

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Greenville County
D. Garrison Hill, Circuit Court Judge

S.C. Supreme Court

BOBBY JUNIOR MOORE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-212650

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

KAREN RATIGAN
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

COURT OF GENERAL SESSIONS
2008-GS-23-10085-10087

STATE OF SOUTH CAROLINA)

TRANSCRIPT OF RECORD

~~-VS-~~)
BOBBY JUNIOR MOORE)
DEFENDANT)

ORIGINAL

September 10, 2009
Greenville, South Carolina

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, Judge

APPEARANCES:

Julie Anders, Esquire
Solicitor for the State

Caroline Horlbeck, Esquire
Attorney for Defendant

CAROLINE HISKELL
Circuit Court Reporter

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I N D E X

(There were no witnesses or exhibits presented.)

State versus Bobby Moore

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

2 THE CLERK: Your Honor, this is case 2008-GS-
3 23-10086 and 10088, the State versus Bobby Moore. Both of
4 these he is indicted for grand larceny. This is a third
5 property offense on each and he is pleading guilty to the
6 same.

7 In case 2008-GS-23-10085 and 10087, Mr. Moore
8 is indicted for malicious damage of real property for
9 purpose of obtaining nonferrous metals, third property
10 offense, he is pleading guilty to the same on both of
11 those, and, Your Honor, there is two Orders of Restitution
12 on those.

13 Sir, please raise your right hand the best
14 you can.

15 BOBBY JUNIOR MOORE, having been duly sworn,
16 testified as follows:

17 THE COURT: Ms. Horlbeck, you represent
18 Mr. Moore in this matter?

19 MS. HORLBECK: Yes, sir, I do.

20 THE COURT: Have you had an opportunity to
21 talk with your client about the charges pending against
22 him, the possible punishments he faces, and his
23 Constitutional Rights?

24 MS. HORLBECK: I have.

25 THE COURT: Do you believe he understands

State versus Bobby Moore

1 those discussions you've had with him?

2 MS. HORLBECK: He does.

3 THE COURT: Have you had an opportunity to
4 review with your client all the State's evidence?

5 MS. HORLBECK: I have.

6 THE COURT: Based upon your investigation of
7 all the facts and circumstances, do you believe the State
8 could produce sufficient evidence to convince a jury of
9 his guilty beyond a reasonable doubt, and if a trial were
10 to be held, his conviction would be most probable?

11 MS. HORLBECK: I do.

12 THE COURT: Mr. Moore, how are you, please,
13 sir?

14 DEFENDANT MOORE: 42.

15 THE COURT: Are you married?

16 DEFENDANT MOORE: No.

17 THE COURT: Do you have children?

18 DEFENDANT MOORE: Yes.

19 THE COURT: How many children do you have?

20 DEFENDANT MOORE: Three.

21 THE COURT: How old are your children?

22 DEFENDANT MOORE: 24, 18, 13.

23 THE COURT: How far did you go in school,
24 sir?

25 DEFENDANT MOORE: Eleventh grade.

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1 THE COURT: Where did you attend school?

2 DEFENDANT MOORE: Tennessee.

3 THE COURT: Since you been out of school,
4 what kind of work have you primarily done?

5 DEFENDANT MOORE: Landscaping.

6 THE COURT: Have you ever been treated for
7 alcohol or drug abuse?

8 DEFENDANT MOORE: I've been treated for
9 alcohol.

10 THE COURT: How long ago was it you received
11 that treatment?

12 DEFENDANT MOORE: Six, seven years ago.

13 THE COURT: Was that an inpatient where you
14 stayed in the hospital or was it outpatient where you went
15 to meetings?

16 DEFENDANT MOORE: Outpatient with meetings.

17 THE COURT: Did you complete that program
18 they had for you?

19 DEFENDANT MOORE: Yes, sir.

20 THE COURT: Have you ever been treated for
21 any mental illness?

22 DEFENDANT MOORE: Yes.

23 THE COURT: How long ago was that treatment?

24 DEFENDANT MOORE: 2005.

25 THE COURT: Was that outpatient or inpatient?

State versus Bobby Moore

1 DEFENDANT MOORE: Inpatient.

2 THE COURT: Which hospital were you in?

3 DEFENDANT MOORE: Tennessee Mental Health.

4 THE COURT: How long were you hospitalized
5 there?

6 DEFENDANT MOORE: Three weeks.

7 THE COURT: What was the nature of your
8 treatment or what was the diagnosis? What kind of problem
9 did you have?

10 DEFENDANT MOORE: Basically I almost had a
11 break down because when I got out of jail -- my mom had
12 passed away when I was in and when I got out, I had my
13 babies and all these responsibilities and I wiggged out.

14 THE COURT: Are you taking any medication
15 today?

16 DEFENDANT MOORE: No.

17 THE COURT: You don't have any prescription
18 drugs?

19 DEFENDANT MOORE: Well, my shoulder they got
20 me on medicine over at the jail.

21 THE COURT: Does that medication you're
22 taking effect your ability to understand what you're doing
23 here today?

24 DEFENDANT MOORE: No, sir.

25 THE COURT: You know why we're here and what

State versus Bobby Moore

1 we're here about?

2 DEFENDANT MOORE: Yes, sir.

3 THE COURT: I have an indictment before me,
4 Mr. Moore, that states here in Greenville County on or
5 about September 21, 2008, you had previously been
6 convicted of at least two offenses on property offenses,
7 and on that date you maliciously and willfully cut or
8 defaced certain real property and fixtures at the Bank of
9 Traveler's Rest, that be two air conditioner units being
10 valued at more than \$1,000 for the purpose of obtaining
11 nonferrous metals from that property.

12 Are you here to plead guilty to that
13 malicious injury to that real estate?

14 DEFENDANT MOORE: Yes, sir.

15 THE COURT: And also on that same date, I
16 have an indictment that says that you took away certain
17 property from the Bank of Traveler's Rest valued at more
18 than \$1,000 that being copper parts with the intent to
19 permanently deprive the owner of that property, and again
20 having at least two prior property offenses. Are you here
21 to plead guilty to that charge as well to the grand
22 larceny?

23 MS. ANDERS: I'm sorry, Your Honor, I did not
24 mean to interrupt you, but with Indictment 2008-GS-
25 23-10085, we'd like to move to amend that to one air

State versus Bobby Moore

1 conditioning unit and not two. It's a scribbler's error.
2 So it should be three total, two at one incident location
3 and one at the other.

4 MS. HORLBECK: And we consent to that.

5 MS. ANDERS: And that would be 10085 that
6 needs to be amended, sir.

7 THE COURT: So that's one air conditioning
8 unit instead of two. I'm going to make that change by
9 consent.

10 That was the last indictment that I read that
11 there was one air conditioning unit at the bank instead of
12 two that which you're pleading guilty to?

13 DEFENDANT MOORE: Yes, Your Honor.

14 THE COURT: And I also have the indictment
15 that I was just reading that said you took some property
16 from the Bank of Traveler's Rest that being copper parts
17 with the intent to permanent deprive the owner of the use
18 of that property. Are you here to plead guilty to that
19 grand larceny of the copper parts from the bank?

20 Do you need to talk to your lawyer about
21 because I since some hesitancy on that?

22 DEFENDANT MOORE: We're talking about the
23 same thing, right?

24 MS. HORLBECK: Yes.

25 THE COURT: You destroyed the property and

State versus Bobby Moore

1 then you took some property.

2 DEFENDANT MOORE: Yes, Your Honor.

3 MS. ANDERS: And we have pictures if that
4 would help.

5 MS. HORLBECK: We've reviewed the pictures.

6 THE COURT: I'm reading one indictment from
7 the bank that says you destroyed the property and then you
8 took some of their property. Do you plead guilty to both
9 of those charges?

10 DEFENDANT MOORE: Yes, sir.

11 THE COURT: Is that correct?

12 DEFENDANT MOORE: Yes, sir.

13 THE COURT: And then I have an indictment
14 that says on or about that same day of September 21, again
15 having at least two prior property offense, that you
16 injured some real estate of Avenity Realty or Grand South
17 Bank this being two air conditioning units valued at more
18 than \$1,000 again for the purpose of getting some metals.
19 You destroyed that property at that bank.

20 DEFENDANT MOORE: Yes, sir.

21 THE COURT: And finally I have an indictment
22 that says on that day, September 21, 2008, that you took
23 away without any permission and with the intent to deprive
24 permanently the owner of the property, Avenity Realty and
25 or Grand South Bank, copper parts, are you here to plead

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1 guilty to that?

2 DEFENDANT MOORE: Yes, sir.

3 THE COURT: Solicitor, I'd be glad to hear
4 about the facts of the case.

5 MS. ANDERS: May it please the Court, between
6 October, 2007 and September 21, 2008, the defendant and, I
7 believe, five co-defendants damaged numerous AC units
8 around the county by taking copper coils. In this matter
9 today, approximately 151 warrants are being dismissed in
10 exchange to the plea to four indictments and that would be
11 because the State feels you have sufficient leeway under
12 the guise of 40 years to take that into consideration.

13 At this incident at issue for trial today,
14 this would be on September 21, 2008 around 5:00 p.m., a
15 witness was eating at the Huddle House on White Horse Road
16 next door to Avenity Realty and Aarons Rental. Those
17 were, of course, bank-owned properties. On Commons Way on
18 White Horse Road in Greenville County, the witness watched
19 this defendant and another co-defendant, Pamela Cole,
20 remove AC coils from the units behind the businesses.

21 This defendant would put the coils in a
22 shopping cart and would push it across White Horse Road
23 with the co-defendant. He pushed it towards the Bi-lo
24 across the street. The witness call police and the
25 officers did locate this defendant and the co-defendant

State versus Bobby Moore

1 with three AC coils in their possession, the three that
2 had been taken.

3 This defendant originally denied involvement
4 but later he gave lengthy lengthy statements admitting his
5 involvement to this case and many many others within the
6 county. His statement essentially said that they took
7 every night's copper to another defendant and traded it
8 for \$30 crack and \$20 cash.

9 He does have a prior record.

10 THE COURT: You heard the facts recited by
11 the solicitor, Mr. Moore. Are those substantially the
12 facts to which you are here to plead guilty today?

13 DEFENDANT MOORE: Yes, sir.

14 THE COURT: Now, you understand that by
15 pleading guilty to a charge, any charge, you're giving up
16 your right to have a trial by jury. Jury is down stairs,
17 we could bring them up, select 12 people and they could
18 sit up in that jury box. The State would have to prove
19 your guilt of each element of this offense beyond a
20 reasonable doubt. You'd be presumed innocent. You
21 wouldn't have to say anything at all.

22 You'd have a right to confront the witnesses
23 against you, ask your lawyer to cross-examine the State's
24 witnesses. If you wanted to put up a defense, you could
25 testify, you could call witnesses on your own behalf. The

State versus Bobby Moore

1 State would be required to get them hear by subpoena if
2 you listed them or do their best efforts to get them here.
3 You could challenge your statement that you made that
4 incriminates you. You could challenge the State's
5 evidence.

6 You have these rights and lots of other
7 rights under our Constitution that you give up by pleading
8 guilty, do you understand that?

9 DEFENDANT MOORE: Yes, Your Honor.

10 THE COURT: Do you want to give those rights
11 up?

12 DEFENDANT MOORE: Yes, Your Honor.

13 THE COURT: Are you satisfied with your
14 lawyer in this case?

15 DEFENDANT MOORE: Yes, Your Honor.

16 THE COURT: Has she done everything you've
17 asked her to do?

18 DEFENDANT MOORE: Yes, Your Honor.

19 THE COURT: Have you met with her as often
20 and as long as you feel necessary?

21 DEFENDANT MOORE: Yes.

22 THE COURT: And have you understood those
23 discussions you've had with her?

24 DEFENDANT MOORE: Yes, Your Honor.

25 THE COURT: Is there any recommendation from

State versus Bobby Moore

1 the State?

2 MS. ANDERS: No, sir. And also I forgot to
3 mention the value of these pieces was in excess of \$1,000
4 just for jurisdictional purposes.

5 THE COURT: Mr. Moore, has anybody promised
6 you anything to get you to plead guilty to that?

7 DEFENDANT MOORE: No, sir, Your Honor.

8 THE COURT: Has any threats been brought to
9 bare upon you by anyone to cause you to plead guilty?

10 DEFENDANT MOORE: No, sir.

11 THE COURT: Do you understand the other
12 charges that have been dismissed against you? Do you
13 understand that?

14 DEFENDANT MOORE: Yes, sir, Your Honor.

15 THE COURT: Is everybody in agreement that
16 the sentence on each of these will be 10 years?

17 MS. ANDERS: Yes, sir.

18 MS. HORLBECK: I think so. He definitely has
19 enough property offenses and a lot of them are from other
20 States. I don't know if they were uncounseled
21 convictions. That would be my only concern.

22 MS. ANDERS: Your Honor, we have a sufficient
23 amount from South Carolina.

24 MS. HORLBECK: It might be good to read those
25 into the record.

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1 THE COURT: Let's do that.

2 MS. ANDERS: Yes, sir. And these are only
3 certified convictions that we were able to obtain from out
4 of state. Would you like them now, sir?

5 THE COURT: Yes, sir.

6 MS. ANDERS: From 1987 in Tennessee, casual
7 exchange of marijuana; from 1989 -- all of these are from
8 Tennessee -- habitual traffic offender, armed robbery,
9 escape, burglary first degree, armed robbery again. He
10 spent until 2005 in prison there. And then in 2005 in
11 Georgia executing a check with erroneous account number.

12 From 2007, misdemeanor theft in Tennessee;
13 from 2007, these are from South Carolina, receiving stolen
14 goods under \$1,000 and some traffic tickets to go with
15 that; in 2008 receiving stolen goods under \$1,000 and
16 petty larceny.

17 THE COURT: Mr. Moore, you understand by
18 entering a plea of guilty to these four charges, you could
19 be sentenced up to 10 years in jail on each of those which
20 is 40 years, do you understand that?

21 DEFENDANT MOORE: Yes, sir, Your Honor.

22 THE COURT: Has anybody connected with the
23 case in law enforcement or the Solicitor's Office
24 mistreated you in any way?

25 DEFENDANT MOORE: No, sir, Your Honor.

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1 THE COURT: Have you had enough time to
2 decide whether or not you want to plead guilty?

3 DEFENDANT MOORE: Yes, sir, Your Honor.

4 THE COURT: And are you pleading guilty to
5 these charges of your own free will?

6 DEFENDANT MOORE: Yes, sir, Your Honor.

7 THE COURT: Mr. Moore, are you pleading
8 guilty to these charges because you are guilty?

9 DEFENDANT MOORE: Yes, sir, Your Honor.

10 THE COURT: Have you understood the questions
11 I've asked you?

12 DEFENDANT MOORE: Yes, sir.

13 THE COURT: Have you been truthful in your
14 answers to me?

15 DEFENDANT MOORE: Yes, sir, Your Honor.

16 THE COURT: If you meet our Appellate Court
17 rules, the law would allow you to appeal this proceeding
18 within 10 days, and if you can't afford a lawyer, one
19 would be appointed for you. Do you understand that?

20 DEFENDANT MOORE: Yes, sir, Your Honor.

21 THE COURT: I find there is substantial
22 factual basis for the plea; that it has been freely and
23 voluntarily, knowingly, and intelligently made by
24 Mr. Moore with the advice of competent legal counsel with
25 whom he has expressed his satisfaction. I will accept

State versus Bobby Moore

1 your plea, sir.

2 Ms. Horlbeck, I'll be glad to hear from you.

3 MS. HORLBECK: Your Honor, this is Bobby
4 Moore and specifically with respect to all the charges,
5 there were four or five people involved in everything.
6 With respect to these four charges that we're dealing with
7 today, there was another co-defendant. It was actually
8 his girlfriend and the two of them were seen by a witness
9 damaging the air conditioners damaging the coils and that
10 sort of thing.

11 She and I think all the other co-defendants
12 have already been sentenced.

13 MS. ANDERS: And I have those sentences if
14 you'd like them, sir.

15 MS. HORLBECK: And I'll go into them too.
16 Bobby and Pam, the co-defendant, had known each other for
17 four years. They'd been dating and Bobby explained to me
18 that they got hooked back on drugs, the two of them, and
19 this is the reason for them going around and damaging
20 these air conditioners.

21 He's been in the Law Enforcement Center for
22 quite some time. I don't have the exact days so I'd refer
23 to the Solicitor's Officer on that number.

24 MS. ANDERS: 354.

25 MS. HORLBECK: So he's had quite some time to

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1 think about what he's done and to come to terms with
2 things. And he explained to me this morning, he's not
3 happy he's in jail, he's very happy he's in jail because
4 he's at least had the time to dry out and clean up.

5 In the year that I've known Bobby, he's
6 honestly a very very nice person notwithstanding what's
7 happened and he's been arrested and he's doing these
8 things with the air conditioner, he's never given me any
9 grief. I've got a lot of clients who are very unhappy
10 down at the Law Enforcement Center and he's always been
11 pleasant, and he's always willing to sit and listen to me
12 and the advice that I give him.

13 He's very persistent too. If he's got an
14 idea about something, he will go -- he wants to talk about
15 it with you and he wanted to know everything about his
16 case and he actually went through it and come through it
17 and was able to give me a lot of ideas and insight. But
18 together we kind of reached a decision that this was going
19 to be the best resolution to this case.

20 Now, his co-defendants, I believe, pled to
21 some more charges, but all in all his co-defendant, Pam,
22 received a 10 year suspended to six years and five years
23 probation. And I believe there's a co-defendant, Hester,
24 that go 10 years and then there's a co-defendant, Ray,
25 that got 10 years provided on 4 years and 5 years

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1 probation. I believe he had a consecutive sentence too.

2 Am I speaking correctly, solicitor?

3 MS. ANDERS: I believe so.

4 MS. HORLBECK: Your Honor, I know we're
5 getting a lot of things dismissed and we're very happy
6 about that, but we've also agreed to pay the restitution.
7 We've signed everything that we could possible sign. We
8 are asking, Your Honor, to give him a sentence that is in
9 the neighborhood of his co-defendant's sentence.

10 Obviously his immediate co-defendant, Ms. Cole, is
11 probably serving about a six-year sentence, so we'd ask
12 Your Honor to take that into consideration.

13 I really thing that now that Bobby has had a
14 chance to dry out, I think that that would be a good
15 resolution to this case. I don't know the status of any
16 drug treatment programs in SCDC at this point, but a
17 six-year sentence would certainly allow him to take
18 advantage of that program if it's still in existence or if
19 it comes back into existence. I don't know if the budget
20 has cut it or not, but a six-year sentence would certainly
21 allow him to take advantage of that.

22 He's been very honest. He's served a lot of
23 prison. He got out in '05, he got into a halfway house,
24 and then got back into the drugs, and that's what happened
25 here.

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1 He does have some redeeming qualities about
2 him. Even though he only completed the 10th grade, he did
3 get his GED so Bobby's got some good things about him.
4 He's able to hold down a job. He works 10 to 15 years
5 landscaping for Tommy Powell so he's not someone that
6 needs to be just thrown away. We'd ask Your Honor to take
7 that into consideration and give him a sentence -- let him
8 feed out of the same troth as his co-defendants.

9 That's all we have. Thank you.

10 MS. ANDERS: Your Honor, I'd like to tell you
11 about the co-defendants, if you'd like.

12 THE COURT: I'll hear from Mr. Moore in a
13 minute. I'd be glad to hear about the co-defendants.

14 MS. ANDERS: Pamela Cole and Bobby Moore each
15 had approximately 150 warrants. Pamela Cole had
16 absolutely no prior record and nothing was a third
17 property offense, and I believe that's part of the reason
18 she got the 10 provided on 6. Tim Hester had a very very
19 lengthy record and had about 125 warrants. He got the
20 10-year sentence and Tim Hester and Derrick Ray did many
21 things together, and then Pamela Cole, Mr. Moore, and
22 Mr. Ray and Mr. Hester did some things together. Mr. Ray
23 had about 100 warrants.

24 Arthur Gray participated in about 20
25 different incidents. He got 10 years provided on six

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1 months and he had no record as well, and then Joe Chapman
2 was a driver. He got three years and pleaded to accessory
3 -- I'm sorry that's 30 months.

4 THE COURT: Have the victims all been
5 notified?

6 MS. ANDERS: Every single one.

7 THE COURT: None of them are here today?

8 MS. ANDERS: No, sir. And the restitution
9 has been split up proportionately to who was charged with
10 each incident, and each defendant agreed to his
11 proportionate share of the restitution at each location.

12 THE COURT: Has anyone added up how much
13 restitution is owed on this.

14 MS. ANDERS: At one point, it was in the
15 neighborhood of \$90,000.

16 THE COURT: From this defendant?

17 MS. ANDERS: That would be everyone, I
18 believe.

19 MS. HORLBECK: That's total.

20 THE COURT: When I sign the sentencing sheet
21 it says restitution in the amount of some number is owed.
22 I'm going to need to add that up.

23 MS. ANDERS: I'm sorry, sir, I don't have the
24 number.

25 THE COURT: I'll do the adding. It's

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1 probably about \$30,000 if I'm adding it in my head. Is
2 that about right, Mr. Moore?

3 DEFENDANT MOORE: Yes.

4 MS. HORLBECK: We know it's a lot.

5 THE COURT: We'll add up the amount.

6 MS. HORLBECK: And, Judge, the only thing I
7 want to add is that there are certainly a number of
8 convictions. We're not disputing his record. I still am
9 not sure which charges are counseled or uncounseled. I
10 don't know whether he was informed of the fact that his
11 priors in Greenville County would some day come back to
12 haunt him as an enhancement, and that's another reason I
13 would ask Your Honor to consider sentencing him the same
14 things as the co-defendant.

15 THE COURT: This is all because of drugs,
16 Mr. Moore?

17 DEFENDANT MOORE: Yes, sir. It's been a
18 honer for me for about five years now.

19 THE COURT: You've been using drugs for more
20 than five years, haven't you?

21 DEFENDANT MOORE: Alcohol. Crack cocaine, I
22 met this guy in 2005.

23 THE COURT: You never used any other drugs
24 other than ---

25 DEFENDANT MOORE: Marijuana.

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1 THE COURT: When did you first start using
2 marijuana?

3 DEFENDANT MOORE: When I was a teenager. The
4 cocaine it takes a person and it turns them into somebody
5 else and it gets a point where you do what you do to get
6 it. And I want this opportunity to apologize to the Court
7 and the community and my victims. And I'm clean and
8 sober. I'm not happy to be in jail, no, I'm not. If I
9 can get out of these cuff and run down the street yelling
10 I'm free, I'd be happy to do that, but I got one things of
11 this. I'm sober. I'm making a sound decision without
12 crack cocaine being my breakfast.

13 I don't have to steal nothing to go and get
14 cocaine because I'm clean and I'm happy with that. It
15 only took me a year to come to terms with making this
16 decision to come in here and tell the truth. Now, I put
17 myself at the mercy of the Court.

18 THE COURT: Weren't you clean after your
19 alcohol treatment six years ago?

20 DEFENDANT MOORE: I was clean until I went
21 into a halfway house, and I met people that were involved
22 in cocaine.

23 THE COURT: They were halfway the other way
24 instead of halfway clean.

25 DEFENDANT MOORE: Yes, it turned against me.

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1 The system put me into the house to help me, but it hurt
2 me.

3 THE COURT: You picked the wrong guys to
4 listen to in the halfway house.

5 DEFENDANT MOORE: I think what the problem
6 was they had people coming out of prison into the halfway
7 house and they had people coming off the street into it,
8 and it was supposed to be a refuge for people coming off
9 the street to get off of drugs.

10 THE COURT: Which ones would have been better
11 to listen to, the ones coming out of prison or the ones
12 coming off the street?

13 DEFENDANT MOORE: If I had my choice, I'd go
14 around the halfway house because it hurt me more than it
15 helped me.

16 THE COURT: Who in the halfway house was
17 giving you bad advice, those coming out of prison or those
18 coming ---

19 DEFENDANT MOORE: Those off the street. Us
20 guys out of prison, we didn't know nothing about the
21 community or where to go and nothing like that, and those
22 people coming off the street knew all about the
23 communities and get us in these cars and like let's go
24 over here. They caused us problems.

25 THE COURT: You think you'd be able to pay

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1 all this restitution back, Mr. Moore?

2 DEFENDANT MOORE: Well, I can die trying. I
3 made a mistake and I realize it and I'll do whatever I can
4 to try and correct it. And I'm going to help Pam pay hers
5 too. It's a lot of money for us, but we've made our mends
6 and we've turned our lives over to God and God says do
7 what's right. So we'll give it back. We need time.

8 MS. HORLBECK: And, Judge, just for the
9 record Bobby indicated to me that he did have a lawyer
10 represent him on his Tennessee charge and his Georgia
11 charge. I would like to place that on the record for
12 everybody's benefit.

13 THE COURT: Mr. Moore, I agree with your
14 attorney, the fact that you are contrite and have a lot of
15 potential. I sure hope you make it. I want you to make
16 it and I believe you can. But, obviously, you got to pay
17 your debt to society. I'm going to make sure you do that.

18 I want you to know that on the sentence I'm
19 stacking it and a lot of time left when you got out on
20 probation and in my view it's not towards punishment.
21 It's to encourage you to stay clean when you get out. I
22 want you to know that when you do get out, there's a lot
23 of time hanging over your head if you don't meet the
24 requirements of probation and don't do the things you're
25 supposed to do but I believe you will. I'm confident you

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1 will.

2 I hope that while you're doing your time,
3 you'll be a positive influence on those others who don't
4 realize the dangers of the paths they're taken. Maybe you
5 can help them.

6 Okay, this is case 2008-GS-23-10085, the
7 sentence of the Court is defendant be committed to the
8 State Department of Corrections for a period of 10 years,
9 be given credit for his time served, recommending ATU Unit
10 while he is incarcerated.

11 Case No. 2008-GS-23-10086, the sentence of
12 the Court is the defendant be committed to the State
13 Department of Corrections for a period of 10 years
14 provided upon the service of four years. The balance is
15 suspended placed on probation for five years. This will
16 be a consecutive sentence to that previously imposed. The
17 condition of probation having substance abuse counseling
18 as Probation deems necessary, random drug and alcohol drug
19 testing, pay restitution in the amount of \$38,178.84.

20 Case 2008-GS-23-10087, the sentence is 10
21 years provided upon the time serviced. This is suspended
22 during this probation. It is to be a consecutive sentence
23 to that previous imposed.

24 Case 2008-GS-23-10088, the sentence is 10
25 years provided upon his time served. This is suspended

State versus Bobby Moore

1 during probation. Again, this is a consecutive sentence.

2 Again, the intent is once you get out of
3 jail, you do the things you are supposed to do and I'm
4 confident you'll do those things.

5 Wish you the very very best, Mr. Moore.

6 THE COURT: We're going to check the math on
7 that restitution to see if we got it right.

8 MS. HORLBECK: Thank you, Your Honor.

9 MS. ANDERS: Thank you, Judge.

10 ---END OF TRANSCRIPT RECORD---

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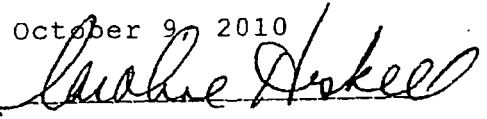
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State versus Bobby Moore

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I, the undersigned Caroline Hiskell, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court of Greenville County, South Carolina on the 10th day of September, 2009.

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

October 9, 2010

Caroline Hiskell

STATE OF SOUTH CAROLINA
County of Greenville

In the Court of Common Pleas

Bobby Junior Moore #336787
Full name and prison number (if any) of Applicant.

vs.

State of South Carolina
Name of Respondent.

Henry D. McMaster

APPLICATION FOR
POST-CONVICTION RELIEF

2010-CP-23- 6769

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 applicable questions. If necessary, applicant may furnish his answer to a particular question on the reverse side of this page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that the 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. If the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Evans Correctional Institution 610-Highway nine W
Bennettsville, South Carolina 29512
2. Name and location of Court which imposed sentence Greenville County General Sessions
Court
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence imposed:
 - (a) 08-65-23-10085
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) September 19, 2009
 - (b) Grand Larceny Malicious damage
 - (c) fourteen (14) years

5. Check whether a finding of guilty was made
- (a) after a plea of guilty After A guilty Plea
 - (b) after a plea of not guilty N/A
 - (c) after a plea of nolo contendere N/A

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

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

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) Counsel did not Advise me of the right to Appeal
- (b) _____
- (c) _____

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

- (a) Ineffective Assistance of Counsel
- (b) Involuntary Plea
- (c) _____

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

- (a) Ineffective Assistance of Counsel Next page
- (b) Involuntary Plea Next page
- (c) Plea did not Comply with State Rules of Criminal Process Rule 11.

10(a) Ineffective of Assistance of Counsel, Counsel for the Applicant failed to filed a notice of Appeal. At the guilty Plea hearing conducted September 10, 2009 After the evidence closed Counsel failed to filed a Notice of Appeal on the issue discrimination, the Applicant was charged with grand larceny and his Co-defendant was also charged with grand larceny the Applicant received a fourteen (14) Year Sentence and his Codefendant received a Six (6) year Sentence both Party should have received the same Sentence, however, Counsel should have been under obligation to filed a notice of Appeal. The Applicant fourteenth Amendment Prohibit Anytype of discrimination because of race, color or Previous Condition of Servitude, the Court of Appeals would have saw this meritious issue.

An effective Counsel would have filed A notice of Appeal to determine if this his Client, whom he knew was discriminated Against. Counsel failed to tender reasonably effective Assistance "under Prevailing norms. To Show prejudice the Applicant has demonstrate that he was discriminated Against. Also Counsel was ineffective for failing to Suppress the State Evidence And Investigated my Case.

10(b) The Trial Judge failed to Ascertain that the Applicant Guilty Plea was knowing And Voluntary And whether the Applicant had Another Alternative Course of Action open to me. The guilty Plea was not Voluntarily And knowingly made And I did not understand the nature of the charge Against me And the Consequences of this Plea.

Whether I had Another Alternative Course of Action Open to me. The Trial Judge failed to Use the Utmost Sollicitude in Canvassing this guilty Plea to Insure that this Plea was given freely And Voluntarily with full Knowledge of these Circumstance Surrounding the Plea And the Attendant of my waiver rights Occurring with this Plea the trial Judge did not give me A full Understanding of the rights I was abandoning. The record Indicate this.

11. Prior to this application have you filed with respect to this conviction
- (a) any petition in a State Court under South Carolina Law? N/A
 - (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? N/A
 - (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already s
in (7)? N/A
 - (d) any other petitions, motions or applications in this or any other Court?
N/A

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

- (a) the specific nature thereof:
 - i. 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

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any p
tion, motion or application which you have filed?

N/A

(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. N/A
- ii. N/A
- iii. N/A

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

- (a) N/A
- (b) N/A
- (c) N/A

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

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

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

(a) the name and address of each attorney who represented you

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

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

- i. Trial Proceeding Carolina Horlbeck
- ii.
- iii.

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

New Trial

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

N/A

STATE OF SOUTH CAROLINA

County of Greenville

VERIFICATION

I, Bobby Junior Moore # 336787, being duly sworn
oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof;
cludes every ground known to me for vacating, setting aside or correcting the conviction and sentence attack
application; and that the matters and allegations therein set forth are true.

Bobby Moore

SWORN to and subscribed before me this _____

day of _____, 19 _____

Notary Public (L.S.)

My Commission Expires: _____

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

I, Bobby Junior Moore # 336787, hereby apply for leave
proceed in this action without prepayment of fees or costs or security therefor. In support of my application I decl
under penalty of perjury that the following facts are true:

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

Bobby Moore
Applicant

SWORN or affirmed to and subscribed before me this

13 day of August 2010

Pamela J. [Signature]
Notary Public

STATE OF SOUTH CAROLINA
 COUNTY OF GREENVILLE

BOBBY J. MOORE #336787

v.

STATE OF SOUTH CAROLINA

* IN THE COURT OF COMMON PLEAS

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C/A NO. 2010-CP-23-6769

MEMORANDUM BRIEF OF LAW TO SUPPORT P.C.R. APPLICATION

NOW COMES THE APPLICANT BOBBY J. MOORE #336787 BEFORE THIS HONORABLE COURT, IN THE ABOVE MEMORANDUM BRIEF OF LAW IN SUPPORT OF HIS P.C.R. APPLICATION THAT WAS FILED ON AUG. 17, 2010.

IN THE APPLICANT'S P.C.R. APPLICATION, THE APPLICANT GROUNDS WAS, INEFFECTIVE ASSISTANCE OF COUNSEL; INEFFECTIVE ASSISTANCE OF COUNSEL OF INVOLUNTARY PLEA; INEFFECTIVE ASSISTANCE OF COUNSEL THAT PLEA DID NOT COMPLY WITH THE STATE'S RULE OF CRIMINAL PROCEDURES RULE 11.

(1). THE TRIAL COUNSEL WAS INEFFECTIVE IN A NUMBER OF WAYS. THE APPLICANT AND HIS COUNSEL RELATIONSHIP WAS INCOMPETENT. APPLICANT DID NOT SEE OR TALK TO COUNSEL UNTIL A FEW DAYS BEFORE THE HEARING, WHICH WAS HELD ON SEPTEMBER 10, 2009. THE INEFFECTIVENESS MADE THE PREPARATION AND THOROUGHNESS FOR THE HEARING IN ADEQUATELY. BECAUSE HAD THE TRIAL COUNSEL WENT OVER THE FILE AND DISCUSSED IT WITH THE APPLICANT, THE COUNSEL WOULD HAVE SEEN (OR) BEEN AWARE OF THE STATEMENTS GIVEN BY THE CO-DEFENDANTS, WHERE THEY BOTH ADMIT THEIR GUILT AND WHERE BOTH ADMITTING

(1).

THEIR GUILT AND THAT THEY SHOW THE DEPUTIES THE PLACES THEY STOLE THE COPPER, BY GETTING IN THE POLICE CAR AFTER BEING ARRESTED AND GOING OUT WITH THE DEPUTIES OF THE GREENVILLE COUNTY SHERIFF'S OFFICE TO THE PLACES.

THE CO-DEFENDANT PAMELA K. COLE GAVE HER FIRST STATEMENT ON 9-22-2008, WHICH SHE TOLD ON TIMOTHY CHARLES HESTER (SEE PCR EXHIBIT (A)).

THEN AFTER THE DEPUTIES ARRESTED TIMOTHY CHARLES HESTER, HE GAVE HIS STATEMENT ADMITTING HIS GUILT AND RODE WITH THE DEPUTIES SHOWING THEM PLACES WHERE HIM AND APPLICANT STOLE COPPER, TIMOTHY CHARLES HESTER TOLD EVERYTHING (SEE PCR EXHIBIT (B)).

THE DEPUTIES WENT BACK TO PAMELA K. COLE AND SHE ADMITTED THAT SHE HAD TOLD THEM LIES. SO, SHE GAVE ANOTHER STATEMENT TO RUN COINCISE WITH TIMOTHY CHARLES HESTER STATEMENT (SEE PCR EXHIBIT (C)).

THE WHOLE TIME THESE STATEMENTS WAS BEING GIVEN BY BOTH OF THE CO-DEFENDANTS WHO WAS LEAVING THE JAIL RIDING AROUND WITH THE DEPUTIES, THE APPLICANT WAS STILL IN JAIL AND NO ONE ASKED HIM HIS SIDE OF THE STORY, THEY PUT EVERYTHING ON HIM, UNTIL HE GAVE HIS STATEMENT FREELY AND TOLD EVERYTHING THEY HAD SAID. HIDING NOTHING HE TOLD THE TURTH (SEE PCR EXHIBIT (D)).

THE TRIAL COUNSEL PREPARATION AND THOROUGHNESS OF THE CASE WAS INEFFECTIVE

(2). ON THE SAME DAY THE HEARING WAS BEING CONDUCTED SEPTEMBER 10, 2009. THE APPLICANT TOLD THE COUNSEL THAT HE DID NOT FEEL THEY WAS READY TO PROCEED TO TRIAL. BECAUSE THEY WAS NOT PREPARED. THE COUNSEL TOLD APPLICANT THAT ~~CASE WAS~~ OVER A YEAR OLD AND THE SOLICITOR'S OFFICE WANTED TO GET IT OVER WITH.

(A). UNDER SCCP RULE 1.2 SCOPE OF REPRESENTATION (A.) A LAWYER SHALL ABIDE BY A CLIENT'S DECISIONS CONCERNING THE OBJECTIVE OF REPRESENTATION IN A CRIMINAL CASE, AND ALSO TO A PLEA TO BE ENTERED.

(B). UNDER SCCP RULE 6.2 APPOINTED COUNSEL, AN APPOINTED COUNSEL HAS THE SAME OBLIGATIONS TO THE CLIENT AS A RETAINED COUNSEL.

AT THE HEARING AFTER THE EVIDENCE CLOSING THE COUNSEL FAIL TO FILE "A NOTICE OF APPEAL" AS THE APPLICANT ASKED HER TO FILE. TO SHOW THE COURT THAT THE APPLICANT HAD BEEN DISCRIMINATED AGAINST.

THE APPLICANT WAS CHARGED WITH PETIT LARCENY AND MALICIOUS DAMAGE. THE SAME CHARGES AS BOTH CO-DEFENDANTS. THE APPLICANT IS A AFRICAN AMERICAN WHERE HE RECEIVED A (14) FOURTEEN YEAR SENTENCE AND BOTH OF HIS CO-DEFENDANTS ARE WHITE AMERICAN AND THE RECEIVED A (6) SIX YEARS SENTENCE. ALL PARTIES SHALL HAVE RECEIVE THE SAME SENTENCE. ALL HAD THE SAME CHARGES. THE 14TH FOURTEENTH AMENDMENT PROHIBIT THIS TYPE OF DISCRIMINATION

(3)

BECAUSE OF RACE, COLOR, OR PREVIOUS CONDITION OF SERVITUDE.

THE COUNSEL SHOULD HAVE FILED A NOTICE OF APPEAL AS SHE WAS ASKED BY THE APPLICANT. WHICH ~~WARRANTION~~ PREVENTED THE APPLICANT FROM PRESENTING HIS CLAIMS ADOQUATELY UNDER THE (14TH) FOURTEENTH AMENDMENT OF THE UNITED STATE CONSTITUTION. THE APPLICANT RIGHT WAS NOT ADOQUATELY SAFEGUARDED, UNDER THE EQUAL RIGHT PROTECTION CLAUSE; DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

THE APPLICANT WAS ENTITLED TO ADEQUATE AND EFFECTIVE COUNSEL DURING HIS TRIAL AND THE PREPERATION FOR THE TRIAL ITSELF. APPLICANT DID NOT RECIEVE SUBSTANTIAL EQUALITY LEGAL ASSISTANCE AS REQUIRE BY THE CONSTITUTION.

(3). INEFFECTIVE ASSISTANCE OF COUNSEL IN THE INVOLUNTRY

PLEA. THE COUNSEL FAIL TO LISTEN TO THE APPLICANT WHEN THE TRIAL JUDGE WAS CANVASSING THE GUILTY PLEA. THE APPLICANT KEPT ASKING THE COUNSEL WHAT THE JUDGE MEANT OR WHAT THE JUDGE WAS SAYING? THE COUNSEL TOLD THE APPLICANT JUST TO SAY "YES" TO EACH QUESTION. WHICH CAUSE THE TRIAL JUDGE TO FAIL TO ASCERTAIN THAT THE APPLICANT GUILTY PLEA WAS KNOWINGLY AND VOLUNTARY. THE TRIAL RECORDS WILL SHOW THE TRIAL JUDGE DID NOT GIVE THE APPLICANT A FULL UNDERSTANDING OF MY RIGHTS THAT I WAS ABONDONING, MY PLEA WAS NOT VOLUNTRY.

(4).

THESE FACTS SHOWS THAT THE COUNSEL PERFORMANCE WAS DEFICIENT UNDER THE PREVAILING PROFESSIONAL NORMS OF THIS STATE LAWS GOVERNING THE CONDUCT OF LAWYERS, CHERRY VS. STATE, 300 S.C. at 117, 386 S.E. 2d. at 625, QUOTING STRICKLAND, 466 U.S. at 688, 104 S. Ct. at 2065.

SECONDLY, THE TRIAL COUNSEL'S DEFICIENT PERFORMANCE PREJUDICED AND DISCRIMINATED THE APPLICANT. IF THE COUNSEL PERFORMANCE HAD BEEN PROFESSIONAL AND THE COUNSEL LISTENED TO APPLICANT, THE OUT COME OF THE TRIAL WOULD HAVE BEEN DIFFERENT, CHERRY, 300 S.C. at 117-18, 386 S.E. 2d at 625.

CHERRY AND STRICKLAND SHOWS EXCLUSIVE PROCEDURE THAT COUNSELS PERFORMANCE MUST BE CONSTITUTIONAL. THE TRIAL COUNSEL PERFORMANCE WAS BELOW THE STANDARD. THE COUNSEL SHOULD HAVE FILED A NOTICE OF APPEAL AFTER APPLICANT INFORMED HER TO APPEAL IT. THE COUNSEL COULD HAVE WITHDRAWN THE PLEA. COUNSEL REPRESENTATION WAS FAR FROM GUARANTEEING APPLICANT ADEQUATE REPRESENTATION. THIS INEFFECTIVE ASSISTANCE OF COUNSEL IS CONSISTENT WITH STRICKLAND, 466 U.S. at 692, 104 S. Ct. 2052 AND CRONIC SUPRA, at 659, and N. 25, 104 S. Ct. 2039.

APPLICANT CONSTITUTIONAL RIGHTS LIE BOTH IN "DUE PROCESS" AND "EQUAL PROTECTION", M.L.B., VS S.L.J., 519 U.S. 102, 120, 117 S. Ct. 555, 136 L. Ed. 2d. 473 (1996).

APPLICANT SHOULD HAVE RECEIVED EQUAL REPRESENTATION FROM THE COUNSEL JUST AS A PAID ATTORNEY SERVICE.

THE COUNSEL AFTER EXAMING THE APPLICANT FILE AS AN ADVOCATE'S EYE SHOULD HAVE WENT TO TRIAL AS APPLICANT WANTED AND FILE A NOTICE OF APPEAL TO SHOW THE DISCRIMINATION, AS A ADVOCATE, NOT AS A DISPASSIONATE LEGAL MIND. BUT, AS A PAID LAWYER COMMITTED TO THE REPRESENTATION OF HIS CLIENT. THIS OBLIGATION TO A LITIGANT IN A ADVERSARY SYSTEM, AND APPLICANT WAS ENTITLED TO EQUALITY REPRESENTATION BY THIS COURT APPOINTED COUNSEL, BECAUSE THIS IS A ADVERSARYAL SYSTEM OF JUSTICE. THE COUNSEL DID NOT DO THE WORK OF AN ADVOCATE'S LOOKING HARD TO GET JUSTICE FOR HIS CLIENT AS THE CLIENT'S CO-DEFENDER RECEIVED. SHE ONLY WANTED TO HELP THE SOLICITOR'S OFFICE CLEAR THE BOOKS BY ENTERING THE APPLICANT AS A GUILTY PLEA.

APPLICANT ASK FOR A TIME CUT OR SENTENCE REDUCTION AS THE SAME TIME AS HIS CO-DEFENDANTS.

RESPECTFULLY SUBMITTED.

X

DATE :

(6)

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

BOBBY J. MOORE

Y.
STATE OF SOUTH CAROLINA

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IN THE COURT OF COMMON PLEAS

C/A NO. 2010-CP-23-6769

- CERTIFICATE OF SERVICE -

NOW COME THE APPLICANT AND HEREBY CERTIFIES THAT A COPY OF THE "MEMORANDUM BRIEF OF LAW TO SUPPORT P.C.R. APPLICATION" HAS BEEN SERVED UPON THE FOLLOWING PEOPLE WITH THE APPROPRIATE POSTAL AFFIXED.

OFFICE OF THE CLERK OF COURT
CIRCUIT COURT DIVISION
GREENVILLE COUNTY COURTHOUSE
305 EAST NORTH STREET
GREENVILLE, S.C. 29601

OFFICE OF THE ATTORNEY GENERAL
STATE OF SOUTH CAROLINA
KAREN C. RATIGAN, AAG
P.O. BOX 11549
COLUMBIA, S.C. 29211-1549

DATE: 1-19-11

s/ Bobby Moore

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 19 DAY OF January 2011

Pamela Duggan McDonald
NOTARY PUBLIC

August 18, 2011
MY COMMISSION EXPIRES

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Bobby Junior Moore,)
 S.C.D.C. No. 336787,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2010-CP-23-6769

RETURN

In response to the post-conviction relief application filed August 17, 2010, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the July 2009 term of General Sessions for two (2) counts each of malicious damage to real property for purpose of obtaining nonferrous metal (third property offense) (2008-GS-23-10085, -10087) and grand larceny (third property offense) (2008-GS-23-10086, -10088). Caroline Horlbeck, Esquire represented the Applicant.

On September 10, 2009, the Applicant pled guilty as indicted. The Honorable G. Edward Welmaker sentenced the Applicant to ten (10) years imprisonment for one count of malicious damage to real property for purpose of obtaining nonferrous metal (third property offense).¹ Judge Welmaker then ordered the following sentences were to be consecutive to this first sentence: ten (10) years suspended on service of four (4) years and five (5) years probation for

¹ 2008-GS-23-10085.

one count of grand larceny (third property offense),² ten (10) years suspended upon time-served and the balance suspended during probation for the second count of malicious damage to real property for purpose of obtaining nonferrous metal (third property offense), and ten (10) years suspended upon time-served and the balance suspended during probation for the second count of grand larceny (third property offense). The Applicant, therefore, received an active fourteen (14) year sentence. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript.

II.

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

1. Ineffective assistance of counsel;
 - a. Failed to file a notice of appeal and raise the issue of discrimination (that he received a 14-year sentence and his co-defendant received a 6-year sentence).
2. Involuntary guilty plea.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial

² 2008-GS-23-10086.

process that the trial cannot be relied on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an

evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Applicant's assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant

entering a guilty plea “must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant’s knowing and voluntary waiver of statutory or constitutional rights in a guilty plea “must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant’s counsel, or both.” Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Respondent submits the record fully supports the knowing and voluntary nature of the Applicant’s plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248 (1983).

V.

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

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,


HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: 
Attorneys for Respondent

December 20, 2010

I N D E X

(AW) - Denotes Applicant's Witness
(RW) - Denotes Respondent's Witness

Page No.

(AW) BOBBY JUNIOR MOORE:
 Direct Examination by Mr. Mussetto.....5
 Cross-Examination by Ms. Ratigan.....11

(AW) CAROLINE HORLBECK:
 Direct Examination by Mr. Mussetto.....15
 Cross-Examination by Ms. Ratigan.....19

E X H I B I T S

(There were no exhibits introduced.)

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P R O C E E D I N G S

THE COURT: Yes, ma'am, Ms. Ratigan.

MS. RATIGAN: Thank you, Your Honor.

May it please the Court.

This is the case of Bobby Moore v. the State of South Carolina. The docket number is 2010-CP-23-6769. I'll read his record into -- or I'll read the procedural history into the record, but the sentencing is slightly complicated. So I will refer Your Honor to my return in which I kind of laid it out.

Mr. Moore was indicted for two counts of malicious injury to real property for the purpose of obtaining nonferrous metal that was a third property offense, and two counts of grand larceny. Again, that qualified as a third property offense. He was represented on these charges by Ms. Horlbeck.

On September 10th, 2009, he pled guilty to these charges before Judge Welmaker. He received a 10-year sentence for one count of malicious damage to real property for the purpose of obtaining nonferrous metals. And then he had -- the remaining sentences were consecutive to that sentence. He received 10 years suspended on the service of four years, and five years probation for one count of grand larceny. 10 years suspended upon time served, and the balance suspended

1 during probation for the second count of malicious damage
2 to real property for the purpose of obtaining nonferrous
3 metals. And 10 years suspended on time served, and the
4 balance suspended during probation for the second count of
5 grand larceny. At the end of the day, he received an
6 active 14-year sentence, Your Honor, and, again, some
7 probation to hang out after the end of that.

8 Mr. Moore did not file an appeal. He did file his
9 application in a timely manner. So we're ready to
10 proceed.

11 THE COURT: Mr. Mussetto.

12 MR. MUSSETTO: Judge, at this time, we call
13 Mr. Moore.

14 THE CLERK: Step around to the Bible, please.

15 Place your left hand on the Bible and raise your
16 right hand.

17 WHEREUPON,

18 BOBBY JUNIOR MOORE,
19 after first having been duly sworn, testified as follows:

20 THE CLERK: Thank you.

21 You may be seated.

22 Mr. Nelson [sic], please state your full name for the
23 record.

24 THE WITNESS: Bobby Junior Moore.

25 THE CLERK: Oh, I'm so sorry, Mr. Moore. I'm sorry.

DIRECT EXAMINATION

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BY MR. MUSSETTO:

Q Mr. Moore, did you and I meet this morning?

A Yes, sir.

Q And did you tell me that you were on certain medications?

A Yeah.

Q And did you tell me that those medications, when you take them effect, your eyesight in the morning?

A Yeah.

Q Do the medications that you take cause you to have any difficulty understanding questions that are asked of you?

A Sometimes, like when I first wake up.

Q Are you having any difficulty now understanding the questions I'm asking of you?

A No.

Q Are you having trouble formulating responses to my questions?

A No.

Q Are you prepared to proceed today?

A Yeah.

Q Okay. Going back to this case that we're here today to talk about. Are you alleging that Ms. Horlbeck was an ineffective lawyer during your case?

1 A Yes.

2 Q And on what grounds was she ineffective?

3 A On certain things that were said during the trial. I
4 was wanting to say things, but didn't get a chance to.

5 Q Now, was this a trial, or was this a guilty plea?

6 A It was a guilty plea.

7 Q Okay. Now, let's jump back. What were you
8 originally charged with in this case?

9 A Grand larceny.

10 Q What else?

11 A Malicious damage and conspiracy.

12 Q How many charges were you charged with?

13 A 121.

14 Q And was Ms. Horlbeck your trial counsel from the very
15 beginning of these charges?

16 A Yes, sir.

17 Q Okay. At what point did you start meeting with
18 Ms. Horlbeck to talk about your case?

19 A She came to the jail.

20 Q Okay. Did she ever speak with you about a plea
21 offer?

22 A That morning.

23 Q What morning?

24 A When the plea was offered to me and I went to court.

25 Q Before that time, had you spoken with her about your

1 plea offer?

2 A Yeah -- no. It wasn't about a plea offer. It was --
3 she came to see me to tell me what the Solicitor was going
4 to give me.

5 Q And approximately how many days, or weeks, or months
6 was that before you, actually, pled?

7 A I think two, maybe three times.

8 Q So you met with her two or maybe three times before
9 you, actually, pled and talked about what the Solicitor
10 was going to recommend?

11 A Yeah. I met with her. But when the plea was,
12 actually, offered to me, I only met her one time. And
13 that was in the holding cell here at the courthouse.

14 Q Okay. And what did you understand that plea to be?

15 A That I would get around the same sentence that my
16 co-defendant got.

17 Q And who was your co-defendant?

18 A Pamela Cole.

19 Q And what did she receive?

20 A 10 years, suspended to six.

21 Q And that's what you understood that you were going to
22 get as well?

23 A Yeah.

24 Q Did Ms. Horlbeck tell you that that's what you were
25 going to get?

1 A She didn't say that I would get six years. She said
2 that it would be around that figure of six.

3 Q And what did you end up getting in this case?

4 A 40 years.

5 Q 40?

6 A Yes, with a suspended sentence.

7 Q I'm sorry. Can you repeat that?

8 A I got 40 years suspended down to -- well, I got a 10
9 that was dismissed, another 10 that was dismissed, and one
10 that was suspended down to four, and a 10-year sentence.

11 Q During your plea, did you have any questions
12 regarding what the Judge was asking you?

13 A Yes, sir.

14 Q Did you express your concerns with Ms. Horlbeck
15 during that plea?

16 A I tried.

17 Q What did you do?

18 A I tried to say certain things. And she told me just
19 to say, "yes," or just say, "no."

20 Q And did you do that?

21 A Yeah. I followed her instructions.

22 Q Did you ever say that you understood things that you
23 in actuality did not understand?

24 A Yeah. I mean, I said what she told me to say, "yes"
25 or "no."

1 Q At your plea, how did the State present their
2 recommendation?

3 A I'm not really understanding what you're asking me.

4 Q At your plea, what did the Prosecutor tell the Judge
5 regarding what your offer was going to be?

6 A I'm confused here. I'm not understanding the
7 question you're asking me.

8 Q At your plea, did the Prosecutor tell the Judge that
9 they were making a recommendation?

10 A Yeah.

11 Q And what was that recommendation?

12 A That it was to be 10 years on everything.

13 Q Okay. Did you ever ask Ms. Horlbeck during your plea
14 to stop the plea because you didn't understand what you
15 were responding to?

16 A Yeah. I was just told that it's easier to say "yes"
17 or "no" when I got to a question that I didn't really
18 understand.

19 Q Did the Judge ask you whether you were telling the
20 truth that morning?

21 A Yes, sir.

22 Q What did you respond?

23 A I told the truth.

24 Q You were -- you told the truth?

25 A Yeah.

1 Q Did you answer questions that you really didn't know
2 how to answer?

3 A Yeah. Some of them was -- I didn't know -- I didn't
4 really know, just like the question that you asked me just
5 a few minutes ago, I didn't understand it. Yes, I was
6 trying to. But I was just told to say "yes" or "no."

7 Q Would you have pled guilty knowing that you would
8 have got a higher sentence than your co-defendant
9 received?

10 A Probably not.

11 Q Would you have pled guilty if you had got the same
12 sentence as your co-defendant received?

13 A Yes, sir.

14 Q And, specifically, you're alleging that Ms. Horlbeck
15 was ineffective during your plea?

16 A Yes, sir.

17 Q And that she did not adequately explain to you
18 certain aspects of your plea?

19 A Yes, sir.

20 Q Is there anything else that you'd like to tell the
21 Judge regarding this situation?

22 A There were certain things said that weren't true.
23 Like my co-defendant, they talked about my co-defendant.
24 And it was stated that my co-defendant didn't have a
25 record, and the reason why they -- that's the reason why I

1 was getting a different sentence from her. And every time
2 that I have been arrested, she's been arrested.

3 Q Was that true?

4 A Yes. I mean, they didn't -- the Solicitor got up and
5 said that she didn't have a record, she does. I even took
6 time out to explain this to my attorney, Horlbeck.

7 Q And did Ms. Horlbeck make any objections regarding
8 the Prosecutor's statement?

9 A No.

10 Q Do you feel that contributed to the ineffective
11 assistance of counsel?

12 A Yeah.

13 MR. MUSSETTO: No further questions.

14 THE COURT: Cross-examination.

15 MS. RATIGAN: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. RATIGAN:

18 Q So you stated you had two or three meetings with
19 Ms. Horlbeck; is that correct?

20 A Yes, ma'am.

21 Q And you reviewed with her all the State's evidence
22 against you, all of your charges?

23 A Yes, ma'am.

24 Q And you told her kind of your story about what
25 happened?

1 A Yes, ma'am.

2 Q Did she ever come to you with a 20-year offer from
3 the State? Do you remember?

4 A She came to me with a sheet of paper that had nine
5 charges on it. And she told me that there was 20 years on
6 each one of them.

7 Q And you didn't want to take that offer?

8 A I didn't take the offer because all the charges she
9 brought to me were charges that were bogus, because I
10 didn't do them.

11 Q And you had something around 150 warrants against
12 you, would that be fair to say?

13 A No. That's not correct.

14 Q Okay. How many warrants did you have against you?
15 Do you remember?

16 A I had 121.

17 Q Okay. And did she -- did your attorney tell you that
18 in exchange for pleading guilty, a lot of these warrants
19 would be dismissed?

20 A Yes, ma'am.

21 Q And did Ms. Horlbeck tell you the minimum and maximum
22 sentences you could get on each of these charges you pled
23 guilty to?

24 A She told me 20. And it's not -- the maximum is 10.

25 Q Okay. So you're stating that she told the incorrect

1 maximum statement -- I mean, maximum charge?

2 A No. She never -- she said she had a good feeling
3 about -- when we came in this courtroom, that she had a
4 good feeling when we come in here.

5 Q Did she ever promise you a certain sentence that
6 you'd receive if you pled guilty?

7 A She promised me that morning that I would get real
8 close to my co-defendant -- or what my co-defendant got.

9 Q And your testimony is that there were some errors
10 during the plea, and you talked to -- you tried to get
11 Ms. Horlbeck to object to them and she wouldn't do it?

12 A Well, there was an error in it. And I talked to her
13 about it. And when we got in court, she went and got it
14 amended.

15 Q And what was that error that you're talking about?

16 A Huh?

17 Q What is the error that you're talking about?

18 A One of the papers had -- that was printed up, it was
19 wrong. It said I had did two grand larcenies and two
20 malicious damages, and it wasn't -- it was just one.

21 Q Okay. And that was corrected before you went to the
22 plea?

23 A It was corrected right in the courtroom.

24 Q Okay. And what other errors were made during the
25 plea? The thing about your co-defendant's prior record,

1 that was an error?

2 A Yeah.

3 Q Was there anything else?

4 A Huh?

5 Q Was there any other errors that she should have
6 objected to during the plea?

7 A No.

8 Q Okay. And, at one point, you said you asked her to
9 stop the plea. Why did you want her to stop the plea?

10 A Well, when they started talking about my
11 co-defendant, that's when I wanted to stop. It's even in
12 my transcript where the Judge asked me does he see some
13 hesitancy in me.

14 MS. RATIGAN: Okay. That's all I have, Your Honor.

15 THE COURT: Redirect?

16 MR. MUSSETTO: No further questions.

17 THE COURT: Thank you, Mr. Moore.

18 MR. MUSSETTO: I would call Ms. Horlbeck.

19 THE CLERK: Raise your right hand and place your left
20 hand on the Bible.

21 WHEREUPON,

22 CAROLINE HORLBECK,

23 after first having been duly sworn, testified as follows:

24 THE CLERK: Thank you.

25 You may be seated.

1 offer is dated January the 20th, 2009. The original
2 recommendation was 20 years.

3 I have a note in -- that's when plea negotiations
4 began. And on May the 18th, 2009, I've got a note in my
5 file that the Solicitor's Office was willing to recommend
6 15 years.

7 Q And do you remember or have it in your notes when you
8 first began meeting with Mr. Moore to discuss these plea
9 negotiations?

10 A I -- let's see. I met with him in March of 2009, to
11 review the offer and discovery.

12 Q Do you remember -- or do you know approximately how
13 many times you met with him before his actual plea?

14 A Yes. I met with him in March of 2009, April of 2009,
15 May the 18th, 2009. I met with him again on August the
16 6th of 2009, August the 7th of 2009, August the 17th of
17 2009, September the 9th of 2009, and September the
18 10th.

19 Q And did you -- at any of these meetings, did you tell
20 him what the Judge would be asking him at the plea
21 hearing?

22 A Yes. I always go over that. If the client tells me
23 he wants to plead -- he or she wants to plead guilty and
24 we're at the point where we're signing sentencing sheets,
25 I always review what the Judge will ask.

1 Q Did Mr. Moore tell you that he wanted to plead guilty
2 in this case?

3 A Yes, he did. He got himself on the trial docket. So
4 he was, actually, scheduled for trial on the 10th of
5 September. And he had made the decision that he wanted to
6 plead guilty.

7 Q And who did he plead guilty in front of?

8 A Judge Welmaker.

9 Q Okay. During the course of the plea, did he tell you
10 or whisper to you that he had any hesitation regarding the
11 questions he was being asked by the Judge?

12 A No.

13 Q At any point, did he ask you to stop the plea --

14 A No.

15 Q -- because he did not understand?

16 A No. I don't believe so.

17 Q And in your understanding -- scratch that.

18 What was the maximum that he could have received at
19 this plea?

20 A Let's see. I believe they were all enhancements,
21 third property offense enhancements. So I think the
22 maximum would have been 40 years, if everything had been
23 run consecutive.

24 Q And did you tell him what the maximum was?

25 A Yes, sir.

1 Q Do you remember doing that in court that morning, or
2 was it at a previous meeting?

3 A I don't have a specific recollection. But my
4 practice is to meet with them way before the plea. So I
5 believe I would have told him that -- given the number of
6 times I met with him, I believe I would have told him that
7 way in advance of him appearing in court to plead guilty.

8 Because I -- since he was scheduled for trial and was
9 someone that told me he wanted a trial, I would have made
10 sure that he knew exactly what he was facing before he
11 pled guilty.

12 Q What did the Prosecutor present to the trial [sic] as
13 what the negotiation was?

14 A At the point -- because we were on the trial docket,
15 I don't believe there was a recommendation at that point,
16 because the case had been scheduled for trial. And, in my
17 experience, the Solicitor's Office ceases negotiations
18 once a case has been put on the trial docket. So, at that
19 point, I don't believe there was a recommendation.

20 Q Did you ever tell him that he would be getting what
21 his co-defendant received?

22 A No. I never make promises about a sentence -- any
23 sentence that a client could receive.

24 Q Were you familiar with what his co-defendant
25 received?

1 A Yes.

2 Q Did you ever tell Mr. Moore to say "yes" or "no" to
3 questions that the Judge was asking during the plea?

4 A I don't tell them how to answer questions. And he --
5 there's ample -- he -- from Page 22 to Page 24, he did a
6 fair amount of discussion with the Court. So he had --
7 and I wasn't over there kicking him telling him to be
8 quiet either.

9 MR. MUSSETTO: No further questions.

10 THE COURT: Ms. Ratigan.

11 MS. RATIGAN: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. RATIGAN:

14 Q So your testimony is you had numerous meetings with
15 your client?

16 A Yes.

17 Q And did you file the Brady Rule 5 motions?

18 A Yes, I did.

19 Q Did you receive those materials from the State?

20 A I did.

21 Q Did you review those materials with your client?

22 A I did.

23 Q And Mr. Moore has testified he had over 120 warrants.

24 Does that sound accurate?

25 A Yes.

1 Q And you testified there was a January 20th, 2009,
2 plea offer for 20 years. Did you convey that to your
3 client?

4 A I did.

5 Q Did he reject it out of hand, or did he have some
6 time to think about it?

7 A That one, he -- both. I would say the answer to that
8 is both. He did not like that offer. And he, actually,
9 counter offered eight to 10 years. And I took that
10 counter offer back to the State. That would have been on
11 May the 18th.

12 So he had a good -- May the 18th, 2009, and between
13 that date and the date he, actually, pled, he had what I
14 considered plenty of time to consider his options.
15 Because I had just -- I wrote in here that if he's not
16 guilty, I told him his option was a trial. And I,
17 specifically, wrote in here I stressed to him that I could
18 not promise a specific sentence on what a judge would do.

19 Q So he countered eight to 10 years on May 18th?

20 A He did.

21 Q And you testified that you received a 15-year offer
22 from the State on May 18th. Was that the counter to his
23 counter?

24 A Yes.

25 Q Okay.

1 A And I, actually, have another note on May the 18th,
2 that he told me he wanted more time to consider that
3 offer. I explained that all the offers and negotiations
4 on his case would cease once his case was scheduled for
5 trial.

6 Q So you told him all offers were off the table once it
7 was put on the docket?

8 A Yes. I always warn people that once that date
9 passes, if you haven't indicated what you want to do, or
10 told me you want to plea, or sign up, then your case
11 will be scheduled for trial and all negotiations will
12 end.

13 Q When did he inform you that he wanted to go ahead and
14 plead guilty. Was it the day of the plea? Was it maybe
15 the day before? Do you recall?

16 A I don't have a specific note. I think it would have
17 been sometime within -- generally, you have two weeks from
18 the publishing of the trial docket to the date of your
19 trial. So I would -- I don't have a specific
20 recollection. But I would think it would be somewhere
21 within the several weeks prior to his trial date.

22 Q Did you have adequate time -- after he decided he
23 wanted to plead, did you have adequate time to prepare him
24 for the plea process?

25 A Yes.

1 Q Did you advise him that, at that point, there were
2 absolutely no sentence recommendations from the State?

3 A Yes, I did.

4 Q Did you advise him the State agreed to dismiss almost
5 all of his pending warrants if he decided to plead?

6 A Yes.

7 Q And by the time he pled guilty, his co-defendants had
8 already pled; is that correct?

9 A That's correct.

10 Q Did you ever tell Mr. Moore that he would get real
11 close to what his co-defendants received?

12 A No.

13 Q But you went ahead and you asked for six years anyway
14 just to see what you could get. Would that be fair to
15 say?

16 A Yes. That's what Mr. Moore wanted me to ask for.
17 And I will ask for whatever the client wants me to ask
18 for, and I did.

19 Q Mr. Moore has stated that his co-defendant, in fact,
20 had a record. Is that something you were aware of at the
21 time of the plea?

22 A My understanding is the co-defendant -- there were a
23 number of co-defendants. And my understanding was that
24 Pamela Cole didn't have a prior record at the time that
25 she pled guilty. And she, certainly, didn't have any

1 third property offenses. It was Pamela Cole. And, also,
2 Arthur Gray was another co-defendant who did not have any
3 prior record. And those were the two that got the best
4 sentences.

5 Q And did you explain to Mr. Moore that he was in a bit
6 of a different position because these were third proper
7 offenses?

8 A Yes, I did. And the State, also, put that on the
9 record during his guilty plea on Page 19, Line 14 -- Lines
10 14 through 23 -- actually, Lines 14 -- Page 19, Line 14 to
11 Page 20, Line 3. And so the State laid it out very well
12 during -- to Mr. Moore's detriment, the State laid it out
13 very well, the co-defendants, their records, and why the
14 co-defendants received the sentences they received.

15 Q And what the State laid out, does that comport with
16 what you had advised your client?

17 A Yes.

18 MS. RATIGAN: That's all I have, Your Honor.

19 MR. MUSSETTO: Nothing further, Judge.

20 THE COURT: All right. Thank you.

21 Any further evidence, Mr. Mussetto?

22 MR. MUSSETTO: Nothing else, Judge.

23 THE COURT: Ms. Ratigan?

24 MS. RATIGAN: No, Your Honor.

25 We'd rest on the record and the testimony.

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THE COURT: Okay. I'll review the petition in light of what I've heard today.

Thank you for your presentations.

*****END OF TRANSCRIPT OF RECORD*****

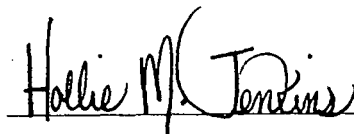
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 29th day of February, 2012.

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

October 17, 2012



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Bobby Junior Moore,)
 S.C.D.C. No. 336787,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. No.: 2010-CP-23-6769

ORDER OF DISMISSAL

FILED
 2010 OCT 24 9:24 AM
 CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 17, 2010. The Respondent made its return on December 20, 2010. An evidentiary hearing into the matter was convened on February 29, 2012 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by John M. Mussetto, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Caroline Horlbeck, Esquire. The Court had before it the guilty plea transcript, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and the Respondent's return.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections. The Applicant was indicted at the July 2009 term of the Greenville County Grand Jury for two (2) counts each of malicious damage to real property for purpose of obtaining nonferrous metal (third property offense) (2008-GS-23-10085, -10087) and grand larceny (third property offense)

1
 JH

(2008-GS-23-10086, -10088). He was represented by Caroline Horlbeck, Esquire.

On September 10, 2009, the Applicant pled guilty. The Honorable G. Edward Welmaker sentenced the Applicant to ten (10) years imprisonment for one count of malicious damage to real property for purpose of obtaining nonferrous metal (third property offense).¹ Judge Welmaker ordered the following sentences were to be consecutive to the first sentence: ten (10) years suspended on service of four (4) years and five (5) years probation for one count of grand larceny (third property offense),² ten (10) years suspended upon time-served and the balance suspended during probation for the second count of malicious damage to real property for purpose of obtaining nonferrous metal (third property offense), and ten (10) years suspended upon time-served and the balance suspended during probation for the second count of grand larceny (third property offense). The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel;
 - a. Failed to file a notice of appeal and raise the issue of discrimination (that he received a 14-year sentence and his co-defendant received a 6-year sentence).
2. Involuntary guilty plea.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their

¹ 2008-GS-23-10085.

² 2008-GS-23-10086.

credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel/Involuntary Guilty Plea

The Applicant alleges his guilty plea was involuntary and he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

The Applicant stated he had over one hundred pending charges. The Applicant stated he had two or three meetings with plea counsel and that they reviewed the State's evidence and his version of events. The Applicant stated there was a plea offer for nine (9) charges and a twenty (20) year recommendation, but that he rejected the offer because they were "bogus charges." The Applicant stated that, on the day before the plea hearing, plea counsel told him he would receive a sentence similar to what his co-defendant had received (a six year active sentence). The Applicant confirmed 121 warrants were dismissed by the State as a result of his guilty plea but stated he "probably" would not have pled guilty if he had known he would not receive the same sentence as his co-defendant.

Plea counsel testified the Applicant had over 120 warrants. Plea counsel testified she filed discovery motions and reviewed the discovery materials with the Applicant. Plea counsel testified the State made a plea offer in January 2009 for the Applicant to plead guilty to ten (10) charges (with the other charges being dismissed) in exchange for a twenty (20) year sentence. Plea counsel testified the Applicant rejected this offer and counter-offered for an eight to ten year sentence. Plea counsel testified the State responded with a fifteen (15) year plea offer in May 2009 but that the offer expired when the case was placed on the trial docket. Plea counsel testified she never told the Applicant he would receive a similar sentence as his co-defendant because the Applicant's charges were third property offenses. Plea counsel testified she advised the Applicant when he pled guilty that he would plead without a recommendation but that the State would dismiss the rest of his charges.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds

plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

The Applicant admitted to the plea judge both that he was guilty and that the facts recited by the solicitor were true. (Plea transcript, p. 11; p. 15). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty and was satisfied with counsel. (Plea transcript, pp. 11-12).

This Court finds the Applicant failed to meet his burden of proving plea counsel misadvised him about the sentence he would receive. Plea counsel testified she told the Applicant he was pleading guilty without a recommendation and advised him of the possible sentences he could receive, as these were third property offenses. Plea counsel testified she did not tell the Applicant he could receive a sentence similar to his co-defendant. This Court finds plea counsel's testimony is credible. This Court notes the Applicant was advised of the maximum sentences he could receive during the plea colloquy, as well as the fact that the charges were third property offenses. (Plea transcript, p. 14; pp. 19-20). While plea counsel asked for a six (6) year sentence, it was also stated at the plea hearing that the Applicant was pleading guilty without a sentence recommendation. (Plea transcript, p. 13; p. 18). The Applicant failed to meet his burden of proving he was misadvised about his potential sentence. See Holden v. State, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011) (finding "any alleged deficiency in plea counsel's representation was cured by the plea colloquy"); Burnett v. State, 352 S.C. 589, 593-94, 576 S.E.2d 144, 246 (2003).

This Court notes the Applicant's allegation in his PCR application that plea counsel did not file an appeal this case. This Court finds the Applicant failed to meet his burden of proving plea counsel should have filed a notice of appeal. Plea counsel has a constitutionally imposed

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duty to consult with the defendant about an appeal only when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). The Applicant made a clear, informed choice to plead guilty that day. See Boykin v. Alabama, 395 U.S. at 243-44, 89 S. Ct. at 1712. The Applicant did not indicate at any point that he was doing so because he believed he would receive a six (6) year sentence. Based on the thorough and complete guilty plea colloquy, it is unlikely a rational defendant would have wanted to appeal. See Flores-Ortega, 528 U.S. at 480, 120 S. Ct. at 1036.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel’s performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they

are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Furthermore, the Applicant's guilty plea was entered knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief is denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 4th day of June, 2012.

D. Garrison Hill

D. Garrison Hill
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

WITNESSES

Brady Mashak

Greenville County Sheriffs Office

09/21/2008

DOCKET NO. 2008-GS-23-010085

JJA

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July

TERM 2008

9-10-09

PLEAD GUILTY

THE STATE

vs.

BOBBY MOORE

ARREST WARRANT NUMBER

1518171

ACTION OF GRAND JURY

TRUE BILL

Nicki Cummins

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

3325

2367

MALICIOUS DAMAGE TO REAL PROPERTY
FOR PURPOSE OF OBTAINING NONFERROUS
METALS

(THIRD PROPERTY OFFENSE)

VIOLATION § 16-11-0523

§ 16-1-0057

Foreperson of Petit Jury

Date:

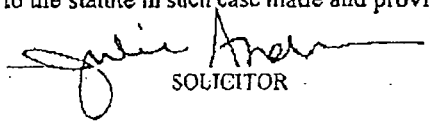
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
GRAND LARCENY

At a Court of General Sessions, convened on JUL 28 2009 The Grand Jurors of Greenville
County present upon their oath:

That BOBBY MOORE did in Greenville County, on or about the 21st day of September, 2008, having previously
been convicted of at least two (2) offenses for which the term of imprisonment is contingent upon the value of the
property involved feloniously take and carry away the personal property of BANK OF TRAVELERS REST of
the value of more than One Thousand Dollars, described as follows: copper parts, with intent to deprive the owner
permanently of such property. This is in violation of §16-13-30 and §16-1-57 of the South Carolina Code of
Laws (1976) as amended.

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


SOLICITOR

WITNESSES

Brady Mashak

Greenville County Sheriffs Office

09/21/2008

DOCKET NO. 2008-GS-23-010086

JJA

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July

TERM 2008

✓
✓

9-10-09

THE STATE

PLEAD GUILTY

vs.

BOBBY MOORE

ARREST WARRANT NUMBER

1518169

ACTION OF GRAND JURY

TRUE BILL

Nicki Cummins

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

0478

2367 ✓

GRAND LARCENY
(THIRD PROPERTY OFFENSE)

VIOLATION § 16-13-0030

§ 16-1-0057

Foreperson of Petit Jury

Date:

WITNESSES

Brady Mashak
Greenville County Sheriffs Office
09/21/2008

JWA

DOCKET NO. 2008-GS-23-010087

JJA

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July

TERM 2008

9-16-09

PLEAD GUILTY THE STATE
vs.

ARREST WARRANT NUMBER
1518170

BOBBY MOORE

ACTION OF GRAND JURY

TRUE BILL

Nicki Cummins

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

3325

2367

MALICIOUS DAMAGE TO REAL PROPERTY
FOR PURPOSE OF OBTAINING NONFERROUS
METALS

(THIRD PROPERTY OFFENSE)

VIOLATION § 16-11-0523
§ 16-1-0057

Foreperson of Petit Jury

Date:

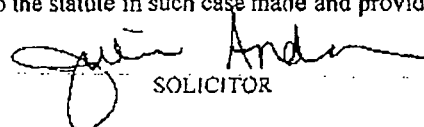
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GRANDSOUTH BANK of the value of more than One Thousand Dollars, described as follows: copper parts,
with intent to deprive the owner permanently of such property. This is in violation of §16-13-30 and §16-1-57 of
the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

Brady Mashak
Greenville County Sheriffs Office
9/21/2008

DOCKET NO. 2008-GS-23-010088

JJA

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July TERM 2008

9-10-09

THE STATE

vs.

BOBBY MOORE

PLEAD GUILTY

ARREST WARRANT NUMBER

1518168

ACTION OF GRAND JURY

TRUE BILL

Nicki Cummins

Foreperson Grand Jury

Foreperson of Grand Jury

VERDICT

Indictment for

0478

2367

GRAND LARCENY
(THIRD PROPERTY OFFENSE)

VIOLATION § 16-13-0030

§ 16-1-0057

Foreperson of Petit Jury

Date: