

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**Dec 04 2020**

**S.C. SUPREME COURT**

—————  
Certiorari to Georgetown County

Honorable George M. McFaddin, Circuit Court Judge

—————  
JOSEPH SKINNER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000559

—————  
APPENDIX  
—————

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STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS

COUNTY OF GEORGETOWN ) 2016-GS-22-01096

State,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	July 17, 2017
	)	
Joseph Skinner,	)	
	)	
Defendant.	)	

B E F O R E:

Honorable Benjamin H. Culbertson  
Georgetown County Courthouse  
Georgetown, South Carolina

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

Richard D. Todd, Jr., Esquire  
Attorney for Plaintiff

Wyn Bessent, Esquire  
Attorney for Defendant

Grace L. Hurley, CVR-CM-M  
Circuit Court Reporter

1 (There were no exhibits marked during the hearing.)

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1 (On the record, July 17, 2017. Defendant is sworn by  
2 clerk.)

3 THE COURT: All right. What have we got?

4 MR. TODD: Your Honor, we're on the record with State  
5 versus Joseph Skinner. This is regarding indictment number  
6 2016-GS-22-01096. He's charged with burglary in the first  
7 degree. Your Honor, he is first up on the trial roster. He  
8 has been arraigned last term of court. I actually believe he  
9 was on the trial roster last term of court and we also did a  
10 formal arraignment just to clarify the plea offer and what was  
11 made. We are past that point now, but Defense counsel has  
12 made a motion to be relieved.

13 MS. BESSENT: At my client's request, Your Honor.

14 THE COURT: Okay. So this is your client's motion?

15 MS. BESSENT: Yes, sir.

16 THE COURT: All right.

17 MS. BESSENT: I was informed this morning by Deputy Steve  
18 Brown --

19 THE COURT: Okay.

20 MS. BESSENT: -- Steve Smith, I'm sorry, that he insisted  
21 on speaking with you this morning. He stated he wanted to  
22 speak with you in chambers. Steve told him that was not, that  
23 was not going to happen, that it would have be out here on the  
24 record and that he wanted me relieved.

25 THE COURT: Okay. All right. And you said this was

1 arraigned when?

2 MR. TODD: Last term of court, Your Honor, in front of  
3 Judge Hyman.

4 THE COURT: And when was that?

5 MS. BESSENT: It was, it was -- actually it was arraigned  
6 May 24<sup>th</sup> in front of Judge Hyman.

7 THE COURT: Okay. All right.

8 MS. BESSENT: And I do have a transcript of that  
9 arraignment if you would like to see it.

10 THE COURT: I mean, was any reference to being relieved  
11 made at that time?

12 MS. BESSENT: No, sir.

13 THE COURT: Okay. All right. Mr. Skinner, you want Ms.  
14 Bessent relieved as your attorney?

15 MR. SKINNER: Yes, sir. Could I say something?

16 THE COURT: Yeah.

17 MR. SKINNER: Do you need to know the reason why?

18 THE COURT: Yeah. Go ahead and tell me why.

19 MR. SKINNER: Well, for one thing, I never received my  
20 written plea offer. She says I did, but I didn't.

21 THE COURT: Okay. What is the plea offer? Is it still  
22 on the table?

23 MR. SKINNER: It was the one from the last -- it was from  
24 -- supposed to been sent out on March 21<sup>st</sup>, and I finally got a  
25 copy of it --

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1 THE COURT: So when you were arraigned here in court,  
2 they didn't tell you what the offer was at the arraignment?

3 MR. SKINNER: No, sir.

4 THE COURT: Okay.

5 MR. SKINNER: They, they came to me --

6 THE COURT: Do we have that transcript you said, Ms.  
7 Bessent? All right. Let me see the arraignment.

8 MS. BESSENT: May I approach?

9 THE COURT: Yes.

10 MS. BESSENT: Without objection?

11 MR. TODD: Without objection.

12 THE COURT: Okay.

13 MS. BESSENT: This was provided by court reporter, Grace  
14 Hurley.

15 THE COURT: All right.

16 MS. BESSENT: Your Honor, may I approach the bench again?

17 THE COURT: Yeah.

18 MS. BESSENT: Mr. Skinner just stated -- he said he was  
19 -- the plea offer was issued on May -- March 22 --

20 THE COURT: Uh-huh.

21 MS. BESSENT: -- and as you will note, Alicia wrote a  
22 letter on March 24<sup>th</sup>. It was received, stamped March 30<sup>th</sup> and  
23 scanned in our system March 30<sup>th</sup>. That clearly contradicts Mr.  
24 Skinner's statement of March 22.

25 THE COURT: Okay.

1 MR. SKINNER: It was --

2 THE COURT: Well, and I see right here during the  
3 arraignment, Mr. Skinner, where the judge went over the plea  
4 offer with you --

5 MR. SKINNER: The Judge did.

6 THE COURT: -- in its entirety. Yeah.

7 MR. SKINNER: Yes, sir. The Judge, that was --

8 THE COURT: So you knew about the plea offer.

9 MR. SKINNER: Well, on, on --

10 THE COURT: Now, it wasn't what you wanted, but it was --  
11 they said, "This is the best we're going to offer to you.  
12 Your option is to go to trial or accept this offer."

13 MR. SKINNER: Yes, sir.

14 THE COURT: And you didn't accept the offer. So you knew  
15 about the offer.

16 MR. SKINNER: Not until I -- until the day before, when  
17 she came to me the day before.

18 THE COURT: Well, you know about it at the arraignment,  
19 and that's the purpose for the arraignment --

20 MR. SKINNER: Well, yeah, yeah.

21 THE COURT: -- to make sure you knew about it.

22 MR. SKINNER: Well, yes, sir. Yes, sir.

23 THE COURT: So you knew about it.

24 MR. SKINNER: Yes, sir.

25 THE COURT: And you chose not to accept it.

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1 MR. SKINNER: At that time, yes, sir.

2 THE COURT: Okay. Well, and that's --

3 MR. SKINNER: I mean, I was just, I was just wondering if  
4 that was a violation of something. I mean, it was like it was  
5 just thrown at me in less than 24 hours and then I was brought  
6 in front of the judge without time to actually think about  
7 whether I wanted to take the plea or go to trial instead of it  
8 being that plea that thing was sent out on March the 22<sup>nd</sup> or  
9 24<sup>th</sup> I didn't know anything about it until I was taken in front  
10 of the Judge on May the 24<sup>th</sup>.

11 THE COURT: I understand. I understand.

12 MR. SKINNER: I mean, you understand what I'm saying? It  
13 kind of --

14 THE COURT: But, well, and I understand that, but what  
15 you've got to understand is that there's really no  
16 constitutional right to a plea bargain. They don't have to  
17 offer you anything.

18 MR. SKINNER: That's, that's what I wanted to know.

19 THE COURT: And you can go to trial. They can, they can  
20 not offer you one thing at all.

21 MR. SKINNER: Well, that's what I wanted to know if I was  
22 -- my rights were being violated because when I went in front  
23 of Judge Hyman I was thinking, you know, I really ain't had  
24 time --

25 THE COURT: Okay.

1 MR. SKINNER: -- the day before didn't give me enough  
2 time to really think about the plea.

3 THE COURT: Well, your rights have not been violated. I  
4 can tell you that.

5 MR. SKINNER: Well, that's what I really wanted to know.

6 THE COURT: All right.

7 MR. SKINNER: Can I say something else?

8 THE COURT: All right.

9 MR. SKINNER: I told Ms. Bessent that, I mean, I'm, I'm  
10 -- I know it's -- and has nothing to do with it to them, but  
11 to me, I mean, when the -- what happened it wasn't -- I didn't  
12 do anything violent, even though it's considered violent  
13 because of two priors, but I asked her about if I would take  
14 it, if they could drop it to at least second non, you know,  
15 like nonviolent I would still have to do seven and a half  
16 years I would have plea to that instead of going to trial.

17 THE COURT: Yeah. But that's what I'm saying is I see in  
18 here where the Judge asked them is that the absolute best  
19 offer and they said yes, that what they offered you at the  
20 arraignment was the only thing they were letting you plead to,  
21 and so the answer to your question was no they weren't going  
22 to reduce it any further.

23 MR. SKINNER: I mean, I, I just, that's just don't  
24 understand that though. I really don't understand it.

25 THE COURT: Well, I mean it's pretty clear right here.

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1 You had -- let me find it.

2 MR. SKINNER: To never had nothing violent on my record.  
3 I mean, they -- to me it's just unfair. I mean, it's nothing  
4 I can do about it. I can't beat the system. I mean, I know  
5 that, you can't beat the system, but I mean, I'm just, I'm the  
6 Defendant. I, I ain't -- I --

7 THE COURT: All right. It's where Mr. Richardson tells  
8 Ms. or this is the Court, "Mr. Richardson tells Ms. Richardson  
9 that he wants her to make the best offer she can before she  
10 actually begins that final trial preparation and to set a  
11 deadline, and if that's not accepted, to withdraw it and not  
12 make that offer or a better offer, and that's how it works.  
13 Isn't that right, Ms. Richardson?" Ms. Richardson, "Yes, Your  
14 Honor." The Court, "How about that, Ms. Bessent, isn't that  
15 true?" Ms. Bessent, "Yes, sir." The Court, "He's not going  
16 to get a better offer?" Ms. Bessent, "No, sir." The Court,  
17 "And he's not going to get" -- Ms. Bessent, "He absolutely  
18 cannot because it is a burg first." The Court, "And he's not  
19 going to get an offer, this same offer again after today?"  
20 Ms. Bessent, "No, Your Honor." Okay. That's pretty self-  
21 explanatory right there.

22 MR. SKINNER: And so, she, she, she has no problem, you  
23 know, well, you know, nobody cares that I have a alcohol  
24 problem. Now, that's, that's the, you know, the --

25 THE COURT: All right.

1 MR. SKINNER: It's like they don't care about that part.

2 THE COURT: All right. So that was made. Any other  
3 grounds to have Ms. Bessent relieved as your attorney?

4 MR. SKINNER: Well, Your Honor, I look -- can I say, they  
5 -- they said -- you all said you're not going to come down  
6 anymore?

7 MR. TODD: Absolutely not.

8 THE COURT: Yeah.

9 MR. SKINNER: So, I mean, if I -- can I plead if I want  
10 to plead?

11 THE COURT: You can always plead. There's -- put it this  
12 way --

13 MR. SKINNER: I can't see me waiting --

14 THE COURT: The things that are absolutely in your  
15 control --

16 MR. SKINNER: Yes, sir.

17 THE COURT: -- you can plead guilty if you want to plead  
18 guilty and nobody can stop you from pleading guilty.

19 MR. SKINNER: Yes, sir.

20 THE COURT: You can have a jury trial if you want a jury  
21 trial and absolutely nobody can stop you from having a jury  
22 trial.

23 MR. SKINNER: Yes, sir.

24 THE COURT: If you have a jury trial you can testify if  
25 you want to and nobody can stop you or you can refuse to

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1 testify and nobody can make you. You understand that?

2 MR. SKINNER: Yes, sir.

3 THE COURT: All right.

4 MR. SKINNER: I just --

5 THE COURT: So it's up to you as to what you want to do.

6 Do you want to talk to Ms. Bessent some more?

7 MR. SKINNER: Yes, sir. It's -- I, I, like I say, if  
8 they're not going to come down anymore what's the sense in  
9 trying to fight?

10 THE COURT: Okay. Well, I can tell you right now you  
11 have not given me any grounds to relieve her as your attorney.  
12 So I'm going to leave her in place as your attorney. We've  
13 got this trial. We've got a jury to qualify here in a couple  
14 of minutes. As a matter of a fact, you can talk whatever you  
15 want to now. We're probably not going to be able to do  
16 anything before we qualify the jury, but that doesn't mean you  
17 can't plead guilty once we qualify a jury. You can still  
18 plead guilty if you want to, but I'll give you a few minutes.  
19 Now, are you involved in this next plea, Ms. Bessent?

20 MS. BESSENT: No. No, Your Honor.

21 THE COURT: Okay.

22 MS. BESSENT: Before we go off the record, Your Honor --

23 THE COURT: Yeah.

24 MS. BESSENT: -- I do want to note that I gave him a copy  
25 of a case, State versus Tindall. It is an Appellate Court

1 case that the State has the unfettered discretion to prosecute  
2 a case as it sees fit.

3 THE COURT: Right.

4 MS. BESSENT: The charge it sees fit to prosecute,  
5 whether to reduce it to a lesser included or to dismiss the  
6 charge altogether.

7 THE COURT: That's right.

8 MS. BESSENT: It was a resisting arrest case wherein the  
9 prosecuting agency chose not to pursue the resisting arrest,  
10 but pursued another charge.

11 THE COURT: Okay.

12 MS. BESSENT: And I highlighted that portion and I gave  
13 it to him to help him understand that it is at the sole  
14 discretion of the State and not even the judicial branch can  
15 intervene and dictate to the Prosecutor what to do.

16 THE COURT: That's correct.

17 MS. BESSENT: Much less, Defense counsel. If the  
18 judiciary cannot do it with its extreme power, then Defense  
19 counsel most certainly cannot do that.

20 THE COURT: That's right. It's the Prosecutor, Mr.  
21 Skinner, it's the Prosecutor's sole discretion.

22 MR. SKINNER: Oh, yeah, I --

23 THE COURT: You can't make them reduce the charge any  
24 more than they can make you plead guilty.

25 MR. SKINNER: But it is -- they can, can reduce it if

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1 they want to.

2 THE COURT: If they want to.

3 MR. SKINNER: But she just doesn't want to.

4 THE COURT: That's up to them.

5 MR. SKINNER: I understand.

6 THE COURT: And that's the case.

7 MR. SKINNER: Uh-huh.

8 THE COURT: All right. Well, I'm going to deny your  
9 motion to relieve Ms. Bessent as your attorney. You still  
10 have the decision. Now the offer that was made is off the  
11 table.

12 MR. SKINNER: Yes, sir.

13 THE COURT: So I don't know if it'd just be a straight-up  
14 plea or if there's another recommendation, but that's off the  
15 table, but you'll, you'll have a little while to decide what  
16 you want to do.

17 MR. SKINNER: Yes, sir.

18 THE COURT: Okay? Because we're going to have to qualify  
19 a jury here in a minute.

20 MR. SKINNER: Yes, sir.

21 THE COURT: Okay. All right.

22 MS. BESSENT: Thank you, Your Honor.

23 THE COURT: Thank you very much.

24 OFF THE RECORD

25 (On the record.)

1 THE COURT: All right. What have we got?

2 MR. TODD: Your Honor, the first matter before the Court  
3 is State versus Joseph Skinner. He's coming from lockup right  
4 now.

5 (Defendant is sworn by the clerk.)

6 MR. TODD: Your Honor, we're on the record with State  
7 versus Joseph Skinner. This is regarding indictment number  
8 2016-GS-22-01096. He's been indicted for burglary in the  
9 first degree. It is our understanding he is here today to  
10 plead guilty to this charge. The State is not making a  
11 recommendation. Our only request from the Solicitor's Office  
12 is that we made him an offer of 15 years, the minimum sentence  
13 on this charge, with his record and also our arraignment, we'd  
14 ask for something in excess of 15.

15 THE COURT: Thank you. All right. Ms. Bessent, you  
16 represent Joseph Skinner on the charge of burglary in the  
17 first degree?

18 MS. BESSENT: Yes, sir. I do.

19 THE COURT: Have you discussed with your client the  
20 charge against him, his rights as a Defendant and the  
21 consequences of being convicted of this crime?

22 MS. BESSENT: Yes, sir. I have.

23 THE COURT: In your opinion does your client understand  
24 the charge against him, his rights as a Defendant and the  
25 consequences of being convicted of this crime?

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1 MS. BESSENT: Yes, sir. He does.

2 THE COURT: And does he wish to plead guilty or not  
3 guilty?

4 MS. BESSENT: Guilty, Your Honor.

5 THE COURT: Do you agree with his decision to plead  
6 guilty to this charge?

7 MS. BESSENT: Yes. I do.

8 THE COURT: Based upon the information you have, if this  
9 case proceeded to trial, do you feel that the State could  
10 prove your client's guilt beyond a reasonable doubt?

11 MS. BESSENT: Yes. I do.

12 THE COURT: Has your client received a competency  
13 evaluation?

14 MS. BESSENT: No, sir. He has not.

15 THE COURT: Do you feel that he needs a competency  
16 evaluation?

17 MS. BESSENT: No, sir. I do not.

18 THE COURT: All right. Sir, your name is Joseph Skinner?

19 MR. SKINNER: Yes, sir.

20 THE COURT: All right. Mr. Skinner, you have been  
21 charged and indicted by the Grand Jury on the charge of  
22 burglary in the first degree, and according to your attorney  
23 you wish to plead guilty to that charge; is that correct?

24 MR. SKINNER: Yes, sir.

25 THE COURT: All right. Before I can accept your guilty

1 plea I've got to go over some questions with you, and the  
2 purpose of my questioning is to make sure that you understand  
3 what you're doing, that you understand the charge against you,  
4 that you understand your rights as a Defendant, that you  
5 understand the consequences of pleading guilty, and I must be  
6 sure you're pleading guilty voluntarily. Now, during the past  
7 72 hours have you taken any medication, consumed any alcohol  
8 or drugs or been under any influence that would affect your  
9 ability to know why you're here?

10 MR. SKINNER: No, sir.

11 THE COURT: Do you understand why you're here today?

12 MR. SKINNER: Yes, sir.

13 THE COURT: Is there anything about this hearing that you  
14 want to ask your lawyer or ask me before we proceed?

15 MR. SKINNER: No, sir.

16 THE COURT: All right. Now, even though you've been  
17 indicted by the Grand Jury, under the Constitution of the  
18 United States you're presumed innocent of this crime, and you  
19 have the right to have your guilt or innocence determined by a  
20 jury trial of your peers. The State bears the burden of  
21 proving your guilt beyond a reasonable doubt. You do not have  
22 to prove your innocence and you cannot be compelled to testify  
23 against yourself. You also have the right to confront and  
24 cross examine anybody who testifies against you. If you  
25 choose you can present a defense to this charge, but when you

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1 plead guilty you give up all of those rights. Do you  
2 understand that?

3 MR. SKINNER: Yes, sir.

4 THE COURT: And do you want to give up those rights and  
5 plead guilty to this charge?

6 MR. SKINNER: Yes, sir.

7 THE COURT: All right. Now, you understand that for this  
8 crime I could sentence you to prison for the rest of your  
9 life. Do you understand that?

10 MR. SKINNER: Yes, sir.

11 THE COURT: Do you understand that this crime carries a  
12 mandatory minimum sentence, which means the absolute minimum  
13 sentence that I must impose by state law is 15 years in  
14 prison?

15 MR. SKINNER: Yes, sir.

16 THE COURT: Do you understand that this crime is  
17 classified as a violent crime? Now, what that means is if  
18 you're ever convicted of another violent crime, then that  
19 subsequent violent crime conviction you would not be eligible  
20 for probation and you would not be eligible for parole. Do  
21 you understand that?

22 MR. SKINNER: Yes, sir.

23 THE COURT: Do you also understand that this crime is  
24 classified as a most serious crime, and what that means is if  
25 you're ever convicted of two most serious crimes or if you're

1 ever convicted of three serious crimes then that third serious  
2 crime conviction or that second most serious crime conviction  
3 the sentences can be enhanced to life in prison without the  
4 possibility of parole, and the State'll use this guilty plea  
5 against you to show a most serious crime conviction on your  
6 record to enhance that subsequent conviction. Do you  
7 understand that?

8 MR. SKINNER: Yes, sir.

9 THE COURT: All right. Do you understand that for this  
10 crime you will not be eligible for parole and you will have  
11 to serve whatever sentence is imposed? Do you understand  
12 that?

13 MR. SKINNER: Yes, sir.

14 THE COURT: Knowing all that, do you wish to plead guilty  
15 or not guilty to burglary in the first degree?

16 MR. SKINNER: Guilty, Your Honor.

17 THE COURT: Has anybody promised you anything or  
18 threatened you in any way to get you to plead guilty?

19 MR. SKINNER: No, sir.

20 THE COURT: Are you pleading guilty voluntarily?

21 MR. SKINNER: Yes, sir.

22 THE COURT: Are you -- I know you had a prior motion to  
23 relieve your attorney, but at this point in time are you  
24 satisfied with the services of your lawyer?

25 MR. SKINNER: Yes, sir.

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1 THE COURT: Are you pleading guilty to this crime because  
2 you committed this crime?

3 MR. SKINNER: Yes, sir.

4 THE COURT: All right. I need you to listen carefully  
5 while the Solicitor gives me the facts of your case. Okay.  
6 All right, sir.

7 MR. TODD: Thank you, Your Honor. On September 3<sup>rd</sup>, 2016,  
8 at approximately 2:00 o'clock in the morning officers with the  
9 Georgetown County Police -- Sheriff's Department went to the  
10 Murrells Inlet Section of Georgetown County to Columbine  
11 Court, which is in Murrells Inlet, to the residence of Mr.  
12 Dallas. Mr. Dallas had called or someone in his family had  
13 called about a burglary that was already in progress. When  
14 the officers arrived at the scene Mr. Dallas was actually  
15 holding the Defendant, Mr. Skinner, at gunpoint and what had  
16 happened was this: Mr. Skinner had gone into the residence  
17 sometime earlier that evening. He was seen on surveillance  
18 going in the residence once they looked at it later on, but  
19 they heard noises going off, had actually set off the burglar  
20 alarm, which they thought it was just a dog. They turned off  
21 the alarm and then they heard loud music later on. Mr.  
22 Skinner had gone in and turned up the music in the -- it was  
23 an attached room kind of like a pool room, but one of the kids  
24 actually stayed in that room. While he was in that room, he  
25 drank the beer. He took a spear and moved a bunch of items

1 around to -- including a bike to take away. He never actually  
2 left the residence. He just moved them for when he was going  
3 to leave, but it seems like he became so intoxicated at the  
4 time he never left the residence. Once officers arrived on  
5 scene they saw Mr. Skinner there, reviewed the surveillance  
6 video and saw that he was there at night.

7 Your Honor, he does have quite an extensive record,  
8 including several burglaries which his indictment is for a  
9 burglary for being there at night and also multiple burglaries  
10 beforehand. Starting in 1987 he has a failure to stop for a  
11 blue light, 1990 auto theft, '91 shoplifting and trespassing,  
12 '92 to '96 he has it looks like five public disorderlies, 1997  
13 another three public disorderlies, 1998 possession of crack,  
14 1999 a DUI, possession of crack, DUS and CDV. In the year  
15 2000 he has a DUI second, hit and run with property damage.  
16 In 2001 he has a burglary second degree, as well a conspiracy.  
17 2003 he has a public disorderly. Also in 2003 he has a  
18 burglary second non-violent and a conspiracy. 2004 he has a  
19 public drunk, shoplifting, two different times, and an alcohol  
20 offense. 2005 he has public disorderly, a shoplifting and a  
21 burglary second degree that was a first degree that was  
22 knocked down to a burglary second where he received ten years.  
23 In 2011 a DUI, shoplifting third, 2015, another shoplifting  
24 third, and then in 2016, just prior to this occurring, he was  
25 in Horry County for a shoplifting third, forgery, threatening

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1 the life of a public employee. One looks like a false  
2 information to police.

3 THE COURT: Okay. All right. Mr. Skinner, you  
4 understand what the allegations are against you?

5 MR. SKINNER: Yes, sir.

6 THE COURT: Is that what happened in this case?

7 MR. SKINNER: Yes, sir.

8 THE COURT: All right. Ms. Bessent, anything in  
9 mitigation?

10 MS. BESSENT: Absolutely, Your Honor. I need to correct  
11 a few things that Mr. Todd just recited. In 2001 he was -- he  
12 pled guilty to a burg second non-violent and common law  
13 conspiracy. He received 15 years suspended to 162 days and  
14 three years probation. In 2003 he was revoked on that 2001  
15 conviction. He has two burg convictions, not three.

16 THE COURT: Okay.

17 MS. BESSENT: That absolutely has to be corrected. That  
18 was not the case.. It is not three burgs.

19 THE COURT: So he had two burglary second convictions.

20 MS. BESSENT: And a revocation.

21 THE COURT: And a revocation on one of them.

22 MS. BESSENT: One revocation.

23 THE COURT: Got you. Okay.

24 MS. BESSENT: I absolutely need to make that clear. The  
25 2005 was a burg first. It was reduced to a burg second

1 nonviolent. That is true.

2 This was a detached pool house, and this case was  
3 originally Alicia Richardson's. She then reassigned it to  
4 Ranny, and since I have been involved with this from the very  
5 beginning.

6 The house has a carport. Above the carport is where  
7 the 20 year old son lives. He does not live in the pool  
8 house.

9 THE COURT: Okay.

10 MS. BESSENT: Okay. I need to make that clear as well.  
11 So this is a detached pool house that is behind the garage.  
12 If you're looking at the house, the house is here, the garage  
13 is here, the pool house is behind the garage. The carport's  
14 here. Apartment upstairs is where the son lives, the 20 year  
15 old son lives. I just want to give you a clear visual of  
16 this.

17 He did enter at night. He was there at 2:00 o'clock in  
18 the morning in the pool house. He did not make an attempt to  
19 get into the dwelling proper where Mr. Dallas and his wife,  
20 Ms. Emery, who is an attorney here, practices law in Myrtle  
21 Beach, live. The son was not in the apartment above the  
22 garage at the time. He was out with friends. He was -- my  
23 client was playing with this African, it's true, it's an  
24 African spear, a true tribal African spear. Apparently the  
25 victim goes over to Africa and does hunts. He has quite a few

State v. Skinner (7-17-17)

23

1 heads mounted on the wall and has quite a few antiques like  
2 this that were given to him by heads of African tribes. He  
3 was quite intoxicated that night.

4 He is a Navy vet. He served four years back in the early  
5 eighties, and he has had an alcohol problem for quite a few  
6 years back in when he was -- back in 2005 when he was  
7 sentenced they ordered ATU. When he moved here to the beach  
8 to live with his parents, he's originally from the Lexington,  
9 Columbia area, he moved here in 2012 to live with his parents,  
10 and he stayed sober for three or four years after that. He  
11 started drinking again and that led to the new series of heavy  
12 crimes, the shopliftings, the public disorderly conducts, and  
13 eventually this led to where we are now.

14 He has been resistant to the idea of the seriousness of  
15 this. It has taken quite a while to get through to him how  
16 serious this is and that at trial if we were to go to trial  
17 and the jury found him guilty that the sentence could be life  
18 and that it would be at this Judge's sole discretion as to  
19 what sentence to impose, that it could range from 15 years up  
20 to life and that in South Carolina life actually does mean  
21 life, and respectfully, Your Honor, if you would impose the  
22 minimum sentence of 15 years we would appreciate it. That  
23 would put him at the age of 65 when he gets out.

24 His mom and dad are still living at this point. He has a  
25 brother and a sister. He has a daughter who lives in Columbia

1 and that is the extent of his family. To date he has served  
2 317 days.

3 THE COURT: All right. Thank you. Mr. Skinner, anything  
4 you want to say?

5 MR. SKINNER: No, sir.

6 THE COURT: All right. Are the victims present?

7 MR. TODD: The victims aren't present. They were here  
8 last term of court. They just wish the Court impose a  
9 justified sentence.

10 THE COURT: Okay. Any other prior record other than what  
11 you've put on the --

12 MR. TODD: No, Your Honor. I believe that's -- that is  
13 everything.

14 THE COURT: Okay.

15 All right. Mr. Skinner, I will accept your guilty plea.  
16 I find that it's made knowingly, voluntarily, fully advised of  
17 your rights as a Defendant, the nature of the charge against  
18 you and the consequences of your guilty plea. I also find  
19 that there is a factual basis to support the charge against  
20 you.

21 The sentence of the Court is that you be confined to the  
22 State Department of Corrections for 17 years. You'll be given  
23 credit for any time served thus far.

24 MR. TODD: Thank you, Your Honor.

25 THE COURT: Thank you.

1 MS. BESSENT: Thank you, Your Honor.  
2 (Adjourned.)  
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## 1 C E R T I F I C A T E

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3 I, the undersigned, Grace L. Hurley, Official Court  
4 Reporter for the State of South Carolina, do hereby certify  
5 that the foregoing is a true, accurate and complete Transcript  
6 of Record of the Hearing held in the case of State versus  
7 Joseph Skinner, held in the Court of General Sessions for  
8 Georgetown County, Georgetown County Courthouse, Georgetown,  
9 South Carolina, on July 17, 2017.

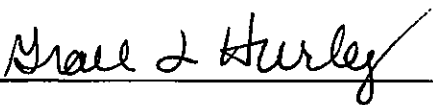
10 I do hereby certify that I am neither of kin, counsel,  
11 nor interest to any party hereto.

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Grace L. Hurley, CVR-CM-M

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Official Reporter

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24 February 4, 2018.

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FORM 5

STATE OF SOUTH CAROLINA )

County of Georgetown )

Joseph Skinner #147101 )

Full name and prison number (if any) of Applicant )

v. )

State of South Carolina )

IN THE COURT OF COMMON PLEAS

2017 CP2201050

APPLICATION FOR  
POST-CONVICTION RELIEF

FILED  
ALTHEA Y. WHITE  
CLERK OF COURT  
2017 DEC 11 AM 9:00  
GEORGETOWN COUNTY, S.C.

**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention Broad River Correction Institution,  
Columbia, South Carolina 29210
2. Name and location of Court which imposed sentence Georgetown Court of  
General Sessions / Lexington County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) No.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2016-GS-2201096 (Burglary 1st)
  - (b) 2001-GS-32-2681 / 2006-GS-32-1296 (Burglary 2nd)

- (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) August 16, 2001 - 15 years
- (b) June 19, 2006
- (c) July 17, 2017, Plead guilty To 17 years, arrest date 9/03/2016
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. N/A
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Counsel Failed To advise me of my Right to appeal
- (b) Counsel Failed To File Notice of intent to appeal.

(c) I did not waive my Right to appeal.

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

(a) Involuntarily Guilty Plea

(b) Court lacked Subject matter Jurisdiction to accept Guilty Plea

(c) ineffective assistance of Trial Counsel

11. State concisely and in the same order the facts which support each of the grounds set out in (10): "Plea was not Lesser included offense"  
"To be amended by Post Conviction Attorney"

(a) Was Threaten with Life Sentence if i did not Plead guilty,

(b) No party can waive presentment to The Grand Jury,

(c) Plea was not knowing and Voluntary because I lacked knowledge of material evidence

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

(a) any petition in a State Court under South Carolina Law? NO.

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO.

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO.

(d) any other petitions, motions or applications in this or any other Court? NO.

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

(a) the specific nature thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

No.

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

(a) which grounds have been presented:

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

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

- i. no.
- ii. no.
- iii. no.

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) Counsel Failed To File notice of appeal To Raise The issues
- (b) Set Forth in (a).
- (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 appeal
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No.

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

- (a) the name and address of each attorney who represented you:
  - i. Elizabeth C. Fullwood, E.S.G.  
Lexington, S.C.
  - ii. Wynn Bessent, E.S.G.  
Georgetown, S.C.
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. arraignment and Plea  
sentencing
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

New Plea hearing / with offer of lesser included offense  
about charges I plead to to be processed by presentment by The  
Grand Jury.

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

No.

STATE OF SOUTH CAROLINA )  
County of Georgetown )

VERIFICATION  
2017 CP 220050

I, Joseph B. Skinner, 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.

Joseph B. Skinner

SWORN to and subscribed before me this 5th  
day of December, 2017.

Janelle T. Spearman (L.S.)  
Notary Public

My Commission Expires:

JANELLE T. SPEARMAN  
Notary Public-State of South Carolina  
My Commission Expires  
August 26, 2025

FILED  
GEORGETOWN COUNTY, SC  
2017 DEC 11 AM 9:00  
ALMA Y. WHITE  
CLERK OF COURT

2017CP2201050

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

I, Joseph B. Skinner, 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.

Joseph B. Skinner
Applicant

SWORN or affirmed to and subscribed before me this 5th day of December 2017.

Janell Spearman
Notary Public

My Commission Expires

JANELLE T. SPEARMAN
Notary Public State of South Carolina
My Commission Expires August 26, 2025

FILED
ALMA Y. WHITE
CLERK OF COURT
2017 DEC 11 AM 9:01
SOUTH CAROLINA COURT SYSTEM

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	
Joseph Skinner,	)	Case No.: 2017-CP-22-01050
S.C.D.C. No. 147101,	)	
	)	
Applicant,	)	
	)	<b>RETURN AND</b>
v.	)	<b>PARTIAL MOTION TO DISMISS</b>
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the application for post-conviction relief filed by Joseph Skinner (Applicant) on December 11, 2017, Respondent would show this Court:

I.

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. Applicant was indicted at the November 2016 term of the Georgetown County Grand Jury for burglary, first degree (2016-GS-22-01096). The State’s summary of the underlying facts, which Applicant affirmed, are as follows:

On September 3<sup>rd</sup>, 2016, at approximately 2:00 o’clock in the morning officers with the Georgetown County Police – Sheriff’s Department went to the Murrell’s Inlet Section of Georgetown County to Columbine Court, which is in Murrell’s Inlet, to the residence of Mr. Dallas. Mr. Dallas had called or someone in his family had called about a burglary that was already in progress. When the officers arrived at the scene Mr. Dallas was actually holding the [Applicant], Mr. Skinner, at gunpoint and what had happened was this:

Mr. Skinner had gone into the residence sometime earlier that evening. He was seen on surveillance going in the residence once they looked at it later on, but they heard noises going off, had actually set off the burglar alarm, which they thought it was just a dog. They turned off the alarm and then they heard loud music later on. Mr. Skinner had gone in and turned up the music in the – it was

an attached room kind of like a pool room, but one of the kids actually stayed in that room. While he was in that room, he drank the beer. He took a spear and moved a bunch of items around to – including a bike to take away. He never actually left the residence. He just moved them for when he was going to leave, but it seems like he became so intoxicated at the time he never left the residence. Once officers arrived on scene they saw Mr. Skinner there, reviewed the surveillance video and saw that he was there at night.

Tr. 19-20 (paragraph break added). Wyn N. Bessent, Esq. represented Applicant, and Randerson Ivy Stephens, Jr., of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On July 17, 2017, Applicant pled guilty as indicted. The Honorable Benjamin H. Culbertson sentenced Applicant to imprisonment for a term of 17 years. Applicant did not appeal his plea or sentence.

## II.

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

1. Involuntary Guilty Plea, in that:
  - a. "Was Threaten with Life Sentence if I did not plead guilty."
2. "Court Lacked Subject Matter Jurisdiction to accept Guilty Plea"
  - a. "No party can waive presentment to the Grand Jury."
3. "Ineffective assistance of Trial Counsel"
  - a. "Plea was not knowing and voluntary because I lacked knowledge of material evidence."
4. "Plea was not lesser-included offense"
  - a. "Plea offer was not a lesser-included offense"

Applicant requests relief as follows:

- "New Plea hearing / with offer of lesser-included offense"
- "Want charges I plead to to be processed by presentment by the Grand Jury"

Attached to and incorporated herein are the records of the Georgetown County Clerk of Court regarding the subject conviction, 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.

### III.

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

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

not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

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

#### IV.

Applicant further claims his plea was not entered knowingly or voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)).

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an

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

#### V.

To the extent Applicant seeks to challenge his Lexington County convictions (2001-GS-32-02681; 2006-GS-32-01290), the application should be summarily dismissed. "A proceeding is commenced by filing an application verified by the applicant with the clerk of court *in which the conviction took place.*" S.C. Code Ann. § 17-27-40 (emphasis added). Typically, an application filed in the wrong venue must typically be transferred to the proper county in which it could be brought. See Rule 82(b), SCRCF. However, the considerable age of the Lexington convictions, such that both the statute of limitations and the equitable doctrine of laches would apply, renders severance and change of venue a wholly wasteful procedural tangle. See Rule 1, SCRCF ("[These rules] shall be construed to secure the just, speedy, and inexpensive determination of every action."). Specifically:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

Applicant reports his prior convictions occurred on August 16, 2001, and June 19, 2006, and never appealed. The current application was not filed until December 11, 2017—well after the one-year statutory filing period expired. Therefore, severance and transfer would be an

entirely wasteful expenditure of strained judicial resources; instead the allegations regarding the Lexington convictions should simply be dismissed.

## VI.

Applicant's allegations regarding jurisdiction are without merit. "Circuit courts obviously have subject matter jurisdiction to try criminal matters." State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005). "[S]ubject matter jurisdiction of the circuit court and the sufficiency of the indictment are two distinct concepts and the blending of these concepts serves only to confuse the issue." Id. Furthermore, Applicant's assertion that an individual cannot waive his right to have an indictment presented to the grand jury is without merit as a matter of law. In any event, as the allegation applies to his Georgetown County conviction, presentation to the grand jury was not waived—it was a true billed indictment. Therefore, Applicant's allegations regarding jurisdiction, and every part of the application based thereupon, should be summarily dismissed.

## VII.

Applicant additionally complains that he was not sentenced pursuant to a lesser-included offense and demands the opportunity to plead to a lesser-included offense. There is no constitutional right to plea bargain. Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999). The South Carolina Constitution and South Carolina case law places unfettered discretion to prosecute solely in the hands of the prosecutor. State v. Thrift, 312 S.C. 282, 291-92, 440 S.E.2d 341, 346 (1994).

Furthermore, the relief demanded is unavailable in a post-conviction relief action. If this Court finds a defect in the original proceedings, the appropriate relief would be a new trial on the original indictments. Gilstrap v. State, 252 S.C. 625, 168 S.E.2d 88 (1969); see also Grant v.

MacDougall, 244 S.C. 387, 391, 137 S.E.2d 270, 272 (1964) (relief of absolute release not available). Where an applicant seeks only relief to which he or she is not entitled, "it is not incumbent upon [the] court to pass upon what relief, if any, he [or she] might, perchance, be entitled to." Young v. State, 250 S.C. 476, 479, 158 S.E.2d 764, 765 (1968). For these reasons, if the Application is not otherwise amended before the evidentiary hearing to reflect a desire for appropriate relief, Respondent would respectfully request this Court engage in a *thorough* colloquy with Applicant to apprise him of the relief available in a PCR. If at the evidentiary hearing Applicant indicates no desire in appropriate relief but a desire to proceed, Respondent will at that time move to dismiss the Application

#### VIII.

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), SCRCPP; 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, SCRCPP. 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), SCRCPP.

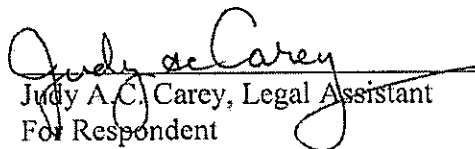
Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	)	
	)	
	)	2017-CP-22-1050
JOSEPH SKINNER, 147101,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____		

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by e-mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Partial Motion to Dismiss** on the above-captioned matter on the following person by e-mail:

**Steven W. Fowler, Esquire**  
**Fowler Law Firm**  
**730 Main Street, Unit 237**  
**North Myrtle Beach, SC 29582**

DATED this 9<sup>th</sup> day of February, 2018.

  
 Judy A.C. Carey, Legal Assistant  
 For Respondent

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STATE OF SOUTH CAROLINA )      TRANSCRIPT OF RECORD  
COUNTY OF GEORGETOWN    )      NO. 2017-CP-22-01050  
  
PCR HEARING

-----  
B E F O R E:    The Honorable George M. McFaddin, Jr.  
November 12, 2019  
-----

Joseph Skinner, SCDC #147101,  
Applicant,  
vs.  
State of South Carolina,  
Respondent.

-----  
APPEARANCES:

Steven Fowler, Esq.  
For the Applicant.

Johnny Ellis James, Esq.  
For the Respondent.

Official Court Reporter,  
Cynthia D. Weaver

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<u>WITNESS</u>	<u>PAGE</u>
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Wyn Bessent	
Direct by Mr. James	46
Cross by Mr. Fowler	56

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P-R-O-C-E-E-D-I-N-G-S

THE COURT: Gentlemen, I'm ready when you are.

MR. JAMES: All right. If we could get Mr. Joseph Skinner.

THE COURT: Yes, sir.

MR. JAMES: If it may please the Court.

This is the matter of Joseph Skinner versus the State of South Carolina, Docket Number 2017-CP-22-01050.

Mr. Skinner is present here in the courtroom today and is represented by Mr. Steven Fowler, Esquire.

Mr. Skinner was indicted at the November 2016 term of the Georgetown County Grand Jury for burglary in the first degree. He was represented on that charge by Wyn Bessent, Esquire, who is present here in the courtroom today. And the case was prosecuted by Randerson Stephens, Jr., of the Fifteenth Circuit Solicitor's Office.

On July 17th, 2017 he pled guilty as indicted. And the Honorable Benjamin H. Culbertson sentenced him to imprisonment for a term of 17 years. He did not appeal the plea or his sentence.

Your Honor, the allegations that we are proceeding upon are, as the State understands it, as they are set forth in the original application and then restated in the State's return. The State made a partial motion to dismiss some of those allegations, but in the interest of Court efficiency,

1 it's probably best to just fold it into the evidentiary  
2 hearing that we will be proceeding upon.

3 So the State is ready to proceed.

4 THE COURT: Yes, sir.

5 MR. JAMES: Your Honor, may Counsel and I  
6 approach?

7 THE COURT: Yes, sir.

8 (WHEREUPON, a bench conference was held.)

9 MR. FOWLER: If I may, Your Honor?

10 THE COURT: Yes, sir.

11 MR. FOWLER: I spoke with my client earlier this  
12 morning -- a good 20-minute conversation -- and also this is  
13 one of those cases that's been around for a while, and I  
14 certainly understand the State wants to move forward with  
15 it.

16 However, this afternoon, after lunch, my client  
17 and I spoke and he indicated that there is a potential  
18 witness or someone he would like to confer with before  
19 proceeding. And he can explain it to the Court far better  
20 than I can. And this was not brought out earlier this  
21 morning, but if it's something that he feels is substantive,  
22 I certainly want that on the record and the Court to hear  
23 it, because it may very well have strong indications in this  
24 case, Your Honor.

25 So we would like to ask for a continuance in terms

1 of trying to get a witness here and/or him discuss with a  
2 family member certain issues about this case.

3 THE COURT: All right, sir. I'll be glad to hear  
4 from him.

5 MR. FOWLER: If you would rise and address the  
6 Court, please?

7 MR. SKINNER: I just -- I would like to ask for a  
8 continuance, Your Honor. Just so I can convey (sic) with my  
9 sister about, if I do win my PCR, I wanted to make sure --  
10 see I didn't know we'd come back this soon. We were just  
11 here three weeks ago, and I didn't know we'd be back this  
12 soon. And I haven't -- I haven't really spoken to her  
13 about -- about this situation, about if I did win the PCR or  
14 about her bonding me out. I wanted to make sure that that  
15 was taken care of before -- before I went through with the  
16 PCR.

17 As I say, I didn't think I'd be back this soon. I  
18 thought we wouldn't be back until the first of the year,  
19 because I had some other issues I'm -- I'm still  
20 researching it -- I'm -- I'm at Broad River. And we were  
21 locked down for nine months. And we still stay locked down  
22 a lot at Broad River, because it's a -- it's a lockdown  
23 yard.

24 THE COURT: Yes, sir.

25 MR. SKINNER: And it's very hard to get to the law

1 library. And we're supposed to be getting tablets in a week  
2 or two, maybe. They say you can get on the law library with  
3 the tablets. And I just -- I just wish -- I'm just asking  
4 the Court so I can just get one more continuance -- just get  
5 a continuance so that can give me just a little bit more  
6 time to a ---

7 (WHEREUPON, a discussion was held off the record  
8 between Applicant and Counsel.)

9 MR. FOWLER: And what I was discussing with him is  
10 earlier we had -- we did send a letter asking for him to  
11 have as much access to the law library as possible. But,  
12 obviously, I'm not privy to what goes on with SCDC and the  
13 personnel there.

14 MR. SKINNER: When they get that stuff it's --  
15 they do what they want to do.

16 THE COURT: Any other reasons, Mr. Skinner?

17 MR. SKINNER: Sir?

18 THE COURT: Any other reasons to continue it?

19 MR. SKINNER: Well, no, sir. Just like I said  
20 about the -- I got other stuff that I'm -- I'm still looking  
21 into at the law library. When you get to the law library  
22 you got an hour -- if you can get to a computer, you got an  
23 hour to -- to research stuff.

24 THE COURT: Okay.

25 MR. SKINNER: You got limited access.

1 THE COURT: Okay. All right, sir. Anything else?

2 MR. SKINNER: No, sir.

3 THE COURT: All right. Let me hear from the  
4 State, please.

5 MR. JAMES: The State respectfully opposes --  
6 excuse me, Your Honor.

7 The State respectfully opposes Mr. Skinner's  
8 request for a continuance, Your Honor. This application was  
9 filed in December of 2017. It is now November of 2019. He  
10 has had nearly two years since the time that he has filed to  
11 conduct any further research that he might desire. He is  
12 represented by experienced and competent counsel whose job  
13 it is, is to do that exact legal research. In addition to  
14 that, he had a year or so prior to filing the application  
15 for relief. Let me double check my math here. Well, I  
16 suppose about six months prior to filing the application for  
17 relief to come up with any issues that he wished to raise.

18 Here and now, at this late hour, is not the time  
19 to be raising them.

20 Your Honor, the State has prepared for this case  
21 multiple times. The State's Witness, Wyn Bessent, is here  
22 and has prepared for this case multiple times.

23 Your Honor, the State -- and I don't want to get  
24 into any particular details -- the State does have a concern  
25 about the continuing health of its witness and thus has an

1 interest in prioritizing movement of this case, while  
2 Ms. Bessent is still present here and capable of providing  
3 the testimony necessary to resolve fully and completely the  
4 allegations that are raised in the application for relief.

5           Your Honor, the State's ready to proceed. I don't  
6 think a continuance is going to produce anything of help to  
7 Mr. Skinner. In particular, as to the sister issue, as to  
8 the bond issue, that's just completely irrelevant to whether  
9 or not he's entitled to post conviction relief. And I have  
10 not heard any other allegations that he wishes to --  
11 specific allegations that he wishes to raise or investigate,  
12 it's just sort of a general "I'd like more time."

13           And for all those reasons, the State would oppose.

14           THE COURT: Okay. Mr. Skinner.

15           MR. SKINNER: Yes, sir.

16           THE COURT: With all due respect, sir, I  
17 respectfully deny your motion to continue this case. It's  
18 two years old. I understand that there have been attempts  
19 in the past to get this thing heard.

20           MR. SKINNER: Well, I mean, why do -- I don't  
21 understand the rush for that. I mean, I just don't -- I  
22 don't -- I mean, it took me a while to even get my PCR  
23 going. And then it rolled into another year and then we  
24 were on -- we were locked down for nine months. That's over  
25 a year itself ---

1 THE COURT: Okay.

2 MR. SKINNER: --- that I didn't have access to any  
3 law library.

4 THE COURT: Yes, sir.

5 MR. SKINNER: I mean, and -- and -- and aren't I  
6 entitled to three continuances? I mean... .

7 THE COURT: I don't know of any rule like that,  
8 sir.

9 MR. SKINNER: That's what I heard.

10 THE COURT: No.

11 MR. SKINNER: I heard I was entitled to  
12 three continuances ---

13 THE COURT: Well, not to be churlish with you, but  
14 I don't know of any rule like that, sir.

15 MR. SKINNER: I mean, I've been railroaded from  
16 day one, since I stepped into Georgetown County.

17 THE COURT: Okay.

18 MR. SKINNER: So, I mean, I don't -- I don't -- I  
19 mean, y'all go ahead, man. Y'all been railroading me from  
20 day one, so you might as well finish railroading me.

21 THE COURT: Okay.

22 MR. SKINNER: Just go right ahead.

23 THE COURT: Thank you, Mr. Skinner.

24 As for the sister reason, I don't see the  
25 relevance of that in any of this of whether or not she can

## JOSEPH SKINNER - DIRECT BY MR. FOWLER

1 bond him out or not. He's got a very good lawyer with him  
2 today. And this is two years later and we're still -- we're  
3 still where we are today. I'm not trying to be hard on you,  
4 Mr. Skinner, but we're going forward today, sir.

5 Mr. Fowler.

6 MR. FOWLER: I'd like to call Mr. Skinner to the  
7 stand, please.

8 THE CLERK: Do you solemnly swear or affirm that  
9 the testimony you're about to give is the truth, the whole  
10 truth, and nothing but the truth, so help you God?

11 THE WITNESS: Yes, ma'am.

12 THE CLERK: Thank you. Please be seated and then  
13 state and spell your full name for the record.

14 THE WITNESS: Joseph Skinner, J-O-S-E-P-H,  
15 S-K-I-N-N-E-R.

16 JOSEPH SKINNER, having been duly sworn,  
17 testified as follows:

18 MR. FOWLER: Mr. Skinner -- well, first of all,  
19 I'd like to -- for the Court to take judicial notice of the  
20 transcript of record of July the 17th, 2017.

21 MR. JAMES: The transcript is part of the record,  
22 Your Honor, as an attachment that the State attorney has  
23 provided to the Court in the packet of materials that has  
24 been handed up to you.

25 THE COURT: Yes, sir, I have it.

## JOSEPH SKINNER - DIRECT BY MR. FOWLER

1 MR. FOWLER: Your Honor, I'd like to move back and  
2 forth just a bit to the Witness.

3 THE COURT: That's fine. Yes, sir.

4 DIRECT EXAMINATION

5 BY MR. FOWLER:

6 Q. Mr. Skinner, you are indicating in your  
7 application, Number 10, in particular. It says: State  
8 concisely the grounds on which you base the allegations that  
9 you are being held in custody unlawfully.

10 You mentioned it's an involuntary guilty plea; is  
11 that correct?

12 A. Yes, sir.

13 Q. Okay. And you also said the Court lacked subject  
14 jurisdiction to accept the guilty plea, right?

15 A. Yes, sir.

16 Q. And if you would just speak a little bit louder  
17 for the Court Reporter.

18 And you have also alleged ineffective assistance  
19 of trial counsel, right?

20 A. Yes, sir.

21 Q. Okay. And, finally, in Number 10, you state: The  
22 plea was not -- the plea was not a lesser included offense.

23 What did you mean by that?

24 A. Well, Your Honor -- I mean, Mr. Fowler, I'm not --  
25 I don't know the law, but I don't know -- a lesser included

## JOSEPH SKINNER - DIRECT BY MR. FOWLER

1 offense, a plea offer, isn't that lesser than what the  
2 charge -- you're being charged with?

3 Q. And that was the question that you had at the  
4 time; is that correct?

5 A. Yes, sir.

6 Q. Did your attorney ever spell out that in any kind  
7 of letter to you?

8 A. No, sir.

9 Q. Okay. And as we look at the transcript, I'd like  
10 to draw your attention -- and some of this -- we're going to  
11 go through this a little bit, piece by piece, but some of  
12 the issues, I think, are in the transcript that go to what  
13 you allege in your application.

14 If you would take a look at Page 4 of the  
15 transcript that we referred to earlier, could you read from  
16 Lines 10 to 17 -- yeah, from 10 to 17 to start, and then  
17 we'll continue on.

18 A. (Reading.) The Court: I mean, was any reference  
19 to being relieved made at the time?

20 Q. Ms. Bessent.

21 A. (Reading.) Ms. Bessent -- am I supposed to say  
22 what she said?

23 Q. Yes.

24 A. (Reading.) No, sir.

25 The Court: Okay. All right. Mr. Skinner, you

## JOSEPH SKINNER - DIRECT BY MR. FOWLER

1 want Ms. Bessent relieved as your attorney?

2 Yes, sir.

3 Could I say something?

4 Q. All right. Let's start there -- stop there at 15  
5 and then go from here.

6 So you wanted her relieved as your attorney is not  
7 a new thing, is it?

8 A. No, sir.

9 Q. Now, on the date of this -- I wanted to say trial,  
10 but it's not exactly a trial -- but on the date of this  
11 transcript, you indicated to the Court at the front that you  
12 wanted her relieved as your counsel, right?

13 A. Yes, sir.

14 Q. And why did you say that at that time?

15 A. Because, for one, she never had any contact with  
16 me. It took six months the first time. And when she came  
17 to see me, she didn't tell me what I was facing. She  
18 said -- she told me what Alicia Richardson might give me,  
19 but it was nothing, you know, etched in stone. I mean --  
20 and -- and -- are you talking about after that?

21 Q. Well -- you answered the question. So let's just  
22 talk from there. And continuing on, on Page 4, I think we  
23 stopped at say -- let's start at 15 and go through 25,  
24 please. If you could read from the...

25 A. (Reading.) Uh-huh. Okay. Yes, sir.

## JOSEPH SKINNER - DIRECT BY MR. FOWLER

1           Could I say something?

2           The Court says, Yeah.

3           Mr. Skinner: Do you need to know the reason why?

4           Yeah, go ahead and tell me why.

5           Well, for one thing, I never seen my written plea  
6 offer.

7           She says, I did, but I didn't.

8           Q. Read to the end of the page.

9           A. (Reading.) Okay. What is the plea offer? Is it  
10 still on the table?

11           It was the one from the last. It was from --  
12 supposed to be sent out on March 21st and I finally got a  
13 copy of it.

14           Q. Okay. So let's talk about that. That's one of  
15 the reasons that you feel -- is you not getting a copy of  
16 the written plea offer one of the reasons why you feel  
17 necessary to do this PCR?

18           A. That's the main reason.

19           Q. Okay. And what is -- and just explain it to me in  
20 layman's terms -- why is getting a written plea offer so  
21 important to you?

22           A. Well, Mr. Fowler, if I -- if I were to know that I  
23 had a written plea, know for a fact, something written on  
24 paper, I would have called my family. When that plea offer  
25 was sent out I would have called my family and I would have

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1 bonded out. They would have bonded me out then.

2 Q. Okay. So you're saying ---

3 A. And I would have got a paid attorney and I  
4 wouldn't have gotten the time I got. I know that for a  
5 fact.

6 Q. Okay. So you're saying that because you didn't  
7 get a written plea offer you -- things changed, right? You  
8 could have bonded out and some of the things you just  
9 mentioned, correct?

10 A. Yeah, dramatic -- dramatically changed. I mean,  
11 that was the whole deal. Because I didn't -- I didn't know  
12 about the plea offer. And then, something else -- can I say  
13 something else?

14 Q. Yes, please.

15 A. When they -- they -- they -- they took me to Ricky  
16 Todd -- I asked to talk to a solicitor -- Ms. -- Ms. Bessent  
17 got Ricky Todd to come talk to me. And I told Mr. Todd, I  
18 said, Mr. Todd, I said, If I had known that I had a written  
19 plea offer, I said I would have bonded out -- I would have  
20 got -- I would have bonded and got a paid attorney. And you  
21 know what he told me? He said, Well, it's too late for that  
22 now.

23 So it -- it -- she had done messed my case up so  
24 bad that the solicitor's office was out -- you know, pretty  
25 much, you know. And, plus, I had told them something else

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1 she said about -- and she was just being honest about the  
2 way -- she said, Horry County, you know -- Horry County  
3 doesn't give out a lot of time. She said, But Georgetown  
4 County gives out too much time. And Mr. Todd and Alicia  
5 Richardson do what they want to do in that courtroom.

6 MR. JAMES: Objection. Hearsay.

7 THE COURT: Sustained.

8 MR. FOWLER: Well, Your Honor -- I -- who were  
9 you -- who did you say said that?

10 THE WITNESS: My attorney.

11 MR. FOWLER: Okay. And she's in the courtroom,  
12 correct?

13 THE COURT: I thought somebody else said it.

14 MR. FOWLER: So, Your Honor, I'd like to --

15 THE COURT: Yes, sir. Yes, sir.

16 MR. FOWLER: So she is here and can ---

17 THE COURT: I thought he was talking about  
18 somebody else.

19 MR. FOWLER: I understand, Your Honor.

20 THE WITNESS: But she was just being honest. And  
21 I appreciate her being honest about that. I mean, she was  
22 just -- and the only reason -- and the only reason -- I  
23 wrote them a letter after she came to see me that first  
24 six months, I wrote the solicitor's office a letter -- I  
25 know I probably shouldn't have, because I was trying to find

## JOSEPH SKINNER - DIRECT BY MR. FOWLER

1 out what kind of time I was facing. Even though she told me  
2 that Wyn Bessent would probably try to get me 15/85, that  
3 wasn't etched in stone.

4 So I wrote the solicitor's office trying to find  
5 out what's going on with my case, since I couldn't get her  
6 on the telephone. I couldn't find out nothing. And --  
7 well, that's when I told them that. And I think they  
8 vindictively -- they vindictively prosecuted me when I did  
9 get to the courtroom. Ricky Todd asked the Judge for more  
10 time than the 15 years that me and Ms. Bessent asked the  
11 Judge for.

12 I was pleading -- openly and honestly, pleading to  
13 15 years, and because I said that to -- in a letter about  
14 them being -- doing what they want to do with people in the  
15 courtroom. I shouldn't have said that, I guess, but I was  
16 being honest. I mean, I was just trying to get some answers  
17 about my time.

18 BY MR. FOWLER:

19 Q. So -- so was it out of frustration that you wrote  
20 the solicitor's office?

21 A. Well, out of frustration. And, yes, sir, mainly  
22 and -- and -- and -- and trying to get a response from them.  
23 And plus I asked about how come I didn't get a plea offer.

24 Q. Okay.

25 A. And I know they don't have to give me a plea

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1 offer, but that's when they did give me a plea offer, but  
2 she never told me I had a plea offer.

3 Q. So let's -- let's summarize this a little bit.

4 Okay, you -- and just briefly answer these, but  
5 then we can get into it.

6 So you briefly -- so you did not receive a written  
7 plea offer at all, correct?

8 A. Nah, I'd never seen -- I didn't say I never  
9 received it.

10 Q. Well, let's be clear, when did you receive it?

11 A. After the plea hearing.

12 Q. Okay. So it was ---

13 A. Three days after the plea hearing.

14 Q. Well, the horse is out of the barn at that point,  
15 isn't it?

16 A. Right.

17 Q. Okay. So you received it three days after the  
18 hearing. When -- the hearing was on ---

19 A. I think May 24th or something like that -- 23rd,  
20 24th.

21 Q. Well, the date of this transcript is July 17th, I  
22 think. So you received it after July 17th -- or when did  
23 you receive it?

24 A. It was -- it was -- it was a few -- two or  
25 three day -- I don't remember, it was two or three days

## JOSEPH SKINNER - DIRECT BY MR. FOWLER

1 after the -- it was after the plea hearing.

2 Q. Okay. All right. So you never received a written  
3 plea offer. How did you know about the plea offer before  
4 you pled?

5 A. Because I seen it. I called her after the plea  
6 hearing and asked her to come to the jail, I want to speak  
7 to her. She came up there. And I -- and I was going to try  
8 to, you know, fire her, so to speak.

9 Q. But, now, was this after or before the plea  
10 hearing?

11 A. After.

12 Q. Okay.

13 A. Three days after.

14 Q. Okay.

15 A. Two or three days after. She came up to the  
16 jailhouse and I said I wanted my paperwork back. I sent her  
17 some paperwork that Alicia Richardson had circled where I  
18 had three prior burglaries, I only had two. One of them was  
19 the same one, but Alicia marked it as three, it was exactly  
20 two. I went off the bond -- off the probation on one and  
21 come back and went back to jail -- to prison for it. And it  
22 looked like there was three, there was only two.

23 Well -- excuse me a minute. My head, I get messed  
24 up sometimes, you know.

25 Q. Sure, take your time. Well, let -- let me go --

## JOSEPH SKINNER - DIRECT BY MR. FOWLER

1 let me go ahead.

2 A. I got it here.

3 Q. Okay.

4 A. It's a -- I was wanting that paperwork back, so I  
5 could, you know, have it for my own personal thing, you  
6 know.

7 Q. Right.

8 A. Well, she was -- she opened my folder up, this is  
9 in the little booth up there, you talk to your attorney at  
10 the county jail.

11 Q. Right.

12 A. She was going through my folder. And I seen "plea  
13 offer" in there. And I said, Oh, oh, turn that back, what  
14 was that? What is that?

15 She said, Oh, that's your plea offer, I showed  
16 that to you. I said, No, you didn't show that to me. She  
17 said she did, but she didn't. I mean, I sat up in that  
18 jail -- in that jail cell all day long. You don't think I  
19 remember if I had a plea offer or not?

20 Q. Right. And you would have a copy of it I presume?

21 A. Yeah, at least a copy of it.

22 Q. Okay. So -- all right.

23 You didn't receive a written plea offer before the  
24 hearing?

25 A. No, sir.

## JOSEPH SKINNER - DIRECT BY MR. FOWLER

1 Q. Okay. Let's take a look at Page 6 of the  
2 transcript. And if you could start at line -- let's start  
3 at Line 8 and then go down to 19, please. Right there, The  
4 Court.

5 A. (Reading.) So when you knew about the plea  
6 offer -- well, on -- on -- now, it wasn't what you wanted,  
7 but it was -- they said this is the best we're going to  
8 offer you. Your option is to go to trial or accept this  
9 offer.

10 Yes, sir.

11 And you didn't accept the offer. So you knew  
12 about the offer?

13 Not until -- until the day before, when she came  
14 to me the day before.

15 Well -- well, you know -- you know about it at the  
16 arraignment and that's the purpose for the arraignment.

17 Q. Okay. So -- so let's -- let's talk about this.

18 So you're saying there was a very short window of  
19 time that you knew about the plea offer, correct?

20 A. Yes, sir. It was -- I mean, it was after the plea  
21 hearing.

22 Q. The written offer?

23 A. The written.

24 Q. Okay. But now, here on this, it said,

25 Mr. Skinner, not until I -- the day before when she came to

## JOSEPH SKINNER - DIRECT BY MR. FOWLER

1 me the day before.

2 A. The day before what?

3 Q. Well, you tell me.

4 A. Oh, oh. The day before I went to the courthouse  
5 to ---

6 Q. Right.

7 A. --- the plea hearing. She came up and told me  
8 that the solicitor's office is taking me to the courthouse  
9 in the morning for a plea hearing.

10 Q. What time of day was it that she went?

11 A. It was morning time. Morning.

12 Q. Okay. So go ahead, continue, please.

13 A. But I said -- I mean, and the whole time I still  
14 didn't know about no -- any plea offer. That's why I say  
15 plea hearing. And I don't know anything about the -- you  
16 know, the court system or how a plea hearing, plea -- I just  
17 know I seen no plea offer. And I was like, plea hearing,  
18 okay.

19 And she said that there it goes -- they said, You  
20 either take 15 years at 85 percent or be arraigned for  
21 trial. And I was like, Why -- I told y'all I didn't get no  
22 warning. Why didn't I get a warning? You tell me in less  
23 than 24 hours you're going to take me to the courthouse and  
24 give me a ultimatum of either take 15 years or be arraigned  
25 for trial.

## JOSEPH SKINNER - DIRECT BY MR. FOWLER

1 Q. So do you feel like you received enough time to  
2 prepare for the plea hearing the next day?

3 A. No, sir. I only had less than 24 hours.

4 Q. Okay. And I'm just asking here, but you had less  
5 than 24 hours. And according to your testimony today you  
6 didn't have a written plea offer. So what difference does  
7 that make to you that you only knew about it 24 hours ahead  
8 of time?

9 A. The difference is that, for one, I went in the  
10 courtroom and I almost signed the thing, because I was  
11 scared about -- they said I could get a life sentence.

12 Q. Right.

13 A. When I got arraigned for trial, I could be facing  
14 a life sentence.

15 Q. Right.

16 A. So I almost signed it when I went up there, but I  
17 didn't.

18 Q. Right.

19 A. But -- but -- but the main thing -- what -- what  
20 did you say before that?

21 Q. I guess my question was: It seems like you said  
22 that you knew about it a day before?

23 A. Yeah, I knew about ---

24 Q. Orally ---

25 A. Not the plea offer. I knew about -- she didn't

## JOSEPH SKINNER - DIRECT BY MR. FOWLER

1 tell me until the day before is what I was saying.

2 Q. Right.

3 A. I didn't know about the -- going to the courthouse  
4 until she came that afternoon to the -- that afternoon to  
5 the jail ---

6 Q. Oh, okay.

7 A. --- the county jail. And the next morning I was  
8 in the courthouse.

9 Q. Oh, okay.

10 A. In the courtroom.

11 Q. Okay. So it was ---

12 A. In front of Judge Hyman.

13 Q. Right.

14 A. And he started ---

15 Q. Yeah. So it was really less than 24 hours before  
16 you ---

17 A. Yeah, it was less. It was less. I mean, even a  
18 day or two, still not a lot of time, you know, to decide --  
19 give a person to decide.

20 Q. Did you have time enough to contact any of your  
21 family members?

22 A. No, sir.

23 Q. Okay. Did you have any time to talk to any kind  
24 of other law person -- legal person?

25 A. No, sir, I did not.

## JOSEPH SKINNER - DIRECT BY MR. FOWLER

1 Q. Okay. Let's look at Page 7 of the transcript, and  
2 if you could read from 3 to 10.

3 A. (Reading.) Mr. Skinner: I mean, I was just -- I  
4 was just wondering if that was a violation of something. I  
5 mean, it was like it was just thrown at me in less than  
6 24 hours. And then I was brought in front of the judge  
7 without time to actually think about whether I wanted to  
8 take the plea or go to trial instead of it being that plea.  
9 That thing was sent out on March the 22nd or the 24th. I  
10 didn't know anything about it until I was taken in front of  
11 the judge on May the 24th. And I'm just guessing at that  
12 date, I guess.

13 Q. Sure. Sure. So I guess the question is when you  
14 asked the Judge or the Court, Is this a violation of  
15 something? What did you mean by that?

16 A. I don't -- well, I don't know.

17 Q. Well, I mean, you said, Is this a violation of  
18 something? Did you have a question to the Court that your  
19 attorney did not answer?

20 A. Well, yeah. Because I didn't understand what I  
21 was there for. I mean, I didn't know -- I didn't know what  
22 a plea hearing was. I mean, was I -- in other words,  
23 there's a missing piece somewhere to the puzzle, because  
24 while I'm at the plea hearing, but what am I here at a plea  
25 hearing for and I didn't get a plea.

## JOSEPH SKINNER - DIRECT BY MR. FOWLER

1 Q. Right.

2 A. That's -- that's the thing.

3 Q. And if you'll look down at -- on Page 7, Lines 14  
4 through 18, you still had to ask the Court some legal  
5 questions, didn't you?

6 A. Uh-huh.

7 Q. Was that frustrating to you?

8 A. Well, I guess. It's all frustrating when they  
9 give you less than 24 hours and how I'm thinking I'm going  
10 to be arraigned for trial.

11 Q. So on Page 7, Lines 14 through 18.

12 A. (Reading.) The Court: Well, and I understand  
13 that.

14 Q. Uh-huh.

15 A. (Reading.) But what you got to understand is that  
16 there's really no constitutional right to a plea bargain.  
17 They don't have to offer you anything. And see that was  
18 Judge ---

19 Q. Hyman.

20 A. No, I think -- was that Judge Hyman on that?  
21 Because that sounds like what's his name?

22 Q. Well, anyway read Line 18.

23 A. (Reading.) Okay.

24 Mr. Skinner: That's -- that's what I wanted to  
25 know.

## JOSEPH SKINNER - DIRECT BY MR. FOWLER

1 Q. Okay. So you were asking the Court legal  
2 questions, correct?

3 A. Yes, sir.

4 Q. Did you ask that of your attorney? Did you ask  
5 these questions of your attorney?

6 A. I very seldom seen my attorney.

7 Q. Okay. And you didn't ask her that day, did you?

8 A. No, sir.

9 Q. Okay. And it was kind of a limited time, wasn't  
10 it? I mean, from when you are saying you got the plea offer  
11 orally, to actually pleading, correct?

12 A. Right.

13 Q. Okay. Okay. Let -- let's briefly, on Page 8 of  
14 the transcript, Number 9 through 14 -- 16 and then we'll  
15 take a break -- 9 through 16, if you could read that,  
16 Mr. Skinner.

17 A. Mr. Skinner: I told Ms. Bessent that -- I mean,  
18 I'm -- I'm -- I know it's -- and has nothing to do with it  
19 to them, but to me, I mean, when -- what happens it  
20 wasn't -- I didn't -- I don't know this -- do anything  
21 violent. Even though it's considered violent, because of  
22 two priors. But I asked her about if I would take it. If  
23 they could drop it to at least a second non, you know,  
24 non-violent, I would still have to do seven-and-a-half  
25 years. I would have to plea to that instead of going to

## JOSEPH SKINNER - DIRECT BY MR. FOWLER

1 trial.

2 Q. Okay. So did you have a lot of questions about  
3 what you were doing at this time, legally?

4 A. Well, yeah, sure. I mean --

5 Q. Well, I mean, you say "Sure", but when you go  
6 to -- before a judge it seems like you're supposed to have  
7 an idea of what you're doing, correct?

8 A. Yes, sir, but I didn't. I didn't have an idea.  
9 Because I didn't -- I say I hadn't spoken to -- it was a  
10 limited time. I spoke to her two times in ten months.

11 Q. Did you write her or ---

12 A. Yes, I did and I got no response.

13 Q. Okay. How many ---

14 A. The only time that I got to talk to her on the  
15 telephone, the first time, was after the plea hearing.

16 Q. Okay. So that was the first time you talked to  
17 her on the phone?

18 A. On the telephone. And I wrote letters and never  
19 got none of the answers back from her.

20 Q. So no response?

21 A. None.

22 Q. Okay. And I guess the point of 9 through 16, it  
23 appears to me, based on your reading, that you had a  
24 question about what you were pleading to; is that correct?

25 A. Yes, sir.

## JOSEPH SKINNER - DIRECT BY MR. FOWLER

1 Q. Okay. And the sentencings of it; is that correct?

2 A. Yes, sir.

3 Q. Okay. You can take a look at Number 23 and 24,  
4 Mr. Skinner, I mean.

5 A. (Reading.) I mean, I just -- that just don't -- I  
6 don't understand that though. I really don't understand it.

7 I was -- I mean, I was confused. I was -- I don't  
8 know.

9 Q. And you weren't under any kind of medication?

10 A. No, sir. See I have -- at the crime scene, so to  
11 speak, the owner come out -- well, he kicked my legs out  
12 from under me and I bumped my head open. I don't remember  
13 nothing after that.

14 Q. Right.

15 A. Until I woke up in jail.

16 Q. Okay.

17 A. And I've had ringing in my head ever since -- for  
18 three years now.

19 Q. Okay. So on Page 6 -- excuse me, on Page 8 of  
20 this transcript, you basically tell the Court that you don't  
21 understand what you're pleading to, right?

22 A. No, sir, I don't.

23 Q. And why did you not understand what you were  
24 pleading to?

25 A. Because I had -- for one, I didn't have -- have --

## JOSEPH SKINNER - DIRECT BY MR. FOWLER

1 hadn't got a plea offer and...

2 Q. Do you think your attorney was effective in terms  
3 of getting you ready for the plea?

4 A. No, sir.

5 Q. Why not?

6 A. Because I told -- the main thing is I didn't -- I  
7 didn't know I had a plea offer. If I had had a plea offer,  
8 then maybe I would have took (sic) the plea.

9 Q. Okay.

10 A. You know what I mean? Before it came to the part  
11 where the solicitor's office got so mad at me, then they  
12 were vindictive against me, and got me more time than the  
13 15 years.

14 Q. So you're saying that the plea offer was something  
15 in writing that you could have thought about?

16 A. Exactly. And I could have bonded out. I would  
17 have bond -- I would have -- I would have bonded out and  
18 went and got a paid attorney. I wouldn't be here now.

19 Q. Do you think your attorney was deficient in  
20 telling you about your plea offer?

21 A. I do, very deficient. I mean, she forgot about  
22 it. I mean, it's an honest mistake, but when it comes down  
23 to somebody's doing 17 years in prison, I mean...

24 Q. And do you think what you said was a deficiency is  
25 why you're here today facing this?

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1 A. Yes, sir.

2 Q. Okay. Let's go to Page 9 -- and I think we're  
3 wrapping this up a little bit, maybe. Would you read  
4 Number 9, two through six.

5 A. (Reading.) Mr. Skinner: Do you -- do you know --  
6 you never had nothing violent -- never had nothing violent  
7 on my record.

8 I mean, they, to me, it's just unfair. I mean,  
9 there's nothing I can do about it. I can't beat the system.  
10 I mean, I know that you can't beat the system, but I'm  
11 just -- I'm the defendant. I'm not ---

12 I just said -- as I said, I had a head injury,  
13 too, from the ---

14 Q. Right.

15 A. -- my head was still -- I was back and forth from  
16 medical with blood -- high blood pressure and all kinds of  
17 stuff.

18 Q. Right. Briefly -- and we'll run through these  
19 fairly quickly, but succinctly. On Page 10, Lines 9 and 10.  
20 What does that say?

21 A. (Reading.) Mr. Skinner: So, I mean, if I can  
22 plead if I want to plead.

23 Q. Okay. So you were asking, again, the Court legal  
24 questions; is that correct?

25 A. Yes, sir.

## JOSEPH SKINNER - DIRECT BY MR. FOWLER

1 Q. Okay. On Page 11, Lines 7 through 9.

2 A. (Reading.) Mr. Skinner: Yes, sir. It's -- I --  
3 like I say, if they're not going to come down any more,  
4 what's the sense in trying to fight it?

5 Q. Okay. So what did you mean by that last sentence  
6 here, "What's the sense in trying to fight?"

7 A. I guess go to trial. I don't know. I don't  
8 reckon.

9 Q. But your attorney didn't explain that to you, did  
10 she?

11 A. No, sir.

12 Q. All right. And I believe this is the last quoted  
13 text.

14 A. That was at the plea hearing you talking about?

15 Q. Yes. Yes. Yes. This is the transcript of record  
16 on July 17th, 2017. Lines 8 to 11, could you read that,  
17 please?

18 THE COURT: What page, sir?

19 MR. FOWLER: I apologize. Page 13, Lines 8  
20 through 11.

21 THE COURT: Okay.

22 THE WITNESS: (Reading.) The Court says, All  
23 right. Well, I'm going to deny your motion to relieve  
24 Ms. Bessent as your attorney. You still have the decision,  
25 now the offer that was made is off the table.

## JOSEPH SKINNER - DIRECT BY MR. FOWLER

1 BY MR. FOWLER:

2 Q. Okay.

3 A. That -- that -- that's Benjamin Culbertson there,  
4 isn't it? Isn't that the 17th? Is that July the 17th?

5 Q. Yeah, well, it's all in that transcript that I've  
6 got here and it's all together.

7 So, basically, it shows, your testimony today --  
8 let's -- let's kind of reboot a little bit.

9 You're saying in your PCR application it's an  
10 involuntary guilty plea, correct?

11 A. Yes, sir.

12 Q. Okay. And these things in the transcript that we  
13 showed today, that you read, show that; is that correct?

14 A. Yes, sir, I would think so.

15 Q. Okay. Now, you said, An ineffective assistance of  
16 counsel in -- on D(C), I believe, in your application. So  
17 why are you -- and you've read these things in from the  
18 transcript. Why do you feel like she was ineffective as  
19 your lawyer?

20 A. Because, I -- for one, I had no -- no -- minimal  
21 contact. You know, I had no clue what was going on with my  
22 case for, like I said, almost ten months. I had to find out  
23 by her coming to me the second time in, like,  
24 nine-and-a-half months or whatever and telling me --

25 MR. JAMES: Your Honor, I must respectfully

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1 object. Asked and answered. We've been over all of this  
2 material two or three times now.

3 THE COURT: I'll allow him to have some summary  
4 here. Proceed, sir.

5 THE WITNESS: As I said -- what did you ask me  
6 again?

7 BY MR. FOWLER:

8 Q. Just the general ineffective assistance of  
9 counsel. You're saying that you didn't speak to her,  
10 correct? For months?

11 A. Right. And then I found out -- I find out -- the  
12 only way I found out I got -- she comes up to me on that  
13 May 24 -- I thought it was May 24th -- but the date -- that  
14 afternoon and tells me I'm going to -- the solicitor's  
15 office is taking me to the courthouse in the morning and for  
16 the ultimatum of, You gotta take 15 years, 85 percent  
17 sentence, or I'll be arraigned for trial.

18 Q. Right.

19 A. And I didn't -- I swear I knew nothing about a  
20 plea offer, a written plea offer.

21 Q. And you feel like that made a difference, correct?

22 A. It made a big difference in my case. It made the  
23 whole difference in my case.

24 Q. You mentioned -- we talked about, I believe,  
25 earlier in the transcript that you said the plea was not a

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1 lesser included offense. What do you mean by that on your  
2 application?

3 A. Well, some stuff I read in law stuff, in the law  
4 books. And I thought a lesser included offense was  
5 something lesser included than what the actual time of the  
6 offense you were being charged with. I thought, well,  
7 lesser included offense would be something lesser than that.  
8 You know, if you're going to give me a plea offer, why you  
9 give me a plea offer to something that's the same time as  
10 what I'm being charged with?

11 Q. And your attorney didn't spell that out, did she?

12 A. No, sir.

13 Q. Now, there is one other thing in Number 10, you  
14 said, "Court lacked subject-matter jurisdiction to accept  
15 the guilty plea." What did you mean by that?

16 A. Well, I really -- I know what it means, but I may  
17 be...

18 Q. Well, just in your own -- own opinion.

19 A. Well, it's -- I thought it should be a lesser  
20 charge, I guess, than what -- first degree burglary.

21 Q. So you were thinking it was probably something  
22 along the lines of a lesser offense, right?

23 A. Right.

24 Q. Okay. You mentioned that -- in Paragraph 11A, you  
25 said you were threatened with a life sentence if you did not

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1 plead guilty. What do you mean by that?

2 A. Well, I told Ms. Bessent that I was -- they were  
3 standing, every -- her and -- they were steady trying to  
4 want me to sign this, sign this, sign this, sign this. I  
5 mean, this was after the plea hearing and after -- they  
6 still want me to sign something.

7 I said -- I told her -- I said I'm not -- I told  
8 her from the very get go, I'm not signing anything until I  
9 talk to the solicitor. I want to talk to a solicitor and  
10 find out -- the only reason I wanted to talk to the  
11 solicitor was to find out why.

12 If you look at my NCIC record, I have nothing.  
13 I'm not a violent person. You know, the only thing that  
14 Mr. Todd could find on my NCIC was a -- said it was a  
15 hit-and-run, leaving the scene of accident. Twenty  
16 something years ago. And I got hit. The only reason I got  
17 charged, because I had a beer -- drank a beer and the guy  
18 actually was speeding and hit me.

19 Q. Now, who is Mr. Todd?

20 A. Ricky Todd, Jr. He's a solicitor. He's the one  
21 who was up on -- at the podium ---

22 Q. Right.

23 A. --- prosecuting my case, because Alicia Richardson  
24 passed it down to Ranny Stephens, who was out of town,  
25 supposedly.

## JOSEPH SKINNER - DIRECT BY MR. FOWLER

1 Q. Right.

2 A. But Mr. Todd told me when I wouldn't take his  
3 15 years, whatever, that he said he got mad and said, Well,  
4 you'll be the first one on the docket come July the 17th.  
5 But he went from Jekyll to Hyde in a short period of time.

6 And, like I said, I was up there with Ms. Bessent,  
7 pleading to 15 years because I didn't know what else to do.  
8 I mean, it was either that or probably get a life sentence,  
9 because Mr. Todd told me if I didn't take the 15 years, the  
10 Judge would probably give me a life sentence.

11 So I went up there -- they had a suit was waiting  
12 on me when I got to the courthouse and I didn't know what to  
13 do, but I went up there and pled guilty. And I pled with my  
14 own free will to 15 years. And Mr. Todd stood up there and  
15 told the Judge that, Oh, Your Honor, the man's son lived  
16 above the pool house. And there was no above the pool  
17 house. And then he said I had three prior burglaries and I  
18 only had two. And Ms. Bessent corrected him. He got angry.  
19 He flew off the handle, Oh, Your Honor, he had a spear.  
20 Because the man has been on safari hunts and he's got animal  
21 heads in his pool house.

22 Q. Right.

23 A. And he had a spear -- a rebar, laying against a  
24 wall. And he said -- he tried to say that the owner said I  
25 had it when I went out there, but the owner said I put it

## JOSEPH SKINNER - DIRECT BY MR. FOWLER

1 down.

2 Q. Okay.

3 A. Yeah.

4 Q. So the point is you feel like the solicitor's  
5 office -- who threatened you with the life sentence if you  
6 didn't plead guilty? The solicitor's office or your  
7 attorney?

8 A. The solicitor's office.

9 Q. Okay.

10 A. I mean, I say "threatened me," that's what it  
11 sounded like to me, because he got angry because I wouldn't  
12 take the 15 years.

13 Q. Okay. You mentioned in 11B, That no party can  
14 waive presentment to the grand jury. To the best of your  
15 knowledge, did you waive presentment in this case?

16 A. I think I did, but I don't remember. I don't  
17 know. I didn't know -- I mean, until I got to reading stuff  
18 about the law, I really didn't know. I didn't at the  
19 time -- I didn't know the law like I know. I know a little  
20 bit more now, than I do then, but ain't nothing like a  
21 lawyer would.

22 Q. And in 11C, you state that the plea was not  
23 knowing and voluntarily given because you lacked the  
24 knowledge of the material evidence.

25 What did you mean by -- and we've gone over the

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1 plea or at least part of -- or the transcript or at least  
2 parts that you spoke in, but you say, "The plea was not  
3 knowing and voluntary because you lacked knowledge of the  
4 material evidence." What did you mean by that?

5 A. Well, I guess, maybe I meant about the plea offer  
6 or something. I don't know. I went up there, like I said,  
7 I went in a rush to the courthouse. They rushed me up  
8 there. Like I said, I had minimum -- minimum time talking  
9 to her about my situation. About my -- and they rushed me  
10 in there. They did -- I think they did that on purpose,  
11 rushed me in there and told me to, you know...

12 Q. When you say "they rushed you," are you talking  
13 about your attorney or talking about the solicitor's office?

14 A. I think -- I'm not sure, to be honest with you. I  
15 mean, I know it was the solicitor's office, but I'm not  
16 sure. But -- but I felt I was rushed in there. My attorney  
17 wasn't there when I got to the courthouse. She was  
18 upstairs. They had two guards downstairs, had a suit  
19 waiting on me, and told me, What are you going to do? What  
20 are you going to do? Are you going to take this or you  
21 going -- I didn't know what to do, you know.

22 Q. Gotcha. And, finally, I think this is a part of  
23 your 11, perhaps D, that the plea offer was not a lesser  
24 included offense.

25 You've mentioned this before, but are you

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1 saying there -- and I think we went over in the  
2 transcript -- but you're saying there was -- are you saying  
3 that there was some confusion in your mind about what you  
4 were pleading to specifically -- as a lesser included  
5 offense of a larger offense?

6 A. Well, I just thought that came along maybe with a  
7 plea offer, that you would -- you know, a lesser included  
8 offense. If you was going to give somebody a plea offer,  
9 why would you give them a plea offer to the time that's  
10 carried on the offense you're being charged with? That's  
11 what I was going with, with that.

12 Q. Okay. Is there anything -- you know, we've gone  
13 over 10 and 11 on your application. Is there anything else  
14 that you feel like the Court -- it would be helpful to the  
15 Court in rendering a decision in your favor? Anything else?

16 A. I can't really -- I mean, like I said -- at this  
17 point, like I said, I went up there of my own free will with  
18 Ms. Bessent and I was pleading to 15 years. And Mr. Todd  
19 come up there, like I said, he told those two misstatements  
20 on me and he got angry, I think, because he embarrassed  
21 himself in the courtroom. That's the only thing I can  
22 figure.

23 Or they just were mad about me writing that letter  
24 to the solicitor's office and about what I said about to  
25 Mr. Richardson about he lets them do what they wanna do with

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1 people in the courtroom. And I think they were taking it  
2 back out on me, when he tried to get -- he asked the Judge  
3 for upper -- he actually said, "Upper than that, Your Honor,  
4 we want upper than that, he had a spear."

5 I had no spear when that man came in the pool  
6 house. He said he wrote a statement, the man wrote a  
7 written statement that said I put it down. I never had it,  
8 but the owner said I put it -- even though if I did have it,  
9 the owner said I put it down before he ever came in the pool  
10 house. But Mr. Todd didn't make it sound like that to the  
11 Judge.

12 Q. How would you characterize your attorney's  
13 performance in representing you?

14 A. Ineffective.

15 Q. Okay. And do you feel like the cause of that,  
16 what you're saying is ineffectiveness, do you think that's  
17 why you are in the position you are now?

18 A. Yes, sir, I do. Because, like I said, if I had  
19 known I had a written plea offer, I would get my -- that  
20 would give me enough time and my family enough time, you  
21 know, you know, you know, to think about -- to come bond me  
22 out, or, you know -- and they probably would have. Because  
23 sometimes it takes them a little while, you know, to think  
24 about things. But I didn't have no time and they didn't  
25 have no time to think about that.

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1 MR. FOWLER: No further questions, Your Honor.

2 MR. JAMES: No questions for this witness.

3 THE COURT: You may step down. Thank you,

4 Mr. Skinner.

5 THE WITNESS: Yes, sir.

6 MR. FOWLER: Your Honor, may I have a moment with  
7 my client?

8 THE COURT: Yes, sir.

9 (WHEREUPON, there was a pause in the proceedings.)

10 MR. FOWLER: Your Honor, after speaking with my  
11 client, we have no further witnesses.

12 THE COURT: Yes, sir. Mr. James.

13 MR. JAMES: Before the State calls its witness,  
14 Wyn Bessent, Your Honor -- I should have brought this up in  
15 the opening call of the case. But reviewing the State's  
16 return, I'm reminded that applicant requests relief in the  
17 form of a new plea hearing with an offer of a lesser  
18 included offense and on charges I plead to, to be processed  
19 by presentment by a grand jury.

20 In response to that, Your Honor, in Section 7 of  
21 the State's return, that would be Pages 6 and 7, the State  
22 noted that the relief requested is not available in a post  
23 conviction relief action. And, therefore, it may be  
24 appropriate to make sure that Mr. Skinner is aware that if  
25 post conviction relief were to be granted, he would go back

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1 to square one. He would face his original charges, and the  
2 complete range of sentencing from 15 years all the way up to  
3 life in prison. Make sure that that is, in fact, what he  
4 wants to occur today. And so if Your Honor would engage in  
5 a brief colloquy with him to confirm that that is the case,  
6 I would appreciate it.

7 THE COURT: Counselor, what do you think? Have  
8 you talked to him about this?

9 MR. FOWLER: Yes, sir. I've talked to him about  
10 it. But we -- he indicated on the stand that he had a head  
11 injury or something and any prophylactic measure that this  
12 Court or I could take to make sure that he's aware of his  
13 rights and what this is, I'm certainly all in favor of it.

14 THE COURT: Is that right, Mr. Skinner?

15 THE WITNESS: Yes, sir.

16 THE COURT: You understand the ramifications that  
17 if you get -- if you get the relief you seek, you start at  
18 15 up to life. Do you understand the possibility? I'm not  
19 saying you will.

20 THE WITNESS: Yes, sir.

21 THE COURT: Don't misunderstand me now.

22 THE WITNESS: Yes, sir.

23 THE COURT: I'm not saying you'll get that, but  
24 you'll take that risk. Do you understand?

25 THE WITNESS: Yes, sir.

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1 THE COURT: And you want to do that?

2 THE WITNESS: Yes, sir.

3 THE COURT: Okay. Thank you.

4 MR. JAMES: All right. With that set forth, Your  
5 Honor, the State would call Wyn Bessent.

6 THE CLERK: Do you solemnly swear to tell the  
7 truth, the whole truth, and nothing but the truth, so help  
8 you God?

9 THE WITNESS: I do.

10 THE CLERK: Thank you. Please be seated and state  
11 and spell your full name for the record.

12 WYN BESSENT, having been duly sworn,  
13 testified as follows:

14 MR. JAMES: Before we proceed, Your Honor, I think  
15 Counsel has an interjection.

16 MR. FOWLER: Your Honor, you happily, I believe,  
17 explained to him his rights, but he did have a question, I  
18 believe, presented to the Court, if appropriate, before  
19 Ms. Bessent talks.

20 THE WITNESS: The one thing I wanted to ask, okay,  
21 I've done -- I've done a little over three years as, the  
22 year in County, the two years in SCDC now, that's a little  
23 over three years. If I did -- just say, I did win my PCR  
24 and I went back, I know I'd still be facing the 15 to life  
25 for the first degree burglary.

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1 THE COURT: Yes, sir.

2 THE WITNESS: But is it -- is it up to the Judge,  
3 presiding Judge, whether I was to get that time, that  
4 three years that I've done in jail, prison -- the  
5 three years all together, the county jail and prison -- is  
6 it up to the presiding Judge -- and when I went back to  
7 court to -- is it up to him whether I got that time back or  
8 not?

9 MR. FOWLER: And, Your Honor, if I may?

10 Our office sends our clients a basic statement out  
11 of the PCR manual by the South Carolina Bar, but this has  
12 been a recurring theme, and he's always asked me this, and  
13 you know, we've answered as best we could, but I think he's  
14 asking you.

15 THE COURT: Mr. Skinner, I'll be honest with you,  
16 I've done PCR before, I've been on both sides of that fence,  
17 from when I practiced law. And I've done a good number  
18 since I took this job two-and-a-half years ago, I don't know  
19 the answer. I'll be honest with you.

20 Do you know?

21 MR. JAMES: Your Honor, the State's position at  
22 this time is that credit for time served is a matter of  
23 right. If you are granted a post conviction relief, and go  
24 back and plead guilty again or are convicted at trial again,  
25 you still get credit for all preceding time that you spent

## WYN BESSENT - DIRECT BY MR. JAMES

1 incarcerated. That doesn't just magically go away.

2 I believe the members of the State's Attorney  
3 General Office previously took the position that, if you won  
4 the PCR, that could go away. I cannot remember for the life  
5 of me the name of the case. There was a recent, and by  
6 recent, I mean in the last two years, opinion out of the  
7 South Carolina Supreme Court to establish that the State's  
8 current position is the right way to do it.

9 THE COURT: I have never come across a situation,  
10 even in the other Court, or this Court, where somebody was  
11 not entitled to time served.

12 Now, I'm not saying that's the final say, but  
13 that's -- I've never dealt with one yet where somebody, even  
14 if it was just jail time, didn't get time for that credit.

15 MR. JAMES: The only portion of time served that  
16 is in any way, shape or form, discretionary, in the Court's  
17 discretion, is if there is home monitoring.

18 THE COURT: Right. House arrest. Yes, sir.

19 THE WITNESS: Thank you, sir.

20 MR. FOWLER: Thank you, Your Honor.

21 THE COURT: Yes, sir.

22 DIRECT-EXAMINATION

23 BY MR. JAMES:

24 Q. Good afternoon, Ms. Bessent.

25 A. Good afternoon.

## WYN BESSENT - DIRECT BY MR. JAMES

1 Q. You are an attorney licensed to practice law in  
2 the state of South Carolina, correct?

3 A. Yes, I am.

4 Q. And for how long have you been so licensed?

5 A. November of 1999.

6 Q. And since November of 1999, what portion of your  
7 practice has been criminal law?

8 A. A little over six years.

9 Q. And are you still engaged in criminal practice?

10 A. Not right now, no. I plan to go back to it  
11 shortly.

12 Q. Did you represent Mr. Joseph Skinner on his  
13 charges?

14 A. Yes, I did.

15 Q. How did you come to represent him?

16 A. He was assigned to me. He was arrested around  
17 September of 2016 on a burg first charge. He was assigned  
18 to me by my boss, Ron Hazzard.

19 Q. And it should be somewhat clear by inference from  
20 the names and the terminology we're throwing around, but  
21 were you working at the Georgetown County Public Defender at  
22 that time?

23 A. I was a public defender at the time, yes, sir.

24 Q. Okay. About how many times did you meet with  
25 Mr. Skinner?

## WYN BESSENT - DIRECT BY MR. JAMES

1           A.   Probably half a dozen.  At least half a dozen.  I  
2 know that I met with him -- he was assigned to me in  
3 September.  I didn't get discovery until December.  I broke  
4 my wrist December 1st.  It was thereafter that I went out to  
5 the jail, because my arm was in a cast.  And I know for a  
6 fact that I visited him -- my first visit with him was when  
7 my arm was still in a cast.

8           Q.   And to a certain extent, you have already answered  
9 these following questions, but you filed motions pursuant to  
10 Rule 5 of Brady?

11          A.   Absolutely.

12          Q.   And you received materials responsive to those  
13 motions?

14          A.   Yes, we did.

15          Q.   And you reviewed those materials?

16          A.   Yes, I did.

17          Q.   And did you review those materials with your  
18 client?

19          A.   Yes, I did.

20          Q.   If you could, in summary, recall, what was the  
21 State's evidence against your client?

22          A.   Mr. Skinner was caught in the pool house of a home  
23 in a gated community, a wealthy community, two or three  
24 o'clock in the morning by the homeowner.  He was in the pool  
25 house.  He was intoxicated.  It was at night, obviously, at

## WYN BESSENT - DIRECT BY MR. JAMES

1 two o'clock in the morning. Again, it was a dwelling. The  
2 pool house was within two-hundred feet of the main house.  
3 And he had two prior burg offenses and convictions at that  
4 point.

5           So, from the very beginning, I told him you are  
6 looking at a burglary first charge, even before it was  
7 indicted, due to the multiple routes that the solicitor's  
8 office could get there -- dwelling at night with the intent  
9 to commit a crime, therein, or based on the two prior  
10 burglaries alone, that was sufficient to get it up to a burg  
11 first.

12           It would be up to the solicitor's office which  
13 avenue to take, but that it would, without a doubt, be  
14 indicted as a burglary first, and it was.

15           Q. Well, that answered my next question, it was in  
16 fact indicted as a burglary first?

17           A. It absolutely was indicted as a burglary first, as  
18 I told him from the very beginning that it would be. I  
19 informed him that the mandatory minimum on a burglary first  
20 is 15 years; that the maximum sentence one can receive for a  
21 burglary first is a life sentence. And that in  
22 South Carolina, life actually means life. You will come out  
23 dead if you get a life sentence.

24           Q. Let's go back to that evidence real quick and just  
25 very briefly drill down a little bit.

## WYN BESSENT - DIRECT BY MR. JAMES

1                   So this was a pool house, correct?

2           A.    Yes, sir.

3           Q.    And you said it was within a short distance from  
4 the main building?

5           A.    Yes, sir.

6           Q.    And, additionally, is it correct that there was an  
7 argument by the State that there was a living space upstairs  
8 in this pool house?

9           A.    There was a bed and a full bathroom.

10          Q.    Okay.

11          A.    And the adult son did stay there at times.

12          Q.    All right. Did Mr. Skinner give you any leads or  
13 witnesses to follow up on?

14          A.    The first time I met him, and actually before I  
15 met him, he had indicated that he had met somebody, a  
16 stranger, didn't know his name, knew nothing about him.  
17 That he went to this place with the -- originally alleged  
18 that it was a quote, "clubhouse," not that it was a private  
19 residence. He didn't know this person's name. He didn't  
20 know how to get in touch with him. Had met him behind the  
21 Fresh Market, apparently, and they walked over to the  
22 alleged victim's residence. Didn't get the guy's name.  
23 There was no way to track him down.

24          Q.    So at that time he was about to recall what  
25 occurred?

## WYN BESSENT - DIRECT BY MR. JAMES

1           A.    Oh, yes, absolutely.  He described walking across  
2 the golf course.  He stated that people may have seen him,  
3 but that he wouldn't be able to tell me who or where to go  
4 to find them.

5           Q.    And you hinted around this earlier, we went  
6 through the punundrum of this next question; but you  
7 explained to Mr. Skinner the elements of the crimes that  
8 were ultimately indicted against him?

9           A.    Yes, I did.  I told him the different ways that  
10 the solicitor's office could get to a burglary first charge.

11          Q.    Did you perceive any defenses or viable theories  
12 to advance in his defense if this were to be taken to trial?

13          A.    Obviously, if he had chosen to go to trial, I  
14 would have defended it.  The only argument I could have ever  
15 possibly have made is that the pool house was not considered  
16 part of the house.  Case law was against us there.

17          Q.    And did you explain that to your client?

18          A.    Yes.

19          Q.    Did you conduct any sort of independent  
20 investigation into the allegations against your client?

21          A.    I had our investigator, Mr. Cory Livingston, go  
22 out take and pictures of the house -- the main house and the  
23 pool house just to establish the proximity of one to the  
24 other.  That was the only investigation we could do.  There  
25 were no witnesses to contact other than the homeowner.

## WYN BESSENT - DIRECT BY MR. JAMES

1 Q. And you said, "Take pictures of each in order to  
2 establish the proximity of one to another." Do you know if  
3 he went out there with a tape measure?

4 A. No, he did not, because it's private property, and  
5 he got as close as he could without going onto the private  
6 property.

7 Q. So it's one of those circumstances where he's kind  
8 of like leaning over a fence and taking a picture?

9 A. He was standing in the road when he took the  
10 pictures.

11 Q. Okay. Did you enter into plea negotiations with  
12 the State on these charges?

13 A. We did.

14 Q. All right. Were you able to obtain any plea  
15 offers from the State?

16 A. Mandatory minimum of 15 years.

17 Q. Okay. Do you recall when it is that you first  
18 received that offer?

19 A. It was in March of 2017.

20 Q. Did you communicate that offer to your client,  
21 Mr. Skinner?

22 A. Our paralegal, in the public defender's office,  
23 her routine is to copy everything and take it out to the  
24 detention center. The detention center then distributes the  
25 mail to our clients. I contacted -- when I was out meeting

## WYN BESSENT - DIRECT BY MR. JAMES

1 with Mr. Skinner on or about June 14th, he alleged that he  
2 had never seen the plea offer.

3           While I was out there with him, I was texting back  
4 and forth with Ms. Carter from our office, asking her  
5 specifically if she had taken it out there. She said that  
6 she had. When I got back to the office from the detention  
7 center, I contacted the solicitor's investigator, because  
8 they can access the jail phone calls. And even though they  
9 cannot hear what our clients are saying to us, they can tell  
10 us who our client has called. And it indeed showed ---

11           MR. FOWLER: Objection, Your Honor.

12           This is about -- I believe, if I'm understanding  
13 correctly -- she is discussing about a third party who is  
14 not here today and documents that have not been offered to  
15 the Court previously or to myself -- about a log of what was  
16 said by my client, apparently, at the jail. And there's no  
17 foundation for this, Your Honor, and it's hearsay, either in  
18 a written document or orally, as I believe she was about to  
19 claim.

20           THE COURT: Mr. James, reply?

21           MR. JAMES: If I may ask a clarifying question  
22 very briefly?

23           THE COURT: Okay.

24 BY MR. JAMES:

25           Q. Who did you say prepared this log?

## WYN BESSENT - DIRECT BY MR. JAMES

1           A.     Steve Brown, chief investigator for the Georgetown  
2 County Solicitor's Office.

3           MR. JAMES: I don't think I have any argument  
4 against the objection, Your Honor.

5           THE COURT: Sustained.

6           THE WITNESS: He was aware of the plea offer.

7 BY MR. JAMES:

8           Q.     It was your understanding and belief that he was  
9 aware of the plea offer?

10          A.     Because we had discussed it.

11          Q.     All right. Had you discussed it prior to that  
12 June 14, 2017 meeting?

13          A.     No. I discussed it with him before he was brought  
14 over on May 24th of 2017 when he was arraigned in front of  
15 Judge Hyman, because otherwise he wouldn't have been  
16 arraigned on the plea offer. I discussed it with him  
17 subsequently on 5/30/2017. I discussed it with him in June  
18 of 2017. I discussed it with him in July of 2017. He  
19 received it in March. I discussed it, without a doubt, with  
20 him in May.

21          Q.     Okay.

22          A.     I cannot tell you if I discussed with him in  
23 April, but it was discussed in May.

24          Q.     Do you recall the arraignment?

25          A.     Yes, I do.

## WYN BESSENT - DIRECT BY MR. JAMES

1 Q. Was the plea offer set to expire there and then at  
2 the arraignment? Or was it left open for him to continue  
3 considering?

4 A. It was left open until June of 2017.

5 Q. Was there a second arraignment or other recorded  
6 proceeding at which he rejected that offer?

7 A. He indicated to me, multiple times after the  
8 arraignment in front of Judge Hyman, that he would take the  
9 15 years. Unfortunately, the next time he was brought over  
10 from the jail, he declined to accept the 15-year offer in  
11 June. And the 15-year offer was taken off the table. And  
12 it was set for trial for July.

13 He was -- I told him at that point, since the plea  
14 offer had come off the table, we'd either go to trial where  
15 you're facing, if you're found guilty, mandatory minimum of  
16 15, maximum of life. Or you plead straight up, which means  
17 you're pleading without a recommendation, and the Judge will  
18 sentence you from anywhere from 15 to life.

19 Q. As you know, there are certain constitutional  
20 rights that go along with somebody who is charged with a  
21 crime. Did you discuss with your client his right to a jury  
22 trial?

23 A. Yes.

24 Q. And his right to confront witnesses against him?

25 A. Yes.

## WYN BESSENT - CROSS BY MR. FOWLER

1 Q. And his right to remain silent?

2 A. Yes.

3 Q. And his right to testify?

4 A. Yes.

5 Q. Was the State, at any time, willing to offer to  
6 your client the opportunity to plead in exchange for a  
7 lesser included offense?

8 A. No. A lesser included offense was not an option,  
9 at all, and never was going to be.

10 Q. Did you tell your client that?

11 A. Yes, I did. We discussed it repeatedly. He kept  
12 asking for a burg second violent. I kept telling him I've  
13 talked to the solicitors, they're not coming off of burg  
14 first.

15 MR. JAMES: I have no further questions for this  
16 witness.

17 THE COURT: Counselor?

18 MR. FOWLER: If I may have a moment?

19 THE COURT: Yes, sir.

20 (WHEREUPON, there was a pause in the proceedings.)

21 MR. FOWLER: Just a moment.

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. FOWLER:

25 Q. One of the things that you said that you discussed

## WYN BESSENT - CROSS BY MR. FOWLER

1 with him was -- went out to the jail several times; is that  
2 correct?

3 A. Yes, I did.

4 Q. Do you keep a log of your visits?

5 A. Yes, we do.

6 Q. Well, we or you?

7 A. I. The public defender's office.

8 Q. Okay. So how many times did you go out and speak  
9 to him?

10 A. Definitely on February 1st of 2017; 5/23 of 2017;  
11 had a telephone call with him on 5/30/2017, it was two  
12 15-minute calls. Went out in June -- June 13th.

13 THE WITNESS: Court's indulgence.

14 THE COURT: Yes, ma'am.

15 THE WITNESS: Went out and saw him again on  
16 June 14th. So back to back.

17 On July 13th, I went out to the jail, Mr. Skinner  
18 refused to speak with me. He was visibly angry, shaking  
19 mad, yelled at me. So that was the end of that one.

20 BY MR. FOWLER:

21 Q. Okay. Why do you think he was upset, based on  
22 your perception?

23 A. He said that he wanted to fire me. He said I  
24 hadn't gone over the State's evidence against him. And that  
25 he hadn't received his plea offer. This was, again,

## WYN BESSENT - CROSS BY MR. FOWLER

1 July 13th, when he had been arraigned back in May. Repeated  
2 he would not speak to me, turned around and walked back out.  
3 I went out to the jail, again, on July 14th. I was there  
4 from 1:45 until 6:00 p.m. with him. On July 17th ---

5 Q. With him, specifically?

6 A. Yes, with him specifically.

7 Q. Okay. And what date was that?

8 A. July 14th, 2017.

9 Q. Okay. And none of that time you personally gave  
10 him a written plea offer?

11 A. Yes, I absolutely did.

12 Q. Do you have any record of that?

13 A. Yes, I do have a record of it. On June 14th, when  
14 I had a conference with him, he indicated at that point that  
15 he was going to plead guilty to and accept the 15-year  
16 offer. He said he hadn't received a copy of his plea offer.  
17 At that time I went and made a photocopy of the plea offer I  
18 had in the file and gave it to him, again.

19 Q. But the day before is when you basically went over  
20 it, correct?

21 A. I met with him on June 14th. And that's when I,  
22 personally, physically, gave him a copy of the plea offer  
23 that had been given to -- delivered to the jail in March.

24 Q. Okay. In terms of this, you were in the audience  
25 when he went over his transcript from the July 17th, 2017

## WYN BESSENT - CROSS BY MR. FOWLER

1 session; is that correct?

2 A. That would be the day he pled guilty, yes.

3 Q. And throughout that transcript, there seemed to be  
4 a lot of questions about legal issues. Would you agree?

5 A. I would say he had questions. I wouldn't --  
6 that's about all I would say.

7 Q. Well, and to answer my question, he had plenty of  
8 questions, correct?

9 A. Yes. Mr. Skinner always has plenty of questions.

10 Q. Okay. And on that, he says on Page 7, "I mean, I  
11 was wondering if that was a violation or something, it was  
12 like it was just thrown at me in less than 24 hours."

13 So his contention is that you did not present this  
14 to him adequately. And you don't have any kind of  
15 personal -- you did not personally give it to him until the  
16 day before?

17 A. I gave it to him in June. You're talking about  
18 July. I personally handed it to him in June.

19 Q. Did you go over what the plea was that he was  
20 going to be...

21 A. Absolutely. That it would be a plea to burg  
22 first, which bears a mandatory minimum of 15 years, which  
23 has to be served at 85 percent.

24 Q. Okay.

25 A. And he was fully cognizant of that.

## WYN BESSENT - CROSS BY MR. FOWLER

1 Q. Did he bring to your attention that he would like  
2 to bond out at some point?

3 A. No. He had the opportunity to bond out the entire  
4 time he was arrested.

5 Q. Okay. Did you ever bring it to his attention that  
6 he could bond out?

7 A. He had the bond paperwork. He was aware he could  
8 bond out.

9 Q. Who gave him the bond paperwork?

10 A. That is something that the detention center does  
11 when they have the bond hearing, which is, generally, within  
12 24 hours of the time they are arrested, which is also before  
13 we are ever appointed as public defenders.

14 Q. Okay. So you're saying that -- okay -- but he  
15 didn't -- and let me be clear here.

16 You're saying that he didn't -- that he received a  
17 written plea before he pled before the Court, correct?

18 A. He absolutely did.

19 Q. Okay. It's stated -- so you stated that he -- you  
20 met with him several times, and yet on Page 8 of the  
21 transcript, he said that he just didn't understand this.

22 So what -- what's your contention that he would  
23 not understand after you met with him for -- several times  
24 apparently?

25 A. I'm not sure what he didn't understand. Because

## WYN BESSENT - CROSS BY MR. FOWLER

1 when he and I talked, he completely understood. When it was  
2 just he and I talking, or even when he asked to speak to  
3 solicitor Ricky Todd, he was very clear that he was facing a  
4 burglary first charge, that he wanted a burglary second  
5 charge instead. He was well aware of the consequences of a  
6 burg first versus a burg second. And that is why he wanted  
7 a burg second. He, in fact, asked to get a ten-year  
8 sentence that was not a violent offense.

9 Q. Did you ask the solicitor's office for a lesser  
10 included offense on these matters?

11 A. Of course I did, but they were not going to move  
12 on this, and they refused to move on it.

13 Q. Did you do it in writing?

14 A. No. Everything between the solicitor's office and  
15 the public defender's office, at least here, since we are  
16 right next door to each other, is either done in person or  
17 on the telephone.

18 Q. When did you tell him that Mr. Todd denied the  
19 lesser included offense?

20 A. He actually wrote Mr. Todd.

21 Q. Well, I guess my question is: When did you tell  
22 him that you asked Mr. Todd for the lesser included offense?

23 A. I told him from the beginning of representation  
24 that he would be charged with burglary first. That I knew  
25 Alicia Richardson, who was the solicitor assigned to the

## WYN BESSENT - CROSS BY MR. FOWLER

1 case, that the offer would be 15 years. The offer came in  
2 at 15 years.

3 I discussed the case with Alicia. She said she  
4 wasn't coming off the 15 years. It was then handed off to  
5 Mr. Todd. Mr. Todd said he wasn't coming off the 15 years.  
6 Mr. Todd then went on vacation and it ended up being  
7 Mr. Stephens who entered -- who handled the matter for the  
8 State.

9 But I discussed it multiple times, both with  
10 Deputy Solicitor Richardson and Assistant, or now, Senior  
11 Solicitor Todd. And they refused to come off of a burg  
12 first due to his past.

13 Q. And just to be clear, on the lesser included  
14 offense, you never presented him, my client, with any  
15 documentation saying that the lesser included offense was  
16 off the table, correct?

17 A. It was never on the table for it to be put on the  
18 table and taken off. It was not an option. And I told him  
19 that repeatedly.

20 Q. Just to be clear, what date did you give him the  
21 written plea offer?

22 A. Me, personally?

23 Q. Yes.

24 A. I personally handed it to him on June 14th when I  
25 was out at the Georgetown County Detention Center. I had

## WYN BESSENT - CROSS BY MR. FOWLER

1 seen him on June 13th. I went back and saw him on the 14th.

2 MR. FOWLER: I have no further questions, Your  
3 Honor.

4 THE COURT: Mr. James?

5 MR. JAMES: Nothing further from the State, Your  
6 Honor.

7 THE COURT: You can step down.

8 THE WITNESS: Thank you, sir.

9 MR. JAMES: That would be the State's showing,  
10 Your Honor.

11 THE COURT: All right. Gentlemen, you've both  
12 done a very good job of presenting your positions here. I  
13 have taken copious notes. I certainly know where each side  
14 stands. And I'll issue a ruling by internet -- email.

15 MR. FOWLER: Thank you, Your Honor.

16 MR. JAMES: May Ms. Bessent be excused?

17 THE COURT: Yes, sir.

18 (WHEREUPON, the proceedings concluded.)  
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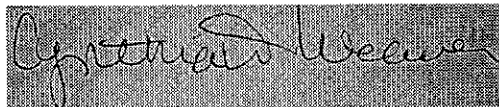
CERTIFICATE OF REPORTER

State of South Carolina            )  
County of Georgetown            )

I, Cynthia D. Weaver, Official Court Reporter for 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 evidence relative to appeal, in the Court of Common Pleas for Georgetown County, South Carolina, on the 12th day of November, 2019.

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

July 1, 2020



Cynthia D. Weaver,  
Official Court Reporter  
State of South Carolina

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4 County of Georgetown )

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15  
16 July 1, 202017 18  
19 Cynthia D. Weaver,  
20 Official Court Reporter  
21 State of South Carolina  
22  
23  
24  
25

STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

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

Joseph Skinner,  
S.C.D.C. No. 147101,

) Case No.: 2017-CP-22-01050  
)  
)

Applicant,

) **ORDER OF DISMISSAL**  
)  
)

v.

State of South Carolina,

Respondent.

FILED  
GEORGETOWN COUNTY, SC  
2020 FEB -5 AM 11:33  
ALMA Y. WHITE  
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed by Joseph Skinner (“Applicant”) on December 11, 2017. Respondent made its return on or about February 9, 2018. The Court convened an evidentiary hearing into the matter on Tuesday, November 12, 2019, at the Georgetown County Judicial Center in Georgetown, South Carolina. Applicant was present at the hearing and represented by Steven W. Fowler, Esq. Johnny Ellis James Jr., Esq., of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant’s plea counsel, Wyn N. Bessent, Esq. (“Counsel”) also testified. The Court had before it Applicant’s records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Georgetown County Clerk of Court regarding the subject convictions, and the pleadings. The Court finds as follows:

**I. PROCEDURAL HISTORY**

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. Applicant was indicted at the November 2016 term of the Georgetown County Grand Jury for burglary, first degree (2016-GS-

22-01096). Wyn N. Bessent, Esq. represented Applicant, and Richard D. Todd, Jr., Esq., of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On July 17, 2017, Applicant pled guilty as indicted. The Honorable Benjamin H. Culbertson sentenced Applicant to imprisonment for a term of seventeen years. Applicant did not appeal his plea or sentence.

### Present Application

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

1. Involuntary Guilty Plea, in that:
  - a. "Was Threaten with Life Sentence if I did not plead guilty."
2. "Court Lacked Subject Matter Jurisdiction to accept Guilty Plea"
  - a. "No party can waive presentment to the Grand Jury."
3. "Ineffective assistance of Trial Counsel"
  - a. "Plea was not knowing and voluntary because I lacked knowledge of material evidence."
4. "Plea was not lesser-included offense"
  - a. "Plea was not lesser-included offense"

Applicant requests relief as follows:

- "New Plea hearing / with offer of lesser-included offense"
- "Want charges I plead to to be processed by presentment by the Grand Jury"

At the evidentiary hearing, Applicant initially moved to continue the hearing, then proceeded on the allegations as set forth above, and offered additional testimony in support of an allegation not properly pled; to wit: he was never provided written notice of the State's plea offer.

As to the relief requested, the State confirmed through cross-examination that Applicant understood the relief available in the event post-conviction relief were granted, and that with that understanding that Applicant wished to proceed with his application and evidentiary hearing.



## II. MOTION FOR CONTINUANCE

At the outset of the evidentiary hearing, PCR counsel informed the Court that Applicant wished for a continuance in order to consult with a potential witness. "As actions are called, counsel may request that the action be continued. If good and sufficient cause for continuance is shown, the continuance may be granted by the court." Rule 40(i)(1), SCRPC. No motion for continuance of trial shall be granted on account of the absence of a witness without the oath of the party, his counsel or agent, to wit:

1. That the testimony of the witness is material to the support of the action or defense of the party moving;
2. That the motion is not intended for delay, but is made solely because the party cannot go safely to trial without such testimony; and
3. That there has been due diligence to procure the testimony of the witness or of such other circumstances as will satisfy the court that the motion is not intended for delay.

Rule 40(i)(2), SCRPC. Whether to grant or deny a motion for a continuance is addressed to the sound discretion of this court, through circuit courts are advised to be flexible with procedural requirements in post-conviction relief actions before applicants suffer procedural default on *substantial* claims. See State v. Colden, 372 S.C. 428, 435, 641 S.E.2d 912, 916 (Ct. App. 2007) (continuances in discretion of trial court); Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017) (encouraging flexibility).

Applicant personally addressed the Court directly and explained he wished to speak to his sister, as she would be the person to bond him out in the event relief were granted. Applicant additionally explained that he had been subjected to lockdown conditions at Broad River Correctional Institute, which limited the time he could spend in the law library, and that he still wished to research issues for his application. Respondent answered in opposition to the motion, arguing it was prepared and ready to proceed. Applicant replied that he felt he had been "railroaded since day one."



This Court reiterates here for clarity its denial of the motion from the bench. Applicant has enjoyed nearly two years since filing the application to conduct any further research, raise any additional claims, or obtain the testimony of any additional witnesses. Applicant is represented by counsel who can perform these tasks on his behalf, such that the conditions of his incarceration are of limited consequence. Applicant offered nothing to show how his sister, or any other person, would be relevant to any allegations raised or which could be raised. Applicant offered nothing to show that the testimony of his sister, or any other person, was vital to the viability of his claims. Applicant offered nothing to show due diligence in obtaining the presence of his sister, or any other person, at the hearing. The Court understands the evidentiary hearing was not the first time this matter was called before the court. No good and sufficient cause is demonstrated and, for all of these reasons, Applicant's motion to continue was, and is, **DENIED.**

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

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

#### A. Involuntary Guilty Plea

Applicant claims his plea was not entered knowingly or voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of the plea and the charges against him or her. Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); see also Boykin v. Alabama, 395 U.S.



238, 243 (1969) (Courts must make sure defendants have “a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought, and forestalls the spin-off of collateral proceedings that seek to probe murky memories.”). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); Richardson v. State, 310 S.C. 360, 363, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such in Section III.C., below.

#### **B. Subject-Matter Jurisdiction, Waiver of Presentment**

Applicant's allegations regarding jurisdiction are without merit. “[S]ubject matter jurisdiction of the circuit court and the sufficiency of the indictment are two distinct concepts and the blending of these concepts serves only to confuse the issue.” State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005). “Circuit courts obviously have subject matter jurisdiction to try criminal matters.” Id. Furthermore, Applicant's assertion that a defendant cannot waive his or her right to presentment of the charges to a grand jury is contrary to clearly established law. See S.C. Const. Art. I, § 11 (“The General Assembly may provide for the waiver of an indictment by the accused.”); S.C. Code Ann. § 17-23-120 (“[W]hen any defendant is arrested

upon a warrant charging a felony, he may apply to the clerk of court of the county having jurisdiction of such case for an immediate disposition of the case and thereupon the clerk of court shall forward the arrest warrant to the solicitor of the judicial circuit.”). In any event, Applicant was true bill indicted by the grand jury; he did not waive presentment. For all of these reasons, Applicant’s allegations regarding jurisdiction and his ability to waive presentment, and every part of the application based thereupon, are **DISMISSED** and his request for relief thereby is **DENIED**.

### C. Ineffective Assistance of Counsel

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

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel’s performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCF. 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). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” Yarborough, 540 U.S. at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between Strickland’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” Harrington, 562 U.S. at 111-12 (quoting Strickland, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” Id. at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).



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

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

#### *1. Threat of Life Imprisonment*

Applicant contends his guilty plea was not voluntarily entered because he was threatened with life imprisonment. Applicant was charged with and ultimately pled to burglary in the first degree, which "is a felony punishable by life imprisonment." S.C. Code Ann. § 16-11-311.



The plea proceeding first began as a hearing prior to jury qualification on Counsel's motion to be relieved, which she made at Applicant's behest. (Tr. 3, ll. 4-16). During the hearing on the motion, Applicant demonstrated clear understanding of his charges and the possible consequences, even as he also demonstrated confusion regarding the rights and obligations of the State:

I didn't do anything violent, even though it's considered violent because of two priors, but I asked [Counsel] about if I would take it, if they could drop it to at least second non, you know, like nonviolent I would still have to do seven and a half years I would have plea to that instead of going to trial.

(Tr. 8, ll. 11-16). The plea court noted the transcript from Applicant's "arraignment"<sup>1</sup> which indicated the State had not been willing to reduce the severity of the charge. (Tr. 8, ll. 17-22). Applicant expressed generalized lack of understanding, and bemoaned that his predicament was unfair where he "never had nothing violent on my record[;]" the plea court opined the State's position and powers were pretty clear. (Tr. 8-9). Applicant continued to lament that nobody cared about his alcohol problem. (Tr. 9-10). The court explained to Applicant he had the right to plead guilty and the right to proceed to trial, and that if he proceeded to trial that Applicant had the right to testify or not testify. (Tr. 9-11). The court offered Applicant additional time to talk to Counsel, which he accepted, and the court held Applicant had failed to offer any grounds to relieve Counsel. (Tr. 11, ll. 5-12). After a discussion of State v. Tyndall,<sup>2</sup> the court denied the motion to relieve Counsel. (Tr. 11-13). Applicant mentioned no threats.

<sup>1</sup> This Court's understanding is that standard practice in the Fifteenth Judicial Circuit is to place plea offers, and the rejection thereof, on the record in pre-trial proceedings occurring near the date of trial, and that they are referred to as "arraignment." Fifteenth Circuit arraignments are thus somewhat different from the more general meaning of the term. See Arraignment Definition, Black's Law Dictionary (11th ed. 2019), available at Westlaw ("The *initial step* in a criminal prosecution whereby the defendant is brought before the court to hear the charges and to enter a plea.") (emphasis added).

<sup>2</sup> 336 S.C. 8, 18, 518 S.E.2d 278, 283 (Ct. App. 1999). The transcript refers to State v. Tindall, but contextually it is clear Counsel was citing to Tyndall, and that portion quoting State v. Thrift, 312 S.C. 282, 291-92, 440 S.E.2d 341, 346-47 (1994).

After returning on record, Applicant's case was called as a plea proceeding, and the State contradictorily asserted that it was not making a recommendation, but was asking for a sentence in excess of the minimum in light of the rejected offer to plead guilty in exchange for the minimum possible sentence of fifteen years. (Tr. 14, ll. 1-14). Upon inquiry by the plea court, Counsel confirmed she had discussed with Applicant the consequences of being convicted of burglary, first degree, and that she was of the opinion that Applicant understood. (Tr. 14-15). Applicant confirmed he understood why he was in court and declined the opportunity to speak further with Counsel or ask the court any questions. (Tr. 16, ll. 11-15). Addressing the potential sentencing range, the plea court asked:

THE COURT: All right. Now, you understand that for this crime I could sentence you to prison for the rest of your life. Do you understand that?

MR. SKINNER: Yes, sir.

THE COURT: Do you understand that this crime carries a mandatory minimum sentence, which means the absolute minimum sentence that I must impose by state law is 15 years in prison?

MR. SKINNER: Yes, sir.

(Tr. 17, ll. 7-15). The plea court further explained to Applicant that burglary, first degree was classified as a violent, most serious crime, and the consequences of those classifications; Applicant confirmed he understood. (Tr. 17-18). Applicant denied anybody had promised him anything or threatened him in any way in order to coerce him into pleading guilty, and that he was pleading guilty voluntarily. (Tr. 18, ll. 17-21).

At the evidentiary hearing, Applicant testified he only met Counsel once over the course of six months. Counsel told Applicant the sentences he could face. Applicant testified that Counsel was honest with him. Applicant recalled that he wrote the prosecutor on one occasion in an attempt to figure out what kind of time he was facing. When asked about the alleged



threats of life imprisonment, Applicant replied that he was not a violent person and that he had simply wished to speak with solicitor Todd. Applicant unequivocally testified he pled guilty of his own free will.

Counsel testified she met with Applicant at least a half-dozen times. Counsel recalled receiving discovery from the State the December prior to the plea, and that she reviewed those materials with Applicant. Counsel advised Applicant that burglary, first degree carried a potential sentence of up to life imprisonment. On cross-examination, Counsel listed the dates and details as to each time she met or otherwise spoke with Applicant. Counsel explained that Applicant always asked many questions.

The Court finds Counsel was not ineffective. The Court does not find credible Applicant's testimony that he only met with Counsel once. To the contrary, Counsel met with Applicant on numerous occasions, and in the course of those meetings Counsel gave Applicant accurate legal advice that if convicted, Applicant faced a potential sentence of up to life in prison for burglary in the first degree. As affirmed by Applicant during the plea, nobody threatened Applicant with anything in order to compel him to plead guilty. The Court finds Applicant fully understood the sentencing range of burglary, first degree, and all of the other consequences he faced if he were convicted of the crime. Applicant himself again affirmed that he voluntarily pled guilty of his own free will. Applicant has presented no evidence to show any deficiency on the part of Counsel, and accordingly his request for relief by way of this allegation is **DENIED**.

## ***2. Failure to Review Discovery with Applicant***

Applicant alleges that his plea was not knowingly and voluntarily entered because he lacked knowledge of material evidence. At the evidentiary hearing, Applicant claimed he only



met with Counsel once, and when asked about the material evidence he lacked knowledge of, Applicant merely answered "I dunno..."

Counsel, as noted in the prior section, testified she received discovery from the State and reviewed it with Applicant over the course of numerous meetings. Counsel further recalled that Applicant explained his actions by asserting somebody had told him the pool house he was caught in was in fact a clubhouse and that he could be there, but Applicant was unable to provide any name or other personal identifying information. Counsel explained that the only possible defense for Applicant was not factual, but legal: argue the pool house in which he was caught was not a domicile for the purposes of burglary in the first degree. Counsel explained the potential defense to Applicant. Counsel recalled that she directed an investigator to go take pictures of the pool house and the adjacent house.

The Court finds Applicant's testimony is not credible on this point, and is in any event inadequate to support his claim. As already noted in the prior subsection, the Court finds Counsel's testimony wholly credible, and concludes that she fully reviewed the discovery materials, explained the evidence in the case to Applicant, and explained to him the best available defense based on that evidence. Applicant has presented no evidence to show any deficiency on the part of Counsel, and accordingly his request for relief by way of this allegation is **DENIED**.

### *3. Failure to Communicate Written Plea Offer*

Applicant did not allege in his application, but extensively alleged through his testimony that Counsel failed to timely communicate the State's plea offer to him. As noted in Section II, above, excuse from procedural default in PCR matters is rare, but the courts are encouraged to



exercise its own discretion to reach the merits of *substantial* issues within the flexibility of the Rules of Civil Procedure. Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017).

A defendant has the right to effective assistance of counsel during the plea bargaining process. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018)). “The United States Supreme Court has held that ‘defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.’” Collins v. State, 422 S.C. 250, 261, 810 S.E.2d 871, 876 (2018) (quoting Missouri v. Frye, 566 U.S. 134, 145 (2012)). Generally, defense counsel provides deficient performance when he or she does not communicate such an offer to the defendant. Frye, 566 U.S. at 145. To show prejudice, an applicant for post-conviction relief “must demonstrate a reasonable probability that: (1) he [or she] ‘would have accepted the earlier plea offer had [he or she] been afforded effective assistance of counsel;’ (2) ‘the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it;’ and (3) ‘the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.’” Collins, 422 S.C. at 262, 810 S.E.2d at 877 (quoting Frye, 566 U.S. at 147; citing Lafler v. Cooper, 566 U.S. 156, 164 (2012)). An applicant must show actual prejudice, but depending on the facts of the case, an applicant’s self-serving statement *may* be sufficient to establish actual prejudice. Davie, 381 S.C. at 613, 675 S.E.2d at 422.

During the hearing on his motion to relieve Counsel, Applicant claimed he never received a written plea offer, contrary to Counsel’s assertion. (Tr. 4, ll. 13-20). When the court questioned Applicant if he was “arraigned” without being told the plea offer, Applicant asserted that was the case. (Tr. 5, ll. 1-3). Counsel provided the court a copy of the transcript of



Applicant's arraignment, and thereafter explained that the plea offer was extended March 22, 2017, set forth in writing in a letter on March 24, 2017, and received by Counsel on March 30, 2017. (Tr. 5, ll. 6-25). The court noted that the transcript reflected that on May 24, 2017, the Honorable Larry B. Hyman, Jr., reviewed the plea offer with Applicant in its entirety, and which Applicant rejected. (Tr. 6, ll. 2-13). Applicant contended he had not known about the offer until the day prior, and the court emphasized that the point of arraignment was to ensure he knew about the plea offer, and that Applicant rejected the offer. (Tr. 6-7). Applicant questioned if the alleged late notice was "a violation of something" and that he had not enjoyed enough time to actually consider the offer. (Tr. 7, ll. 3-11). The court explained Applicant had no constitutional right to plea bargain, and that the State could have offered nothing at all. (Tr. 7, ll. 14-20). Applicant again asserted he had not enjoyed enough time to consider the offer, and the court curtly informed him that none of this rights had been violated. (Tr. 7-8). Applicant and the plea court continued to discuss the fairness of the State's offer as set forth in Section III.C.1, above.

At the evidentiary hearing, Applicant claimed he did not get the written plea offer until after his plea, and explained that had he more timely received the offer, he would have called his family, bonded out of jail, and privately retained counsel. Applicant recalled that at some point he managed to speak to solicitor Todd, but the solicitor refused to ever re-offer the previously rejected offer. Applicant acknowledged he understood the State did not have to extend any plea offer. Applicant testified that he met with Counsel prior to his plea and demanded his paperwork; when he saw the written plea offer, Counsel told him that she had previously showed it to him, which he denied. Applicant admitted he had known about the plea offer prior to his arraignment, but only for a very short period of time, and that he had less than twenty-four hours

to prepare for the arraignment. Applicant asserted that he almost signed the offer in front of Judge Hyman, but that he had not had enough time to talk to his family.

Counsel testified she received the fifteen year plea offer in March 2017. Counsel discussed the offer with Applicant in May 2017. Counsel recalled that on June 14, 2017, Applicant claimed he never received a copy of the plea offer, so she gave him a physical copy at that time. Counsel recalled that Applicant initially told her he wanted the fifteen year offer, but ultimately rejected the offer in June 2017.

First, the Court finds this issue is not sufficiently meritorious or substantial to justify excusing Applicant's procedural default in failing to properly plead the issue in either his application or in any subsequent amendment. This Court is aware of no precedent to provide relief where a defendant is made aware of a plea offer prior to its expiration, and provided the opportunity to accept or reject the offer, but not long enough before expiration to consider the merits of the offer to the extent desired by the defendant. While facts and circumstances could potentially exist to support such a novel claim, no such facts or legal arguments have been properly presented to this Court to support it, let alone to support it where it has not been pled in the first place.

As to the merits notwithstanding the procedural default, the Court finds Applicant was fully aware of the State's plea offer and rejected it. As noted by the plea court, Applicant was fully appraised of the plea offer during his appearance before Judge Hyman. Applicant presents no credible evidence to show that he would have accepted the plea offer had the offer been more quickly communicated to him. To the contrary, Applicant's assertion that he would have bonded out and retained private counsel upon receiving the written plea offer is inconsistent with a desire to accept the plea where all he would have needed to do is indicate his assent and proceed with



Counsel to a plea proceeding. Thus, even if Applicant had properly raised this issue to the Court prior to the initiation of the evidentiary hearing, Applicant has failed to meet his burden under Hill. For all of these reasons, Applicant's allegations regarding provision of the written plea offer, and every part of the application based thereupon, are **DISMISSED** as procedurally defaulted and otherwise without merit, and his request for relief thereby is **DENIED**.

**D. Direct Appeal Issue: Lesser-Included Offense**

Applicant appears to take issue with the fact that he never received an offer to plead guilty in exchange for a lesser-included offense. Even in the added context of his evidentiary hearing testimony, Applicant's frustration does not form a claim cognizable in a post-conviction relief action. An application for post-conviction relief does not serve as a substitute for direct appeal, and an issue that could have been raised at applicant's trial or on appeal is not cognizable in an application for PCR. S.C. Code Ann. § 17-27-20(b); Drayton v. Evatt, 312 S.C. 4, 8-9, 430 S.E.2d 517, 520 (1993) (citing Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983)); Humbert v. State, 345 S.C. 332, 338, 548 S.E.2d 862, 866 (2001). As has been repeatedly explained to Applicant, the State was under no obligation to offer him the opportunity to plead to a lesser offense. For all of these reasons, Applicant's allegations regarding the State's refusal to offer the opportunity to plead to a lesser offense, and every part of the application based thereupon, are **DISMISSED** and his request for relief thereby is **DENIED**.

*[Conclusion and signature on following page]*

A handwritten signature in black ink, appearing to be a stylized 'B' or similar character, located below the text '[Conclusion and signature on following page]'. The signature is written in a cursive, somewhat abstract style.

III. CONCLUSION

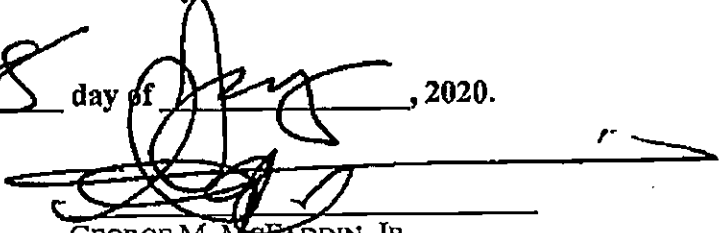
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 28 day of July, 2020.

  
 GEORGE M. McFADDIN, JR.  
 Presiding Judge  
 Fifteenth Judicial Circuit

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

**WITNESSES**

Georgetown County Sheriff's Office

DOCKET NO. 2016GS2201096 ✓

**The State of South Carolina**

**County of Georgetown**

Alicia Richardson

16G00724

**COURT OF GENERAL SESSIONS**

**NOVEMBER, 2016 TERM**

**ARREST WARRANT NUMBER**

2016A2210200003

CDR: 0079 §16-11-0311

DOI: 9/3/2016

**THE STATE**

**vs.**

**JOSEPH SKINNER**

522 CAROLINA WOODS DR

MYRTLE BEACH, SC 29588

DOB: [REDACTED]

SSN: [REDACTED]

W / M

**ACTION OF GRAND JURY**

**TRUE BILL**

**ATTORNEY: Wyn Bessent**

**Indictment for**

*Wyn Bessent*

Foreperson of Grand Jury

Date: 11-16-16

**BURGLARY, FIRST DEGREE**

**VERDICT**

**Jimmy A. Richardson, II, Solicitor**

Foreperson of Petit Jury

Date:

