

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

—————
Certiorari to Horry County

Honorable William H. Seals, Circuit Court Judge
—————

ROBERT LEE MYERS, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000919
—————

AMENDED APPENDIX
—————

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2017-GS-26-00642, 00646 & 00647

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

MARCH 4, 2019

ROBERT LEE MYERS, JR.,)

Defendant.)

B E F O R E:

Honorable Benjamin Culbertson
Horry County Courthouse
Conway, South Carolina

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

Mary Ellen Walter, Esquire
Attorney for State

Kia Wilson, Esquire
Colon Cagle, Esquire
Attorney for Defendant

Sallie Beth Todd
Circuit Court Reporter

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I N D E X

WITNESS DIRECT CROSS REDIRECT RECROSS

(THERE WERE NO WITNESSES CALLED DURING THIS HEARING.)

Certificate of Court Reporter 39

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE</u>
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1 **THE COURT:** Alright. What are we doing?

2 **MS. WALTER:** Your Honor, this is State of South Carolina
3 versus Robert Lee Myers, Junior, who is charged and true
4 billed in indictment 2017-GS-26-00647 with assault and battery
5 of a high and aggravated nature; 00642, burglary first degree;
6 00643, criminal sexual conduct in the first degree; 00644,
7 kidnapping; 00645, possession of a weapon during a violent
8 crime; and 00646, armed robbery. Your Honor, this matter was
9 first up for trial. It's the State's understanding that the
10 defendant wishes to enter pleas straight to the Court on
11 indictment ending in 642, burglary in the first degree; 646,
12 armed robbery; and 647, assault and battery of a high and
13 aggravated nature. Because he is pleading straight to the
14 Court, there is no agreement as to what the State will request
15 for a sentence, nor is there any agreement as to what will
16 happen with the remaining charges.

17 **CLERK:** Please raise your right hand.

18 **MR. ROBERT LEE MYERS, JR., HAVING BEEN**
19 **DULY SWORN TESTIFIES AS FOLLOWS:**

20 **THE COURT:** Alright. Y'all bear with me for just a few
21 minutes.

22 Alright. Ms. Wilson, you represent Robert Lee Myers,
23 Junior on the charge of burglary in the first degree, armed
24 robbery, and assault and battery of a high and aggravated
25 nature?

1 **MS. WILSON:** Yes, sir. I do.

2 **THE COURT:** Alright. Do you represent him on any of
3 these other charges?

4 **MS. WILSON:** I represent him on everything he's currently
5 facing, Your Honor.

6 **THE COURT:** Okay.

7 **MS. WILSON:** Yes, sir.

8 **THE COURT:** Alright. So, you represent him on those
9 charges as well as criminal sexual conduct in the first
10 degree, kidnapping, and possession of a weapon during the
11 commission of a violent crime?

12 **MS. WILSON:** Yes, sir. That's correct.

13 **THE COURT:** Alright. Have you discussed with your client
14 the charges against him, his rights as a defendant, and the
15 consequences of being convicted of these crimes?

16 **MS. WILSON:** Yes, sir. I have.

17 **THE COURT:** In your opinion, does your client understand
18 the charges against him, his rights as a defendant, and the
19 consequences of being convicted of these crimes?

20 **MS. WILSON:** Yes, sir. He does.

21 **THE COURT:** And does he wish to plead -- I understand he
22 wishes to plead guilty to burglary in the first degree, armed
23 robbery, and assault and battery of a high and aggravated
24 nature; is that correct?

25 **MS. WILSON:** That's correct, Your Honor.

1 **THE COURT:** Do you agree with his decision to plead
2 guilty to those charges?

3 **MS. WILSON:** I do.

4 **THE COURT:** Based upon the information that you have, if
5 this case proceeded to trial do you feel that the State could
6 prove your client's guilty beyond a reasonable doubt?

7 **MS. WILSON:** Yes, sir. I do.

8 **THE COURT:** Has your client received a competency
9 evaluation?

10 **MS. WILSON:** He has, Your Honor.

11 **MS. WALTER:** Can I mark those as exhibits, Your Honor?

12 **THE COURT:** Alright.

13 **MS. WALTER:** Your Honor, State's one is the competency
14 and State's two is criminal responsibility.

15 **THE COURT:** Alright. Ms. Wilson, I understand your
16 client has received an evaluation to determine whether or not
17 he is not only competent to stand trial, but whether or not
18 he's criminally responsible; is that correct?

19 **MS. WILSON:** Yes, sir. That's correct.

20 **THE COURT:** And under both of those reports he was found
21 competent to both stand trial and criminally responsible.

22 **MS. WILSON:** Yes, sir. He was.

23 **THE COURT:** Do you agree with those reports?

24 **MS. WILSON:** Yes, sir. I don't have any reason to
25 disagree with those reports.

1 **THE COURT:** Alright. In your opinion, your client not
2 only understands the charges against him, but has he been able
3 to assist you in the preparation of his defense?

4 **MS. WILSON:** Yes, sir, Your Honor. I do believe he
5 understands everything. I do think it's important to put on
6 the record that my client and I have not been communicating
7 except by mail for the last few months, and that Cole Cagle
8 who is standing here with us at the table today from our
9 office, he's an attorney, Cole was recently assigned to sit in
10 on this case. He has established a rapport as well with Mr.
11 Myers and the most recent communications have been with Mr.
12 Cagle. I think it's important to put that out there so the
13 Court understands that the latest communications that have
14 occurred, have occurred through Mr. Cagle and through his
15 efforts. They have been relayed to me and today, of course,
16 we have all communicated as a group.

17 **THE COURT:** Alright. Do you have any objections to
18 State's Exhibits One or Two?

19 **MS. WILSON:** Neither.

20 **THE COURT:** Alright. State's Exhibit One and State's
21 Exhibit Two are admitted into evidence without objection.

22 **(STATE'S EXHIBITS ONE AND TWO**
23 **ARE ADMITTED INTO EVIDENCE)**

24 **THE COURT:** Alright. Mr. Cagle, you likewise, have
25 assisted Ms. Wilson in the representation of Robert Lee Myers,

1 Junior, particularly on the charges of burglary in the first
2 degree, armed robbery, and assault and battery of a high and
3 aggravated nature?

4 **MR. CAGLE:** I have, Your Honor.

5 **THE COURT:** Alright. In your opinion, does he understand
6 the charges against him and has he been able to assist in the
7 preparation of his defense?

8 **MR. CAGLE:** Yes, sir. I do believe he does.

9 **THE COURT:** Alright. Do you agree with the evaluations
10 that find him not only competent to stand trial, but
11 criminally responsible in these cases?

12 **MR. CAGLE:** Yes, sir, Your Honor.

13 **THE COURT:** Alright.

14 Sir, your name is Robert Lee Myers, Junior?

15 **MR. MYERS:** Yes, sir.

16 **THE COURT:** Alright. Mr. Myers, you have been charged
17 and indicted by the Grand Jury with burglary in the first
18 degree, armed robbery, and assault and battery of a high and
19 aggravated nature. And according to your attorney you wish to
20 plead guilty to all of these charges; is that correct?

21 **MR. MYERS:** Yes, sir.

22 **THE COURT:** Alright. Before I can go over -- or before I
23 can accept your guilty plea, I have to go over some charges
24 with you or some questions with you. The purpose of my
25 questioning is to be sure that you understand the charges

1 against you, that you understand your rights as a defendant,
2 that you understand the consequences of pleading guilty, and I
3 must be sure that you're pleading guilty voluntarily. Now,
4 during the past 72 hours have you taken any medication,
5 consumed any alcohol or drugs, or been under any influence
6 that would affect your ability to know why you're here?

7 **MR. MYERS:** No, sir.

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

9 **MR. MYERS:** Yes, sir.

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

12 **MR. MYERS:** No, sir.

13 **THE COURT:** Alright. Now, even though you've been
14 indicted by the Grand Jury, under the Constitution of the
15 United States you're presumed innocent of all of these
16 charges. And you have the right to have your guilt or
17 innocence determined by a jury trial of your peers. The State
18 bears the burden of proving your guilt beyond a reasonable
19 doubt. You do not have to prove your innocence and you cannot
20 be compelled to testify against yourself. You also have the
21 right to confront and cross examine anybody who testifies
22 against you. If you choose, you can present a defense to
23 these charges. But when you plead guilty you give up all of
24 those rights; do you understand that?

25 **MR. MYERS:** Yes, sir.

1 **THE COURT:** And do you want to give up those rights and
2 plead guilty to these charges?

3 **MR. MYERS:** Yes, sir.

4 **THE COURT:** Alright. Now, for burglary in the first
5 degree that carries a minimum sentence of 15 years in prison
6 and it could carry a maximum sentence of life in prison. Do
7 you understand that?

8 **MR. MYERS:** Yes, sir.

9 **THE COURT:** Do you understand that armed robbery carries
10 a minimum sentence of 10 years in prison and could carry a
11 maximum sentence of 30 years in prison? Do you understand
12 that?

13 **MR. MYERS:** Yes, sir.

14 **THE COURT:** And do you understand that assault and
15 battery of a high and aggravated nature carries up to 20 years
16 in prison? Do you understand that?

17 **MR. MYERS:** Yes, sir.

18 **THE COURT:** So, if you receive the maximum sentence
19 allowed by law, and these sentences were ordered to run
20 consecutively, you could go to prison for the rest of your
21 life? DO you understand that?

22 **MR. MYERS:** Yes, sir.

23 **THE COURT:** Do you understand that the absolute minimum
24 sentence that will have to be imposed by the Court is 15 years
25 in prison?

1 **MR. MYERS:** Yes, sir.

2 **THE COURT:** And do you understand that all of these
3 crimes are classified as a violent crime? What that means, is
4 if you're ever convicted of another violent crime you would
5 not be eligible for probation and you would not be eligible
6 for parole. Because of these violent crimes and the length of
7 time they carry, you would not be eligible for parole on these
8 charges either. Do you understand that?

9 **MR. MYERS:** Yes, sir.

10 **THE COURT:** Do you also understand -- well, for all
11 practical purposes, you would not be eligible for parole. Is
12 he eligible for parole on assault and battery?

13 **MS. WILSON:** Your Honor, my understanding is that that is
14 a non-parolable offense.

15 **THE COURT:** Okay. Alright. So, you're not eligible for
16 parole on any of these. Do you also understand that burglary
17 in the first degree is classified as a most serious crime,
18 armed robbery is classified as a most serious crime, and
19 assault and battery of a high and aggravated nature is
20 classified as a serious crime? Now, what that means is if you
21 are ever convicted of another crime that is classified as a
22 most serious crime or a serious crime then the sentence for
23 that subsequent conviction, the sentence can be enhanced to
24 life in prison without the possibility of parole. And the
25 State will use this guilty plea against you to show two most

1 serious crime convictions on your record and a serious crime
2 conviction on your record to enhance that sentence. Do you
3 understand that?

4 **MR. MYERS:** Yes, sir.

5 **THE COURT:** In other words, say for example if you're
6 ever convicted of another assault and battery of a high and
7 aggravated nature again that ordinarily just carries a
8 sentence of not more than 20 years. But because it would be
9 another serious crime conviction, the State could ask that the
10 sentence be enhanced to life in prison without parole. Do you
11 understand that?

12 **MR. MYERS:** Yes, sir.

13 **THE COURT:** Okay. Alright. Knowing your rights as a
14 defendant, knowing the maximum sentence you could receive,
15 knowing the mandatory minimum sentence that must be imposed,
16 knowing that these are classified as violent crimes that are
17 non-parolable, knowing that two are classified as most serious
18 crimes and one is classified as a serious crime and the
19 consequences of those classifications; do you wish to plead
20 guilty or not guilty to burglary in the first degree?

21 **MR. MYERS:** I plead guilty, Your Honor.

22 **THE COURT:** Do you wish to plead guilty or not guilty to
23 armed robbery?

24 **MR. MYERS:** Guilty.

25 **THE COURT:** Do you wish to plead guilty or not guilty to

1 assault and battery of a high and aggravated nature?

2 **MR. MYERS:** Guilty.

3 **THE COURT:** Alright. Now, you understand that even
4 though you're pleading guilty to these charges that does not
5 affect the pending charges against you for criminal sexual
6 conduct in the first degree, kidnapping, and possession of a
7 weapon during the commission of a violent crime. You're still
8 going to have to face those charges. Do you understand that?

9 **MR. MYERS:** Yes, sir.

10 **THE COURT:** Alright. Has anybody promised you anything
11 or threatened you in any way to get you to plead guilty to
12 these charges?

13 **MR. MYERS:** No, sir.

14 **THE COURT:** Are you pleading guilty voluntarily?

15 **MR. MYERS:** Yes, sir.

16 **THE COURT:** Are you satisfied with your lawyers?

17 **MR. MYERS:** Yes, sir.

18 **THE COURT:** Knowing that you still have these other
19 charges pending against you, do you still want to plead guilty
20 to burglary in the first degree, armed robbery, and assault
21 and battery of a high and aggravated nature?

22 **MR. MYERS:** Yes, sir.

23 **THE COURT:** Are you pleading guilty to these crimes
24 because you committed these crimes?

25 **MR. MYERS:** Yes, sir.

1 **THE COURT:** Alright. I need you to listen carefully
2 while the Solicitor gives me the facts of your case. Okay.

3 **MR. MYERS:** Yes, sir.

4 **MS. WALTER:** Your Honor, I will give you a factual
5 recitation. I would also like at Your Honor's choosing to
6 argue for sentencing. I also have the victim present who
7 would like to address the Court and members of the Myrtle
8 Beach Police Department who would address the Court if you
9 would be so inclined.

10 **THE COURT:** Okay. But, I mean, there's -- well, I'll
11 allow that. But before you get to that there is a
12 recommendation checked on the burglary first degree but there
13 is no recommendation.

14 **MS. WALTER:** No. There would not be.

15 **THE COURT:** Okay. Alright. As long -- I'll allow you to
16 argue sentencing but as long as there is no recommendation to
17 the Court one way or the other.

18 **MS. WALTER:** Okay. So, and I think we've had this issue
19 before, my understanding is that if recommendation is checked
20 it means that Ms. Wilson and I have agreed that the State
21 would recommend a particular sentence to Your Honor. If that
22 is not checked, what the State believes it means, and what I
23 believe that the case law says that it means, is that there is
24 no agreed upon recommendation. In other words, I have not
25 told Ms. Wilson I am going to request 20 years, or 30 years,

1 or 40 years, or 50 years. It's up to the State to argue for
2 whatever we believe is appropriate.

3 **THE COURT:** Well, my understanding of a recommendation is
4 you don't give the Court an opinion and it's up to the Court
5 to make a decision.

6 **MS. WALTER:** I don't think that's the way it's been
7 working here and if Your Honor is not going to -- because
8 logically if he's pleading to the Court then the State is
9 being deprived of any right to argue about sentencing.

10 **THE COURT:** Well, if you -- well, we're just talking
11 about checking the sentencing form, if you'll tell me what you
12 want, what you're asking for and I'll mark that as a
13 recommendation from the State. Now, I can accept that
14 recommendation or I can reject that recommendation. I mean,
15 if you give a recommendation that both of you are happy with
16 then you can make it a negotiated sentence and the State --
17 and then the sentencing Judge accepts it or rejects it
18 outright and that's it. But as far as this, I think it's a
19 little disingenuous to check on the sentencing sheet that
20 there is no recommendation from the State, but that the State
21 is then going to argue for a sentence.

22 **MS. WALTER:** And so, this is -- I don't mean to side
23 track ---

24 **THE COURT:** Right.

25 **MS. WALTER:** --- but this is an issue I think that our

1 office might want to address. Would it be more appropriate if
2 the sentencing sheet said no agreements? I just -- because
3 the way that I have done it, and granted I've only been here
4 for two years ---

5 **THE COURT:** Right.

6 **MS. WALTER:** --- is that if both sides agree on a
7 recommended sentence then it's checked recommendation.
8 Negotiated sentences aren't done all that often and so ---

9 **THE COURT:** Well, they're not done all that often here.
10 They're done quite often in a lot of circuits. A lot of
11 circuits that's pretty much what they do is negotiated
12 sentences, it's when the defense and the State comes to terms
13 and agrees on the sentence to be imposed they put it as a
14 negotiated sentence and then present it to the Judge. Now,
15 some Judge's don't accept a negotiated sentence, some Judge's
16 don't accept a recommendation. They just say give me the
17 facts and I'll make a decision. But if you are going to say I
18 think this defendant should get X number of years, you're
19 making a recommendation to me as to what you think the
20 sentence should be.

21 **MS. WALTER:** And I guess the issue is that there have
22 been -- well, in cases where we are trying to work out a plea
23 offer it will be plea to this charge with a recommended
24 sentence of five years. I'm just putting that out there.

25 **THE COURT:** Right.

1 **MS. WALTER:** And the defense will say no, I don't like
2 that recommended sentence.

3 **THE COURT:** Which they're entitled to.

4 **MS. WALTER:** They're entitled to, but that then ends the
5 negotiation. So, maybe it's just a disconnect with
6 practically speaking how it's being done because if we do not
7 agree on the recommended sentence then there is no guilty
8 plea. So, that's sort of where our disconnect is, at least
9 for me.

10 **THE COURT:** Well, I mean, you're telling me that that's
11 pretty much what's happened in this case. You are going to
12 tell me what you think the defendant should get. Ms. Wilson
13 disagrees with that. She's going to tell me what the
14 defendant should get. So, in effect, both of you are making a
15 recommendation. Ms. Wilson is hoping I accept hers; you're
16 hoping I accept yours.

17 **MS. WALTER:** As long as I'm allowed to address Your Honor
18 as to what the State would like as a sentence, that's fine.

19 **THE COURT:** Well, and I agree, and I will allow you to
20 say that, but I must check this box that says the State is
21 making a recommendation on the defendant's sentencing.

22 **MS. WALTER:** Okay.

23 **THE COURT:** Now, the only difference is there's no place
24 on here which says recommendation by the defendant. So, I
25 can't address that.

1 **MS. WILSON:** And, Your Honor, our understanding was this
2 was without a recommendation, which is why we've been having
3 the back and forth. I understand what the State wants to do,
4 but I personally see it as trying to have two bites at the
5 apple. Either it's without the rec. or it's with it. There
6 are charges that are still going to be outstanding which have
7 also been a part of the problem today. I understand what she
8 needs and wants.

9 **THE COURT:** Okay.

10 **MS. WILSON:** I am also trying to balance that with what I
11 have a duty to do for my client and if she's making a
12 recommendation, I need to know that before we get started.

13 **THE COURT:** Well, and she is. She's going to make a
14 recommendation. So, ---

15 **MS. WALTER:** But to be clear, I have never said that I
16 would stand silent in front of the Court when it came to
17 sentencing. I did not do that.

18 **THE COURT:** Okay. Alright.

19 **MS. WILSON:** To be clear ---

20 **THE COURT:** Hey. Alright. This is what we're going to
21 do. We're going to take a five-minute break. You're going to
22 tell her what your recommendation is going to be and then
23 we're going to come back and we're going to proceed. Either
24 your client can plead guilty and we'll go forward with the
25 rest of the plea, or he can have his jury trial and we'll go

1 forward with whatever pretrial matters we have. And we'll
2 start tomorrow.

3 **MS. WILSON:** Okay. Thank you.

4 **THE COURT:** Aright. Alright let's take a five-minute
5 break.

6 **(COURT IN RECESS)**

7 **THE COURT:** Thank you very much. Please be seated.
8 Let's get Ms. Wilson, Mr. Cagle, and their client back out.
9 Alright, Ms. Wilson, have you had an opportunity to discuss
10 with your client whether or not he wishes to go forward with
11 his guilty plea and that the State will be making a
12 recommendation on sentencing?

13 **MS. WILSON:** Your Honor, I have discussed it with him.
14 Before I go any further, I told him that certainly the State
15 is making a recommendation, that that recommendation is 40. I
16 also told him that he could reject that and go forward without
17 any recommendation from the State on his own. He can still
18 plead to this charge. I am hoping that I was correct in that,
19 but that's my understanding about what he could attempt to do,
20 meaning he would just refuse any offer from the State.

21 **THE COURT:** Well, I mean, he doesn't have to accept an
22 offer from the State. He can make whatever recommendation he
23 wants to ---

24 **MS. WILSON:** Yes, sir.

25 **THE COURT:** --- or you on his behalf.

1 **MS. WILSON:** Yes, sir.

2 **THE COURT:** So, they can recommend that he receive life
3 in prison, and you can recommend that he receives the
4 mandatory minimum sentence.

5 **MS. WILSON:** Yes, sir.

6 **THE COURT:** Then it's going to be up to the Court to make
7 a decision. Okay.

8 **MS. WILSON:** Yes, sir. He understands. I've broken it
9 down to him and he tells me that he still wishes to go
10 forward, Your Honor, with his plea.

11 **THE COURT:** Alright. And do you agree with that
12 decision?

13 **MS. WILSON:** I do, Your Honor.

14 **THE COURT:** Alright. Mr. Myers, you understand that the
15 State will be making a recommendation on what sentence I
16 impose on you for these charges. Do you understand that?

17 **MR. MYERS:** Yes, sir.

18 **THE COURT:** Alright. Now, that is simply a
19 recommendation. I can accept it. I can reject it. I can do
20 whatever I deem is appropriate. The only restriction is that
21 I cannot sentence you to any less than 15 years in prison
22 because that is the mandatory minimum sentence that I must
23 impose. The law doesn't give me any discretion on that. For
24 burglary in the first degree the law says that I have to give
25 you at least 15 years. Do you understand that?

1 **MR. MYERS:** Yes, sir.

2 **THE COURT:** Knowing that I will be accepting a
3 recommendation from the State, do you still wish to plead
4 guilty to these charges?

5 **MR. MYERS:** Yes, sir.

6 **THE COURT:** Alright. Has anybody promised you anything
7 or threatened you in any way to get you to plead guilty?

8 **MR. MYERS:** No, sir.

9 **THE COURT:** Are you pleading guilty voluntarily?

10 **MR. MYERS:** Yes, sir.

11 **THE COURT:** Are you satisfied with your lawyers?

12 **MR. MYERS:** Yes, sir.

13 **THE COURT:** Are you pleading guilty because you committed
14 these crimes?

15 **MR. MYERS:** Yes, sir.

16 **THE COURT:** Alright. I need you to listen carefully
17 while the solicitor gives me the facts of your case. Alright.

18 **MS. WALTER:** Thank you, Your Honor. I'll proceed with a
19 factual recitation and then when Your Honor tells me that you
20 want to hear about his criminal history and everything else, I
21 will do that.

22 **THE COURT:** Alright.

23 **MS. WALTER:** Your Honor, on August 18th, 2016, in the
24 Myrtle Beach section of Horry County sometime around 2 in the
25 morning. The victim Ms. **V.P.**, who is seated in the

1 first row of the courtroom. She was 71 years old at the time.
2 She was sort of doing a final check around her property,
3 noticed a light on in an adjacent apartment, storage area that
4 she frequented three to five times a day and had a number of -
5 - a refrigerator, a clock, a phone in there. She went to
6 determine what was happening in there and surprised the
7 defendant who rushed her, threw her to the ground. As the
8 incident progressed, he cut her clothes off. He used rubber
9 gloves that he found in her home to tie her up with
10 electrical cord. Ms. V.P., if this were to go to trial, would
11 testify that he attempted to sexually assault her. Because of
12 everything that was going on, she is unsure if he completed
13 penetration, but definitely that he did assault her. He,
14 throughout the ordeal, was saying you're lying bitch, where's
15 your money bitch. In an effort to -- and actually I skipped
16 one thing. At some point, when he stopped the sexual assault,
17 he poured bleach on her and had her scrub herself and when she
18 wasn't scrubbing hard enough, kept yelling at her telling her
19 that she had to scrub harder. She tried to distract him by
20 telling him by saying that there was more money in her car
21 that had been parked outside. So he, at some point, untied
22 her and went outside at which time Ms. V.P. was about to jump
23 up and run naked out of her home, down the street where
24 Myrtle Beach Police officers were at the scene of an
25 accident. They were then able to render aide to her. When
they returned to

1 her home the defendant was already gone, but an officer who
2 was at Myrtle Beach headquarters had -- there's a system
3 called Milestone that has approximately 800 cameras in the
4 City of Myrtle Beach. And he tracked, from the time of the
5 incident, looking for anything suspicious and saw someone who
6 was later identified as the defendant, riding a bike away from
7 the scene and ducking into some bushes and then coming back
8 out. He directed another officer to that location, and at
9 that location they recovered the rubber gloves, like dish
10 gloves, that the defendant had taken from Ms. **V.P.**'s home.
11 They recovered the gloves and the electrical cord, both of
12 which had the victim's DNA and the defendant's DNA on them.
13 Additionally, the defendant had stolen the victim's cell
14 phone. He was arrested the following day on B&E auto and had
15 the victim's phone in his possession at the time. Your Honor,
16 the victim did go by ambulance to the hospital. Again, if
17 this were to proceed to trial, there were trauma nurses who
18 would testify to her injuries. And, Your Honor, I have three
19 photos that have been passed to the defense. They've been
20 marked State's three, four and five, Your Honor. State's
21 three shows the victim's face after the assault. Four shows
22 her right wrist and left shows her left hand -- excuse me,
23 five shows her left hand. Your Honor, as you can tell from
24 State's three the victim was covered in blood. She had a
25 puncture wound to her left cheek that required four sutures to

1 close. The trauma nurses also noted bleeding in the vaginal
2 area, which they would testify you would not find in a post-
3 menopausal woman absent some type of traumatic injury. Ms.
4 V.P. was subjected to a sexual assault exam and samples were
5 taken. They were sent to Richland County. Richland County
6 did the initial testing of the glove and the electrical cord
7 because the turn around was faster and there was an unknown
8 doer. They -- when they processed the glove and the cord,
9 they got a CODIS hit on the defendant which was then followed
10 up on. The rape kit was processed and in the vaginal smears
11 there was seminal fluid. John Barron from Richland County
12 Sherriff's Department, who is the Forensic Serologist and DNA
13 Analyst, would testify that seminal fluid does not occur
14 naturally in a female. It is only present in males. The
15 seminal fluid does not carry DNA. The seminal fluid carries
16 sperm, which carries the DNA; and in this case there was not
17 sufficient material to be able to generate a DNA profile. So,
18 his conclusion is no male DNA present, but the presence of
19 seminal fluid indicates the presence of a male, if that makes
20 sense.

21 **THE COURT:** Alright.

22 **MS. WALTER:** And that is what the State would prove at
23 trial.

24 **THE COURT:** Alright. Alright. We'll admit State's
25 exhibits three, four, and five into evidence over defendant's

1 objection.

2 **(STATE'S EXHIBITS THREE, FOUR, AND FIVE**
3 **ARE ADMITTED INTO EVIDENCE)**

4 **THE COURT:** Alright. Mr. Myers, you understand what the
5 allegations are against you?

6 **MR. MYERS:** Yes, sir.

7 **THE COURT:** Is that what happened in this case?

8 **MR. MYERS:** Excuse me, sir.

9 **THE COURT:** Alright. You need to talk to your lawyer?
10 Go ahead.

11 **MS. WILSON:** I'm sorry. If I could have the Court's
12 indulgence. I'm just trying to clarify.

13 **THE COURT:** Alright.

14 **MS. WILSON:** I'm sorry. I forgot what the Court's
15 question was.

16 **THE COURT:** I was asking him whether or not the State's
17 rendition of the facts is what happened in this case?

18 **MR. MYERS:** Well, Your Honor, I wouldn't have said it
19 exactly as it's been stated.

20 **THE COURT:** Okay.

21 **MR. MYERS:** But I'm not trying to stand here today and
22 deny any ---

23 **THE COURT:** And I understand from meeting in chambers
24 with the attorneys that you deny the criminal sexual conduct.
25 But, as the State alleges -- there are allegations against you

1 as to what constitutes burglary in the first degree, armed
2 robbery, and assault and battery of a high and aggravated
3 nature. Absent all of the criminal sexual conduct
4 allegations, do you admit to those allegations as it pertains
5 to burglary, armed robber, and assault and battery of a high
6 and aggravated nature?

7 **MR. MYERS:** Yes, sir.

8 **THE COURT:** Okay. Alright. Ms. Wilson, anything in
9 mitigation?

10 **MS. WILSON:** Yes, sir, Your Honor. Your Honor, Mr. Myers
11 is 44, single. He does have a GED. He tells me that he used
12 to do fencing work and that he has four siblings that are
13 still living that are in this area. Your Honor, as the Court
14 can imagine, I am not the first defense attorney on this case.
15 I believe Buddy Long had it before he left our office and then
16 after him was James Galmore. I believe at that time Josh
17 Holford from the Solicitor's Office was actually the
18 prosecutor on this case. Around that time Josh made an offer
19 to Mr. Galmore of approximately 20 to 30 years for the charges
20 in this case. Even from the outset, I think that this case
21 has been a plea as far as my client was concerned. The only
22 hang up, as we've already told this Court, was the CSC. At
23 that time, he wanted to plead to everything other than the
24 criminal sexual conduct and we could not come to a consensus
25 about that. As a result, he was arraigned. There was some

1 outstanding discovery at that time. Those problems have since
2 been cured as we are clearly at the doorstep of trial. But,
3 with all of that being said, Your Honor, my client
4 acknowledged at the time of his interrogation, which was a few
5 weeks after this incident occurred, after the CODIS hits came
6 back as you heard from the State. He sat down with, and I
7 always want to say Lieutenant, Detective Hugh Jones and
8 actually disclosed what happened. This was not a brow beat
9 him kind of interview. And at the Jackson v Denno we actually
10 discussed as part of our strategy about what we would need to
11 do or say, or if we could say or do anything to, you know,
12 show lack of voluntariness, but those things simply weren't
13 really present there. It was really a matter of him sitting
14 down and just coming clean in what is right at about an hour
15 or so conversation with the Detective. I think it's important
16 for the Court to know that my client was, is, has been a long-
17 time drug user. He even goes into this with Detective Jones
18 and he's talking about the substances that he's used and how
19 much he used, as often as he could get it. He was homeless at
20 the time, had a raging drug addiction. He tells me coke,
21 crack, sometimes heroin, pretty much just about any and
22 everything he could get his hands on. Nothing was really off
23 limits to him as far as drugs are concerned. Because he only
24 did odds and ends type of work, he didn't have a steady
25 income, didn't have a place to go. But the money he did get

1 obviously went to feed his habit. He tells me that prior to
2 this incident, to these acts that he committed, he tells me
3 that he hadn't slept in days. That he was on like this
4 endless search, if you will, for the next drug fix. I am not
5 offering this to the Court to excuse his actions. He's here
6 today taking responsibility because he knows what he did. But
7 in any situation where a defendant comes in front of the Court
8 they're clearly asking the Court for mercy, asking for
9 leniency, asking for those things that, you know, in most
10 situations people feel they're not entitled to have. Mr.
11 Myers is remorseful. The Court sees him here crying when he
12 came in. He was crying a little bit in the back. I think
13 that the issue for him has been I know I've got to go to
14 prison. I don't know how long it's going to be for, obviously
15 nobody wants to go. And the conversations about how much
16 time, as much as they seem just a part of our normal process
17 for us, I think for our clients it's a lot more stressful.
18 And, of course, I'm not trying to take away from the trauma
19 and the stress that the victim has suffered in this case. I'm
20 not trying to deny that that's a real thing. But I don't
21 think that sometimes the clients really understand why and the
22 how's of the recommendations and the sentences, and how
23 impossible it can be to get some recommendations back once
24 they're gone, or what the sticking points really are. I'm
25 saying that to the Court because I know that it may seem petty

1 or even ridiculous for my client to stand here and ask the
2 Court for mercy. It may be -- clearly it's probably the
3 State's opinion, it may be this victim's opinion I'm certainly
4 not trying to put words in their mouths, but that he is no
5 entitled to any mercy because he didn't show any. Thank God
6 that's not how mercy actually works. He's asking for
7 something from this Court that only this Court can provide
8 him. I understand the State's recommendation. I'm not angry
9 about the recommendation. My concern there is about something
10 very different from the number that is being put out. But,
11 with that being said, he understands it too. We've gone over
12 it. He knows the risk that he's taking, and he understands
13 that life is out there. That it's not impossible with this
14 plea to end up with that sentence. Your Honor, I do want the
15 Court to know that I don't think that Mr. Myers -- I clerked
16 after law school in Charleston and it just so happened that
17 the Judge that I clerked for, clerked for another Judge
18 herself. And she used to say that her Judge always said that
19 there is a difference between people who are truly evil and
20 those who are misguided. Now, evil acts can occur from any
21 kind of person. They might not be an evil person, but they do
22 really terrible and heinous things. But that doesn't mean
23 that they are evil people. I don't think that Mr. Myers is an
24 evil person. Do I think he did some awful things here? I
25 think he agreed that they were beyond compare. Not necessary

1 his norm, definitely gave into theft to support his habits,
2 but not truly a malicious and evil person. But I would dare
3 say, he wasn't truly himself at this time. And I'm not saying
4 from a mental health standpoint he wasn't himself, that he
5 wasn't responsible. I'm saying that the drug addiction, the
6 lack of sleep, maybe not taking care of himself because he was
7 homeless all probably contributed to the behaviors at that
8 point in time. Not an excuse, but I'm hoping that it provides
9 a snapshot of who he was and how he was at that time. Not an
10 evil person. The final thing, Your Honor, that I'd like to
11 say to the Court is that I'm asking the Court to take into
12 consideration the fact that he is remorseful. He is sorry. I
13 think that if he could go and undo it, he would; and not just
14 because he's looking at prison time. I think that if he could
15 go do the prison time and still undo it, he would, which is
16 not always the case. There's plenty of clients who never
17 confess to anything, never give a statement, never cooperate
18 with police before they get to Court, and they never will.
19 They're never going to acknowledge any wrongdoing. That's not
20 what's happening here. He is asking this Court to consider a
21 20-year sentence. I don't know if the Court is going to find
22 that that's reasonable, but it is what he is asking of this
23 Court. I am asking of this Court as his attorney, and on his
24 behalf as well, that if the Court feels that 20 is not the
25 appropriate sentence, that the Court not allow more than a 30-

1 year sentence in this case. I understand that there's lots of
2 considerations. I understand the nature of these charges.
3 And I understand, well I can empathize with the level of
4 trauma that this victim has probably suffered. I am, however,
5 saying to the Court that -- I'm saying to the Court that I
6 think that there's a distinction between a killing of a person
7 and the kinds of acts that have been committed here. I'm not
8 trying to say it's much better, I'm just saying that she is
9 thankfully still alive, and I am asking the Court to draw a
10 distinction there. I think my client may want to address the
11 Court as well, Your Honor.

12 **THE COURT:** Alright. Mr. Myers, anything you want to
13 say?

14 **MR. MYERS:** Yes, sir, Your Honor. First off, I did have
15 a letter that I had written last night, Your Honor.

16 **THE COURT:** Alright.

17 **MR. MYERS:** I don't know, will you allow me to read it?

18 **THE COURT:** If you want to. I'll give you an opportunity
19 to say whatever you want to say. Go ahead.

20 **MR. MYERS:** This is just how I felt last night when I was
21 writing it last night, Your Honor, and I was hoping that I
22 could convey this to the Court.

23 **THE COURT:** Okay.

24 **MR. MYERS:** I said, dear Your Honorable Judge, this
25 letter is written with the hopes of being able to convey what

1 I find difficult to speak and to those that I feel have
2 already rejected me. (Inaudible) have put me down and I feel
3 that I must eat the fruits of my labor. Unfortunately, these
4 words are coming from a man depleted of hope and confidence.
5 I don't feel that I was given a fair chance because no one
6 seems willing to listen. So, Your Honor, I petition you with
7 all due respect to please be open minded and understanding
8 when I say that this letter is a plea for my life as well as
9 my liberty. What seems to move most people is that life for
10 me didn't begin as a criminal. (Inaudible) but I truly had a
11 potentially great future ahead of me as a child. I was
12 exceptionally smart and intelligent and full of athleticism,
13 which I displayed at every opportunity only to be despised by
14 my very own mother and siblings. When my junior high school
15 P.E. teacher said with great enthusiasm that my mom really
16 consider putting me in gymnastic school, she said to me, ahh
17 boy, that's for white people. When two of my high school
18 teachers approached my dad with the prospect of putting in an
19 advanced learning school, he told me, boy don't you ever bring
20 them folk back around this house, I don't know if they're the
21 police. A year or so later I was a dropout. Every dream of
22 being in some type of school and thoughts of going to college
23 were always shot down by the constant disapproval of my
24 parents. At age 17 I was already experimenting with cocaine,
25 marijuana, and alcohol. Addiction became my life. I was

1 always accepted in the circles of addicts. I'll admit that
2 I've had some run ins with the law, but nothing too serious to
3 be sent to prison. At age 21 the inevitable happened and I
4 was sent to prison for the first time. I swear I had no
5 involvement. I spent nine and a half years for the crime and
6 believe it became the pinnacle of my demise as an optimist.
7 The years that I've spent in and out of prison since then were
8 the result of my own bad choices. I'll admit that drugs were
9 always the main factor. I was constantly asking for help,
10 which always fell on deaf ears. In 2015 I was finally given
11 an opportunity to curb my addiction, a disease of addiction,
12 through the life recovery program, only to be rejected by the
13 staff when I needed them the most. I just want to state that
14 that rejection, Your Honor, it ultimately contributed to the
15 events leading to the crimes. I understand that there's no
16 good excuse for committing crimes, nor any good reason to not
17 be punished for it. I'm aware of the severity of my actions;
18 and although reluctant, I must accept responsibility.
19 Nevertheless, Your Honorable Judge, I besiege you to please
20 take everything that I've said into great consideration and
21 just find it in your heart to be merciful towards me, Your
22 Honor.

23 **THE COURT:** Alright.

24 **MR. MYERS:** I do not desire it, I know, but I sincerely
25 as it, Your Honor.

1 off, pulled my jean shorts off, threw me on the floor, pulled
2 me up to try to have intercourse from the rear. Then he
3 turned me over, slammed me down, tied me up, blindfolded me
4 and proceeded to ask me where my money -- where's your money
5 bitch? Where's your money? I told him there was no money in
6 the house. I don't keep any money in the house. He kept
7 asking me, bitch where's your pocketbook? Where's your
8 pocketbook bitch? I knew where it was. I told him where it
9 was. He said, I'll untie you if you go and tell me where your
10 purse is. I told him. He went and got the purse, he came
11 back, he did cut the bindings off. He slapped me up beside
12 the head again. He said, bitch let me tell you something all
13 that's happened to you right now, bitch, is you're kind of
14 roughed up a little bit, you hear me. He said, do you know
15 where some more money is? I said, the only thing I can tell
16 you is there may be a little bit of money in the console of my
17 car. He said, if I go out there and there's no money in the
18 car I'm going to come back and I'm going to kill you. As soon
19 as I heard that front door open, I got up and ran out the back
20 door, down the alley, out to the highway 501 and waived to the
21 police because he had blindfolded me but I could see that
22 there was a blue light flashing through the blind. So, I knew
23 that there was a police out there somewhere because every
24 night on that corner the police stop somebody. I do not know
25 whether he came back to find out I was gone, I don't know.

1 All I know is when I went out to the highway the police saw me
2 and they followed me back to the house. I was so traumatized
3 I don't even remember going to the hospital.

4 **THE COURT:** Alright.

5 **MS. V.P.:** And I think he is a violent individual. He
6 deserves life, frankly.

7 **THE COURT:** Alright. Thank you, ma'am.

8 **MS. V.P.:** Thank you.

9 **THE COURT:** Alright.

10 **MS. WALTER:** Your Honor, some of the other ---

11 **THE COURT:** Is the State -- I'm sorry, do what?

12 **MS. WALTER:** I'm sorry. I have his criminal history, but
13 we also have the two members from the Myrtle Beach Police
14 Department if you would hear from them.

15 **THE COURT:** For what reason?

16 **MS. WALTER:** As I thought I stated earlier, they were
17 both affected by this case. It's one of the worth that they
18 have seen. Detective Jones was the case agent and Detective
19 Beam assisted him with it.

20 **THE COURT:** I'll hear from the victims and then I'll hear
21 from the solicitor. So, I'll hear anything that you want to
22 say and then I'll hear his prior record.

23 **MS. WALTER:** Okay. If the record could just reflect that
24 Detective Jones and Detective Beam were here and ready to
25 address the Court.

1 **THE COURT:** Alright.

2 **MS. WALTER:** Your Honor, in cases like this people often
3 say well she's not dead so isn't that something good. But
4 what is neglected is that while she is alive, she lives with
5 this every single day. When we go home, that is our safety,
6 that is our sanctuary. That is where you should feel safe
7 and Ms. V.P. was living in her home with her brother and her
8 mother and should have been safe, should have felt safe. And
9 as she just explained to Your Honor, the defendant had already
10 taken things out of her home when she went in. He circled
11 back around specifically when she entered. And what purpose
12 could that be but to do bodily harm? And it's not just bodily
13 harm, what conceivable reason is there to cut her clothes off,
14 tie her up, blind fold her, scrub her with bleach? She had a
15 puncture wound to her cheek. Your Honor can see the injuries
16 in State's three, four, and five. This was much more violence
17 than was necessary for what he got away with. And the State,
18 honestly, I can't disagree with what the victim is requesting,
19 but the State is requesting a 40-year sentence. I would say
20 that the use of the term misguided for the defendant is
21 misguided. His statement, in the State's perspective, seemed
22 to blame everyone other than himself. His criminal history,
23 Your Honor, dates back to 1993. It's a little disjointed
24 because I was getting it from the public index so sometimes
25 the dates weren't always there. But he started off simply

1 enough with disorderly conduct. But then in 1994 there was an
2 unlawful carry for which he got 30 days. Unlawful use of an
3 automobile, five years suspended to two years probation, two
4 counts of that. I'm just trying to make sure I cover these
5 all. There was a criminal domestic violence in 1994 for which
6 he received time served. And then, Your Honor, there was the
7 case that I guess he spoke of where he did over nine years in
8 prison. There was burglary second, three counts of that, and
9 unauthorized use of an automobile for which he was given a 10-
10 year sentence and a five-year sentence consecutive. Your
11 Honor, there was another burglary third, and ABHAN, a strong
12 armed robbery, an attempted burglary, purse snatching, grand
13 larceny and ABHAN together, receiving stolen goods under false
14 pretenses, B&E auto in addition to the one that's still
15 pending, a property offense and giving a false name. So, he
16 has a demonstrated criminal past and a violent criminal past.
17 There are a number of offenses here that demonstrate his
18 violent tendencies. And I do agree that Ms. V.P. is lucky to
19 be alive, but this is a trauma that she is going to live with
20 for the rest of her life and something that has destroyed the
21 sanctity of her home. And we would ask Your Honor to follow
22 the State's recommendation.

23 **THE COURT:** Alright. I need to see the attorneys in
24 chambers for just a second. Alright.

25

(COURT IN RECESS)

STATE OF SOUTH CAROLINA)

County of Horry)

Robert Lee Myers Jr. ^{SCDC #} 229315)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

20 03 23 2020

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
HORRY COUNTY
2020 MAR 19 P 1:13
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

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 MCI McCormick, SC 29899

2. Name and location of Court which imposed sentence Horry county
court of general sessions

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) 2017 GS 2600647 ARHAN
 - (b) 2017 GS 2600642 Burglary 1st

(c) 2017652600646 Armed Robbery

The date upon which sentence was imposed and the terms of the sentence:

- (a) March 4, 2019 For a determinate term
- (b) of (40 years burglary 1st) (30 years Armed Robbery)
- (c) (20 year ABHAN)

6. 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 _____

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

yes

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

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

- i. N/A Trial counsel failed to submit
- ii. requested appeal
- iii. _____

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

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

(c) the date of each such result:

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

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

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

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

- (a) _____
- (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) Unknowing, unwilling, Involuntary Plea

(c) _____

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

(a) counsel failed to file notice of appeal.

(b) counsel did not secure plea deal.

(c) counsel falsely advised defendant about guilty Plea

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. _____

(c) the disposition thereof:

i.

N/A

ii.

iii.

iv.

(d) the date of each such disposition:

i.

N/A

ii.

iii.

iv.

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

i.

N/A

ii.

iii.

iv.

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

N/A

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

(a) which grounds have been presented:

i.

N/A

ii.

iii.

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

i.

N/A

ii.

iii.

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

- (a) ~~_____~~ _____
 (b) _____
 (c) _____

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

- (a) your arraignment and plea? yes
 (b) your trial, if any? _____
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (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. J.M. (Buddy) Long Horry Co. Public
defenders office.
 ii. James C. Galmore Horry Co. Public
defenders office.
 iii. Kia Wilson Horry Co. Public defenders
office
 (b) the proceedings at which each such attorney represented you:
 i. J.M. (Buddy) Long

 ii. James C. Galmore

 iii. Kia Wilson, arraignment and plea

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

I ask that the courts grant me a sentence adjustment in accordance to my original plea of 20-30 years

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

NO

20 20 CP26 2070

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Horry)

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

Robert L. Myers Jr.

SWORN to and subscribed before me this 27th day of February, 2020.

Lalaine A. Gray (L.S.)
Notary Public

My Commission Expires: January 13th 2030

FILED
HORRY COUNTY
2020 MAR 19 P 1:13
RENEE M. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

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

0-20 CP262070

I, Robert L. Myers Jr., 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.

Robert L. Myers Jr.
Applicant

SWORN or affirmed to and subscribed before me this
17th day of March, 2020.

Leticia M. Myers
Notary Public

My Commission Expires January 13th 2030

FILED
HORRY COUNTY
2020 MAR 19 P 1:13
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

Attachment: Memorandum of law

(11) Applicant was denied the right to effective assistance of counsel guaranteed by the sixth and fourteenth Amendments to the United States Constitution and by Article 1, 3 and 14 of the S.C. Constitution during the guilty plea.

(a, b, c) Supporting facts: Guilty plea performance during the guilty phase was unreasonable and prejudicial. see *Strickland v. Washington* 466 U.S. 668 (1984)

1. Counsel failed to adequately investigate facts and circumstances, counsel's failure to conduct such an investigation deprived the defendant of critical information relevant to an accurate assessment of applicant's plea
2. Counsel failed to withdraw after client filed numerous complaints through the Horry County Public Defenders office counsel's failure to withdraw deprived the defendant of full representation, counsel proved to be bias toward defendant. In *Re Galmore* cite as 530 S.E. 2nd 378 (S.C. 2000)
3. Counsel falsely advised defendant about guilty plea, coerced defendant into believing he had no opportunities except to take plea or automatically lose in trial where defendant would receive maximum sentence of life in prison.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Robert Lee Myers, Jr., #229315,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2020-CP-26-2070

**RETURN AND PARTIAL
MOTION TO DISMISS**

FILED
HORRY COUNTY
2020 NOV 12 P 3:00
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

NOW COMES Respondent, making its return and partial motion to dismiss the post-conviction relief (hereafter "PCR") application filed on March 19, 2020 by Robert L. Myers, Jr. (hereafter "Applicant"). Respondent respectfully offers the following in support of its return:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. On August 18, 2016, Applicant sexually assaulted, poured bleach on, and robbed a seventy-one year old woman. (Tr. 21-22). In February 2017, the Horry County Grand Jury indicted Applicant for First Degree Burglary (2017-GS-26-00642), First Degree Criminal Sexual Contact (2017-GS-26-00643), Kidnapping (2017-GS-26-00644), Possession of a Weapon During the Commission of a Violent Crime (2017-GS-26-00645), Armed Robbery (2017-GS-26-00646), and Assault and Battery of a High and Aggravated Nature (2019-GS-26-00647).¹ Kia Wilson and Colon Cagle, Esquires, represented Applicant. Mary Ellen Walter, Esquire of the Fifteenth Circuit Solicitor's Office prosecuted the case. On March 4, 2019, Applicant pled guilty and indicted to the Assault and

¹ The only charges incorporated in this PCR application are the Burglary, Robbery, and Assault and Battery charges and, thus, allegations potentially concerning the other charges will not be addressed in this return.

Battery, Burglary, and the Armed Robbery charges before the Honorable Benjamin Culbertson, circuit court judge. The State offered no sentencing recommendation or recommendation on how the remaining charges should be handled. Judge Culbertson sentenced Applicant to imprisonment for forty years for Burglary, thirty years for Armed Robbery, and twenty years for the Assault and Battery charge, sentences running concurrently. Applicant did not appeal his conviction or sentence.

II. Current Action Before the Court

In his PCR application, Applicant alleges he is detained unlawfully for the following reasons (excerpts verbatim):

1. "Ineffective assistance of counsel."
 - a. "Counsel failed to file notice of appeal."
 - b. "Counsel did not secure plea deal."
 - c. "Counsel falsely advised defendant about guilty plea."
2. "Unknowing, unwilling, involuntary plea."

Attached to and incorporated herein are Applicant's Horry County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the current PCR application, and the plea transcript. Respondent reserves the right to amend this return based upon receipt of additional relevant information.

III. All Allegations Beyond *White* Relief Should be Barred by the Statute of Limitations

Respondent submits this application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the Act requires as follows:

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

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held the statute of limitations applies to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may be used to raise the statute of limitations defense. *McDonnell v. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, South Carolina Code Annotated Section 17-27-70(c) authorizes this Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

Applicant pled to the charges on March 4, 2019 and did not pursue a direct appeal. Thus, the application was due by March 5, 2020. The application was filed on March 19, 2020; after the filing period expired. The application should be summarily dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act, particularly because Applicant has failed to allege any ground entitling him to equitable tolling. *See Pelzer v. State*, 378 S.C. 516, 521, 662 S.E.2d 618, 619-20 (Ct. App. 2008) (holding equitable tolling is available where (1) extraordinary circumstances prevented the plaintiff from filing despite his due diligence; (2) the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period or the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass; and (3) the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim).

IV. Allegation that Applicant is Entitled to Belated Appellate Review Per *White*²

Applicant alleges he was denied his right to a direct appeal based on ineffective

² *White v. State*, 263 S.C. 110, 119, 108 S.E.2d 35, 39 (1974).

assistance of plea counsel. The one-year limitations period to file a PCR petition does not apply where the defendant alleges he was denied a direct appeal due to ineffective assistance of counsel. *Wilson v. State*, 348 S.C. 215, 218, 559 S.E.2d 581, 582-83 (2002).

Applicant claims he was denied effective assistance of counsel because his plea counsel did not inform him of his option to appeal from a guilty plea. However, in *White v. State*, our Supreme Court held that even if the PCR court found the applicant never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction over granting a belated appeal. *Id.* at 119, 108 S.E.2d at 39-40. However, where an applicant establishes in a PCR hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, upon an appeal of the PCR decision, our Supreme Court will review the trial record and pass upon all issues properly raised and argued as if the direct appeal was perfected. *Id.*

Applicant cannot meet his burden in showing entitlement to a belated appeal pursuant to *White*. However, because this allegation presumably raises questions of fact not conclusively refuted by the record, Respondent requests an evidentiary hearing solely on this issue. If the Applicant prevails on his ineffective assistance of counsel for failure to file an appeal allegation and establishes he did not timely file this current application because of ineffective assistance of counsel, Respondent requests an evidentiary hearing to address the remaining issues raised in the PCR application. *See Toney v. State*, Op. No. 2019-MO-006 (S.C. filed February 6, 2019) (where a PCR applicant has established he did not knowingly and voluntarily waive his right to a direct appeal, the applicant is entitled to a full evidentiary hearing on the merits of his application).

If this Court finds Applicant was denied his right to a direct appeal, Respondent maintains that Applicant's remaining allegations of ineffective assistance of counsel and allegation concerning an invalid plea lack merit. In a PCR action, Applicant bears the burden of

proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

The two-pronged test outlined in *Strickland v. Washington* governs ineffective assistance of counsel claims. 466 U.S. 668 (1984). First, the applicant must prove that counsel’s performance was deficient. *Id.*; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The court determines deficiency of an attorney’s performance by its “reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is if the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the applicant so that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant’s right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent

solemnity and truthfulness included in the guilty plea process. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

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

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

Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

Respondent contends Applicant cannot meet his burden; however, these allegations probably raise questions of fact the record does not conclusively refute. Accordingly, if this Court find Applicant was denied his right to a direct appeal and is entitled to equitable tolling of the statute of limitations, Respondent requests an evidentiary hearing to fully resolve this issue.

Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. Other Allegations Denied

Each and every other allegation in Applicant's PCR application not explicitly admitted, qualified, or explain in this return is hereby denied by Respondent.

VI. Conclusion

WHEREFORE, Respondent requests an evidentiary hearing be held on the failure to appeal allegation and that the remaining allegations be summarily dismissed for untimeliness.

Respectfully submitted,

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Attorney General

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November 10, 2020

1 State of South Carolina)

TRANSCRIPT OF RECORD

2 COUNTY OF HORRY)

CASE NO. : 2020-CP-26-2070

3 PCR HEARING

4 -----
5 June 25, 2021

6 **BEFORE:** The Honorable William H. Seals, Jr.

7 -----
8 Robert Lee Myers, Jr.,

9 Applicant,

10 vs.

11 State of South Carolina,

12 Respondent.

13 -----
14 APPEARANCES:

15 Carla F. Grabert-Lowenstein
16 For the Applicant.

17
18 William H. Ray
19 For the Respondent.

20 Julie A. Kevish
21 Official Court Reporter
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1
2 MR. RAY: May it please the Court. This is the
3 matter of Robert Lee Myers, Jr. versus the State of South
4 Carolina. It is case number 2020-CP-26-2070. Mr. Myers is
5 currently incarcerated in the South Carolina Department of
6 Corrections. He was indicted by the Horry County Grand Jury in
7 February of 2017 for first degree criminal sexual contact,
8 kidnapping, possession of a weapon during the commission of a
9 violent crime, first degree burglary, armed robbery, and
10 assault and battery of a high and aggravated nature. Mr. Myers
11 is represented by attorneys Kia Wilson and Attorney Colon
12 Cagle.

13 On March 4, 2019 he pled guilty as indicted to the
14 assault and battery of a high and aggravated nature burglary
15 and an armed robbery before the Honorable Benjamin Culbertson.
16 The State did not offer a sentencing recommendation I believe
17 at first, but ultimately recommended 40 years and did not make
18 any promises on the remaining charges. Judge Culbertson
19 sentenced Applicant to imprisonment for a term of 40 years for
20 burglary, 30 years for armed robbery and 20 years for the
21 assault and battery charge. All sentences were set to run
22 concurrently. Mr. Myers did not appeal his conviction or his
23 sentence. There are a couple matters the State would like to
24 address prior to beginning the hearing. The first is, in Mr.
25 Myers' application he requested a time cut as his relief. Of

1 course the State's position is that that is not available in
2 Post Conviction Relief and so we would just ask that the Court
3 engage him in a colloquy and advise him, inform him of the
4 risks and benefits of proceeding forward.

5 MS. LOWENSTEIN: Your Honor, before we go any
6 further, I understand the Court's been served with a request
7 for press coverage and my client would object to that. We had
8 no knowledge of it and I don't think we'll necessarily get into
9 things that if they were, you know, put on TV today there would
10 be a warning about it might be inappropriate for younger
11 individuals to listen to. I frankly can't see where there is
12 an interest in -- and Mr. Myers has asked me to object to that
13 press coverage, and in addition I'd just like to put on the
14 record that the Department of Corrections did not send any of
15 his legal paperwork with him, so I just wanted to put those two
16 things on the record and have the Court make a determination
17 about the press coverage.

18 THE COURT: I think the press has the right to be in
19 the courtroom, it's a public courtroom and I'm not going to
20 deny them that request. As far as the time cut goes I want to
21 explain to you that I cannot give you a time cut. This is a
22 post-conviction relief hearing. The only two things that could
23 happen is, one, I could deny your request and then of course
24 everything would stay the same, or I could grant your
25 application. If I would grant your application the only thing

1 that would happen is that you would start over again, ground
2 zero. Technically you could be facing all of these charges
3 again. The Solicitor could let you plea, the Solicitor could
4 give you a trial on everything, it's also possible that you
5 could get more time than what you have now, so there are some
6 risks in going forward with your application, but that's your
7 right and I just want to explain to you, as the State has said,
8 I cannot cut your time, that is not something I can do at this
9 hearing. Do you understand that?

10 THE APPLICANT: Yes, sir.

11 THE COURT: Do you have any questions?

12 THE APPLICANT: No, sir.

13 THE COURT: Thank you.

14 MS. LOWENSTEIN: Your Honor, I would just like to put
15 on the record that I have discussed both personally and at
16 least one phone, if not two phone conversations, with those
17 risks.

18 THE COURT: Okay. Thank you. Yes, sir?

19 MR. RAY: Yes, Your Honor. The next matter that the
20 State would like to take up is when we filed our return we
21 filed a partial Motion to Dismiss. Mr. Myers raised several
22 allegations of ineffective assistance of counsel in his initial
23 application. He was convicted on March 4, 2019. The
24 Application was not filed until March 19, 2020 which was about
25 two weeks past the one year deadline. That Application, I

1 believe, was notarized on March 17th which still would have
2 been untimely. The State is unaware of any grounds for
3 equitable tolling of the Statute of Limitations and so the only
4 allegation that we believe is not barred by the Statute is an
5 allegation that his counsel failed to file a notice of appeal
6 pursuant to his request, so that would be a widely stayed plan
7 which of course is not barred by the statute. So we would just
8 renew our Motion to Dismiss. We did receive some amended
9 allegations. I mean, we would renew the Motion to Dismiss for
10 untimeliness.

11 THE COURT: Yes, ma'am?

12 MS. LOWENSTEIN: Your Honor, that is one of the
13 things that we're talking about because there was no further
14 communication after he was sentenced and he had requested that
15 that notice of appeal had been signed. I think it is
16 ineffective assistance of counsel on that in and of itself
17 because a layperson, especially with some of the issues that
18 Mr. Myers was dealing with is not going to understand the
19 complexity, nor of having to have that notice filed, nor
20 understand what needed to happen if -- you know, down the line
21 if it wasn't timely filed, so I would ask that the Court find
22 that the other allegations are not barred, and as counsel has
23 already indicated the request to file the case because it
24 wasn't done was, you know, is still alive and ready for a
25 challenge of ineffective assistance of counsel.

1 THE COURT: So he pled guilty on March 4, 2019; is
2 that correct?

3 MR. RAY: That's correct.

4 THE COURT: And he had notarized the application
5 when?

6 MR. RAY: The application, I do have a copy of his
7 materials, I forgot to pass these up if you would like these.

8 THE COURT: Sure. Thank you.

9 MR. RAY: You're welcome.

10 THE COURT: You said he filed it on March 19th, is
11 that right?

12 MR. RAY: It is stamped from the Clerk of Courts, I
13 believe on March 19, 2020. It was notarized on the last page
14 of the application on March 17, 2020.

15 THE COURT: And it's my understanding that the
16 one-year Statute is strict compliance; is that right?

17 MR. RAY: That is the State's understanding, as well.

18 THE COURT: Do you have anything to say to that?

19 MS. LOWENSTEIN: And I understand that. If the Court
20 rules that way I will go forward just on the other, but I do
21 think there are some issues about what happened during the
22 sentencing and I would like at least to address some of the
23 issues with Mr. Myers' mental state that might have affected
24 that him not getting that in on time before the Court makes a
25 final decision on that, and I can do that through Ms. Wilson

1 and then you can tell me whether I'm going forward on the one
2 thing or on all of the allegations of ineffective assistance of
3 counsel that I put forth, if that would be acceptable to the
4 Court.

5 THE COURT: Well, why don't we hear testimony in
6 regard to that one thing you're talking about and then I'll go
7 from there.

8 MS. LOWENSTEIN: Okay. I would call Ms. Wilson.

9 **KIA WILSON WAS DULY SWORN AT THIS TIME AND TESTIFIED**
10 **AS FOLLOWS:**

11 THE CLERK: Please state your name and spell it for
12 the court reporter.

13 THE WITNESS: Kia Wilson, K-I-A, W-I-L-S-O-N.

14 **DIRECT EXAMINATION**

15 BY MS. LOWENSTEIN:

16 Q. Good morning, Kia. How are you?

17 A. Okay.

18 Q. I'll try to kind of short circuit this and get right to
19 the point. Mr. Myers did a criminally responsibility exam,
20 correct, and did he also did a competency exam?

21 A. Yes, I believe we had both done, yes.

22 Q. Did any of those issues concern you in terms of him
23 understanding the appeals process and having to have the notice
24 of appeal filed?

25 A. No, I always explain to my clients about the right to an

1 appeal, the ten-day process, how to do it. I even go so far as
2 to tell them they should not call the office and leave a
3 message for me directly, that they should tell whoever answers
4 the phone at the office that they want an appeal because the
5 staff is going to actually be the ones doing that paperwork and
6 I just sign off on it, and that's also to cover in case I'm not
7 actually present at the office in that time frame, for example,
8 if we're in court.

9 Q. And do you specifically remember having that
10 conversation with Mr. Myers?

11 A. Specifically as in, like, I would remember the ones that
12 I did this week, I cannot, it's been awhile, but habit would
13 suggest that, yes, I would have told him the exact same thing
14 that I always tell my clients, but I will say this, as well,
15 because of the circumstances of the plea that day and because
16 of the fact that he had not been communicating with me
17 regularly prior to trial which is what we were supposed to have
18 that day, I cannot imagine that I wouldn't have been trying to
19 cover my bases with Mr. Myers because there had already been a
20 lot of issues with him as far as complaints against me.

21 Q. Okay. So what you're telling us is you usually have
22 that conversation with your clients and you believe that you
23 had that with Mr. Myers. Have you had an opportunity to check
24 your file to see if that was notated in your file?

25 A. It wouldn't be. Me having that conversation about what

1 I explain to clients, whenever there is a plea -- for trial
2 purposes we would have been ready for trial that day. That's
3 what was gonna happen, this was a trial date, he was number one
4 of that roster. It was when we got here that the conversation
5 with Mr. Myers changed, from Mr. Myers changed. That was when
6 he was interested in a plea. I think the picking of the jury,
7 sometimes trial gets real for people when it's about to happen.
8 That's what I think was occurring that day. I think that the
9 potential life sentence that was on the table for him with all
10 of his charges was a very real possibility all of the sudden,
11 maybe more real than it had been when we were just discussing
12 what could happen here, and I think that's why he wanted to
13 have this discussion about what we can do.

14 Q. And did you say he was on the roster that day?

15 A. Yeah, my understanding, he was number one, if I remember
16 correctly, he was number one on the trial roster, we were going
17 to trial.

18 Q. You mentioned that there was a communication issue.

19 A. Yes.

20 Q. So that causes you to have the professional belief that
21 you had that specific conversation with him.

22 A. I would have had it whether I had a problem
23 communicating with him or not. When I say "communicating," I
24 don't even mean that I had trouble communicating with him, I
25 mean that he did not want to speak with me, and that happens

1 sometimes before trial with clients who have a lot of exposure,
2 they are nervous, they get, I don't want to call them skittish,
3 but they certainly get less cooperative the closer they get to
4 trial because they don't want that and sometimes they are
5 trying to create a record. I've been through this stuff in the
6 past 17 years so I, you know --

7 Q. Well, this is a paramountly important right, and if he
8 would had at some point some communication issues then wouldn't
9 it have behooved you to make a note in the file and --

10 A. I don't agree with that. I talk to clients every --

11 Q. That was really a yes or no.

12 A. But it's not really because certainly the opportunity to
13 sit down with my client and prep them before they go into court
14 for a plea is something that I do every single time. What the
15 judge asks them is the same every single time and then the
16 judge also is going to advise them about the right to an
17 appeal. I cover what the judge is going to say to them and
18 that way they know what the questions are. It's not an
19 advisement how to answer but it's to make sure that they
20 understand what they are about to discuss when they go in front
21 of the judge, I don't forget that.

22 Q. Okay, and I understand that. Now, but Mr. Myers had a
23 history of you being concerned about his competency and his
24 criminal responsibility. Didn't that put him in a much
25 different category in needing to have things explained to him?

1 A. Part of why I had Mr. Myers evaluated is because he
2 wanted to be evaluated. Now, I will say this, as well, with
3 charges as serious as his were and with him wanting to be
4 evaluated I don't have a problem making that happen, I don't.
5 Now, if the -- I don't really know -- I know what you're trying
6 to get it, I just don't have another way to answer you. I
7 didn't have any additional concerns. When we were able to
8 discuss the case when he was agreeing to speak with me we had
9 reasonable conversations. It was clear to me that he
10 understood what was happening in this case. He was able to
11 discuss the case with me, was able to go through the discovery
12 with me when I sat down with him. I was under no illusion that
13 he was not able to fathom what was going on or understand what
14 was going on.

15 Q. So the plea happens and you're indicating that you
16 explained his right to appeal?

17 A. I'm telling you that, yes, I would have.

18 Q. But you can't tell us for sure that you did?

19 A. Without the recall of the specifics of that day, I mean,
20 I can't tell you what I wore that day either, I know I had on
21 clothes. I'm telling you that I would have covered that with
22 him because I always cover those things with my clients before
23 pleas.

24 Q. Okay, now, what is the process that you do to
25 communicate that the client wants to have you file that notice

1 of appeal?

2 A. Usually it goes like this. After I've covered the
3 questions that the judge is going to ask, you have a right to
4 an attorney, we go through the actual rights, you have the
5 right to confront witnesses, all of the questions that the
6 judge goes through, then we get to the end of that and we talk
7 about the right to the appeal. Obviously you have ten days.
8 If you choose to have an appeal whether you have a legal basis
9 or not, because this is after a guilty plea, all you have to do
10 is tell us that you want it and we will file it for you, but
11 you don't need to call and leave me a message at the office,
12 you leave a message with whoever answers the phone at the
13 front desk because they are going to be the ones to file it,
14 and if you leave me a message and I don't get it because I'm in
15 court you're sleeping your opportunity for the appeal, so you
16 need to tell whoever answers the phone at the office at the
17 front desk when you call that you want an appeal and they're
18 going to file it no questions asked, that is what I tell them.

19 Q. So did you have the one-page form about wanting to file
20 a notice of appeal, did you have anything for him to sign while
21 he was still face to face with you?

22 A. I don't recall that. What kind of one-page form are you
23 talking about?

24 Q. Well, what I'm saying is that if they don't want to
25 appeal they can basically let you know that with one-page form.

1 A. No, we don't do that. If you don't want an appeal you
2 just don't call for one. If you want an appeal that's why I
3 have the conversation about calling. If you want the appeal
4 you have to actually ask us to file it, then we do.

5 Q. And you don't have a form that you could take back to
6 the office and say this client wants to file a notice of
7 appeal?

8 A. We don't use a form.

9 Q. Well, but if you're going to prepare that then you could
10 have a form that would tell your staff at your office that the
11 client wanted to do an appeal as opposed to calling.

12 THE COURT: Are we still dealing with the motion that
13 the State made or are you getting into the PCR application
14 itself?

15 MS. LOWENSTEIN: Right. So it's what is still alive
16 is the ineffectiveness of not filing the appeal, and I'm just
17 asking if counsel had -- Mr. Myers, in particular, just signed
18 a form saying I want to appeal so that the public defender's
19 office could prepare that.

20 THE COURT: I haven't ruled on the State's motion
21 yet. I thought you were asking questions in that regard.

22 MS. LOWENSTEIN: I think it's still alive, if the
23 Court could give me guidance about how much further I can go,
24 because I'm just dealing with whether or not procedures were
25 followed that would make sure that that notice of appeal got

1 filed timely.

2 THE COURT: I'll tell what let's do, I'm going to
3 grant the State's motion and you can proceed forward on the one
4 remaining issue.

5 MS. LOWENSTEIN: I understand that.

6 THE COURT: Go ahead.

7 Q. So Ms. Wilson, am I correct that your office doesn't
8 have a form that says I want to appeal or I don't want to
9 appeal that you can present to a client right after that
10 conversation about that right that they can sign and then you
11 could take back to your office to have the notice of appeal
12 actually prepared?

13 A. You would be correct in saying we do not have a form, we
14 don't use that.

15 Q. And would you say that it's not always easy to get
16 through on the telephone to your office because of the volume?

17 A. I would say that from the jail we accept collect calls,
18 free calls from anybody at J. Reuben Long who's calling us.
19 The staff, which is why I always tell them do not leave me a
20 message, I would say, yes, at times it can be exceedingly
21 difficult to reach me directly by phone, especially during
22 times of court which is why I tell clients you need to tell
23 whoever answers the phone at the front desk, because our staff
24 is really efficient at taking calls and we see the calls coming
25 from the jail, we take them on purpose, that's why they are

1 collect. Anybody from the jail who is incarcerated can call us
2 at any time unless they for some reason have a restriction on
3 their privileges on the jail side.

4 Q. I understand that. If you file a notice of appeal does
5 it end up in the client's file so at this point you could go
6 back and check to see if one was ever filed?

7 A. Ask that again. You're asking if it ends up in the
8 client's file, the paper file?

9 Q. Yes, or digital?

10 A. If we file an appeal for a client that file is already
11 closed in our office. Okay? Now, we file the paperwork, I
12 don't actually do it so the actual process is a little beyond
13 me, but we have a system set up for filing appeals. When the
14 call comes in it goes to the person who deals with that letter
15 of the alphabet because as you can imagine we have lot of
16 clients, and as I explained previously, staff actually
17 completes the paperwork part of that process. At this juncture
18 I will tell you that we have one person in particular who
19 oversees those appeals going out in our office and he would
20 send -- after those documents are all printed out and completed
21 he would bring them to me for signature and then he would
22 handle the process from there and make sure that it gets out
23 within the ten days and I have some oversight over that making
24 sure that, you know, double checking really just to make sure
25 that it goes out, but beyond that other than putting my

1 signature on the documents making sure that everything's in
2 order, I don't process the appeal itself going out of the
3 office.

4 Q. But you when you got the notice of this PCR had the
5 ability to go back and check, did you not, whether or not a
6 notice of appeal had been filed?

7 A. I did not go check, I didn't think I needed to check on
8 that, but certainly if I had been given some idea I should
9 check on that specifically I would have. I don't go back and
10 just look for that. The appeals don't get handled through my
11 office so once I fulfill my obligation when a client asks for
12 one and the staff does that paperwork and I sign it and we send
13 it off, I don't have any further contact with that case.

14 Q. Did you know that the issue of whether or not upon
15 request you had filed a notice of appeal was part of this PCR?

16 A. I never had any notice that he was requesting an appeal.

17 Q. No, but you knew that that was one of the issues he had
18 brought up in his application?

19 A. I was aware of it after I spoke to Mr. Ray and I read
20 the transcript yesterday and saw his letter on yesterday.

21 Q. But you're basically telling me that, unfortunately,
22 there's no notation of whether the client wanted the appeal,
23 you don't know whether he tried to get through and didn't on
24 the telephone and that we really have no paper trail, would
25 that be accurate?

1 A. I'm telling you that there is no note that he called in
2 asking for an appeal. I am telling you that at no point in
3 time did any staff member say that Mr. Myers called in asking
4 for an appeal. At no time did I get a letter from Mr. Myers
5 requesting that appeal. At no point in time was there anybody
6 who contacted our office on his behalf requesting an appeal, it
7 didn't happen.

8 Q. Well, you're assuming nobody tried, and that's my
9 question because I understand the circumstances, I understand
10 lots of phone calls from the jail, but isn't it just possible
11 that Mr. Myers mentioned to you he wanted to appeal and he
12 thought that that was sufficient especially given his mental
13 health history?

14 A. No. If Mr. Myers mentioned he wanted an appeal he would
15 have had an appeal because I would have had it filed
16 immediately upon returning to the office, that conversation
17 didn't happen.

18 Q. But you have no paperwork to show that it did or did not
19 happen?

20 A. I wouldn't have any paperwork.

21 Q. If I could have just a moment? I think he's almost
22 finished writing his question, Your Honor. Thank you, Your
23 Honor.

24 THE COURT: Take your time.

25 Q. Ms. Wilson, prisoners are usually transported a short

1 time, and I know you can't give me the exact amount, but is it
2 possible that Mr. Myers was shipped for, you know, in take, to
3 come into the system and they're not allowed phone calls during
4 that time?

5 A. I've never heard of that, but I don't know, I've had
6 plenty of clients call me from the jail saying that they wanted
7 an appeal but I don't know when he left or if he would've had
8 no access to the phone at the time, that's not what I
9 understand to be the norm.

10 Q. You're not saying it's not possible?

11 A. I'm saying I don't know.

12 MS. LOWENSTEIN: I have no further questions, Your
13 Honor.

14 THE COURT: Cross-examination.

15 **CROSS-EXAMINATION**

16 BY MR. RAY:

17 Q. Ms. Wilson, how are you?

18 A. I'm good, thank you.

19 Q. Let me ask you, do you keep a form for everything you
20 tell your clients?

21 A. I do not.

22 Q. Do you keep a form for most things that you tell your
23 clients?

24 A. No.

25 Q. But you do tell every client that they have the right to

1 appeal?

2 A. Yes, I do.

3 Q. Did you speak with Mr. Myers after his guilty plea?

4 A. I want to say that I may have, but I don't remember,
5 honestly, with any specificity. Sometimes when there are --
6 especially in a case like this one where the sentence wasn't
7 what we hoped for, obviously we were asking for less, I will
8 sometimes go back into lockup with clients after the plea just
9 to make sure that there is no, kind of, I don't know, sometimes
10 it seems like it's to soothe them, sometimes it's to make sure
11 they have no other questions, answer anything I can, but, yeah,
12 I probably would have in this instance. I think I probably
13 would have, I just don't remember for certain.

14 Q. So he did speak to you and ask you questions about his
15 case?

16 A. Prior to the plea that day?

17 Q. At any point in time.

18 A. Well, I represented him for a good while, I had to go
19 out and get an expert, the CSC issue was always a major problem
20 from what I recall. That was one of the things that the
21 Solicitor was hot in him behind him for and that he adamantly
22 denied from day one in speaking with me. But we were able to
23 discuss the case, I knew what his concerns were, he made them
24 very clear up until the point that he stopped communicating
25 with me.

1 Q. So when you advise your clients about their right to
2 appeal do you have a different speech or a different thing that
3 you tell them depending upon if they go to trial versus if they
4 plead guilty?

5 A. I mean, not really. Usually what happens is when I
6 first sit down with a client I intend to go over what the
7 charges are what the penalties are, I try to cover collateral
8 consequences and explain what they mean, and then I try to make
9 sure that they understand that they don't, you know, you've got
10 the right to a trial versus the right to a plea and you don't
11 have a right to a plea but the Solicitor probably will make
12 some offer at some point, but you're not guaranteed one, and
13 then of course, I have to have the conversation you are not
14 going to get three pleas, that's a thing at J. Reuben Long,
15 you're not even guaranteed the first one. So, yeah, it becomes
16 kind of, you know, a process each time just going through it,
17 but I tend to say the same things over and over and over again
18 to all of the clients, so it's not completely dissimilar, the
19 process or the way it happens may be a little different
20 because, obviously, if they do end up at a plea we're going to
21 have that conversation again about the ten days and more
22 specifically about the actual process to get the appeal done.

23 Q. Now, Mr. Myers was evaluated, he had a competency
24 evaluation; is that correct?

25 A. Yes.

1 Q. And he also had the criminal responsibility exam?

2 A. That's my recollection, yes.

3 Q. And you stated on the record that you didn't disagree
4 with the findings?

5 A. I did not.

6 Q. So you're not aware of any reason why he would have
7 become incompetent or incapacitated after the date of the plea?

8 A. Absolutely I'm not. I mean, I don't know what the
9 opportunity would have been, but, yeah, at the time of the plea
10 I was clear that he had been deemed competent that there was no
11 issue and that he was able to discuss with me and had been up
12 until he refused to at which point he was speaking to Cole.

13 Q. Now, have you ever had a client appeal, a former client
14 appeal a verdict that from a case where you represented them,
15 that you're aware of?

16 A. Yes.

17 Q. You have?

18 A. Yes.

19 MR. RAY: No further questions, Your Honor.

20 THE COURT: Anything further?

21 MS. LOWENSTEIN: I have no further questions, Your
22 Honor.

23 THE COURT: You have a good day.

24 THE WITNESS: Thank you.

25 THE COURT: Do you want to call your next witness?

1 MS. LOWENSTEIN: One moment.

2 THE COURT: Take your time.

3 MS. LOWENSTEIN: Your Honor, I would call Mr. Myers.

4 And we have had an opportunity just now to discuss that and I

5 appreciate mediate that opportunity.

6 **ROBERT L. MYERS WAS DULY SWORN AT THIS TIME AND**

7 **TESTIFIED AS FOLLOWS:**

8 **DIRECT EXAMINATION**

9 BY MS. LOWENSTEIN:

10 Q. Robert Myers, M-Y-E-R-S.

11 Q. Mr. Myers, you're the Applicant in this case, correct?

12 A. Yes, ma'am.

13 Q. And you made the choice that you would like me to ask
14 you some questions?

15 A. Yes, ma'am.

16 Q. Now, you heard Ms. Wilson's testimony that you never did
17 tell her you wanted to appeal?

18 A. Yes, ma'am.

19 Q. And we went through a lengthy discussion of the process.
20 What is your recollection of whether you told her you wanted to
21 appeal?

22 A. I remember after being sentenced we went back into the
23 room, one of the rooms where they normally speak with their
24 clients, me and my attorney, Ms. Wilson. At that time she said
25 that I had an opportunity to appeal the sentence and I told her

1 that I wanted to and she said, well, she was -- to some degree
2 she was saying that if I did appeal it she was going to come
3 back and defend herself against whatever I had to say about
4 her.

5 Q. This was before your plea was taken or was it before?

6 A. It was after.

7 Q. Excuse me, I said the same thing twice, Excuse me. Did
8 she come out and see you while you were still housed at J.
9 Reuben before you were transferred to the Department of
10 Corrections?

11 A. No, ma'am.

12 MS. LOWENSTEIN: No further questions.

13 THE COURT: Cross?

14 MR. RAY: Just very briefly.

15 **CROSS-EXAMINATION**

16 BY MR. RAY:

17 Q. Mr. Myers, you met with Ms. Wilson after your guilty
18 plea?

19 A. Yes, sir.

20 Q. And you had met with her before your guilty plea?

21 A. Yes, sir.

22 Q. And had you discussed your right to appeal prior to your
23 guilty plea or was it just at that meeting afterwards?

24 A. It was afterwards.

25 Q. That was the only time it came up?

1 A. Yes, sir.

2 Q. Now, when you said she was going to defend herself, was
3 she talking about claims of ineffective assistance of counsel
4 or was she talking about in an appeal?

5 A. The appeal, the appeal.

6 Q. So do you believe that the judge did anything wrong or
7 that there was an error in the law or anything like that? Why
8 did you want to appeal?

9 A. Well, what was stated to me before I accepted the plea,
10 before I took the plea, was that if I had pled to any charge
11 that carried a maximum of at least 30 years or so that the
12 Solicitor would be willing to accept that, and so on the
13 morning when I came up for court Ms. Wilson said, she came in
14 the room and she stated to me that that still stood, that offer
15 stood, and so I told her the charge that I would plea to and
16 she took those charges to the Solicitor and came back and said
17 the Solicitor said she's good with that, she would take that,
18 and then when we got in the courtroom everything just started
19 unraveling and I ended up getting -- Ms. Wilson kept stating to
20 me that I wouldn't get more than 20, 25 years.

21 Q. So you wanted to appeal because of Ms. Wilson?

22 A. So I upset, yes, I was upset coming out and she knew it
23 and I was like -- she said, you can appeal it, she said, you
24 can appeal it, and I said, yeah, I want to do it, I want to do
25 that, and she said, well, I'm gonna defend myself.

1 Q. So have you ever filed any other sorts of complaints
2 about her performance?

3 MS. LOWENSTEIN: Your Honor, I was restricted and I
4 would object if I'm not going to be able to go into any of the
5 other allegations which I brought up my more definite
6 statement.

7 THE COURT: I think he's going into the issue of
8 appeal only.

9 MR. RAY: Well, Your Honor, he stated that he wanted
10 to appeal based upon his counsel's performance. I was curious
11 if he has filed any other complaints against his counsel based
12 upon performance.

13 THE COURT: Overruled.

14 A. Yes, sir.

15 Q. You have?

16 A. Yes, sir.

17 Q. Were you successful?

18 A. No one ever answered the call at that Public Defender's
19 office. I tried to call and speak with her supervisor or
20 whoever and they never responded to me. I mean, for months and
21 I wrote to the U.S. Supreme Court about her. I told her, she
22 just every time me and her spoke about my case she just,
23 basically just let me know that she wasn't going to work for
24 me, she wasn't going to do anything to help me and I kept
25 telling her, well, I didn't want her on my case, but she

1 wouldn't relieve herself from my case. I think I wrote the
2 judge -- no, I wrote the Clerk of Court and filed the motion to
3 relieve counsel, something like that, and they said I couldn't
4 fire her, she had to fire herself. And so I told her when she
5 came to visit me one day, I said I wasn't going to speak with
6 her anymore because I was, like, she wasn't doing anything, I
7 mean, not nothing to help me in my case, and I had got a plea
8 offer for a 20 to 30 year plea and I told her that I would take
9 that plea but I didn't want to accept the sexual charge, the
10 sexual, whatever charge it was, but and she was, like, she got
11 upset with me about the whole thing and brought me in the
12 courtroom and had me arraigned on the charges, on all the
13 charges. And so I mean, she was just doing a whole lot of
14 stuff that just didn't sit right with me, you know, as my
15 defense attorney, so for about at least seven, eight months or
16 so before I came up to court for my trial I had spoken with
17 her, I had spoke with her.

18 Q. So if you were unhappy with her performance prior to
19 your guilty plea why did it take you over a year to file your
20 application for Post-Conviction Relief?

21 A. Over a year?

22 Q. That's correct. After your application was filed on
23 March 19, 2020 you pled guilty on March 4, 2019, why did it
24 take you so long?

25 A. Really, I don't know. Really I didn't have any guidance

1 on any of that. Like, I know at one point when I did file it
2 the mailroom lady at the prison, she forgot to stamp the back
3 page, the pages, and they sent it back to me through the mail.
4 They sent it back to me and told me that it needed to be
5 stamped.

6 MR. RAY: No further questions.

7 A. I can't remember exactly what date I actually sent it
8 off.

9 **REDIRECT EXAMINATION**

10 BY MS. LOWENSTEIN:

11 Q. What's your educational level?

12 A. Well, I got a G.E.D.

13 Q. I'm sorry?

14 A. I have a G.E.D.

15 Q. And did you get that while you've been in prison?

16 A. Yes, ma'am.

17 Q. Now, sir, did you understand the length of time that the
18 notice of appeal needed to be filed in? Did you understand
19 that the notice of appeal needed to go to the Court within ten
20 days after you plead guilty?

21 A. She -- yes, ma'am, because she stated, when she came
22 into the room, she said that I had ten days to file it and I
23 told her that I wanted to file it, and basically, when they
24 took me back to the jail and they put me on maximum security,
25 the lockdown because I had over 20 years.

1 Q. But you trusted that your request to Ms. Wilson was
2 going to be carried out?

3 A. Yeah, I thought that's how it worked.

4 MS. LOWENSTEIN: I have no further questions.

5 THE COURT: Anything further?

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

7 THE COURT: You may step down, thank you. Call your
8 next witness.

9 MS. LOWENSTEIN: No further witnesses, Your Honor.

10 THE COURT: Any witnesses from the State?

11 MR. RAY: No witnesses from the State.

12 THE COURT: I'll take the matter under advisement,
13 study the record, the file and make a decision soon. Thank
14 you.

15 MS. LOWENSTEIN: Your Honor, I've worked with this
16 Public Defender's Office a lot, and I will first of all say
17 that I respect them. I understand the tough job that they
18 have, but what we've heard, and I think it was honest from Ms.
19 Wilson, is that there is no paper trail that could verify or
20 deny my client's claim that he told her he wanted to appeal.
21 An individual who is not sophisticated then being placed in a
22 situation where he has to make the phone call, he has to make
23 that call when he has the opportunity, and sometimes those
24 don't come up. I think that what needed to happen is like what
25 happens in federal court, and that is that there is something

1 signed about whether the person wants to appeal or not, and the
2 reason I say that is, I've been in the position of having those
3 things signed, plus, also, either doing my own form, or frankly
4 doing something as simple as the eight and a half by 11, you
5 know, with my client's signature and the date on it, so when I
6 go back I can tell my staff, you know, what they need to do,
7 and frankly, that didn't happen here, and it didn't happen
8 because the process of making the phone call is way too
9 onerous, and frankly, the process of not having some kind of a
10 note about it is not good for the defense attorney and it's not
11 good for the defendant, and I believe that we've met Mr.
12 Myers' burden that ineffective assistance of counsel occurred
13 on that ground.

14 THE COURT: Would the State like to say anything?

15 MR. RAY: Well, Your Honor, we've heard testimony
16 today that Mr. Myers had had numerous conversations with Ms.
17 Wilson, he had written letters and spoken to her. He stated
18 that he has a G.E.D. She didn't believe there were any issues
19 with his competency or his understanding of what was going on.
20 She stated that she speaks with every client about their right
21 to appeal. She doesn't keep forms for everything she tells
22 them, she doesn't keep forms for telling them that they have a
23 right to appeal but she does it every time. His stated grounds
24 for wanting to appeal was to challenge Ms. Wilson's conduct,
25 but for reasons he could not explain he did not do so through

1 the Post-Conviction Relief process until after that Statute of
2 Limitations had passed. So we would assert that his
3 credibility is an issue and Ms. Wilson testified credibly and
4 we would request that this Court dismiss the allegation.

5 THE COURT: I'll take it under advisement and let you
6 know something soon.

7
8 MS. LOWENSTEIN: Thank you, Your Honor.

9 THE COURT: Thank you. Have a good day.

10 **CERTIFICATE**

11 STATE OF SOUTH CAROLINA

12 COUNTY OF HORRY

13 I, Julie A. Kevish, Official Court Reporter for the
14 State of South Carolina, do hereby certify that the foregoing
15 is a true, accurate and complete Transcript of Record of the
16 proceedings had and evidence introduced in the Court of Common
17 Pleas for Horry County, South Carolina, on the 25th of June,
18 2021.

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

21

22

June 25, 2021

23

24



25

JULIE A. KEVISH
OFFICIAL COURT REPORTER

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
)	
Robert Lee Myers, Jr., SCDC No. 229315)	Case No. 2020-CP-26-2070
)	
Applicant,)	ORDER OF DISMISSAL
)	
v.)	
)	
State of South Carolina)	
)	
Respondent.)	
_____)	

This matter comes before the Court by way of Applicant Robert L. Myers, Jr.'s March 19, 2020, application for post-conviction relief. The State made its return and partial motion to dismiss on November 12, 2020, asserting all claims beyond whether Applicant was entitled to belated appellate review were untimely pursuant to S.C. Code Ann. § 17-27-45. The Court convened an evidentiary hearing on Friday, June 21, 2021. Applicant was present at the hearing and represented by Attorney Carla F. Grabert-Lowenstein. Assistant Attorneys General William H. Ray represented Respondent.

The PCR hearing heard testimony from both Applicant and his plea counsel, Attorney Kia Wilson. The Court had before it Applicant's records from the South Carolina Department of Corrections, the Horry County Clerk of Court's records, a copy of the original plea transcript, a copy of Applicant's original PCR application, and a copy of his amended allegations. This Court has reviewed the record and pleadings in this matter and finds Applicant cannot establish any constitutional deprivations or other grounds on which relief can be granted. Specific findings of fact and conclusions of law are set forth below:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted by the Horry County Grand Jury for first-degree burglary (2017-GS-26-00642), first-degree criminal sexual conduct (2017-GS-26-00643), kidnapping (2017-GS-26-00644), possession of a weapon during the commission of a violent crime (2017-GS-26-00645), armed robbery (2017-GS-26-00646), and assault and battery of a high and aggravated nature (2019-GS-26-00647). Applicant was represented by Attorneys Kia Wilson and Colon Cagle and Assistant Solicitor Marry Ellen Walter, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On March 4, 2019, Applicant appeared before the Honorable Benjamin H. Culbertson and entered a guilty plea, as indicted and without negotiation or recommendation, to the assault and battery, burglary, and armed robbery charges. Applicant was sentenced to forty years' imprisonment for the burglary, thirty years' imprisonment for the armed robbery, and twenty years' imprisonment for the assault and battery. The remaining charges were subsequently dismissed *nolle prosequi*. Applicant did not appeal his conviction or sentence.

II. FACTUAL HISTORY

At around 2:00 AM on August 18, 2016, a 71 year old Horry County woman noticed that a light was on in a building adjacent to her home. (Tr. 20, 23-5). She went to check on it and unexpectedly discovered Applicant inside. (Tr. 21, 5-7). He rushed her, threw her to the ground, stripped off her clothes, tied her up with electrical cord, and sexually assaulted her. (Tr. 21, 7-11; Tr. 33, 23 – Tr. 34, 2). He held a knife to her throat, doused her in bleach, forced her to scrub it on her skin, and demanded that she tell him where her money was. (Tr. 21, 13-19; Tr. 33, 14-16). She told him that there was money in her vehicle, which was parked outside. (Tr. 21, 19-21; Tr. 34, 12-18). He eventually untied her and went outside, allowing her an opportunity to flee, naked, to

police who happened to be down the street at the scene of a car accident. (Tr. 21, 21-24; Tr. 34, 18-24).

Officers investigated and discovered camera footage showing Applicant riding a bicycle away from the scene before hiding in nearby bushes around the time of the assault. (Tr. 22, 1-8). Officers searched the area and discovered rubber dish gloves and electrical cord that had been taken from the victim's home. (Tr. 22 8-12). Both Applicant's and the victim's DNA was found on these pieces of evidence. (Tr. 22, 11-12). The victim was taken to the hospital with injuries to her wrists, a puncture wound to her face, and significant traumatic injuries indicating sexual assault. (Tr. 22, 18 – Tr. 23, 3). A rape kit was processed, which indicated that seminal fluid that did not contain DNA evidence was present. (Tr. 23, 10-20).

Applicant was arrested the next day and found to be in possession of the victim's cell phone. (Tr. 22, 13-15). He voluntarily confessed to police. (Tr. 26, 6-15).

III. CURRENT APPLICATION

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

1. Ineffective assistance of counsel
 - a. Counsel failed to file notice of appeal
 - b. Counsel did not secure plea deal
 - c. Counsel falsely advised defendant about guilty plea
2. Unknowing, unwilling, involuntary plea

At the hearing Applicant proceeded on the following allegations, which were served on Respondent on June 10, 2021 and alleged as follows:

1. Ms. Wilson failed to file the directed verdict motion, or even a notice of appeal. Mr. Myers informed counsel he wanted to appeal the sentence. Counsel failed to file the appeal. The State now claims this PCR claim is beyond the statute of limitations. Clearly Mr. Meyer has been prejudiced.

2. Ms. Wilson did not spend adequate time with Mr. Myers to be able to fully and reasonably advise him on the charges faced and possible defenses. Ms. Wilson was unaware Mr. Myers was on the docket for the plea which was entered on March 4, 2019. How could Ms. Wilson adequately advise Mr. Myers given counsel was unaware of what was scheduled with the case. Mr. Colon Cagle, attorney, was sitting in a “Second Chair” position, adding additional confusion on Mr. Myer’s part.
3. Mr. Myers’s confusion was exacerbated having been through a complex competency and criminal responsibility evaluation and report. PCR counsel is not alleging that Mr. Myers did not understand what happened the night of the crime or did not understand the questions in court. Rather counsel argues, if there was sufficient question to have these evaluations conducted, Ms. Wilson should have taken extra care to ensure that Mr. Myers fully understood all aspects and elements involved going into the plea hearing.
4. The plea transcript is ambiguous, jumbled with confusion about what was the actual offer, what charges were included. Due to this confusion the court decided to take a break in the plea. (Reporters Transcript p. 37 at 23-25). In the absence of clear professional advice and counsel from Ms. Wilson, faced with confusion, if not disorganized proceeding, Mr. Myers finally capitulated to the plea.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Respondent’s Partial Motion to Dismiss for Untimeliness

The State argued in its return and partial motion to dismiss that all of Applicant’s allegations were untimely except for his claim for belated appellate review pursuant to *White v. State*, 263 S.C. 110, 119, 108 S.E.2d 35, 39 (1974). At the hearing Respondent renewed its motion and again asserted that all of the amended allegations were untimely filed, except for the request

for a belated appeal, to the extent that one was raised in the amendment. This Court finds that the partial motion to dismiss is proper.

The Uniform Post-Conviction Procedure Act states as follows:

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

S.C. Code Ann. §17-27-45(A).

The South Carolina Supreme Court has held the statute of limitations applies to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may be used to raise the statute of limitations defense. *McDonnell v. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). The statute of limitations will be tolled where the Applicant shows that the failure to timely file a PCR application was due to mental incompetency. *Ferguson v. State*, 382 S.C. 615, 677 S.E.2d 600 (2009). Furthermore, the statute of limitations does not apply when a PCR applicant does not knowingly and voluntarily waive his right to appeal his trial conviction. *White*, 263 S.C. 110, 208 S.E.2d 35. The statute of limitations may also be tolled when an inmate places an application in the prison mailroom and a subsequent delay, beyond the inmate's control, renders the application untimely. *Mose v. State*, 420 S.C. 500, 803 S.E.2d 718 (2017). In addition, S.C. Code Ann. §17-27-70(c) authorizes this Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Respondent moved to dismiss all allegations other than the request for a belated appeal under *White*.

The record shows that Applicant entered a guilty plea on March 4, 2019 and did not pursue a direct appeal. Thus, the application was due to be filed on or before March 5, 2020. The

application was notarized on March 17, 2020, and was filed on March 19, 2020; about two weeks past the filing deadline. At the hearing, Respondent asserted that Applicant had not presented grounds for equitable tolling of the statute of limitations. Applicant responded by arguing that he is a layman in the law, has some mental health issues, and therefore, the statute of limitations as set forth in Section 17-27-45 should be equitably tolled.

Applicant's plea counsel testified that she had requested both a criminal responsibility examination and a competency examination prior to his guilty plea. Those competency evaluations indicated that he was competent, and she had no reason to contest those findings. She stated that it was clear he was competent and she is unaware of any reason why he would have become incompetent since the date of his guilty plea. Applicant testified that he did not know why it took over a year to file his PCR application. He stated that he had tried to file it earlier, but did not produce any evidence or specifics about when this took place or why his attempt to timely file was unsuccessful.

This Court finds that Applicant has failed filed his application within the one year statute of limitations as required pursuant to Section 17-27-45. Furthermore, he has not shown that he is entitled to equitable tolling of the statute of limitations. He has not shown that his delay in filing his PCR application was due to incompetency or incapacity, and produced no evidence indicating that his application's filing was delayed by the prison mailroom. Instead, the application was notarized after the window for timely filing had closed, indicating that it was not completed in a timely manner. Therefore, the State's partial motion to dismiss all allegations except the request for a belated appeal is granted and those allegations are dismissed with prejudice.

Belated Appellate Review

At the evidentiary hearing Applicant proceeded on the sole allegation that his counsel failed to file a notice of appeal on his behalf. This Court finds the allegation to be without merit.

Counsel is required to make certain the defendant is made fully aware of the right to appeal following a trial. *White*, 263 S.C. 110, 208 S.E.2d 35 (1974). However, absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. *Weathers v. State*, 319 S.C. 59, 459 S.E.2d 838 (1995). The bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief. *Id.* Instead, there must be proof that extraordinary circumstances exist such that the defendant should have been advised of the right to appeal. *Id.* Extraordinary circumstances may exist when there is reason to think that a rational defendant would want an appeal, such as when nonfrivolous grounds for an appeal exist, or when the defendant reasonably demonstrates an interest in appealing. *Id.*; *Roe v. Flores-Ortega*, 528 U.S. 470 (2000).

At the PCR hearing Applicant's plea counsel testified that she did not specifically recall telling Applicant that he could appeal his conviction or sentence, but she is certain that she did so because there were issues communicating with him and she made a point to cover all of her bases. She explained that it is her habit to always thoroughly explain the appeals process to every client that she represents, and that her office makes staff available to her clients so that they may file a notice of appeal even if her clients cannot get in touch with her directly. When a client requests an appeal she tells them to call her office, speak with the staff, and a notice of appeal will be filed without question. She did not recall Applicant requesting an appeal at any point, and believes that the only conversation she had with him after his plea was to discuss the length of his sentence.

Applicant testified that he was informed of his right to appeal and that he told his counsel that he wanted to appeal his conviction immediately after the plea hearing. She responded by telling him that “she would defend herself.” He testified that he had previously complained about her performance during the course of his prosecution, filed a grievance against her, and had unsuccessfully attempted to fire her. He explained that he was unaware that a notice of appeal had to be filed within ten days, and that he did not know why it took him over a year to file his PCR application.

This Court finds Applicant’s testimony to be unpersuasive. He indicated that after his plea hearing he spoke with his counsel and expressed frustration over her performance. Such issues are properly raised through the post-conviction relief process, not on direct appeal. The transcript from the plea hearing does not indicate, and Applicant has not alleged or proven, that any nonfrivolous grounds for a direct appeal exist. Likewise, because Applicant’s desire to file an appeal was motivated not by any legitimate appealable issue, it is not clear that he unambiguously expressed his desire to appeal the verdict to his plea counsel. Her response that “she would defend herself” is illustrative, as it indicates that he likely was talking about filing an application for post-conviction relief to raise ineffective assistance of counsel claims against her. This Court finds that Applicant’s plea counsel credibly testified that she informed Applicant of his right to appeal out of habit, made her staff available to him, and he never indicated that he wanted such. Therefore, Applicant has failed to show that extraordinary circumstances exist that would require plea counsel to file a notice of appeal, his request for a belated appeal is without merit, and the allegation is denied and dismissed with prejudice.

V. CONCLUSION


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

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 31 day of July, 2021.


 William H. Seals, Jr.
 Presiding Judge
 Fifteenth Judicial Circuit

Mauri, South Carolina

DOCKET NO. 2017-GS-26- 001047

WITNESSES

H Jones Myrtle Beach Police Department

J. Beam

ARREST WARRANT NUMBER

2016A2620602237
CDR: 3411 16-03-0600(B)(1)
DOA: 8/28/2016

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: FEB 24 2017

VERDICT

Foreperson of Petit Jury
Date:

The State of South Carolina

County of Horry

Joshua D. Holford 16H04603

COURT OF GENERAL SESSIONS

FEBRUARY, 2017 TERM

THE STATE

vs.

**Robert Lee Myers Jr.
B/M
Homeless
Myrtle Beach, SC 29577**



ATTORNEY: James Cullen Galmore

Indictment for

Assault and Battery of a High & Aggravated Nature

Jimmy A. Richardson, II, Solicitor

**FILED
HORRY COUNTY
2017 MAR -1 AM 8:43**

**CLERK OF COURT
HORRY COUNTY, SC**

**CLERK OF COURT
HORRY COUNTY, SC**

ORIGINAL

WITNESSES

H Jones Myrtle Beach Police Department

J. Berry

ARREST WARRANT NUMBER

2016A2620602238
CDR: 0079 16-11-0311
DOA: 8/28/2016

ACTION OF GRAND JURY

TRUE BILL

[Signature]

Foreperson of Grand Jury
Date:

FEB 24 2017

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017-GS-26- 001642

The State of South Carolina

County of Horry

Joshua D. Holford

16H04603

COURT OF GENERAL SESSIONS

FEBRUARY, 2017 TERM

THE STATE

vs.

**Robert Lee Myers Jr.
B/M
Homeless
Myrtle Beach, SC 29577**

ATTORNEY: James Cullen Galmore

Indictment for

Burglary, 1st Degree

Jimmy A. Richardson, II, Solicitor

ORIGINAL

**FILED
HORRY COUNTY**

2017 MAR -1 AM 8:43

**CLERK OF COURT
HORRY COUNTY, SC**

STATE OF SOUTH CAROLINA)
)
COUNTY OF Horry)

INDICTMENT

At a Court of General Sessions, convened on February 23, 2017, the Grand Jurors of Horry County present upon their oath:

BURGLARY, FIRST DEGREE

CDR: 0079 16-11-0311

That Robert Lee Myers Jr. did in Horry County, on or about August 18, 2016, enter the dwelling of V.P. [REDACTED] located at [REDACTED] 7th Avenue, within the city of Myrtle Beach, without consent and with the intent to commit a crime therein and the defendant did so in the nighttime, and/or with a deadly weapon, and/or the defendant has previously been convicted of two prior burglaries/housebreakings, in violation of Section 16-11-0311(A), S. C. Code of Law, 1976, as amended.

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



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

DOCKET NO. 2017-GS-26- 00646

WITNESSES

H Jones Myrtle Beach Police Department

J. Beam

ARREST WARRANT NUMBER

2016A2620602242
CDR: 0139 16-11-0330(A)
DOA: 8/28/2016

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: FEB 24 2017

VERDICT

Foreperson of Petit Jury
Date:

C

The State of South Carolina

County of Horry

Joshua D. Hofford 16M04603

COURT OF GENERAL SESSIONS

FEBRUARY, 2017 TERM

THE STATE

vs.

Robert Lee Myers Jr.
B/ M
Homeless
Myrtle Beach, SC 29577

ATTORNEY: James Cullen Galmore

Indictment for

Armed Robbery

Jimmy A. Richardson, II, Solicitor

FILED
HORRY COUNTY
2017 MAR -1 AM 8:43

CLEER COURT
HORRY COUNTY, SC

CLERK OF COURT
JAMES R. RYAN

ORIGINAL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on February 23, 2017, the Grand Jurors of Horry County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That Robert Lee Myers Jr. did in Horry County on or about August 18, 2016, while armed with a deadly weapon and/or while alleging, either by action or words, was armed while using a representative of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, take and carry away personal property of V.P. [REDACTED] from or in the immediate presence of V.P. [REDACTED] with intent to deprive V.P. [REDACTED] of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(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.



JIMMY A. RICHARDSON, II
 FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Horry
STATE VS.

Robert Lee Myers Jr.

AKA: _____

Race: BLACK Sex: M Age: 44

Address: Homeless

City, State, Zip: Myrtle Beach, SC 29577

DL#: _____ SID#: 00812341

*CDL Yes No CMV Yes No Hazmat Yes No

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

TO: Assault & Battery of a High & Aggravated Nature 0-20 years

in violation of § 16-03-0600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

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 Walter, Mary-Ellen SC103036 SC Bar# Robert L. Myers Defendant Kia T. Wilson Attorney for Defendant Wilson, Kia T. SCB69441 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 20 days/months/years or under the Youthful Offender Act not to exceed X years and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X

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: 3/4/2019
 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 § 17-25-132 Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

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

Payment Terms: _____

Set by SCDPPPS _____

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 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$3.75

TOTAL \$128.75 + 840.00 = \$968.75

Clerk of Court/ Deputy Clerk Renee Davis
Court Reporter: Sallie Beth Todd

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS2600647

A/W#: 2016A2620602237

Date of Offense: 8/18/2016

S.C. Code § : 16-03-0600(B)(1)

CDR Code #: 3411

SENTENCE SHEET

CONVICTED OF or PLEADS

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 weeks/monthly pmts. of \$ 25.00 beginning 4/4/2019
\$ _____ paid to Public Defender Fund

Other: _____

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

Presiding Judge Marijann T. Culbertson

Judge Code: 2148

Sentence Date: March 4, 2019

FILED
CLERK OF COURT
Horry County
MAR -11
4:31

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry
STATE VS.

INDICTMENT/CASE#: 2017GS2600646

AKA: Robert Lee Myers Jr.

A/W#: 2016A2620602242

Race: BLACK Sex: M Age: 44

Date of Offense: 8/18/2016

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

City, State, Zip: Myrtle Beach, SC 29577

SENTENCE SHEET

DL#: SID#: 00812341

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was
TO: Armed Robbery 10-30 years

CONVICTED OF or PLEADS

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 w/minor 1st or Lewd Act) §17-25-45

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 Walter, Mary-Ellen SC103036 SC Bar# Defendant Kia T. Wilson SCB69441 SC Bar# Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed X years
and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment
of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X

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: 3/4/2019
 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 §17-25-13 Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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 weeks/monthly pmts. of \$ 25.00 beginning 4/14/2019
\$ paid to Public Defender Fund
Other:

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 61.6 (Public Def/Probation)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$3.75

TOTAL \$128.75

Clerk of Court/ Deputy Clerk: Renee Elvis
Court Reporter: Sallie Beth Robb

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

Presiding Judge: Morgan Culbertson
Judge Code: 2148
Sentence Date: March 4, 2019

FILED
HENRY COUNTY
2019 MAR -4 PM 1:3

COUNTY OF 102 Horry
STATE VS.

Robert Lee Myers Jr.

AKA:

Race: BLACK Sex: M Age: 44

DOB: -1974 SS#:

Address:

City, State, Zip: Myrtle Beach, SC 29577

DL#: SID#: 00812341

*CDL Yes No CMV Yes No Hazmat Yes No

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

TO: Burglary, 1st degree 15 - life

INDICTMENT/CASE#: 2017GS2600642

A/W#: 2016A2620602238

Date of Offense: 8/18/2016

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.

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Walter, Mary-Ellen SC103036 Defendant X: Robert L. Myers Wilson, Kia T. SCB69441 Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 40 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: 3/4/2019
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 (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 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 61.6 (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$3.75

TOTAL \$128.75

Clerk of Court/ Deputy Clerk Renee Elvis

Court Reporter: Sallie Beth Todd

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 \$ 25.00 beginning 4/4/2019

\$ paid to Public Defender Fund

Other:

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

Presiding Judge Margaret Culbertson

Judge Code: 2148

Sentence Date: March 4, 2019

FILED
Horry County
2019 MAR -4 PM 4:31