

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Florence County
Thomas A. Russo, Circuit Court Judge

RECEIVED

APR 29 2013

S.C. Supreme Court

TERRENCE A. BAKER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

DAVID ALEXANDER
Appellate Defender

ALAN WILSON
Attorney General

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

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT	1
APPLICATION FOR POST-CONVICTION RELIEF	12
RETURN	18
POST-CONVICTION RELIEF HEARING TRANSCRIPT	22
ORDER OF DISMISSAL	43
INDICTMENT	49
SENTENCING SHEETS	52

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE	)	2011-GS-21-1610
	)	
	)	
State Of South Carolina	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Terrence A. Baker	)	)
<u>DEFENDANT</u>	)	October 4, 2011
		Florence, South Carolina

B E F O R E:

THE HONORABLE WILLIAM H. SEALS, JR., JUDGE.

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

PATRICIA S. PARR, ASSISTANT SOLICITOR
Attorney for the State

MICHAEL BELL, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

KESHIA REED.
Official Court Reporter

I N D E X

(WHEREUPON, there were no witnesses called.)

1 MRS. PARR: May it please the Court.

2 THE COURT: Sure.

3 MRS. PARR: This is indictment 2011-1616 against
4 Terrence Antonio Baker. This matter has been to the grand
5 jury. He's pleading guilty to three counts of forgery
6 less than \$10,000. The State has agreed to a three year
7 cap. Actually, the State would also want the Court to
8 require the defendant to make restitution to the two
9 victims. I put the amounts on the plea sheet.

10 THE COURT: I can't read it. But you got it on
11 there?

12 MRS. PARR: Yes, I have it on there. I just put
13 it on there because on the back it had comments on there.

14 THE COURT: And restitution is on there?

15 MRS. PARR: Yes, restitution is on each one of
16 them.

17 THE COURT: Mr. Baker, you are pleading guilty
18 to forgery value less \$10,000, which carries up to five
19 years in jail; is that correct?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And on that particular instance,
22 that is indictment 1610. Do you agree that restitution to
23 Willa Powers in the amount of \$1,074; is correct?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. In regards to indictment

1 1610, you are also pleading guilty to another count of
2 forgery, which also carries up to five years in jail. Do
3 you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you agree that restitution to a
6 David Townsend in the amount of \$1,180.96 is proper?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And you have another indictment for
9 forgery, which also carries up to five years in jail; is
10 that correct?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Is there any restitution on that
13 particular indictment?

14 MRS. PARR: No, Your Honor, it's put all in one.

15 THE COURT: All right. You understand that
16 technically you're facing up to 15 years in jail today?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Understanding that, you still want
19 to go forward with this plea?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You in the courtroom when I went
22 over your rights to a jury trial?

23 THE DEFENDANT: Yes, I was.

24 THE COURT: Did you understand those rights?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: You want to give up your right to a
2 jury trial and plead guilty?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You satisfied with your lawyer?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Has anybody promised you anything
7 for a reward or gift to get you to plead guilty?

8 THE DEFENDANT: No, sir.

9 THE COURT: Anybody threatening you or coercing
10 you into pleading guilty?

11 THE DEFENDANT: No, sir.

12 THE COURT: Are you under the influence of any
13 drugs or alcohol at this time?

14 THE DEFENDANT: No, sir.

15 THE COURT: Are you guilty?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Have you understood all of my
18 questions?

19 THE DEFENDANT: Yes, I have.

20 THE COURT: Have you answered me truthfully?

21 THE DEFENDANT: Yes, I have.

22 THE COURT: Solicitor.

23 MRS. PARR: May it please the Court, Your Honor,
24 on May 26th, the defendant -- on May 25th, the defendant
25 presented checks, counterfeit checks to -- Court's

1 indulgence a moment. On May 25th, the defendant presented
2 a check to Willa Power. It's called a convenient store
3 Short Trip Number Nine and the checks were counterfeit on
4 the account of C.A. Restaurant Partners drawn at First
5 Citizens Bank for a check made payable to her. In that
6 check when she sent it, it came back to be counterfeit.
7 The defendant actually presented another check to her on
8 June 2nd 2011 as well. And that's why the total is as is
9 that we're requesting for Short Trip.

10 Then the defendant went to Save-A-Step here in
11 Florence and presented counterfeit checks in that
12 businesses owned by Mr. David Townsend. One check he
13 attempted to present and get payment for, but it was not.
14 But there were two that he did cash in. One was in the
15 amount of \$651.43 and another one in the amount of
16 \$529.51, that's why Mr. Townsend is requesting restitution
17 in the amount of 1,180.96.

18 In terms of a prior record, the defendant has
19 conviction for B&E of a motor vehicle in '92, '93 grand
20 larceny, also March 31st '93 conviction for B&E of a motor
21 vehicle, October of '93 burglary second nonviolent and
22 petty larceny, April 3rd '96 a petty larceny and burglary,
23 September 8th 2002 blue light, operate of an uninsured
24 vehicle, 2003 possession of cocaine base first, 2004 grand
25 larceny, 2009 forgery, May 27th '09 a CDV, September 27th

1 2009 CDV second, December 21st 2010 given false
2 information, driving under suspicion.

3 THE COURT: All right. I will accept the plea.
4 I'll be glad to hear from you, Mr. Bell.

5 MR. BELL: Thank you very much, Your Honor.
6 Four checks here cashed, Judge, succumb to easy money of
7 the counterfeit check, which as I told you in our previous
8 plea is easy money up front. And when you cash them,
9 you're going to get there is no way to get caught. So it
10 certainly short term gratification at work. And almost
11 every forgery and counterfeit check that was seize, it's
12 no explanation for doing that other than short term money
13 problems when you basically get people that are out of
14 work and having problems. But he's been in jail for 114
15 days. He's been in some trouble before. I asked him
16 what's different now that would make you a safer person if
17 you out on the street, that some of the times in the past
18 when you got in trouble again been in a domestic
19 situation. That have been fight for custody of his kids.
20 He got temporary custody of them. Of course, right now
21 he's got a sister keeping them while he's in jail, but
22 he's got three kids two, three and eight years old. So he
23 desperately wants to get out to help them. Having three
24 kids and no job, would be a recipe for diaster. He tells
25 me he can do work with a landscape company, so that he

1 would have income, responsibility for these kids. He
2 seems sincerely to want to get out and to try to pay
3 restitution for these checks, Your Honor. I would ask you
4 to accept the recommendation concurrent. I would ask you
5 to accept the three year cap. I would ask you to listen
6 to him and to consider if perhaps he's worth the risk of
7 probation and ordering restitution.

8 Certainly, if you took that chance with him and
9 he misstep one time, he'll be gone serving substantial
10 time. I would ask you to consider that, Your Honor. He's
11 been articulate with me in expressing his desire to be
12 with his kids and being someone at work. And I would ask
13 you listen to him and consider him for a possibility of
14 that. His record is not great, but it's not -- it's a
15 situation he can't do anything about that now. The only
16 thing he can do about it in the future and I like you to
17 listen.

18 THE DEFENDANT: Your Honor, I'm not going to
19 make this long. I'm going to make this simple. I been in
20 the court system a couple of times. This time right here
21 it's checks. I did them, I cashed them. At the time, I
22 needed the money real bad. I didn't have job. I had some
23 things going on and I made a mistake. But I got a job now
24 and I was working already before that, but this job I have
25 it's a pretty good job. I'm making pretty good money. I

1 can go to work as soon as possible. I mean, this week as
2 soon as I leave, Your Honor. I been getting business from
3 my employer. And the reason he isn't here today is
4 because they got a real god job going on and I told him it
5 wouldn't be too bad if he couldn't come or not. My mother
6 she isn't here today and I have no one with me right now.
7 She has taken ill the week before last, very serious.
8 She's forced into retirement this month coming up. She
9 can't go back to work, so I'm going to have to start
10 taking care of her for one thing. Right now my sister is
11 taking care of my kids. She's watching over them.

12 During this four month process, I been going
13 back and forth fighting custody and I have been granted
14 custody of my three kids something I been going through
15 for a good little while now. So this four months I did,
16 it gave me a chance to get myself all the way together.
17 If you give me the chance to get out and get this job, go
18 back to work, pay this restitution off cause that's
19 something I really want to do because these two places I
20 been going to they kind of like a community place and I
21 see these people all the time. So I want to kind of make
22 myself back all right with them.

23 THE COURT: All right. What I'm going to do in
24 reference to the first forgery with Willa Powers, sentence
25 of the Court is that the defendant is committed to the

1 state department of corrections for a term of three years,
2 be given credit for 114 days.

3 In regards to the indictment in reference to
4 David Townsend, sentence of the Court is three years, be
5 given credit for 114 days. And those two are going to be
6 consecutive. In reference to the other forgery, time
7 served. I'm not even going to order restitution cause he
8 ain't gone pay it. We just wasting our time.

9 END OF REQUESTED TRANSCRIPT

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

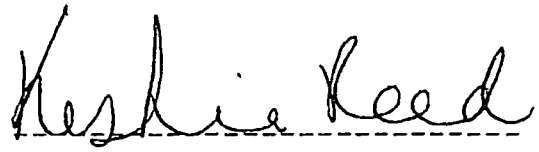
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter and Notary Public
in and for the State of South Carolina At Large, do hereby
certify that the above-entitled cause was heard as
hereinafter set out; that I was authorized to and did
transcribe the said proceedings; and that the foregoing
and annexed paged, numbered 1 through 11, inclusive,
constitute a true and accurate transcription of my
stenographic report of the said cause taken during the
said hearing. In the Court of General Sessions for
Florence County, South Carolina, on the 4th day of
October, 2011.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto. In witness
whereof, I have hereunto affixed my signature this 9th day
of May 2012.


Keshia Reed, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

County of Florence

IN THE COURT OF COMMON PLEAS

Terrence A. Baker #32832
Full name and prison number (if any) of Applicant

2012 - CP 21.38

State of South Carolina

CERTIFIED: A TRUE COPY APPLICATION FOR

Clerk of Court
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention MANNING CORRECTIONAL INSTITUTION
502 BECKMAN DR COLUMBIA SC 29103
2. Name and location of Court which imposed sentence FLORENCE COUNTY
GENERAL SESSIONS - 12th JUDICIAL CIRCUIT
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-21-01610 - FRAUD
 - (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) GUILTY PLEA INVOLUNTARILY AND UNINTELLIGENTLY
- (c) ENTERED
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHMENTS FOR #11
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions. if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

1) INEFFECTIVE ASSISTANCE OF COUNSEL

- A) COUNSEL FAILED TO OBJECT TO THE IMPOSITION OF SENTENCE THAT WAS NOT THE ORIGINAL NEGOTIATED PLEA.
- B) COUNSEL FAILED TO MOTION THE COURT FOR RECONSIDERATION OF THE INCORRECT SENTENCE IMPOSE
- C) COUNSEL FAILED TO OBJECT TO THE SOLICITOR'S FAILURE TO HONOR THE INITIAL NEGOTIATED PLEA AGREEMENT.

GUILTY PLEA INVOLUNTARILY & UNINTELLIGENTLY ENTERED

A) APPLICANT'S GUILTY PLEA IS UNINTELLIGENTLY ENTERED
DUE TO COUNSEL'S FAILURE TO ENSURE THE ORIGINAL
NEGOTIATED GUILTY PLEA PROMISES WERE KEPT
BY THE SOLICITOR.

B) APPLICANT'S GUILTY PLEA IS INVOLUNTARILY MADE
DUE TO COUNSEL'S FAILURE TO INFORM HIM OF
CONSEQUENCES OF SENTENCE & NATURE OF SAID
SENTENCE.

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

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

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

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

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

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

i. MICHAEL BELL
180 N. IRBY ST. FLORENCE SC 29501
ii. _____
iii. _____

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

i. PLEA
ii. _____
iii. _____

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

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

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

Terrence Baker
Applicant
Terrence Baker

SWORN or affirmed to and subscribed before me this
7th day of Feb., 2012.

Elizabeth Warr
Notary Public

My Commission Expires: My Commission Expires May 30, 2017

2012 FEB -9 PM 4:49

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	
	)	
	)	2012-CP-21- 388
Terrence A. Baker, 302932	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the Application for post conviction relief (PCR) filed February 9, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the October 2011 term of the Florence County Grand Jury for forgery (four counts) (2011-GS-21-1610). Michael Bell, Esquire, represented Applicant.

On October 4, 2011, the Applicant pled guilty as indicted. The Honorable William H. Seals, Jr. sentenced Applicant to three years imprisonment on two counts of forgery, to run consecutive, and time served on a third count of forgery. On information and belief, the fourth count of forgery may have been dismissed as a consequence of Applicant's plea, Respondent reserves the right to amend upon further information of the circumstances of Applicant's plea. Applicant filed a Notice

of Appeal, and the South Carolina Court of Appeals dismissed the appeal on November 10, 2011 because service of the Notice of Appeal was not timely.

Attached herewith and incorporated herein are the records of the Florence County Clerk of Court regarding the subject conviction, and Applicant's SCDC records. The guilty plea transcript will be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any additional information or relevant materials.

II.

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of counsel"
2. "Guilty plea involuntarily and unintelligently entered"

Applicant seeks "Vacate conviction and sentence, run sentence concurrent under one 3 yr sentence." as a result of this proceeding.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.

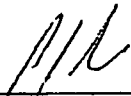
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

5/4, 2012.

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	CASE NO. 2012-CP-21-388
	)	
TERRENCE A. BAKER,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Defendant.	)	
	)	

October 16, 2012
 Florence, South Carolina

B E F O R E:

THE HONORABLE THOMAS A. RUSSO, Judge

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

CHARLES T. BROOKS, Esquire
 Attorney for the Plaintiff

TYSON ANDREW JOHNSON, SR., Esquire
 Office of the Attorney General
 Attorney for the Defendant

KRYSTAL J. SMITH
 Official Court Reporter

I N D E XWITNESS/DESCRIPTION PAGE NUMBER

Terrence A. Baker

Direct Examination by Mr. Brooks..... 5

Cross Examination by Mr. Johnson..... 9

Michael Bell

Direct Examination by Mr. Brooks..... 11

Cross Examination by Mr. Johnson..... 15

Ruling of the Court..... 18

Court Reporter Certification..... 21

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

EXHIBITS

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

(No Exhibits Presented)

1 OCTOBER 16, 2012

2 (WHEREAS this matter was scheduled for a PCR hearing, the
3 applicant appeared along with his counsel of record. The
4 hearing began at 9:59 a.m.)

5 THE COURT: Are y'all ready?

6 MR. JOHNSON: Yes, sir. Your Honor, this is Terrence
7 Baker versus South Carolina. It's 2012-CP-21-388. He was
8 indicted for forgery. Michael Bell represented him and he
9 pled guilty on October 4th, 2011. Judge Seals sentenced him to
10 three years imprisonment on two counts of forgery to run
11 consecutive and time served on the third count of forgery and
12 the fourth count of forgery may have been dismissed is my
13 information as a consequence of his plea.

14 He appealed. The Court of Appeals dismissed the appeal
15 on November 10th, 2011, and he's represented today by Mr.
16 Charles Brooks. At this point, we'll turn it over to Mr.
17 Brooks.

18 THE COURT: All right, Mr. Brooks?

19 MR. BROOKS: Judge, we're ready. I'll call Mr. Baker to
20 the stand.

21 THE COURT: All right. Mr. Baker, if you would, please
22 come around to the witness stand, sir, and if you would, bring
23 with you whatever you need to bring with you and if you need
24 any help with that, just let us know. You got it?

25 THE CLERK: Please place your left hand on the Bible and

DIRECT EXAMINATION OF TERRENCE BAKER BY MR. BROOKS

1 raise -- left hand on the Bible and raise your right hand as
2 much as possible. Do you swear or affirm the testimony you
3 give in this case will be the truth, the whole truth, and
4 nothing but the truth, so help you God?

5 WITNESS: I do.

6 THE CLERK: Please be seated and then state your name for
7 the record.

8 MR. BROOKS: Ready, Judge?

9 WITNESS: Terrence Antonio Baker.

10 MR. BROOKS: Are you ready, Judge?

11 THE COURT: Yes, sir.

12 MR. BROOKS: All right.

13 TERRENCE BAKER, being first duly
14 sworn, testifies as follows:

15 DIRECT EXAMINATION

16 BY MR. BROOKS:

17 Q: Mr. Baker, you had Mr. Bell representing you; is that
18 correct?

19 A: Yes, it is.

20 Q: And it was through the Public Defender Office?

21 A: Yes, it was.

22 Q: And you filed this application for post-conviction
23 relief; is that correct?

24 A: Yes.

25 Q: Okay and you had a -- the basis of your allegation is

DIRECT EXAMINATION OF TERRENCE BAKER BY MR. BROOKS

1 that you had an agreement for three years; is that correct?

2 A: Actually, zero to three years was the cap with the
3 stipulation of all charges being ran concurrent, yes.

4 Q: Okay and Judge Seals had actually given you two
5 concurrent and one consecutive; is that correct?

6 A: Yes, that's -- no, no, no, no, no, no, no, no, no. He
7 gave me time served for one and ran the both -- the other two
8 consecutive.

9 Q: Okay. Now and currently that has changed how much time
10 you thought you were going to do versus how much time they had
11 you classified in; is that correct?

12 A: Yes.

13 Q: Okay and basically, your position is that Mr. Bell --
14 upon the judge giving a consecutive sentence, Mr. Bell should
15 have objected to it; is that correct?

16 A: Exactly.

17 Q: And he should have asked for the plea to be withdrawn
18 based on the judge not accepting the recommendation?

19 A: Yes.

20 Q: Okay and -- and your position is that constituted
21 ineffective assistance of counsel; is that correct?

22 A: Yes.

23 Q: Okay, sir. Now, Mr. Baker, you do understand -- and
24 Judge Russo may -- may chime in on this -- is that the only
25 thing that the Court can do is in effect vacate your sentences

DIRECT EXAMINATION OF TERRENCE BAKER BY MR. BROOKS

1 and put you back in the position that you were in facing the
2 four counts of forgery; do you understand that?

3 A: I understand that if the Court finds in favor of the
4 applicant, it shall -- it shall be appropriate -- they shall
5 order appropriately; you know what I mean? A motion to
6 correct it, that's what I -- this is what I understand.

7 THE COURT: Let me -- let me interject here just so --
8 Mr. Baker, let me clarify things for you and I tell this to
9 all -- everyone who comes before the Court with regards to
10 post-conviction relief. If I were to agree with everything in
11 your application, if I were to agree with you completely ---

12 WITNESS: Yeah.

13 THE COURT: I cannot -- I have no authority ---

14 WITNESS: I understand.

15 THE COURT: --- to do anything other than to put you back
16 in the same position you were in before you entered a plea.

17 WITNESS: Exactly.

18 THE COURT: In other words, I cannot alter your sentence.
19 I cannot change your sentence. I cannot do anything with
20 regards to that sentence, but I can basically put you back
21 where you were before you entered your plea, before you
22 entered into any negotiations, and -- and what that means,
23 sir, is that if there were any charges that were dismissed as
24 a result of your plea, those charges come back and you face
25 those charges again.

DIRECT EXAMINATION OF TERRENCE BAKER BY MR. BROOKS

1 If there were any recommendations or negotiations with
2 the State, those are gone. The State is no longer bound by
3 any -- any recommendations or negotiations. You're not bound
4 by those negotiations as well. It frees up everybody and
5 basically you start over. It goes back to square one and --
6 and you start over. Now, you understand that that's -- that
7 that's the only thing I can do for you if I were to agree with
8 your application?

9 WITNESS: I understand.

10 THE COURT: All right, sir.

11 Q: And -- and just to piggyback on that, I want to make sure
12 you understand, Mr. Terrence, your max out date is July of
13 2014; is that correct?

14 A: July 2014.

15 Q: Okay and you understand that if Judge Russo does what
16 he's explained to you, that could potentially expose you to
17 these four counts of forgery again and that each of them carry
18 five years?

19 A: It does.

20 Q: And you understand that could potentially expose you to
21 twenty years?

22 A: Exactly.

23 Q: Okay.

24 A: I understand that.

25 Q: Knowing that, it is still your desire to ask the Court to

CROSS EXAMINATION OF TERRENCE BAKER BY MR. JOHNSON

1 grant you PCR relief; is that correct?

2 A: Yes, exactly.

3 Q: Okay. Is there anything we haven't covered about ---

4 A: No.

5 Q: --- your case? Okay. Answer any questions the Attorney
6 General has.

7 CROSS EXAMINATION

8 BY MR. JOHNSON:

9 Q: Good morning. As Mr. Brooks covered, you understand you
10 would be facing up to twenty years all over again?

11 A: Yes.

12 Q: And your max out is when?

13 A: 2014.

14 Q: Okay.

15 A: As opposed to if everything was ran concurrent like I
16 agreed to, it would be December this year.

17 Q: Now, did you understand that this was -- this was a
18 recommendation by the State for these charges to be run
19 concurrent?

20 A: I understand that.

21 Q: And do you understand that the Court can accept the
22 recommendation or it cannot accept the recommendation?

23 A: I understand that and the Court accepted the
24 recommendation. It's in the transcript, line 3.

25 Q: I'm sorry, sir. Where are you referring to?

CROSS EXAMINATION OF TERRENCE BAKER BY MR. JOHNSON

1 A: Where the judge accepted the recommendation.

2 Q: Well, I'm on page -- I'm on page 8 just for the Court's
3 reference, and line 3 is where the Court is being asked to
4 accept the recommendation of concurrent and also I would ask
5 you to accept the three year cap. That's on page 8 by Mr.
6 Bell, but it appears that the Court accepted the three years,
7 but not the recommendation for them to run concurrent and
8 instead chose to run them consecutive.

9 A: It shows where -- on page 7, line 3, where the judge
10 himself said, all right, I will accept the plea.

11 Q: So do you understand that -- that he's accepting the plea
12 in its entirety, but not necessarily dealing with the details
13 of the sentence there?

14 A: I only had one plea. That was a zero -- zero to three
15 with a cap and all my charges to be ran concurrent. That was
16 the only plea I had.

17 Q: All right.

18 A: I didn't have two or three pleas.

19 Q: Why do you think the judge decided to run these
20 consecutive instead of concurrent?

21 A: I don't know why he did that.

22 Q: Okay.

23 A: That wasn't my plea. My plea was all charges ran
24 concurrent.

25 MR. JOHNSON: That's all the questions I have, Your

DIRECT EXAMINATION OF MICHAEL BELL BY MR. BROOKS

1 Honor.

2 THE COURT: Anything further?

3 MR. BROOKS: No other questions, Judge.

4 THE COURT: All right. Thank you very much, sir. You
5 may step down.

6 (Whereupon, the witness leaves the stand at 10:09 a.m.)

7 MR. BROOKS: We'd call Mr. Bell to the stand, please.

8 THE COURT: All right, Mr. Bell?

9 THE CLERK: Please place your left hand on the Bible and
10 raise your right hand. Do you swear or affirm the testimony
11 you give in this case will be the truth, the whole truth, and
12 nothing but the truth, so help you God?

13 WITNESS: I do.

14 THE CLERK: Please be seated and state your name for the
15 record.

16 WITNESS: My name is Michael Bell.

17 MICHAEL BELL, being first duly sworn,
18 testifies as follows:

19 DIRECT EXAMINATION

20 BY MR. BROOKS:

21 Q: Mr. Bell?

22 A: Yes, sir.

23 Q: You represented Mr. Baker?

24 A: I did, I did.

25 Q: And that was through your capacity as a public defender?

DIRECT EXAMINATION OF MICHAEL BELL BY MR. BROOKS

1 A: That's correct.

2 Q: And do you recall there being a deal between you and your
3 client and the Solicitor's Office?

4 A: We had a deal that was on the -- I think it's reflected
5 on the plea sheet where Pat Parr recommended concurrent and
6 she recommended a three year cap. She also requested
7 restitution if we were to plea and feeding off that what I
8 requested was probation and restitution considering the amount
9 of time he had been in jail and his -- and asked him to say
10 things that would, given his record, give the judge something
11 to hang his hat on as far as having to do better in the
12 future.

13 Q: And he had been in jail for, according to the transcript,
14 114 days?

15 A: I remember it was a hundred and something. I don't
16 remember exactly.

17 Q: And her recommendation as a solicitor was concurrent; is
18 that correct?

19 A: It's -- it is reflected on the plea sheet that she put
20 concurrent on it and that was our understanding of a three
21 year cap recommended concurrent.

22 Q: Okay. So now when the judge had issued his sentence and
23 issued consecutive time, did you object in any way?

24 A: There wouldn't be any grounds to object. If it had been
25 a negotiated sentence, there would have been a grounds to

DIRECT EXAMINATION OF MICHAEL BELL BY MR. BROOKS

1 object because in a negotiated sentence, you either have to
2 accept the -- the agreement or -- or you have to let them step
3 aside, but on a recommendation the judge is free to accept it
4 or reject it and it would -- there is no grounds for an
5 objection because he hasn't committed any legal error in
6 refusing to accept a recommendation. In this case, he also
7 didn't accept Pat Parr's recommendation that he pay
8 restitution.

9 Q: Did you know how much -- do you recall how much the
10 alleged restitution was?

11 A: It's in the transcript because she gave the amounts to
12 the -- to the judge in her statement that he might be ordered
13 to pay something. My position is whenever you ask for
14 restitution, you ought to get probation. Pat believes in
15 split sentences.

16 Q: So then let me ask you this. Did you file any type of
17 motion for reconsideration?

18 A: I have never, ever had a judge change a sentence on a
19 reconsideration. The one thing I did do was I went and
20 checked the sheet the judge completed to be sure that he
21 didn't just misspeak, that he might have intended to say
22 concurrent and said consecutive, but he had clearly written
23 consecutive on the plea sheets and I think maybe off the bench
24 I might have said something a few days later, not in general,
25 but giving consecutive sentences to somebody and he said,

DIRECT EXAMINATION OF MICHAEL BELL BY MR. BROOKS

1 well, I must have had a good reason to do that.

2 Q: So you ---

3 A: But I didn't -- I didn't file any motion for
4 reconsideration. I have filed motions for reconsideration
5 through the years and never, ever had one changed.

6 Q: Did you consult with Mr. Baker afterwards to see whether
7 or not he wanted you to file anything or whether it was an
8 appeal or an objection or a reconsideration?

9 A: Well, there being no legal error, there would have been
10 no grounds for an appeal. I always -- one thing I tell people
11 is if you don't like your sentence, it's not a grounds for
12 appeal. If it's an illegal sentence, that's a grounds for
13 appeal. There has to be a legal error either at trial or
14 plea. The only -- the only error I've been able to think of
15 in pleas is if it was an illegal sentence.

16 Previously, before some of the cases on -- on indictments
17 being notice documents, we used to could file some things
18 based on flaws in indictments if things didn't go our way.
19 Not anymore.

20 Q: Did you -- and you didn't -- for the record, you didn't
21 file any type of motion to set aside or withdraw the guilty
22 plea; is that correct?

23 A: No. I mean there is no right to have it set aside. Like
24 I said, if it was negotiated, there would have been.

25 MR. BROOKS: No other questions.

CROSS EXAMINATION OF MICHAEL BELL BY MR. JOHNSON

1 THE COURT: Mr. Johnson?

2 CROSS EXAMINATION

3 BY MR. JOHNSON:

4 Q: So this was not a negotiated sentence set forth?

5 A: No, it was not.

6 Q: All right. Instead, it was a request for a cap of three
7 years?

8 A: Right. Had it been a negotiated sentence of three years,
9 I would not have been free to request him to consider
10 probation.

11 Q: That's what I want to ask you about. Part of your
12 strategy in the plea was you had the -- you reserved the
13 ability to ask for probation; is this true?

14 A: That's correct.

15 Q: Now, if you had a negotiated sentence, that would not
16 have been possible?

17 A: All you can ask for is what you've negotiated.

18 Q: Did you -- did you feel it was entirely possible that the
19 judge actually could grant probation in this case?

20 A: Well, he had been in jail for an amount of time.
21 Unfortunately, he had a record for the same thing, which was a
22 minus, but ninety percent of the time judges are going to
23 accept recommendations.

24 Q: And this wasn't ---

25 A: And then there are -- there are exceptions.

CROSS EXAMINATION OF MICHAEL BELL BY MR. JOHNSON

1 Q: This wasn't the only part of the recommendation that the
2 judge refused to accept?

3 A: I think he very clearly said I'm not going to order
4 restitution because there's no way he's ever going to pay it,
5 but Pat had asked. Pat was asking for restitution. I was
6 asking for probation. The agreement was for a three year cap
7 and for the recommendation of concurrent.

8 Q: All right. So after the plea was over, you checked to
9 see if he misspoke, the judge misspoke possibly. You checked
10 that; correct?

11 A: That's correct.

12 Q: You checked the plea sheet to ensure what he had written
13 down was what he had said in court; right?

14 A: That's right.

15 Q: All right. What else could you have done?

16 A: I mean I could have filed a motion for reconsideration.
17 Like I said, every one I've ever done has been fruitless and I
18 don't see that an appeal would be a -- would be viable.
19 Apparently, he got someone else to file one.

20 Q: Well, let me ask you this. Immediately after the judge
21 issued the sentence, did Mr. Baker say, hold up, wait up, this
22 isn't right?

23 A: Well, generally they will escort them out right after the
24 sentence.

25 Q: He didn't immediately say anything to you about this on

CROSS EXAMINATION OF MICHAEL BELL BY MR. JOHNSON

1 his way out?

2 A: Not that I recall.

3 Q: All right.

4 A: Obviously, you know, it wasn't what we were hoping for or
5 looking for. It's just it's in the judge's discretion what
6 the sentence is.

7 MR. JOHNSON: No further questions, Your Honor.

8 THE COURT: Anything further, Mr. Brooks?

9 MR. BROOKS: No other questions.

10 THE COURT: Thank you, Mr. Bell. You may step down, sir.

11 (Whereupon, the witness leaves the stand at 10:17 a.m.)

12 MR. BROOKS: Judge, that's the applicant's case.

13 THE COURT: All right. Anything further from the State?

14 MR. JOHNSON: Nothing further, Your Honor.

15 THE COURT: I'll be happy to hear from the attorneys ---

16 MR. BROOKS: Judge ---

17 THE COURT: --- with any remarks.

18 MR. BROOKS: It's Mr. Baker's position that because Mr.
19 Bell did not try to withdraw his plea and did not try to file
20 any objection to Judge Seals' sentence or any type of appeal
21 that that constitutes ineffective assistance of counsel and as
22 he has requested, we feel he is entitled to post-conviction
23 relief and his sentences set aside and for him to start over
24 and we would respectfully ask the Court to do that.

25 THE COURT: All right. Mr. Johnson?

1 MR. JOHNSON: I appreciate Mr. Brooks' advocacy, but in a
2 case such as this with overwhelming evidence, Mr. Brooks
3 [sic.] received the benefit of a very favorable sentence of
4 ---

5 MR. BROOKS: Mr. Baker.

6 MR. JOHNSON: Mr. Baker.

7 MR. BROOKS: Okay.

8 MR. JOHNSON: I'm sorry, my apologies. Mr. Baker -- Mr.
9 Baker received a very favorable sentence when he was facing
10 considerably more time, twenty years, perhaps fifteen at best,
11 and he got the best deal possible and he received
12 representation that as you've heard from the testimony really
13 could not have been any better. So we would ask that the case
14 be denied and dismissed.

15 RULING OF THE COURT

16 THE COURT: All right. The -- the problem here and the
17 issue here is that Mr. Baker through negotiations through his
18 lawyer, Mr. Bell, was able to get the State to agree to
19 dismiss some charge and to make a recommendation to the Court
20 and ask the Court to consider not sentencing Mr. Baker to more
21 than three years at maximum and was seeking restitution and
22 that the Court would run these sentences concurrent and the
23 State did, in fact, make that recommendation to the Court.

24 As Mr. Bell indicated in his testimony earlier, the Court
25 is not bound by recommendations. It is just that; it is a

1 recommendation. The Court can accept a recommendation; the
2 Court can refuse to accept a recommendation.

3 Earlier in Mr. Baker's testimony, he was saying that the
4 Court accepted the recommendation and that's not accurate.
5 The transcript is clear the Court went through several
6 qualifying questions which the Court does with all guilty
7 pleas to determine whether or not a plea is entered into
8 freely, voluntarily, and intelligently, and at the conclusion
9 of that, he then got Ms. Parr to give a recitation of the
10 facts and at the conclusion of that, the Court simply stated
11 -- and I'm quoting directly from the transcript -- all right,
12 I will accept the plea. That -- that clearly is accepting the
13 guilty plea.

14 It has nothing to do with I'm accepting the
15 recommendation because clearly the Court did not accept the
16 recommendation, nor did it accept Mr. Bell's request for a
17 probationary sentence in an effort to allow restitution to be
18 paid. The Court did not allow restitution. It did not take
19 the recommendation of restitution. The Court did not order
20 restitution and it did not honor the -- the concurrent portion
21 of that recommendation.

22 But again, as I stated earlier, the Court is not bound by
23 recommendations. Mr. Bell I think stated it clearly and
24 accurately in his testimony. If the Court -- if this had been
25 a negotiated sentence, then the Court would have either had to

1 have accepted the negotiations or allowed the defendant to
2 withdraw his plea. That's not what we had here.

3 This was simply a recommendation and in that case, in a
4 recommendation, the Court can accept the recommendation or
5 sentence how the Court sees appropriate within the confines of
6 the law and the statutes and that did occur here. There was
7 no appeal, but there was no grounds for appeal because the
8 Court is well within its right to and discretion to deny or
9 reject a recommendation.

10 Having said all that, it does appear that there has been
11 nothing in the record to indicate to the Court that the
12 application is -- is proper or should be granted. I'm going
13 to respectfully deny the application. Thank you.

14 MR. BROOKS: Thank you, Judge.

15 MR. JOHNSON: Thank you, Your Honor.

16 (Whereupon, the proceedings end at 10:22 a.m.)

17

18 --- END REQUESTED TRANSCRIPT ---

19

20

21

22

23

24

25

1 STATE OF SOUTH CAROLINA)
2) CERTIFICATE
3 COUNTY OF FLORENCE)
4

5 I, the undersigned, Krystal J. Smith, Official Court
6 Reporter for the Twelfth Judicial Circuit of the State of
7 South Carolina, do hereby certify that the foregoing is a
8 true, accurate, and complete Transcript of Record of all the
9 proceedings had and evidence introduced in the hearing of the
10 above captioned case, relative to appeal, in the Court of
11 Common Pleas for Florence County, South Carolina, on the 16th
12 day of October, 2012.

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

15
16 Krystal J. Smith

17 Court Reporter
18

19 Florence, South Carolina

20 December 24, 2012
21
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Terrence A. Baker, # 302932,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2012-CP-21-388

ORDER OF DISMISSAL

FILED
2012 OCT 29 PM 3:05
COMMIE REEL-SHEARIN
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 9, 2012. Respondent made a timely Return. The Court convened an evidentiary hearing into the matter on October 16, 2012, at the Florence County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, Esquire. Tyson Andrew Johnson, Sr., Esquire of the South Carolina Attorney General's Office represented Respondent.

At the hearing, the Applicant testified on his own behalf. Also testifying was Michael S. Bell, Esquire. This Court had before it the PCR Application, the State's Return, the records of the County Clerk of Court, the transcript, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the October 2011 term of the Florence County Grand Jury for forgery (four counts) (2011-GS-21-1610). Michael S. Bell, Esquire, represented Applicant.

1 of 5

CERTIFIED: A TRUE COPY

Commie Reel-Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

On October 4, 2011, the Applicant pled guilty as indicted. The Honorable William H. Seals, Jr. sentenced Applicant to three years imprisonment on two counts of forgery, to run consecutive, and time served on a third count of forgery. Applicant's other charges were dismissed as a consequence of Applicant's plea. Applicant filed a Notice of Appeal, and the South Carolina Court of Appeals dismissed the appeal on November 10, 2011 because service of the Notice of Appeal was not timely.

ALLEGATIONS

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

1. "Ineffective assistance of counsel"
2. "Guilty plea involuntarily and unintelligently entered"

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. 17-27-80.

Ineffective Assistance of Counsel

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged as a ground for

relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

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, 385 S.E.2d at 625 (citing Strickland, supra). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Failure to object to sentence

Applicant testified his counsel was ineffective because when he was given consecutive sentences, he felt they should have been concurrent, and that his counsel should have objected to the consecutive nature of the sentences. This was a sentence where there was a recommendation from

the state for a cap of three years and restitution. Applicant indicated at the hearing that he knew he was facing up to fifteen years imprisonment, and the transcript of his plea also supports this at page

4. Counsel testified he asked for a three year cap but the judge chose to not honor the request for concurrent sentences and sentence Applicant to two consecutive three year terms. Counsel indicated that he checked the plea sheet to see if the judge mis-spoke, and since he saw no legal error, he felt the sentences given as consecutive were appropriate and what the court intended. The sentencing judge also disregarded the State's request for restitution, indicating "we are just wasting our time."

Tr. P 10.

Whereas Applicant has styled his complaints against his counsel as a failure to correct judicial inadvertence, or scrivener's error, this Court finds there was no error in the sentences being run consecutively, and further notes that the sentencing sheet also reflects that the terms are to be run consecutive, which appears to be something the plea judge considered and subsequently made a conscious decision to do.

I find that counsel's performance was not deficient under these circumstances. Counsel worked diligently toward a favorable plea for his client. Applicant candidly admitted his guilt and freely sought to pursue what he hoped would be an advantageous plea offer that would minimize his sentence exposure, but the sentencing judge chose to not accept certain terms of the plea discussions between the State and counsel. Applicant has not proven prejudice in this case because the evidence shows the sentence he was given was within the legal range for his charges, was intentional, and exactly as the sentencing judge intended it to be. I find counsel's actions were reasonable under prevailing professional norms, and therefore this claim is denied.

Other Allegations

No other allegations were raised or testified to at the PCR hearing. Therefore, any additional allegations raised in the PCR Application or amendment are deemed waived because no evidence was presented.

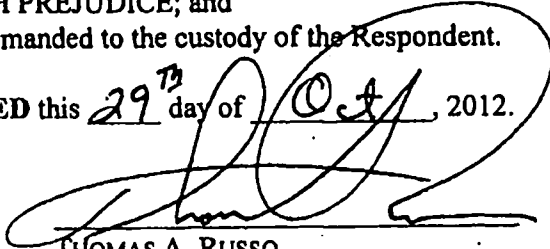
CONCLUSION

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

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 29th day of Oct, 2012.



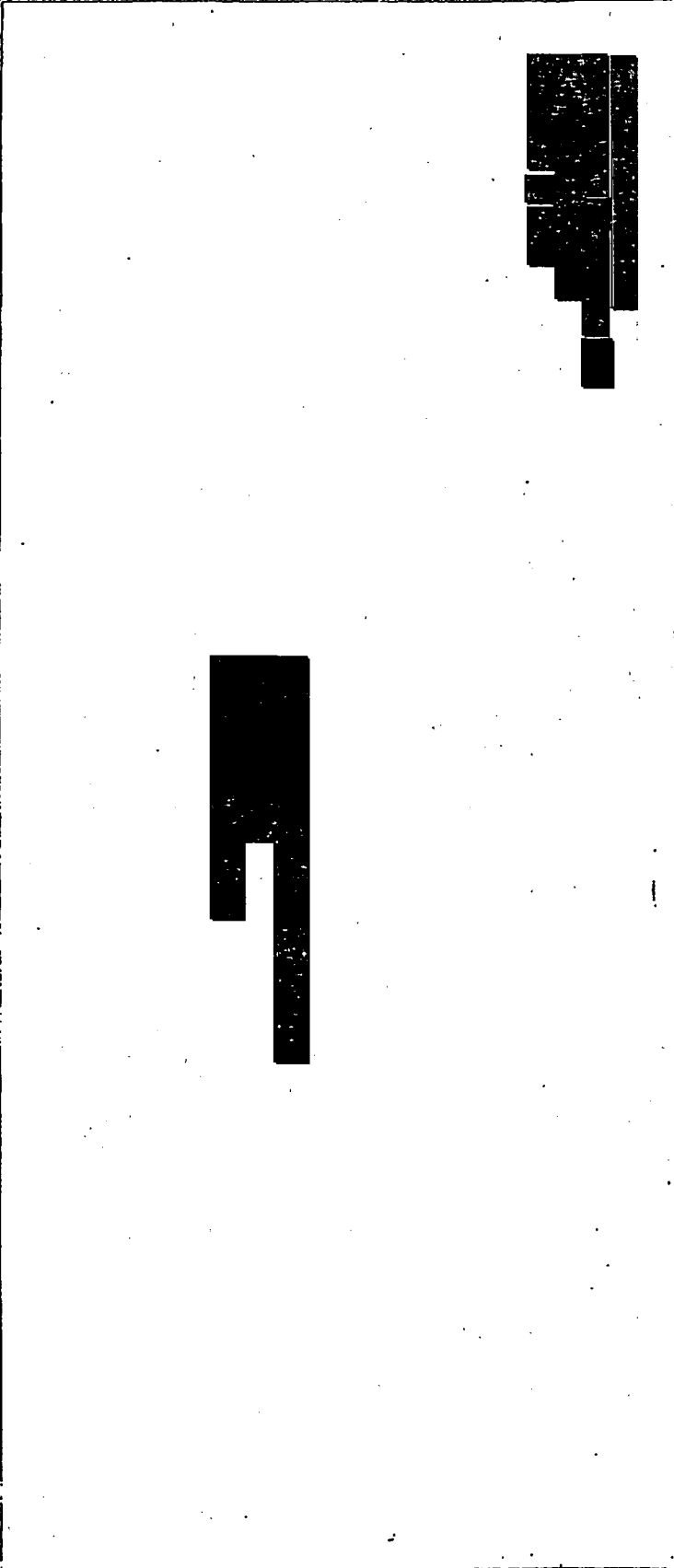
THOMAS A. RUSSO
Presiding Judge
12th Judicial Circuit

Florence, South Carolina.

FILED
2012 OCT 29 PM 3:05
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

5 of 5

CERTIFIED: A TRUE COPY
Connie Reel Shearin
CLERK OF COURT C.P & G.S
FLORENCE COUNTY, S.C.



Freedom FOREVER
Justice FOREVER
Equality FOREVER

WITNESSES

James Allen Florence County Sheriff

DOCKET NO. 2011-GS-21-1610

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

OCTOBER TERM 2011

THE STATE

VS.

TERRENCE ANTONIO BAKER

PATRICIA S PARR

ARREST WARRANT NUMBER

M273649 M273650 M273652

M273775

ACTION OF GRAND JURY

FILED

Indictment for
FORGERY
(4 COUNTS)

David E. Davis
Foreperson of Grand Jury
Date: 9-29-11

VERDICT

Foreperson of Petit Jury

Date:

2011 SEP 29 PM 1:27
COMM. REEL-SHEARIN.
CCCP & GS
FLORENCE COUNTY, SC

FILED

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)

INDICTMENT FOR

FORGERY
 (4 COUNTS)

At a Court of General Sessions, convened on SEPTEMBER 29, 2011 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- FORGERY

That Terrence Antonio Baker did in Florence County on or about May 26, 2011, with intent to defraud, falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged or counterfeited, or utter and publish as true any false, forged or counterfeited writing or instrument of writing, or did willingly act or assist in any of the foregoing, to wit: counterfeit check # 61948 on the account of CA Restaurant Partners on First Citizens Bank payable to Terrence Baker in the amount of six hundred fifty one dollars and forty-three cents (\$651.43) , where the amount of the forgery was less than ten thousand dollars, in violation of Section 16-13-0010(A), S. C. Code of Laws, 1976, as amended.

COUNT TWO- FORGERY

That Terrence Antonio Baker did in Florence County on or about May 25, 2011, with intent to defraud, falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged or counterfeited, or utter and publish as true any false, forged or counterfeited writing or instrument of writing, or did willingly act or assist in any of the foregoing, to wit: counterfeit check # 61949 on the account of CA Restaurant Partners on First Citizens Bank and made payable to Terrence Baker in the amount of five hundred dollars and fifty-three cents (\$529.53) , where the amount of the forgery was less than ten thousand dollars, in violation of Section 16-13-0010(A), S. C. Code of Laws, 1976, as amended.

COUNT THREE – FORGERY

That Terrence Antonio Baker did in Florence County on or about June 3, 2011, with intent to defraud, falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged or counterfeited, or utter and publish as true any false, forged or counterfeited writing or instrument of writing, or did willingly act or assist in any of the foregoing, to wit: counterfeit check # 61950 on the account of CA Restaurant Partners on First Citizens Bank and made payable to Terrence Baker in the amount of five hundred twenty dollars and eighty-five cents (\$520.85) , where the amount of the forgery was less than ten thousand dollars, in violation of Section 16-13-0010(A), S. C. Code of Laws, 1976, as amended.

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR FORGERY (4 COUNTS) WITH THE AFORESAID NAMES(S) OF TERRENCE ANTONIO BAKER SHOWN THEREON:

COUNT FOUR- FORGERY

That Terrence Antonio Baker did in Florence County on or about May 25, 2011, with intent to defraud, falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged or counterfeited, or utter and publish as true any false, forged or counterfeited writing or instrument of writing, or did willingly act or assist in any of the foregoing, to wit: counterfeit check # 61947 on the account of CA Restaurant Partners drawn at First Citizens Bank payable to Terrance Baker in the amount of five hundred twenty nine dollars and fifty-three cents (\$529.53) , where the amount of the forgery was less than ten thousand dollars, in violation of Section 16-13-0010(A), S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Florence
STATE VS.Terrence Antonio Baker

AKA: _____

Race: B Sex: M Age: 38

DOB: _____ SS#: _____

Address: _____

City, State, Zip: _____

DL#: _____ SID#: _____

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

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

TO: Forgery / Forgery, value less than \$10,000INDICTMENT/CASE#: 2011-GS-21-1610A/W#: M273775Date of Offense: 5/25/2011S.C. Code §: 16-13-0010(A)CDR Code #: 3436

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was rest Willa Powers short Trip + 907.4in violation of § 16-13-0010(A) of the S.C. Code of Laws, bearing CDR Code # 3436
☒ 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. ConcATTORNEY: PARR, PATRICIA S 4342 Terrence Baker Michael G. Bell 635
SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 3 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: both
☒ 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. 114 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

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

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 \$ 100.00

§ 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(J) (Vehicle Assessment) \$40/ea \$ 5.00

Proviso 90.5 (SCCJA Surcharge) \$5 \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ 105.00

_____ 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 2157Judge Code: 2157Sentence Date: 10-4-2011Clerk of Court/ Deputy Clerk K. BellCourt Reporter: K. Bell

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Florence

VS.

Terrence Antonio Baker

AKA:

Race: B

Sex: M

Age: 38

DOB:

SS#:

Address:

City, State, Zip:

DL#:

SID#:

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

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

TO: Forgery / Forgery, value less than \$10,000

ct 2

rest

\$1980.94

David Townsend San A St

in violation of § 16-13-0010(A)

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

3436

☒ 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:

PARR, PATRICIA S

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,

for a determinate term of

3

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

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (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(J) (Vehicle Assessment)

\$40/ea

Proviso 90.5 (SCCJA Surcharge)

\$5

3% to County (if paid in installments)

TOTAL

\$

\$105.00

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011-GS-21-1610

A/W#: M273650

Date of Offense: 5/25/2011

S.C. Code § : 16-13-0010(A)

CDR Code #: 3436

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

David Townsend San A St

in violation of § 16-13-0010(A) of the S.C. Code of Laws, bearing CDR Code # 3436

☒ 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:

PARR, PATRICIA S

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,

for a determinate term of

3

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

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (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(J) (Vehicle Assessment)

\$40/ea

Proviso 90.5 (SCCJA Surcharge)

\$5

3% to County (if paid in installments)

TOTAL

\$

\$105.00

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:

Sentence Date:

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

COUNTY OF Florence
STATE VS.Terrence Antonio Baker

AKA: _____

Race: B Sex: M Age: 38DOB: S#: _____Address: 1 _____

City, State, Zip: _____

DL#: _____ SID#: _____

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

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

TO: Forgery / Forgery, value less than \$10,000 D-520INDICTMENT/CASE#: 2011-GS-21-1610A/W#: M273649Date of Offense: 5/26/2011S.C. Code § : 16-13-0010(A)CDR Code #: 3436

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-13-0010(A) of the S.C. Code of Laws, bearing CDR Code # 3436☒ 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. CanATTEST: PARR, PATRICIA SSC Bar# 4342Defendant Terrence BakerAttorney for Defendant Markus BellSC Bar# 635WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of Time Served 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.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (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 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 36-5-2995 (DUI Assessment) \$12 \$ _____

§ 36-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Det/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(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ _____

TOTAL \$ 105.00

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 2011Judge Code: 2157Sentence Date: 10-4-2011Clerk of Court/ Deputy Clerk YHLCourt Reporter: CR

SCCA/217 (03/2011)