeah.

21 A: Yes.

22 Q: Okay. And you entered that house through the window;  
23 right?

24 A: No, I did not.

25 Q: Okay. How did you enter the house?

## WILLIAM PEGUES - CROSS BY MR. ISENBERG

1 A: Through the front door.

2 Q: Okay. And you -- and you believe that's the same  
3 statement you gave the Court during the plea hearing?

4 A: Yes. I never said I entered through no window.

5 Q: Okay. Was the front door unlocked?

6 A: The door was open. The guy let me in. I forgot the  
7 guy's name. He let me into the house.

8 Q: He let you in the house and then he started beating you?

9 A: No. Somebody else let me into the house.

10 Q: Okay. That -- okay. And you -- you would agree that  
11 that's not the same statement you gave the Court at your plea  
12 hearing; correct?

13 A: I would agree with what now?

14 Q: Well, at the plea hearing, the solicitor said that you  
15 entered the house without permission and you agreed with  
16 that. Do you remember that?

17 A: Yes. And I -- and I -- yes, and I told them why.

18 Q: And now you're saying that you entered the house with  
19 permission?

20 A: What I'm saying is when I went in the house, I told the  
21 police what he told me I better tell them because he told me  
22 he would kill me and my family. And the same guy that was at  
23 my house, he left there that night and went to my mama's  
24 house and told her that I was in the hospital because there  
25 was some more people that was there and the guy, Dale Lousy

WILLIAM PEGUES - CROSS BY MR. ISENBERG

1 [ph], the guy that stopped them from killing me after  
2 splitting my head open with a baseball bat.

3 Q: Okay. And you said -- you testified that you wanted to  
4 go to trial, but your counsel said that you should plead  
5 guilty; correct?

6 A: Yes. She told me I was facing a life sentence, facing  
7 30 years.

8 Q: Okay. So -- and you would agree that the minimum for  
9 first-degree burglary is 15 years and the maximum is life;  
10 correct?

11 A: I guess, yes.

12 Q: Yes. So you would be facing a life sentence if you went  
13 to trial; right?

14 A: But I would rather have took those chances to prove that  
15 what I was saying was true.

16 Q: Okay. She said you would be facing life if you went to  
17 trial; right?

18 A: She -- she told me I was facing a life sentence.

19 Q: Okay. And at trial on first-degree burglary, you  
20 would've been facing a potential sentence of life if found  
21 guilty; correct?

22 A: I guess so, yes. I guess.

23 Q: Okay. And knowing that, you decided to plead guilty to  
24 the --

25 A: No. It was not --

WILLIAM PEGUES - CROSS BY MR. ISENBERG

1 Q: -- mandatory minimum 15 years; correct?

2 A: That's not right. I took the plea because I feel like I  
3 didn't have no other choice. I wanted to try to prove my  
4 innocence.

5 Q: You wanted to try to prove your innocence by pleading  
6 guilty?

7 A: No. I wanted -- I wanted -- I wanted a chance. I  
8 wanted to have a fair trial, which was taken away from me. I  
9 wanted to go to trial.

10 Q: And do you remember the plea judge telling you you had  
11 the opportunity and the right to take it to a fair trial;  
12 correct?

13 A: To be honest with you, a lot of stuff I don't really  
14 remember because I think I was on medication because I had  
15 got out of the hospital. The only thing I know is that I  
16 just wanted to just go along with what was said because I  
17 felt like I didn't have no other choice.

18 Q: Right. So you remember feeling like you didn't have a  
19 choice; correct?

20 Q: Yeah. I feel like I had no other choice.

21 Q: Okay. So you remember that, but you don't remember  
22 anything else?

23 A: Like I'm telling you, I hadn't been too long got out the  
24 hospital and I think I was on medication. You've got to  
25 understand I done had my head split open and then I had done

WILLIAM PEGUES - CROSS BY MR. ISENBERG

1 been in the hospital for three weeks in a coma. I'm just  
2 saying there's a lot of stuff that I don't remember and a lot  
3 of stuff that I do, but I was -- and I was up under a lot of  
4 duress and a lot of stress at the time.

5 Q: Okay. So you do remember entering the house with  
6 permission, but you don't remember why you entered when you  
7 pleaded guilty?

8 A: Why I don't remember why I entered the plea of guilty?

9 Q: Yeah. I'm just -- it sounds like selective memory.  
10 Would you agree?

11 A: No. I'm just saying I -- I entered the plea of guilty  
12 because I feel like I didn't have no other choice.

13 Q: Okay.

14 A: Because I had done told her I wanted to talk to the  
15 judge and get another attorney and she told me that he  
16 wouldn't let me get another attorney.

17 Q: Okay.

18 MR. ISENBERG: I have no further questions for this  
19 witness, Your Honor.

20 THE COURT: Redirect?

21 MS. ALFORD: No redirect, Your Honor.

22 THE COURT: Thank you, sir. You may step down.

23 THE APPLICANT: Thank you, sir.

24 THE COURT: You may call your next witness.

25 MS. ALFORD: We'd call Ms. Ashley McIntyre.

ASHLEY MCINTYRE - DIRECT BY MS. ALFORD

1 THE COURT: All right. Ma'am, do you swear or affirm  
2 the evidence you're about to give is the truth?

3 THE WITNESS: Yes, sir.

4 THE COURT: Please be seated.

5 ASHLEY MCINTYRE, being first  
6 duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. ALFORD:

9 Q: Ms. McIntyre, will you please state your name for the  
10 record?

11 A: It's Ashley Douglas McIntyre.

12 Q: And what do you do for a living?

13 A: I am a Chesterfield County public defender.

14 Q: Okay. And you're familiar with Mr. Pegues?

15 A: Yes. I'm aware of him.

16 Q: You represented him back in -- I believe it was 2017?

17 A: Yes. I represented him from 2000 -- January -- excuse  
18 me -- January of 2016 until his plea on January of 2017, with  
19 about a four-month -- four-month gap when someone else  
20 represented him.

21 Q: Okay. So that's about eight months because it was a  
22 year span of time. So you represented him for about eight  
23 months?

24 A: Yes.

25 Q: And you represented him, you stated, throughout his case

ASHLEY MCINTYRE - DIRECT BY MS. ALFORD

1 minus those four months, as well as during his plea?

2 A: Yes.

3 Q: I'm going to jump straight into what he's alleging. He  
4 alleges -- he's alleging that you failed to adequately  
5 investigate. Did you ever visit the scene of the incident?

6 A: No, I never visited the scene of the house that it took  
7 place. In fact, the discovery provided almost 100 pictures,  
8 and the front door and all that was part of the discovery.  
9 So I never thought it prudent to actually visit the home.

10 Q: Well, as far as by way of investigation, what did you do  
11 outside of meeting with Mr. Pegues?

12 A: Well, first, I think I should start by saying that the  
13 discovery was -- was given and it was pretty complete. They  
14 had video interviews of Mr. Pegues, his two co-defendants, as  
15 well as Ricky Bullock, which is the main victim in this case,  
16 as well as the other victim for a charge that was dismissed  
17 as a result of his plea, Mr. Gary Foreshee. So in reviewing  
18 their interviews, it did give me a very complete picture of  
19 everybody's story, if anything was missing.

20 So my first step was, obviously, to discuss this with my  
21 client and -- and get his version of the events officially  
22 because I did represent him before. I was assigned to him  
23 for his bond hearing two days after the incident occurred.  
24 So briefly we talked about the case then, but, you know, that  
25 -- that occurred in court while they were waiting. So it was

ASHLEY MCINTYRE - DIRECT BY MS. ALFORD

1 only about a 20-minute conversation.

2 After getting his side of the story, I did attempt to  
3 run down some of what he said, but his -- his version to me  
4 was very similar to his version to the -- the agent, Agent  
5 Tubbs, that took his initial interview. There wasn't much  
6 left to run down other than some of the things he told me  
7 were kind of known around the community. The victim was a  
8 known drug dealer.

9 This -- this story that he told about they invited him  
10 in and then they proceeded to attempt to kill him, I did  
11 investigate that to the best that I could. And in reading  
12 between the lines, I solely believed, as I said in the plea,  
13 that Ricky Bullock, the victim in this case, had every  
14 intention of, you know, killing my client and disposing of  
15 his body. Had it not been for the other victim in the house  
16 calling the police, I think that alone probably saved his  
17 life.

18 As I explained to Mr. Pegues though, that doesn't negate  
19 the -- the elements of burglary and -- and what occurred up  
20 until that point that he finally got the drop on my client,  
21 which was my client walking in, shooting multiple shots, and  
22 then beginning to actually physically fight with both the  
23 victims.

24 Q: Okay. About how many times outside of -- because I know  
25 you just testified to you had this conversation with him in

ASHLEY MCINTYRE - DIRECT BY MS. ALFORD

1 court about 20 minutes. Outside of court appearances, about  
2 how many times would you say you -- over that 8 months you  
3 visited him or had a conversation, a meeting with him?

4 A: I can't say without a shadow of a doubt, but I do know  
5 that before the case was assigned to someone else, I met with  
6 him two to three times. And then whenever the case was  
7 officially set for trial, I was not able to contact him for  
8 quite some time, but as soon as I was, we met at least three  
9 or four times.

10 Three of those times would have been in the presence of  
11 our Fourth Circuit Public Defender, Matt Rivers. He being my  
12 boss, I asked him to join in on the case just to, you know,  
13 have a second opinion and make sure I wasn't missing any  
14 investigation I needed to do, I wasn't, you know, being  
15 unclear with my client. So the last three meetings I had  
16 with him, Matt Rivers also was there. They were quite  
17 lengthy and he -- he talked to my client one-on-one and  
18 answered, you know, the same questions I had answered  
19 previously.

20 Q: Did Mr. Pegues at any point tell you that he wanted to  
21 go to trial?

22 A: I don't recall him telling me he wanted to go to trial,  
23 but I will say that not being able to get in touch with him,  
24 I did later learn that he had an altercation with the police  
25 officers where they had to apprehend him.

## ASHLEY MCINTYRE - DIRECT BY MS. ALFORD

1 Q: Uh-huh.

2 A: So when I finally did get in touch with him, it was, you  
3 know, a month away from when his trial would have been. So,  
4 of course, I took preparations to prepare for a trial, simply  
5 because up until, you know, right before, you just don't  
6 really know how these things will work out.

7 Q: When did you discuss the offer with him?

8 A: We did that sort of early on because, according to my  
9 notes, the written plea offer was given a day or two before  
10 we had our first court appearances. So he -- that was March,  
11 on March 17<sup>th</sup> was his first court appearance. When he came,  
12 we then proceeded. After appearances, I had him come to my  
13 office and we went over the offer, the elements of the crime,  
14 what -- you know, what it carried up to and -- and all of  
15 that.

16 Q: Okay. And as far as the allegation in the amendment, do  
17 you recall saying to Mr. Pegues that if he went to trial and  
18 was found guilty, he would automatically receive a life  
19 sentence?

20 A: No. I think my -- my boss, who was also present at the  
21 last few meetings, could -- could back me up in saying that I  
22 -- I would never tell him that. That would be up to the  
23 judge.

24 I'm sure that I told him multiple times that burg first  
25 carries a mandatory minimum 15 years and up to life. And

ASHLEY MCINTYRE - DIRECT BY MS. ALFORD

1 sometimes I tell my clients, you know, that if you exercise  
2 your right to a jury trial, you might expect for it to be  
3 something more than the mandatory minimum, but at no point  
4 would I have told him he automatically would receive life.

5 MS. ALFORD: No further questions, Your Honor.

6 THE COURT: Cross-examination.

7 MR. ISENBERG: Yes, Your Honor. May it please the  
8 Court.

9 THE COURT: Certainly.

10 CROSS-EXAMINATION

11 BY MR. ISENBERG:

12 Q: Good morning/afternoon. I can't read that clock really  
13 well. You testified on direct that you never guaranteed a  
14 life sentence at trial; correct?

15 A: No, sir.

16 Q: Okay.

17 A: I never did.

18 Q: So let's deconstruct that. So you did advise him that  
19 he was exposed to a life sentence at trial based upon first-  
20 degree burglary?

21 A: I advised him of that multiple times.

22 Q: And --

23 A: So when my boss met with him, he would say the same  
24 thing.

25 Q: All right.

ASHLEY MCINTYRE - CROSS BY MR. ISENBERG

1 A: He did the same thing.

2 THE COURT REPORTER: Speak up.

3 THE WITNESS: I'm sorry.

4 BY MR. ISENBERG:

5 A: I did advise him several times of each of the charges  
6 that -- he had, originally, five charges and we went over  
7 multiple times what the minimum and maximum sentences for  
8 each would have been.

9 Q: Right. And you also testified that you told him the  
10 mandatory minimum was 15 years; correct?

11 A: Yes. For the burg first.

12 Q: Okay. And he ended up deciding to plead guilty to the  
13 mandatory minimum of 15 years; correct?

14 A: That's correct.

15 Q: Okay. And did you discuss with him the benefit of  
16 pleading guilty to the mandatory minimum as opposed to being  
17 exposed to life at trial?

18 A: Absolutely.

19 Q: And is that why he decided to take the plea of guilty?

20 A: I'm sure that's why. I do know that the last few  
21 meetings we had where Matt Rivers was also present, his  
22 concerns were -- and justly so. The victim in this case, you  
23 know, is -- actually, I think he's serving a life sentence  
24 right now. He's not a great human being, very known drug  
25 dealer, bad drug dealer, apt to violence, and I think his

ASHLEY MCINTYRE - CROSS BY MR. ISENBERG

1 biggest concern was he didn't think it was fair that, you  
2 know, here's this man that's causing society all these  
3 troubles and he was just trying to protect society in his --  
4 in his view.

5 Q: Right. And I think everyone can understand his issues  
6 with the victim in this case, but on that note, did you  
7 explain to him the differences between sort of his feelings  
8 on the victim and being guilty of the crime of first-degree  
9 burglary?

10 A: Absolutely. We went over the elements numerous times  
11 and how, you know, his version -- I even explained to him  
12 that I believed fully that Mr. Bullock would have probably  
13 killed him and no one would have --

14 Q: Right.

15 A: -- ever known, but that still was not a defense to any  
16 crime he was charged with.

17 And I do want to add that the -- the other person -- at  
18 least one of the other persons that was in the house that my  
19 client made me aware of, he was at the hearings, but he was  
20 also a victim and gave a full statement to the police as  
21 well. His name is Gary Foreshee and he -- he was the person  
22 that was actually in the living room when they first entered  
23 the house.

24 Q: Okay.

25 A: So the first shots were -- I guess he would have

ASHLEY MCINTYRE - CROSS BY MR. ISENBURG

1 perceived them as being towards him.

2 Q: Right. And sort of on that note, I think that's a good  
3 jumping off point to segue to the investigation. You  
4 investigated his version of events to sort of find out  
5 whether he had permission to enter the house? I think that's  
6 correct?

7 A: Yes. To the best of my ability. Obviously, both of his  
8 co-defendants had -- had their own representation. So I did  
9 not speak to them personally, but I did watch their  
10 interviews, talked to their -- their attorneys.

11 And from -- from what I could gather, a lot of his story  
12 was -- was correct, but basically, the interviews that were  
13 given to the police, they seemed to coincide with what  
14 accounts the others were giving after the fact. In fact, I  
15 think one of the co-defendants, Marcus McManus, the one that  
16 was actually there with him, he was set to testify against my  
17 client had we gone to trial.

18 Q: So to summarize, as a result of your investigation  
19 through watching the interviews, sort of comparing stories,  
20 you realized that the evidence against him was strong that he  
21 did not have permission, based upon the facts presented that  
22 he walked into the house with a firearm and started firing  
23 shots; correct?

24 A: That's correct.

25 Q: Okay. And you also testified that you investigated the

ASHLEY MCINTYRE - CROSS BY MR. ISENBERG

1 other people in the house when in preparation for trial;  
2 correct?

3 A: Yes. Well, I attempted to, but the one that I think Mr.  
4 Pegues talked about was the -- was actually present during  
5 the hearings. That person was a victim in the case. He  
6 actually was charged with two counts of ABHAN, one being  
7 against that person, Gary Foreshee. The other people that he  
8 named were never -- by law enforcement or myself, we were  
9 never able to accurately track down. They were -- you know,  
10 if he knew their names at all, it was their street names. So  
11 --

12 Q: Right.

13 A: -- we were never able to track down anyone further. And  
14 quite honestly, given the statements that his co-defendants  
15 and all the victims said, the fact that they all added up,  
16 I'm not so sure that would have helped his case.

17 Q: So you're -- what you're saying is, to summarize, any  
18 individuals who you didn't investigate, you didn't have the  
19 names of to look that were in the house that night; correct?

20 A: Right. I attempted to investigate.

21 Q: Okay. And I think I lost my train of thought. And so  
22 you -- sorry. You were prepared to go to trial on this case;  
23 correct?

24 A: That's correct.

25 Q: Okay. And so you testified that you could not locate

ASHLEY MCINTYRE - CROSS BY MR. ISENBERG

1 the applicant until about a month before trial; correct?

2 A: Let's see. I was given official notice that he was  
3 first up for trial on January 10<sup>th</sup> on December 21<sup>st</sup>. I had  
4 already been made apprised of his ICU stint to the Cheraw  
5 Hospital. In fact, he received additional pending charges  
6 from that incident. That day, December 21<sup>st</sup>, the day I  
7 received notice, I attempted to call with all -- all phone  
8 numbers we had on file unsuccessfully, and I cannot tell you  
9 the exact date from that point until right before trial that  
10 I was able to get in contact with him.

11 Q: Okay. So you attempted to contact him through multiple  
12 avenues multiple times in preparation for trial; correct?

13 A: That's right.

14 Q: Okay. And you did that over the course of a couple of  
15 months?

16 A: That would have been about two weeks.

17 Q: Okay.

18 A: I knew he was hospitalized. I was made aware of that  
19 about mid-December.

20 Q: Uh-huh.

21 A: But I was also made aware that he was no longer in the  
22 hospital and the circumstances surrounding that  
23 hospitalization. Namely, I talked to the SWAT team leader  
24 and the Solicitor's Office about their version of what had  
25 happened there, and I think that, ultimately, he was sent to

ASHLEY MCINTYRE - CROSS BY MR. ISENBERG

1 the ICU for a drug overdose. I cannot be 100 --

2 Q: Right.

3 A: -- percent positive on that though.

4 Q: So despite not being able to contact him, you still  
5 investigated his case through other avenues, such as the  
6 videos and other statements given by law enforcement;  
7 correct?

8 A: Correct. As well as --

9 Q: Okay.

10 A: -- getting some of my colleagues to overlook, you know,  
11 the steps I had done just to make sure I wasn't missing  
12 anything.

13 Q: And all of that investigation that you sort of conducted  
14 throughout this case and in part not being able to contact  
15 the client, you still gave -- you were able to give a  
16 mitigation statement sort of relating the facts that were  
17 favorable to your client that wanted -- that he wanted to be  
18 sort of given to the Court; correct?

19 A: Yes. I knew it was important to him and with good  
20 reason. I thought that, you know, so many times my clients  
21 have to come to court, bond hearing being the first one,  
22 where they have to sit there and take hearing, you know,  
23 another side and victims in the case tell their side of the  
24 story and they just have to sit there and take it.

25 So I thought that it was very important to at least make

ASHLEY MCINTYRE - CROSS BY MR. ISENBERG

1 the judge aware of, you know, he didn't just simply walk in  
2 on perfectly innocent people and start shooting. And they  
3 didn't simply apprehend him and wait for the cops. They --  
4 they did severe damage to him. In fact, at the bond hearing,  
5 he looked totally different. His head was completely split  
6 open.

7 Q: Right. And I would -- I would say you would agree  
8 objectively that you didn't have to present these facts to  
9 the Court because they weren't necessarily relevant to the  
10 first-degree burglary, but you did anyway as an advocate for  
11 your client; correct?

12 A: Yes.

13 Q: And do you believe there's anything else you could have  
14 done investigation-wise for your client?

15 A: No. I feel confident in saying that I don't -- I don't  
16 think there was. You know, I wasn't 100 percent sure when I  
17 wasn't able to -- to discuss it with my client. That's why I  
18 got, you know, my boss on board to overlook things --

19 Q: Right.

20 A: -- and give me advice on if I, you know, was missing  
21 anything, what I needed to do -- excuse me -- what I needed  
22 to do more. So I can say with a lot of confidence that I did  
23 everything in my power.

24 Q: Were any names presented here today that you didn't  
25 already recognize?

## ASHLEY MCINTYRE - CROSS BY MR. ISENBERG

1 A: No.

2 Q: Okay. So no one -- no name has been spoken here today  
3 that you could have investigated?

4 A: No.

5 Q: Okay. And as for erroneous advice, you told him he  
6 could have been exposed to a life sentence at trial but did  
7 not guarantee it; correct?

8 A: Right.

9 Q: Okay. And do you feel confident that you gave him  
10 accurate advice in preparation for his plea of guilty?

11 A: Absolutely.

12 Q: Okay.

13 A: And I also had someone else talk to him, another  
14 attorney.

15 Q: Okay. And you don't feel like there's anything  
16 differently you could have done in this case?

17 A: No, sir.

18 Q: Okay. And my last question would be do you believe the  
19 benefit of the plea bargain was to get the mandatory minimum  
20 instead of being exposed to life?

21 A: Absolutely. Additionally, we got two other charges  
22 dropped, a kidnapping and another assault and battery of a  
23 high and aggravated nature. And unofficially, the -- the  
24 other charges from what occurred a month before the plea deal  
25 were resolved as well.

ASHLEY MCINTYRE - REDIRECT BY MS. ALFORD

1 Q: Okay.

2 MR. ISENBERG: No further questions for this witness.

3 MS. ALFORD: Just one question, Your Honor.

4 REDIRECT EXAMINATION

5 BY MS. ALFORD:

6 Q: You testified that you discussed the benefit of pleading

7 --

8 A: Uh-huh.

9 Q: -- guilty. When did that conversation take place?

10 A: It would have taken place somewhat when we met when the  
11 offer was given when we met on March 27<sup>th</sup>. By that time, I  
12 can't recall off the top of my head, but I do think that I  
13 had a lot of the discovery already in place that we were able  
14 to discuss, but more so in the days leading up to his trial  
15 date, the days that -- pretty much the only days we could  
16 talk that I was able to get in touch with him.

17 We did meet one time after I was reassigned the case.  
18 As soon as I was reassigned it, I scheduled a meeting just to  
19 kind of get -- figure out what was happening in the case. He  
20 didn't show up to the first meeting, which was scheduled  
21 November 22<sup>nd</sup>, but he did show to the second one on November  
22 28<sup>th</sup>, and I feel sure we would have discussed in a lot more  
23 detail at that meeting.

24 MS. ALFORD: No further questions, Your Honor. Thank  
25 you.

1 THE COURT: All right. Thank you, ma'am. You may step  
2 down.

3 You may call your next witness.

4 MS. ALFORD: No further witnesses.

5 MR. ISENBERG: Your Honor, the State has no witnesses,  
6 but it does request a brief and promises that --

7 THE COURT: Certainly.

8 MR. ISENBERG: -- a brief closing argument.

9 THE COURT: I'll be glad to hear from you.

10 MR. ISENBERG: Your Honor, the State's -- it's -- to the  
11 best of my knowledge, the applicant has presented two claims,  
12 the failure to investigate and the failure to -- oh, I'm  
13 sorry. An involuntary guilty plea based upon erroneous  
14 advice and the desire to go to trial.

15 First off, with the failure to investigate, counsel  
16 provided credible testimony that she investigated not only  
17 the witnesses that she was given, but also looked at the  
18 interviews to make sure that the stories matched up. And she  
19 investigated the applicant's version of events to see if  
20 there was anything more to his proclamation that he did have  
21 permission to enter the house, and she said that she sort of  
22 came to -- she didn't find anything that would have been  
23 favorable to prove that he did not have permission to enter  
24 the house.

25 She did also say that there were no concrete names given

1 to her during the investigation that she did not investigate,  
2 and the applicant did not raise any more names here that  
3 could have been investigated that weren't already done at the  
4 -- before pleading guilty.

5 So I would say on a prejudicial prong, he has failed to  
6 overcome his burden of proof that an investigation would have  
7 led to any more names, concrete names that would have  
8 provided favorable evidence.

9 And as I already stated, the deficiency prong, he's  
10 failed to overcome the burden of proof that counsel did not  
11 investigate the statements, his version of events, and the  
12 witnesses given to her throughout the course of this case.

13 As for the erroneous advice which led to his guilty  
14 plea, the applicant admitted that counsel phrased it such  
15 that he would be exposed to life at trial. The fact is he  
16 would have been exposed to life at trial because he would've  
17 been on trial for first-degree burglary.

18 That's exactly the testimony that counsel gave us. I  
19 think at this point it's undisputed that she told him he  
20 would be exposed to life at trial and he ended up pleading  
21 guilty because he got the mandatory minimum for first-degree  
22 burglary. That was the benefit of the plea -- the plea  
23 bargain.

24 So I would certainly say there was no deficient advice  
25 given and, on top of that, there was -- there's been no

1 prejudice proven because everyone agrees that he took the  
2 mandatory minimum of 15 years knowing that he could have been  
3 exposed to life. That was his motivation to plead guilty.

4 And with that, I'll rest. And if you have any  
5 questions, please let me know.

6 THE COURT: All right, sir.

7 Ms. Alford?

8 MS. ALFORD: May it please the Court, Your Honor.

9 The -- the biggest issue raised by Mr. Pegues as the  
10 applicant is that he felt like he had no other choice. Even  
11 throughout his testimony, he said I pled guilty because I  
12 felt like I had no other choice. He testified that he even  
13 informed counsel, his defense counsel, that he wanted to go  
14 to trial and that, if not, you know, he wanted to seek  
15 another attorney.

16 In his amendment, he stated that he pled guilty because  
17 he thought if he went to trial and was found guilty, he would  
18 automatically receive a life sentence, which was his  
19 testimony, not that he would be exposed to a life sentence.

20 He feels that his right to choose was somewhat taken  
21 away and he was forced into this guilty plea, and we ask that  
22 the Court please take the testimony provided by him, as well  
23 as what he pled in his application, into consideration.

24 RULING

25 THE COURT: All right. The Court does take all of that

1 in consideration, but nevertheless, the Court agrees with the  
2 position of any arguments made by the Attorney General on  
3 behalf of the State. Consequently, the Court is compelled to  
4 deny the application for post-conviction relief.

5 I'm going to ask Mr. Isenberg if he would prepare an  
6 order within 20 days consistent with these instructions.

7 MR. ISENBERG: Thank you, Your Honor.

8 THE COURT: All right, sir.

9 MS. ALFORD: Thank you, Your Honor.

10 (WHEREUPON, the proceedings ended.)

11

12 --- END REQUESTED TRANSCRIPT ---

13

14

15

16

17

18

19

20

21

22

23

24

25



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS	
	)	FOR THE FOURTH JUDICIAL CIRCUIT	
COUNTY OF CHESTERFIELD	)		
William S. Pegues,	)	Case No.: 2017-CP-13-00252	
S.C.D.C. No. 261269,	)		
	)		
Applicant,	)	<b>ORDER OF DISMISSAL</b>	
v.	)		
State of South Carolina,	)		
	)		
Respondent.	)		

2019 SEP 30 PM 12: 06  
 Wanda C. Miles  
 CLERK OF COURT  
 CHESTERFIELD COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief filed by William S. Pegues (“Applicant”) on April 28, 2017. Respondent made its return on December 4, 2017. The Court convened an evidentiary hearing into the matter on August 21, 2017, at the Chesterfield County Courthouse. Applicant was present at the hearing and represented by Sherril Alford, Esquire. Jacob A. Isenberg, of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant’s plea counsel, Ashley McIntyre, Esquire (“Counsel”) also testified. The Court had before it Applicant’s records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Chesterfield County Clerk of Court regarding the subject convictions, Applicant’s direct appeal records, and pleadings. After a thorough review of all evidence and testimony in the record, this Court finds Applicant’s application should be dismissed with prejudice.

**I. PROCEDURAL HISTORY**

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Chesterfield County Clerk of Court. Applicant was indicted at the March



2016 term of the Chesterfield County Grand Jury for burglary, first degree (2016-GS-13-00077), assault and battery of a high and aggravated nature (2016-GS-13-00078), and possession of a weapon during the commission of a violent crime (2016-GS-13-00079). Ashley McIntyre represented Applicant, and Mary T. Johnson-Lee, of the Fourth Circuit Solicitor's Office, prosecuted the case.

On January 10, 2017, Applicant pled guilty as indicted. The Honorable Paul M. Burch sentenced Applicant to imprisonment for concurrent terms of seven years for ABHAN, and five years for possession of a weapon during the commission of a violent crime. Applicant again appeared before the Court on January 11, 2017, at which time Judge Burch sentenced him to a concurrent term of fifteen years for the burglary.

Applicant, by and through representation, filed a timely notice of appeal wherein Counsel indicated that she was "not aware of an appellate issue preserved for appeal. [Counsel] only filed this Notice of Appeal because my client requested such." By order dated February 16, 2017, the South Carolina Court of Appeals dismissed the appeal for want of a sufficient explanation as required by Rule 203(d)(1)(B){iv}, SCACR. State v. Pegues, S.C. Ct. App. Order filed February 16, 2017. The Remittitur was issued on March 6, 2017.

**II. CURRENT ALLEGATIONS**

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

- 1. Ineffective Assistance of Counsel
  - a. 'counsel failed to adequately investigate'
- 2. Involuntary Guilty Plea
  - a. "counsel was unwilling to adequately assist me had I chosen to take counsel's erroneous advice and went to trial to prove my innocence"
- 3. Due Process Violation

Applicant requests relief as follows:

Wanda C. Miles  
CLERK OF COURT  
CHESTERFIELD COUNTY, SC  
2019 SEP 30 PM 12: 07

- “Vacate sentences and convictions and remand for new trial”

At the evidentiary hearing, Applicant proceeded forward on allegations of ineffective assistance of counsel and an involuntary guilty plea. However, Applicant did not provide any evidence or testimony about his due process violation allegation. Therefore, this Court finds Applicant’s allegation regarding a due process violation is dismissed with prejudice.

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

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

#### A. Ineffective Assistance of Counsel

Applicant’s allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel’s performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its

2019 SEP 30 PM 12:07  
 Wanda C. Mass  
 CLERK OF COURT  
 CHESTERFIELD COUNTY, SC

“reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” Yarborough at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced 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. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he/she would not have pleaded guilty and would have insisted



on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975)).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Id. at 696-97.

#### **Failure to Investigate Witnesses**

Applicant contends Counsel deficiently failed to interview witnesses present during the incident. In reviewing a claim that defense counsel failed to properly investigate a defense to a crime, a court's principle concern is whether the investigation "was itself reasonable." Taylor v. State, 404 S.C. 350, 364, 745 S.E.2d 97, 104 (2013). However, Counsel is not deficient in conducting a reasonable investigation as long as they interview potential witnesses "when it is reasonable to do so." Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2001).

Here, Applicant testified there were several people in the house where the incident took place. Applicant testified some of them witnessed him being brutally beaten by a resident of the home. Applicant also testified one of them actually gave him permission to enter the home. Finally, Applicant testified he notified Counsel to interview all of them.

On the other hand, Counsel credibly testified she investigated all the factual witnesses identified by law enforcement. Counsel credibly recalled law enforcement turned over multiple statements from all named eyewitnesses. Counsel credibly testified Applicant did not provide her with any additional individuals to investigate beyond those identified by law enforcement. Moreover, Counsel credibly testified she advised Applicant being assaulted inside the residence was not a defense to first degree burglary. Therefore, Counsel credibly testified witnesses corroborating him being beaten would not likely be seen as relevant. Additionally, Counsel credibly testified she reviewed all statements taken by law enforcement. Counsel credibly testified the statements taken did not reflect Applicant had permission to enter the home. In fact, Counsel credibly recalled residents of the home stated they only realized Applicant entered the home after he began firing gunshots.

Accordingly, this Court finds Counsel gave credible testimony on the issue. Counsel read the witness statements then listened to Applicant tell his side of the story. Thereafter, she accurately advised him the assault would not apply to defending a first degree burglary charge. Further, she advised him all factual witnesses gave written statements indicating he barged into the house firing shots without permission. Therefore, this Court finds Counsel reasonably decided not interview witnesses where she had their written statements and determined the assault to irrelevant to a defense of first degree burglary. This Court further finds Applicant has failed to

2016 SEP 30 PM 12: 07  
Wanda C. Miles  
CLERK OF COURT  
CHESTERFIELD COUNTY, S.C.

overcome the burden to prove Counsel was deficient based upon a failure to interview eyewitnesses.

Applicant contends a factual witness would have testified he had permission to enter the home. The prejudice prong is dependent upon whether counsel's deficiencies "affected the outcome of the plea process." Frierson v. State, 417 S.C. 287, 789 S.E.2d 762 (Ct. App. 2016), *aff'd as modified*, 423 S.C. 257, 815 S.E.2d 433 (2018). To establish it through witness corroboration an applicant "must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. SCRE 801. Mere "speculation" about the details of what a witness would testify about is insufficient to establish prejudice. Dalton v. State, 376 S.C. 130 at 143, 654 S.E.2d 870 at 877.

Here, Applicant did not specifically name the individual who allegedly gave him permission to enter the home. Moreover, nobody testified on his behalf at this evidentiary hearing. Therefore, this Court finds Applicant is insufficiently speculating he would receive favorable testimony from the unidentified witness. This Court finds Applicant has failed to overcome the burden to prove he suffered prejudice resulting from the failure to interview factual witnesses.

### **B. Involuntary Guilty Plea**

To find a guilty plea voluntarily and knowingly, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000). Also, an applicant's statements during the plea hearing are considered "conclusive unless [he] presents valid reasons why he should be allowed to depart

from the truth” of them. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007). Finally, the plea colloquy can cure any alleged deficiency if counsel not properly advise an applicant about the consequences of accepting it. See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997) (stating that plea counsel’s deficient performance can be cured by the plea court’s colloquy).

**Erroneous Sentence Advice**

Applicant contends he did not enter a knowing plea based upon wrongfully believing conviction at trial would automatically result in a life sentence. Burglary in the first degree is a felony punishable by life imprisonment. S.C. Code Ann. § 16-11-311 (B). However, a court may sentence the defendant to a term of not less than fifteen years. Id.

Here, Applicant testified he wanted to go to trial on the first degree burglary charge. Thereafter, Applicant testified Counsel advised him conviction at trial would result in a mandatory sentence of life without parole. Finally, Applicant testified he entered a guilty plea to avoid exposure to this mandatory life sentence at trial.

On the other hand, Counsel credibly testified she accurately advised Applicant about sentencing requirements for first degree burglary. Specifically, Counsel credibly testified she advised Applicant he could receive a life sentence if a jury found him guilty. However, Counsel credibly testified she advised Applicant he could not receive less than fifteen years if a jury found him guilty.

Accordingly, the issue here is whether Applicant knew the potential consequences of being convicted of first degree burglary. Counsel gave credibly testimony she accurately advised Applicant about relevant sentencing consequences. Also, the plea court advised Applicant about potential sentencing consequences of first degree burglary. (Tr. 4). Thereafter, Applicant notified

the plea court he still wished to plead guilty. (Tr. 5). Accordingly, this Court finds Applicant knew the potential consequences of being convicted of first degree burglary. As a result, he has failed to overcome the burden to prove his decision to plea was not knowing or voluntary.

**IV. CONCLUSION**

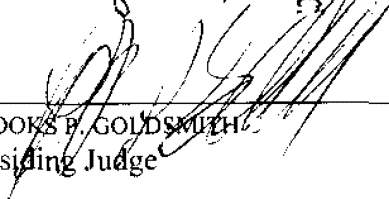
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel’s assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant’s behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 19 day of September, 2019.

  
 \_\_\_\_\_  
 BROOKS P. GOLDSMITH  
 Presiding Judge

Wanda C. Miles  
 CLERK OF COURT  
 CHESTERFIELD COUNTY, S.C.  
 2019 SEP 30 PM 12: 07

Fourth Judicial Circuit

\_\_\_\_\_, South Carolina

2019 SEP 30 PM 12: 07

Wanda C. Miles  
CLERK OF COURT  
CHESTERFIELD COUNTY, S.C.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHESTERFIELD )

INDICTMENT FOR  
Burglary - First degree  
§16-11-0311

At a Court of General Sessions, convened on March 15, 2016, the Grand Jurors of Chesterfield County present upon their oath:

BURGLARY, 1<sup>ST</sup> DEGREE

CDR: 0079 16-11-0311

That William Saragarra Andre Pegues did in Chesterfield County on or about January 11, 2016, enter the dwelling of Ricky Bullock located at [redacted] Hickory Rd., Chesterfield, SC, without consent and with the intent to commit a crime therein and the defendant did so in the nighttime, while armed with a deadly weapon, in violation of Section 16-11-0311, 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.

  
WILLIAM B. ROGERS, JR.  
SOLICITOR

WITNESSES

A Tubbs

Chesterfield County Sheriff

Law Enforcement Case #:

*[Handwritten Signature]*

347

WAIVER OF PRESENTMENT

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

Defendant

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

Defendant

ARREST WARRANT NUMBER  
2016A1310400014

ARRESTED ON: 2016-01-12

ACTION OF GRAND JURY

*True Bill*

*[Handwritten Signature]*  
Grand Jury Foreperson

*3-15-16*  
Date

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:  
2016-GS-13-0077

The State of South Carolina

County of Chesterfield

COURT OF GENERAL SESSIONS

Term:  
March 2016

THE STATE

vs.

William Saragarra Andre Pegues

INDICTMENT FOR

Burglary - First degree

§16-11-0311

CDR Code: 0079

William B. Rogers, Jr., Solicitor



WITNESSES

A Tubbs

Chesterfield County Sheriff

Law Enforcement Case #:

 347  
WAIVER OF PRESENTMENT

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

Defendant

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

Defendant

ARREST WARRANT NUMBER  
2016A1310400015

ARRESTED ON: 2016-01-12

ACTION OF GRAND JURY

True Bill

  
Grand Jury Foreperson

2-15-16  
Date

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:  
2016-GS-13-0078

The State of South Carolina

County of Chesterfield

COURT OF GENERAL SESSIONS

Term:  
March 2016

THE STATE

vs.

William Saragarra Andre Pegues

INDICTMENT FOR  
ASSAULT AND BATTERY OF A HIGH AND  
AGGRAVATED NATURE

§16-03-0600(B)(1)

CDR Code: 3411

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	
COUNTY OF CHESTERFIELD	)	Possession of a Weapon During the Commission of a Violent Crime

§16-23-0490

At a Court of General Sessions, convened on March 15, 2016, the Grand Jurors of Chesterfield County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION  
OF A VIOLENT CRIME

CDR: 0549 16-23-0490

That William Saragarra Andre Pegues did in Chesterfield County, on or about January 11, 2016, possess a firearm, or visibly display what appeared to be a firearm,, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

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

  
 WILLIAM B. ROGERS, JR.  
 SOLICITOR

WITNESSES

A Tubbs

Chesterfield County Sheriff

Law Enforcement Case #:

 347  
WAIVER OF PRESENTMENT

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

Defendant

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

Defendant

**ARREST WARRANT NUMBER  
2016A1310400016**

ARRESTED ON: 2016-01-12

**ACTION OF GRAND JURY**

True B:11

  
Grand Jur. Foreperson

3-15-16  
Date

**VERDICT**

Petit Jury Foreperson

Date

**DOCKET NUMBER:  
2016-GS-13-0079**

**The State of South Carolina**

**County of Chesterfield**

**COURT OF GENERAL SESSIONS**

**Term:  
March 2016**

**THE STATE**

vs.

**William Saragarra Andre Pegues**

**INDICTMENT FOR**

**Possession of a Weapon during Commission of a  
Violent Crime**

§16-23-0490

**CDR Code: 0549**

**William B. Rogers, Jr., Solicitor**