

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**  
**Dec 01 2020**  
S.C. SUPREME COURT

—————  
Certiorari to Spartanburg County

Honorable G. Thomas Cooper, Circuit Court Judge

—————  
LARRY D. BROWN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000824

—————  
APPENDIX  
—————

TAYLOR D GILLIAM  
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  
1000 Assembly St.  
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

ATTORNEY FOR PETITIONER

**INDEX**

INDEX ..... i

TRANSCRIPT OF GUILTY PLEA HEARING HELD AUGUST 17, 2017 .....1

APPLICATION FOR POST-CONVICTION RELIEF .....36

RETURN AND MOTION FOR MORE DEFINITE STATEMENT.....43

TRANSCRIPT OF POST-CONVICTION RELIEF HEARING HELD OCTOBER 11, 2019 ....53

APPLICANT’S EXHIBIT NO. 1 (ARREST RECORDS).....83

ORDER OF DISMISSAL.....84

INDICTMENTS .....98

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

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

THE STATE OF SOUTH )  
CAROLINA )  
 ) TRANSCRIPT OF RECORD  
-vs- ) 2016-GS-11-00696  
 ) 2016-GS-11-00698  
LARRY DEAN BROWN, ) 2016-GS-11-00762  
 ) 2016-GS-11-00906  
DEFENDANT. ) 2016-GS-11-00907  
 ) 2016-GS-11--1176  
 )  
 ) AUGUST 4, 2017  
 ) GAFFNEY, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. MARK HAYES, II, JUDGE.

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

KIMBERLY LESKANIC, ASSISTANT SOLICITOR  
ATTORNEY FOR THE STATE

E. JOSHUA SCHULTZ, ESQUIRE  
ATTORNEY FOR THE DEFENDANT

MICHAEL R. WATTS  
CIRCUIT COURT REPORTER

INDEX

- 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 CALLED

EXHIBITS

1	NO.	DESCRIPTION	ID.	EV.
2				
3		(NO EXHIBITS MARKED)		
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 (PROCEEDINGS, AUGUST 4, 2017)

2 THE COURT: Okay. When I call your name, if you  
3 would, just raise your hand and let me eyeball where you  
4 are.

5 If by chance you're in the gallery, in the  
6 audience, if you would, I'm going to ask you to come right  
7 up here and sit where Mr. Pruett is moving from.

8 We have Larry Brown.

9 Shane Wilkie.

10 Randy Simpson.

11 Matthew Jefferies.

12 James Wooten.

13 Freddie Smith.

14 Jasmine Wall.

15 Nicholas Abston.

16 Boyte Rankin.

17 Michael Allen.

18 Michael Rollins.

19 Marvin Moates.

20 Shane Johnson.

21 Dillon Frashier.

22 Shacona Black.

23 Robert Davidson.

24 Joshua Phillips.

25 Is there anybody sitting in jury box whose name I

1 did not call?

2 (Off the record).

3 (Back on the record)

4 THE COURT: Again, those of you whose name I did  
5 not call, raise your hands again.

6 (Off the record).

7 (Back on the record)

8 THE COURT: All right. I need for y'all to please  
9 listen to me for a few moments.

10 I have been told that each one of you has one or  
11 more matters that are presently pending in the Court of  
12 General Sessions. I have also been told that each one of  
13 you --

14 You are going to need move out of the way. I need  
15 to be able to see.

16 I have also been told that each one of you have  
17 expressed a desire or an intent to want to enter a plea to  
18 those matters.

19 I need to let you know that as a part of every  
20 plea that is presented in front of me we make a recording.  
21 This gentleman who is sitting way down there, he's a court  
22 reporter. He's taking down everything that's said. I tell  
23 you that because if ever during this process now or later if  
24 you need to speak to me, I need you to speak up loud enough  
25 so both he and I can hear you, because if we can't hear you,

1 I cannot accept your plea.

2 Now, likewise, if ever during this process if you  
3 cannot hear me, immediately let me know and I will speak up  
4 as well.

5 Now, in just a few moments I'm going to ask you a  
6 series of questions, and I'm going to ask you these  
7 questions as a group. I do not wish for you to think nor  
8 conclude that simply because I'm asking you these questions  
9 as a group that for some reason these questions are not  
10 important, because these questions are very important.

11 The questions that I ask you and the answers that  
12 you give me to these questions help me decide whether or not  
13 I can, in fact, accept your plea, so please listen to them.

14 If you need to respond to the questions, I'm going  
15 to ask if you would -- I'm going to ask you to stand up and  
16 let me call on you one at a time. Just don't everybody  
17 speak out at once, and let me call on you one at a time.

18 Now, if ever during this process if any of you  
19 wish to speak to your lawyer, you just let me know and I'll  
20 allow you to talk to your lawyer in private.

21 Now I'm going to call your names one more time.  
22 This time when I call your name, I'm going to ask you if you  
23 would to please stand up and remain standing. After  
24 everybody's name has been called and the court reporter has  
25 your names written down, the lady who is sitting right here

1 in front of me is the Clerk of Court. She's going to swear  
2 you in. So please respond out loud when she asks you to do  
3 so.

4 All right. Again, we have John Paul Erwin.

5 Kenneth Temple.

6 Joshua Phillips.

7 Robert Davidson.

8 I'll tell you what. Mr. Phillips, why you don't  
9 come around here and have a seat.

10 We have Robert Davidson.

11 Nathaniel Jordan. Mr. Jordan, come up here.

12 Shacona Black.

13 Dillon Frashier.

14 Shane Johnson.

15 Marion Moates.

16 Michael Rollins.

17 Michael Allen.

18 Boyte Rankin.

19 Nicholas Abston.

20 Jasmine Wall.

21 Freddie Smith.

22 James Wooten.

23 Matthew Jefferies.

24 Randy Simpson.

25 Shane Wilkie.

1 Larry Brown.

2 All right. I need for y'all to please raise your  
3 right hand.

4 LARRY BROWN, SHANE WILKIE, RANDY SIMPSON, MATTHEW  
5 JEFFERIES, JAMES WOOTEN, FREDDIE SMITH, JASMINE WALL,  
6 NICHOLAS ABSTON, BOYTE RANKIN, JOSHUA PHILLIPS, MICHAEL  
7 ALLEN, MICHAEL ROLLINS, MARION MOATES, SHANE JOHNSON, DILLON  
8 FRASHIER, SHACONA BLACK, NATHANIEL JORDAN, ROBERT DAVIDSON,  
9 KENNETH TEMPLE, JOHN ERWIN, having been first duly sworn,  
10 testified as follows:

11 ALL DEFENDANTS: (Collectively said I do).

12 THE COURT: Here are the questions that I'm going  
13 to ask you. Please listen to them.

14 During the last twenty-four hours have you  
15 consumed any type of substance that has adversely or  
16 negatively affecting your ability to understand what we are  
17 doing today? If you have taken something, please stand at  
18 this time.

19 (No response).

20 THE COURT: In the past if you have ever received  
21 any type of substance abuse treatment, that's for a drug or  
22 alcohol problem, I need for you to please stand at this  
23 time, if you have ever received any substance abuse  
24 treatment.

25 All right. We'll start right here in the front

1 row.

2 What's your name again?

3 DEFENDANT NATHANIEL JORDAN: Nathaniel Jordan.

4 THE COURT: Mr. Jordan, did you receive treatment  
5 for drugs, alcohol, or both?

6 DEFENDANT NATHANIEL JORDAN: Drugs, marijuana.

7 THE COURT: And where did you receive that last  
8 treatment?

9 DEFENDANT NATHANIEL JORDAN: Morris Village.

10 THE COURT: About how long ago was that,  
11 approximately?

12 DEFENDANT NATHANIEL JORDAN: About a year and a  
13 half ago.

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

15 DEFENDANT NATHANIEL JORDAN: Yes, sir.

16 THE COURT: Thank you, sir. You may be seated.  
17 Yes, sir, your name?

18 DEFENDANT JOSHUA PHILLIPS: Joshua Phillips.

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

21 DEFENDANT JOSHUA PHILLIPS: Drugs.

22 THE COURT: Where?

23 DEFENDANT JOSHUA PHILLIPS: 2004, at Morris  
24 Village.

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

1 DEFENDANT JOSHUA PHILLIPS: Yes, sir.

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

3 Yes, sir, your name again?

4 DEFENDANT JOHN PAUL ERWIN: John Paul Erwin.

5 THE COURT: Mr. Erwin, did you receive treatment  
6 for drugs, alcohol, or both?

7 DEFENDANT JOHN PAUL ERWIN: Both.

8 THE COURT: Where?

9 DEFENDANT JOHN PAUL ERWIN: Morris Village.

10 THE COURT: About how long ago was that,  
11 approximately?

12 DEFENDANT JOHN PAUL ERWIN: It's been about eight  
13 years.

14 THE COURT: Was it successful at the time?

15 DEFENDANT JOHN PAUL ERWIN: Certain issues.

16 THE COURT: Thank you, sir.

17 Yes, sir, your name again?

18 DEFENDANT SHANE WILKIE: Shane Wilkie.

19 THE COURT: Mr. Wilkie, treatment for drugs,  
20 alcohol, or both?

21 DEFENDANT SHANE WILKIE: Drugs.

22 THE COURT: Where?

23 DEFENDANT SHANE WILKIE: William S. Hall.

24 THE COURT: About how long ago was that?

25 DEFENDANT SHANE WILKIE: About seven years ago.

1 THE COURT: Was it successful at the time?

2 DEFENDANT SHANE WILKIE: Yes, sir.

3 THE COURT: Thank you, sir.

4 Yes, sir.

5 DEFENDANT SHANE JOHNSON: Shane Johnson.

6 THE COURT: Mr. Johnson, drugs, alcohol, or both?

7 DEFENDANT SHANE JOHNSON: Both.

8 THE COURT: Where?

9 DEFENDANT SHANE JOHNSON: North Carolina

10 Department of Corrections.

11 THE COURT: About how long ago was that?

12 DEFENDANT SHANE JOHNSON: 2009.

13 THE COURT: Successful?

14 DEFENDANT SHANE JOHNSON: Yes, sir.

15 THE COURT: Thank you, sir.

16 Yes, sir, your name?

17 DEFENDANT MARION MOATES: Marion Moates.

18 THE COURT: Mr. Moates, treatment for drugs,  
19 alcohol, or both?

20 DEFENDANT MARION MOATES: Drugs.

21 THE COURT: Where?

22 DEFENDANT MARION MOATES: Morris Village.

23 THE COURT: How long ago was that?

24 DEFENDANT MARION MOATES: About fifteen, sixteen  
25 years ago.

1 THE COURT: Successful?

2 DEFENDANT MARION MOATES: Yes, sir.

3 THE COURT: Thank you, sir.

4 Yes, sir, your name?

5 DEFENDANT KENNETH TEMPLE: Kenneth Temple.

6 Morris Village, drugs. And yes, sir, it was.

7 THE COURT: About how long ago was that?

8 DEFENDANT KENNETH TEMPLE: 2013.

9 THE COURT: Thank you, sir.

10 Yes, sir, your name?

11 DEFENDANT RANDY SIMPSON: Randy Simpson.

12 THE COURT: Mr. Simpson, drugs, alcohol, or both?

13 DEFENDANT RANDY SIMPSON: Both.

14 THE COURT: Where?

15 DEFENDANT RANDY SIMPSON: I don't know the name of  
16 the place. 2006.

17 THE COURT: Successful?

18 DEFENDANT RANDY SIMPSON: Yes, sir.

19 THE COURT: Thank you, sir.

20 If you are satisfied with the work that your  
21 lawyer has done for you, I need for you to please stand at  
22 this time. If you are satisfied with the work that your  
23 lawyer has done, please stand.

24 Let the record reflect that everyone stood.

25 Thank you very much. You may be seated.

1           If anybody has come to you and threatened you in  
2 any way or if they have made you any promise in order to get  
3 you to make the decision to enter the plea, then I need for  
4 you to please stand at this time. If you have been  
5 threatened in any way or promised anything, please stand.

6           (No response).

7           THE COURT: If the decision by you to enter the  
8 plea is a free and voluntary decision on your part, then I  
9 need for you to please stand at this time, if it's a free  
10 and voluntary decision.

11           Let the record reflect that everyone stood.

12           Thank you very much. You may be seated.

13           I need for each of you to understand that under  
14 the law you are presumed innocent of each and every charge  
15 that's presently against you and you are entitled to have a  
16 jury trial on each and every one of those charges.

17           Now, at any jury trial that would take place it  
18 would be the State that has the burden of proof and the  
19 State would have to convince all twelve members of a jury  
20 that you are, in fact, guilty beyond a reasonable doubt of  
21 each and every one of those charges.

22           Now, in order to enter a plea, however, you have  
23 to give up your right to that jury trial, but if you wish to  
24 have a jury trial on any of the charges that are presently  
25 against you, that is perfectly fine. We will simply

1 schedule a jury trial for you.

2 Is there anyone who wishes to have a jury trial on  
3 any of the charges that are presently against them? If you  
4 do wish to have a jury trial, please stand at this time.

5 (No response).

6 THE COURT: In addition to giving up your right to  
7 that jury trial there are other very important  
8 Constitutional Rights that you are entitled to, but that you  
9 have to give up in order to enter a plea.

10 You have to give up your right to confront and  
11 cross-examine the State's witnesses. You also have to give  
12 up your right to present evidence that you or your lawyer  
13 might feel would establish a defense to the charge or  
14 charges against you, and you have to give up your right of  
15 subpoena, and you have to give up your right to remain  
16 silent.

17 Now, if you understand all of those rights and you  
18 wish to give up those rights and go forward with entering a  
19 plea, then I need for you to please stand at this time.

20 Let the record reflect that everyone stood.

21 Thank you very much. You may be seated.

22 Again, if ever during this process if any of you  
23 wish to speak to your lawyer, just let me know and I'll  
24 allow you to talk to your lawyer in private.

25 Those of you who joined us from the gallery, y'all

1 can return back to the gallery now.

2 (Off the record).

3 (Back on the record)

4 MS. LESKANIC: Larry Brown.

5 May it please the court, Your Honor, standing  
6 before is Larry Dean Brown. He is pleading guilty on six  
7 charges.

8 2016-GS-11-696 is a True Billed indictment for  
9 burglary in the first degree.

10 2016-GS-11-698 is a True Billed indictment for  
11 burglary, first degree.

12 2016-GS-11-762 is a True Billed indictment for  
13 possession of stolen goods. It is a third or subsequent  
14 property offense.

15 2016-GS-11-906 is a True Billed indictment for  
16 attempted escape.

17 2016-GS-11-907 is a True Billed indictment for  
18 malicious injury to the jail.

19 And 2016-GS-11-1176, this is a True Billed  
20 indictment for burglary in the first degree.

21 There is a negotiated sentence in this case of a  
22 cap of 25 years on the burglary first charges; with the  
23 malicious injury to the jail and escape, concurrent.

24 The receiving stolen goods, the negotiation is a  
25 ten-year sentence, suspended to probation, with the

1 restitution that is on the order I will present to the court  
2 and that is to be consecutive to the active sentence.

3 The defendant has signed the restitution order  
4 waiving his right to a hearing, and there are several  
5 victims here, Your Honor, that would like to address you at  
6 the appropriate time.

7 THE COURT: You are Mr. Brown?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Sir, it is your intent to enter a plea  
10 to the charges that were just announced?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: How old are you?

13 THE DEFENDANT: Thirty-seven, sir.

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

15 THE DEFENDANT: The 11th grade, sir.

16 THE COURT: Did you ever obtain a GED?

17 THE DEFENDANT: No, sir.

18 THE COURT: Married, single, divorced, widowed?

19 THE DEFENDANT: Single.

20 THE COURT: Children.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: How many?

23 THE DEFENDANT: Two.

24 THE COURT: How old.

25 THE DEFENDANT: Eleven and nine.

1 THE COURT: Do you or did you have a job outside  
2 the home prior to your arrest?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: What were you doing?

5 THE DEFENDANT: Roofing.

6 THE COURT: Military?

7 THE DEFENDANT: No, sir.

8 THE COURT: On these charges how long a time have  
9 you been in jail?

10 THE DEFENDANT: Seventeen months.

11 MR. SCHULTZ: 425 days, Your Honor.

12 THE COURT: Please listen to the solicitor. She  
13 is going to provide us with the facts.

14 MS. LESKANIC: Thank you, Your Honor.

15 Taking this chronologically, the first case is a  
16 burglary first degree. The victim in that case is Betty  
17 Grigg, and her home on Wilcox Avenue here in Cherokee County  
18 was broken into between November 24th and November 25th of  
19 2015. She came home to find a window broken out on the  
20 front of the residence. She called 9-1-1.

21 When officers from the Cherokee County Sheriff's  
22 Department responded, they found blood residue near the  
23 window. They collected that blood sample. It was sent to  
24 SLED and there was a CODUS hit matching the defendant. We  
25 then sent down a buccal swab of the defendant and there was

1 a match to his blood at that window and he was charged with  
2 burglary in the first degree.

3 The second incident, Your Honor, occurred between  
4 December 20th and January 21st of 2016. So December 20th of  
5 2015 to January 21st of 2016.

6 In that case a building owned by Timothy Spencer  
7 was broken into. There were some tools and toys that were  
8 stolen out of that building that were actually Christmas  
9 gifts.

10 The defendant was charged with possession of  
11 stolen goods, because he sold some of these stolen items to  
12 a woman by the name of Candace Chaney, who cooperated with  
13 the police and gave a statement that she had purchased these  
14 items from the defendant close in time to the burglary of  
15 the building.

16 Next, Your Honor, is another burglary first. In  
17 that case the victim was Mr. And Mrs. Dawkins. Ms. Dawkins  
18 is here with her son. That occurred on Spruce Street here  
19 in Cherokee County between January 15th and January 19th of  
20 2016. The residence was broken into. There were numerous  
21 items that were stolen, including a coin collection, a safe  
22 that was found pried open in a building behind their house.

23 And, again, in that case Ms. Chaney gave a  
24 statement that she had received some of these stolen coins  
25 from the defendant and also she had gone with him, I

1 believe, to sell a NASCAR car selection that was stolen, but  
2 she placed the defendant with the stolen items.

3           There was also another witness who stated that she  
4 had picked the defendant up at a residence behind the  
5 Dawkins residence. He had called her and asked for a ride  
6 and he had property that was stolen from the home. The  
7 property that he had when she picked him up matched the  
8 description of the property that was stolen from the Dawkins  
9 home, showing that he was the one that had actually broken  
10 into the house and stolen those items.

11           When they attempted to arrest Mr. Brown and talk  
12 with him about that, he fled from police. He was tracked  
13 for more than an hour, but was not apprehended, and he was  
14 later arrested in a hotel room at the Gaffney Inn.

15           He had a backpack on him containing items that had  
16 been stolen from the next burglary, which occurred on  
17 March 9th of 2016. The home of Jeff Cole was broken into on  
18 Cherokee Avenue here in Cherokee County. There was a back  
19 window that was broken and the defendant stole money and  
20 coins in that burglary case.

21           Then, Your Honor, when he was arrested, he was at  
22 the Cherokee County detention center April 28th of 2016, and  
23 while he was in a cell he actually broke through the wall of  
24 the jail in an attempt to escape, causing damage to the  
25 cell, and he was charged with the malicious injury and the

1 attempted escape.

2 I don't think I said so, but Mr. Spencer's  
3 property, the building, and the possession of stolen goods,  
4 that also occurred here in Cherokee County.

5 THE COURT: Do you believe that as she stated the  
6 facts the solicitor is substantially correct?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Sir, do you understand that the pleas  
9 are being presented to me as a negotiated plea?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Therefore, if I accept the pleas, I'll  
12 be bound by the negotiations and will have to impose a  
13 sentence with a cap of 25 years on the burglaries and run  
14 the --

15 THE DEFENDANT: Yes, sir.

16 THE COURT: -- receiving stolen goods consecutive?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And that's what you want me to do?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Sir, do you understand that the  
21 burglary cases, that they are classified as violent  
22 offenses?

23 THE DEFENDANT: I do, sir.

24 THE COURT: And they are also classified as  
25 most-serious offenses?

1 THE DEFENDANT: I do, sir.

2 THE COURT: And you have been able to talk to your  
3 lawyer as to the consequences and ramifications of those  
4 classifications of violent and most serious?

5 THE DEFENDANT: I have, sir.

6 THE COURT: And do you still wish to enter these  
7 pleas?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Are you, in fact, guilty of the three  
10 burglaries in the first degree cases?

11 THE DEFENDANT: I am, sir.

12 THE COURT: Are you also guilty of the escape  
13 case?

14 THE DEFENDANT: I am, sir.

15 THE COURT: Are you also guilty of possession of  
16 stolen goods, the value two to \$10,000, third or subsequent  
17 property offense?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Are you also guilty of the malicious  
20 injury to courthouse or jail?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Have all of your answers to my  
23 questions today been truthful?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Discovery has been shared with the

1 defense?

2 MS. LESKANIC: Yes, Your Honor.

3 THE COURT: Prior record?

4 MS. LESKANIC: 1997, burglary in the second  
5 degree, violent.

6 1998, two counts of burglary in the second degree,  
7 nonviolent.

8 2001, escape from temporary custody.

9 2002, burglary, second degree, violent.

10 2013, resisting arrest and shoplifting.

11 2015, malicious injury to personal property and  
12 petit larceny.

13 2016, possession of drug paraphernalia.

14 THE COURT: All right. We have got restitution as  
15 indicated by the executed restitution order.

16 Did you say the victims did wish to address the  
17 court?

18 MS. LESKANIC: Yes, Your Honor.

19 I believe Ms. Dawkins would like to address the  
20 court, as well as Mr. Spencer.

21 THE COURT: All right. If you would, just speak  
22 one at time and just start by giving us your full name.

23 MARISOL LOPEZ DAWKINS: My full name is Marisol  
24 Lopez Dawkins.

25 THE COURT: Yes, ma'am.

1           MARISOL LOPEZ DAWKINS: And I just wanted the  
2 court to know that what Mr. Brown did to my family was very  
3 devastating and I ask that the court give him the cap,  
4 because Mr. Brown has been a menace to society for quite  
5 some time and he hasn't made any changes or any improvement  
6 and he showed no mercy upon what he's done.

7           Mr. Brown sent me a message that if I came to the  
8 county jail, that he would tell me where my items were, but  
9 I did not go because he wasn't willing to cooperate with the  
10 detective in order to get the items back, because the items  
11 that he had taken out of our home were things that my  
12 husband had purchased over the twenty-six years of our  
13 marriage and things that were collected that were to be  
14 inherited to my son and had been passed down from  
15 generations as well.

16           My husband is not here because he was in a  
17 motorcycle wreck and he's in critical condition and he's  
18 currently hospitalized fighting for his life.

19           So I just ask that the court please cap him out  
20 and give him the maximum sentence.

21           THE COURT: Thank you, ma'am. Good luck to your  
22 husband.

23           MERISOL LOPEZ DAWKINS: Thank you.

24           MS. LESKANIC: Mr. Spencer.

25           THE COURT: Just start by giving us your full

1 name, if you would.

2 TIMOTHY FLOYD SPENCER: Your Honor, I'm Timothy  
3 Floyd Spencer.

4 THE COURT: Yes.

5 TIMOTHY FLOYD SPENCER: I was one of the victims  
6 he broke into. My shop -- I have a rental house. I have a  
7 shop there. My daughter and her husband had actually put my  
8 grandson's toys in there. They had been in there for a  
9 couple of weeks. Well, they go to get them out Christmas  
10 eve night and they are gone, so we had a devastating time to  
11 find somebody in Gaffney that was open to where this  
12 six-year old kid didn't wake up with no Christmas. We  
13 actually got Big Lots. My daughter went up there to get the  
14 toys and they was going to close, so I called the sheriff  
15 and he seen that Big Lots stayed open, but we did get that  
16 replaced, but then that's not what he wanted. That was just  
17 some toys to wake up to that Santa Clause had brought. So  
18 then I had to turn around when the stores opened up to what  
19 he wanted, we replaced those again, what he actually wanted.  
20 We acted like Santa Clause got lost.

21 But not only that, my mother had collected dolls,  
22 collector dolls. Harley Barbies and Holiday Barbies. There  
23 is nothing, just plain Barbies. They was always collector  
24 items that was still in the box for my two girls and he got  
25 all of those.

1                   And, you know, I don't really want no  
2                   restitution -- I do want restitution, if he won't tell me  
3                   where my dolls are. The main thing to me is where is my  
4                   dolls, because my momma is deceased and I can't replace  
5                   them.

6                   THE COURT: Thank you, sir.

7                   TIMOTHY FLOYD SPENCER: But I -- I plead for the  
8                   maximum sentence, Your Honor. I mean, he devastated my  
9                   family at Christmas eve, so I hope you give him the maximum  
10                  sentence. Thank you, sir.

11                  MS. LESKANIC: Do you want to speak? Start by  
12                  giving us your name.

13                  EMMANUEL ISAIAH DAWKINS: My name is Emmanuel  
14                  Isaiah Dawkins.

15                  COURT REPORTER: Speak up, please.

16                  THE COURT: You have got to be able to speak up,  
17                  because both that gentleman right in front of you and I can  
18                  hear you.

19                  EMMANUEL ISAIAH DAWKINS: My name is Emmanuel  
20                  Isaiah Dawkins.

21                  THE COURT: Uh-huh.

22                  EMMANUEL ISAIAH DAWKINS: And I wish you would  
23                  give him the maximum sentence, because he took a lot of my  
24                  dad's things he worked real hard for and he took a lot of my  
25                  stuff too. And -- that's all.

1 THE COURT: Thank you.

2 MS. LESKANIC: Thank you, Emmanuel.

3 And Larry Byron.

4 LARRY BRANDON: Brandon.

5 THE COURT: Okay.

6 MS. LESKANIC: Would you have like to speak also?

7 LARRY BRANDON: Yeah, I'll speak.

8 He -- I would like for you to give him the maximum  
9 sentence. I mean, he stole my son's Christmas. I mean,  
10 that wasn't good. That wasn't good at all. We just -- we  
11 had a bad Christmas because of it.

12 THE COURT: And your name?

13 LARRY BRANDON: Larry Brandon.

14 THE COURT: Thank you.

15 MS. LESKANIC: Thank you, Your Honor.

16 THE COURT: Yes, sir.

17 MR. SCHULTZ: Thank you, Your Honor.

18 May it please the court, I represent Larry Brown  
19 on these charges here.

20 Your Honor, I think that he should receive the  
21 benefit of pleading here. He's accepting responsibility.

22 I have always found him to be a very ideal client  
23 in all respects. I have talked to him several times at the  
24 Cherokee County jail. We have gone over his case. We have  
25 gone over the evidence in the case.

1           The -- he is receiving a benefit I believe for  
2 pleading here today. The State several months ago served  
3 notice that they intend to seek a life without parole  
4 sentence for him. This obviously changes the whole  
5 calculation because he's entering a guilty plea here today.

6           Your Honor, I do believe that Mr. Brown's behavior  
7 with these cases was fueled by a drug habit, so we would ask  
8 for any kind of rehabilitation that the Department of  
9 Corrections offers.

10           We would ask for any kind if inpatient or  
11 outpatient treatment, if the court is inclined to offer --  
12 or to give him give him a probationary sentence after the  
13 term of imprisonment is over.

14           Over time I think when talking to him, he's -- as  
15 the drugs and the, I guess, methamphetamine, or whatever  
16 drugs he was under the influence of, as they got out of his  
17 system, he became much more amenable to talking to me, to --  
18 he talked to my associate as well, who did a couple of bond  
19 hearings in front of the Circuit Court judges here in  
20 Cherokee County. Those bonds were not granted, Your Honor,  
21 and he's been in jail for the past seventeen months.

22           Several months ago I believe Mr. Bain with the  
23 solicitor's office talked to Mr. Brown and asked him to  
24 cooperate against a defendant Timothy Nall. Mr. Nall  
25 ultimately pled, but Mr. Bain -- I had a brief conversation

1 with Mr. Bain about Mr. Brown's behavior and he said he was  
2 very amenable to talking, very amenable to testifying  
3 against Mr. Nall.

4 Mr. Nall ultimately received a -- I believe a  
5 five-year sentence in front of Judge Kelly several months  
6 ago.

7 He's very kind. He's very nice. He's a very  
8 quiet guy and I have had no problems with him whatsoever,  
9 despite all the things that he did.

10 We are asking for mercy here, Your Honor. I'm  
11 asking for the minimal sentence in this to be run  
12 concurrent.

13 I'm also asking, Your Honor, that he be given the  
14 chance and the opportunity to complete any and all probation  
15 that the court attaches on him after the imposition of  
16 whatever sentence in the Department of Corrections that the  
17 court gives him. The reason for that is that he has had  
18 seventeen months to think about the type of life that he was  
19 living up until the age of thirty-seven, which he is here  
20 today.

21 Obviously we are doing the benefit of not going to  
22 trial and with the possibility that Ms. Leskanic may sustain  
23 a conviction on him for at least one of the burglaries. And  
24 if that were to happen, he would receive a far greater  
25 sentence, so I believe that he's doing two good things here

1 today. He's -- number one, he's accepting responsibility,  
2 and number two, this limits his exposure to anything less  
3 than life.

4 And, again, I would like to thank Mr. Brown for  
5 being so amenable to everything that we talked about here  
6 today.

7 The family has been in probably constant  
8 communication -- Mr. Brown's has been in constant  
9 communication with my office in the last year, or so. They  
10 are very concerned about him. There is several family  
11 members that wish to speak at the appropriate time, Your  
12 Honor.

13 Again, Your Honor, in summary, this is somebody  
14 that is not a malicious person, is not an evil person. He  
15 became addicted to any kind of drug that was available here  
16 in Cherokee County, elsewhere, and it fueled this criminal  
17 activity, Your Honor. So we would ask for rehabilitation.  
18 We would ask for the minimal sentence, followed by a  
19 probationary sentence where he would have the opportunity to  
20 give restitution back and make the victims whole in this  
21 case.

22 Your Honor, a fifteen year sentence, in my  
23 opinion, is a very extreme sentence, because he is  
24 thirty-seven years old. Even if the minimal is given to him  
25 today, he would still have to do anywhere from about twelve

1 to thirteen years in jail for a thirty-seven year old man.  
2 He would not be getting out until he's in his early fifties.

3 I think that the interests of justice are served  
4 by the minimal sentence.

5 I also think the interests of justice are served  
6 by a probationary sentence to be tacked on to the end of  
7 that, so that he can make the victims and this county whole  
8 for things that he did.

9 And, Your Honor, I would like to present the  
10 family at the appropriate time. Thank you.

11 THE COURT: Do you agree with the statements made  
12 by your lawyer?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Yes, sir.

15 Ma'am, just come up here and stand beside Mr.  
16 Schultz.

17 Would you please speak up loud enough so both the  
18 court reporter and I can hear you?

19 Start by giving us your full name.

20 CAROLINE TAGG: My name is Caroline Tagg.

21 COURT REPORTER: I'm sorry, you are going to have  
22 to move closer, please.

23 Name again?

24 CAROLINE TAGG: Caroline Tagg.

25 COURT REPORTER: Thank you.

1 CAROLINE TAGG: Your Honor, I would like to read  
2 on the statement on behalf of myself and my mom.

3 And to the ones that couldn't be here today, first  
4 I would like to say that he is the son to my grandmother  
5 Jackie and a father to my niece that is nine and a nephew  
6 that is seven. A mother to my mom Jackson and Mr. Brown is  
7 a wonderful man.

8 A man -- Mr. Brown had a very bad drug addiction  
9 in his past few years and the drugs he was able to do for  
10 him to do his role as a father and to his two kids. And,  
11 Your Honor, this past seventeen months have not only took  
12 time from our family and his beautiful kids, but has saved  
13 his life and now to this day he is drug free.

14 And although he still needs -- although he still  
15 needs more rehab, Your Honor, we are here today to ask that  
16 you let Mr. Brown be court ordered to do rehab, probation,  
17 and restitution, of a prison sentence or lesser sentence  
18 with probation so he can be here with us, not today, but  
19 only for his two kids that need their dad.

20 Your Honor, our family has been through a lot  
21 these past couple of years. Two family members have been  
22 passed away and my mom in and out of the Lavine Cancer  
23 Institute in Charlotte. Now that Mr. Brown is sober and  
24 that could be -- that could use more rehab, he can't get  
25 that in prison. He's human just like us and putting him

1 away isn't teaching him and helping him in any lesson. In  
2 getting him rehab and court ordered and making him pay  
3 restitution, Mr. Brown is on any probation, so, Your Honor,  
4 we ask that you take into consideration with a lesser  
5 sentence, rehab, probation. Thank you.

6 THE COURT: Thank you, ma'am.

7 Would you start by giving us your full name?

8 KATHERINE OSBORNE: Katherine Osborne.

9 My name is Katherine Osborne.

10 I would like to take a moment to speak for Larry  
11 Brown. He is a big part of my life over the past four  
12 years. We have had our ups and downs, but he's a great man.  
13 He has fed me when I was hungry. He gave up his bed so I  
14 could sleep when I had no place to go. He took clothes off  
15 his back so I wouldn't be cold.

16 Yes, he's messed up, but he is human. I ask that  
17 y'all would be gentle as a human.

18 He has passed -- I don't know. I can't read it.  
19 Thank you.

20 THE COURT: Thank you, ma'am.

21 MR. SCHULTZ: Your Honor, I would just like to  
22 reflect that there is several family members that are out  
23 there and I think they are overcome with emotions. They  
24 would not elect to wish to address the court, but they  
25 wanted to know that they are here in support of their family

1 member.

2 THE COURT: Mr. Brown, is there anything else that  
3 you would like to say or want me to know or consider?

4 THE DEFENDANT: Yes, sir.

5 I would like to apologize to the victims and my  
6 family for letting them down, my kids. I just wish that the  
7 courts have mercy on me today, you know. That's it. Thank  
8 you, Your Honor.

9 THE COURT: Thank you, Mr. Brown.

10 I'll find that there is a substantial factual  
11 basis for the pleas.

12 On the burglary cases, those -- on those three  
13 cases, they will be twenty-five year sentences at the State  
14 Department of Corrections, run concurrent with each other.

15 He gets credit for 425 days.

16 I have indicated by the document that he receive  
17 the Addiction Treatment Unit while he's in the Department of  
18 Corrections.

19 That will run concurrent with the ten year  
20 sentence on the possession of -- I'm sorry, that will run  
21 concurrent with the three year sentence on the malicious  
22 injury to courthouse or jail and the fifteen year sentence  
23 on the escape charge.

24 Consecutive to those charges is the possession of  
25 stolen goods, value \$2,000, third or subsequent property

1 offense. That is a ten year sentence suspended upon the  
2 time that he served, followed by five years of supervision.

3 He gets credit for 425 days.

4 I have indicated that all of the restitution is to  
5 be paid under Indictment 2016-GS-11-762.

6 Once he is -- I have indicated probation will  
7 start once he's released.

8 He will be evaluated to determine what type of  
9 additional treatment plan. He needs to comply with that  
10 treatment plan, as well as he needs to stay clean, because  
11 they will be doing random drug testing on him.

12 I have also indicated there is not to be any  
13 contact with any of victims.

14 Good luck to you, sir.

15 MS. LESKANIC: Thank you, Your Honor.

16 MR. SCHULTZ: Thank you, Your Honor.

17 (END OF REQUESTED TRANSCRIPT OF RECORD)

18

19

20

21

22

23

24

25

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  
CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Cherokee County, South Carolina, on the 4th day of August, 2017.

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

FEBRUARY 27, 2019



Michael R. Watts  
Circuit Court Reporter

FORM 5

18CP-10467

STATE OF SOUTH CAROLINA

COUNTY OF Cherokee

Full name and prison number (if any) of Applicant.  
Larry O. Brown 244139

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.  
2018 JUL 20 AM 11:35  
BRANDY W. HIGGINS

APPLICATION FOR

POST-CONVICTION RELIEF

**INSTRUCTIONS - READ CAREFULLY**

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

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

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

(Lieber Correctional Institution)

1. Place of detention \_\_\_\_\_ Cherokee County Detention Center
2. Name and location of Court which imposed sentence \_\_\_\_\_ Cherokee County Court House
3. Name(s) of co-defendant(s) (if any) \_\_\_\_\_ Court of General Sessions.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 

(a) _____	2016 GS 1100696	2016 GS 1100906
(b) _____	2016 GS 1100698	2016 GS 1100907
(c) _____	2016 GS 1100762	2016 GS 1101176
5. The date upon which sentence was imposed and the terms of the sentence:
 

a) _____	8/4/2017
b) _____	25-YRS

(c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty \_\_\_\_\_

(c) after a plea of nolo contendere \_\_\_\_\_

7. Did you appeal from the judgment of conviction or the imposition of sentence?  
NO

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

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the date of each such result:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

(a) \_\_\_\_\_ my Lawyer was not paid in full

(b) \_\_\_\_\_ and wanted \$1500.00 for the appeal.

(c) \_\_\_\_\_

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

## Prosecutorial Misconduct

- (a)      Ineffective assistance of Counsel.
- (b)      Failure to adequately investigate case.
- (c)      Perjury.

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

- (a)      Trial Counsel representation fell below an objective
- (b)      Counsel failure to investigate crime scene and state witness.
- (c)      Prosecution knowingly used perjury evidence didn't - a

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

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

- (a) the specific nature thereof:
- i.
- ii.
- iii.
- iv.
- (b) the name and location of the Court in which each was filed:
- i.
- ii.
- iii.
- iv.
- (c) the disposition thereof:
- i.
- ii.
- iii.

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

NO

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

(a) which grounds have been presented:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

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) \_\_\_\_\_

(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? \_\_\_\_\_
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? \_\_\_\_\_

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. \_\_\_\_\_ Joshua Schultz
- ii. \_\_\_\_\_ 184 N. Daniel Morgan Ave.
- iii. \_\_\_\_\_ Spartanburg, Sc 29306
- (b) the proceedings at which each such attorney represented you:
- i. \_\_\_\_\_ at General Sessions,
- ii. \_\_\_\_\_ Plea deal,
- iii. \_\_\_\_\_

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

\_\_\_\_\_ New Sentence

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

NO

STATE OF SOUTH CAROLINA

County of

)  
)  
)

VERIFICATION

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

Larry Brown

SWORN to and subscribed before me this 17<sup>th</sup>  
day of July, 2018.

Luchean Bryant (L.S.)  
Notary Public

My Commission Expires: May 26, 2020

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

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

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

Larry Brown  
Applicant

SWORN or affirmed to and subscribed before me this  
17<sup>th</sup> day of July, 2018.

Luduan Bryant  
Notary Public

My Commission Expires: May 26, 2020

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) FOR THE SEVENTH JUDICIAL CIRCUIT  
 COUNTY OF CHEROKEE )

Larry Dean Brown, ) Case No.: 2018-CP-11-00467  
 S.C.D.C. No. 244139, )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

**RETURN AND MOTION FOR A MORE  
 DEFINITE STATEMENT  
 (Counsel Appointed)**

FILED IN OFFICE OF  
 CLERK OF COURT  
 CHEROKEE COUNTY, S.C.  
 2019 MAY -3 AM 11:00  
 BRANDY W. MOORE

In response to the application for post-conviction relief filed by Larry Dean Brown (Applicant) on July 20, 2018, Respondent would show this Court:

**I. PROCEDURAL HISTORY**

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. Applicant was indicted at the May 2016 term of the Cherokee County Grand Jury for two counts of burglary, first degree (2016-GS-11-00696, -00698). Applicant was further indicted at the June 2016 term for possession of stolen goods (2016-GS-11-00762). Applicant was further indicted at the July 2016 term for escape / attempt to escape (2016-GS-11-00906), and malicious injury to courthouse / jail (2016-GS-11-00907). Applicant was still further indicted at the September 2016 term for an additional count of burglary, first degree (2016-GS-11-01176).

E. Joshua Shultz, Esq. represented Applicant, and Kimberly Leskanic, Esq., of the Seventh Circuit Solicitor’s Office, prosecuted the case. On August 4, 2017, Applicant pled guilty to the above crimes as indicted. Accepting terms negotiated between Applicant and the

State,<sup>1</sup> the Honorable J. Mark Hayes sentenced Applicant to imprisonment for concurrent terms of 25 years for each count of burglary, first degree, 15 years for escape, and 3 years for malicious injury, as well as a consecutive term of 10 years for possession of stolen goods—a total cumulative sentence of 35 years. Applicant did not appeal his plea or sentence.<sup>2</sup>

## II. STATEMENT OF THE FACTS

The underlying facts of the crimes for which Applicant is incarcerated were articulated by the State during the plea proceeding as follows:

Taking this chronologically, the first case is a burglary first degree. The victim in that case is Betty Grigg, and her home on Wilcox Avenue here in Cherokee County was broken into between November 24<sup>th</sup> and November 25<sup>th</sup> of 2015. She came home to find a window broken out on the front of the residence. She called 9-1-1.

When officers from the Cherokee County Sheriff's Department responded, they found blood residue near the window. They collected that blood sample. It was sent to SLED and there was a CODUS hit matching the defendant. We then sent down a buccal swab of the defendant and there was a match to his blood at that window and he was charged with burglary in the first degree.

The second incident, Your Honor, occurred between December 20<sup>th</sup> and January 21<sup>st</sup> of 2016. So December 20<sup>th</sup> of 2015 to January 21<sup>st</sup> of 2016. In that case a building owned by Timothy Spencer was broken into. There were some tools and toys that were stolen out of that building that were actually Christmas gifts.

The defendant was charged with possession of stolen goods, because he sold some of these stolen items to a woman by the name of Candace Chaney, who cooperated with the police and gave a statement that he had purchased these items from the defendant close in time to the burglary of the building.

Next, Your Honor, is another burglary first. In that case the victim was Mr. and Mrs. Dawkins. Ms. Dawkins is here with her son. That occurred on Spruce

---

<sup>1</sup> A negotiated cap of 25 years on everything but the receiving stolen goods, and a negotiated 10 year sentence, suspended to probation, consecutive.

<sup>2</sup> Applicant notes in response to Question 9 in the application that he did not appeal because his attorney "was not paid in full and wanted \$1500.00 for the appeal."

Street here in Cherokee County between January 15<sup>th</sup> and January 19<sup>th</sup> of 2016. The residence was broken into. There were numerous items that were stolen, including a coin collection, a safe that was found pried open in a building behind their house.

And, again, in that case Ms. Chaney gave a statement that she had received some of these stolen coins from the defendant and also she had gone with him, I believe, to sell a NASCAR car selection that was stolen, but she placed the defendant with the stolen items.

There was also another witness who stated that she had picked the defendant up at a residence behind the Dawkins residence. He had called her and asked for a ride and he had property that was stolen from the home. The property that he had when she picked him up matched the description of the property that was stolen from the Dawkins home, showing that he was the one that had actually broken into the house and stolen those items.

When they attempted to arrest Mr. Brown and talk with him about that, he fled from police. He was tracked for more than an hour, but was not apprehended, and he was later arrested in a hotel room at the Gaffney Inn.

He had a backpack on him containing items that had been stolen from the next burglary, which occurred on March 9<sup>th</sup> of 2016. The home of Jeff Cole was broken into on Cherokee Avenue here in Cherokee County. There was a back window that was broken and the defendant stole money and coins in that burglary case.

Then, Your Honor, when he was arrested, he was at the Cherokee County detention center April 28<sup>th</sup> of 2016, and while he was in a cell he actually broke through the wall of the jail in an attempt to escape, causing damage to the cell, and he was charged with the malicious injury and the attempted escape.

(Tr. 17-20). Upon inquiry by the Court, Applicant confirmed the above articulated facts. (Tr. 20, ll. 5-7).

### III. CURRENT APPLICATION

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

1. "Prosecutorial misconduct"

2. "Ineffective assistance of counsel"
  - a. "Trial counsel representation fell below an objective"
3. "Failure to adequately investigate the case."
  - a. "Counsel failur[e] to investigate crime scene and state witness."
4. "Perjury"
  - a. "Prosecution knowingly used Perjury evidence didn't – a"

The mid-sentence cutoff of Applicant's allegations seems to suggest he may have intended to attach a supplemental page to the application, or perhaps wrote something on the reverse side of the paper, but no such supplement or reverse-side writing is in Respondent's possession.

Applicant requests relief as follows:

- "New Sentence"

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

#### **IV. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL**

##### **Ineffective Assistance of Plea Counsel, Generally**

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 "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, 59 (1985).

#### **Failure to Investigate**

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997));

Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Respondent is without knowledge or information sufficient to form a belief as to the truth of Applicant's claim at the time of this writing. See Rule 8, SCRCP (functions as a denial).

### **Conclusion and Action Requested**

Applicant can satisfy neither requirement of the Hill test. However, the allegation of ineffective assistance of counsel 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).

### **V. RESPONSE TO CLAIM OF PROSECUTORIAL MISCONDUCT**

Applicant alleges that the State knowingly used perjured testimony in prosecuting the case against him. "A conviction obtained by the knowing use of perjured testimony is fundamentally unfair and must be set aside if there is any reasonable likelihood that the false testimony could have affected the jury's judgment." Simpson v. Moore, 367 S.C. 587, 601, 627 S.E.2d 701, 708 (2006) (citing United States v. Bagley, 473 U.S. 667, 678 (1985)). "The failure to correct false evidence is as reprehensible as its presentation." Riddle v. Ozmint, 369 S.C. 39, 47-48, 631 S.E.2d 70, 75 (2006) (citing Washington v. State, 324 S.C. 232, 478 S.E.2d 833 (1996)). "The knowing use of perjured testimony is subject to the materiality standard of review: evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Simpson, 367 S.C. at 601, 627 S.E.2d at 708.

Applicant does not indicate what testimony he believes to be perjured, why he believes it to be perjured, or on what basis he believes the prosecution knew or should have known it to be perjured. As such, Applicant has failed to make a *prima facie* case of prosecutorial misconduct and the allegation should be dismissed.

#### **VI. MOTION FOR MORE DEFINITE STATEMENT**

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). Namely, what perjury existed, notwithstanding Applicant's plea of guilty?

Respondent respectfully submits that 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.

#### **VII. ASSERTION OF RIGHTS TO NOTICE OF AMENDMENTS, EXPERTS**

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, 421 S.C. 85, 805 S.E.2d 568 (2017). 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.

#### **VIII. GENERAL DENIAL**

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

*[Conclusion and signature on following page]*

**IX. CONCLUSION**

WHEREFORE, Respondent respectfully requests that this Court grant its motion for a more definite statement as set forth in Section VI, above, and thereafter convene an evidentiary hearing on the allegations of ineffective assistance of trial counsel and prosecutorial misconduct.

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: *Samuel L. King for JET*  
ATTORNEYS FOR THE STATE  
Office of the Attorney General  
P.O. Box 11549  
Columbia, S.C. 29211

May 1, 2019



1 STATE OF SOUTH CAROLINA ) IN THE COURT OF  
 ) COMMON PLEAS  
 2 ) OF THE SEVENTH  
 COUNTY OF SPARTANBURG ) JUDICIAL CIRCUIT  
 3 )  
 )  
 4 )  
 LARRY D. BROWN, )  
 5 )  
 Applicant, ) TRANSCRIPT OF RECORD  
 6 ) 2018-CP-11-00467  
 vs. )  
 7 )  
 THE STATE OF SOUTH CAROLINA, )  
 8 )  
 Respondent. )  
 9 )

10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

October 11, 2019  
 Spartanburg, South Carolina

B E F O R E:  
 HONORABLE G. THOMAS COOPER, Judge.

A P P E A R A N C E S  
 RODNEY W. RICHEY, ESQUIRE  
 For The Applicant  
 JACOB A. ISENBERG, ASSISTANT ATTORNEY GENERAL  
 For The State

Julie A. Cendroski,  
 Circuit Court Reporter  
 Seventh Judicial Circuit

## I N D E X

<u>WITNESS</u>	<u>PAGE</u>
ANNOUNCEMENT OF CASE By Mr. Isenberg	5
<u>LARRY D. BROWN</u>	
DIRECT EXAMINATION By Mr. Richey	7
CROSS-EXAMINATION By Mr. Isenberg	17
REDIRECT EXAMINATION By Mr. Richey	22
<u>E. JOSHUA SCHULTZ</u>	
DIRECT EXAMINATION By Mr. Richey	23
CROSS-EXAMINATION By Mr. Isenberg	27
COURT TAKES UNDER ADVISEMENT	28
CERTIFICATE OF COURT REPORTER	30

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

	<u>MARKED</u>	<u>ENTERED</u>
APPLICANT'S EXHIBIT NUMBER 1, Expungement Papers	14	14

1           LARRY D. BROWN VS. THE STATE OF SOUTH CAROLINA

2           THE COURT: All right. Whenever you're ready.

3           MR. ISENBERG: Your Honor, before I state the  
4 procedural history, it's my understanding that opposing  
5 counsel intends to withdraw the prosecutorial misconduct  
6 allegation. And if that's the case, I'd like to go  
7 ahead and get that on the record before I ask the  
8 solicitor of the trial be excused. So with that being  
9 said, I'll just turn it over to you before I give the  
10 procedural history.

11           MR. RICHEY: That's correct, Your Honor. We  
12 don't, we don't object to her being excused. That's  
13 correct.

14           THE COURT: You don't what?

15           MR. RICHEY: Sir?

16           THE COURT: I didn't hear you.

17           MR. RICHEY: No, no, no. We're, we're not  
18 opposed to it. We're not gonna go through prosecutorial  
19 misconduct and we're not opposed to her being excused.

20           THE COURT: He's waiving that --

21           MR. RICHEY: Yeah, the prosecutorial --

22           THE COURT: -- in his application?

23           MR. RICHEY: -- misconduct.

24           THE COURT: Is it in here?

25           MR. RICHEY: Yes, sir. It's in the, it's in the

1 return.

2 THE COURT: I'm looking at the application.

3 MR. RICHEY: Yeah.

4 MR. ISENBERG: Your Honor, it is all a little bit  
5 more cleaned up in the return. I can direct you to page  
6 three, three and four.

7 THE COURT: He puts it in his application.

8 MR. ISENBERG: Oh, okay.

9 THE COURT: Prosecutorial misconduct. And he's  
10 waiving that; is that correct?

11 MR. RICHEY: Yes, sir.

12 THE COURT: All right. Let's proceed.

13 MR. ISENBERG: Your Honor, with that being said,  
14 as I said, we would ask that the solicitor, who was in  
15 the original case, be excused. She's been here all  
16 morning waiting patiently.

17 THE COURT: Any objection?

18 MR. RICHEY: None, Your Honor.

19 THE COURT: All right. Whoever the solicitor is  
20 may be excused.

21 MS. LESKANIC: Thank you, Your Honor. I'm gonna  
22 elect to stay, but thank you.

23 THE COURT: Your Honor, this case is  
24 Larry Dean Brown versus The State of South Carolina.

25 Case number 2018-CP-11-00467. It's based on the

1 application he filed on July 20th, 2018.

2 He's currently confined to the South Carolina  
3 Department of Corrections pursuant to orders of  
4 commitment of the Cherokee County Clerk of Court. He  
5 was indicted to the May 2016 term for two counts of  
6 burglary in the first degree. And he was further  
7 indicted in the June 2016 term for possession of stolen  
8 goods.

9 He was indicted again at the July 2016 term for  
10 escape and attempt to escape and malicious injury to  
11 courthouse, courthouse personnel. He was also indicted  
12 in September of 2016 for an additional count of burglary  
13 in the first degree. Joshua Schultz represented him.  
14 He's also here today. And Kimberly Leskanic of the  
15 Seventh Circuit Solicitor's Office prosecuted the case.

16 On August 4th, 2017, he pled guilty to the  
17 above-mentioned crimes, so all the crimes that we  
18 mentioned or that I mentioned he pled guilty to.  
19 Accepting terms negotiated between his attorney and the  
20 State, the Honorable J. Mark Hayes, II, sentenced him to  
21 imprisonment for concurrent terms of 25 years for each  
22 count of burglary first degree, 15 years for escape, and  
23 3 years for malicious injury; as well as a consecutive  
24 term of 10 years for possession of stolen goods. A  
25 total penal sentence of 35 years. He did not appeal

1 this plea or sentence. And with that being said, I'll  
2 turn it over to opposing counsel to make his case.

3 THE COURT: All right. Mr. Richey?

4 MR. RICHEY: I call Mr. Brown.

5 (Witness comes forward.)

6 THE COURT: Place your left hand on the Bible and  
7 raise your right hand, if you can. (Complies.)

8 Do you solemnly swear or affirm the testimony  
9 you're about to give in this hearing will be the truth,  
10 the whole truth, and nothing but the truth so help you  
11 God?

12 THE WITNESS: Yes, sir, I do.

13 THE COURT: All right. Have a seat.

14 LARRY DEAN BROWN,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. RICHEY:

18 Q. Sir, would you state your name, please.

19 A. Larry Brown.

20 Q. And, Mr. Brown, are you currently in the  
21 Department of Corrections?

22 A. Yes, sir.

23 Q. Okay. And are you in there for the charges that  
24 the Attorney General read out to the judge?

25 A. Yes, sir.

1 Q. Who represented you on those charges?

2 A. Mr. Schultz, sir.

3 Q. And you filed an application for a postconviction  
4 relief; is that correct?

5 A. Yes, sir.

6 Q. And you believe that Mr. Schultz did not properly  
7 represent you, correct?

8 A. That is correct, sir.

9 Q. Okay. And in this case, let's kind of go through  
10 them kind of in sequence. That was a supposed burglary  
11 of a Ms. Betty Greg's home; is that correct?

12 A. Yes, sir.

13 Q. Okay. And can you tell me just briefly the facts  
14 of what happened, supposedly happened?

15 A. There was some DNA blood up on the panel side on  
16 the outside where a broken window was.

17 Q. Okay. And so based on that blood and DNA being  
18 out front, you got charged with burg first, correct?

19 A. That is correct, yes.

20 Q. And did you talk to Mr. Schultz about that?

21 A. Yes, sir.

22 Q. About the charge?

23 A. Yes, sir.

24 Q. And, and did you talk to him about the elements  
25 of burglary?

1 A. Yes, sir.

2 Q. You did?

3 A. Yes, sir.

4 Q. And, and when you talked to him was there a  
5 recommendation for you to have a trial or plead guilty?

6 A. Plead guilty.

7 Q. Okay. And can you tell me why you got that  
8 recommendation based on the elements?

9 A. Other prior history.

10 Q. Okay. Were you ever told that you have to enter  
11 a home?

12 A. (Indicating.)

13 Q. You have to enter a home.

14 A. No, sir, not in this brief, sir.

15 Q. Huh?

16 A. No, sir.

17 Q. Okay. Have -- do you believe that's a case you  
18 should have plead guilty to?

19 A. Yes, sir.

20 Q. You believe it is a case you should have pled  
21 guilty to?

22 A. Not first-degree burglary, sir, no.

23 Q. Oh, okay. So you believe that you should have  
24 pled to something else; is that correct?

25 A. That's correct.

1 Q. And what was that?

2 A. It should have been at least attempted.

3 Q. Okay.

4 A. And, you know, malicious damage.

5 Q. And you're not saying that you went in the home,  
6 correct?

7 A. That's correct.

8 Q. Okay. You're saying that you was outside the  
9 home and never in the home?

10 A. Correct.

11 Q. And you discussed that with your lawyer?

12 A. Yes, sir.

13 Q. And he told you to plead guilty to it?

14 A. Right.

15 Q. Okay. Now, there's a second burglary attempt; is  
16 that correct?

17 A. Yes, sir.

18 Q. And you were found a little bit away from the  
19 home; is that correct?

20 A. Yes, sir.

21 Q. Okay. Was there any evidence that you entered  
22 that home?

23 A. No, sir. Just some property. I believe they had  
24 was told I had.

25 Q. So you, you actually were found in possession of

1 some items that were allegedly stolen from the home,  
2 correct?

3 A. That's correct.

4 Q. And that was -- there was no evidence that you  
5 were actually in the home?

6 A. Right, no evidence.

7 Q. Okay. And you talked to Mr. Schultz about that.

8 A. Yes, sir.

9 Q. And you pled to that charge?

10 A. Yes, sir.

11 Q. Okay. Can you tell me in both of these cases,  
12 why did you plead to either one, either one of these  
13 burglaries?

14 A. My, my prior history, they said. That's the  
15 problem with going to trial, I'd be convicted because of  
16 my prior record.

17 Q. Okay. And, and so your plea was -- let me ask  
18 you this, were you served with a Notice of Intent to  
19 seek life?

20 A. Yes, sir.

21 Q. And do you believe they have the ability to get a  
22 life sentence on you? I mean, do you believe that your  
23 record and all that, you could have got a --

24 A. Yes, sir.

25 Q. -- life sentence based on your record?

1 A. Yes, sir.

2 Q. Okay.

3 THE COURT: Was that served on him?

4 MR. RICHEY: Yes, sir, Notice to Life.

5 BY MR. RICHEY:

6 Q. And so the notice, there was nothing defective or  
7 wrong about the notice, correct?

8 A. Correct.

9 Q. Okay. So, so you pled to these charges so you  
10 would not get a life because you were worried about  
11 getting a life sentence, correct?

12 A. Yes, sir.

13 Q. And you didn't plead guilty to them based off the  
14 evidence and the facts in the case, correct?

15 A. Correct.

16 Q. And so now when you look at this case, do you  
17 believe this is a case you should not have pled guilty  
18 to?

19 A. Yes, sir.

20 Q. And that you should have had a trial?

21 A. Yes, sir.

22 Q. And that's what you're asking this Court to do is  
23 grant you a new trial?

24 A. That's correct.

25 Q. Because it is your position that the State would

1 not be able to prove either charge?

2 A. Yes, sir.

3 Q. Okay. There was some mitigation in this case  
4 offered.

5 Can I approach the witness, Your Honor, please?

6 THE COURT: Certainly.

7 BY MR. RICHEY:

8 Q. Okay. I'm gonna hand this to you. What are  
9 these documents?

10 A. Those are nolle prosequed on receiving stolen goods  
11 that they had used for an enhancement.

12 Q. Okay. And you're saying they used these to  
13 enhance the other charges against you?

14 A. Yes, sir.

15 Q. Okay. And do you believe that that was improper?

16 A. Yes, sir.

17 Q. And they were used as part of the aggravation in  
18 your case, correct?

19 A. Yes, sir.

20 Q. Okay. And do you believe that your lawyer should  
21 have objected to that?

22 A. Yes, sir.

23 Q. So ---

24 THE COURT: Is that in sentencing?

25 MR. RICHEY: Yes, sir.

1 (Applicant's Exhibit Number 1, Expungement  
2 Papers, was marked for identification.)

3 We'd offer this as Applicant's Number 1.

4 THE COURT: Any objection?

5 MR. ISENBERG: No, Your Honor.

6 THE COURT: And what is that?

7 MR. RICHEY: Your Honor, this is expungement of a  
8 charge that he had that actually the cases were  
9 expunged.

10 (Applicant's Exhibit Number 1 was entered into  
11 the record.)

12 BY MR. RICHEY:

13 Q. And did you believe that Mr. Schultz was working  
14 in your best interest?

15 A. No, sir.

16 Q. Huh? Do you believe he was working in your best  
17 interest?

18 A. No, sir.

19 Q. And why is that? Well, no, let me ask you this  
20 question. Do you believe that he did an adequate  
21 investigation into the facts of your case?

22 A. No, sir.

23 Q. And why is that?

24 A. He would have known that the enhancement charges  
25 they used against me had been nolle prosequed and, you

1 know, expunged.

2 Q. And what about to the burglaries?

3 A. He -- like I say, there's no evidence of me being  
4 in the residence and he would have known that it was  
5 possession of stolen goods.

6 Q. Okay. And did he talk to you about that, the  
7 difference in the charges?

8 A. No, sir.

9 Q. When did you discover all of the stuff in your  
10 case? Was it after you got to SCDC or before?

11 A. It was after.

12 Q. After you got to SCDC you discovered that these  
13 burglary charges shouldn't have been burglary charges?

14 A. Yes, sir.

15 Q. Okay. And what was the timing of that? Was that  
16 in this first 30 days? The first year? Do you know?  
17 Do you recall?

18 A. It was within the first year.

19 Q. And did you ever reach out to Mr. Schultz about  
20 that?

21 A. No, sir. I was reaching out trying to get the  
22 discoveries and motions.

23 Q. And, and so it's your position that you deserve a  
24 new trial on all your charges; is that correct?

25 A. That is correct, sir.

1 Q. Okay. Answer any questions the Attorney General  
2 has for you.

3 THE COURT: Let's just hold on a minute.

4 MR. ISENBERG: Yes, sir.

5 THE COURT: Mr. Richey?

6 MR. RICHEY: Yes, sir.

7 THE COURT: Tell me what your position is with  
8 regard to this expungement. What was being expunged and  
9 is that because they used some prior record? A burglary  
10 was committed by a person's prior record of two or more  
11 convictions for burglary or housebreaking or a  
12 combination of both that enhanced these charges to a  
13 first degree, correct?

14 MR. RICHEY: Yes, sir.

15 THE COURT: And are you saying that those prior  
16 convictions had been expunged?

17 MR. RICHEY: No. No. That -- they -- those --  
18 let me make sure I've got my -- those are property  
19 offenses. And it's his position -- let's see.

20 THE COURT: What's his record?

21 MR. ISENBERG: It's on page 22 of the transcript.

22 THE COURT: All right. That may help if I'd read  
23 the transcript. All right. So this expungement of  
24 these property crimes --

25 MR. RICHEY: Yes, sir.

1 THE COURT: -- were not what was used to enhance  
2 the burglary issue of first degree?

3 MR. RICHEY: No, sir.

4 THE COURT: Okay.

5 MR. RICHEY: No, sir.

6 THE COURT: All right. I understand.

7 MR. RICHEY: Thank you. Answer any questions the  
8 Attorney General has for you.

9 MR. ISENBERG: May it please the Court?

10 THE COURT: Yes, sir.

11 CROSS-EXAMINATION

12 BY MR. ISENBERG:

13 Q. Good morning, Mr. Brown.

14 A. Good morning, sir.

15 Q. How are you doing?

16 A. I'm fine, sir.

17 Q. I'm gonna give the judge one second.

18 THE COURT: Go ahead.

19 MR. ISENBERG: Thank you, Your Honor.

20 BY MR. ISENBERG:

21 Q. You testified on direct that you were served with  
22 life without parole notice.

23 A. Yes, sir.

24 Q. And you testified that your attorney told you  
25 that if you went to trial you would be subject to life

1 without parole?

2 A. Yes, sir.

3 Q. And you testified that that's why you pled  
4 guilty?

5 A. Yes, sir.

6 Q. Okay. So that's why you pled guilty.

7 A. Yes, sir.

8 Q. And now you're testifying that you want a new  
9 trial, correct?

10 A. Yes, sir.

11 Q. Okay. On which, which charge?

12 A. On all of them.

13 Q. Okay. So you want, you want a new trial on your  
14 first charge of burglary?

15 A. Yes, sir.

16 Q. Because you didn't enter the house?

17 A. Yes, sir.

18 Q. Okay. So you remember the plea hearing? Do you  
19 remember your plea hearing?

20 A. A little bit.

21 Q. Okay. Do you remember the solicitor giving the  
22 facts at the plea hearing?

23 A. Yes, sir.

24 Q. And do you remember agreeing with those facts,  
25 correct?

1 A. Yes, sir.

2 Q. And you remember her talking about the DNA  
3 evidence found at the scene, correct?

4 A. Yes, sir.

5 Q. And do you remember her saying that SLED matched  
6 that DNA found with you, correct?

7 A. Yes, sir.

8 Q. Okay. So you're now not agreeing with that?

9 A. The DNA was on the outside of the house, not in  
10 on the inside.

11 Q. Okay. So now you're saying that the DNA being on  
12 the outside of the house means that you were innocent,  
13 correct?

14 A. I mean, I'm innocent of the first-degree  
15 burglary, that is correct.

16 Q. Okay. But you -- were you at the house?

17 A. I was at the house.

18 Q. And you broke the window?

19 A. I broke the window.

20 Q. And that's why your DNA is on the window?

21 A. That's correct.

22 Q. Why did you break the window?

23 A. I mean, I attempted. I mean, I'm not gonna lie.  
24 Of course, I attempted to enter the house, but I never  
25 entered the house.

1 Q. You broke the window, right?

2 A. I broke the window.

3 Q. So when you broke the window your hand went  
4 inside the house?

5 A. I mean, not no blood was on the inside of the  
6 house it didn't.

7 Q. Okay.

8 A. The blood was on the --

9 Q. I'm asking ---

10 A. -- outside.

11 Q. I'm not asking you to look at the evidence, I'm  
12 just asking a question. When you broke the window, did  
13 your hand go inside the house?

14 A. I don't know. I mean...

15 Q. Okay.

16 A. I mean, you know, cause, I mean, I was  
17 intoxicated at the time I broke the window.

18 Q. So you wouldn't know if you entered the house  
19 based upon your intoxication anyway.

20 A. If I entered the house, blood would have been in  
21 the house.

22 Q. Right.

23 A. It was outside by the sign.

24 Q. All right. So you want to go to trial on that.  
25 And you also want to go to trial on your other burglary

1 first, correct?

2 A. That's correct.

3 Q. Because you didn't enter the house, correct?

4 A. Correct.

5 Q. And -- but you did receive a lot of items that  
6 were stolen from that house.

7 A. That's correct.

8 Q. But you agreed with the solicitor at the trial  
9 that you were, in fact, guilty of first-degree burglary,  
10 correct?

11 A. That's correct.

12 Q. Okay. So, you said then that you entered the  
13 house, but now you're saying you didn't, correct?

14 A. That's correct.

15 Q. Okay. Why? Why did you lie, I guess, at your  
16 plea hearing?

17 A. Because I was -- they brought up my prior  
18 history. I felt because of my prior history they say  
19 I'm more likely to be convicted.

20 Q. Your prior history led you to agree with --

21 A. And they said ---

22 Q. -- inaccuracies they stated?

23 A. That's right because they said anything is a life  
24 sentence.

25 Q. Okay. So the LWOP notice caused you to agree

1 with everything so that you could plead guilty?

2 A. Correct.

3 Q. Okay. No further questions.

4 THE COURT: Redirect?

5 MR. RICHEY: Thanks.

6 REDIRECT EXAMINATION

7 BY MR. RICHEY:

8 Q. Mr. Brown, had you not been threatened with this  
9 LWOP, would you have pled?

10 A. No, sir.

11 Q. You would have went to trial?

12 A. Yes, sir.

13 Q. Okay, thank you.

14 THE COURT: All right. You may come down.

15 (Witness leaves witness stand.)

16 MR. RICHEY: We'd call Mr. Schultz.

17 (Witness comes forward.)

18 THE COURT: Do you solemnly swear or affirm the  
19 testimony you're about to give in this hearing will be  
20 the truth, the whole truth, and nothing but the truth so  
21 help you God?

22 THE WITNESS: I do.

23 THE COURT: Have a seat.

24 THE WITNESS: Thank you, sir.

25 E. JOSHUA SCHULTZ,



1 could have gotten a life sentence?

2 A. Yes.

3 Q. Okay. You discussed that with Mr. Brown; is that  
4 correct?

5 A. Yes.

6 Q. And Mr. Brown, the first burglary we had talked  
7 about, the blood burglary, did you discuss that with  
8 him?

9 A. Yes.

10 Q. And were you in agreement that because the blood  
11 was found outside of the house that he was not guilty of  
12 the charge?

13 A. I'm not sure if I was in agreement with that.

14 Q. Okay.

15 A. But that could have been a possible defense used,  
16 yes.

17 Q. Okay. So did you all -- you all talked about  
18 trying the case under that theory?

19 A. Yes.

20 Q. Okay. And can you tell me why he didn't try the  
21 case using that theory?

22 A. I think he was concerned, as I was concerned,  
23 about the possibility of a life without parole sentence  
24 if he was convicted of one of those charges.

25 Q. So you all felt like the defense wasn't strong

1 enough to chance. Is that a fair way of saying it or  
2 not?

3 A. That's fair.

4 Q. And you did that in consultation with him?

5 A. Yes.

6 Q. As to the other burglary charges, were there any  
7 evidence in those cases that you think Mr. Brown could  
8 have benefitted from at trial?

9 A. I can't remember specifically, but there could  
10 have been some defensible issues there.

11 Q. And I'll just say one of the burglaries he was  
12 not found in the house. The items were found that were  
13 taken from the house and thus he was charged with it.

14 Is that ---

15 A. Yes.

16 Q. Do you recall that?

17 A. I do.

18 Q. And again, that defense in consultation with  
19 Mr. Brown was not strong enough for you all to go to  
20 trial. Is that, is that a fair assessment?

21 A. That would be fair.

22 Q. Did Mr. Brown want to go to trial?

23 A. I don't believe so. I think he was concerned  
24 about, as I said before, about the chance of a life  
25 without parole sentence.

1 Q. And he has some prior burglaries on his record;  
2 is that correct?

3 A. He does.

4 Q. And were there any discussions about going to  
5 trial at all?

6 A. Yes, there were some.

7 Q. And, and what were those?

8 A. What were those discussions?

9 Q. Yeah.

10 A. Well, we just, we just talked about the  
11 probability of surviving a conviction and what could  
12 happen if he was convicted on a burglary first and he  
13 could potentially get a life without parole sentence.

14 Q. And, and in terms of the investigation of the  
15 case, did you look at the discovery and determine  
16 whether the State could actually get a conviction?

17 A. Yes.

18 Q. And, and from your review of the discovery, did  
19 you believe that the State could prove it beyond a  
20 reasonable doubt?

21 A. I think they could, yes.

22 Q. Even, even with his defense?

23 A. Yes.

24 Q. And, and you discussed that with him?

25 A. I did.

1 Q. Thank you. Answer the questions the Attorney  
2 General will have for you.

3 A. Thank you.

4 CROSS-EXAMINATION

5 BY MR. ISENBERG:

6 Q. Good afternoon, Mr. Schultz.

7 A. Good afternoon.

8 Q. You testified that you were aware that he  
9 received LWOP notice?

10 A. Yes.

11 Q. Okay. Did you investigate the basis for this  
12 LWOP notice?

13 A. Yes.

14 Q. Okay. Do you remember what the basis was for  
15 LWOP?

16 A. Prior convictions.

17 Q. Okay. And what were those prior convictions? Do  
18 you remember off the top of your head?

19 A. Off the top of my head, no.

20 Q. Okay. But you do believe that you did an  
21 investigation into his priors and there was sufficient  
22 reason to give him notice of LWOP, correct?

23 A. Yes.

24 Q. Okay. And that's your common practice, correct,  
25 when someone receives LWOP notice, you investigate to

1 make sure it's proper, correct?

2 A. Yes. Yes. Especially because usually LWOP  
3 notices -- or excuse me, I want to be proper there on  
4 the record. The life without parole notice is usually  
5 contained in sentencing sheets there.

6 Q. Right. Okay. Thank you. I just wanted to be  
7 clear on that.

8 No further questions, Your Honor.

9 THE COURT: All right. Anything further?

10 MR. RICHEY: That's all. That's all, Your Honor.

11 THE COURT: All right.

12 MR. ISENBERG: Your Honor, we'd ask that Mr.

13 Schultz be excused.

14 MR. RICHEY: No objection.

15 THE COURT: You may go.

16 THE WITNESS: Thank you, Judge.

17 (Witness leaves witness stand and courtroom.)

18 THE COURT: Anything further in this case?

19 MR. RICHEY: Nothing, Your Honor.

20 MR. ISENBERG: Nothing, Your Honor. Just request  
21 to submit proposed orders in 30 days.

22 THE COURT: Thirty days.

23 MR. RICHEY: Thank you, Your Honor.

24 MR. ISENBERG: Thank you, Your Honor.

25 THE COURT: All right. That concludes this case.

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

(Hearing concluded at 12:15 p.m.)

--- THIS ENDS REQUESTED TRANSCRIPT ---

## 1 COURT REPORTER CERTIFICATE

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, the undersigned Julie A. Cendroski, Court Reporter for the Seventh Judicial Circuit Court of the State of South Carolina, do hereby certify that to the best of my ability the foregoing is a true, accurate, and complete transcript of record of all the proceedings and evidence introduced in the hearing and/or trial of the captioned case, relative to appeal, in the Court of Common Pleas for Spartanburg County, South Carolina, on the 11th day of October, 2019.

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

s/Julie A. Cendroski  
Julie A. Cendroski  
Circuit Court Reporter  
Seventh Judicial Circuit

STATE OF SOUTH CAROLINA  
COUNTY OF CHEROKEE

IN THE SUMMARY COURT  
ORDER FOR DESTRUCTION OF ARREST RECORDS

THE STATE OF SOUTH CAROLINA

Larry Dean Brown  
380 Norman Blvd  
Gaffney, SC 29341-2937

Value \$2,000 or less

Defendant

AKA

Race W Sex M Age \_\_\_\_\_  
DOB [REDACTED] SSN XXX-XX-XXXX

SID # SC01138143

Charges were disposed of in the court indicated below:

Magistrate  Municipal

I, Robert Howell, Summary Court Judge, find that the below charge(s) under the jurisdiction of this Court was ended either by an adjudication of not guilty or by a judicial dismissal, and the defendant is entitled to have all records, including any outstanding associated bench warrants, relating to this offense expunged and destroyed according to §17-22-950.

Warrant/Ticket/Courtesy Summons No. 2016A1110100027 Date of Arrest 2/5/2016 Place of Arrest County Of Cherokee, S.C.

Arrest Charge RSG / Receiving stolen goods, value \$2,000 or less

Warrant/Ticket/Courtesy Summons No. 2016A1110100028 Date of Arrest 2/5/2016 Place of Arrest County Of Cherokee, S.C.

Arrest Charge Breach/Breach of Trust, Obtaining property under false token

I further find the charge(s) covered by this order was not made pursuant to Title 56 (traffic), Title 50 (DNR), or the authority of counties and municipalities under Title 4 and Title 5, and that the defendant is eligible for expungement.

I also find that §17-22-950 has been complied with as follows (check one):

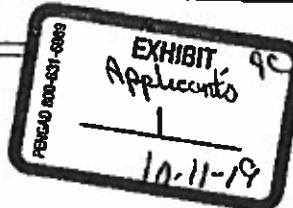
- The defendant was fingerprinted and the summary court has coordinated with SLED and confirmed the criminal charge is statutorily appropriate for expungement.
- The defendant was not fingerprinted and the summary court has coordinated with the arresting law enforcement agency and confirmed that no fingerprints were taken from the defendant for this charge.

IT IS ORDERED that all records relating to such arrest or issuance of ticket or courtesy summons and subsequent discharge, including associated bench warrants, pursuant to the above-referenced section be expunged and destroyed and that no evidence of such records pertaining to such charge shall be retained by any municipal, county or state agency except for: arrest and booking record, associated bench warrants, mug shots, and fingerprints of the defendant shall be retained under seal pursuant to §17-1-40, by law enforcement, detention, correctional and prosecution agencies for three years and one hundred twenty days, and law enforcement and prosecution agencies may retain the information indefinitely under seal for purposes set forth in §17-1-40 (B)(1)(a) and (b); under §17-1-40 (C)(1), this order does not require the destruction of evidence gathered, unredacted incident and supplemental reports, and investigative files, which statutorily shall be retained under seal for three years and one hundred twenty days, and may be retained indefinitely under seal for purposes set forth in §17-1-40 (C)(1); and information retained under seal by law enforcement, detention, correctional and prosecution agencies pursuant to §17-1-40 is not a public information and is exempt from disclosure, except by court order.

Signed this 19<sup>th</sup> day of April, 2014

Judge

For SLED Internal use only: Expunged by SLED by: \_\_\_\_\_



A TRUE COPY

Kimberly S. Brasier  
MAGISTRATE'S OFFICE  
CHEROKEE COUNTY, S.C.

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

Larry D. Brown, #244139

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS  
) FOR THE SEVENTH JUDICIAL CIRCUIT

) Case No.: 2018-CP-11-0467

) **ORDER OF DISMISSAL**

BRANDY W. HODGIF

2020 APR 24 AM 10:47

FILED IN THE CLERK'S OFFICE OF THE SEVENTH JUDICIAL CIRCUIT

This matter comes before the Court by way of a post-conviction relief (hereafter "PCR") application filed by Larry D. Brown (hereafter "Applicant") on July 20, 2018. Respondent made its return on May 1, 2019. The Court convened an evidentiary hearing into the matter on October 11, 2019, at the Spartanburg County Courthouse. Applicant was present at the hearing and represented by Rodney W. Richey, Esquire. Assistant Attorney General Jacob A. Isenberg, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, E. Joshua Schultz, Esquire (hereafter "Counsel") also testified. After a thorough review of all records and evidence before this Court, this Court finds Applicant has not met his requisite burden of proof in establishing he is entitled to post-conviction relief and hereby denies and dismisses this application with prejudice. Specific findings of fact and conclusions of law are set forth below.

**Procedural History**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. During the May 2016 term, the Cherokee County Grand Jury indicted Applicant for two counts of first-degree burglary (2016-

GS-11-00696 and -00698). During the June 2016 term, Applicant was indicted for possession of stolen goods (2016-GS-11-00762). During the July 2016 term, Applicant was indicted for escape/attempt to escape (2016-GS-11-00906) and malicious injury to courthouse/jail (2016-GS-11-00907). During the September 2016 term, Applicant was indicted for another count of first-degree burglary (2016-GS-11-01176).

E. Joshua Shultz, Esquire, represented Applicant. Assistant Solicitor Kimberly Leskanic, Esquire, of the Seventh Circuit Solicitor's Office, prosecuted the case. On August 4, 2017, Applicant appeared before the Honorable J. Mark Hayes II, circuit court judge, and pled guilty as indicted to three counts of first-degree burglary; possession of stolen goods, third or subsequent property offense; attempted escape; and malicious injury. In exchange for the guilty plea, the State agreed to a negotiated cap of twenty-five years on each burglary charge, the malicious injury and escape sentences running concurrent with the burglary sentences, and a negotiated ten-year sentence for receiving stolen goods, suspended to probation, with restitution. Judge Hayes sentenced Applicant to twenty-five years for each count of first-degree burglary; fifteen years for escape; and three years for malicious injury, all running concurrently. Judge Hayes also sentenced Applicant to a consecutive term of ten years for possession of stolen goods, suspended upon the time served, followed by five years of probation. Applicant did not appeal his plea or sentence.<sup>1</sup>

#### Statement of Facts

On either November 24 or 25, 2015, Betty Grigg's home was broken into. (Plea Tr. 17). She called the police when she returned home and discovered a window had been broken. (Plea

---

<sup>1</sup> Applicant stated in the PCR Application that he did not appeal because his attorney "was not paid in full and wanted \$1500.00 for the appeal."

Tr. 17). Responding officers collected a sample from the blood residue found near the window. (Plea Tr. 17). This was sent to SLED for DNA analysis, and a CODIS hit matched with Applicant. (Plea Tr. 17). A buccal swab was obtained from Applicant, which also matched to the blood residue left on scene, and he was charged with first-degree burglary. (Plea Tr. 17-18).

Sometime between December 20, 2015, and January 21, 2016, a building owned by Timothy Spencer was broken into. (Plea Tr. 18). Tools and toys were stolen out of the building. (Plea Tr. 18). Applicant was charged with possession of stolen goods after he sold some of them to a witness who told the police she purchased them from Applicant around the time of the burglary. (Plea Tr. 18).

Sometime between January 15, 2016, and January 19, 2016, Applicant broke into Marison Lopez Dawkins' and Emmanuel Isaiah Dawkins' home and stole numerous items, including a coin collection in a safe found pried open in a building behind the house. (Plea Tr. 18). The same witness to whom applicant sold the toys and tools confirmed she also received some of these stolen coins from Applicant. (Plea Tr. 18). She accompanied Applicant "to sell a NASCAR car selection that was stolen,"<sup>2</sup> but placed Applicant with the stolen items. (Plea Tr. 18-19). Another witness stated she picked Applicant up at a residence behind the Dawkins' home. (Plea Tr. 19). Applicant called her for a ride and, when she picked him up, he had the items that matched the items reported stolen from the Dawkins' home. (Plea Tr. 19).

When the police tried to arrest Applicant, he fled from them. (Plea Tr. 19). Officers tracked him for over an hour, but he was not apprehended until he was later arrested in a hotel room. (Plea Tr. 19). When he was arrested, Applicant had on a backpack containing stolen items

---

<sup>2</sup> It is unclear from the plea transcript exactly what the solicitor meant by this statement, but this Court interprets it to mean the witness accompanied Applicant to when he was trying to sell "a NASCAR car selection," which turned out to be stolen. See Plea Tr. pp. 18-19.

from a March 9, 2016, burglary. (Plea Tr. 19). The burglary occurred at Jeff Cole's home, where a window was broken, and Applicant stole money and coins from the home. (Plea Tr. 19).

On April 28, 2016, while Applicant was detained at the Cherokee County detention center, he attempted to escape by breaking through the wall of the jail, damaging the cell. (Plea Tr. 19). He was charged with malicious injury and attempted escape. (Plea Tr. 19-20). Upon inquiry by the Court, Applicant confirmed the above-articulated facts. (Plea Tr. 20).

**Current Action before this Court**

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

1. "Prosecutorial misconduct."
2. "Ineffective assistance of counsel."
  - a. "Trial counsel's representation fell below an objective."
3. "Failure to adequately investigate the case."
  - a. "Counsel [failed] to investigate crime scene and state witness."
4. "Perjury."
  - a. "Prosecution knowingly used Perjury evidence..."

Regarding relief, Applicant requests a "[n]ew [s]entence".

At the evidentiary hearing, the only claim Applicant raised was that Counsel was ineffective for failure to argue that Applicant should not have been charged with first-degree burglary because he did not actually enter the home during any of the burglaries. Accordingly, this Court finds Applicant has waived all other issues listed in this application, and those allegations are dismissed with prejudice.

**Summary of Testimony Presented at the Evidentiary Hearing**

*Applicant's Testimony*

Applicant testified he was confined in the South Carolina Department of Corrections after pleading guilty to the aforementioned charges. (PCR TR. 7-8). Applicant stated he did not believe Counsel was effective. (PCR Tr. 8). Applicant stated that leading up to the plea hearing, he and Counsel discussed the charges and the elements of the crimes charged. (PCR Tr. 8-9). Applicant stated that, on the first burglary incident at the Griggs' home, he thought he should not have been charged with first-degree burglary, but should have been charged with attempted or malicious damage, because he was always outside the home and never went inside. (PCR Tr. 10). He said he discussed this with Counsel, but Counsel still recommended he plead guilty to first-degree burglary. (PCR Tr. 10). Applicant deflected when asked if his hand went inside the house. (PCR Tr. 20).

Applicant said that after the second burglary he was found away from the home, and there was no evidence he entered the home, other than the fact that he was found with items stolen from the home. (PCR Tr. 10-11). Applicant stated there was no evidence he was in the residence, and Counsel should have known he should have been charged with possession of stolen goods instead. (PCR Tr. 15). Applicant testified that he told Counsel this, and Counsel recommended he plead to the first-degree burglary charge due to his prior record. (PCR Tr. 11).

Applicant acknowledged he was served with a Notice of Intent to Seek Life Without Parole (LWOP) and conceded this notice was not defective. (PCR Tr. 11-12). Applicant stated he pled guilty as indicted based on his worry about being sentenced to LWOP after a trial, not because of the evidence against him or the facts of the case. (PCR Tr. 12). Applicant testified he now thinks he should have had a trial because he does not think the State could prove any of the first-degree burglary charge. (PCR Tr. 12-13).

Applicant testified he thought at least one of his charges was inappropriately enhanced



based on his prior record, because he believed some of the prior charges were dismissed and, thus, were not convictions. (PCR Tr. 13-15). According to Applicant, Counsel was ineffective because if Counsel had properly investigated the case, he would have discovered this and could have argued against the sentencing enhancement. (PCR Tr. 14-15).

Applicant also testified that he should not have been charged and convicted of first-degree burglary because there was no evidence that he entered the buildings he burglarized in any of the cases. (PCR Tr. 15). Applicant testified that he should have been charged and convicted of possession of stolen goods, but Counsel failed to discuss this with Applicant and Applicant did not learn about the lesser offense until he was already in prison. (PCR Tr. 15). Applicant stated he did not try to contact Counsel about this information because he was too busy trying to obtain the discovery and evidence. (PCR Tr. 15).

Applicant stated he pled guilty because he was served with the LWOP notice and that, if he had gone to trial, he would have been subject to life without parole. (PCR Tr. 17-18). Applicant conceded that he remembered the Solicitor giving the supporting facts at the plea hearing, including the evidence found at the scene. (PCR Tr. 18). Applicant conceded he told the plea court he was guilty of first-degree burglary and had entered the house, but Applicant testified he is now asserting he did not enter the house. (PCR Tr. 21). He explained he conceded to entering the house at the plea hearing because he thought his prior criminal history would cause him to be convicted at trial. (PCR Tr. 21). Applicant testified if he had not been threatened with LWOP, he would not have pled guilty. (PCR Tr. 22).

#### *Trial Counsel Testimony*

Counsel testified he represented Applicant on these charges. (PCR Tr. 23). Counsel agreed the State served Applicant with its LWOP notice, and the notice was accurate and not

 6

defective. (PCR Tr. 23). Counsel further testified he discussed the LWOP notice, charges, and DNA evidence with Applicant. (PCR Tr. 24).

Counsel testified he did not agree that Applicant was not guilty of the first-degree burglary charge(s) because of lack of evidence that Applicant entered the home. (PCR Tr. 24). Counsel stated that was a possible defense he discussed with Applicant, but Applicant decided not to go to trial because of the possibility of being sentenced to LWOP if he was convicted of any one of the first-degree burglary charges and because the defense was not particularly strong. (PCR Tr. 24). Counsel further testified that on the second and third burglary charges there were some defensible issues, but the defenses were not strong enough to risk a life sentence. (PCR Tr. 25). Counsel testified he investigated the basis for the LWOP notice, discovered Applicant's prior convictions and criminal history, and found the notice was appropriate because of Applicant's prior convictions. (PCR Tr. 27).

#### **Findings of Fact and Conclusions of Law**

Before this Court are the Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, and the records for this PCR action. Based on this Court's review of the above and the testimony and evidence presented at the hearing, pursuant to sections 17-27-70 and -80 of the South Carolina Code, this Court denies relief and dismisses the application based upon the following findings:

#### ***Ineffective Assistance of Counsel***

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "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. Ineffective assistance of counsel is governed by the Sixth Amendment, which the Supreme Court expanded upon through developing the two-pronged test outlined in *Strickland*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel’s performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by the preponderance of the evidence that counsel’s actions fell outside of the zone of “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. See also Rule 71.1(e), SCRCP (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”). Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the inquiry is limited to facts available to counsel at the time of the representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant so 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694.



The court makes this determination based upon the totality of the evidence. *Id.* at 695.

Realistically, this matters “only in the rarest case” because “[t]he likelihood of a different result must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

Regarding guilty pleas, specifically, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). The applicant’s right to contest the validity of a plea is usually, but not invariably, foreclosed because of the solemnity and truthfulness inherent in the plea proceeding. *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.”). Absent valid reasons why the applicant is entitled to depart from admissions made at the plea hearing, sworn statements made during the original proceeding remain conclusive. *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)).

For a plea to be valid, the applicant must have been aware of the nature and crucial elements of the offense, the maximum and minimum penalties, and the rights he is waiving by accepting the plea. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Roddy v. State*, 339 S.C. 29 (2000). A plea is not knowing or voluntary if a defendant “lacks knowledge of material evidence in the prosecution’s possession.” *Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999).

A defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between the court and

defendant, between the court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. at 34, 528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874 (quoting *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). Further, "guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea." *Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

Here, Applicant claims Counsel was constitutionally ineffective because he failed to assert a defense or otherwise mitigate the first-degree burglary charges. (PCR Tr. 8, 10, 15). Specifically, Applicant asserts Counsel should have argued that Applicant should not have been charged with first-degree burglary, because there was no evidence Applicant entered the homes during any of the burglary incidents, other than the fact that he was caught in possession of stolen items originally located inside the houses. (PCR Tr. 8, 10, 15).

However, at the plea hearing, Applicant told the plea judge that no one threatened him or promised him something to accept the plea. (Plea Tr. 13). Applicant also stated he was satisfied with the work Counsel did for him. (Plea Tr. 12). Applicant affirmed the decision to plead guilty was free and voluntary on his part. (Plea Tr. 13). Applicant further confirmed he was aware of the constitutional rights he was giving up to enter the plea, including the right to present a defense, present witnesses, and the right to a jury trial. (Plea Tr. 13-14). Applicant stated he understood he was waiving these rights and decided to enter a plea anyway. (Plea Tr. 14). At the hearing, Applicant conceded he broke into multiple homes. (Plea Tr. 18). When specifically



asked if he was guilty of all three first-degree burglary charges, Applicant stated he was. (Plea Tr. 21).

At the PCR hearing, Counsel credibly testified the defense that Applicant had not actually entered the homes was explored, but Counsel still encouraged Applicant to plead guilty because he felt it was a weak defense, and Applicant was facing a life sentence if found guilty at trial. (PCR Tr. 26). Counsel testified that he believed the State could prove Applicant committed at least one count of first-degree burglary beyond a reasonable doubt, which would subject Applicant to a sentence of LWOP. (PCR Tr. 26). Further, Counsel testified that, after careful investigation, he found there was a sufficient enough basis for the State's LWOP notice. (PCR Tr. 27-28). Counsel testified he communicated all of this information to Applicant, who ultimately decided enter a guilty plea. (PCR Tr. 26).

Therefore, based on the combined record of the guilty plea transcript and Counsel's credible testimony at the PCR hearing, this Court finds that the plea was voluntarily, knowingly, and intelligently entered by Applicant and, consequently, any defenses were waived at the plea hearing and cannot be asserted now. Counsel was not deficient in any way, nor was Applicant prejudiced by Counsel's performance. Thus, Applicant's allegations are dismissed and relief is therefore denied.

#### 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 PCR application must be denied and dismissed with prejudice.

This Court notifies Applicant that he must file and serve a notice of appeal, through counsel, within thirty days from the counsel's receipt of written notice of entry of judgment to

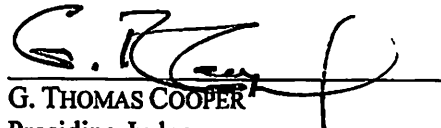


secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. PCR counsel's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the PCR Application 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 17 day of APRIL, 2020.

  
G. THOMAS COOPER  
Presiding Judge  
Seventh Judicial Circuit

Chaudon, South Carolina

FORM 4

STATE OF SOUTH CAROLINA  
 COUNTY OF CHEROKEE  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2018CP1100467

Larry D. Brown, #244139		State Of South Carolina	
-------------------------	--	-------------------------	--

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):  Rule 40(j) SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  
 Affirmed;  Reversed;  Remanded;  Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order; (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
n/a		

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

s/ Thomas G. Cooper  
 Circuit Court Judge

2126  
 Judge Code

4/24/2020  
 Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on, to attorneys of record or to parties (when appearing pro se) as follows:

Rodney Wade Richey PO Box 10916 Greenville, SC  
29603-0916

Alan McCrory Wilson S.C. Attorney General's Office PO  
Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Brandy W. McBee - Clerk of Court

Court Reporter

Court Reporter:

**E-Filing Note:** In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

BRANDY W. NOBEE

2020 APR 24 AM 11:16

CLERK OF  
COURT  
SOUTH CAROLINA

WITNESSES

Gaffney Police Dept.

*Brian Blab*

ARREST WARRANT NUMBER

2016A1120200114

ACTION OF GRAND JURY

TRUE BILL

*Dorothy R Petty*  
Foreperson of Grand Jury

Date: 5-12-16

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

16-GS-11-00696

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAY 12 2016

TERM

THE STATE

vs.

LARRY DEAN BROWN

Indictment for

BURGLARY, FIRST DEGREE  
(Dwelling)

SC Code: 16-11-0311

CDR Code: 0079

Class: FEL/EXM (V)

FILED IN THE OFFICE  
CLERK OF COURT

2016 MAY 12 A 9:52

BRANDY W. MCBEE  
CHEROKEE COUNTY, SC

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHEROKEE )

INDICTMENT

At a Court of General Sessions, convened on May 12 2016, the Grand Jurors of Cherokee County present upon their oath:

**BURGLARY, FIRST DEGREE**

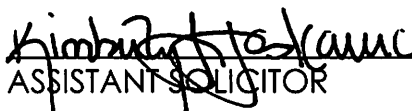
**(DWELLING)**

That the Defendant, Larry Dean Brown did in Cherokee County between January 15, 2016, and January 19, 2016, enter the dwelling belonging to Timothy K. Dawkins and/or Marisol Dawkins, located at [REDACTED] Spruce Street, Gaffney, South Carolina without consent and with the intent to commit a crime therein, and

- (1) the burglary was committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or

in violation of §16-11-311, Code of Laws of South Carolina (1976) as amended.

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

  
 ASSISTANT SOLICITOR

WITNESSES

Cherokee County Sheriff's Office

*[Handwritten signature]*

ARREST WARRANT NUMBER

2016A1110100180

ACTION OF GRAND JURY

*[Faint stamp]*

*[Handwritten signature]*  
Foreperson of Grand Jury

Date: 5-12-16

VERDICT

Foreperson of Petit Jury  
Date:

DOCKET NO  
**16-GS-11-00698**

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

FILED IN THE OFFICE  
CLERK OF COURT

2016 MAY 12 A 9:59

BRANDY W. MCBEE  
CHEROKEE COUNTY, SC

COURT OF GENERAL SESSIONS

MAY 12 2016

TERM

THE STATE

vs.

LARRY DEAN BROWN

Indictment for

BURGLARY, FIRST DEGREE  
(Dwelling)

SC Code: 16-11-0311  
CDR Code: 0079  
Class: FEL/EXM (V)

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHEROKEE )

INDICTMENT

At a Court of General Sessions, convened on MAY 12 2016, the Grand Jurors of Cherokee County present upon their oath:

**BURGLARY, FIRST DEGREE**  
**(DWELLING)**

That the Defendant, Larry Dean Brown did in Cherokee County between March 9, 2016, and March 11, 2016, enter the dwelling belonging to Jeffrey William Cole, located at 3940 Cherokee Avenue, Gaffney, South Carolina without consent and with the intent to commit a crime therein, and

(1) the burglary was committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both,

in violation of §16-11-311, Code of Laws of South Carolina (1976) as amended.

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

  
 ASSISTANT SOLICITOR

COUNTY OF Cherokee
STATE VS.
Larry Dean Brown

INDICTMENT/CASE#: 2016GS1100698
A/W#: 2016A1110100180
Date of Offense: 3/9/2016
S.C. Code § : 16-11-0311
CDR Code #: 0079

AKA:
Race: WHITE Sex: M Age: 37
DOB: SS#:
Address: Norman Blvd.
City, State, Zip: Gaffney, SC 29340-0000
DL#: SID#:

SENTENCE SHEET

\*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Burglary First degree [15 years - LIFE]

CONVICTED OF or PLEADS

(15-25)

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS
Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: LESKANIC, KIM SC Bar# 116837 Defendant
Attorney for Defendant SC Bar# 74518

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 25 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable\*; the balance is suspended with probation for

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

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. \$11

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

PTUP
days/hours Public Service Employment

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5 %), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 61.6 (Public Def/Probation) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114(BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, 3% to County (if paid in installments) \$ 3.75

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund

Other: ATV vehicle in DOC.

TOTAL \$ 128.75

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

Clerk of Court/ Deputy Clerk Brandy W. McBee
Court Reporter: Mike Wata
SCCA/217 (07/2016)

Presiding Judge
Judge Code: 2137
Sentence Date: 8/4-17

WITNESSES

Cherokee County Sheriff's Office

*[Handwritten Signature]*

ARREST WARRANT NUMBER

DIRECT INDICTMENT

ACTION OF GRAND JURY

*[Faint handwritten text]*

*[Handwritten Signature]*  
Foreperson of Grand Jury

Date: 6-9-16

VERDICT

Foreperson of Petit Jury  
Date:

DOCKET NO. **16-GS-11-00762**

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 09 2016

TERM

THE STATE

vs.

LARRY DEAN BROWN

Indictment for

PSG/POSSESSION OF STOLEN GOODS

SC Code: 16-13-180 (B)(1), 16-01-0057

CDR Code: 3598

Class FEL/F

FILED IN THE OFFICE  
CLERK OF COURT

2016 JUN -9 A 10:10

BRANDY W. MCSEE  
CHEROKEE COUNTY, SC



WITNESSES

Cherokee County Detention Center

*Z H Bee*

ARREST WARRANT NUMBER

2016A1110200120

ACTION OF GRAND JURY

**TRIAL**

*Norothy J Betty*  
Foreperson of Grand Jury

Date: *7-7-16*

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO

**16-GS-11-00906**

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUL 07 2016

TERM

THE STATE

vs.

LARRY DEAN BROWN

Indictment for

ESCAPE/ATTEMPT TO ESCAPE

SC Code: 24-13-410

CDR Code: 2527

Class: Fel/D

FILED IN THE OFFICE  
CLERK OF COURT  
2016 JUL -7 A 10:08  
FRANKY W. MCBEE  
CHEROKEE COUNTY, SC

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHEROKEE )

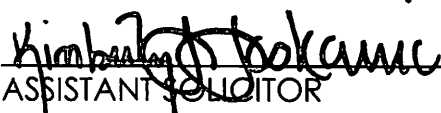
INDICTMENT

At a Court of General Sessions, convened on JUL 07 2015, the  
 Grand Jurors of Cherokee County present upon their oath:

**ESCAPE, ATTEMPT TO ESCAPE**

That Larry Dean Brown did in Cherokee County on or about April 28, 2016, while lawfully confined in a local detention facility or while in the custody of an officer or another employee, escape, attempt to escape, or have in his possession tools, weapons, or other items that may be used to facilitate an escape, to wit: by breaking through the wall of the Cherokee County Detention Center attempting to escape custody, in violation of §24-13-0410, CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

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

  
 ASSISTANT SOLICITOR

WITNESSES

Cherokee County Detention Center

*Z H Beas*

ARREST WARRANT NUMBER

2016A1110200121

ACTION OF GRAND JURY

JUL 07 2016

*Scotty R Petty*  
Foreperson of Grand Jury

Date: 7-7-16

VERDICT

Foreperson of Petit Jury  
Date:

DOCKET NO.

**16-GS-11-00907**

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUL 07 2016

TERM

THE STATE

vs.

LARRY DEAN BROWN

Indictment for

MALICIOUS INJURY TO COURTHOUSE/JAIL

SC Code: 4-17-70

CDR Code: 0051

Class MIS-A

FILED IN THE OFFICE  
CLERK OF COURT

2016 JUL -7 A 10: 08

SANDY W. MCBEE  
CLERK OF COURT  
CHEROKEE COUNTY, SC

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF CHEROKEE        )


INDICTMENT

At a Court of General Sessions, convened on           JUL 07 2015          , the  
Grand Jurors of Cherokee County present upon their oath:

**MALICIOUS INJURY TO COURTHOUSE/JAIL**

That Larry Dean Brown did in Cherokee County on or about April 28, 2016,  
willfully and unlawfully injure or destroy a wall belonging to the Cherokee County  
Detention Center, Gaffney, South Carolina, in violation of §4-17-70, CODE OF  
LAWS OF SOUTH CAROLINA, (1976), as amended.

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

  
ASSISTANT SOLLICITOR

WITNESSES

Cherokee County Sheriff's Office

*[Handwritten Signature]*

ARREST WARRANT NUMBER

2016A1110100636

ACTION OF GRAND JURY

*[Faint handwritten notes]*

*[Handwritten Signature]*

Foreperson of Grand Jury

Date: 9-22-16

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

16-GS-11-01176

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

SEP 22 2016

TERM

THE STATE

vs.

LARRY DEAN BROWN

Indictment for

BURGLARY, FIRST DEGREE  
(Dwelling)

SC Code: 16-11-0311  
CDR Code: 0079  
Class: FEL/EXM (V)

FILED IN THE COURT OF  
GENERAL SESSIONS

2016 SEP 22 A 10:31

JERRY M. MOBBE  
CLERK OF COURT  
CHEROKEE COUNTY, SC

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHEROKEE )


INDICTMENT

At a Court of General Sessions, convened on SEP 22 2016, the Grand Jurors of Cherokee County present upon their oath:

**BURGLARY, FIRST DEGREE**  
**(DWELLING)**

That the Defendant, Larry Dean Brown did in Cherokee County between November 24, 2015, and November 25, 2015, enter the dwelling belonging to Betty Grigg, located at 1359 Wilcox Avenue, Gaffney, South Carolina without consent and with the intent to commit a crime therein, and the burglary was committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or the entering or remaining occurred in the nighttime, in violation of §16-11-311, Code of Laws of South Carolina (1976) as amended.

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

  
ASSISTANT SOLICITOR