

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea Benjamin, Circuit Court Judge

Appellate Case No. 2020-000104

Case No. 2016-CP-40-4676

David Keith McElveen,

Petitioner,

v.

The State of South Carolina,

Respondent.

APPENDIX

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S.C. SUPREME COURT

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1 State of South Carolina

2 County of Richland

3

4

5 David Keith McElveen,
6 Plaintiff

Guilty Plea
2015-GS-40-01590

6

7 vs.

8 The State of South Carolina,
9 Defendants

March 14, 2016
Columbia, S.C.

9

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11

12 BEFORE THE HONORABLE Clifton Newman, Judge.

13

14

15

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

17 Ms. Margaret F. Bodman,
18 Assistant Solicitor for the State

18

19 Mr. Mark E. Schnee,
20 Attorney for the Defendant

20

Margaret T. Sullivan,
Court Reporter

21

22

23

24

25

1 THE COURT: Yes.

2 MS. BODMAN: Yes, sir. Margaret Bodman
3 with the solicitor's office, on the State versus
4 David Keith McElveen. And we have reached a plea
5 agreement in that case.

6 THE COURT: All right.

7 (Whereupon, the defendant is sworn.)

8 THE COURT: Mr. Schnee, do you represent
9 Mr. David McElveen?

10 MR. SCHNEE: I do you, Your Honor.

11 THE COURT: And he is here to plead
12 guilty?

13 MR. SCHNEE: Yes, Your Honor.

14 THE COURT: And you're in agreement with
15 that?

16 MR. SCHNEE: I am.

17 THE COURT: Ms. Bodman.

18 MR. BODMAN: Thank you, Your Honor.

19 Mr. McElveen was originally charged with burglary in
20 the first degree, two counts of armed robbery, and
21 one count of assault and battery in the first
22 degree. In exchange for his plea, I am dismissing
23 one of the armed robberies. The female victim is
24 deceased since this occurred. And I will dismiss
25 the assault and battery in the first degree. But

1 otherwise he is pleading straight up to burglary in
2 the first degree, and one count of armed robbery.

3 THE COURT: Mr. McElveen you are here to
4 plead guilty to the charges that the solicitor
5 mentioned?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Burglary in the first degree
8 carries a minimum sentence of 15 years, a maximum
9 sentence of life imprisonment. Do you understand
10 that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: It's also classified in the
13 law as being a violent offense and a most serious
14 offense. Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And also armed robbery is
17 classified as a most serious offense. And armed
18 robbery carries a minimum sentence of 10 years, and
19 a maximum sentence of 30 years. Is that your
20 understanding?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And that's if you are
23 convicted any additional most serious offenses
24 during your life time, you may be sentenced to life
25 without the possibility of parole. Do you

1 understand that, sir?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Now have you talked with your
6 lawyer Mr. Schnee about this long enough, and do you
7 have a good enough understanding as to his
8 proceedings to go forward with this guilty plea?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Now do think you understand
11 the nature of the charges that you are facing, and
12 understand the possible punishment?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Has anyone promised you
15 anything to get you to plead guilty?

16 THE DEFENDANT: No, sir.

17 THE COURT: Are you today under the
18 influence of any drugs, alcohol, medication or
19 anything that might affect your ability to
20 understand what you're doing?

21 THE DEFENDANT: No, sir.

22 THE COURT: Are you fully satisfied with
23 your lawyer in the case?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Have you been by law

1 enforcement, anyone in the solicitor's office, or
2 anyone in connection with this case?

3 THE DEFENDANT: No, sir.

4 THE COURT: Are you on probation or parole
5 at this time?

6 THE DEFENDANT: No, sir.

7 THE COURT: Are you guilty of these two
8 charges?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: What did you do?

11 THE DEFENDANT: I drove my girlfriend over
12 to the victim's house. And they robbed the
13 co-defendants. I mean they robbed the victims, and
14 I drove them away.

15 THE COURT: And you believe that you
16 guilty of these two crimes?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Now as you stand before me,
19 you are presumed to be not guilty of the charge, and
20 you have the right to have a jury trial. And this
21 is one of the cases that were set for trial.

22 MS. BODMAN: Yes, sir.

23 THE COURT: And you have the right to have
24 a trial. The jury -- the jurors are downstairs
25 waiting to be called for the next trial. So you are

1 presumed to be not guilty. You have a right to have
2 a jury trial. If you were to have a jury trial, the
3 State would have to present evidence which convinces
4 a jury of your guilt beyond a reasonable doubt.
5 Otherwise, a jury would be instructed that they must
6 find you not guilty. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: If you had a trial, you would
9 have the right to remain silent if you want to.
10 That cannot be used against you. You have the right
11 to have your lawyer Mr. Schnee to cross examine any
12 witnesses who testify against you, and to present
13 any defense that you might have, and to challenge
14 any evidence the State may offer against you. Do
15 you understand?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: When you plead guilty, you
18 give up those important constitutional rights. Did
19 you know that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you want to give up those
22 rights and proceed with this guilty plea?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: So understanding the nature of
25 the charges, the possible punishment, and the

1 consequences of your guilty plea, how do you plead
2 to burglary first degree?

3 THE DEFENDANT: Guilty.

4 THE COURT: How do you plead to armed
5 robbery.

6 THE DEFENDANT: Guilty.

7 THE COURT: Ms. Madam Solicitor.

8 MS. BODMAN: Thank you, Your Honor. This
9 happened back September 29th of 2014, approximately
10 2:15 in the morning at [REDACTED] Street here in
11 Richland County. This is on a Sunday night going
12 into a Monday morning. On the Saturday previous to
13 this, the defendant went with a woman by the name of
14 Michelle over to [REDACTED] Street, where some
15 drugs were purchased by the female victim in this
16 case by the name of Eva.

17 THE COURT: What part of the county is
18 that in?

19 MR. BODMAN: It's Richland County. It's
20 outside of Forest Acres. It's over by 77 and Forest
21 Drive off of Percival Road. So the female victim
22 Eva, purchased some drugs from the defendant and
23 this woman, Michelle. Michelle also went inside the
24 home and asked the male victim Mr. David Hollis if
25 he also wanted to purchase some drugs and he did.

1 But Mr. Hollis only say Michelle. He never saw
2 Mr. McElveen the defendant.

3 While at that house either Michelle or
4 Eva told the defendant Mr. McElveen that Mr. Hollis
5 the victim, had some bank, had some money.
6 Essentially he keeps coming over to, I guess, sell
7 some drugs. But he's got money. Mr. Hollis had
8 some period before, a year or I'm not sure exactly
9 when it was, had received a worker's comp.
10 settlement in the amount of around \$30,000.

11 THE COURT: Did you say they went to
12 Mr. Hollis' house to buy drugs?

13 MS. BODMAN: Yes. So this is [REDACTED]
14 Street is Mr. Hollis' house. And Eva, the other
15 victim, also lived at that home. And so there was a
16 discussion with the defendant telling him about some
17 large amount of money that Mr. Hollis was in receipt
18 of. Mr. McElveen had met his two co-defendants by
19 the name of McKoy and Boykin through Alvin S. Glenn
20 detention center a previous day. He had been
21 talking with McKoy, or I guess McKoy was talking
22 that, you know, that he needed some more money. He
23 was having to pay child support. He had just lost a
24 job that he had gotten.

25 So he told Mr. McElveen hey, if you have

1 any opportunities to make some money, let me know.
2 On so after Mr. McElveen had found out that about
3 this \$30,000 and prior to the actual incident,
4 McElveen texted McKoy. It could have been McKoy
5 could had said, I have a lick for us to do. He then
6 contacted also the co-defendant Boykin. Mr. McKoy
7 got his girlfriend's car, and drove over and picked
8 up McElveen and his co-defendant Boykin. They then
9 drove over to [REDACTED] Street.

10 Essentially McElveen says well I can't go
11 do this lick, because I was over here the other day
12 selling some drugs, and somebody might recognize my
13 face. So he recruited Boykin and McKoy to actually
14 go into the home. And so Boykin and McKoy armed was
15 weapons then went up to [REDACTED] Street, the [REDACTED]
16 [REDACTED] Street, knocked on the door. When
17 Mr. Hollis opened the door, they shoved the guns
18 into his face and Eva's face. Put them down on the
19 sofa, and started demanding where is this \$30,000.
20 Where is all this money.

21 Mr. Hollis not only was telling them, I
22 wouldn't keep that kind of money in my house, I
23 don't have it. But he actually believed he'd
24 probably gone through that money paying bills and
25 all that sort of thing. So basically they just had,

1 Mr. Hollis, the victim, started just emptying his
2 pocket of whatever he had, his wallet, his cell
3 phone, \$30 in cash.

4 It could have been that Boykin then
5 took -- so McElveen is sitting in the car waiting
6 for all this to happen. Boykin took Eva into the
7 back room and saying, tell us what his pen number
8 is. We'll give you maybe some of the money from it
9 or something. So from both Eva and Mr. Hollis, they
10 took Mr. Hollis' wallet, took both of their cell
11 phones and took some cash.

12 THE COURT: Is all that true so far,
13 Mr. McElveen?

14 THE DEFENDANT: I don't know exactly what
15 happened on the inside of the house.

16 THE COURT: Other than not knowing what
17 happened inside the house, as it relates to you, is
18 everything true?

19 THE DEFENDANT: Yes, sir.

20 MS. BODMAN: So then once he got these
21 items, Boykin and McKoy then go run out of the house
22 and jump into McElveen's -- it's actually McKoy's
23 girlfriend's car, but McElveen is driving and they
24 take off. Mr. Hollis decided that he was not going
25 to let them get away with this, and he didn't have

1 any phone to call 911 or help, so he actually went
2 jumped into his truck. And their house, the house
3 is kind of on a U. So he went one direction and
4 kind of guessed where these defendants would be
5 coming out. Went afternoon the block fast. Saw
6 the car pass by, and wasn't 100 percent sure that
7 that was car, but he had actually come home moments,
8 Mr. Hollis had come home moments before this
9 invasion happened, and he saw a car parked outside
10 of his house. So he thought that's got to be the
11 car. That's the car I saw sitting here when I came
12 home.

13 So he actually chases the car down on
14 Forest Drive and crashes into the back of the
15 defendant's car. The first time I guess not so
16 hard. And then the second time knew he needed to
17 make a pretty big impact to try to disable the
18 vehicle. So he crashed. Sure enough, he crashed
19 into the back of the the defendant's car. The wheel
20 fell off. It completely disabled. So the three
21 defendants jump out of the car and flee in three
22 different directions. Inside of that vehicle is
23 Mr. Hollis' wallet, with all of his bank cards and
24 identifying information. A debit card was left
25 behind with McKoy, co-defendant's name McKoy on that

1 debit card. And there were four cell phones that
2 were found in that vehicle. One of the cell phones
3 came back to McElveen, this defendant. And had on
4 that phone the text message that he sent to McKoy
5 saying I have a lick for us to do. And there was a,
6 basically a selfie. Mr. McElveen had taken a photo
7 of himself on the cell phone.

8 Mr. Hollis then made his way to Forest
9 Acres Police Department, where he got the assistance
10 of police officers letting him know what had
11 happened. Some officers went back to the house to
12 make sure that Eva was okay, and just started taking
13 statements and getting descriptions. Then more
14 officers went to the car and preserved the car so
15 that they could process it.

16 There was DNA found on the steering wheel
17 cover. And there was a mixture of DNA on that
18 steering wheel cover. And the major contributor to
19 that DNA is this defendant, Mr. McElveen. One of
20 other phones, cell phones in the car, comes back to
21 Mr. Boykin, co-defendant Boykin. The other two we
22 couldn't particularly identify either by DNA. I
23 think both of those phones we tried to do downloads,
24 and nothing really came off of those phones to tell
25 us.

1 THE COURT: Do you have any basis to
2 dispute any of those facts that she has given thus
3 far, Mr. McElveen?

4 THE DEFENDANT: No, sir.

5 MS. BODMAN: The weapons that were
6 described as being used is one with a small silver
7 and the other one was a small black. Mr. McKoy is
8 the first person that was arrested based on the
9 relationship I guess with the vehicle, as well as
10 his debit card. And he initially came in and gave a
11 statement saying that this was actually just a drug
12 deal, and they had tried to sell the victim some
13 fake drugs, and he just got mad about it. So none
14 of this burglary or home invasion robbery took
15 place. It was just a bad drug deal. Investigator
16 Carwell with me, told Mr. McKoy that's fine, I am
17 going to go, I am going to be arresting your two
18 co-defendants, and someone is going to want to help
19 themselves and tell me the truth about what
20 happened.

21 Mr. McKoy was placed in a holding cell,
22 and he got Mr. Carwell's, Investigator Carwell's
23 attention a little bit later, and said he knew that
24 there was a reason he was arrested first, and this
25 was his chance to tell truth. So he then told about

1 how Mr. McElveen and McKoy after this home invasion
2 and armed robbery, had gotten together at a IHOP or
3 Waffle House. And McKoy was telling him, I am going
4 be to be okay. If they find my prints in the car,
5 I've got reason for my prints and my stuff to be in
6 the car, because this is my girlfriend's car. I
7 drive it all the time, but you've got a problem. If
8 they find your prints and your stuff in this car, we
9 don't know how to explain that. We need to come up
10 with a story to help you. And so that's when they
11 came up with the story of selling bad drugs and that
12 it was all just a drug deal, and there was no
13 burglary. So McKoy came clean on this second
14 statement. Every single detail of who had the
15 weapons, who went in, who set it up, being
16 recruited by McElveen to go do this lick, and what
17 they took in this home invasion.

18 Subsequently, McElveen was arrested. And
19 he gave a statement admitting that he did recruit
20 Boykin and McKoy, that he had met them through Alvin
21 S. Glenn; that he called them; that he knew or
22 believed that there was supposed to be a lot of
23 money in this house. And that they had weapons and
24 that they went into this home. And basically the
25 events after that, jumping back in the car, being

1 hit and fleeing. And then finally Boykin was
2 arrested, and he give a minimized statement
3 basically saying he was the there, but he was kind
4 of outside. He was scared that maybe they showed
5 some weapons in his direction.

6 So the Boykin's story is the least
7 consistent with the physical evidence with
8 Mr. Hollis' description of what happened and the
9 other two co-defendants.

10 THE COURT: Are those cases still going
11 on? Are they over?

12 MS. BODMAN: No, they are not over. We
13 started with Mr. McElveen. Since each of them gave
14 statements, we would only be able to admit their
15 full statement if we tried them separately. So we
16 started with Mr. McElveen since he recruited
17 everybody to do this. McKoy is being brought over
18 this afternoon. He's ready to testify against
19 Mr. McElveen. And Boykin is currently sitting in
20 the Department of Corrections on a CDV-HAN
21 revocation, but he will be our next trial up. And I
22 believe McKoy still wants to offer truthful
23 testimony and assistance in this case.

24 THE COURT: Do you think all those facts
25 are true, Mr. McElveen?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: I'll accept the guilty pleas.
3 Any additional information?

4 MS. BODMAN: Criminal history.

5 THE COURT: From the officer.

6 MS. BODMAN: Oh, I'm sorry.

7 OFFICER CARWELL: Just to reiterate, he's
8 described he was the driver. He's more than that.
9 I feel he's the mastermind. The two co-defendants
10 would have never known where this house was; had no
11 connections to the victim. So the State would ask
12 for a substantial prison sentence.

13 MS. BODMAN: At the appropriate time,
14 Mr. Hollis is here and would like to say something.

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

16 MR. HOLLIS: I just want to say something
17 to Mr. McElveen. I just hope that you learn a
18 lesson from this, and to be a respectable citizen.
19 Crime does not pay. I mean most people in the
20 correction institute aren't your friends. You know,
21 I mean, this is about learning a lesson. I hate it
22 for you, but I just want to see you learn a lesson.
23 You set an example down there. Be a good boy. But
24 crime does not pay. We've all been in trouble one
25 time in our life. Well all make mistakes. But I

1 mean, you can get through this. That's all I have
2 to say, Your Honor.

3 THE COURT: Thank you, sir. And the
4 record.

5 MS. BODMAN: Yes, sir. A 2007, a grand
6 larceny. It looks he might have gotten a YOA on
7 that. 2009, possession of marijuana. 2010, some
8 type of traffic offense and a DUS and possession of
9 marijuana. 2010, a DUS third. 2010, distribution
10 of cocaine and a failure to stop for a blue light.
11 And I do not see the year on this, but also a, it
12 looks probably around 2013 or 12, because it's
13 another possession of, or a possession of cocaine,
14 excuse me.

15 THE COURT: Mr. Schnee.

16 MR. SCHNEE: Thank your, Your Honor. May
17 it please the court.

18 THE COURT: Yes, sir.

19 MR. SCHNEE: David is currently 28 years
20 old. He was arrested as the solicitor said,
21 October 29th 2014. Which is 503 days ago. I ask
22 that you give him credit for all that time. As you
23 heard it, one of the female victims on the inside of
24 this is also partly responsible for having
25 indicating large amounts of money. Not to take away

1 my client's obvious participation, but this wasn't
2 just a random event.

3 I say this to say my client is not a
4 menace to society. You've heard his record. He
5 has no prior violence of any kind. No indication
6 that he would ever want to commit a violent crime.
7 He certainly did bring in Mr. McKoy and Mr. Boykin
8 to do this. Mr. McKoy was the one that was
9 interested in doing robberies, and Mr. Boykin has
10 done other things like this in the past. I know my
11 client is very, very sorry for what he has done. It
12 was obviously a very difficult decision.

13 When he was contacted by law enforcement,
14 he gave a complete confession and cooperated fully.
15 He voluntarily gave his DNA. He answered all the
16 investigator's questions. At no point was he trying
17 to run away from this or run away from
18 responsibility. He does have a lot of family
19 support going forward. He also has a one-year-old
20 child he's actually never even seen. It's a
21 difficult thing for him, because he's going to
22 assuming Your Honor goes along with my request of
23 giving him the minimum of 15, based on his lack of a
24 prior record, that's at least another 11 years he
25 will be in prison. Almost 12 more years.

1 Relatively speaking in terms of
2 comparisons, McKoy, all three of the co-defendants
3 were offered the same thing prior. Months and
4 months and months ago. Probably 8 or 9 months ago
5 when there was a range of 18 to 20. McKoy has prior
6 robberies on his record. Obviously he went in with
7 Boykin. As you hear, he's in the Department of
8 Corrections. I think in terms of my client's
9 physical involvement in the house, he has the lowest
10 criminal record. He is accepting responsibility
11 fully. I think 15 years is an appropriate sentence.
12 It is also a very long sentence as Your Honor is
13 aware. Even if it's just the minimum the
14 legislature sets. This is a very long amount of
15 time. And I ask you sentence him to that.

16 THE COURT: Mr. McElveen, what would you
17 like to say?

18 THE DEFENDANT: I just wanted to say to
19 the victims and everyone that I am terribly sorry
20 for the decision I made. I am not a bad person. I
21 hate that I'm facing this kind of time. I wish I
22 could take back what I did, but I can't. I have a
23 son out there who needs me. It's hard to be away
24 from him. I just really hope that I can at least
25 get the minimum, so I can get a chance to be in his

1 life one day again.

2 I definitely learned my lesson. You don't
3 have to worry about seeing me come to the courtroom
4 again. That's all I want to say.

5 THE COURT: The solicitor called out some
6 various crimes: Grand larceny, marijuana, DUS
7 third, possession of cocaine, and distribution of
8 something. Did you get sentenced to prison on any
9 of those charges?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Which ones?

12 THE DEFENDANT: I got the YOA for grand
13 larceny.

14 THE COURT: How old were you then?

15 THE DEFENDANT: I was 19.

16 THE COURT: And then you were gone a
17 couple of years, or a year and a half?

18 THE DEFENDANT: I did around 8 months for
19 the YOA.

20 THE COURT: And this distribution from
21 2010, what was the sentence on that?

22 THE DEFENDANT: They gave me a 16 month
23 sentence.

24 THE COURT: So those two situations, they
25 weren't enough to get your attention? How did you

1 escalate from those situations to crimes like this?

2 THE DEFENDANT: I just made a very bad
3 decision. And it's one mistake I really wish I
4 could take back. I know it might seem like I am not
5 learning my lesson. But I have learned my lesson.
6 I learned my lesson.

7 THE COURT: So what is the idea behind
8 this crime from your perspective?

9 THE DEFENDANT: I just wasn't thinking. I
10 knew the victim had a lot of money. I really
11 didn't -- would rather -- I just really have no
12 excuse. I just made a very bad decision. I really
13 wish I could take it back.

14 THE COURT: And some of these situations
15 turn out very tragic, resulting in deaths of
16 victims, or deaths of defendants, in deaths of
17 co-defendants. As tragic as this one was. Any
18 response by the State?

19 MR. BODMAN: Your Honor, I do not believe
20 that the facts here at all support a minimum
21 sentence. When we look at the different ways that a
22 person can commit a burg. 1st, one could be, I could
23 case out a place and sure that there's not a person
24 at home. But I go in. Just the fact that I go in
25 at night, and that's a burg. 1st. Then I could go

1 in and there's just some type of bodily harm. There
2 could no presence of weapons, but some type of
3 bodily harm to a human being. Then you could have
4 two burg. convictions that just make it arise to a
5 burg. 1st.

6 But what we have here is, we have is we
7 have at night, weapons---

8 THE COURT: So Mr. Hollis is at home at
9 night.

10 MS. BODMAN: Yes.

11 THE COURT: And tell me what happened
12 again. Just in a general sense.

13 MR. BODMAN: He recruits these two guys to
14 do a home invasion, armed robbery, to get \$30,000.
15 And so his co-defendants go in, as his set up.
16 There's some money here. Here's the house. They
17 are both brandishing firearms. They stick them in
18 the faces of these two victims, who are in their own
19 home in the middle of the night.

20 THE COURT: What time was it?

21 MR. BODMAN: Around 2:15 in the morning.
22 2:30 in the morning. Set them down on the sofa with
23 guns in their faces saying, show us where the money
24 is. Tell us where the money is. I mean when you're
25 looking at this statutory 15 to life, this is a more

1 egregious burglary in that scheme of things. And---

2 THE COURT: So who knew Mr. Hollis before
3 this, if any of them?

4 MS. BODMAN: David McElveen came over to
5 Mr. Hollis' house with a women by the name of
6 Michelle. Michelle knew Eva, the female victim,
7 that lived in the house.

8 THE COURT: Who is now deceased.

9 MS. BODMAN: So Michelle and Eva knew each
10 other. That was with essentially this connection.
11 Mr. Hollis does not know Mr. McElveen. He doesn't
12 the other two defendant's. There was a comment by
13 Mr. Schnee that months and months ago we offered 15
14 to 25, yeah, for a more speedy resolution of this
15 case. Step up, take responsibility, and let's get
16 speedy justice for these victims. Now Eva has
17 passed away. Now we make offers to say if you stand
18 up and you accept responsibility in light of all of
19 the information we have at this point, and we can
20 get some speedy justice for these victims. Eva is
21 not here. She died in December.

22 And even without that -- with that range,
23 I was never with that plea offer saying that this
24 was in fact a 15. It was pled, and you can make
25 your argument, and I'm going to make mine. And I

1 think the facts are solidly that this is not a
2 minimum. Not a minimum case.

3 THE COURT: Mr. Schnee, anything else?

4 MR. SCHNEE: Yes, Your Honor in response
5 to that, if I may briefly.

6 THE COURT: Yes, sir.

7 MR. SCHNEE: The definition of armed
8 robbery is what Ms. Bodman is talking about, and the
9 sentence on that is 10 years. And the violent
10 aspects of everything else, that is what the
11 legislators has determined is a appropriate sentence
12 for armed robbery is 10 years. Which is the
13 definition of going somewhere and putting a gun into
14 someone's face and demanding money. So the mere
15 fact that there's an armed robbery involved in this,
16 does not make it outside of a minimum range sentence
17 appropriate for prong. The fact is, my client did
18 not go in the house. Did not attack anyone. Yes,
19 my client participated in it, and did bring two
20 other people to do it. Two people who were wanting
21 to do it. And that was all based on the now
22 deceased victim saying hey, there's a lot of money
23 here, you can come back and get some.

24 I think this 15 years is very appropriate
25 for this case, Your Honor.

1 THE COURT: Any final words, Mr. McElveen?

2 THE DEFENDANT: Sir?

3 THE COURT: Any final words you want to
4 say, utter?

5 THE DEFENDANT: I am sorry. I am terribly
6 sorry what happened. I made a mistake. I've learn
7 my lesson. I don't think I deserve to have -- spend
8 a really long time in jail. I've learned my lesson.
9 I promise, I promise I will never do anything like
10 this again. I just want to be with my family.

11 Never any kind of crime like this one. I just want
12 to get out and be with my family. Raise my son. I
13 don't want my son to grow up without me. I grew up
14 without my father. I just don't want him to go
15 through that.

16 THE COURT: What's your son's age again?

17 THE DEFENDANT: 13 months.

18 THE COURT: 13 months. And you've been in
19 jail 503 days. So at the time that you did the
20 robbery, did you know that the mother was pregnant?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: So you had an expecting --
23 you're expecting a child, your first child, is that
24 right?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And you go out and do this?
2 It should have been a happy time for you. I don't
3 know you, but. Here is my sentence. For armed
4 robbery, the sentence is 18 years. For burglary
5 first degree, the sentence is 22 years. Credit for
6 503 days. The sentences will run concurrent thank
7 you, sir. Thank you, sir.

8 --End of Requested Transcript of Record--

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C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the Third 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 evidence introduced in General Sessions Court, on March 14, 2016, in Richland County, Columbia, South Carolina.

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

10.7.16
DATE

Margaret T. Sullivan

COURT REPORTER

My Commission expires: 9/7/21

STATE OF SOUTH CAROLINA

County of RichlandDavid Keith McElveen

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

vs.

Attorney General of

Name of Respondent.

South Carolina

In the Court of Common Pleas

2016 CP400 4676

2016 AUG -3 AM 11:25
 JEANETTE W. MCBRIDE
 C.C.P. & G.S.
 RICHLAND COUNTY
 FILED

APPLICATION FOR

POST-CONVICTION RELIEF

Attachment Memorandum
of Law Support PCR

INSTRUCTIONS — READ CAREFULLY

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

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

1. Place of detention McCormick Corr Inst 386 Redemption
Way McCormick, S.C. 29889
2. Name and location of Court which imposed sentence General Sessions Richland
County
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2015-GS-40-01590
 - (b) 2015-GS-40-01599
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) March 14, 2016
 - (b) 20 years
 - (c) _____

5. Check whether a finding of guilty was made

- (a) after a plea of guilty YES
 (b) after a plea of not guilty _____
 (c) after a plea of nolo contendere _____

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

NA

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

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

- i. NA
 ii. _____
 iii. _____

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

- i. NA
 ii. _____
 iii. _____

(c) the date of each such result:

- i. NA
 ii. _____
 iii. _____

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

- i. NA
 ii. _____
 iii. _____

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

- (a) Counsel's duty was appeal after been advise
 (b) by client.
 (c) _____

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

- (a) 6th Amendment
 (b) 14th Amendment
 (c) _____

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

- (a) see Attachment Memorandum of Law In
 (b) support Post-Conviction Relief Application
 (c) _____

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? NA
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? NA
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NA
- (d) any other petitions, motions or applications in this or any other Court? NA

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. NA
- ii. _____
- iii. _____
- iv. _____

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

- i. NA
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. NA
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. NA
- ii. _____
- iii. _____
- iv. _____

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

- i. NA
- ii. _____
- iii. _____
- iv. _____

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

No

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. NA
- ii. _____
- iii. _____

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

- i. NA
- ii. _____
- iii. _____

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

- (a) Applicant timely file my first PCR after
- (b) my conviction and sentences.
- (c) _____

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? NA
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

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. Mr. Mark Schnee 1720 Main St Suite
202 Columbia SC, 29201.
- ii. _____
- iii. _____

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

- i. guilty Plea
- ii. _____
- iii. _____

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

Resentenced to minimum of 15 years.

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

NA

ARREST WARRANT

2014A4010601157

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

THE STATE

#1409004229-R2

against

David Keith Mcelveen

Address:

Columbia, SC 29205-

Phone:

SSN:

Sex: M Race: W Height: 6 3 Weight: 200

DL State: SC DL #:

DOB: Agency ORI #: SC0400000

Prosecuting Agency: Richland County Sheriff

Prosecuting Officer: John Carwell, JR - 1227

Offense: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Offense Code: 0139

Code/Ordinance Sec: 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant DAVID MCELVEENon 10/29/14

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Richland County General Sessions
1701 Main Street
P O Box 192
Columbia, SC 29202

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

Personally appeared before me the affiant John Carwell, JRbeing duly sworn deposes and says that defendant David Keith Mcelveendid within this county and state on or about 9/29/2014State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

in the following particulars:

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on or about 09/29/2014 while at ST in the WAVERLY Mag Dist of Richland County it is believed that one DAVID K. MCELVEEN did commit the crime of ARMED ROBBERY in that he did drive his two co-defs to the incident location in a 2009 Green Toyota Camry in an attempt to steal \$30,000. in US currency. The two co-defs did force their way into the residence during the hrs of darkness after the homeowner opened the door demanding the money at gunpoint. The co-defs then pushed the victim to the couch stealing his wallet & cell phone after he told the defs he did not have the money. The male victim was able to follow the defs in his vehicle after they fled the scene. The defs then fled the vehicle they were riding in after the victim hit them with his vehicle. The def's cell phone was found between the driver's seat & the center console, which contained text messages referencing the robbery. A co-def has provided a statement implicating the def. Affiant & others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

Affiant's Address 5623 Two Notch RoadColumbia, SC 29223-Affiant's Telephone (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 9/29/2014defendant David Keith Mcelveen

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland / Lykesland Magistrate

) as set forth below:

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 10/17/2014Signature of Issuing Judge
Michael Ronald DavisJudge Code: 5458

(L.S.)

Judge's Address 1403 Caroline RoadColumbia, SC 29209-2609Judge's Telephone (803)576-2500Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL Form Approved by S.C. Attorney General April 23, 2003 SCCA 518

OCT 22 2014

LWHO

CERTIFIED TRUE COPY
OF ORIGINAL FILEDJANETTE W. BRIDE
S.C. REG. S.
RICHLAND COUNTY
SOUTH CAROLINA

BAIL set by

33 Judge

on

Type and Amount:

Name of Surety:

PRELIMINARY HEARING held by

Judge

on

Defendant Attorney:

Decision:

DISPOSITION before

Judge

on

by

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition:

Sentence:

JURORS

WITNESSES

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

CODEFENDANTS



WITNESSES

(S) John Carwell JR
- Richland County Sheriff

ARREST WARRANT NUMBER

2014A4010601157

ACTION OF GRAND JURY

TRUE BILL

Connie Lumpkin
Foreperson of Grand Jury

Date:

APR 08 2015

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-40-01590

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2015

92

**THE STATE
vs.**

David Keith Mcelveen

**Indictment for
ROBBERY / ARMED ROBBERY, ROBBERY
WHILE ARMED OR ALLEGEDLY ARMED
WITH A DEADLY WEAPON**

SC Code: 16-11-0330(A)

CDR Code: 0139

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

**CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jeannette W. McBride
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA**

SCANNED

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

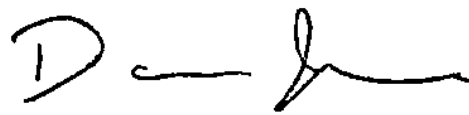
INDICTMENT

At a Court of General Sessions, convened on APRIL 8, 2015, the
Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That DAVID KEITH MCELVEEN did in Richland County on or about September 29, 2014, commit robbery by feloniously taking from the person or presence of DAVID HOLLIS, by means of force or intimidation, goods or monies of DAVID HOLLIS, such goods or monies being described as LAWFUL UNITED STATES CURRENCY, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he or she was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of §16-11-330(A), SC 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.



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Richland

VS.

David Keith Mcelveen

AKA:

Race: WHITE Sex: M Age: 28

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Columbia, SC 29205

DL#: [REDACTED] SID#: 01734665

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Margaret Bodman
Bodman, Margaret Fent70937
SC Bar#X David Mcelveen
DefendantT. Mallick
Attorney for Defendant74866
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 18 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. (503 days credit)☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 26-16-25 (Criminal)

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS4001590

A/W#: 2014A4010601157

Date of Offense: 9/29/2014

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

CERTIFIED TRUE COPY
ORIGINAL FILEDJ. P. Mallick
C.C.C.P.&G.S.RICHLAND COUNTY
SOUTH CAROLINA

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2127

Sentence Date: March 14, 2016

SCANNED

ARREST WARRANT

2014A4010601156

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

THE STATE

#1409004229

against

David Keith Mcelveen

Address:

Columbia, SC 29205-

Phone: SSN:

Sex: M Race: W Height: 6 3 Weight: 200

DL State: SC DL #: DOB:

Agency ORI#: SC0400000

Prosecuting Agency: Richland County Sheriff

Prosecuting Officer: John Carwell, JR - 1227

Offense: Burglary / Burglary (After June 20, 1985) - First degree

Offense Code: 0079

Code/Ordinance Sec: 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt, with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant

on

10/29/14

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Richland County Sheriff's Office

1701 Main Street

P O Box 192

Columbia, SC 29202

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

CLEARED

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

Personally appeared before me the affiant John Carwell, JR

being duly sworn deposes and says that defendant David Keith Mcelveen

did within this county and state on or about 9/29/2014

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

in the following particulars:

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on or about 09/29/2014 while at [REDACTED] ST in the WAVERLY Mag Dist of Richland County it is believed that one DAVID K. MCELVEEN did commit the crime of BURGLARY-1ST DEG in that he did drive his two co-defs to the incident location in a 2009 Green Toyota Camry in an attempt to steal \$30,000. in US currency. The two co-defs did force their way into the residence during the hrs of darkness after the homeowner opened the door demanding the money at gunpoint. The co-defs then pushed the victim to the couch stealing his wallet & cell phone after he told the defs he did not have the money. The male victim was able to follow the defs in his vehicle after they fled the scene. The defs then fled the vehicle they were riding in after the victim hit them with his vehicle. The defs cell phone was found between the driver's seat & the center console, which contained text messages referencing the robbery. A co-def has provided a statement implicating the def. Affiant & others are witness to prove

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

Affiant's Address 5623 Two Notch Road

Columbia, SC 29223-

Affiant's Telephone (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 9/29/2014

defendant David Keith Mcelveen

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland / Lykesland Magistrate

) as set forth below:

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 10/22/2014

Signature of Issuing Judge

Michael Ronald Davis

Judge Code: 5458

(L.S.)

Judge's Address 1403 Caroline Road

Columbia, SC 29209-2609

Judge's Telephone (803)576-2500

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

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ORIGINAL Form Approved by S.C. Attorney General April 21, 2003 SCCA 518

OCT 22 2014

By violate the criminal laws of the

Richland / Lykesland Magistrate

CERTIFIED TRUE COPY
OF ORIGINAL FILED
SHERIFF'S OFFICE
RICHLAND COUNTY
SOUTH CAROLINA

BAIL set by

Judge metts
on 10-29-14
Type and Amount:
Name of Surety: 500,000 CIS con.

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____
Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____
Sentence: _____

JURORS

WITNESSES

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS



STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

39

COUNTY OF Richland

STATE VS.

David Keith Mcelveen

AKA:

Race: WHITE Sex: M Age: 28

DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Columbia, SC 29205

DL#: [REDACTED] SID#: 01734665

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Burglary / Burglary (After June 20, 1985) - First degree

INDICTMENT/CASE#: 2015GS4001599

A/W#: 2014A4010601156

Date of Offense: 9/29/2014

S.C. Code § : 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-11-0311

of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Margaret Bodman
Bodman, Margaret Fent70937
SC Bar#David McElveen
Defendant

Attorney for Defendant

74886
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 22 ^{TV} days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. (503 days credit)☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 24-13-40 to be calculated and appliedPursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ca
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$

Clerk of Court/ Deputy Clerk

Court Reporter: Sullivan

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

March 14, 2016

CERTIFIED TRUE COPY
OF ORIGINAL
JANETTE W. BRIDGES
C.C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel;
§ 47.12 requires \$500 be paid to Clerk
during probation.

JANET

WITNESSES

(S) John Carwell JR
- Richland County Sheriff

ARREST WARRANT NUMBER

2014A4010601156

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-40-01599

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2015

92

**THE STATE
vs.**

David Keith Mcelveen

**Indictment for
BURGLARY / BURGLARY (AFTER JUNE
20, 1985) - FIRST DEGREE**

SC Code: 16-11-0311
CDR Code: 0079

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Heather W. W. Wade
C.C.C.P.S.G.S.
RICHLAND COUNTY
SOUTH CAROLINA.

SCANNED

STATE OF SOUTH CAROLINA)

INDICTMENT

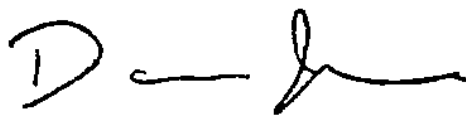
COUNTY OF RICHLAND)

At a Court of General Sessions, convened on APRIL 8, 2015, the
Grand Jurors of Richland County present upon their oath:

BURGLARY, 1ST DEGREE

That David Keith Mcelveen did in Richland County on or about September 29, 2014, enter the dwelling of DAVE HOLLIS located at [REDACTED] STREET, without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight, the defendant or another participant in the crime was armed with a deadly weapon AND/OR did cause physical injury to a person who was not a participant in the crime AND/OR did use or threaten the use of a dangerous instrument AND/OR did display what was or what appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun or other firearm, AND/OR the entry or remaining in the dwelling did occur in the nighttime; in violation of Section 16-11-0311(A), Code of Laws of South Carolina, 1976, as amended.

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


DAN JOHNSON, SOLICITOR

State of South Carolina
County of Richland

) In The Court of Common
) Pleas

David Keith McElveen

) CASE ~~NO~~ 2016 CP 400 4679

Applicant

) Summons

vs.

State of South Carolina)

Respondent)

To Respondents:

You ARE Hereby summoned AND required to answer Post-Conviction Relief Application herein a copy of which is herewith served upon you, and to serve a copy of your answer to memorandum of law in support of Post-Conviction Relief Application upon the subscribed at the address shown below, within (30) days after service herof, exclusive of the day of such service and if you fail to answer the PCR Application Judgment by default will be demanded in the PCR Application.

MCCT S.C. 29899

Date 7/27 2016

s/ David McElveen
David Keith McElveen
306 Redemption Way
McGinnis, S.C. 29899

David Keith McElveen # 321043
 386 Redemption Way
 McCormick, S.C. 29899

Date 7/27 2016

PCR No. 2016 CP4004679

Dear Honorable Clerk of Court Richland County:

Enclosed Please find for filing within your office:

A original copy of Post-conviction Relief Application along with Affidavit of service, And summons.

It would be a great Honor if you will forward to me a clocked-dated stamped copy.

Respectfully Submitted
of David McElveen

CC: D.K.M.
 CC: H.C.C.R.C.

State of South Carolina
County of Richland

David Keith McElveen
Applicant

v

State of South Carolina,
Respondent

In the Court of Common
Pleas

C/A

Notice Memorandum
of Law in Support
Post-Conviction Relief
Application

to Respondents

RICHLAND COUNTY
FILED

2016 AUG -3 AM 11:25

JEANETTE W. MCBRIDE
C.C.P. & G.S.

Now comes applicant moves before
this Honorable Circuit Court pursuant
to Post-Conviction Relief Application
S.C. Code of Law Ann 17-27-10 § 17-27-
45(A)

± Procedural History

The applicant is currently incarcerated
with the South Carolina Department of
Corrections pursuant to the Richland
County clerk of courts orders of Commit-
ment. The applicant was indicted at the
April 2015, term of the Richland County
Grand Jury for Armed Robbery 2015-GS-
40-01590) Burglary, 1st Degree.

II ARGUMENT

Trial counsel prejudice applicant by failing to file a timely Direct of Notice of Appeal.

Applicant advise trial counsel to file timely Direct of Notice of Appeal to challenged his guilty Plea which applicant did not knowingly and voluntarily waived my right to timely direct of Appeal pursuant my conviction and sentences the applicant was threat to Plea guilty to charged of Armed Robbery & Burglary, 1st DEGREE, and counsel was advise to file a timely Appeal.

"Ineffective assistance when counsel failed to file timely Notice of Appeal at client Request. see cite at William V Lockhart 849 F2d 1134, 1137-38 (8th Cir 1988). Applicant entitled to evidentiary hearing on ineffective assistance when claimed applicant asked trial counsel to file Notice of Appeal and counsel did not. cite Strickland v Washington 466 U.S. at 692

III ARGUMENT

Trial counsel was ineffective for failing to prepare, and to conduct a proper pre-trial investigation.

The applicant submits that he received ineffective assistance of counsel prior to and during his guilty plea. The six Amendment to the United States Constitution guarantees that every criminal defendant is entitled to the effective assistance of counsel in presenting their defense. See also, S.C. Const., Art. 1, section 14. The Supreme Court has stated, "The right to counsel is a fundamental right of criminal defendants; it assures the fairness, and thus the legitimacy, of our assures the fairness, and thus the legitimacy, of our Adversary Process." Kimmelman v. Morrison, 477 U.S. 365 (1986). Furthermore, the Supreme Court has Re-confirmed that "the right to counsel is the right to effective assistance of counsel." Mc Mann v. Richardson; 397,

U.S. 759, 771 (1970) to see whether counsel has fallen below the minimum standard needed for effective assistance of counsel under the sixth Amendment to the constitution, a two prong test must be met. In Strickland v Washington 466 U.S. 668, 688-694 (1984), The Supreme Court held that a determination of ineffective assistance of counsel would be conditioned on two factors:

- (1), Counsel's performance must have fallen below an objective standard of reasonableness; and (2) there must be a reasonable probability that but for counsel's errors, the results of the proceedings would probably have been different.

South Carolina has adopted the Strickland standard, see, e.g. Cherry v State, 386 SE2d 624 (1989). The right to effective assistance of counsel may be violated by even an isolated error of counsel if the error is sufficiently egregious and prejudicial. Murray v Carrier, 477 U.S. 478 (1986), "it is

the client's right to expect that his lawyer will use every skill, expend every energy, and tap every legitimate resource in the exercise of independent professional judgment on behalf of the client and in undertaking representation of the client interests."

Frazer v United States, 18 F.3d 778, 785 (9th Cir 1994). "Defense counsel must do his utmost to bring his legal acumen to bear on behalf of the defendant; keep the defendant fully informed developments in the case and consult with the defendant on all major decisions to be made; conduct a reasonable pre-trial investigation, which should include contacting potential witnesses; prepare adequate, and professionally for trial; conduct the trial to the best of his ability; and at the bottom, serve as a vigorous and devoted advocate of the defendant's cause." United States ex Rel Partee v Lane, 926 F.2d 694, 702 (7th Cir 1991).

A Counsel was ineffective for failing to conduct an adequate pretrial investigation.

As the Supreme Court also recognized in Strickland, "counsel bears a duty to make a reasonable investigation of the law and facts in his client's case," Strickland 466 U.S. at 691. Additionally, the A.B.A. standards relating to the administration of criminal justice provide:

It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case, and the penalty in the event of conviction. The investigation should always include efforts to secure information in the possession of the prosecutor and law enforcement authorities. The duty to investigate exists regardless of the accused stating desire to plea guilty.

A defendant's right to effective assistance of counsel confers a duty on counsel to conduct an adequate pretrial investigation. When a lawyer fails to conduct a substantial investigation into any of his client's plausible lines of defense, the lawyer

has failed to render effective assistance of counsel. Cobb v State 408 S.W.2d 223 (1991), Pre-trial preparation, principally because it provides a basis upon which most of the defense case must rest, is. Lawyer's preparation, & failure to investigate evidence that would be helpful to the defense is also an indication of ineffective assistance of counsel. Id.

" Trial counsel advise applicant Plea guilty without investigate both co-defendants criminal records that would be helpful to defense. It is the duty counsel to conduct investigate before advise applicant to Plea guilty to all charges pending against applicant to explore all evidence in the case in the prosecute possession. The duty to investigate exist regardless of the accused stating desire to Plea guilty. cite at Espinal v Bennett, 588 F. Supp. 388 (E.D.N.Y. 2008) Failure to investigate.

III ARGUMENT

Trial Counsel prejudice Applicant by Failure file Motion for reconsider after guilty Plea.

Trial counsel prejudice Applicant by failure to file for a motion for reconsider is because Applicant entered the guilty Plea on counsel advise asking for the minimum sentence which is 15 years. This was an open Plea which the sentence is determined by the Judge but the solicitor stated that I do not deserve the minimum and the investigator on the case stated that I deserve a substantial amount of time. The applicant was sentenced to 22 years. Counsel prejudice Applicant by Failure file for motion for reconsider so I can go back before sentences Judge asking for "grace And "mercy" for the 15 years that my attorney had advise me; so after I got sentenced I stated to my Counsel to file for A motion for reconsider and my

Counsel Mr. Mark Schnee stated to me that he was going to wait until after my 2 co-defendants (Michael McCoy, and Jason Boykin) got sentenced before he files for the motion for Reconsider. Trial counsel also stated this to my Brother (Timothy Artlip) My sister (Tonya Fird) and also my girlfriend (Ashley Smith). Trial counsel by law have (10) days to file for a motion for Reconsider after my guilty Plea, and trial counsel advised me wrong, and counsel is ineffective assistance counsel.

The sixth Amendment guarantees the right to effective assistance of counsel in criminal prosecutions. In Strickland v Washington, the Supreme Court established a two-prong test to evaluate ineffective assistance claims. To obtain reversal of conviction, the defendant must prove: (1) that counsel's performance fell below an objective standard of reasonableness, and (2) that counsel's

deficient performance prejudice the resulting in an unreliable or fundamentally unfair outcome of the proceeding.

VI ARGUMENT

Trial Counsel prejudice Applicant by Failure to adequately investigate re-search and evaluate my case, Request Continuance.

Trial counsel mark schnee prejudice applicant by stated that there was an issue with turning over all evidence to him because he was told by solicitor margaret Bondman that investigator Caldwell illegally searched my phone because he went through my phone before he had a search warrant to go through it. Also my co-defendant Michael McCoy 2 different statements and I wanted Legal Counsel Mr. Mark Schnee to investigate re-search why my co-defendant went and changed his first statement.

A criminal defendant who pled guilty, but later asserted that such plea was a result of his attorney's failure

to adequately investigate research and evaluate his case, was obliged to prove that (1) counsel's performance was deficient (2) such deficiency so prejudiced the defense as to deprive him of a fair trial, and (3) the prejudice entailed a reasonable probability that, but for the errors of counsel, the defendant would not have pled guilty but would have pled guilty but would have assisted on going to trial. Wilson v. State, S.C. 1993) 315 S.C. 158 432 S.E.2d 477

"Strickland" counsel's function is to assist the defendant and hence counsel owes the client a duty of loyalty, a duty to avoid conflicts of interest.

Conclusion

wherefore applicant Request Relief to be resentence to minimum of 15 years.

Date 7/27 2016

8/ David McElver
DAVID Keith McElver
386 Redemption Way
McCormick, S.C. 29899

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
	)	
David Keith McElveen, #321043,	)	2016-CP-40-4679
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed on August 3, 2016, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Richland County Clerk of Court's orders of commitment. Applicant was indicted by the April 2015 term of the Richland County Grand Jury for armed robbery (2015-GS-40-01590) and first degree burglary (2015-GS-40-01599). Mark E. Schnee, Esquire, represented him. Assistant Solicitor Margaret Bodman prosecuted the case. On March 14, 2016, Applicant appeared before The Honorable Clifton Newman. Applicant pled guilty as indicted to both charges and, in return, the State dismissed another armed robbery charge as well as a charge of assault and battery in the first degree. Judge Newman sentenced Applicant, without any negotiations or recommendations, to eighteen (18) years for armed robbery and twenty-two (22) years for burglary. The sentences are set to run concurrently. Applicant did not appeal his convictions or sentences.

II.

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

1. Ineffective Assistance of Counsel
 - a. "Trial Counsel prejudice applicant by failing to filed a timely direct notice of appeal"
 - b. "Trial Counsel was ineffective for failing to prepare and to conduct a proper pre-trial investigation"
 - c. "Trial counsel prejudiced applicant by failing file motion for reconsider after guilty plea"
 - d. "Trial counsel prejudiced applicant by failing to adequately investigate, research, and evaluate my case and request continuance."

Respondent denies Applicant is entitled to relief on any of these claims and demands strict proof thereof. Applicant must specify any claims he intends to raise at the PCR trial. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 *et seq*; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing. For the purpose of this Return, Respondent incorporates the Clerk of Court records, the South Carolina Department of Corrections' records, and the guilty plea transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

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

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. See Butler, 286 S.C. at 442, 334 S.E.2d at 814. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having

produced a just result.” Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See Strickland, 466 U.S. at 669. Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. See Hill v. Lockhart, 474 U.S. 52, 52 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record, a question of fact is raised which can only be resolved by an evidentiary hearing. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983). If the court does determine that Applicant’s alleges specific instances of ineffective assistance which are not conclusively refuted by the record, then Respondent would request an evidentiary hearing to fully resolve this issue.

IV.

The Respondent alleges that trial counsel failed to inform of him of his right to appeal. Counsel has a constitutionally-imposed duty to consult with defendant about appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S. Ct. 1029, 145 L. Ed. 2d 985 (2000). Although not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues, and because such a plea may indicate that the defendant seeks an end to judicial proceedings. Id. 528 U.S. at 480, 120 S. Ct. at 1036. To show prejudice in these circumstances, a defendant must demonstrate that there is a reasonable probability that, but for counsel's deficient failure to consult with him about an appeal, he would have timely appealed. Id. 528 U.S. at 484, 120 S. Ct. at 1038.

While trial counsel is required to make certain the defendant is made fully aware of the right to appeal, the standard for a guilty plea differs. Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Id. at 225, 670 S.E.2d at 374 (citing Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000); Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995)). “Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver.” Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981) (citing 92 C.J.S. Waiver, p. 1063 (1955)). Respondent submits that this allegation is without merit and demands strict proof thereof.

Nevertheless, the allegation raises a question of fact which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified, or explained is hereby denied.

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JESSICA E. KINARD
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

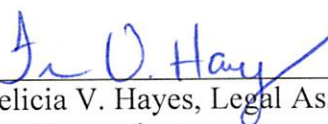
May 18, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	2016-CP-40-4679
	)	
DAVID KEITH MCELVEEN, #321043,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent,	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Kristy Grafton Goldberg, Esquire
Law Office of Kristy Goldberg, LLC
1720 Main Street, Suite 303
Columbia, SC 29201

DATED this the 18th day of May, 2017.



 Felicia V. Hayes, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

2016-CP-40-4679

4676

DAVID MCELVEEN,)
SCDC # 321043,)

Applicant,)

vs.)

AMENDED APPLICATION
FOR POST CONVICTION RELIEF

STATE OF SOUTH CAROLINA,)
Defendant.)

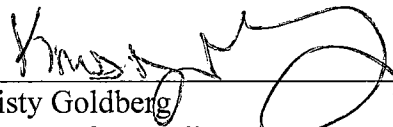
RICHLAND COUNTY
FILED
2017 AUG 22 PM 12:23
JEANETTE A. McBRIDE
C.C.P. CLERK

Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby Amended as follows:

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

- (a) Ineffective assistance of counsel – counsel failed to adequately share discovery with and explain evidence to Applicant and prepare Applicant for the decision he needed to make regarding plea or trial.
- (b) Ineffective assistance of counsel – counsel failed to investigate case and interview witnesses.
- (c) Ineffective assistance of counsel – counsel failed to regularly meet with Applicant and discuss his options with him and failed to relay plea offers and explain plea offer expiration. Failed to fully explain the timeline for when decisions needed to be made and the risks and consequences of his decisions.
- (d) Ineffective assistance of counsel – counsel failed to explain to Applicant if and when plea offers would be revoked and failed to inform Applicant when no further plea offers were going to be extended.
- (e) Ineffective assistance of counsel – counsel erroneously informed Applicant that he would receive the minimum sentence when entering a plea.
- (f) Ineffective assistance of counsel – counsel failed to object when the State and law enforcement requested a “substantial prison sentence” greater than the minimum sentence even though this was a straight up plea without recommendations.

- (g) Ineffective assistance of counsel – counsel failed to file a Motion to Reconsider or Notice of Appeal upon receiving request from Applicant.



Kristy Goldberg
Attorney for Applicant

Kristy Goldberg
Law Office of Kristy Goldberg, LLC.
1720 Main Street, Suite 303
Columbia, SC 29201
803-667-6633
803-799-4059 (fax)
kristy@kristygoldberglaw.com

Columbia, South Carolina

This 18 day of AUGUST, 2017

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

DAVID MCELVEEN,)
 SCDC # 321043,)
 Applicant,)

vs.)

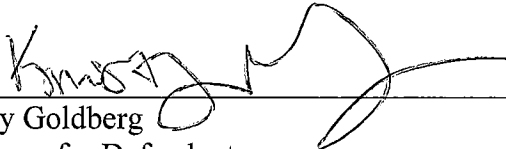
STATE OF SOUTH CAROLINA,)
Defendant.)

IN THE COURT OF COMMON PLEAS
 2016-CP-40-4679

CERTIFICATE OF SERVICE

RICHLAND COUNTY
 FILED
 2017 AUG 22 PM 12:25
 JEANETTE W. MORRIS
 C.C.P. & G.S.

I certify that on this date I served the Amended Application for Post-Conviction Relief in this case on The State of South Carolina by delivering a copy of this application to the Office of the Attorney General via U.S. mail at Post Office Box 11549, Columbia, South Carolina 29211-1549.


 Kristy Goldberg
 Attorney for Defendant

Kristy Goldberg
 Law Office of Kristy Goldberg, LLC.
 1720 Main Street, Suite 303
 Columbia, SC 29201
 803-667-6633
 803-799-4059 (fax)
 kristy@kristygoldberglaw.com

Columbia, South Carolina

This 18th day of August 2017

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

DAVID MCELVEEN,)
SCDC # 321043,)
Applicant,)

2016-CP-40-4679-
4676

v.)

AMENDED APPLICATION FOR
POST-CONVICTION RELIEF

STATE OF SOUTH CAROLINA)
Respondent.)

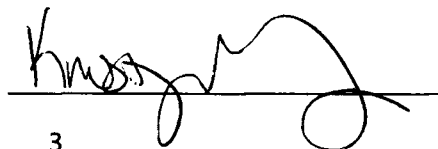
FILED
JUN 21 AM 10:16
JEANETTE W. MCBRIDE
C.C.P. & G.S.

1. Place of Detention: Broad River Correctional Institution.
2. Name and location of Court which imposed sentence: Richland County Court of General Sessions, Richland County Courthouse, Columbia, South Carolina.
3. Name(s) of co-defendant(s): Michael McCoy and Jason Boykin
4. The indictment number or numbers upon which and the offense or offenses for which sentence was imposed:
 - a. 2015-GS-40-1599 First Degree Burglary
 - b. 2015-GS-40-1590 Armed Robbery
5. The date upon which sentence was imposed and the terms of the sentence:
 - a. Sentence imposed March 14, 2016, 22 years for First Degree Burglary
 - b. Sentence imposed March 14, 2016, 18 years for Armed Robbery
6. A finding of guilty was made after a plea of guilty.
7. Did you appeal the judgment of conviction or the imposition of sentence? No.
8. If you answered "yes" to (7), list
 - a. The name of each Court to which you appealed:
 - i. n/a.
 - b. The result in each such Court to which you appealed:
 - i. n/a.
 - c. The date of each such result:
 - i. n/a.
 - d. If known, the citations of any written opinion or orders entered pursuant to such results:
 - i. n/a.

9. If you answered "no" to (7), state your reasons for not so appealing: Counsel failed to file notice of appeal.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- a. Ineffective assistance of counsel in failing to adequately advise and assist the Applicant during the pendency of this case;
 - b. Ineffective assistance of counsel for failure to object during the guilty plea when the State breached the plea agreement;
 - c. Ineffective assistance of counsel for failure to file a Motion to Reconsider as requested by the Applicant;
 - d. Ineffective assistance of counsel for failure to file a Notice of Appeal as request by the Applicant.
11. State concisely and in the same order the facts which support each of the grounds set out in (10).
- a. Counsel failed to review discovery with client, failed to explain plea offers and deadlines for plea offers, failed to explain strengths and weaknesses of the case, and generally failed to assist the Applicant in handling this case in an appropriate manner;
 - b. Counsel failed to object and move to withdraw plea when the State requested a substantial prison sentence in violation of the agreement that the Applicant would be entering into a "straight up plea." Transcript page 16;
 - c. As stated above;
 - d. As stated above.
12. Prior to this application have you filed with respect to this conviction:
- a. Any petition in a State Court under South Carolina Law? No.
 - b. Any petitions in State or Federal Courts for habeas corpus or post-conviction relief? No.
 - c. Any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in # 7? No.
 - d. Any other petitions, motions or applications in this or any other Court? No.
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- a. The specific nature thereof: n/a.
 - b. The name and location of the Court in which each was filed: n/a.
 - c. The disposition thereof: n/a.
 - d. The date of each such disposition: n/a.

- e. If known, citations of any written opinions or orders entered pursuant to each such disposition: n/a.
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No.
15. If you answered "yes" to (14) identify:
- a. Which grounds have been presented: n/a.
- b. The proceedings in which each ground was raised: n/a.
16. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented: All issues in Section (10) are being presented for the first time.
17. Were you previously represented by an attorney at any time during the course of:
- a. Your arraignment and plea? Yes.
- b. Your trial, if any? n/a.
- c. Your sentencing? Yes.
- d. Your appeal, if any, from the judgment of conviction or imposition of sentence? n/a.
- e. Preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction which you filed? None other than what is listed above.
18. If you answered "yes" to one or more parts of (17), list:
- a. The name and address of each attorney who represented you:
- i. Mark Schnee, 1720 Main Street, Suite 202, Columbia, South Carolina.
- b. The proceedings at which each such attorney represented you:
- i. Plea and sentencing.
19. State clearly the relief you seek in filing this application: Conviction reversed with remand for new trial, or if appropriate, remand for resentencing.
20. Are you now under sentence from any other court that you have challenged? No.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "K. Schnee", written over a horizontal line.

Kristy Goldberg
Attorney for Plaintiff

Law Office of Kristy Goldberg, LLC.
1720 Main Street, Suite 303
Columbia, SC 29201
Phone (803) 667-6633
kristy@kristygoldberglaw.com

Columbia, South Carolina

This 19th day of June, 2018

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

2016-CP-40-4679

DAVID MCELVEEN,)
SCDC # 321043,)
Applicant,)

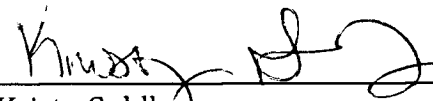
v.)

CERTIFICATE OF SERVICE

STATE OF SOUTH CAROLINA)
Respondent.)

FILED
2018 JUN 21 AM 10:16
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

I certify that on this date I served the Application for Post-Conviction Relief in this case on The State of South Carolina by delivering a copy of this Notice to the State Attorney General's Office, by delivering a copy of this motion via U.S. Mail said copy to the Office of the Attorney General, Post Office Box 11549, Columbia South Carolina 29211.


Kristy Goldberg
Attorney for Plaintiff

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Phone (803) 667-6633
kristy@kristygoldberglaw.com

Columbia, South Carolina

This 19th day of June, 2018

 COPY

1 STATE OF SOUTH CAROLINA

2 COURT OF COMMON PLEAS

3 COUNTY OF RICHLAND

4 -----x

5 DAVID KEITH McELVEEN,)

6 Applicant,)

7 vs.)

Transcript of Record
2016-CP-40-04676

8 STATE OF SOUTH CAROLINA,)

9 Defendant.)

10 -----x

11 July 16, 2018

12 POST-CONVICTION RELIEF

13
14 B E F O R E:

15 The Honorable DeAndrea G. Benjamin, Presiding Judge

16
17 A P P E A R A N C E S:

18 Kristy Goldber, Esq.
Attorney for the Applicant

19
20 Lindsey A. McCallister, Esq.
Attorney for the State

21
22
23
24 Court Reporter: Bonnie Kelly

25 Transcribed by Bobbi Fisher, RPR, CET

I N D E X

WITNESS

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E X H I B I T S

EXHIBIT

MKD/RCD

State's 1 Sentencing Sheet

25/25

P R O C E E D I N G S

(Whereupon, the following proceedings commenced as follows:)

MS. McCALLISTER: Your Honor, the next case is David Keith McElveen versus the State of South Carolina, 2016-CP-40-4679. Your Honor, Mr. McElveen was indicted in April of 2016 by the Richland County grand jury for two counts of armed robbery, first-degree burglary and assault and battery in the first degree. He was represented by Mark Schnee, and the Solicitor on the case was Margaret Bodman for the State.

On March 14th, 2016, he appeared before the Honorable Clifton Newman and pleaded guilty as indicted to one count of armed robbery and the first-degree burglary. And in return for the plea, the State dismissed the second armed robbery charge as well as the charge of assault and battery in the first degree. That plea was without any negotiations or recommendations, and Judge Newman sentenced Mr. McElveen to 18 years for armed robbery and 22 years for burglary to be run concurrently.

He did not appeal those convictions or sentences. He filed this application for post-conviction relief timely on August 3rd, 2016, and Ms. Kristy Goldberg has been appointed to represent him in this matter. Both Mr. McElveen and Ms. Goldberg are present in the courtroom today. And I would just ask Ms. Goldberg to put forward the allegations that we

1 are going forward on here today.

2 THE COURT: All right. Yes, ma'am.

3 MS. GOLDBERG: Thank you, Your Honor. May it please the
4 Court. Mr. McElveen originally filed a pro se PCR application
5 in this matter. I was thereafter retained. I filed an
6 amended application on June 21st of 2018, and the allegations
7 that are in there are the ones that are going forward today.

8 Do you have a copy of that amended application?

9 THE COURT: I do.

10 MS. GOLDBERG: All right. That's what we are going
11 forward.

12 At this time, I'm happy to call my witness, David
13 McElveen.

14 DAVID McELVEEN,
15 the witness, after having been duly sworn, was examined and
16 testified to as follows:

17 THE CLERK: Thank you. Have a seat in the witness stand,
18 please. And state your name for the record.

19 THE DEFENDANT: David Keith McElveen.

20 DIRECT EXAMINATION

21 BY MS. GOLDBERG:

22 Q All right. Thank you, sir. Can you tell me where you're
23 currently housed.

24 A Yes, ma'am. Broad River Correctional Institution.

25 Q How old are you?

1 **A** Thirty years old.

2 **Q** Did you graduate high school?

3 **A** Yes, ma'am.

4 **Q** Where did you graduate from?

5 **A** Hillcrest High School.

6 **Q** Simpsonville?

7 **A** Yes, ma'am.

8 **Q** What sentence are you currently serving?

9 **A** Twenty-two years for first-degree burglary and 18 years
10 for armed robbery to run concurrent.

11 **Q** So, in total, 22 years then?

12 **A** Yes, ma'am.

13 **Q** And no other sentences or violation -- probation
14 violations or anything like that?

15 **A** No, ma'am.

16 **Q** All right. When were you arrested; do you remember?

17 **A** October 28th, 2014.

18 **Q** After you were arrested, did you stay in jail or were you
19 able to bond out?

20 **A** I stayed in jail.

21 **Q** How long did you end up staying at the detention center?

22 **A** 503 days.

23 **Q** Now, after you were arrested, were you originally
24 appointed an attorney in this case?

25 **A** Yes, ma'am.

1 Q Who was that?

2 A Joanna McLaney (ph), I think it was, of the public
3 defender's office.

4 Q Okay. Did you ever meet with her?

5 A Yes, ma'am.

6 Q What -- at some point, her representation ended; correct?

7 A Yes, ma'am.

8 Q After about how long?

9 A After about three weeks.

10 Q And why did it end?

11 A Because one of my other co-defendants was being
12 represented by a public defender or the public defender's
13 office.

14 Q Public defender's office had a conflict?

15 A I guess. They said I couldn't be represented by a public
16 defender because one of my co-defenders was already being
17 represented by a public defender.

18 Q So they sent your case out to an attorney outside of
19 their office?

20 A Yes, ma'am.

21 Q And who did they appoint to your case?

22 A Mark Schnee.

23 Q Do you remember about when Mr. Schnee was appointed to
24 your case?

25 A It was probably about the third week of November.

1 Q How did you find out he was appointed to your case?

2 A I received a letter in the mail stating that he would be
3 representing me.

4 Q From the public defender's office or from Mr. Schnee
5 himself?

6 A Mr. Schnee is still pro bono.

7 Q When did you first meet with and see Mr. Schnee?

8 A The first time I ever met him or saw him was during my
9 preliminary hearing, which I think took place in January 2015.
10 He didn't really have time to discuss my case or anything like
11 that.

12 Q Did he represent you during the hearing?

13 A Yes, ma'am.

14 Q So you had the full preliminary hearing?

15 A Yes, ma'am.

16 Q All right. And that was the first time you met with him.
17 And that was about how long after he had sent you a letter?

18 A The preliminary hearing?

19 Q Mm-hmm.

20 A I think two months.

21 Q And then when did you meet with him or talk with him
22 next?

23 A In May, I think it was. May of 2015.

24 Q Tell me the circumstances of that meeting, where and when
25 you met with him.

1 **A** It was in the county jailhouse. He actually was coming
2 to see another client of his, and I asked to speak with him,
3 and we talked briefly about my case.

4 **Q** What did you talk about?

5 **A** He said he really -- he didn't have anything at the
6 moment on my case. That's why he hadn't come to see me yet.
7 I talked with him, asked him if he could get me to get a bond
8 reduction, and I also stated that I would be willing to plead
9 guilty if it was a reasonable plea, something like zero to ten
10 non-violent.

11 **Q** All right. When did you see him again next?

12 **A** In June, for a motion to relieve counsel.

13 **Q** Was there a motion hearing in May first? May 14th? I
14 think there's a transcript.

15 **A** Maybe it was in May.

16 **Q** All right. What -- and do you remember anything about
17 that particular hearing?

18 **A** Yeah. Yes, ma'am.

19 **Q** That was the motion to relieve counsel?

20 **A** I had actually wrote a letter to -- for a motion to
21 relieve counsel to Judge Hood before Mr. Schnee came down to
22 the county jail to see me. And then once he came to see me,
23 he said he was going to get me a bond. So whenever I went to
24 the motion to relieve counsel, I told Judge Hood that I wanted
25 to keep him to represent me.

1 Q And so you withdrew your motion to relieve counsel?

2 A Yes, ma'am.

3 Q In May.

4 A Yes, ma'am.

5 Q When did you see Mr. Schnee again next?

6 A Whenever I went for my motion for my bond reduction.

7 Q And that was in June; correct?

8 A Yes, ma'am.

9 Q What happened that day in court?

10 A My bond was reduced from 500,000 to 250,000, and the
11 Solicitor said they had a plea of 15 to 25, violent.

12 Q Who did the -- did the Solicitor tell you that or the
13 Solicitor tell someone else that?

14 A She stated it in court while we was staying for the
15 motion to relieve counsel.

16 Q You heard --

17 A I mean, motion for a bond reduction.

18 Q Okay. You heard her tell the judge that?

19 A Yes, ma'am.

20 Q Prior to that day in court when you overheard the
21 Solicitor say that in open court, did you know that that plea
22 offer had existed?

23 A No, ma'am.

24 Q Do you know when that plea offer was extended?

25 A No, ma'am.

1 Q Were there any discussions that day in June of 2015 about
2 what you needed to do, whether or not you had a time frame to
3 accept it or needed to accept it by a particular period or
4 what conversation took place?

5 A No, ma'am, we didn't discuss any expiration dates or
6 anything like that. Mr. Schnee stated that the type of
7 Solicitor that Margaret Bodman is, she usually just throws out
8 a plea early in a case, which, at the time, I think he still
9 hadn't even received my motion for discovery. And he said
10 basically the type of Solicitor that Margaret Bodman is, like,
11 she'll throw a plea out early in a case, which that's not
12 really a good plea, because 15 to 25, I can get that in a
13 trial.

14 He said, later on down the line, she's the type of
15 Solicitor that would throw -- would come to a better plea
16 toward the end of a case.

17 Q Was that statement made to you during a conversation
18 about whether or not you should accept the plea or reject it
19 or what was the context of that?

20 A Basically, we shouldn't accept it.

21 Q That was your attorney's advice?

22 A Yes, ma'am.

23 Q Is there any problem that you have with your attorney
24 about the way that that plea offer was handled?

25 A Yes, ma'am. I think he could have done a better job

1 explaining to me how a plea offer works, explain to me how
2 there's an expiration date and I have a certain amount of time
3 to accept it before it's taken off the table.

4 Q Do you -- you didn't know that that offer had an
5 expiration date?

6 A No, ma'am.

7 Q Did you ever find out that that particular plea offer
8 expired or didn't expire?

9 A No, ma'am.

10 Q So when you left the courthouse the day of that bond
11 hearing to go back to the jail, what was the plan between you
12 and your attorney about what happens next?

13 A It was -- it wasn't any specific plan. It was just -- he
14 was still waiting on my full motion for discovery and that he
15 would just be down to the jail to go over my case.

16 Q When he got more of your discovery.

17 A Yes, ma'am.

18 Q When did you see him again next?

19 A In October. October 14th, I think it was, for a DNA
20 thecal swab.

21 Q They brought you to the courthouse for that?

22 A Yes, ma'am.

23 Q And they swabbed your cheek and sent you back?

24 A Yes, ma'am.

25 Q Was there a hearing or did you just consent?

1 **A** No, ma'am, we just consented.

2 **Q** What conversations did you have with your attorney that
3 day?

4 **A** Just pretty much discussed that, you know, he said -- he
5 stated he still didn't receive all the motion -- I think he
6 stated it was some kind of conflict of interest with turning
7 over phone records or something like that or that an
8 investigator went through the phone before he got a search
9 warrant for the phone or something like that.

10 **Q** He was still getting more information.

11 **A** Yes, ma'am.

12 **Q** Any discussions that day about pleas, plea offers,
13 anything like that?

14 **A** Yes, ma'am. I just asked, you know, if he could get me a
15 decent plea, and I'd be willing to plead guilty.

16 **Q** You told him you wanted to?

17 **A** Yes, ma'am.

18 **Q** And what was he response, to the best of your memory?

19 **A** He said he'll bring it up to the Solicitor.

20 **Q** Did you ask for a particular plea offer?

21 **A** Yes. Zero to ten, non-violent.

22 **Q** When did you see your lawyer again next?

23 **A** I actually went for another bond reduction.

24 **Q** Okay.

25 **A** And that was in January of 2016.

1 Q All right. What happened at that?

2 A The motion was denied, and the Solicitor stated during
3 the proceedings that --

4 MS. MCCALLISTER: Your Honor, I object to what the
5 Solicitor stated. It's hearsay.

6 MS. GOLDBERG: It was said in open court.

7 THE COURT: I think it's still hearsay. Okay. Objection
8 sustained.

9 BY MS. GOLDBERG:

10 Q Did you receive any information that day? Did you
11 receive any information about any existing plea offers that
12 day?

13 A No, ma'am.

14 Q Did you receive any information that day about any
15 expected trial dates?

16 A Yes, ma'am.

17 Q And what was that?

18 A I had a trial date set for March the 14th.

19 Q And that your trial would be set for March 14th?

20 A 2016, yes, ma'am.

21 Q All right. Did you talk with -- are there any other
22 important conversations that you had with your attorney that
23 day?

24 A This was in January, the motion for bond reduction. He
25 just stated that he would be down -- to come down to the

1 jailhouse to go over my case. He also stated that he hadn't
2 went -- the evidence with the phone records, he still hadn't
3 received that. He hadn't had all the discovery, so most
4 likely, the trial date would be continued.

5 Q When it was said in court that your trial would be
6 scheduled for March 14th of 2016, was there anything
7 surprising about that to you or did that mean anything
8 important to you?

9 A Yes, ma'am. It was just unexpected.

10 Q Unexpected?

11 A Yes, ma'am.

12 Q Why was it unexpected?

13 A Because I had no idea that I had a trial set.

14 Q Had you ever asked for a trial?

15 A No, ma'am.

16 Q Did you ever want a trial?

17 A No, ma'am.

18 Q Did you -- I mean, did you ever ask your lawyer to bring
19 this case to a jury trial, up until that point?

20 A No, ma'am.

21 Q So when did you see your attorney next after that?

22 A March the 9th, five days before my trial was set to
23 start.

24 Q And what happened during that meeting that day?

25 A He stated that trial was still set forth to go forward on

1 March the 14th and that it was no further plea offers offered
2 to me and that my co-defendant would testify against me if I
3 was wanting to go to trial and stated I didn't have a good
4 chance of winning that trial, I had a 5 percent chance of
5 winning that trial. And he basically -- I asked him, Well,
6 can you talk to the Solicitor about at least dropping the
7 first-degree burglary and letting me plead to armed robbery --
8 ten years for armed robbery? He said he would try.

9 Q The previous plea offer of 15 to 25 years violent time,
10 did that -- to your understanding, did that still exist? I
11 think the way you phrased it just a minute ago was that there
12 was no further plea offers. So did that original plea offer
13 still exist at this time or had that been revoked and there
14 were no plea offers existing at this time? Or do you know?

15 A I didn't know.

16 Q You don't -- you didn't know if --

17 A I didn't know anything about a plea offer or any -- I
18 didn't know if it still was on the table. I didn't know any
19 of that.

20 Q Did you ask?

21 A No, ma'am.

22 Q All right. And then when did you see him again after
23 that?

24 A He came back the next day.

25 Q And what did he say on that day?

1 **A** He brought my co-defendant's statements and my statements
2 and still reiterated that my co-defendant, Michael McCoy,
3 would testify if I was to go to trial. And he asked what did
4 I want to do as far as pleading guilty or going to trial. And
5 I asked him what would he do. And he stated that, you know,
6 it's not a good chance that, if you go to trial, most likely,
7 we'll lose. And if you go all the way to trial and you lose,
8 you can get a life sentence with a mandatory minimum of
9 first-degree burglary, 15 to life.

10 **Q** He said you could get a life sentence or you would get a
11 life sentence?

12 **A** I could.

13 **Q** These days back to back when he came to see you at the
14 jail prior to trial, are these weekdays? Are they weekends?
15 Do you remember?

16 **A** Weekdays.

17 **Q** Weekdays.

18 **A** Wednesday and the next day, a Thursday.

19 **Q** All right. So then, after that, when did you see him
20 next?

21 **A** The day of trial.

22 **Q** Was that a Monday?

23 **A** Yes, ma'am.

24 **Q** What happened on Monday when you got to the courthouse?

25 **A** We met downstairs in the holding cell, and he stated the

1 Solicitor would not be -- was not offering anything. She was
2 not taking first-degree burglary off the table and she's ready
3 to go through a trial. And he also reiterated, like, the
4 chances I had, basically, if I had to go to trial. And he
5 also stated that, if I pled guilty, that Judge Newman is a
6 reasonable judge, that there's no reason why he wouldn't give
7 me the minimum 15 years due to the fact that I didn't have a
8 violent history.

9 Q During that conversation in the holding cell downstairs,
10 did you make a decision of what you wanted to do with this
11 case?

12 A Yes, ma'am.

13 Q And what was that decision?

14 A I decided to plead guilty.

15 Q And why did you decide to plead guilty?

16 A On advice of my counsel.

17 Q And, specifically, what were you relying on?

18 A The chance that I had of going the trial.

19 Q Based on his opinion of the chance you had of going to
20 trial?

21 A Yes, ma'am.

22 Q What was your understanding of the terms of your guilty
23 plea?

24 A My understanding is that it was an open plea, no
25 recommendations, 15 to life.

1 Q How did you have that understanding? Are those
2 assumptions you made or did your lawyer tell you that?

3 A He told me that and I also signed the sentencing sheet
4 before I went to the courtroom that said no recommendations on
5 it.

6 Q So your understanding was that the State was not
7 recommending anything?

8 A Yes, ma'am.

9 Q Did you rely on that in part in making your decision to
10 plead guilty?

11 A Yes, ma'am.

12 Q If you knew that the State was going to come before the
13 judge and ask the judge to sentence you a substantial amount
14 of time that day, would you still have entered a guilty plea?

15 A No, ma'am.

16 Q Why not?

17 A Because it was in violation of my plea agreement, and I
18 also felt like it had an overall outcome of my sentence.

19 Q What did you lose by pleading guilty?

20 A I lost my rights to a fair trial in front of a jury of my
21 peers.

22 Q What do you think your attorney should have done
23 differently that he didn't do?

24 A I think he should have reviewed my discovery with me,
25 shared every strength and weakness of my case.

1 Q Just discuss the case more thoroughly?

2 A Yes, ma'am.

3 Q Specifically regarding the -- what happened during the
4 plea, what do you think your lawyer should have done
5 differently?

6 A He should have objected when the State -- when the State
7 requested, I guess, a substantial amount of time. He should
8 have objected and went forward to withdraw the plea.

9 Q If you were planning on pleading guilty in this case or,
10 you know, given the fact that you did ultimately plead guilty,
11 why didn't you enter a guilty plea back when a plea offer had
12 been made to begin with?

13 A Counsel -- on the advice of my counsel that there would
14 be a plea later on down in the case.

15 Q He made you -- he gave you the information that a better
16 plea offer may come along later?

17 A Yes, ma'am.

18 Q And you relied on that?

19 A Yes, ma'am.

20 Q Do you think that you had the opportunity to really make
21 your own judgments and decisions in deciding when to enter a
22 plea and how to do this? Was there any information that you
23 were lacking during this whole process?

24 A Yes, ma'am.

25 Q And what was that?

1 **A** Just the fact that I never saw my motion or discovery and
2 as far as the advice on preparing to go to trial if I had to
3 or taking the plea early in the case.

4 **Q** He should have advised you to take the plea earlier? Is
5 that what you're saying or no?

6 **A** I think he could have advised me if, you know, he felt
7 the case was weak and have a chance in trial, but like I said
8 earlier, he didn't have no motion or discovery so, I mean, he
9 pretty much couldn't make a decision then. As far as making a
10 decision, when you went to plea to go to trial at that time,
11 the case -- the case without seeing the motion or discovery.

12 **Q** After your plea -- the day of your plea and after your
13 plea, did you ever talk with your lawyer about the possibility
14 of filing a motion to reconsider the sentence?

15 **A** Yes, ma'am.

16 **Q** And what took place in those conversations?

17 **A** He just stated that he would file all the proper
18 paperwork after my two co -- other two co-defendants got
19 sentenced, to basically go off of what their sentence was and
20 whenever I go back for a motion to reconsider, the judge can
21 look at all that.

22 **Q** Do you know what your two co-defendants were sentenced
23 to?

24 **A** Yes, ma'am.

25 **Q** What's that?

1 MS. McCALLISTER: Your Honor, I don't think that's
2 relevant.

3 THE COURT: Objection overruled.
4 Go ahead.

5 A Jason Boykin was sentenced to 15 non -- 15 years,
6 non-violent. And Michael McCoy was sentenced to eight years,
7 non-violent.

8 BY MS. GOLDBERG:

9 Q Did your lawyer ever file a motion to reconsideration
10 sentence after those two sentences were imposed?

11 A No, ma'am.

12 Q Did he ever talk to you again about it or consult you in
13 deciding whether to file it or not file it?

14 A No, ma'am.

15 Q You were under the impression that it would be filed
16 automatically by him at that time?

17 A Yes, ma'am.

18 MS. McCALLISTER: Your Honor, I object to the leading.

19 THE COURT: Sustained.

20 BY MS. GOLDBERG:

21 Q And it was never filed?

22 A No, ma'am.

23 Q What about any conversations regarding a motion -- or not
24 a motion. Any conversations regarding filing a notice of
25 appeal?

1 **A** Basically the same thing as the motion to reconsider.

2 **Q** He told you he would file it after the co-defendants'
3 cases were resolved?

4 **A** Yes, ma'am.

5 **Q** Did he ever file a notice of appeal?

6 **A** No, ma'am.

7 **Q** Did you want him to file a notice of appeal?

8 **A** Yes, ma'am.

9 **Q** Let me ask you this: In this conversation that you and
10 your lawyer had, where a motion to reconsider and a notice of
11 appeal, were those two things separately mentioned and talked
12 about or did you think this was all one -- one and the same,
13 if that makes sense?

14 **A** I thought they were two different things. We talked
15 about both at the same time.

16 **Q** And he told you that he would file both of them?

17 **A** Yes, ma'am.

18 **Q** And that he would file both of them at a later day?

19 **A** Yes, ma'am.

20 **Q** Did you know that that notice of appeal had to be filed
21 within ten days?

22 **A** No, ma'am.

23 MS. GOLDBERG: Beg the Court's indulgence.

24 All right. Nothing further. Thank you, Your Honor.

25 The Attorney General will ask you questions. Okay?

1 CROSS-EXAMINATION

2 BY MS. McCALLISTER:

3 Q Mr. McElveen, you have talked about the fact that you met
4 with Mr. Schnee several times in this case, either at the jail
5 or at court; correct?

6 A Yes, ma'am.

7 Q Okay. And you talked about some of the discovery that he
8 got or that he had with him at those times; is that correct?

9 A The only thing we talked about was my co-defendants'
10 statements that were against me.

11 Q Okay. And he -- I think you also said you talked about
12 your own statement that you gave to law enforcement; is that
13 correct?

14 A Yes, ma'am.

15 Q Okay. And is it your contention, then, that there are
16 other things in discovery that you did not see?

17 A Yes, ma'am.

18 Q What are those things?

19 A I wanted to see all the probable cause that led up to my
20 arrest.

21 Q Okay. And did you tell him that you wanted to see those
22 things?

23 A Yes, ma'am.

24 Q Okay. And what was his answer when you said you wanted
25 to see that?

1 **A** He said, when he received all of the discovery, he would
2 review it with me.

3 **Q** Okay. And you're saying that that never happened?

4 **A** No, ma'am.

5 **Q** But you agreed to enter the plea knowing that there were
6 things that you had asked for that you hadn't seen?

7 **A** Yes, ma'am.

8 **Q** Okay. And I think you said that you signed the
9 sentencing sheet before you went into the courtroom to accept
10 the plea offer that day; correct?

11 **A** Yes, ma'am.

12 **Q** And the sentencing sheet said or had marked on it
13 "without negotiations or recommendations"; is that correct?

14 **A** Yes, ma'am.

15 **Q** And you saw that?

16 **A** Yes, ma'am.

17 **Q** Okay. So you knew that that was marked on the sentencing
18 sheet when you went into court?

19 **A** Yes, ma'am.

20 **Q** Okay.

21 MS. McCALLISTER: May I approach the witness, Your Honor?

22 THE COURT: Yes.

23 BY MS. McCALLISTER:

24 **Q** Is this the sentencing sheet with your signature that
25 we're talking about?

1 **A** Yes, ma'am.

2 MS. McCALLISTER: Your Honor, I believe this is already
3 part of the record, but I would ask to make it State's Exhibit
4 No. 1.

5 THE COURT: Any objection?

6 MS. GOLDBERG: I agree it's already part of the record,
7 so...

8 THE COURT: Do you want to still mark it?

9 MS. McCALLISTER: We'll mark it.

10 (State's Exhibit No. 1 was marked for identification and
11 received into evidence.)

12 MS. McCALLISTER: I'm sorry, Your Honor. There's
13 actually two pages to that.

14 BY MS. McCALLISTER:

15 **Q** And I believe you said that you met with Mr. Schnee two
16 days in a row the week before trial; correct?

17 **A** Yes, ma'am.

18 **Q** And, at that time, you were still asking him for a plea
19 offer of zero to ten and non-violent time; is that right?

20 **A** No, ma'am. During this time, he was stating that the
21 Solicitor wasn't coming with any plea offers, so I made a
22 suggestion that he could bring to her about dropping the
23 first-degree burglary and I'd just plead to armed robbery.

24 **Q** Okay. So let me back up and make sure I got this
25 straight. At one point, though, I thought you testified you

1 told him you would agree to plead guilty to zero to 10,
2 non-violent; is that right?

3 A Yes, ma'am.

4 Q And that was some time earlier at the beginning of your
5 case?

6 A Yes, ma'am.

7 Q And he never came to you and said that the State had
8 agreed to that -- those terms, did he?

9 A No, ma'am.

10 Q Okay. And so then your next suggestion was to drop the
11 burglary and only plead guilty to the armed robbery?

12 A Yes, ma'am. This was toward the end of the case.

13 Q That was the week before trial; correct?

14 A Yes, ma'am.

15 Q And so he told you that he would see what the State would
16 do on that and he would come back to you; correct?

17 A Yes, ma'am.

18 Q And when he came back to you, he said the State doesn't
19 agree to that; correct?

20 A Yes, ma'am.

21 Q Okay. So you knew that the State had rejected both of
22 your suggestions for plea offers when you decided to plead
23 guilty; correct?

24 A Yes, ma'am.

25 Q Okay. And you said that you had a conversation sometime

1 after your plea was entered about filing a motion to
2 reconsider and/or a notice of appeal. Do you recall when that
3 was? When was that conversation?

4 **A** It was right in the courtroom right after I got
5 sentenced.

6 **Q** Okay. Did you ever follow up with him about filing those
7 things?

8 **A** No, ma'am. After I got in SCDC, I found out that you
9 only had ten days to file both of these paperwork, so that's
10 why I went ahead and filed my PCR.

11 **Q** Okay. So you never had another conversation with
12 Mr. Schnee after the day of your plea?

13 **A** No, ma'am.

14 MS. McCALLISTER: Beg the Court's indulgence, Your Honor.

15 BY MS. McCALLISTER:

16 **Q** Okay. And I believe you said that, when you saw him on
17 the morning of trial, he informed you that there were no other
18 offers and that the State was ready to proceed with trial and
19 he reiterated that he didn't think you had a good chance or a
20 good outcome at trial; is that correct?

21 **A** Yes, ma'am.

22 **Q** Okay. And you decided to plead guilty on that advice, is
23 that right, based on his assessment of your chances?

24 **A** And also on the advice that first-degree burglary carries
25 a life sentence -- 15 to life.

1 Q So you were looking to avoid a possible minimum life
2 sentence.

3 A Yes, ma'am.

4 Q Okay. And I believe you testified that you understood
5 that the terms of the plea, then, would be a minimum of 15 and
6 a maximum of life. That was your range that you were looking
7 at; correct?

8 THE COURT: I'm sorry; what did you say?

9 MS. McCALLISTER: That was the range that he was looking
10 at.

11 BY MS. McCALLISTER:

12 Q Correct?

13 A Yes, ma'am.

14 Q And the sentence that you received is within that range;
15 correct?

16 A Yes, ma'am.

17 MS. McCALLISTER: Okay. I think that's all the questions
18 I have for him.

19 MS. GOLDBERG: Briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MS. GOLDBERG:

22 Q Mr. McElveen, you, I believe, just stated that you were
23 at SCDC when you found out that you only had ten days to file
24 a notice of appeal or a motion to reconsider. Is that what
25 you said?

1 A Yes, ma'am.

2 Q Do you remember when you found that out?

3 A After I got to McCormick, I went to the law library and
4 found out. I got to McCormick at the end of April or sometime
5 in May.

6 Q So it would have been well past those ten days had
7 already expired?

8 A Yes, ma'am.

9 MS. GOLDBERG: Okay. No further questions.

10 THE COURT: All right. You may step down.

11 MS. GOLDBERG: I believe there's no further witnesses,
12 Your Honor.

13 THE COURT: You have no further witnesses?

14 MS. GOLDBERG: Correct.

15 THE COURT: All right. Thank you.

16 All right.

17 MS. McCALLISTER: Your Honor, the State calls Mark
18 Schnee.

19 MARK SCHNEE,

20 the witness, after having been duly sworn, was examined and
21 testified to as follows:

22 THE CLERK: Thank you. Have a seat in the witness stand,
23 please. State your name for the record.

24 THE WITNESS: Mark Schnee.

25 DIRECT EXAMINATION

1 BY MS. McCALLISTER:

2 Q Mr. Schnee, where do you work currently?

3 A Currently, I have my own law firm.

4 Q Okay. And do you recall your representation of
5 Mr. McElveen in this case?

6 A I do.

7 Q Okay. And where were you working at the time you
8 represented him?

9 A The same place.

10 Q The same place. Okay.

11 And how long have you been practicing law?

12 A Started as a public defender in 2006.

13 Q And how long have you had your own firm?

14 A Since 2009.

15 Q Okay. And so has your -- is your practice primarily
16 criminal?

17 A Yes.

18 Q What would you say is the percentage of criminal work
19 that you do?

20 A Up until recently, probably close to 90 percent.

21 Q Okay. And at the time of Mr. McElveen's representation,
22 is that still approximately 90 percent of your work?

23 A Yes.

24 Q And Mr. -- you were appointed in this case because of a
25 conflict with the PD's office; is that correct?

1 **A** That's my understanding, yes.

2 **Q** Okay. And do you recall how long you had this case
3 before Mr. McElveen ultimately pleaded guilty?

4 **A** I mean, I had it for quite a while.

5 **Q** Several months?

6 **A** Over a year.

7 **Q** Over a year. Okay.

8 **A** I mean, I don't remember exactly when I received the
9 appointment, but the earliest notes that I have seem to be
10 December/Januaryish of 2014. And it was a guilty plea in
11 2016, so...

12 **Q** Okay. And do you recall over the course of your
13 representation approximately how many times you met with
14 Mr. McElveen?

15 **A** In total, no. I met with him numerous times. Even went
16 through a lot of dates. As to the exact number, no, I
17 don't -- I don't count them.

18 **Q** But you agree with his recitation of the times that you
19 met at court and you didn't hear him say anything that you
20 disagree with in terms of your --

21 **A** There might be a couple missing, but all those days were
22 definitely meetings that we had.

23 **Q** And in the course of those meetings, did you discuss with
24 him what he was being charged with?

25 **A** Yes.

1 Q Did you discuss the elements that the State would have to
2 prove to find him guilty of those charges?

3 A Yes.

4 Q Did you request discovery?

5 A Always, yes.

6 Q And did you receive discovery from the State?

7 A Throughout the entire representation, I received
8 discovery in various chunks.

9 Q Okay. Can you describe what some of that was? What was
10 the evidence against Mr. McElveen?

11 A There are always police reports. In this case, there
12 were some photo line-ups. There were statements by
13 Mr. McElveen, by co-defendants, by various witnesses. The
14 problems that we were having with discovery is where we always
15 have problems, deals with the forensic analysis and actually
16 having those tested and getting the results in and having an
17 expert go over it in a useful format.

18 Q Okay. Was that forensic evidence ultimately turned over
19 to you?

20 A Eventually, yes.

21 Q Okay. And did you discuss that evidence with
22 Mr. McElveen?

23 A We did, very briefly. Some of the forensics were turned
24 over right before trial and they -- at that point, they
25 weren't -- they didn't have a direct impact on Mr. McElveen

1 and his decision-making process as much as what we need to do
2 if trial was the way to go.

3 Q And just to be clear, when you're talking about the
4 statements, Mr. McElveen gave a statement admitting to his
5 involvement; correct?

6 A Yes.

7 Q And his co-defendants also gave statements admitting to
8 their involvement; correct?

9 A Correct.

10 Q And naming Mr. McElveen as a participant?

11 A They all named -- at least two of them named everybody
12 that was involved.

13 Q Okay.

14 A Maybe not exactly what happened and who did what, but
15 everybody's names were in there very clearly.

16 Q And was -- Mr. McElveen has mentioned things about phone
17 records and a cellphone. Do you recall what that evidence
18 was?

19 A That would lead to some of the forensics in terms of
20 cellphone dumps that were recovered.

21 Q And there were eventually some cellphone records
22 recovered with text messages that implicated Mr. McElveen;
23 correct?

24 A I don't believe there were any text messages that
25 implicated. There were some jail calls from, I believe

1 Mr. Boykin to Mr. McElveen, either Mr. Boykin's arrested and
2 then gave over Mr. McElveen's name and -- either he or a third
3 party ended up calling Mr. McElveen and there's some
4 recordings about it, talking about Mr. McElveen on the phone,
5 but -- so there's some weird stuff at the jails.

6 Mr. McElveen, obviously, wasn't a participant in any of that.
7 So there was kind of that little side issue.

8 Q Okay. And these are the things that you're talking about
9 which wouldn't have a direct impact on his decision to plead
10 guilty but would affect your preparation for trial.

11 A It would affect -- absolutely, correct. It would affect
12 what happens if we go to trial, but in terms of what they
13 would have to refer, admissibility, if I needed to have
14 experts to combat it, but it wasn't going to impact whether he
15 should or should not plead guilty.

16 Q Okay. And let's talk about this issue of the plea -- of
17 plea offer. How did it come about that Mr. McElveen decided
18 to plead guilty?

19 A Mr. McElveen actually wanted a good plea offer from
20 essentially the beginning. He was very open about that. And
21 he's absolutely right. My advice to him was to wait until
22 later. The early-on discussions and the email from Margaret,
23 15 to 25. And I know we discussed the offer in general. I
24 don't know if I discussed an expiration date; I probably would
25 not have. I honestly didn't even consider that really to be

1 much of an offer. Mandatory minimum is 15. Saying 15 to 25
2 is -- particularly someone like Mr. McElveen, with such a
3 minimal prior record, it's essentially making no offer.

4 Q Okay. But you did convey that offer to Mr. McElveen and
5 discuss it with him?

6 A The offer that I received very early on of 15 to 25, yes,
7 we discussed it.

8 Q Okay.

9 A And he took my advice and rejected it.

10 Q Okay.

11 A Because without reducing it to burglary first or anything
12 else, a 15-year mandatory minimum -- if you don't eliminate
13 that, there's no real point in having a legitimate plea offer
14 in this particular case.

15 Q Okay. But the State -- and the State did eventually
16 agree to drop some charges; is that correct?

17 A I don't know if any were dropped.

18 Q Okay.

19 A There might have been some assault charge that was
20 reduced. I don't know. The State did nothing to impact it.

21 Q Okay. And he's talked about how he has -- he made
22 suggestions to you about what he would be willing to plead to
23 or what he wanted you to ask the State.

24 A Yes.

25 Q Do you recall those discussions with him?

1 **A** I do.

2 **Q** Okay. And did you take those suggestions to the State
3 and ask them about those -- that offer, I guess? What he was
4 willing to plead to, did you take that to the State at all?

5 **A** I discussed -- I met with the Solicitor about trying to
6 resolve this case, yes. I certainly -- if a client of mine
7 tells me what they're willing to do, I absolutely will go to
8 the Solicitor and try to get him something in that range.

9 **Q** Okay. And did the State ever make an offer in the range
10 that he was saying he was willing to accept?

11 **A** The State never came off first-degree burglary.

12 **Q** Okay. And so the decision -- the decision to plead
13 guilty, even though first-degree burglary was still on the
14 table, how did that come about?

15 **A** The decision came about, essentially, Margaret created a
16 trial list. The Solicitor's Office just put the case on the
17 trial list. I absolutely fought against it because we were
18 still missing discovery. In fact, a lot of the trial dates
19 and discussions of -- Mr. McElveen is correct, it happened
20 essentially right at the time that we consented to the
21 Schmerber.

22 So they're taking my client's DNA and saying we want to
23 do a trial in 45 days or whatever it was. And I said that is
24 not possible. I don't agree with it. I didn't agree with it.
25 I fought it, but the Solicitor went forward anyway, at the

1 time, he -- the judge didn't care that I was not in agreement
2 with any trial discussions about that.

3 Q Okay.

4 A So in terms of pleading guilty, it was we plead guilty
5 that day or we go to trial.

6 Q Okay. And you explained that to Mr. McElveen, that those
7 were his two options: He could plead guilty or he could go to
8 trial?

9 A Yes.

10 Q Okay.

11 A I mean, I didn't quite use those -- we certainly -- he
12 certainly understood that those were his options that day.

13 Q Okay. And you did have notice of the trial date
14 sometime -- whether that was really going to be a firm trial
15 date based on the discovery or not, you weren't sure, but you
16 had notice of the day.

17 A I had notice the Solicitor had put it on a trial list.

18 Q Okay.

19 A That is not notice of a legitimate, lawful trial.

20 Q Okay. But you understood and Mr. McElveen understood
21 that the case was on a trial docket and could potentially be
22 called for trial?

23 A Yes, in theory.

24 Q Mr. McElveen has testified that he -- you and he had a
25 conversation regarding filing a motion to reconsider and

1 filing a notice of appeal.

2 **A** Yeah, after -- I did discuss the -- certainly the motion
3 to reconsider. I told him I would go back and go through
4 everything and take a look in a little bit more detail in
5 terms of if Margaret said anything that was completely outside
6 of what I had recalled from reading it. I said I didn't know
7 that there was anything that was going to be there. And,
8 obviously, if the co-defendants' charges -- if they were
9 completely dropped or there was some new development, I would
10 absolutely file something to deal with that.

11 As for an appeal, I don't remember any particular
12 discussion about it other than it's a guilty plea. So if
13 there was a discussion, I would have told him there were no
14 objections during the guilty plea. There is no appeal to
15 take. Even if I file one, it will get dismissed because
16 there's no appealable, preserved issue. He didn't -- I
17 honestly don't know exactly the extent of the conversation
18 that we had about the appeal because, in general, if a guilty
19 plea -- there usually isn't much of a discussion. If he had
20 told me flat out I'm required to file that notice of appeal, I
21 would have done it, but I -- even though on the notice of
22 appeal I would have to write that I did not know of any
23 appealable issues, my client is informing me that I must file
24 it, and that's a guilty plea type of appeal specific language
25 that is required.

1 He didn't tell me I had to file one, and there were no
2 grounds to follow because there was no objection during.

3 **Q** Okay. And so, on the motion to reconsider, you told him
4 that you would -- you would review what happened at the plea
5 to see if there was any issue that you could potentially
6 raise?

7 **A** Right. Judge Newman, in order to go forward, confronted
8 him on a motion to reconsider. You have to have a good
9 reason. Filing a motion just because, he is one of those
10 judges that will actually sentence someone higher just because
11 you told him you didn't like his first sentence.

12 **Q** Okay. And so you didn't -- you didn't end up filing a
13 motion to reconsider in this case?

14 **A** I did not, no.

15 **Q** Okay. And based on what you're saying here today, is
16 that because you didn't see any valid reason to bring up?

17 **A** I did not have one that was available to me at the time,
18 and I certainly wasn't going to file one to get Mr. McElveen
19 more time.

20 **Q** Okay.

21 **A** I thought he already had too much time on this to begin
22 with.

23 **Q** So your recollection of the conversation is not you
24 making a promise to file something. It was "I'll look at it
25 and potentially file something"?

1 **A** Correct.

2 **Q** And he never directed you specifically "I want to file
3 that motion regardless"? He never told you to file that
4 motion?

5 **A** In terms of a motion to reconsider, no. And even if he
6 did, I might have ignored it anyway. The notice of appeal, I
7 would be required to do, but a motion to reconsider would be a
8 discretionary thing, and I would not file it in front of that
9 judge if I had -- if I didn't have a legal argument or ground.

10 **Q** And Mr. McElveen has testified what his understanding of
11 the plea agreement was that day, that it was without
12 recommendations and that he was looking at a range of 15 years
13 to life; is that correct, as far as you recall?

14 **A** There was a plea-as-charged essentially, yes.

15 **Q** So it was a straight-up plea; correct?

16 **A** There were -- the State was free to do whatever it is
17 they were going to do. We were free to ask for whatever we
18 wanted to. Obviously, dealing with the statutory rules.

19 **Q** Okay. And did you discuss that with him, that the State
20 would be free to ask for what they wanted?

21 **A** I don't recall the exact words that were used. I had no
22 idea what the State was going to ask for, if anything. I know
23 that we were asking for that, the absolute minimum of 15.

24 **Q** Okay.

25 **A** There are no restrictions. We were pleading guilty as

1 charged.

2 Q Okay. And do you feel that he understood the fact that
3 he could receive a sentence anywhere from 15 years to life
4 when he accepted that plea?

5 A Yes, he knew there was the theoretical possibility of the
6 receiving up to a life sentence.

7 Q Okay.

8 A A lawful sentence.

9 Q And you never promised him any specific sentence in that
10 range?

11 A No. I made it very clear that I cannot promise a
12 sentence. I certainly told him that I firmly believed she
13 would get near the 15 or the 15 itself, and I'm sure he took
14 that into account when he made his decision. But I certainly
15 didn't promise him (indiscernible).

16 Q And, in your opinion, did you feel like there was any
17 ground to object to anything that the State presented during
18 the plea as being violative of this agreement -- this plea
19 agreement?

20 A There was no plea agreement. I mean, it was just
21 plea-as-charged.

22 Q It was just that he was choosing to plead guilty instead
23 of proceeding to trial, that's it?

24 A He was choosing to plead guilty.

25 Q Okay.

1 **A** I mean, the only person that thought this was a trial was
2 Margaret, and that's because she just decided it was a trial.
3 We never asked for one. We never wanted one.

4 **Q** Okay. I think that's all the questions I have.

5 THE COURT: Yes, ma'am.

6 MS. GOLDBERG: Thank Your Honor, may it please the Court.

7 CROSS-EXAMINATION

8 BY MS. GOLDBERG:

9 **Q** Good afternoon, Mr. Schnee.

10 **A** Good afternoon.

11 **Q** This plea was in March of 2016?

12 **A** Yes.

13 **Q** So, basically, you represented Mr. McElveen through the
14 entire calendar year of 2015?

15 **A** Plus a little bit essentially, yeah.

16 **Q** Plus more.

17 During 2015, generally speaking, what was the defense
18 strategy? What were you working on or what was the plan?

19 **A** Well, at first, we were trying to deal his bond issue.
20 In the initial discovery, I mean, they had, basically, the
21 police reports, statements, things of that nature. And
22 Mr. McElveen was either -- he was either denied bond or given
23 a half-a-million-dollar bond. I don't remember which the
24 first one was because I know he went up a few times.

25 So my biggest concern at the time was trying to get him a

1 bond that he could actually afford because if he had gotten
2 out on bond, then the State essentially loses the power over
3 him in terms of forcing him to do anything, and I think we
4 would have gotten a better result.

5 When dealing with a case that you expect to have a plea
6 as the end result, especially with a large mandatory minimum,
7 and if you're hoping to reduce it and you get someone out on
8 bond who then goes and works and doesn't get any trouble, it
9 usually is to the benefit.

10 Q So during that year, you were generally expecting this
11 case to end with a plea, essentially?

12 A I was expecting the case to end in a plea from just about
13 the beginning.

14 Q The whole time.

15 A Mr. McElveen never wanted a trial, never asked for it.
16 He was very honest about that. So, no, I did not anticipate a
17 trial. I was working towards how do we get the best result.

18 Q You made a distinction earlier between discovery that
19 maybe would be necessary for Mr. McElveen to decide if he
20 should plead guilty or not versus discovery that might be more
21 technical in nature and necessary for trial.

22 Do you know at one point you had all the discovery
23 necessary for him to make those decisions?

24 A I couldn't give you an exact date. It would have been
25 I'm guessing the second half of 2015, more maybe towards the

1 end of 2015.

2 Q So not right at the last minute of trial.

3 A Not at the last minute in terms of for his
4 decision-making process. I would say probably, a rough
5 estimate, let's just go with something like
6 August/September/Octoberish of 2015. So significantly into
7 the case is when I would have had all the discovery that
8 Mr. McElveen would need for that decision.

9 Q Do you remember reviewing that information with him?

10 A I know, when we had talked a lot about the discovery,
11 more about what was missing and what problems there were. In
12 terms of going page by page, I couldn't tell you. Clearly, I
13 have not shown him every page. I generally don't waste the
14 time going through paperwork that has nothing to do with
15 what's actually involved in the case. But we certainly went
16 through all the facts and the details of the actual incident.

17 Q There was mention of a statement that Mr. McElveen had
18 given to law enforcement.

19 A Correct.

20 Q You remember that exists?

21 A Yes, it's a written statement.

22 Q Do you remember any conversations about, like, whether
23 that statement could have been suppressed or whether there
24 were issues around that statement? Were there conversations
25 with Mr. McElveen about it?

1 **A** Sure. I don't really have any specific recollection. If
2 it's in my notes -- I know you went through my file more
3 recently than I have since you had it for a while.

4 I'm sure I had general discussions in terms of
5 voluntariness and I would have asked if there was anything
6 that, you know, would have raised a red flag to me. But in
7 terms of -- that would have been more of a trial preparation
8 issue, obviously. I can't recall anything particularly that
9 would have destroyed his initial statement.

10 **Q** And you weren't necessarily preparing for trial; correct?

11 **A** I was not. That was not how I was thinking about it,
12 which is also the only reason I suggested he consent to the
13 Schmerber. At the time, we were still looking for offers, and
14 I was hoping not fighting Margaret on it would help that.

15 **Q** When that time came regarding the Schmerber, that's about
16 the time you knew that this case was going to be placed on the
17 trial docket in March; is that right?

18 **A** It was in the same range of time. Margaret had started
19 emailing about trial dates, and she did file for the
20 Schmerber. And I said, Well, why are we talking about a trial
21 date when you're trying to get my client's DNA? You have got
22 to have the results.

23 And Mr. McElveen was already in the DNA database, so they
24 already had everything they needed. They just needed a new
25 sample to test.

1 Q So they already knew what the results were going to be?

2 A Yes. We all did.

3 Q And when Ms. Bodman informed you of her intention to call
4 it for trial, that's what you were saying that he tried to
5 fight her on?

6 A Well, not the intent to put it on the trial docket, per
7 se, but in terms of putting it on a trial docket before
8 discovery was finished.

9 Q At the time the case was called for trial -- was there
10 eventually a formal notice of trial issued in this case?

11 A Yes. Ten days before.

12 Q Ten days before.

13 A They officially sent me a "this is your trial." I guess
14 11 days before.

15 Q And at the time that he was scheduled for trial, was
16 there any discovery outstanding that would substantially make
17 a difference to whether the case should have or shouldn't have
18 gone forward on that day? Or had you-all received it at the
19 last minute by that point?

20 A I had received it by the last minute. In fact, I --
21 after his case, I actually -- the next time I had an issue
22 like this come up, I had to file a motion to close discovery,
23 demanding at least 30 days from the time I receive either a
24 deadline or I receive the last piece of paper, at least 30
25 days prior to trial, which ended up being granted and ended up

1 resulting in the State not being able to use things they
2 wanted to turn over late. They should have turned it over
3 much, much earlier.

4 So, yeah, all of it had been turned over but not in a
5 timely fashion.

6 Q So even though you resisted the trial being called when
7 it was called because there was discovery outstanding, by the
8 time it was called, it was no longer outstanding.

9 A It wasn't outstanding, but I would not have been prepared
10 to argue against any of it in trial. I would not have had the
11 ability to get an expert to deal with anything if it was
12 necessary.

13 Q On the day of trial, given that situation, given the
14 conversations that you had had with your client, is there any
15 reason you didn't -- or did you -- ask the judge for a
16 continuance?

17 A In emails --

18 MS. McCALLISTER: Objection, Your Honor. I don't -- she
19 hasn't pled anything in terms of his failure to ask for a
20 continuance or anything along those lines.

21 MS. GOLDBERG: This is just a question directly related
22 to the direct examination.

23 THE COURT: To the --

24 MS. GOLDBERG: The direct examination from the State.

25 This is following up on him -- his complaints that the trial

1 was called at an unreasonable time.

2 THE COURT: The objection is overruled.

3 A There were a number of discussions over email between
4 myself and the Solicitor's Office. I don't remember if the
5 judge indicated anything at all because -- but there was no
6 stopping it. That's their trial docket and they kept doing
7 whatever they wanted to do with their trial docket.

8 Q By the time that that Monday finally came and the case
9 was on the trial docket, did you think at that point in time
10 you had grounds to ask the judge for a continuance?

11 A It would have been denied because the only grounds I had
12 were late discovery and the issue of Langford and, you know,
13 my client's constitutional right to fair notice and the
14 Solicitor's illegal docket control. Judge Newman had already
15 ruled on that plenty of other times. He doesn't care. He
16 didn't care then and he still doesn't care.

17 So that wasn't worth discussing, certainly not if
18 Mr. McElveen was going to plead guilty, which he ended up
19 doing.

20 MS. GOLDBERG: Beg the Court's indulgence. I'm going to
21 grab that exhibit.

22 BY MS. GOLDBERG:

23 Q Mr. Schnee, I'm going to hand you the State's Exhibit No.
24 1, which is a copy of both sentencing sheets in this case.

25 A Okay.

1 Q Does that appear to be the sentencing sheets relative to
2 Mr. McElveen's case?

3 A Yes.

4 Q You had testified that -- I think the words you used was
5 this was a straight-up plea?

6 A Yes.

7 Q Both of those sentencing sheets are checked off to say
8 the plea is done without negotiations or recommendations;
9 correct?

10 A Correct.

11 Q Okay. What's the difference between a plea with a
12 recommendation and a straight-up plea?

13 A Under the law, none.

14 Q So --

15 A But, in theory, there are people that think a straight-up
16 plea means anyone can ask for anything. If it's no
17 recommendations and no negotiations, there are some people
18 that would take that to mean the State isn't asking for
19 anything. Under the law, it -- essentially, there's -- you
20 either agree that the State will recommend, which the judge
21 can listen to in court, a negotiation that the judge must
22 follow, or the third option is anyone can ask for anything
23 they want and that's it.

24 Q So a recommendation -- let me back up.

25 MS. GOLDBERG: Beg the Court's indulgence.

1 BY MS. GOLDBERG:

2 Q A recommendation would typically be when the State is
3 recommending a particular sentence; correct?

4 A Right. It's when the State is asking for something and,
5 in theory, the defense is agreeing that that would be an
6 appropriate sentence and hoping the judge would like it.

7 Q But the judge isn't bound by it.

8 A Correct.

9 Q The defense isn't bound by it.

10 A It depends on the judge. There are plenty of judges
11 that, if you have a recommendation and you ask for anything
12 other than that, you, as an attorney, might have to have a
13 toothbrush that day.

14 Q Do you recall telling -- telling Mr. McElveen that this
15 was a straight-up plea?

16 A It's entirely possible I used those words, yes.

17 Q Do you recall sharing with him that this plea was going
18 to be done without negotiations or recommendations?

19 A What we discussed is they're not offering us anything.
20 It's 15 to life. A judge can do anything in that range.
21 That's a part of the discussion.

22 Q Do you recall if you actually warned him that the State
23 would be asking for a lot of time or did that not come up?

24 A I don't think it came up. In fact, when she says
25 substantial time, that's not something I knew she was going to

1 ask for. I knew she was going to ask more than the 15. I
2 mean, she didn't have a number. I just assumed she was going
3 to ask for more.

4 Q Was it -- you assumed she was going to be asking for more
5 than the 15.

6 A Otherwise, she would have agreed to the 15.

7 Q Did you tell Mr. McElveen that?

8 A I'm not sure if I did or I didn't. Margaret never told
9 me what she was going to ask for, so I didn't have anything in
10 particular to relay to Mr. McElveen as to what she would say.
11 But she was free to ask for anything she wanted.

12 Q After your discussions with Mr. McElveen, nothing was
13 said to alert him that the State was definitely asking for
14 more time; is that fair or not fair?

15 A I think it would be fair to say that he knew the State
16 would -- that certainly wanted more than the 15, but there is
17 nothing, in effect, that he would know nor that I did know
18 that would indicate what exactly they were asking for.

19 Q Did -- go ahead.

20 A Or if they would ask for anything at all. I honestly did
21 not know. It was a plea without any offers, so they can ask
22 for anything they want.

23 Q If Mr. McElveen had known -- based on your conversation
24 with him and your relay of advice and your understanding of
25 what he was deciding, if he had known that the State was going

1 to come in and actually ask for a substantial prison sentence,
2 would the end result of your conversation -- would your
3 conversations have been the same or would there have been a
4 difference in the decision-making process and what was
5 evaluated?

6 **A** In terms of the -- my advice to plead guilty or go to
7 trial, my advice would have been the same.

8 **Q** Your advice would have been the same.

9 **A** My advice would have been the same even if they walked in
10 there in mid-July (ph).

11 **Q** Given Mr. McElveen's expressed concerns about pleas and
12 everything, do you understand if his decision-making would
13 have been the same?

14 **A** I don't --

15 **MS. McCALLISTER:** Objection, Your Honor. I don't know
16 how he can testify as to what Mr. McElveen's decision-making
17 would be.

18 **THE COURT:** All right. The objection is sustained.
19 That's speculation.

20 **MS. GOLDBERG:** All right. Beg the Court's indulgence.

21 **BY MS. GOLDBERG:**

22 **Q** Mr. Schnee, when the State asked for -- on behalf of the
23 Solicitor and the law enforcement, asked for substantial
24 prison sentence in this case, is there any reason why you
25 didn't object during the guilty plea?

1 **A** The only reason being that there's no restriction on them
2 requesting time or a particular amount. I think it's
3 inappropriate request but it's not -- I have no legal grounds
4 to object to it.

5 **Q** And is there any particular reason, other than what you
6 just said, why you didn't ever move to withdraw the plea?

7 **A** Looking back -- withdrawing the plea would have been a
8 problem; it would have just started the trial. The only thing
9 I probably should have objected to is the fact that Margaret
10 said this was a case on the trial docket. Maybe I did not
11 make that clear. Maybe I should have objected and said, No,
12 Judge, this is ridiculous; we have never asked for a trial.
13 And I do think that the fact that it was on the trial list
14 impacted Mr. McElveen's sentence unfairly. But there's no
15 legal grounds to object. It's still not a legal issue that
16 could be preserved. Asking for substantial time is not
17 against the law, so I still wouldn't have filed an appeal on
18 that. I guess that's where you're headed.

19 **Q** And after the plea, did you ever look into this case
20 further to determine if the motion to reconsider was
21 appropriate?

22 **A** I looked to -- on the discovery and when I got back to my
23 office, just to make sure there was nothing that I missed, and
24 I found no real reason to file a motion to reconsider. Had
25 the co-defendants gotten probation or a charge dismissed, at

1 that point, I would have filed a motion, even if it was a year
2 later. It would have been a new fact that it would have been
3 something that would have been subject to given the Court
4 jurisdiction to hear it, but they -- I mean, they both got
5 substantial jail sentences. So, no, I never did end up filing
6 a motion. I didn't find anything inappropriate.

7 MS. GOLDBERG: No further questions.

8 THE COURT: Yes?

9 MS. McCALLISTER: Just briefly.

10 REDIRECT EXAMINATION

11 BY MS. McCALLISTER:

12 Q So you did not object to any of the State's presentation
13 in terms of the facts or asking for a sentence?

14 A Obviously not. The transcript is what the transcript is.

15 Q Okay.

16 A I, obviously, would have remembered if I objected. I
17 have done it so few times during a guilty plea.

18 Q Okay.

19 A No, I did not object at all.

20 Q And then when you went back and looked through the
21 discovery, you didn't see anything that indicated the State
22 had misrepresented something or that anything that provided
23 you a ground to object to the sentence or to the plea?

24 A Correct.

25 Q Okay. And in your discussions with Mr. McElveen, on the

1 day of the plea, before he decided that that's what he wanted
2 to do, you said that you didn't know what the State was going
3 to recommend; correct? You didn't know if they were going to
4 ask for anything or if they might ask for life or what.

5 A I did not know what they were going to ask for, correct.

6 Q Did he ask you about that? Did he ask what's the State
7 going to recommend?

8 A I don't recall if we -- if that question was asked.

9 Q Okay.

10 A And if he did, I would have said I honestly don't know.

11 Q But you explained to him that there was a range and that
12 the judge could sentence him to anything in that range?

13 A He was aware of the sentencing range, yes.

14 Q Okay. And whose decision was it for him to accept
15 that -- the plea that day?

16 A Ultimately, it was his. Very much based on my advice.

17 Q I think that's all I have.

18 THE COURT: All right. Sir, you may step down.

19 THE WITNESS: Thank you.

20 THE COURT: Call your next witness.

21 MS. McCALLISTER: The State has no more witnesses, Your
22 Honor.

23 THE COURT: All right. Anything further?

24 MS. GOLDBERG: Yes, Your Honor, no witnesses, but I just
25 have a couple of -- two cases that I'd like to cite for the

1 record.

2 THE COURT: All right.

3 MS. GOLDBERG: The first case that I'd like to bring to
4 the Court's attention is State v. Smith. That's a Court of
5 Appeals case from 2014. The cite is 407 S.C. 279. That was
6 a -- I believe it was originally a murder case, but there was
7 a plea to involuntary manslaughter. The State in that plea
8 requested the maximum sentence. The defendant was ultimately
9 sentenced to 24 years. But the allegation there was that the
10 trial counsel should have objected when the State requested
11 the maximum sentence because the agreement was that the State
12 would remain silent during sentencing. That is Mr. McElveen's
13 contention in this case, is that he -- his understanding in
14 going forward with the plea versus giving up his trial rights
15 was that the State was going to be remaining silent during
16 sentencing, there would be no recommendations; however, that
17 did not happen in this case. And I will just point the Court
18 to pages 16, 21, and 23 of the guilty plea transcript wherein
19 the State did recommend a substantial prison sentence.

20 That same State v. Smith case, essentially the Court
21 found that Smith would not have pled guilty had he know the
22 Solicitor was going to do that, and, therefore, the failure to
23 object was ineffective assistance of counsel.

24 The Supreme Court ended up reviewing that case in
25 Citation 413 S.C. 194, which is 2015, and the Supreme Court

1 upheld that basically, just to clarify that the proper remedy
2 was a new trial versus the resentencing because he wouldn't
3 have pled guilty at all had he known that the State was going
4 to ask for the maximum amount of time.

5 So, Your Honor, I'm citing that as -- it goes along with
6 Mr. McElveen's stated allegation in this case that he did not
7 know the State was going to ask for a substantial prison
8 sentence and would not have given up his trial rights had he
9 known.

10 And the only other thing I want to cite to is a new
11 opinion. Opinion 27801, that's Darryl Frierson versus the
12 State of South Carolina.

13 THE COURT: One more time?

14 MS. GOLDBERG: 27801. 2018 case from May. And the only
15 reason I cite to that is just because --

16 THE COURT: And the name again?

17 MS. GOLDBERG: Darryl Frierson --

18 THE COURT: Darryl?

19 MS. GOLDBERG: -- versus the State of South Carolina.

20 THE COURT: Darryl Frierson?

21 MS. GOLDBERG: Yes, ma'am.

22 And that case just makes it clear that the Court's not to
23 look at -- the Court -- the standard -- here, I'm just going
24 to read it, "In order to establish prejudice, when challenging
25 a guilty plea, is the defendant must prove there's a

1 reasonable probability that, but for the errors, the defendant
2 would not have pled guilty but instead would have gone to
3 trial."

4 So there's not necessarily an overwhelming evidence
5 analysis that should take place in this case. It is whether
6 or not he would have still given up his trial rights or pled
7 guilty. So I just want to make that standard of prejudice in
8 this context clear.

9 THE COURT: Yes, ma'am.

10 MS. McCALLISTER: Your Honor, responding to that argument
11 directly first, this issue of whether there was some kind of
12 breach of the plea agreement, the State would cite to State v.
13 Richert, which is 371 S.C. 295. It is a Court of Appeals case
14 from 2006. And the language in that case talks about how the
15 sentencing sheet offers three alternatives to designate the
16 nature or status of a plea. The alternatives provide that a
17 plea is, one, without negotiations or recommendation; two, a
18 negotiated sentence; or, three, a recommendation by the State.

19 In the instance in Richert, as in this instance, the
20 option "without negotiations or recommendation" was selected
21 by the Solicitor and signed by the defendant and the
22 defendant's counsel. In Richert, the Court of Appeals says,
23 "It is axiomatic that the phrase 'without negotiations or
24 recommendations' means that the State and the defendant have
25 not agreed on sentencing; therefore, either party is free to

1 request favorable sentence."

2 And, Your Honor, I think Mr. Schnee testified multiple
3 time that there was no agreement. He was going into the plea,
4 he knew the sentencing range was 15 to life, he was told that
5 the judge could do anything in that range and that there was
6 nothing for Mr. Schnee to object to in terms of a breach of a
7 plea agreement.

8 He's testified also about the issues with discovery and
9 that he explained to Applicant, you know, the charges, the
10 elements, what the State would have to prove. They met
11 multiple times, according to his testimony and the Applicant's
12 testimony. Mr. McElveen acknowledged that he knew that there
13 were maybe some items of discovery that he hadn't seen when he
14 decided to plead guilty, and he pled guilty anyway of his own
15 free will.

16 I think the transcript makes it clear as well that he
17 knew what he was doing and he knew that the only agreement
18 from the State -- it says on page 2 to 3 of the transcript --
19 is that they agreed to dismiss one of the armed robbery
20 charges and the assault and battery charge and that he was
21 otherwise pleading straight up to armed robbery and burglary
22 first.

23 He, you know, indicated his assent throughout the entire
24 plea colloquy, that he understood this and that that's what he
25 wished to do, Your Honor. And so we would ask that these

1 allegations in the application be denied.

2 THE COURT: All right. Anything else?

3 MS. GOLDBERG: No, Your Honor.

4 THE COURT: All right. I am going to -- she has listed
5 seven or eight -- ten grounds. I'm going to take a look at
6 the ten.

7 MS. GOLDBERG: It should just be four.

8 THE COURT: Okay. Four. I'll take a look at -- I'm
9 looking at the amended answer. And I'll get something back to
10 you-all shortly.

11 MS. GOLDBERG: Thank you, Your Honor.

12 MS. McCALLISTER: Thank you.

13 THE COURT: All right. Thank you.

14 (The above hearing concluded.)
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1 CERTIFICATE OF TRANSCRIBER

2 CASE/NO.: David McElveen v. State of SC

3 2016-CP-40-04676

4 DATE OF PROCEEDING: July 16, 2018

5 COURT REPORTER: Bonnie Kelly

6
7 I, Bobbi J. Fisher, do hereby certify that the
8 foregoing transcript is a true and correct record of the
9 recorded proceedings; that said proceedings were transcribed
10 to the best of my ability from the audio recording and
11 supporting information; and that I am neither counsel for,
12 related to, nor employed by any of the parties to this case,
13 and I have no interest, financial or otherwise, in its
14 outcome.

15
16 

17
18 _____
19 Bobbi J. Fisher, RPR, CET

20 NCRA Registered Professional Reporter (RPR)

21 AAERT Certified Electronic Transcriber No. CET-1148

22 Prepared: August 18, 2020
23
24
25

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016CP4004676

David Keith McElveen

The State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____ The Application for post-conviction relief is Denied. More formal order to follow.

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

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

Circuit Court Judge



Judge Code 2161

Date

7-19-18

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 20 day of July, 2018 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court



STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

David Keith McElveen, #321043,)
) C.A. No. 2016-CP-40-4676

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)
_____)

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by David Keith McElveen (Applicant) on August 3, 2016, and amended, through counsel, on June 19, 2018. Respondent made its Return on May 18, 2017. An evidentiary hearing into the matter was convened on July 16, 2018, at the Richland County Courthouse before the undersigned. Kristy Grafton Goldberg, Esquire, represented Applicant. Assistant Attorney General Lindsey A. McCallister represented Respondent.

At the hearing, Applicant testified on his own behalf. Mark Schnee, Esquire, Applicant's plea counsel, was also called to testify. This Court also had before it a copy of the records of the Richland County Clerk of Court, records from the South Carolina Department of Corrections, the application and amendments, Respondent's Return, and the plea transcript.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Richland County Clerk of Court's orders of commitment. Applicant was indicted by the April 2015 term of the Richland County Grand Jury for armed robbery (2015-GS-40-01590) and first-degree burglary (2015-GS-40-01599). Mark E. Schnee (Counsel), Esquire, represented Applicant.

Assistant Solicitor Margaret Bodman prosecuted the case on behalf of the State. On March 14, 2016, Applicant appeared before the Honorable Clifton Newman and pled guilty as indicted to both charges. In return, the State dismissed a pending armed robbery charge as well as a pending charge of assault and battery in the first degree. Judge Newman sentenced Applicant, without negotiation or recommendation, to eighteen years' imprisonment for armed robbery and twenty-two years for burglary, with the sentences to run concurrently. Applicant did not appeal his convictions or sentences.

ALLEGATIONS

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

1. Ineffective Assistance of Counsel
 - a. "Trial Counsel prejudice applicant by failing to filed a timely direct notice of appeal"
 - b. "Trial Counsel was ineffective for failing to prepare and to conduct a proper pre-trial investigation"
 - c. "Trial counsel prejudiced applicant by failing file motion for reconsider after guilty plea"
 - d. "Trial counsel prejudiced applicant by failing to adequately investigate, research, and evaluate my case and request continuance.

In his amended application filed June 19, 2018, Applicant additionally alleges:

1. "Ineffective assistance of counsel in failing to adequately advise and assist the Applicant during the pendency of the case"
 - a. "Counsel failed to review discovery with client, failed to explain plea offers and deadlines for plea offers, failed to explain strengths and weaknesses of the case, and generally failed to assist the Applicant in handling this case in an appropriate manner."
2. "Ineffective assistance of counsel for failure to object during the guilty plea when the State breached the plea agreement."
 - a. "Counsel failed to object and move to withdraw plea when the State requested a substantial prison sentence in violation of the agreement that the Applicant would be entering into a 'straight up plea.'"

3. "Ineffective assistance of counsel for failure to file a Motion to Reconsider as requested by the Applicant."
4. "Ineffective assistance of counsel for failure to file a Notice of Appeal as request[ed] by the Applicant."

At the evidentiary hearing, counsel indicated Applicant wished to proceed solely on the allegations contained in his amended application. Therefore, to the extent the allegations outlined in Applicant's original application constitute separate issues for relief, this Court finds those allegations are voluntarily waived and abandoned. As such, those allegations are hereby denied and dismissed with prejudice.

SUMMARY OF TESTIMONY

Applicant testified he originally had a different attorney on these charges, but Counsel was appointed after a conflict arose with the Public Defender's Office. Applicant testified Counsel sent him a letter notifying him of the appointment, and they subsequently met for the first time at Applicant's preliminary hearing in January 2015. Applicant testified they met again briefly in May 2015, but Counsel did not have much, if any, discovery at that point. Applicant explained he asked Counsel about a potential bond reduction and informed Counsel he would accept a plea agreement of zero-to-ten years of nonviolent time. Applicant further testified Counsel was able to arrange a bond hearing, and his bond was reduced by half. According to Applicant, Counsel conveyed the State's offer of fifteen-to-twenty-five years at the bond hearing, but Counsel told Applicant he would get a better offer towards the end of the case, so Applicant did not accept it. Applicant further testified he was never told if the offer had an expiration date.

Applicant testified he next saw Counsel at a hearing regarding the State's request for DNA, and at that time, discovery was still outstanding regarding the search of Applicant's phone. Applicant informed Counsel at the DNA hearing he would plead guilty if Counsel could obtain a

favorable offer, and Applicant reiterated his request for something in the range of zero-to-ten years of nonviolent time. Applicant testified he and Counsel spoke at a second bond reduction hearing in January 2016, but Applicant did not receive any further information about a plea. Instead, according to Applicant, Counsel informed him a trial was set for March 14, 2016, and Counsel said he would come to the detention center to review the case with Applicant. Applicant testified he did not expect to receive a trial date because he had not asked for a trial.

Applicant further testified he met with Counsel on March 9, 2016, and the trial remained scheduled to begin on March 14. At that time, Counsel informed Applicant his codefendants would testify against him, and Counsel felt Applicant did not have a good chance of prevailing at trial. According to Applicant, he wanted the State to dismiss the first-degree burglary charge in exchange for a ten-year sentence on the armed robbery, and Counsel told him he would try to get the State to agree. Applicant testified he did not know if the fifteen-to-twenty-five year offer was still on the table at that point, and he did not ask Counsel about any other plea offers.

Applicant then testified Counsel returned to the detention center the next day and reviewed his statement and the codefendants' statements with Applicant. Applicant testified Counsel asked whether he wanted to plead guilty or go to trial and again told Applicant he did not think Applicant had a good chance of winning the case. Counsel also informed Applicant he could get up to life without parole if convicted of the first-degree burglary charge. Applicant further testified he next saw Counsel on the day of trial, and Counsel told him the State had not made any further offers, and the case was ready for trial. According to Applicant, Counsel told him the judge was "reasonable" and there was no reason for the judge not to give Applicant the minimum sentence if Applicant wanted to plead guilty. Applicant testified he pleaded guilty based on Counsel's advice,

and he understood the terms of the plea to be without recommendation from the State, such that the possible sentencing range was fifteen years to life. Applicant also acknowledged signing the sentencing sheet with this information.

However, Applicant contended he would not have entered the plea if he had known the State was going to ask for a substantial sentence. Applicant testified he believed Counsel should have shared the strengths and weaknesses of the case with him and should have objected when the State asked for substantial time. Further, Applicant testified he did not accept the original plea offer of fifteen to twenty-five years because Counsel advised he would receive a better offer later. Applicant also noted the defense had not received all of the discovery at the time the first offer was made, which made it hard for Applicant to decide what to do.

Finally, Applicant testified he and Counsel discussed the possibility of filing both a motion to reconsider and a notice of appeal. Applicant testified he understood these were two different things, but Counsel talked about them at the same time. Applicant testified he wanted Counsel to file a motion to reconsider his sentence, and Counsel said he would file one “later,” after Applicant’s codefendants had been sentenced. According to Applicant, Counsel also told him he would file a notice of appeal “later,” and Applicant did not know it had to be filed within ten days until he was already in the South Carolina Department of Corrections.

Counsel testified he had primarily practiced in criminal defense work since 2006, and he was appointed to this case in either late 2014 or early 2015. Counsel testified his first priority was to resolve Applicant’s bond because it is helpful to have the client out of the detention center when preparing a case. Counsel also testified he met with Applicant numerous times to discuss the elements of each offense and review discovery, including police reports, photo lineups, and

statements given by various witnesses and the codefendants. Counsel testified the discovery also included phone calls between Applicant and the male codefendant, as well as some DNA evidence. Counsel further testified he and Applicant discussed the evidence and discovery on several occasions including what was missing from the file, potential problems with the case, and all of the facts and details of the incident. Counsel testified they also discussed potential issues with Applicant's statement and the possibility of suppression, but he did not recall any red flags regarding the voluntariness of the statement.

According to Counsel, Applicant wanted to plead guilty immediately, but Counsel advised him to wait because he felt the fifteen-to-twenty-five year offer was not very good. Counsel testified he probably did not advise Applicant the offer could expire. However, Counsel testified he always expected the case to end with a guilty plea because Applicant never wanted a trial. Counsel further explained he negotiated for the State to dismiss the first-degree burglary charge, particularly because that charge was based on DNA evidence which was not received until closer to trial, at the end of 2015. Counsel also testified he advised Applicant to consent to the State's motion for a DNA sample because he hoped Applicant's cooperation would help in negotiations and Applicant's DNA was already in the database, so everyone knew what the results of the testing would be.

Counsel testified he did not fight the State over when to notice the case for trial except before he received all of the discovery. Counsel testified he received the required ten days' notice of trial. Counsel testified when Applicant decided to plead guilty, he explained the ramifications of a "straight up" plea and informed Applicant the State was not offering any specific sentence, the sentencing range would be fifteen years to life, and the judge could sentence him to anything

within that range. Counsel testified although he did not know exactly what the State was going to say during sentencing, he assumed the solicitor would ask for more than fifteen years because, otherwise, the State would have agreed to that determinate sentence. Counsel further testified Applicant knew the potential sentencing range and knew he was not promised anything specific as to the length of the sentence.

Counsel testified he did not believe the State violated the agreement, and he did not object to anything the State said during the plea because he had no legal basis to do so. Counsel testified, in his professional opinion, there was no restriction on the sentence the State could request. Counsel further testified withdrawing the plea would have been problematic because the case would have gone straight to trial. Counsel recalled discussing the possibility of a motion to reconsider the sentence with Applicant, and he told Applicant he would review the file to see if the solicitor had said anything improper, but he did not know if there would be a basis for the motion. Counsel testified he looked through the discovery to make sure the State had not misled the court in anyway and determined there was no basis to file the motion. Finally, Counsel testified he did not recall Applicant requesting him to file a notice of appeal, and if Applicant had done so, Counsel would have explained he had not made any objections during the plea, so there would not be any preserved issues for an appeal. Counsel further acknowledged he is required to file such notice if Applicant requested it, and he testified he would have done so.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record and heard the testimony at the PCR hearing. This Court has observed the witnesses presented at the evidentiary hearing, judged their credibility, and

weighed their testimony accordingly in its discussion below. Set forth below are findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code of Laws.

Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. 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 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel’s performance was deficient. Id. Under this prong, the court measures an attorney’s performance by its “reasonableness under professional norms.” Id. (quoting Strickland, 466 U.S. at 688 (1984)). 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.” Id. at 117-18, 386 S.E.2d at 625. When there has been a guilty plea, the applicant must prove counsel’s representation was below the standard of reasonableness and

that, but for counsel's unprofessional errors, there is a reasonable probability he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

This Court finds Applicant has failed to prove Counsel's performance was deficient in any way. Counsel met with Applicant and reviewed him the elements of the crime charged, possible penalties, the evidence and discovery in the case, and Applicant's version of the facts. Therefore, for the reasons stated below, the Court denies relief and dismisses the allegations with prejudice.

1. Failure to adequately advise and assist Applicant

Applicant alleges Counsel was ineffective for failing to review discovery with him, failing to explain plea offers and deadlines for plea offers, failing to explain the strengths and weaknesses of the case, and generally failing to assist Applicant in handling this case in an appropriate manner. This Court disagrees and finds Counsel provided effective assistance in this case.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

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

It is undisputed that Counsel conveyed the fifteen-to-twenty-five year plea offer to Applicant, and on Counsel's advice, Applicant decided not to accept it. Applicant explained they had not yet seen all of the discovery at that time, and Applicant wanted Counsel to negotiate for dismissal of the first-degree burglary charge and a nonviolent sentence. This Court finds said testimony credible. This Court also finds credible Counsel's testimony he reviewed Applicant's constitutional rights, the State's evidence, the potential strengths and weaknesses of each side's case, and the possible penalties with Applicant prior to the plea. Further, Counsel testified he explained the ramifications of a "straight up" plea to Applicant and informed Applicant the State was not offering any specific sentence, the sentencing range would be fifteen-years-to-life imprisonment, and the plea judge could sentence him to anything within that range.

Additionally, the plea transcript reflects the judge engaged in a detailed recitation of Applicant's constitutional rights during the plea colloquy, including the right to a jury trial, the State's burden of proof at trial, and Applicant's right to present a defense. Tr. pp. 5-6. The plea court clearly informed Applicant of the potential sentencing range for each charge, including the mandatory minimum sentences. Tr. p. 3. Applicant affirmed he had enough time to talk with Counsel, understood the nature of charges and possible punishments, and represented no promises had been made to induce him to plead. Tr. p. 4. Applicant also informed the plea court he was

satisfied with Counsel's services. Tr. p. 4. Accordingly, this Court finds Counsel's representation of Applicant was not deficient.

Finally, as noted above, Applicant ultimately received a sentence of twenty-two years on the first-degree burglary charge. Applicant testified the only plea offer communicated to him was a range of fifteen to twenty-five years, within which his sentence falls. Therefore, Applicant suffered no prejudice, even if Counsel was deficient in conveying the offer. For these reasons, this Court finds Applicant has failed to meet his burden of proof as to deficiency or prejudice as to the allegation Counsel failed to adequately advise and assist him in resolving this case in an appropriate manner. Counsel met with Applicant on multiple occasions to review discovery, discuss the facts of the case, and explain Applicant's constitutional rights and options for resolving the case. Further, the plea transcript reflects Applicant entered into the guilty plea freely and voluntarily. Therefore, this Court denies relief and dismisses this allegation with prejudice.

2. Failure to object to the State's alleged breach of plea agreement

Applicant next alleges the State breached the agreement to allow Applicant to enter a "straight up plea" by asking for a substantial sentence, and Counsel was ineffective for failing to object and move to withdraw the plea. This Court finds the State did not breach the agreement, and therefore, Counsel was not ineffective because he was not deficient, as there was no legal basis to object or move to withdraw the plea.

The Court finds State v. Rikard, 371 S.C. 295, 638 S.E.2d 72 (Ct. App. 2006), instructive. As the Court of Appeals explained in Rikard, "[t]he sentencing sheet offers three alternatives to designate the nature or status of the plea. Those alternatives provide that the plea is: (1) without negotiations or recommendation; (2) a negotiated sentence; or (3) a recommendation by the State." Id. at 302, 638 S.E.2d at 76. In Rikard, the option of "without negotiations or recommendation"

was selected and signed by the solicitor, Rikard, and Rikard's plea counsel. Id. The Court of Appeals held "[i]t is axiomatic that the phrase 'without negotiations or recommendation' means that the State and the defendant have not agreed on sentencing. Therefore, either party is free to request a favorable sentence." Id.; cf. Smith v. State, 413 S.C. 194, 775 S.E.2d 696 (2015) (finding plea counsel ineffective for failing to object when the State asked for the maximum sentence because the plea agreement included a condition that the State remaining silent at sentencing).

Here, Counsel testified he did not believe the State had violated the agreement, and he did not object to anything the State said during the plea because he had no legal basis to do so. Counsel testified, in his professional opinion, there was no restriction on the sentence the State could request. This Court agrees with Counsel's assessment, applying the case law cited above. Counsel also testified when Applicant decided to plead guilty, he explained the ramifications of a "straight up" plea and informed Applicant the State was not offering any specific sentence. Counsel further testified Applicant knew the potential sentencing range and knew he was not promised anything specific as to the length of the sentence. The Court finds this testimony is credible and supported by the plea transcript. During the plea hearing, Applicant addressed the judge himself and through Counsel, and Applicant never indicated he wished to withdraw the plea or that he felt the State had not upheld its end of the agreement. Tr. pp. 17-21, 23. Based upon Counsel's credible testimony and this Court's review of the plea transcript, the Court finds Counsel was not deficient for failing to object to the State's request for a substantial sentence because the State did not breach the agreement by making that request.

Accordingly, this Court finds Counsel had no basis for an objection on that ground, and he cannot be deficient for failing to make such an objection. Because this Court finds Counsel was

not deficient in failing to object or failing to move to withdraw the plea, this allegation is denied and dismissed with prejudice.

3. Failure to file Motion to Reconsider/ Failure to file Notice of Appeal

Applicant also alleges Counsel was ineffective for failing to file a motion to reconsider or a notice of appeal after Applicant requested he do so. Specifically, Applicant testified he and Counsel discussed the options of filing a motion to reconsider and/or a notice of appeal, and Counsel told him he would file them “later.” Counsel recalled telling Applicant he would review the file after the plea to ensure the solicitor had not misrepresented any facts, which Counsel testified he did and determined there was no basis for the motion. Counsel further testified he did not recall any discussion wherein Applicant asked for a notice of appeal to be filed, and he was aware of his obligation to file one upon Applicant’s request. Counsel also testified if Applicant had asked, he would have explained to Applicant there was no basis for an appeal because neither Applicant nor Counsel made any objections during the plea, so nothing was preserved for appellate review. Further, Applicant indicated his agreement with the facts of the case as presented by the State during the plea hearing, and neither Applicant nor Counsel ever indicated any disagreement regarding the facts or the State’s conduct during the plea. Tr. pp. 10, 13, 15-16, 17-21.

This Court therefore finds Applicant has failed to meet his burden of proof as to ineffective assistance of counsel for failure to file a motion to reconsider or a notice of appeal. The Court finds credible Counsel’s assertion he reviewed the file after the plea and could not discern any basis to file a motion to reconsider. The Court also finds credible Counsel’s testimony that Applicant did not ask him to file a notice of appeal. Therefore, this Court finds Counsel’s conduct was not deficient, and, accordingly, Counsel did not render ineffective assistance. This allegation shall be denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant relief. Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR (providing the appropriate procedure to perfect an appeal). Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Further, Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for the appropriate procedures for appealing a judgment in a PCR action.

IT IS THEREFORE ORDERED:

1. the Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall be remanded to the custody of the Respondent.

AND IT IS SO ORDERED.



The Honorable DeAndrea G. Benjamin
Presiding Circuit Court Judge
Fifth Judicial Circuit

Columbia, S.C.

1-3, 2020

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JAN 24 2020

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

S.C. SUPREME COURT

DeAndera Benjamin, Circuit Court Judge

Case No. 2016-CP-40-4676

David Keith McElveen, SCDC # 321043, ... Appellant

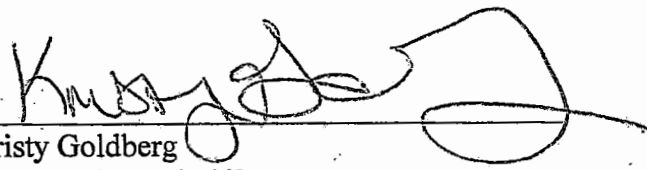
v.

State of South Carolina, ... Respondent.

NOTICE OF APPEAL

Applicant David McElveen hereby appeals from the Order of the Honorable DeAndrea Benjamin, presiding Judge for the 5th Judicial Circuit, filed January 7, 2020 and received on January 8, 2020.

January 21, 2020


Kristy Goldberg
Attorney for Plaintiff

3600 Forest Drive, Suite 204
Columbia, South Carolina 29204
kkgoldberg@wjlaw.net

Other Counsel of Record:
Assistant Attorney General, Lindsey McCallister
Office of the Attorney General

Post Office Box 11549
Columbia, South Carolina 29211

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndera Benjamin, Circuit Court Judge

RECEIVED

JAN 24 2020

S.C. SUPREME COURT

Case No. 2016-CP-40-4676

David Keith McElveen, SCDC # 321043, ... Appellant

v.

State of South Carolina, ... Respondent.

RICHLAND COUNTY
FILED
2020 FEB -7 AM 11:38
JEANNETTE MCBRIDE
C.C.P. S.C.

PROOF OF SERVICE

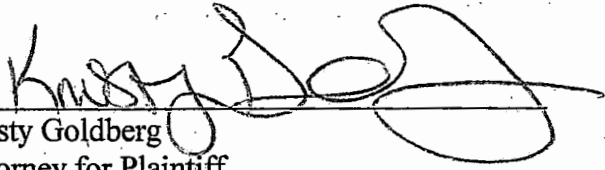
Personally appeared before me, Kristy Goldberg, Esquire, who being duly sworn, deposes
and states:

She was the counsel of record for Applicant during the PCR matter;

Service by mail is proper in this instance; and

She has served the NOTICE OF APPEAL on the following party on January 21, 2020 by
depositing one copy in the U.S. Mail, postage prepaid:

Assistant Attorney General, Lindsey McCallister
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211


Kristy Goldberg
Attorney for Plaintiff

3600 Forest Drive, Suite 204

Columbia, South Carolina 29204
kggoldberg@wjlw.net

Other Counsel of Record:
Assistant Attorney General, Lindsey McCallister
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

ARREST WARRANT

2014A4010601157

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

THE STATE

#1409004229-R2

against

David Keith Mcelveen

Address:

Columbia, SC 29205-

Phone: SSN:

Sex: M Race: W Height: 6 3 Weight: 200

DL State: SC DL #:

DOB: Agency ORI #: SC0400000

Prosecuting Agency: Richland County Sheriff

Prosecuting Officer: John Carwell, JR - 1227

Offense: Robbery / Armed Robbery, robbery while armed or

allegedly armed with a deadly weapon

Offense Code: 0139

Code/Ordinance Sec: 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant DAVID MCELVEEN

on 10/29/14

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Richland County General Sessions

1701 Main Street

P O Box 192

Columbia, SC 29202

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

Personally appeared before me the affiant John Carwell, JR

being duly sworn deposes and says that defendant David Keith Mcelveen

did within this county and state on or about 9/29/2014

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

in the following particulars: Richland / Lykesland Magistrate

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on or about 09/29/2014 while at [REDACTED] ST in the WAVERLY Mag Dist of Richland County it is believed that one DAVID K. MCELVEEN did commit the crime of ARMED ROBBERY in that he did drive his two co-defs to the incident location in a 2009 Green Toyota Camry in an attempt to steal \$30,000. in US currency. The two co-defs did force their way into the residence during the hrs of darkness after the homeowner opened the door demanding the money at gunpoint. The co-defs then pushed the victim to the couch stealing his wallet & cell phone after he told the defs he did not have the money. The male victim was able to follow the defs in his vehicle after they fled the scene. The defs then fled the vehicle they were riding in after the victim hit them with his vehicle. The def's cell phone was found between the driver's seat & the center console, which contained text messages referencing the robbery. A co-def has provided a statement implicating the def. Affiant & others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

Affiant's Address 5623 Two Notch Road

Columbia, SC 29223-

Affiant's Telephone (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 9/29/2014

defendant David Keith Mcelveen

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland / Lykesland Magistrate

) as set forth below:

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 10/17/2014

Signature of Issuing Judge

Michael Ronald Davis

Judge Code: 5458

(L.S.)

Judge's Address 1403 Caroline Road

Columbia, SC 29209-2609

Judge's Telephone (803)576-2500

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL Form Approved by S.C. Attorney General April 23, 2003 SCCA 518

OCT 22 2014

CERTIFIED TRUE COPY OF ORIGINAL FILED

Jannette W. M. Bride S.C. REG. S.

RICHLAND COUNTY SOUTH CAROLINA

BAIL set by

Judge metts
on 10-29-14
Type and Amount:
Name of Surety: 500,000 CIS con

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____
Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____
Sentence: _____

JURORS

WITNESSES

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS



STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

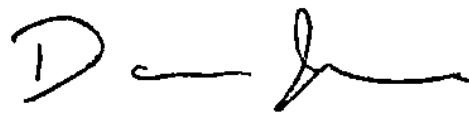
INDICTMENT

At a Court of General Sessions, convened on APRIL 8, 2015, the
 Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That DAVID KEITH MCELVEEN did in Richland County on or about September 29, 2014, commit robbery by feloniously taking from the person or presence of DAVID HOLLIS, by means of force or intimidation, goods or monies of DAVID HOLLIS, such goods or monies being described as LAWFUL UNITED STATES CURRENCY, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he or she was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of §16-11-330(A), SC 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.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) John Carwell JR
- Richland County Sheriff

ARREST WARRANT NUMBER

2014A4010601157

ACTION OF GRAND JURY

TRUE BILL

Connie Lumpkin
Foreperson of Grand Jury

Date:

APR 08 2015

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-40-01590

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2015

92

**THE STATE
vs.**

David Keith Mcelveen

**Indictment for
ROBBERY / ARMED ROBBERY, ROBBERY
WHILE ARMED OR ALLEGEDLY ARMED
WITH A DEADLY WEAPON**

SC Code: 16-11-0330(A)
CDR Code: 0139

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

**CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jeannette W. McBride
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA**

SCANNED

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

153

COUNTY OF Richland
 STATE VS.
David Keith Mcelveen

AKA:
 Race: WHITE Sex: M Age: 28
 DOB: [REDACTED] SS#: [REDACTED]
 Address: [REDACTED]
 City, State, Zip: Columbia, SC 29205
 DL#: [REDACTED] SID#: 01734665

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Margaret Bodman
 Bodman, Margaret Fent

70937
 SC Bar#

X David Mcelveen
 Defendant

T. Mahan
 Attorney for Defendant

74866
 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 18 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. (503 days credit)

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 26-16-25 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$

Clerk of Court/ Deputy Clerk

Court Reporter: Sullivan

SCCA/217 (03/2011)

INDICTMENT/CASE#: 2015GS4001590

A/W#: 2014A4010601157

Date of Offense: 9/29/2014

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

CERTIFIED TRUE COPY
 ORIGINAL FILED
 J. P. Mahan
 C.C.C.P.&G.S.
 RICHLAND COUNTY
 SOUTH CAROLINA

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2127

Sentence Date: March 14, 2016

SCANNED

ARREST WARRANT

2014A4010601156

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

THE STATE

#1409004229

against

David Keith Mcelveen

Address:

Columbia, SC 29205-

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: W Height: 6 3 Weight: 200

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0400000

Prosecuting Agency: Richland County Sheriff

Prosecuting Officer: John Carwell, JR - 1227

Offense: Burglary / Burglary (After June 20, 1985) - First degree

Offense Code: 0079

Code/Ordinance Sec: 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt, with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant DAVID MCELVEEN

on 10/29/14

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Richland County Sheriff's Office

1701 Main Street

P O Box 192

Columbia, SC 29202

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

CLEARED

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

Personally appeared before me the affiant John Carwell, JR

being duly sworn deposes and says that defendant David Keith Mcelveen

did within this county and state on or about 9/29/2014

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

in the following particulars:

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

That on or about 09/29/2014 while at [REDACTED] ST in the WAVERLY Mag Dist of Richland County it is believed that one
DAVID K. MCELVEEN did commit the crime of BURGLARY-1ST DEG in that he did drive his two co-defs to the incident
location in a 2009 Green Toyota Camry in an attempt to steal \$30,000. in US currency. The two co-defs did force their way into the
residence during the hrs of darkness after the homeowner opened the door demanding the money at gunpoint. The co-defs then
pushed the victim to the couch stealing his wallet & cell phone after he told the defs he did not have the money. The male victim
was able to follow the defs in his vehicle after they fled the scene. The defs then fled the vehicle they were riding in after the victim
hit them with his vehicle. The defs cell phone was found between the driver's seat & the center console, which contained text
messages referencing the robbery. A co-def has provided a statement implicating the def. Affiant & others are witness to prove

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

Affiant's Address 5623 Two Notch Road

Columbia, SC 29223-

Affiant's Telephone (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 9/29/2014 defendant David Keith Mcelveen

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland / Lykesland Magistrate

) as set forth below:

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable

Sworn to and subscribed before me

on 10/22/2014

Signature of Issuing Judge

Michael Ronald Davis

Judge Code: 5458

(L.S.)

Judge's Address 1403 Caroline Road

Columbia, SC 29209-2609

Judge's Telephone (803)576-2500

Issuing Court: ☒ Magistrate☐ Municipal☐ CircuitORIGINAL Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

OCT 22 2014

By [REDACTED] violate the criminal laws of the
Richland / Lykesland Magistrate

CERTIFIED TRUE COPY
OF ORIGINAL FILED
JAN 18 2015
RICHLAND COUNTY
SOUTH CAROLINA

BAIL set by

WITNESSES

155 Judge metts
on 10-29-14

Type and Amount:

Name of Surety: 500,000 CIS con.

PRELIMINARY HEARING held by

Judge _____

on _____

Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS



STATE OF SOUTH CAROLINA)

INDICTMENT

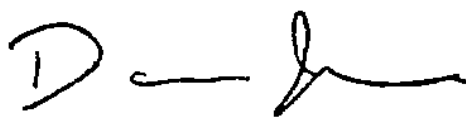
COUNTY OF RICHLAND)

At a Court of General Sessions, convened on APRIL 8, 2015, the
Grand Jurors of Richland County present upon their oath:

BURGLARY, 1ST DEGREE

That David Keith Mcelveen did in Richland County on or about September 29, 2014, enter the dwelling of DAVE HOLLIS located at [REDACTED] STREET, without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight, the defendant or another participant in the crime was armed with a deadly weapon AND/OR did cause physical injury to a person who was not a participant in the crime AND/OR did use or threaten the use of a dangerous instrument AND/OR did display what was or what appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun or other firearm, AND/OR the entry or remaining in the dwelling did occur in the nighttime; in violation of Section 16-11-0311(A), Code of Laws of South Carolina, 1976, as amended.

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


DAN JOHNSON, SOLICITOR

WITNESSES

(S) John Carwell JR
- Richland County Sheriff

ARREST WARRANT NUMBER

2014A4010601156

ACTION OF GRAND JURY

TRUE BILL

Cornie Lupton
Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-40-01599

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2015

92

THE STATE
vs.

David Keith Mcelveen

Indictment for
BURGLARY / BURGLARY (AFTER JUNE
20, 1985) - FIRST DEGREE

SC Code: 16-11-0311
CDR Code: 0079

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Heather W. W. Wade
C.C.C.P.S.G.S.
RICHLAND COUNTY
SOUTH CAROLINA.

SCANNED

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Richland

VS.

David Keith Mcelveen

AKA:

Race: WHITE Sex: M Age: 28

DOB: SS#: 01734665

Address:

City, State, Zip: Columbia, SC 29205

DL#: SID#: 01734665

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Burglary / Burglary (After June 20, 1985) - First degree

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Margaret Bodman
Bodman, Margaret Fent70937
SC Bar#David McElveen
Defendant

Attorney for Defendant

74886
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 22 ^{TV} days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. (503 days credit)☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-43Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ca
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS4001599

A/W#: 2014A4010601156

Date of Offense: 9/29/2014

S.C. Code § : 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

CERTIFIED TRUE COPY
OF ORIGINAL
JANETTE W. BRIDGES
C.C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

PTUP

_____ days/hours Public Service

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel;
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code:

Sentence Date:

March 14, 2016