

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Sumter County

Honorable R. Kirk Griffin, Circuit Court Judge

MICHAEL ROSE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000484

APPENDIX

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(There were no exhibits submitted.)

1 MS. HELD: May it please the Court, this
2 is the State of South Carolina versus Michael
3 Charles Rose. Your Honor, Mr. Rose is here with his
4 attorney Mr. Allen Jackson Barnes of the Sumter
5 County Public Defender's Office; and Mr. Rose has
6 two charges, Your Honor, and he is pleading to both
7 of those. One charge, Your Honor, is a true billed
8 indictment for burglary first degree and that
9 indictment number is 2016-GS-43-0619. In plea
10 negotiations the State is allowing Mr. Rose to plead
11 to burglary second degree violent on that indictment
12 number which was 2'16-0619. Then, Your Honor, his
13 other charge, Your Honor, that is also a true billed
14 indictment. I did notice, Your Honor, that he was
15 arrested for burglary first degree and for some
16 reason I prepared the indictment to what he's
17 actually pleading to, the burglary second degree
18 violent, so the charge code, the CDR code for -- at
19 the top here it still says 79. I just wanted the
20 Court to be aware of that. But he actually was
21 arrested and thus qualified for burglary first
22 degree. For some reason I, I don't know if we need
23 to amend it since he's actually pleading to the
24 lesser included offense, anyway, but I wanted ---

25 THE COURT: What is he actually indicted

1 for?

2 MS. HELD: He's actually indicted for
3 burglary second degree violent.

4 THE COURT: Is that what he's pleading to?

5 MS. HELD: Yes, sir.

6 THE COURT: Well, that's fine.

7 MS. HELD: It's just up here it says the
8 charge could still -- I just wanted the Court to be
9 aware of that.

10 THE COURT: As long as the charge code is
11 right on the plea part.

12 MS. HELD: Yes, sir, it is. So on
13 indictment number 19-GS-43-1099 he is pleading to
14 burglary second degree violent, Your Honor. The
15 court -- the State will have a recommendation. May
16 I approach.

17 THE CLERK: Raise your right hand, sir.
18 State your full name.

19 THE DEFENDANT: Michael Rose.

20 WHEREUPON,

21 **MICHAEL ROSE,**
22 having been duly sworn by the Clerk, testified
23 as follows:

24 THE COURT: Mr. Rose, you want to plead
25 guilty?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Have you had enough time to
3 talk to your lawyer about this?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: You satisfied with his
6 representation?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Has anybody promised you
9 anything or threatened you in any way?

10 THE DEFENDANT: No, sir.

11 THE COURT: Are you under the influence of
12 alcohol or drugs today?

13 THE DEFENDANT: No, sir.

14 THE COURT: You got any mental diseases?

15 THE DEFENDANT: No, sir.

16 THE COURT: You understand I can give you
17 15 years on each one?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And they're violent.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And they're serious, you
22 understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: If you get another serious
25 offense against you, you'll be looking at life

1 without the possibility of parole?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Are you under the influence of
4 alcohol or drugs?

5 THE DEFENDANT: No, sir.

6 THE COURT: You got any mental diseases?

7 THE DEFENDANT: No, sir.

8 THE COURT: By pleading guilty you're
9 giving up your right to remain silent. You're
10 giving up your right to a jury trial and your right
11 to confront witnesses and cross-examine witnesses
12 and subpoena witnesses to testify on your behalf.
13 You understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: If you went to trial they'd
16 have to prove you guilty beyond a reasonable doubt
17 to all twelve jurors. You understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And on indictment 2016-43-619,
20 your attorney on that case is Debbie Butcher. It's
21 my understanding that Ms. Butcher is not here, but
22 you're willing for Mr. Barnes to stand in for her.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Did you have an opportunity to
25 talk with her about your case?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And you're satisfied with her
3 representation, as well as Mr. Barnes?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. If you want to appeal
6 this guilty plea you got to do so in ten days. You
7 understand?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Solicitor.

10 MS. HELD: May it please the Court, Your
11 Honor, for the indictment 2'16-619 -- excuse me,
12 2016, then 619, Your Honor, that occurred on
13 February the 4th, 2016, at 592 South Main.
14 Ms. Barbara Evans, who was the renter of the house
15 at the time, had been gone for a couple of days
16 staying at her mother's house around the corner.
17 She came into her house and noticed a black bag and
18 an umbrella on a table in the front room. She
19 thought, oh, somebody's been in my house; but she
20 went, she didn't hear or see anything right away.
21 She went down the hallway and went into her bedroom;
22 and the next thing she knew she heard Mr. Rose
23 behind her saying, oh, Barbara, it's me. They
24 apparently had known each other from when they grew
25 up together and so she knew who it was. He left.

1 When they police came to investigate they discovered
2 that some wires in the attic, plastic copper wires
3 wrapped with plastic, multiple of those had been cut
4 and four were left at the home that were cut, and
5 she had seen Mr. Rose with those in her hand. So
6 those are the facts on that case, Your Honor. And
7 Ms. Evans was here this morning, she did not wish to
8 be here this afternoon for the guilty plea.

9 And Your Honor, for the other indictment,
10 2019-1099, that happened on June 22nd, 2018, at 220
11 Dingle Street which is Burgess Brogdon
12 Do-It-Yourself Center and Mr. Gene Weston is the
13 proprietor of that establishment. Mr. Rose lives --
14 they, you can see the house and the business from
15 each others' yards and so it turned out that when
16 the law enforcement responded to 220 Dingle Street
17 which is in the -- and I neglected to say, Your
18 Honor, the other [REDACTED] South Main is, of course, in
19 the city of Sumter and the county of Sumter as is
20 the indictment that ends in 1099. They came to the
21 Do-It-Yourself Center and they discovered there were
22 multiple things. The plexiglass was broken. There
23 was a lawn trimmer moved, stolen, and some hammer
24 drills. And the neighbor had called 9-1-1 and
25 identified Mr. Rose as the person who was

1 committing, he saw the burglary in progress and
2 that's how they knew it was Mr. Rose. And Your
3 Honor, Mr. Rose, well...

4 THE COURT: Those facts correct, Mr. Rose?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: You pleading guilty 'cause you
7 are guilty?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: I find there's a factual basis
10 for your plea. They're freely and voluntarily
11 entered into and you've had the advice of competent
12 counsel and you tell me you're satisfied. I'll
13 accept your plea.

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Okay.

16 MS. HELD: Your Honor, for the record I
17 just want to say that I spoke to Mr. Weston last
18 week and he said he, it was not necessary for him to
19 be present if Mr. Rose pled and the State -- would
20 you like to hear the State's recommendation, Your
21 Honor?

22 THE COURT: Yes, ma'am.

23 MS. HELD: It is eight years to first the
24 burglary second degree violent, concurrent.

25 THE COURT: Okay.

1 Mr. Barnes.

2 MR. BARNES: Thank you, Your Honor, may it
3 please the Court. Given -- well, first of all, I
4 want to thank Ms. Held for the offer and for
5 agreeing to let us proceed with that today. Given
6 that both of the victims in this case are satisfied
7 with the recommendation, we would appreciate Your
8 Honor following it.

9 THE COURT: Okay.

10 MR. BARNES: Yes, sir, Your Honor. The
11 other thing that we would, we would ask Your Honor
12 to please recommend some sort of addiction
13 treatment. I'm not sure what sort of, other than
14 ATU, what they have. I'm not sure with his
15 classification if he would still qualify for ATU;
16 but we would ask Your Honor to recommend some sort
17 of addition treatment, whatever they have to offer.

18 (Attorney Barnes confers with defendant.)

19 THE COURT: Okay. On indictment -- do you
20 want to tell me something else?

21 MR. BARNES: No, sir.

22 THE COURT: 2016-GS-43-619, the sentence
23 of the Court that you're committed to the State
24 Department of Corrections for a term of eight years.
25 On indictment ending 2019-GS-43-1099, the sentence

1 is the same. You're committed to the State
2 Department of Corrections for a term of eight years
3 to run concurrent with each other, and I'm
4 recommending ATU and whatever other programs they
5 have.

6 MR. BARNES: And Your Honor, would you
7 also make sure that Mr. Rose gets credit for
8 whatever time he served?

9 THE COURT: Yeah. Okay, thank you.

10

11

12 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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STATE OF SOUTH CAROLINA

County of Sumter S.C.

RECORDED

IN THE COURT OF COMMON PLEAS

2020 MAR 23 PM 3:20

Michael Charles Rose 216588
Full name and prison number (if any) of Applicant

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

2020-CP-43-482

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

CERTIFIED TRUE COPY
OF ORIGINAL FILE
Barbara Shaper
CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

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 Wateree Correction Institution
2. Name and location of Court which imposed sentence Sumter County
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) Burglary 1st degree # 2019-GS-43-1099 - Dec 9, 2019
 - (b) _____

14 (c)

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

(a) December 9, 2019 8yrs (violent) Burglary 2nd lesser included

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

No

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

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

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

(c) the date of each such result:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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

(a) Trial Counsel informed the applicant that he would not

(b) be filing notice of appeal

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) trial counsel failed to review and discuss all discovery information and evidence
- (b) trial counsel was ineffective in that he did unfairly and improperly pressure and coerce me into signing up any rights in accepting a plea offer.
- (c) Trial counsel was ineffective in that he should have been able to negotiate a better deal on my behalf.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) as stated above
- (b) as stated above
- (c) as stated above
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

NO

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

(a) which grounds have been presented:

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

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

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

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) Issue were not Properly presented by trial counsel
- (b) and are reflective of ineffective assistance of counsel.
- (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? N/A
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No

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. Allen Jackson Barnes Sumter County Public defender
215 N. Harvin Street, Room #151 Sumter S.C. 29150
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. _____
 - ii. _____
 - iii. _____

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

Conviction reversed with remand for new trial

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

No

STATE OF SOUTH CAROLINA)
County of Sumter)

VERIFICATION

I, Michael Charles Rose, 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.

Michael Charles Rose
Michael Charles Rose

SWORN to and subscribed before me this 19th day of March 2020.

Pamela D. Hatfield (L.S.)
Notary Public

My Commission Expires: 3/15/2021

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

I, Michael Charles Rose, 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.

Michael Charles Rose
Michael Charles Rose
Applicant

SWORN or affirmed to and subscribed before me this

19th day of March, 2020

Renee D Hatfield

Notary Public

My Commission Expires:

3/15/2021

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	FOR THE THIRD JUDICIAL CIRCUIT
)	
)	
Michael Rose, #216589,	)	Case No.: 2020-CP-43-0482
Applicant,)	
)	
v.	)	RETURN, PARTIAL MOTION TO
	)	DISMISS, AND MOTION FOR A
	)	MORE DEFINITE STATEMENT
State of South Carolina,)	
Respondent.)	
_____)	

NOW COMES Respondent, the State of South Carolina, making its return to the application for post-conviction relief filed on March 23, 2020, by Applicant Michael Rose, Respondent respectfully offers the following in support of its return:

I. Procedural History

Applicant is presently in the South Carolina Department of Corrections. In October 2019, the Sumter County Grand Jury indicted Applicant for Burglary, 1st degree (2019-GS-43-1099).

A. Jack Barnes, Esquire, (Counsel) represented Applicant. Assistant Solicitor Margret M. Held of the Third Circuit Solicitor's Office, prosecuted the case.

On December 9, 2019, Applicant entered a negotiated plea before the Honorable R. Ferrell Cothran, Jr., for the lesser included offense of second degree burglary¹. Judge Cothran sentenced Applicant to eight years of imprisonment for this charge². Applicant did not appeal his conviction or sentence.

¹ Applicant was also indicted for first-degree burglary in 2016, and pleaded guilty on the same day to second-degree burglary for his 2016 indictment (2016-GS-43-0619). However, it appears Applicant is only challenging the convictions arising out of indictment 2019-GS-43-1099 in his PCR application.

² Applicant was also sentenced to a concurrent term of eight years of imprisonment for his 2016 charge.

II. Factual History

The underlying facts of the crime³ for which Applicant is incarcerated were articulated by the State during the plea proceedings as follows:

On June 22, 2018, owners of Burgess Brogdon Do-It-Yourself Center discovered plexiglass broken and various items stolen including a law trimmer and some hammer drills. (Tr. 8). A neighbor, whom had originally called 9-1-1 after seeing suspects forcing entry, later properly identified Applicant in a line-up. (Tr. 8-9).

III. Allegations Raised and Relief Sought in Application

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

1. Ineffective Assistance of Counsel
 - a. "Trial counsel failed to review and discuss all discovery information and evidence."
2. Involuntary Guilty Plea
 - a. "Trial counsel was ineffective in that he did unfairly and improperly pressure and coerce me into signing up any rights in accepting a plea offer."
3. "Trial counsel was ineffective in that he should have been able to negotiate a better deal on my behalf."

Applicant requests the following form of relief: "Conviction reversed with remand for new trial."

Attached to and incorporated herein are the Sumter County Clerk of Court Records regarding the subject convictions, the Applicant's South Carolina Department of Corrections Records, the plea transcript, and the current PCR application. Respondent reserves the right to amend this Return upon receipt of relevant information.

IV. Responses to Allegations of Ineffective Assistance of Counsel

In his application, Applicant asserts he is entitled to post-conviction relief based on

³ As discussed above, Applicant is only challenging his 2019 indictment in this PCR action, and therefore, Respondent herein is only responding as it relates to indictment 2019-GS-43-1099.

ineffective assistance of counsel for failure “to review and discuss all discovery information and evidence;” however, he does not provide any specific information. Applicant’s claim lacks sufficient factual support required for Respondent to adequately respond with any specificity. Accordingly, Respondent responds generally to his claims of ineffective assistance of counsel and requests that Applicant—through his counsel—file an amended application properly setting forth specific allegations and claims with supporting facts well in advance of an evidentiary hearing. Additionally, Respondent requests that this matter not be set for an evidentiary hearing until Applicant provides a more definite statement.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984); *Taylor v. State*, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). In a PCR action, an applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When the applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show “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*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. *Id.*; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided

representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). 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 such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

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 pleaded 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)).

Respondent submits Applicant can satisfy neither requirement of the *Strickland* test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing

to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

As discussed above, it is impossible for Respondent to adequately respond to Applicant's allegation of ineffective assistance of counsel because Applicant has completely failed to provide any specific allegations or facts to support such claims. Respondent requests Applicant, through counsel, provide specific claims and facts to support his vague allegations of ineffective assistance of counsel prior to an evidentiary hearing.

V. Involuntary Guilty Plea

Applicant also states he entered his guilty plea involuntarily because he was unfairly and improperly pressured and coerced take a plea. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. *Al-Shabazz v. State*, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty with the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." *Hill v. Lockhart*, 474 U.S. 52, 56 (1985). Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." *McMann v. Richardson*, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." *Id.* at 771.

For a guilty plea to be valid, the record must establish the defendant had a full

understanding of the consequences of his plea and the charges against her. *Dalton v. State*, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Boykin v. Alabama*, 395 U.S. 238, 242 (1969)). Further, an applicant can attack the voluntary, knowing and intelligent character of a guilty plea entered on advice of counsel by showing counsel's advice in taking the plea fell below an objective standard of reasonableness. *Porter v. State*, 368 S.C. 378, 629 S.E.2d 353 (2006). "That a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." *McMann v. Richardson*, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." *Id.* at 771.

In this case, the record refutes any allegation Applicant did not knowingly and voluntarily enter his guilty plea. At the guilty plea hearing, Judge Cothran conducted a thorough colloquy with Applicant. (Tr. 4-7). Applicant was also properly advised of the constitutional rights he would waive by pleading guilty, including the right to a trial, which Applicant testified he understood. (Tr. 6). Judge Cothran explained the implications of his conviction and South Carolina's three strike rule. (Tr. 5-6). Furthermore, after the assistant solicitor read the factual summary of events he confirmed those facts were correct. (Tr. 9).

Judge Cothran asked Applicant twice whether he was under the influence of drugs or alcohol or diagnosed with any mental illnesses that may impede with his ability to understand the plea proceedings. (Tr. 5-6). Applicant affirmed he was not and he was not threatened or promised anything in exchange for his guilty plea. (Tr. 5). At no point did not allege or imply he was coerced or pressured to take the plea. Lastly, Applicant asserted he was satisfied with his attorney's

representation and had enough time to discuss the plea negotiations. (Tr. 5).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. There is no evidence to support that but for Applicant's counsel that he would have insisted on going to trial. However, allegations regarding the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

VI. Motion for a More Definite Statement

Respondent also hereby moves for a more definite statement regarding Applicant's allegation of ineffective assistance of counsel for failing to review and discuss discovery evidence. Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VII. Motion for Partial Dismissal for Failure to State a Claim

Applicant alleges that trial counsel should have been able to obtain a "better" plea offer. Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.

S.C. Code Ann. § 17-27-20 (1976).

This allegation does not support a cognizable claim for post-conviction relief under any of the statutory grounds. Therefore, the Court should summarily dismiss this application for post-conviction relief.

VIII. Assertion of Rights to Notice of Amendments, Experts

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. Rule 11(a), SCRCPP. *Pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing a nullity where person was represented by counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) (“Since there is no right to ‘hybrid representation’ that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.”).

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent, or in the alternative continue the matter to permit adequate time to investigate and address the claims. *See Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017) (“In most PCR cases . . . we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases.”); *Love v. State*, 428 S.C. 231, 242, 834 S.E.2d 196, 201 (2019) (“When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record.”); *see also* Rules 15(a)-(b), SCRCP (explaining how to amend a pleading).

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

IX. Denial of All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

X. Conclusion

WHEREFORE, having made its return, the State requests an evidentiary hearing be held on Applicant's claim of ineffective assistance of counsel and an involuntary guilty plea, and Applicant's third allegation be dismissed for failure to state a claim. Further, the State requests Applicant file an amended application containing the required specificity regarding his allegation of ineffective assistance of counsel.


Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BRIANNA L. SCHILL
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

9/18, 2020

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER)	
)	
	)	2020-CP-43-0482
)	
MICHAEL ROSE CHARLES, #216589,)	
)	
Applicant,)	
)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	
_____)	

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

Timothy L. Griffith, Esquire
Timothy L. Griffith, Attorney at Law
2338 Mount Vernon Drive
Sumter, South Carolina 29154

DATED this the 18th day of September, 2020.


Kaitlyn S. Slice, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER)	
	)	2020-CP-43-0482
Michael Rose)	
Applicant,)	
	)	AMENDED APPLICATION
v.)	
)	
STATE OF SOUTH CAROLINA,)	
Respondent.)	
_____)	

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

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

I have spoken at length with Mr. Rose so as to help him understand the PCR and so that I can articulate his concerns and claims. His application is for burglary 2nd degree: 2019-GS-43-1099 he plead guilty to another burglary 2nd degree: 2016-GS-43-0619 but did not understand that he had plead to the second one – though the transcript shows he did – he therefore had not filled the application on both.

Mr. Rose would amend his application to include both cases 2019-GS-43-1099 and 2016-GS-43-0619.

1. Ineffective assistance of Counsel: Mr. Rose claims that although he did receive a copy of his discover, neither of his attorneys went over the discovery to explain it to him. If he had been able to go over the discovery with his attorneys, he would have proceeded to trial.

2. Ineffective assistance of Counsel: Mr. Rose claims that he only met with his attorneys on the day of his plea so therefore did not have time to understand what he was pleading to.

I did discuss with Mr. Rose the concept of “lesser included,” and I believe he is more clear on that issue.

3. Mr. Rose will claim that the Court did not have jurisdiction to accept the plea in his cases. I have explained that the Court most likely did have jurisdiction, however, he would like to present that to the Judge.

We did discuss many other concerns he had which I explained to him were not PCR issues but were issues for appeal or to be handled at trial. He did not appeal though the transcript shows the Judge informing him – but he says he did not know what he was supposed to do to get his attorney to appeal so.

4. Ineffective assistance of Counsel: Failure of attorney to file appeal.



Timothy L. Griffith
Attorney for Applicant
2338 Mount Vernon Drive
Sumter SC 29154
803 499-2012
tlgriffith@tlgriffith.com

Sumter, South Carolina
This 25th day of February 2021

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER)	
Michael Rose ,)	2020-CP-43-0482
Applicant,)	
v.)	CERTIFICATE OF SERVICE
STATE OF SOUTH CAROLINA,)	
Respondent.)	
_____)	

I Lora Singleton, an employee for Timothy L. Griffith, Attorney at Law, Attorney for the Plaintiff in the above captioned case, do swear and affirm that I did cause the Amended Application for PCR to be served upon the State of South Carolina by delivering a copy of this application to the Office of the Attorney General via U.S. mail at Post Office Box 11549, Columbia, South Carolina 29211-1549 AND BY email to Ms. Schill of the AG office, this 25th day of February, 2021.

Lora Singleton, Paralegal
Notary for the State of SC

My commission expires April 9, 2023



State of South Carolina.,) In the Court of Common Pleas
) For The Third Judicial Circuit
)
)
 County of Sumter.) Case No.: 2020-CP-43-00482

Michael Charles Rose.,)
)
)
 Applicant.,)
)
 -vs-)
)
 State of South Carolina.,)
)
 Respondent.)
 _____)

Transcript of Record
 Post Conviction Relief

March 8, 2021
 Sumter, South Carolina

B-E-F-O-R-E:

The Honorable R. Kirk Griffin, judge.

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

Mr. Timothy Lee Griffith
 2338 Mount Vernon Drive
 Sumter, South Carolina 29154
 tlgriffith@tlgriffith.com
 (803) 499-2012
 Attorney for the Applicant

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 (803) 734-3412
 Attorney for the Respondent

Wanda S. Nelson, CVR-M
 Official Court Reporter, Retired
 State of South Carolina

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I-N-D-E-X CONTINUED

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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No Exhibits were entered into the record.

1 (SUMTER TERM OF COMMON PLEAS COURT FOR SUMTER COUNTY
2 IN SESSION ON MONDAY, MARCH 8, 2021 IN THE MATTER OF
3 MICHAEL C. ROSS VERSUS THE STATE OF SOUTH CAROLINA AT 09:25
4 A.M.)

5 THE COURT: Mr. Rose, can you hear me?

6 MR. ROSE: Yes, sir, I can hear.

7 THE COURT: All right, Mr. Rose, we are proposing to
8 conduct your post-conviction relief hearing via video
9 conferencing due to the Corona virus pandemic. Do you
10 consent to having your post-conviction relief hearing held
11 via video conferencing?

12 MR. ROSE: Do I have what?

13 THE COURT: Do you consent to us conducting this
14 hearing via video conference instead of in person?

15 MR. ROSE: Yes, sir.

16 THE COURT: And do you consent to everybody who's
17 involved with this case, the Attorney General's Office, the
18 lawyers who are involved in your case, and any other
19 witnesses who may testify likewise appearing via video
20 conference?

21 MR. ROSE: Yes, sir.

22 THE COURT: All right. Thank you, Mr. Rose.

23 Mr. Neubauer, if you will give me the case caption and
24 the procedural history of the case before we get started.

25 MR. NEUBAUER: Yes, your Honor. May it please the

ORIGINAL

1 court, this matter is *Michael Rose versus the State of*
2 *South Carolina* Docket No. 2020-CP-43-0-4-8-2.

3 In October 2019 the Sumter County Grand Jury indicated
4 Applicant for burglary 2st degree, 2019-GS-43-1-0-9-9.
5 Allen J. Barnes represented Applicant. Assistant Solicitor
6 Margaret M. Held of the Third Circuit Solicitor's Office
7 prosecuted the case. On December 9th, Applicant entered a
8 negotiated plea before the Honorable R. Ferrell Cothran,
9 Junior for 2nd degree burglary. Judge Cothran sentenced
10 Applicant to eight (8) years presently on this charge. At
11 that same time Applicant was indicted for a 1st degree
12 burglary from 2016 and pled guilty to that charge as well
13 however he was sentenced to eight (8) years for 2nd degree
14 burglary. Indictment No. 2016-GS-43-0-6-1-9. Those two
15 eight-year terms were to run concurrent. Applicant did not
16 appeal this conviction or sentence.

17 On March 23, 2020 Applicant filed an application for
18 Post-Conviction Relief. In his application he alleged
19 ineffective assistance of counsel; the trial counsel failed
20 to review and discuss all discovery information and
21 evidence; an involuntary guilty plea stating that trial
22 counsel is ineffective in that he did unfairly and
23 improperly pressure and coerce applicant into giving up any
24 rights in accepting a plea offer. And alleged trial
25 counsel was ineffective in that he should have been able to

ORIGINAL

1 negotiate a better deal on his behalf.

2 Applicant through his attorney in an Anders addendum
3 and filed amended allegations alleging that he did or that
4 applicant did receive a copy of the discovery but neither
5 of his attorneys went over discovery to explain it with him
6 claiming that if he had been able to go over his discovery
7 with his trial attorney he would have proceeded to trial.

8 Ineffective assistance of counsel: The applicant
9 claims he only met with his attorneys on the day of his
10 plea so he did not have time to understand what he was
11 pleading to or that the court did not have jurisdiction to
12 accept the plea in his case. And ineffective assistance of
13 counsel for failure to file an appeal.

14 On the requested relief applicant states that he wants
15 his conviction reversed with remand for a new trial.

16 THE COURT: All right. Thank you, Mr. Neubauer.

17 Is there anything else procedurally before we get
18 started? Mr. Barnes, you're on mute if you're attempting
19 to talk to us.

20 MR. BARNES: Sorry about that. I believe that Mr.
21 Neubauer said that in the case in which I represented Mr.
22 Rose he was indicted for 1st degree burglary. That is not
23 the case. He was indicted for 2nd degree burglary in my
24 case. He may have been arrested for 1st degree burglary,
25 but he was ultimately indicted for 2nd degree burglary.

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1 THE COURT: Okay.

2 MR. BARNES: And that's an important point so I just
3 want to make sure the record is clear about that.

4 THE COURT: All right.

5 MR. NEUBAUER: I apologize.

6 THE COURT: Mr. Barnes, he may have been served with a
7 warrant for burglary in the 1st degree but when the matter
8 was presented to the Grand Jury in Sumter County it was
9 indicted as a burglary 2nd?

10 MR. BARNES: Yes, your Honor, it was.

11 THE COURT: Okay. All right, thank you, Mr. Barnes,
12 for clearing that issue up.

13 Mr. Griffith, I'll be happy for you to call your first
14 witness.

15 MR. GRIFFITH: Thank you, your Honor, if it please the
16 court. Your Honor, I would call Mr. Michael Rose.

17 THE COURT: All right, Mr. Rose, I need you to raise
18 your right hand for me please., I need to remind you to keep
19 your voice up. We are recording everything that's being
20 said from the courtroom where I am here in Sumter County so
21 we need to make sure that we hear your testimony.

22 (WHEREUPON, MICHAEL CHARLES
23 ROSE, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
24 FOLLOWS:)

25 THE COURT: All right. Mr. Griffith, whenever you're

ORIGINAL

MICHAEL ROSE:. DIRECT BY MR. GRIFFITH:

1 ready.

2 MR. GRIFFITH: Thank you,, your Honor.

3 DIRECT EXAMINATION

4 MICHAEL ROSE BY MR. GRIFFITH:

5 Q. Mr. Rose, you're currently incarcerated where?

6 A. Evans Correctional Institution.

7 Q. And how long have you been incarcerated now?

8 A. A little over a year. December 9th, 20 -- No, I think
9 it was December the 13th, 2019 today.

10 Q. Okay. And you were -- you pled guilty to two counts
11 of burglary 2nd degree; is that correct?

12 A. Well, as far as the transcript goes I never gave a
13 confession of guilt.

14 Q. Mr. Rose, who was your attorney for -- how many
15 attorneys did you have first of all?

16 A. For what case?

17 Q. When you gave your plea how many attorneys were
18 representing you?

19 A. Only one. That was Mr. Allen Barnes.

20 Q. Okay, what about Attorney Butcher? Did she also
21 represent you on a case?

22 A. No because she was not there.

23 Q. Okay. But in the meantime she did represent you on
24 one of your cases; isn't that correct?

25 A. I mean well she was assigned to the case, yes.

ORIGINAL

1 Q. Okay. Good. And while they were assigned how many
2 times did you have an opportunity to speak to your
3 attorneys?

4 A. The day I went to court.

5 Q. So before you gave your plea what you're saying is
6 you did not have an opportunity to speak with your
7 attorneys before that?

8 A. Not to go over all the -- over Rule Five and discovery
9 no.

10 Q. Did you have an opportunity to speak with them at all?

11 A. Yes, on the day that I went to court.

12 Q. Only on the day you went to court and not before that?

13 A. Yes, sir.

14 Q. And you had in your application of course, and you and
15 I discussed it; did you ever see your discovery, your Rule
16 5?

17 A. No, sir.

18 Q. I think you were saying to me that you may have
19 eventually gotten a copy.

20 A. Yes, sir. That was two months after I went to court.

21 Q. Oh, okay.

22 A. Yeah, that was in February.

23 Q. Did you --

24 A. 2020.

25 Q. Okay. So did either of your attorneys discuss your

MICHAEL ROSE: DIRECT BY MR. GRIFFITH:

-10-

1 case with you about the discovery?

2 A. The only thing they spoke to me on the day I went to
3 court was that there was evidence placing me at the alleged
4 crime scene and that if I went to trial I would loose.
5 That's the only thing they told me concerning this case.
6 As far as going over any documents to show me any evidence
7 placing me at the alleged crime scene there was none of
8 that at all.

9 Q. Okay. Well did they -- did you feel like you were
10 under any kind of pressure to plea or were they giving you
11 an opportunity to talk about it? What happened?

12 A. No. See Mr. Allen Barnes he told me that they had
13 evidence placing me at the crime scene that if I went to
14 trial I'm gonna loose. He pressured me into taking that
15 plea --- .

16 (LOUD NOISE OBSTRUCTING COURTROOM AUDIO.)

17 A. --- if not I was on trial and he was telling me I was
18 gonna loose the case so I felt very ---

19 (LOUD NOISE OBSTRUCTING COURTROOM AUDIO.)

20 A. --- pressured and coerced to sign up my rights to
21 plea.

22 Q. Okay. So since that time you've had a copy of your
23 discovery; is that correct?

24 A. Yes, sir.

25 Q. And have you gone through it yourself?

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MICHAEL ROSE: DIRECT BY MR. GRIFFITH:

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1 A. Yes, sir.

2 Q. Okay. And after looking at your discovery do you
3 believe that if you had seen that ahead of time, or had
4 time to go over it, would you have given a plea or would
5 you have gone to trial?

6 A. Before I was going to trial?

7 Q. Would you have gone to trial?

8 A. Sir, let me explain something to you.

9 Your Honor, I have something I would like to read in
10 the record concerning this case.

11 THE COURT: Okay. Is this something that you created
12 or --

13 MR. ROSE: No, this is this case.

14 THE COURT: Okay. But is it something that you
15 created or something that someone else wrote for you?

16 MR. ROSE: Someone wrote for me. I wrote this myself
17 based on my study concerning this case.

18 THE COURT: Okay. Go ahead, I'll be happy to hear it.

19 MR. ROSE: Okay. Well first off all I'm gonna read,

20 "Your Honor, I am not satisfied with the
21 representation of Mr. Timothy L. Griffith and my
22 reasons are based on the following facts:

23 I had written to Mr. Griffith many times over
24 the past eight months asking him to amend my PCR
25 application. He responded to me on two separate

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MICHAEL ROSE: DIRECT BY MR. GRIFFITH:

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1 occasions indicating that he may amend my PCR
2 application once he receives the copy of the
3 transcript of record from the court proceedings
4 on December the 9th of 2019 from the Attorney
5 General's Office.

6 On December the 2nd, 2020 during conversations
7 between Griffith and myself he admitted to
8 having received a copy of the transcript of
9 record but indicated that he would not amend my
10 PCR application because my case had been before
11 the Grand Jury and that was a True Bill charging
12 me with the crime of burglary 1st degree and
13 that I my guilty plea to the lesser included offer
14 of burglary 2nd degree violent which they did.

15 Your Honor, please keep in mind that the
16 moment Mr. Griffith told me all this over the
17 phone he was in possession of the trial transcript
18 of record of the court proceedings on December
19 9th, 2019 which reveals on page 3 sentences 12
20 through 24 that Prosecutor Ms. Margaret M. Held has
21 given testimony in local court admitting to the
22 fact that she did not have a True Bill Indictment
23 for burglary 1st degree in order to prosecute
24 me on that lesser included offer. But she still
25 proceeded to prosecute me anyway with the

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1 accomplishing help of the Honorable R. Ferrell
2 Cothran, Junior where he gave testimony in open
3 court on page 3 sentences 25 through page 4
4 sentences 11 telling the prosecutor" -- this one
5 right here, okay -- "it's okay if she do not have
6 a legal indictment that prosecuting me on any
7 lesser included offer on the burglary 1st degree.
8 The Honorable R. Ferrell Cothran has conspired
9 with the Prosecutor Ms. Held in open court to
10 maliciously prosecute me and false imprisonment.

11 Now Mr. Griffith lied about my plea being
12 because he went to trial to cover up the unlawful
13 misconduct with the prosecutor and the judge and
14 that's not why I'm not satisfied with the
15 representation of Mr. Timothy Griffith because I
16 do not trust him."

17 And also, your Honor, there is not testimony from me
18 on the record of any crime I confessed to.

19 THE COURT: Okay. So it appears that we have a
20 motion.

21 Mr. Rose, you want me to appoint you a new lawyer to
22 represent you on this PCR, is that what you're telling me?

23 MR. ROSE: Yes, your Honor, I do not trust Mr.
24 Griffith.

25 THE COURT: All right. Mr. Neubauer, what's the

MICHAEL ROSE: DIRECT BY MR. GRIFFITH:

-14-

1 State's position with regard to Mr. Rose's motion?

2 MR. NEUBAUER: Your Honor, I would object. This point
3 the allegations that Mr. Rose is claiming his attorney
4 refused to make are refuted by the amended application that
5 Mr. Griffith filed or filed and sent to our office on the
6 25th of February. He has included the information
7 regarding the issues with jurisdiction and the charges that
8 Mr. Rose has been charged with and what he finally pled to.
9 I do not feel that there is a basic one that where Mr.
10 Griffith appears to have done what Mr. Rose initially
11 wanted him to which is challenge the validity of the
12 indictment.

13 THE COURT: Okay. Based on what I read, or what was
14 read to the court earlier, the initial grounds for post-
15 conviction relief were failure to review discovery,
16 pressure -- the applicant felt pressured and coerced to
17 enter a plea, and that he felt that his counsel should have
18 been able to negotiate a better deal, and then subsequently
19 the application was amended to include the following
20 grounds for post-conviction relief: That discovery was not
21 explained to the applicant; that the applicant only met
22 with his lawyer on the day of the plea. There was a
23 jurisdictional challenge included in the amended PCR
24 application and that the applicant is asking that his
25 conviction be vacated and remanded to the Circuit Court for

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MICHAEL ROSE: DIRECT BY MR. GRIFFITH:

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1 a new trial.

2 Mr. Rose, it appears Mr. Griffith has amended your
3 application to include these grounds that you have talked
4 about and what you just read to the court. And Mr. Rose,
5 while I sympathize with you, that sometimes it's difficult
6 especially in this current climate with limited meetings
7 with lawyers face to face, you know you've been appointed
8 Mr. Griffith for this charge, or to represent you on this
9 PCR application, and at this point I think he's done what
10 you've ask him to do so we're gonna proceed.

11 I'm gonna deny your motion.

12 MR. ROSE: Your Honor, --

13 THE COURT: Sir?

14 MR. ROSE: Are you saying that he actually have
15 amended my PCR application to include the things I ask him
16 to include?

17 THE COURT: Yes. He amended it to add that your
18 discovery was not explained to you before you pled guilty;
19 that you only met with your attorney on the day of your
20 plea; he has challenged the jurisdiction of the court to
21 take your plea; so he's added those three items to the PCR
22 Application. So I think based on what you read I think he
23 has done what you ask him to do.

24 MR. NEUBAUER: Pardon me, your Honor. In the amended
25 allegation there was also a claim that his attorneys failed

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MICHAEL ROSE: DIRECT BY MR. GRIFFITH:

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1 to file an appeal and I believe I stated that; however, I
2 may have --

3 THE COURT: You did. I may have -- I obviously didn't
4 write that one down so there's another ground that he's
5 added that your trial counsel failed to preserve your
6 appeal rights after your guilty plea. So based on what you
7 read, like I said before, Mr. Rose, it appears that Mr.
8 Griffith has for lack of a better phrase thrown the kitchen
9 sink -- he's raised the issues that are likely to be raised
10 on a PCR application for a guilty plea.

11 Like I said I think he has gotten the issues that you
12 want before the court before the court in this amended
13 application.

14 MR. GRIFFITH: If it please the court, your Honor, I
15 did have just a couple of more questions for Mr. Rose.

16 THE COURT: Well, yeah, we're gonna resume his
17 testimony. I just wanted the record to be clear that I
18 considered his motion based on what he read to the court.
19 And considering that he -- the issues that he raised you
20 have filed an amended PCR Application to include these
21 grounds for ineffective assistance of counsel.

22 I just want it to be understood that in the court's
23 view Mr. Griffith has done what Mr. Rose ask him to do and
24 we're gonna go forward with the hearing this morning.

25 So, Mr. Griffith, you can resume your questions for

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MICHAEL ROSE: DIRECT BY MR. GRIFFITH:

-17-

1 Mr. Rose.

2 MR. GRIFFITH: Thank you, your Honor. If it please
3 the court.

4 MICHAEL ROSE BY MR. GRIFFITH:

5 Q. Mr. Rose, also I want you to tell the court if you
6 were ever told that you needed to appeal your plea?

7 Mr. Rose, were you told that you need to appeal by
8 your attorney?

9 A. Did my attorney tell me that I needed to appeal it?

10 No he did not do that.

11 A. Did your attorneys explain to you about appealing
12 your case?

13 A. No, sir.

14 Q. Okay. And so was your case -- your case was not
15 appealed; is that correct?

16 A. No, sir.

17 Q. Okay. And so your attorney failed to file an appeal
18 and failed to explain to you that you could file an appeal;
19 isn't that correct?

20 A. Yes, sir.

21 Q. Okay. So is there anything else that we haven't
22 talked about, Mr. Rose, that you would like to let the
23 court know about your plea?

24 A. Are we gonna go over the grounds for filing this PCR
25 application?

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MICHAEL ROSE: DIRECT BY MR. GRIFFITH:

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1 THE COURT: Mr. Rose, he's asked you about the
2 discovery, he's asked you about you feeling pressured and
3 coerced to plead guilty; he's asked you about the fact that
4 your discovery wasn't explained to you; he's asked you
5 about when you talked with your lawyers and the
6 jurisdictional matter is a legal matter not necessarily a
7 factual matter, so he's asked you about -- and he's asked
8 you about the appeal; failure to explain or file the
9 appeal, so he's asked you about the grounds.

10 What else would you like to tell the court with regard
11 to those issues?

12 MR. ROSE: Well based on Mr. Barnes failing to review
13 and discuss all the discovery information and evidence with
14 me that he had done so it would have been reviewed sooner
15 than later. They also violated my constitutional rights
16 under the Fourth Amendment when he arrested on an invalid
17 arrest warrant for burglary 1st degree without probable
18 cause. Burglary 1st degree evidence consist of entry into
19 a dwelling house when someone lives there. An officer
20 swore under oath in a warrant affidavit entry into a
21 business of Burgess Do-It-Yourself and took and carried
22 away items which do not support the warrant for burglary
23 1st degree so that subjected me to false arrest and false
24 imprisonment. The affidavit on the arrest warrant does not
25 support the warrant offenses so there are two different

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1 charges.

2 BY MR. GRIFFITH:

3 Q. Mr. Rose, so if it were not for those things, anyone
4 of those things, you would have gone ahead and gone to
5 trial; is that correct?

6 A. Mr. Griffith, if Mr. Barnes would a represented me the
7 way he was supposed to been representing me and revealed
8 this to me, I wouldn't have to go to trial. Mr. Barnes
9 could have filed a motion to have the warrant dismissed but
10 he did not. So that would not have been an option but he
11 would have had the case dismissed. But they definitely
12 filed a false arrest so why am I arrested.

13 Q. Okay. But if he were not able to get it dismissed
14 lets say, but you would not gone to trial you would not
15 have plead guilty. In other words you would not have pled
16 guilty if it were not for all these items; is that correct?

17 A. I don't see that would a been an option.

18 Q. Okay.

19 A. Because I shouldn't have been here. I shouldn't have
20 even been arrested.

21 Q. Okay.

22 MR. GRIFFITH: I have no further questions.

23 Please answer the questions from the Attorney General
24 please.

25 THE COURT: All right, Mr. Neubauer, before you get

MICHAEL ROSE: CROSS BY MR. NEUBAUER

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1 stated, Mr. Rose, now Mr. Neubaüer who is the lawyer for
2 the Attorney General's Office is gonna have the opportunity
3 to cross-examine you so listen to his questions, let him
4 finish his question, and then give us your answer.

5 So, Mr. Neubauer, whenever your ready.

6 MR. NEUBAUER: Thank you, your Honor.

7 CROSS-EXAMINATION

8 MICHAEL ROSE BY MR. NEUBAUER:

9 Q. Hello, Mr. Rose. Just a few questions for you.

10 So how many times in total do you remember meeting
11 with Ms. Debbie Butcher?

12 A. Before December 2019 I went to the courthouse and the
13 prosecutor took me before the judge and had me to sign
14 something asking me about when I'm gonna plead or go to
15 trial and she was up in here. After that I seen her the
16 day after the court plea.

17 Q. And do you remember how many times you met with Mr.
18 Jack Barnes?

19 A. During roll call and he explained to me that he could
20 a got me something for non-violent and then after that I
21 met with him the day I went to court.

22 Q During your meetings with either Ms. Butcher or Mr.
23 Barnes do you remember them reviewing or discussing the
24 discovery, or the state's evidence against you?

25 A. No. The only thing they told me that they were gonna

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1 place as prosecutor. That's it. As far as showing me any
2 documents, showing me anything, no, sir.

3 Q. And do you recall discussing any possible defenses
4 with either of your attorneys?

5 A. No, sir.

6 Q. Do you recall discussing any plea offers with Ms.
7 Butcher and Mr. Barnes?

8 A. No, sir.

9 Q. All right. Do you recall the solicitor discussing
10 two different indictments at your plea hearing, one from
11 2016 and one from 2019?

12 A. No, sir.

13 Q. Thank you.

14 A. 2019 the only document -- the only document that was
15 spoken of was from 2016 for burglary 1st degree, sir.

16 MR. NEUBAUER: Your Honor, I'd like to draw the
17 Court's attention to page 3 and 4 of the plea transcript.

18 Q. Regarding the 2016 Indictment do you recall the judge
19 asking you if you were willing to have Mr. Barnes
20 stand in for Ms. Butcher at your plea hearing?

21 A. Yes, sir.

22 Q. Do you recall the judge reviewing the maximum
23 sentences for these charges?

24 A. Yes, sir.

25 Q. And you told the judge that you understood these

MICHAEL ROSE: CROSS BY MR. NEUBAUER

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1 charges?

2 A. Yes, sir.

3 Q. Do you recall waiving your constitutional rights;
4 your right to a jury trial, your right to present witnesses
5 on your behalf; your right to remain silent?

6 A. Do I remember waiving my rights?

7 Q. Yes.

8 A. No, sir.

9 MR. NEUBAUER: I direct the court's attention to
10 page 6 of the trial transcript.

11 Q. Do you recall telling the plea judge that you were
12 satisfied with your attorney services?

13 A. Page 6. What sentence? Page 7 that's saying no, sir.

14 Q. As far as the -- Your right. That would be lines 8
15 through 18. Now do you recall telling the plea judge that
16 you were satisfied with your attorney services?

17 A. Yes, sir.

18 Q. All right. And that you had no complaints against
19 your counsel?

20 A. No, sir. At the time I did not.

21 Q. And do you recall telling the judge that no one was
22 promising you anything or threatening you in order for you
23 to plead guilty?

24 A. Yes, sir.

25 Q. And do you recall telling the plea judge that you

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1 wished to plead guilty and that you were doing so on your
2 own free will?

3 A. Sir, I don't see anything about me pleading guilty.

4 MR. NEUBAUER: Your Honor, I would draw the court's
5 attention to page 9 of the plea transcript lines 6 through
6 8.

7 Q. And do you recall the solicitor discussing the facts
8 on both the 2016 and 2019 robberies?

9 A. Sir, robberies? Yes, sir.

10 Q. The charges that you were facing at that time.

11 A. You said did she discussed that? What do you mean?

12 Tell me what --

13 Q. She stated the facts of those two incidents to the
14 court prior to your pleading guilty. Do you recall that?

15 A. Sir, I still do not understand what your saying I'm
16 pleading guilty. I never did plead guilty. So you show me
17 that.

18 Q. If you would --

19 MR. NEUBAUER: If the court would address page 9 of
20 the plea transcript lines 6 through 8.

21 Q. The court asked you are pleading guilty because you
22 are guilty? The defendant responded, yes, sir.

23 A. (INAUDIBLE.)

24 Q. So that would be you?

25 A. How -- how -- how --

MICHAEL ROSE: CROSS BY MR. NEUBAUER

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1 THE COURT: Mr. Rose, Mr. Rose, hold on a second.

2 Hold on a second. Mr. Rose, there's a transcript of
3 your guilty plea where you pled guilty to these two counts
4 of burglary 2nd. He is referring to the transcript which
5 was provided by the court reporter, so there's no question
6 before this court as to whether guilty pleas were entered,
7 so I think the court can take judicial notice that Mr. Rose
8 pled guilty to two counts of burglary as indicated by this
9 PCR application.

10 So, Mr. Neubauer, I read the transcript of the plea so
11 I think the point that you're trying to make, while I
12 understand why you're trying to make it, its in the record
13 that he pled guilty to these two charges so ---

14 MR. NEUBAUER: Yes, your Honor.

15 THE COURT: --- we can move along from this issue.

16 MR. NEUBAUER: Yes, your Honor. I beg the Court's
17 indulgence.

18 THE COURT: Yes, sir.

19 BY MR. NEUBAUER:

20 Q. Mr. Rose, do you recall the judge at your plea
21 hearing telling you about your right to appeal your guilty
22 plea within ten days?

23 A. Yes, sir.

24 Q. And do you -- did you at any point in those ten days
25 ask Mr. Barnes or Ms. Butcher to appeal your guilty plea?

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MICHAEL ROSE: CROSS BY MR. NEUBAUER
REDIRECT BY MR. GRIFFITH

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1 A. I ask Mr. Barnes before I plead guilty in the
2 courtroom. I ask Mr. Barnes I said, Mr. Barnes, so I'm not
3 satisfied with this plea will you appeal my case? He told
4 me that he would not appeal the case for me. So yes I did
5 ask him and he refused to do so.

6 MR. NEUBAUER: Thank you. I have no further questions
7 at this point.

8 THE COURT: Mr. Griffith, any redirect?

9 MR. GRIFFITH: Yes, your Honor.

10 REDIRECT EXAMINATION

11 MICHAEL ROSE BY MR. GRIFFITH:

12 Q. Mr. Rose, despite the fact that you did plea, you
13 told us earlier that you felt a lot of pressure to plea;
14 isn't that correct?

15 A. Yes, sir.

16 Q. And you didn't really understand everything that was
17 going on; is that correct?

18 A I understand everything that was going on concerning
19 the case?

20 Q. Well that is your attorneys had not explain to you
21 what happened at the plea and you didn't really -- you felt
22 pressured to do the plea; isn't that correct?

23 A. I still don't want to plead guilty, sir.

24 Q. Right. You really didn't want to plead guilty; is
25 that correct?

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MICHAEL ROSE: REDIRECT BY MR. GRIFFITH

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1 A. No, sir.

2 Q. Okay. And did your attorneys tell you that when the
3 judge asked you questions that you should say yes, sir, et
4 cetera?

5 A. Yes, sir.

6 Q. Okay.

7 MR. GRIFFITH: I have no further questions, your
8 Honor.

9 THE COURT: All right. Thank you, Mr. Griffith
10 Any recross, Mr. Neubauer?

11 MR. NEUBAUER: No, your Honor.

12 THE COURT: All right. Thank you, Mr. Griffith.
13 Thank you, Mr. Rose.

14 Mr. Griffith, do you have any further witnesses?

15 MR. GRIFFITH: No further witnesses, your Honor.

16 THE COURT: All right. Mr. Neubauer, if you'd call
17 your first witness please.

18 MR. NEUBAUER: Yes, your Honor, the State would call
19 Ms. Debbie Butcher.

20 THE COURT: All right, Ms. Butcher, if you'd raise
21 your right hand for me please.

22 (WHEREUPON, DEBORAH BUTCHER, BEING
23 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

24 THE COURT: Thank you, Ms. Butcher.

25 Mr. Neubauer.

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1 MR. NEUBAUER: Thank you, your Honor.

2 DIRECT EXAMINATION

3 DEBORAH BUTCHER BY MR. NEUBAUER:

4 Q. Hello, Ms. Butcher. How long have you been practicing
5 law in the State of South Carolina?

6 A. 2005 I believe.

7 Q. And what percentage of your practice has been in
8 criminal defense?

9 A. Now it's probably twenty percent but it used to be
10 more like sixty.

11 Q. And were you appointed to represent Mr. Rose or did
12 he retain your services?

13 A. I was appointed.

14 Q. And do you recall how the 2016 charges arose and how
15 Mr. Rose came to be arrested?

16 A. Yes, I do. It was actually a neighbor had recognized
17 him and she found him in his home. Her home rather.

18 Q. And did you meet with Mr. Rose to discuss the charges?

19 A. I did. I was appointed. On 11/30/2016 is when I
20 received the appointment I spoke with him. He was in jail,
21 I met with him on the 1st of December, a few days after
22 that we had a -- and I went over the discovery. I actually
23 received the discovery when I was appointed. On going
24 through the discovery there was a photo lineup that the
25 victim had picked him out of but it was very difficult to

DEBORAH BUTCHER: DIRECT BY MR. NEUBAUER

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1 see it. He actually -- it was just a very bad photo
2 lineup.

3 So, we had a bond hearing on December -- around
4 December 14th and I ask Jason to get me a good photo from
5 the lineup which he eventually did and at that point, you
6 know, it clearly was Mr. Rose.

7 Q. Thank you. Do you know how many times you met with
8 Mr. Rose during your representation of him?

9 A. I know I sent him several letters. We probably met
10 face to face three or four times. Now we met at the
11 courthouse once even. That's my recollection, four times.

12 Q. And did you discuss the indictments and the elements
13 of the offense that Mr. Rose was charged with?

14 A. Yes.

15 Q. And did you see any basis for challenging the
16 indictments?

17 A. Not the indictments no.

18 Q. Did you review possible punishments and maximum
19 sentences ---

20 A. Yes.

21 Q. --- with the defendant? And do you remember what
22 you told him regarding that?

23 A. No. Actually I can't recollect; its been a while,
24 but my general practice is to look up the charges -- I
25 don't trust my memory as to what the penalties are -- and

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1 go over that the first time I meet with them. And I also
2 go over, you know, ten days to appeal and all that. And
3 then before a plea I'll go over it again.

4 Q. And do you remember discussing Mr. Rose's
5 constitutional rights with him; his right to trial;
6 right to?

7 A. That's part of what I go over when I first meet with
8 someone.

9 Q. And you discussed the State's burden of proof and the
10 evidence that they had against him?

11 A. Yes.

12 Q. And did he ever indicate to you that he didn't
13 understand your discussions about the charges or his
14 rights?

15 A. No, no not at all.

16 Q. Do you remember what type of investigation you did
17 into this case?

18 A. I went through the discovery with him. I didn't go
19 talk to the victim or anything if that's what you're
20 asking.

21 Q. Just wanting to know generally what occurred as far
22 as the investigation of it, did you discuss Mr. Rose's
23 version of the facts of the case?

24 A. I'm sorry, say that again.

25 Q. Did you discuss Mr. Rose's version of the facts of

1 his case, so ask him what he believes that occurred did he
2 give you any version of what occurred?

3 A. Yes, he said that, you know, it wasn't him.

4 Q. And could you briefly describe the State's evidence?

5 A. A neighbor walked into the home, saw someone there,
6 she identified it as -- the person is Mr. Rose, she picked
7 him out of a photo lineup.

8 Q. Yes, ma'am. And were there any issues from this that
9 you felt were particularly problematic for Mr. Rose's case?

10 A. The fact that someone who knew him that said he was
11 in their home.

12 Q. And you said you discussed discovery with Mr. Rose.

13 Do you know how many times you talked with him
14 regarding discovery?

15 A. I know we went over it fully when I first met with
16 him and after that I always, you know, do you have any
17 questions. And I don't know if I gave him a copy, if
18 someone ask for a copy I always give them one, but, you
19 know, we just went over his chances at trial given the
20 scenario there was someone who actually knew him.

21 Q. Yes, ma'am. And that was, leads perfectly into my
22 next question. Did you develop any opinion regarding the
23 State's ability to prove guilt beyond a reasonable doubt?

24 A. I believe they could.

25 Q. And did you convey this to Mr. Rose?

1 A. Yes. His big question going through this was just did
2 they actually have a good photo of him that the victim was
3 able to use to pick him out of a photo lineup and that was
4 cleared up eventually.

5 Q. Yes, ma'am. And did you feel that you had enough
6 time to meet with Mr. Rose prior to his plea?

7 A. Yes. Now, and I wasn't there for the plea.

8 Q. Yes, ma'am.

9 A. But I did speak to him about it beforehand.

10 Q. Yes, ma'am. And did yourself enter into any plea
11 negotiations on behalf of Mr. Rose?

12 A. I'm sure I discussed it with the prosecutor, the
13 solicitor.

14 Q. And do you remember the terms of any pleas that you
15 discussed with the solicitor?

16 A. Not off the top of my head, no. I was sure that he
17 did plead to what we had discussed.

18 Q. Yes, ma'am. And did you explain all collateral
19 consequences of Mr. Rose's plea to him?

20 A. Yes.

21 Q. As far as two, three strike clause, serious versus
22 most serious, violent and non-violent pleas?

23 A. Yes.

24 Q. And any plea negotiations you had with the solicitor
25 were these conveyed to Mr. Rose?

DEBORAH BUTCHER: DIRECT BY R. NEUBAUER
CROSS BY MR. GRIFFITH

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1 A. Yes.

2 Q. And do you remember his opinion on taking a plea? Was
3 he for it or was he set on going to trial?

4 A. It seems like it finally got something that he was
5 willing to plead to.

6 Q. Yes, ma'am.

7 MR. NEUBAUER: At this point I have no further
8 questions.

9 THE COURT: Mr. Griffith, cross-examination.

10 MR. GRIFFITH: Thank you, your Honor.

11 CROSS-EXAMINATION

12 DEBORAH BUTCHER BY MR. GRIFFITH:

13 Q. Ms. Butcher, during the discussions with Mr. Rose did
14 you have the opportunity after the plea or before the plea
15 to determine in your opinion whether he was -- seemed to be
16 confused or whether he understood fully exactly what was
17 going on as far as a plea?

18 A. He understood everything very well in my opinion. He
19 was able to have enough knowledge to know that, you know,
20 his chances were better at trial if there was not a good
21 photo of him in the photo lineup even, so he seemed very
22 well aware.

23 Q. Did you before the plea or anytime after the plea
24 have an opportunity to inform Mr. Rose that even though he
25 had pled guilty he did have an opportunity to appeal his

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1 case?

2 A. I don't believe I spoke with him after the plea. And
3 like I said when I first meet with someone I go over that
4 with them. The reason I do it from the get go is so I will
5 not forget.

6 Q. Thank you. After the plea did you speak with him and
7 question whether he wanted an appeal or did you not have an
8 opportunity to talk to him at all after the plea?

9 A. I don't believe I ever spoke with him after the plea.

10 Q. So do you file an appeal on a plea as a normal course?

11 A. No.

12 Q. But did you ever get any indication from him by
13 letter or anything else asking you to file an appeal?

14 A. Not to my knowledge.

15 MR. GRIFFITH: I have no further questions, your
16 Honor.

17 THE COURT: Thank you, Mr. Griffith.

18 Mr. Neubauer, any redirect?

19 MR. NEUBAUER: No redirect, your Honor.

20 THE COURT: All right. Thank you, Ms. Butcher.
21 Thank you for being here.

22 Mr. Neubauer, call your next witness.

23 MS. BUTCHER: May I be excused, your Honor?

24 THE COURT: If no other party has any objection to
25 Ms. Butcher being excused?

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1 MR. GRIFFITH: No objection, your Honor.

2 MR. NEUBAUER: No objection from the State.

3 THE COURT: All right. Ms. Butcher, again thank you
4 for being here and you are excused.

5 MS. BUTCHER: Thank you.

6 MR. NEUBAUER: At this point the State would call
7 Mr. Jack Barnes.

8 THE COURT: All right. Mr. Barnes, if you would
9 raise your right hand for me please.

10 (WHEREUPON, ALLEN BARNES, BEING
11 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

12 THE COURT: All right. Thank you, Mr. Barnes.
13 Mr. Neubauer.

14 MR. NEUBAUER: Thank you.

15 DIRECT EXAMINATION

16 ALLEN BARNES BY MR. NEUBAUER:

17 Q. Hello, Mr. Barnes. I hope you're having a good day
18 today.

19 A. Good morning.

20 Q. We'll just go kind of down a similar train. How
21 long have you been practicing law, Mr. Barnes?

22 A. Twenty-nine years.

23 Q. And what percentage of that would be in criminal
24 defense?

25 A. For the last -- well the last four or five years. I

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1 can't remember exactly. Its been a hundred percent because
2 I've been a full time public defender but I have been doing
3 criminal work since 2010.

4 Q. Yes, sir. And were you appointed or retained in this
5 matter?

6 A. I was appointed. Well through the public defender's
7 office and the case was assigned to me.

8 Q. And do you remember when you were appointed to
9 represent Mr. Rose?

10 A. I believe it was in early June, 2019.

11 Q. Do you recall how the charges against Mr. Rose came
12 about?

13 A. He was charged with -- well I think he was initially
14 arrested for -- I think the arrest warrant was for 1st
15 degree burglary. But at some point when he was indicted he
16 was actually indicted for 2nd degree burglary, and so for
17 our purposes because I knew from the get-go that it wasn't
18 a 1st degree burglary as did the prosecutor so, you know,
19 she never attempted to indict it as a 1st degree burglary
20 because it couldn't a been. So, anyway, but we always
21 discussed it in terms of a 2nd degree burglary.

22 Q. Yes, sir. And you met with Mr. Rose and discussed
23 these charges?

24 A. I did. I actually -- Mr. Rose and I have a little bit
25 of a history together. He became upset with me initially

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1 right off the bat because I was unable to be at his
2 preliminary hearing on June 25th right after my
3 appointment, someone else from my office covered that for
4 me because I had to be in Magistrate's Court that day, and
5 so shortly after that, you know, he and I had a discussion
6 about why I wasn't there and this that and the other. He
7 accused me of lying to him.

8 And so we discussed the things that were talked about,
9 you know, there not being any DNA evidence and those sorts
10 of things at the scene of the crime. So, that was I guess
11 our first discussion about anything. And then in early
12 July again he had a bond hearing and he received bond but
13 he was unhappy with his bond because it was high and he was
14 required to wear a ankle monitor as I recall or maybe he
15 was on some sort of house arrest I think is what it was,
16 which required him to wear a monitor.

17 At any rate, again, he, you know, made a lot of hay
18 over the fact that he didn't like the evidence or the
19 evidence that was presented at the bond hearing was
20 inconsistent with the preliminary hearing and, you know, he
21 didn't think he was properly represented and this that and
22 the other. And so, you know, my point in all of this is
23 that we had the opportunity to discuss on many occasions
24 during the infancy of my representation of him the nuances
25 of his case, but he was arrested because -- well, so he's

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1 charged with burglarizing the Burgess Do-It-All Center
2 which is a local hardware and lumber and building supply
3 here in Sumter. And I think he either grew up or his
4 mother or some relative of his lives across the street from
5 there or near it and so he was identified by a neighbor, a
6 neighbor, a Mr. Isaac Bracey of burglarizing the Burgess
7 Do-It-All Center. In fact while the burglary was in
8 process Mr. Bracey picked up the phone and called the
9 police and said, Michael Rose is burglarizing the Burgess
10 Do-It-All Center.

11 So while he was actually in process he was identified
12 as doing it. So from the very start of the case I said to
13 Mr. Rose, you got a big hurdle to over come because you
14 were actually identified by someone who knows you as
15 burglarizing the case -- burglarizing the Burgess Do-It-All
16 Center while it was in process. So I had lots of
17 discussions from the very get go about what the evidence in
18 the case would show.

19 And in preparation for today's hearing because and,
20 you know, I don't know that this is necessarily has to be
21 any secret but Mr. Rose has filed multiple -- in fact I
22 think three -- grievances against me with ODC over the
23 course of my representation of him. The first one was
24 before any of this actually even came down in October of
25 2019 before he ever even plead.

1 And then in refreshing my memory for preparation of
2 today I noticed in my first October 8, 2019 letter to ODC
3 that I mentioned to Assistant Disciplinary Counsel that I
4 had had discussions with Mr. Rose prior to October 8 about
5 his defenses; that he told me he did not have an alibi but
6 that his brother, who also happened to be in jail, was the
7 one who actually did it and was willing to confess and that
8 therefore he would be let off the hook.

9 Well it just so happened that his brother was in jail
10 so I went down to the jail, the Detention Center here in
11 Sumter, and talked to his brother who told me in no
12 uncertain terms that he did not do it and that in fact his
13 brother, Mr. Rose, was in fact the burglar. So, you know,
14 early on we had, well before his guilty plea we had
15 discussions about alibi witnesses -- an alibi which he told
16 me had none, and a possible other defense that being
17 someone else doing it and that person that I talked to, his
18 brother, staunchly denied that he was the person. And in
19 fact he told me his brother was the one that had done it
20 because his brother told him that he had done it.

21 And I revealed that to ODC in my October 8, 2019
22 letter well before he plead guilty. Okay. I guess that's
23 a good answer.

24 Q. Yes, sir, I appreciate it. Do you recall having
25 meetings with both Mr. Rose and Ms. Butcher who was

1 representing him on his 2016 charge?

2 A. I do. I believe on -- sometime in early October we
3 were looking for Mr. Rose and because it appeared that Ms.
4 Butcher's case was going to come up for trial in either
5 November or December. Her case was older than my case and
6 her case had some age on it and it looked like her case was
7 probably gonna come up for trial. So in preparation for
8 that Ms. Held, the prosecutor, was beginning to talk to Ms.
9 Butcher and I about trying to resolve both bases
10 simultaneously.

11 And again in preparation for today, went back and
12 found an email where Ms. Butcher had contacted me and said
13 do you have a good number for Mr. Rose and I said well,
14 interestingly enough he showed up in my office today and we
15 talked about what all was going on. I told him that he was
16 probably on the trial roster for either November or
17 December in your case and that Ms. Held had reached out
18 with -- wanting to discuss a plea offer probably in the
19 neighborhood of ten years for two pleas to 2nd degree
20 burglary -- not to 1st degree burglary -- and 2nd degree
21 burglary but to two counts of 2nd degree burglary and that
22 I thought that was a pretty good offer that we needed to
23 get together with Ms. Butcher and discuss that.

24 And then later at the end of October I reached out to
25 Ms. Butcher and said Mr. Rose has an appearance the first

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1 week of November, in all likelihood Ms. Held is going to
2 want him to tell the court that either he is going to trial
3 on your case in December, or, he is going to plead guilty.
4 Could you be here next week, and she said, yes.

5 So at his appearance in November Ms. Butcher and I sat
6 down in the attorney's client conference room outside of
7 the courtroom with Mr. Rose and we discussed for quite some
8 time all the differences in the case and this that and the
9 other. The reality of the situation was that Mr. Rose was
10 faced with two burglary charges by people who knew him
11 personally, who had identified him personally.

12 These were not difficult cases. There was not a lot
13 of discovery to wrestle with. There were not multiple
14 documents; there were not multiple witnesses; there was not
15 DNA evidence; there was not, you know, lots of scientific
16 evidence that needed to be entered. It was a -- I went
17 back and looked at my discovery for purposes of today. It
18 consisted of an investigative report, an eye-witness
19 statement by Mr. Bracey, a photo lineup that Mr. Bracey
20 identified Mr. Rose; and his NCIC report, his criminal
21 history.

22 So, this was not something where Mr. Rose needed to
23 wade through folders and file boxes full of discovery. It
24 was very simple. And what it came down to was the fact
25 that in both cases he had eye witnesses that identified

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1 him. So, in my mind and Ms. Butcher's minds particularly
2 since the offer included dropping in her case the 1st
3 degree burglary down to 2nd degree burglary in a situation
4 where in his criminal background is loaded with burglaries
5 he was really gonna be in trouble if he went to trial and
6 got convicted of 1st degree burglary. He was looking at a
7 very long time perhaps even life, so, it was a no brainer
8 as far as we were concerned that he take 10 years. So we
9 had a long discussion with him that first week of November.

10 He didn't want to plead guilty that day and Ms. Held
11 very kindly agreed to a continuance until the December term
12 because Mr. Rose didn't want to go to jail that day. So,
13 Ms. Held being the nice person that she is agreed to a
14 continuance until December and his plea was set for
15 December the 2nd. Well, he didn't show up on December the
16 2nd and a bench warrant was issued for his arrest and he
17 got picked up on December the 9th or shortly before then as
18 I recall and he ultimately pled guilty on December the 9th.

19 And for whatever reason Ms. Butcher couldn't be here
20 on December the 9th and so we had a lot of back and forth,
21 back and forth, back and forth, that morning about whether
22 we should go forward with Ms. Butcher not being here and at
23 the end of the day we ultimately all decided to -- with the
24 consent of Mr. Rose to go forward without her being here.
25 But of course no good deed goes unpunished and now here we

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1 all are but that's how we got to the guilty plea.

2 Oh, and I forgot to mention that during the
3 intervening month from November to December when he
4 ultimately pled guilty, I actually convinced Ms. Held to
5 drop it down from ten years to eight years and she very
6 kindly agreed to do so. So, Mr. Rose pled guilty to two
7 concurrent sentences for eight years for what was
8 originally a 1st degree burglary and a 2nd degree burglary
9 and I frankly was very pleased, with what I thought was an
10 excellent outcome for my client.

11 Q. Yes, sir. A few more questions. So you met both
12 with Mr. Butcher and -- or Ms. Butcher and Mr. Rose a few
13 times. You discussed the facts of his case with Ms.
14 Butcher and him. Did you feel comfortable on the day of
15 the plea filling in for Ms. Butcher that you were qualified
16 to take him to court and have him accept both pleas on both
17 charges?

18 A. Without question.

19 Q. And you discussed the indictments in Mr. Rose's case,
20 correct?

21 A. Yeah, I don't have any independent recollection of
22 discussing an indictment but I'm confident I did. I
23 generally read the indictments to my client so yes. I
24 don't know that I ever had Ms. Butcher's indictment. I
25 think in her case he was indicted to 1st degree burglary so

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1 his plea to the 2nd degree burglary would have been to a
2 lesser included offense in that case. But in my case, you
3 know, it was a 2nd degree burglary and I'm confident I
4 would have at some point read it to him.

5 Q. Yes, sir. And he was arrested for 1st degree burglary
6 but indicted for 2nd degree burglary. Did you find any
7 basis for challenging the indictment at that time?

8 A. No I did not because I believe it's *State versus*
9 *McCoy* that says that jurisdiction doesn't attach until
10 someone is indicted, so, you know it really is -- its not
11 challengeable to say that someone was improperly arrested
12 or arrested for the wrong thing. If they're ultimately
13 properly indicted then -- if they're properly indicted you
14 have no legal grounds to go back and challenge an arrest
15 warrant, so no, I didn't. I didn't have a legal basis for
16 challenging the arrest warrant.

17 And Mr. Rose actually sent to me a motion to dismiss
18 that he wanted me to file and I said, Mr. Rose, I'm your
19 lawyer, the filing of motions and other documents is my
20 decision. There is no motion to dismiss. You have been
21 properly indicted in my opinion and I have no legal basis
22 to file a motion to dismiss. That doesn't exist in
23 criminal law really not under these circumstances, and
24 therefore I cannot file it. In fact not only can I not
25 file it I have an ethical duty not to file it if it's

1 frivolous or if it's against both the weight of the law. I
2 cannot as a lawyer -- I'm an officer of the court -- file
3 something like that; its of no merit. So I can't do it and
4 I'm not gonna do it. And if you have a problem with it
5 you'll have to take it up with somebody else. I'm not
6 gonna do it and I didn't.

7 Q. Yes, sir. Thank you. Did he ever at any point
8 indicate to you that he did not understand your discussions
9 about charges during breaks?

10 A. Absolutely not. Mr. Rose has a criminal history
11 dating back to 1993. He had previously served large
12 periods of time in prison. He is no stranger to the prison
13 system. I believe that in at least one case previously he
14 has filed an appeal; he knows what the process is; he is no
15 stranger to any of this. So, no, he absolutely knew what
16 was going on. He had -- there is no doubt in my mind he
17 knew absolutely everything that was going on. He knows how
18 to work the system and he did that. So at no point was I
19 ever concerned that he was, you know, confused about
20 anything.

21 Q. Yes, sir. And you remember going over Mr. Rose's
22 discovery with him, correct?

23 A. Numerous times beginning -- well beginning after his
24 preliminary hearing.

25 Q. Yes, sir. And did you throughout this development

1 an opinion regarding the State's ability to prove guilt
2 beyond a reasonable doubt?

3 A. That he would absolutely be found guilty.

4 Q. And you conveyed this to Mr. Rose prior to his plea?

5 A. On multiple occasions.

6 Q. Yes, sir. Did you feel you had enough time to meet
7 with Mr. Rose prior to his plea?

8 A. Yeah. I mean, you know, looking -- I mean there
9 were probably times I don't remember meeting with Mr. Rose
10 but, you know, the times that I have actual written
11 documentation of it is at least six times so yes. I mean
12 honestly six times to meet with a client that you're
13 appointed to represent is probably twice as much as most
14 clients get so yes.

15 Q. Yes, sir. And you briefly discussed plea negotiations
16 with Ms. Held including your getting his plea ultimately
17 reduced to eight years concurrent for both 2nd degree
18 burglaries. Could you discuss any other aspects of the
19 plea negotiations? Were there any other pleas presented to
20 Mr. Rose other than the ten-year plea that ultimately
21 became a eight-year plea?

22 A. No. No. The first offer I found in going back to
23 refresh my memory for today was an offer for ten years from
24 Ms. Held.

25 Q. Yes, sir. And this --

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1 A. And yes, if she had previously said -- made an offer
2 to Ms. Butcher independent of me I don't know anything
3 about that. But the first offer, first joint offer to me
4 and Ms. Butcher was for ten years.

5 Q. Yes, sir. And this was a negotiated plea, correct?

6 A. I don't believe it was a negotiated plea. I believe
7 it was just a recommendation.

8 Q. Yes, sir. And did you explain what that meant to Mr.
9 Rose?

10 A. Yes I did.

11 Q. Did you explain all collateral consequences of his
12 plea such as serious versus most serious, violent versus
13 non-violent?

14 A. Yes because in the situation of Mr. Rose for someone
15 like him who had such a serious and, you know, in depth
16 criminal history it has significant ramifications for him.

17 Q. Yes, sir. And what did Mr. Rose say regarding taking
18 a plea? Was he opposed at all?

19 A. He was. He did not want to go to jail. I mean there
20 is no question about it he didn't want to go to jail.

21 That's why he didn't show up on December the 2nd and take
22 his plea.. He didn't want to go to jail. He made that
23 clear from the get go. I mean when he -- after he
24 burglarized the Burgess Do-It-All Center he was on the run
25 for a year before he was arrested for the charge that I

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1 ultimately represented him of. He didn't want to go to
2 jail. No one does. So yes, he didn't want to go to jail.
3 And he didn't want to take the plea but at the end of the
4 day he understood that eight years concurrent for two
5 charges versus going to jail potentially for life -- now
6 understand, the pressure was this.

7 He was number thirteen on the roster in December in
8 Ms. Butcher's case so there was a very good chance that he
9 would be reached. Now I don't know ultimately where Robin
10 Knight when he plead guilty, I don't ultimately know where
11 Ms. Butcher's case was. I mean by that point she might a
12 been three on the roster, I don't know. So there was a
13 very good possibility that she was gonna be reached for
14 trial so he was under pressure. I mean he was looking at
15 going to trial that month on a 1st degree burglary case
16 where he was identified by an eye witness who knew him.

17 And so, you know, no he didn't want to go to jail but
18 he also understood that there was a very good chance that
19 he was going to trial that month on a 1st degree burglary
20 case, so there was pressure on him to accept the plea. But
21 to answer your question, no he didn't want to plead guilty.
22 There was resistance but he didn't really have an option.

23 Q. Yes, sir. Did you ever pressure or coerce or in any
24 way try to force Mr. Rose to plead guilty in this case?

25 A. No. Because as far as I was concerned my case was --

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1 my case was only six months old at that point so there was
2 really no pressure for me. The only incentive for me was
3 to wrap both cases up at one time because I thought it was
4 a good deal for my client. I mean really it was Ms.
5 Butcher's case that was more important to resolve because
6 not only was it on the trial roster for that month but it
7 was also a 1st degree burglary. I mean he broke into a
8 woman's house. And so you know it's more important to
9 resolve that case.

10 It didn't matter to me because I wasn't going to trial
11 that month. I would have had a lot more time to discuss my
12 case with Mr. Rose in the coming months, probably years
13 frankly, because it would be a long time before my case
14 would come to trial and that there would be any significant
15 pressure on Mr. Rose to make a decision about my case. The
16 pressure on my case at that time was because Ms. Held
17 wanted them both resolved. And so, you know, she was
18 leveraging her situation up which she has the absolute
19 right to do. She wanted both of them resolved so that's
20 how she did it. And frankly if was in his best interest to
21 do so.

22 Q. Yes, sir. I was just about to ask in a moment if you
23 felt that it was in his best interest but when he actually
24 plead on December the 9th did you ever direct him on how to
25 answer the court's questions, that you tell him to say yes

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1 to everything, to say no at all or was he, I guess, coached
2 in how to answer the questions?

3 A. No he was not coached nor did he need to be. He had
4 plead guilty on multiple occasions before; he knew exactly
5 what he needed to do.

6 Q. Yes, sir. And just a few more questions. I
7 apologize. Ultimately whose decision to plead guilty
8 in this matter?

9 A. Ultimately it was his decision. You know I do not
10 care whether a client pleads guilty or not. It is not up
11 to me. You know, frankly trying cases is fun for me. I
12 enjoy it, it's what we go to law school to do, so I don't
13 care if people go to trial. I like it. Now if my clients
14 ask me what I think they should do and I think it's in
15 their best interest to plead guilty I certainly tell them.
16 But I don't at the end of the day care whether they plead
17 guilty or not. It's not my decision. I'm not the one
18 going to jail so I don't really care.

19 Q. Yes, sir. Now briefly discussing appeal. Is it your
20 practice to discuss the right to appeal with your clients?

21 A. I generally discuss the right to appeal along the way,
22 you know if you're unhappy with the outcome you have
23 the right to appeal it. I don't recall when I would have
24 discussed this with Mr. Rose. Certainly the judge
25 instructed him that if he was unhappy with the outcome he

1 had a right to appeal and he never ask me to appeal the
2 case.

3 And, you know, he mentioned that he ask me to appeal
4 the case prior to it. I can promise you if Mr. Rose had
5 said Mr. Barnes I want you to appeal this case before the
6 plea started I would have absolutely ask to adjourn it. I
7 could not have gone forward with a guilty plea where the
8 client ask me, prior to going forward, whether or not where
9 I was instructed to appeal it. I'm asking for a PCR if
10 that's the case. I mean how could I as a lawyer do that?
11 So if he had said before the start of the plea I want you
12 to file an appeal on this case I would have said your
13 Honor, we're not prepared to go forward with a guilty plea
14 today. I cannot do that.

15 And I could not have -- because of the attorney client
16 privilege I could not have explained to the judge why I
17 wanted to do that. Maybe I could have gone back in camera
18 and said my client's already instructed me to file an
19 appeal so I do not feel like he is voluntarily pleading
20 guilty and we can't go forward so I absolutely would not
21 have done that. I mean I know better than that. Because
22 if I had done that then, you know, I'm not even sure it
23 would be ethical to do that but it certainly would have
24 made his appeal not knowingly and voluntarily made. So
25 absolutely that did not happen. I mean it did not happen.

1 And I would like to point out that in early 2020 I
2 received several very pleasant letters from Mr. Rose, you
3 know, asking how I was doing. He was wanting some
4 additional information about his case I assume so he could
5 file one because he did have some additional charges
6 because he picked up some charges while he was actually
7 incarcerated; tampering with I don't know what. But anyway
8 they were ultimately dismissed by Ms. Held.

9 So I received several letters from him, you know,
10 asking for discovery in those cases and this that and the
11 other. Never any mention of any appeals, why didn't you
12 file an appeal, blah, blah, blah, none of that. So, you
13 know, as far as I was concerned he was perfectly happy with
14 what had happened.

15 Q. And if at any point after his guilty plea Mr. Rose
16 had indicted that he wished to appeal what would you have
17 done?

18 A. I would have absolutely filed an appeal. I always
19 have. I mean, you know, as a practical matter we don't --
20 the public defender's office doesn't actually do appeals.
21 We file a Notice of Appeal so for me when you, you know,
22 and then the appeal is turned over to the Office of
23 Appellate Defense, so it's not as though it's a lot of work
24 for me. I literally file a Notice of Appeal. It's a one
25 paragraph document. It takes thirty minutes to do so, you

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1 know, so it's no big burden on me. I mean I literally spit
2 the Notice of Appeal out and I file one here in Sumter; I
3 send one to Columbia, boom, it's done, so it's not a big
4 deal. And I send a copy of it to my client. That's it.

5 And then another office picks it up and handles it so,
6 you know, it makes no sense that I wouldn't do one because
7 it's just so easy to do. Its actually a form that we have
8 in our office. We pull it up, the name of the defendant is
9 automatically put into the form. We don't have to do
10 anything except pull it up in the particular case it's in,
11 it spits it out, I sign my name to it and I file it.

12 That's it. Literally thirty minutes, so it is so easy to
13 do. If Mr. Rose had ask me to do one I would have gladly
14 done it.

15 Now I will say this, in the case of guilty pleas when
16 my clients ask me to file an appeal I do tell them that I
17 am required to as a part of the appellate process to notify
18 the Court of Appeals what the grounds for appeals are --
19 the appeal is. And if as a lawyer I do not feel like there
20 are sufficient grounds for appeal I will let the Court of
21 Appeals know that. The Court of Appeals will then notify
22 the defendant directly that you have X number of days to
23 file an appeal. And if you don't file that document or you
24 don't notify them during that period of time that your case
25 will be dismissed.

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1 I can promise you in Mr. Rose's case because as I said
2 he got what I thought was an excellent deal; that I would
3 have had that conversation with him without question
4 because I would not have had a ground for an appeal in this
5 case and I would have had to tell him that so I would have
6 put him notice that look, I will file your Notice of Appeal
7 but I will include in the Notice of Appeal that I do not
8 have a ground for appeal and I'm filing this Notice of
9 Appeal because you ask me to. And that you will then be
10 contacted and you will be required to let the Court of
11 Appeals know what the grounds for appeal are and if you
12 don't do that it will be dismissed.

13 So, you know, that's why I'm confident that I was not
14 ask to file an appeal because in this particular situation,
15 you know, and its hard when someone files or enters a
16 guilty plea and they sit there and tell the judge yes I
17 know this, I'm doing this knowingly and freely and nobody's
18 promised me anything, I'm satisfied with my lawyer, blah,
19 blah, blah, I mean, are they lying then or are they lying
20 now? I mean how did you file an appeal when you stand
21 there under oath and say all of these things?

22 Q. Thank you, sir.

23 MR. NEUBAUER: I have no further questions at this
24 point. If you'd briefly answer any questions from Mr.
25 Griffith.

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1 THE COURT: Mr. Griffith, cross-examination.

2 MR. GRIFFITH: Thank you, your Honor.

3 CROSS-EXAMINATION

4 ALLEN BARNES BY MR. GRIFFITH:

5 Q. Mr. Barnes, you covered quite a bit of the area that
6 I may ask you questions about including the fact that do
7 you believe he understood that he could get an appeal?

8 A. Without question.

9 Q. Okay.

10 A. I believe he has previously filed an appeal on one of
11 his earlier cases as I remember.

12 Q. And so you say you have handled some of his cases
13 prior?

14 A. No.

15 Q. Okay.

16 A. I just learned that in the course of his
17 representation.

18 Q. But would you say that he did seem competent or that
19 he didn't really understand what was going on?

20 A. Oh, no, he was very competent.

21 MR. GRIFFITH: I have no further questions, Judge.

22 THE COURT: All right. Any redirect, Mr. Roseboro?

23 MR. NEUBAUER: No, your Honor.

24 THE COURT: Mr. Neubauer, I'm sorry, I called you
25 the wrong name. Call your next witness please.

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1 MR. NEUBAUER: Yes, your Honor. The State would call
2 Mr. Margaret Held.

3 THE COURT: Ms. Held, would you raise your right hand
4 please.

5 (WHEREUPON, MARGARET HELD,
6 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

7 DIRECT EXAMINATION

8 MARGARET HELD BY MR. NEUBAUER:

9 Q. Good morning, Ms. Held. I just have a few brief
10 questions regarding the particular indictments. When Mr.
11 Rose was initially arrested in 2016 and indicted you were
12 not working with the solicitor's office at that point were
13 you?

14 A. I worked here, Mr. Neubauer, but these cases were not
15 assigned to me at that time.

16 Q. Yes, ma'am, I apologize.

17 A. Oh, I'm sorry, wait a minute. Well actually that's
18 correct. I did not start working full time at the
19 solicitor's office until August 29, 2016, so for the first
20 arrest warrant from February 4th of 2016 I did not work
21 here. But when I did start working here these cases were
22 not assigned to me anyway.

23 Q. Yes, ma'am. And regarding specifically the 2019
24 charge that he was ultimately indicted for 2nd degree
25 burglary, I know that he was initially arrested under 1st

1 degree burglary. Do you remember the specific reason why
2 he was not indicted on 1st degree as opposed to 2nd?

3 A. The arrest warrant indicated that it was a business
4 and I don't believe that a business can be 1st degree
5 burglary even if it's at night time. It's my understanding
6 the statute that it would be at most a burglary 2nd degree.
7 So I didn't think it was proper to have an indictment done
8 on a burglary 1st degree which did not meet the actual
9 statutory requirements, so I indicted him for burglary 2nd
10 degree violent I believe is what I did because it did meet
11 those requirements. But I do have, yes, burglary 2nd
12 degree violent which is of course less than burglary 1st
13 degree as far as sentencing goes.

14 Q. Yes, ma'am. And --

15 A. I'm sorry, Mr. Neubauer, of course it was sent to the
16 Grand Jury and it was True Billed.

17 Q. Yes, ma'am. So it was True Billed as a 2nd degree
18 burglary, correct?

19 A. Yes, correct.

20 Q. And the 2016 burglary charge was a True Bill
21 Indictment for 1st degree burglary, is that correct?

22 A. Yes. What happened in that case the first prosecutor
23 on the case -- I don't know, for whatever reason only
24 indicted Mr. Rose for burglary 2nd degree. And in looking
25 at the actual indictment that was True Billed it did not

1 contain any statutory allegations on why it was a burglary
2 2nd degree such as day, I mean such as time. Just that it
3 was extremely general. So in looking at the warrant I
4 looked at that and saw that Mr. Rose had at least two prior
5 convictions for burglary which would make it a 1st degree
6 burglary.. And it was a house anyway. I mean it was a
7 house in the daytime which normally is not burglary 1st
8 degree.

9 But because of his prior convictions is why I decided
10 to indict him on burglary 1st degree in an amended
11 indictment. And I believe you have a copy of the amended
12 indictment where that one was True Billed as a burglary 1st
13 degree.

14 Q. Yes, ma'am. And ultimately there was a plea
15 negotiation between you, Ms. Butcher and Mr. Barnes where
16 he ultimately pled to two eight-year concurrent sentences
17 for two 2nd degree burglaries. Do you remember
18 particularly how that came about?

19 A. My first plea offer -- Well of course I looked at his
20 record and he has at least three prior burglary convictions
21 over the years. None of them he had ever been required to
22 plead to anything above burglary 2nd degree non-violent.
23 But since this was his fourth shot at -- well shot's not
24 the right word -- since this was his fourth time in court
25 on two different charges of burglary I insisted that it be

1 -- I can reduce it but it would have to be burglary 2nd
2 degree violent. It can be concurrent and that ten years
3 concurrent was the offer for both of them.

4 And then when Mr. Barnes spoke earlier about sometime
5 in November he and Ms. Butcher -- I remember being in the
6 courtroom -- and he, Mr. Rose, was out on bond and he and
7 Mr. Barnes and Ms. Butcher sat in the attorney conference
8 room which we have in our General Sessions Court two small
9 conference rooms between the outer doors and the courtroom;
10 there is a little lobby or vestibule, and they went in
11 there and talked about and Mr. Barnes came out and said
12 could he wait and plead in December and do you think you
13 could reduce the charge down to eight for both. And I
14 said, and he'll sign the plea sheets today? And yes. Then
15 he has to come back in on the first Monday we had court
16 which Mr. Barnes said was December 2nd but I don't remember
17 that date of the year fully.

18 Q. Yes. And do you remember if he ultimately did sign
19 the sentencing sheets those days?

20 A. I'm pretty sure he did sign them that day but I can't
21 -- well, that's what I remember yes.

22 Q. But ultimately there is a or there are two sentencing
23 sheets showing an indictment from 2016 and 2019 with your
24 signature, Mr. Rose's signature, and the signature of his
25 attorneys in those matters?

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1 A. Yes. And those were recommended; not negotiated. So
2 he could have received from just property more. That was a
3 risk he took but they were recommendations but Judge
4 Cothran followed the recommendation.

5 Q. Yes, ma'am. Thank you so much.

6 MR. NEUBAUER: I have no further questions at this
7 point.

8 THE COURT: Mr. Griffith, cross-examination.

9 MR. GRIFFITH: Thank you, your Honor.

10 CROSS-EXAMINATION

11 MARGARET HELD BY MR. GRIFFITH:

12 Q. Attorney Held, at this time you have already
13 mentioned some information for us about as far as the
14 indictments are concerned and following up on that just to
15 cover and make sure that we have touched on the
16 jurisdiction issue, did you testify that both of these, all
17 of the charges for which he had pled guilty were actually
18 the Grand Jury heard them and he was actually indicted on
19 these charges or was he -- did he waive the indictment?

20 A. No, he was actually indicted and both indictments
21 were True Billed.

22 Q. Okay.

23 MR. GRIFFITH: I have no further questions for her,
24 your Honor.

25 THE COURT: Any redirect?

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1 MR. NEUBAUER: No, your Honor.

2 THE COURT: Mr. Neubauer, any other witnesses?

3 MR. NEUBAUER: No, your Honor, the State has no
4 further witnesses.

5 THE COURT: All right. Ladies and gentlemen, I
6 appreciate your preparedness and the way each of you
7 presented your cases. I'm gonna take this matter under
8 advisement and I will issue a decision via it memo by March
9 19th of this year, that is next Friday. And in that memo
10 it will direct the prevailing party to draft a proposed
11 order and send that proposed order to the other side and
12 then present it to the court and I will sign it after all
13 of that is done. A decision will be made by March 19th.

14 This matter is adjourned.

15 (COURT ADJOURNED AT 11:07 A.M.)

16 (END OF TRANSCRIPT OF RECORD.)

17

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CERTIFICATE OF REPORTER

State of South Carolina)
)
 County of York)

I, Wanda S. Nelson, Certified Verbatim Reporter, Official Court Reporter, Retired, State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcription of Record of the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Sumter County, South Carolina on the 8th day of March, 2021.

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

Wanda S. Nelson *Wanda S. Nelson*
 Wanda S. Nelson, CVR-M
 Certified Verbatim Reporter,
 Official Court Reporter, Retired
 State of South Carolina.

Date: September 16, 2021

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FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2020CP4300482

RECORDED

Michael Charles Rose	2021 APR 28 AM 10:30	South Carolina State of
PLAINTIFF(S)	JAMES C. CAMPBELL CLERK OF COURT SUMTER COUNTY, S.C.	DEFENDANT(S)
Submitted by: Clerk of Court	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant	

CERTIFIED TRUE COPY
 OF ORIGINAL FILED

Sherry H. Hunt
 DEPUTY CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRCP;
 - Rule 41(a), SCRCP (Vol. Nonsuit);
 - Rule 43(k), SCRCP (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRCP;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: **See attached Order.**

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	2768	4/28/2021
	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Timothy Lee Griffith 2338 Mount Vernon Dr Sumter, SC 29154

Alan McCrory Wilson S.C. Attorney General's Office PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

James C. Campbell

Court Reporter

James C. Campbell - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
 COUNTY OF SUMTER)

RECORDED
 2021 APR 27 PM 2:18

THE COURT OF COMMON PLEAS
 FOR THE THIRD JUDICIAL CIRCUIT

Michael Rose, #283221,

2020-CP-43-0482

Applicant,

JAMES C. CAMPBELL
 CLERK OF COURT
 SUMTER COUNTY, S.C.

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

CERTIFIED TRUE COPY
 OF ORIGINAL FILED

Sherry H. How
 DEPUTY CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

This matter comes before the Court by way of an application for post-conviction relief filed on March 23, 2020, by Michael Rose (Applicant). The State (Respondent) filed a Return on September 18, 2020, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on March 8, 2021, remotely via the WebEx virtual courtroom. Applicant was present at the hearing and represented by Timothy Griffith, Esquire. Assistant Attorney General Michael Neubauer of the South Carolina Attorney General’s Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf. A. Jack Barnes, Esquire, Deborah Butcher, Esquire, and Assistant Solicitor Margret M. Held of the Third Circuit Solicitor’s Office also testified. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. In October 2019, Applicant was indicted by the Sumter County Grand Jury for Burglary, 1st degree (2019-GS-43-1099). A. Jack Barnes, Esquire, represented Applicant. Assistant Solicitor Margret M. Held of the Third Circuit

Solicitor's Office, prosecuted the case.

On December 9, 2019, Applicant entered a negotiated plea before the Honorable R. Ferrell Cothran, Jr., for the lesser included offense of second degree burglary. Applicant was also indicted for first-degree burglary in 2016, and pleaded guilty on the same day to second-degree burglary for his 2016 indictment (2016-GS-43-0619). Judge Cothran sentenced Applicant to eight years of imprisonment for each of his burglary charges. Applicant did not appeal his conviction or sentence.

SUMMARY OF FACTS

The underlying facts of the crimes for which Applicant is incarcerated were articulated by the State during Applicant's guilty plea hearing as follows:

"...For the indictment 2016-619...On February 4, 2016, at [REDACTED] South Main, Ms. Barbra Evans, who was the renter of the house at the time had been gone for a couple of days staying at her mother's house around the corner. She came into her house and noticed a black bag and an umbrella on a table in the front room. She thought, oh, somebody's been in my house; but she went, she didn't hear or see anything right away. She went down the hallway and went into her bedroom; and the next thing she knew she heard Mr. Rose behind her saying, oh, Barbara, it's me. They apparently had known each other from when they grew up together and so she knew who it was. He left. When the police came to investigate they discovered that some wires in the attic, plastic copper wires wrapped in plastic, multiple of those had been cut and four were left at the house that were cut, and she had seen Mr. Rose with those in his hand..."

...for the other indictment, that happened on June 22, 2018, at 220 Dingle Street which is Burgess Brogdon Do-It-Yourself Center and Mr. Gene Weston is the proprietor of that establishment. Mr. Rose lives—they, you can see the house and the business from each other's yards and so it turned out that when the law enforcement responded to 220 Dingle Street which is in the – and I neglected to say, Your Honor, the other [REDACTED] South Main is, of course, in the city of Sumter as in the indictment that ends in 1099. They came to the Do-It-Yourself Center and they discovered there were multiple things. The plexiglass was broken. There was a lawn trimmer moved, stolen, and some hammer drills. And the neighbor had called 9-1-1 and identified Mr. Rose as the person who was committing, he saw the burglary in progress and that's how they knew it was Mr. Rose."

GP. Tr. 7-9.

ALLEGATIONS RAISED

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

1. Ineffective Assistance of Counsel
 - a. "Trial counsel failed to review and discuss all discovery information and evidence."
2. Involuntary Guilty Plea
 - a. "Trial Counsel was ineffective in that he did unfairly and improperly pressure and coerce me into signing up any rights in accepting a plea offer."
3. "Trial counsel was ineffective in that he should have been able to negotiate a better deal on my behalf."

As requested relief, Applicant states he is seeking "conviction reversed with remand for new trial."

On February 25, 2021, Applicant, through his counsel, filed an amended application alleging:

- a. I have spoken at length with Mr. Rose so as to help him understand the PCR and so that I can articulate his concerns and claims. His application is for burglary 2nd degree: 2019-GS-43-1099 he plead guilty to another burglary 2nd degree: 2016-GS-43-0619 but did not understand that he had plead to the second one – though the transcript shows he did – he therefore had not filled the application on both. Mr. Rose would amend his application to include both cases 2019-GS-43-1099 and 2016-GS-43-0619.
- b. Ineffective Assistance of Counsel; Mr. Rose claims that although he did receive a copy of his discovery, neither of his attorneys went over the discovery to explain it to him. If he had been able to go over the discovery with his attorneys, he would have proceeded to trial.
- c. Ineffective Assistance of Counsel: Mr. Rose claims that he only met with his attorneys on the day of his plea so therefore did not have time to understand what he was pleading to.
- d. I did discuss with Mr. Rose the concept of "lesser included," and I believe he is more clear on that issue.
- e. Mr. Rose will claim that the Court did not have jurisdiction to accept the plea in his cases. I have explained that the Court most likely did have jurisdiction, however, he would like to present that to the Judge.
- f. We did discuss many other concerns he had which I explained to him were not PCR issues but were issues for appeal or to be handled at trial. He did not appeal though the transcript shows the Judge informing him – but he says he did not know what he was supposed to do to get his attorney to appeal so.

g. Ineffective Assistance of Counsel: Failure of attorney to file appeal.

At the evidentiary hearing, Applicant stated he was going forward on the allegations set forth in his original application and his amended application.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court viewed 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 Clerk of Court records regarding the subject convictions, the trial transcript, the application for post-conviction relief, the amended application for post-conviction relief, and the legal arguments made by the attorneys. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).

1. Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the ranged of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decision in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at

117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different" Id. at 117-118, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

a. Trial Counsel failed to review and discuss all discovery information and evidence.

Applicant alleges his attorneys failed to review and discuss all discovery information and evidence with him. This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in his case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). (citing Strickland).

Applicant testified he met with both Mr. Jack Barnes and Ms. Deborah Butcher. Applicant testified his attorneys did not discuss the State's evidence with him. Applicant testified at his plea hearing that he met with Ms. Butcher, he was satisfied with her representation, and consented to conducting his guilty plea without her being present. Applicant, at his plea hearing, testified he had enough time to talk with his lawyer.

Ms. Butcher testified she met with Applicant three to four times and sent Applicant multiple letters. Ms. Butcher testified she discussed the elements of Applicant's charges and the indictments. Ms. Butcher testified she discussed the State's evidence with Applicant and the State's burden of proof in criminal cases. Ms. Butcher testified she went through discovery with

Applicant but she did not talk to the victim in Applicant's case. Ms. Butcher testified she discussed the strength of the State's case against him, this included multiple individuals who knew Applicant and identified Applicant in each case. Additionally, each witness identified Applicant in a six-person photo lineup. Ms. Butcher testified she fully went over Applicant's discovery and asked Applicant if he had any questions regarding his discovery.

Mr. Barnes testified he met with Applicant six times. Mr. Barnes testified he discussed the discovery in Applicant's case numerous times. Mr. Barnes testified he felt he had enough time to meet with Applicant prior to his plea. Mr. Barnes testified he does not have an independent recollection of discussing Applicant's indictments but is confident he did discuss them. Mr. Barnes testified he typically reads and discusses each client's indictments with them.

This Court finds Applicant has failed to show his counsel was ineffective. Applicant has failed to show his counsel was deficient, Applicant's counsel testified they met with Applicant and discussed the strength of the State's case against him. Individuals who knew Applicant identified him in each case. Each witness identified Applicant in a six-person photo lineup. Attorney Jack Barnes testified that he met with Applicant six times, and that the discovery in each case was not voluminous. The Court finds Mr. Barnes' testimony credible. Applicant admitted in his plea hearing that he met with Ms. Butcher, was satisfied with her representation, and consented to conducting his guilty plea without her being present. Additionally, Applicant has failed to provide "any evidence of how additional preparation or communication would have resulted in a different outcome." Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012); see Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (explaining that, where an applicant failed to present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial, applicant failed to

show his counsel's lack of preparation prejudiced him); Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (finding that, when there is evidence counsel met with a defendant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). Accordingly, Applicant's claim his trial counsel failed to review and discuss all discovery information and evidence is without merit. This claim is denied and dismissed with prejudice.

b. Trial Counsel was ineffective in that he did unfairly and improperly pressure and coerce me into signing up any rights in accepting a plea offer.

Applicant asserts his counsel was ineffective for pressuring and coercing Applicant into signing away his rights by accepting a plea.

In evaluating issues concerning guilty pleas, this Court will consider the entire record, including the transcript of the guilty plea proceeding and the evidence presented at the post-conviction relief hearing. Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000). Voluntariness of a guilty plea is not merely determined by an examination of a specific inquiry by the plea court alone but rather is determined by the record of both the guilty plea proceeding and the post-conviction relief hearing. Id. In order to find a guilty plea was knowingly and voluntarily entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969). Further, “[a] guilty plea is a solemn, judicial admission of the truth of the charges” against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. Dalton v. State, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions “made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his

statements.” Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975)); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Applicant testified he felt a lot of pressure to plead guilty in this case. Applicant testified he did not want to plea. Applicant also testified he did not plead guilty at his plea hearing. However, at Applicant’s plea hearing, Applicant testified he was pleading guilty because he was in fact guilty. GP Tr. p. 9. Additionally, at Applicant’s plea hearing, Applicant testified he was not threatened in any way. GP Tr. p. 5.

Mr. Barnes testified Applicant did not want to go to jail, because nobody ever wants to go to jail. Mr. Barnes testified he did not coerce or force Applicant to plead guilty. Mr. Barnes testified he is confident he discussed Applicant’s indictments with Applicant. Mr. Barnes testified Applicant understood the charges he was facing and the possible sentences he could receive. Mr. Barnes testified Applicant understood he was facing two concurrent eight year sentences if he plead guilty, or the possibility of life in prison if he were convicted at trial. Mr. Barnes testified he did not coerce or force Applicant to plead guilty. Mr. Barnes testified he did not coach Applicant on how to answer the plea judge’s questions, nor did Applicant need to be coached.

This Court finds Applicant failed to show his Counsel was deficient. Applicant has not shown Counsel coerced or forced him in any way. Additionally, Applicant has failed to show that he was prejudiced by Counsel’s actions at Applicant’s plea. Applicant has not provided any evidence, outside of self-serving testimony, to show he would have proceeded to trial instead of pleading guilty. Therefore Applicant’s claim his trial counsel unfairly and improperly pressured and coerced Applicant into signing away his rights by accepting a plea offer is without merit. This claim is denied and dismissed with prejudice.

c. Trial Counsel was ineffective in that he should have been able to negotiate a better deal on my behalf.

Applicant asserts Counsel was ineffective because he should have been able to negotiate a better deal for Applicant's plea.

Applicant at his PCR hearing testified he did not have any option except to plea. On cross-examination Applicant testified he was not told of any plea offers prior to the one he accepted. Applicant additionally testified he did not plead guilty at his plea hearing. However, this Court takes judicial notice that Applicant plead guilty to two counts of second-degree burglary.

Deborah Butcher testified she met with Applicant multiple times prior to his plea. Ms. Butcher testified she discussed Applicant's chances at trial, and believed the State could prove Applicant's guilt beyond a reasonable doubt. Ms. Butcher testified she and Mr. Barnes were able to get a plea offer that Applicant was willing to plead to.

Jack Barnes testified he spoke with Applicant about the facts of Applicant's case and any possible defenses, including a possible alibi. Mr. Barnes testified he was able to get Applicant a plea deal to concurrent terms of ten years for two counts of second-degree burglary. Mr. Barnes testified prior to Applicant's plea, Mr. Barnes was able to convince Margret Held to drop the plea from ten years to eight years concurrent for what was originally second-degree and first-degree burglary charges. Mr. Barnes testified he spoke with Applicant about the eight year plea offer, and that Applicant understood he could either plea to eight years concurrent or risk a possibility of life without parole if Applicant went to trial. Mr. Barnes testified he felt it was in Applicant's best interest to plead guilty.

This Court finds Applicant's allegation is without merit. Applicant was facing one count of Burglary in the First Degree, and one count of Burglary in the Second Degree (Violent). Counsel was able to negotiate a reduction of the Burglary in the First Degree to Burglary in the Second Degree Violent. Applicant pleaded guilty to two counts of Burglary in the Second Degree

(Violent), and received concurrent eight-year sentences. Mr. Barnes was successful in reducing the initial plea offer by two years. This Court finds Applicant has failed to show how Counsel was deficient, or how Applicant was prejudiced by Counsel's performance while negotiating a potential plea deal. Therefore this claim is denied and dismissed with prejudice.

d. Mr. Rose claims that although he did receive a copy of his discovery, neither of his attorneys went over the discovery to explain it to him. If he had been able to go over the discovery with his attorneys, he would have proceeded to trial.

Applicant alleges he did not have an opportunity to discuss his discovery with his attorneys. Applicant alleges he would have proceeded to trial if he had the opportunity to discuss the discovery in his cases.

Applicant testified he met with both Mr. Jack Barnes and Ms. Deborah Butcher. Applicant testified his attorneys did not discuss the State's evidence with him. Applicant admitted in his plea hearing that he met with Ms. Butcher, he was satisfied with her representation, and consented to conducting his guilty plea without her being present.

Ms. Butcher testified she met with Applicant three to four times and sent Applicant multiple letters. Ms. Butcher testified she discussed the elements of Applicant's charges and the indictments. Ms. Butcher testified she discussed the State's evidence with Applicant. Ms. Butcher testified she went through discovery with Applicant but she did not talk to the victim in Applicant's case. Ms. Butcher testified she fully went over Applicant's discovery and asked Applicant if he had any questions regarding his discovery.

Mr. Barnes testified he met with Applicant six times. Mr. Barnes testified he discussed the discovery in Applicant's case numerous times. Mr. Barnes testified he felt he had enough time to meet with Applicant prior to his plea. Mr. Barnes testified he does not have an independent

recollection of discussing Applicant's indictments but is confident he did discuss them. Mr. Barnes testified he typically reads and discusses each client's indictments with them.

This Court finds Applicant has failed to show his counsel was ineffective. Applicant has failed to show his counsel was deficient, Applicant's counsel testified they met with Applicant and discussed the strength of the State's case against him. The State's evidence against Applicant included individuals who knew Applicant and identified him in each case. Each witness identified Applicant in a six-person photo lineup. Mr. Barnes testified that he met with Applicant six times, and that the discovery in each case was not voluminous. The Court finds Mr. Barnes' testimony credible. Applicant admitted in his plea hearing that he met with Ms. Butcher, was satisfied with her representation, and consented to conducting his guilty plea without her being present. Additionally, Applicant has failed to present "any evidence of how additional preparation or communication would have resulted in a different outcome." Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012); see Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (explaining that, where an applicant failed to present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial, applicant failed to show his counsel's lack of preparation prejudiced him); Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (finding that, when there is evidence counsel met with a defendant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). Accordingly, Applicant's claim his trial counsel failed to review and discuss all discovery information and evidence is without merit. This claim is denied and dismissed with prejudice.

- e. Mr. Rose claims that he only met with his attorneys on the day of the plea so therefore he did not have time to understand what he was pleading to.*

Applicant asserts he was not able to speak with his attorneys until the day of his plea and he did not have time to understand what he was pleading to.

Applicant testified he did not talk to his attorneys before his plea and he only spoke with them on the day he went to court. Applicant testified his attorneys only told him if he went to trial he would lose. On cross examination, Applicant testified he only met with Ms. Butcher in 2019 when he went to the court house and the prosecutor took him before the judge. Applicant testified he did not discuss the evidence against him with his attorneys. Applicant testified he never discussed any possible defenses with his attorneys. Applicant testified he did not speak with Jack Barnes prior to his plea hearing.

Ms. Deborah Butcher testified she sent Applicant several letters, and met with Applicant three to four times in person. Ms. Butcher testified she discussed the elements of Applicant's charges and the indictments with applicant. Ms. Butcher testified she discussed Applicant's version of the facts, including Applicant assertion he did not commit the crime. Ms. Butcher testified she met with Applicant, and with Applicant and Mr. Barnes in order to consolidate both of Applicant's charges into one plea deal. Ms. Butcher testified she felt she had enough time to meet with Applicant prior to his plea hearing. On cross examination Ms. Butcher testified she was able to determine Applicant understood everything she discussed with Applicant.

Mr. Jack Barnes testified he met with Applicant six times prior to Applicant's plea hearing. Mr. Barnes testified he discussed discovery with Applicant, including eye witness statements, incident reports, photo lineups, and Applicant's NCIC report. Mr. Barnes testified the discovery in Applicant's case was not voluminous, or something Applicant had to "wade through." Mr. Barnes testified he discussed possible defenses with Applicant, including Applicant's assertion his

brother committed the crime, instead of Applicant. Mr. Barnes testified he reached out to Applicant's brother who adamantly denied committing the crime.

This Court finds Applicant has failed to show his counsel was ineffective by failing to meet with Applicant prior to his plea. Both of Applicant's attorneys testified they met with Applicant multiple times prior to Applicant's plea hearing. Additionally, both of Applicant's attorneys testified they discussed with Applicant both the charges applicant was facing, and the State's evidence against Applicant. Applicant, at his plea hearing indicated he understood what he was doing. Applicant has failed to show how his counsel was deficient in meeting with Applicant and discussing the charges Applicant was facing. Additionally, Applicant has failed to present "any evidence of how additional preparation or communication would have resulted in a different outcome." Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012); see Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (explaining that, where an applicant failed to present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial, applicant failed to show his counsel's lack of preparation prejudiced him); Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (finding that, when there is evidence counsel met with a defendant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). This court finds Applicant's allegation he only met with his attorneys on the day of his plea and Applicant did not have time understand what he was pleading to is without merit. Therefore this claim is denied and dismissed with prejudice.

f. The Court did not have jurisdiction to accept Applicant's plea in his cases.

Applicant alleges the Court did not have jurisdiction to accept the plea in his case. “The court of general sessions has subject matter jurisdiction to try criminal cases.” State v. Smalls, 364 S.C. 343, 346, 613 S.E.2d 754, 756 (2005). Applicant testified he was arrested on first-degree burglary, however his indictment was for second-degree burglary. Applicant testified he believes the Court did not have jurisdiction to accept his plea because he was indicted for a different charge than he was arrested for.

Margret Held testified Applicant’s indictment 2019-GS-43-1099 was for first-degree burglary, however Ms. Held filed an amended indictment for second-degree burglary which was true billed. Ms. Held also testified Applicant’s indictment 2016-GS-43-0619 was also true billed by the Sumter County Grand Jury. Ms. Held testified Applicant signed the sentencing sheets for both indictments prior to his plea hearing while Applicant was meeting with his attorneys.

“We hold that signing a sentencing sheet for a charge to which a defendant has pled guilty constitutes a written waiver of presentment. Moreover, a signed document that informs a defendant of the charges against him such as a sentencing sheet gives rise to a presumed regularity in the proceedings and signifies that the defendant has been notified of the charges to which he has pled guilty.” Id. 364 S.C. at 347, 613 S.E.2d at 756.

This Court finds Applicant’s allegation to be without merit. Applicant pleaded guilty to a lesser-included offense of Burglary in the First Degree on true-billed indictment 2016-GS-43-0619. Applicant pleaded guilty as indicted to Burglary in the Second Degree (Violent) on true-billed indictment 2019-GS-43-1099. Applicant has failed to provide any evidence to support his allegation that the Court lacked jurisdiction to accept Applicant’s pleas. Therefore, this claim is denied and dismissed with prejudice.

CONCLUSION

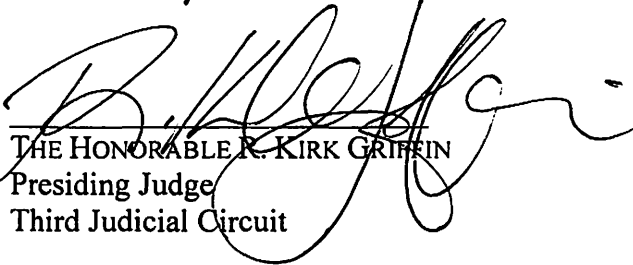
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from post-conviction relief counsel's receipt 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), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant is to remain in the custody of the Respondent.

AND IT IS SO ORDERED this 27th day of April, 2021.


 THE HONORABLE R. KIRK GRIFFIN
 Presiding Judge
 Third Judicial Circuit

Sumter, South Carolina

ARREST WARRANT

2016A4320100103

STATE OF SOUTH CAROLINA

County/ Municipality of

Sumter Municipal

THE STATE 16016808 against

Michael Charles Rose

Address: Sumter, SC 29150-

Phone: SSN: Sex: M Race: W Height: 5 9 Weight: 185 DL State: SC DL #: DOB: Agency ORI #: SC0430100

Prosecuting Agency: Sumter Police Department Prosecuting Officer: Ricky Morse - 2401 Offense: Burglary / Burglary (After June 20, 1985) - First degree

Offense Code: 0079 Code/Ordinance Sec: 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant MICHAEL CHARLES ROSE on 2-9-2016

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions 215 N. Harvin St. Sumter, SC 29150

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA County/ Municipality of Sumter Municipal

AFFIDAVIT

ORIGINAL

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

Personally appeared before me the affiant Ricky Morse being duly sworn deposes and says that defendant Michael Charles Rose did within this county and state on or about 2/4/2016 State of South Carolina (or ordinance of County/ Municipality of Sumter Municipal in the following particulars:

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

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

That on February 4, 2016, at Main St, in the City of Sumter, one Michael Charles Rose did enter the residence belonging to one Barbara Evans without consent and with intent to commit a crime therein. The victim/ Barbara Evans arrived home and found the defendant standing in a bedroom door with hand tools in his hand and a black duffel bag on the kitchen table. The defendant grabbed the bag and left the scene. The victim found the attic door had been pulled open and upon inspection the copper wire in the attic had been cut and was missing and also the copper wire to the air conditioner unit in the attic was also cut and it appeared the copper tubing was also cut to the air conditioner unit. The victim positively identified the defendant in a six person SLED photo lineup. Michael Charles Rose has two or more prior convictions for Burglary. Law Enforcement will attest to the same.

Signature of Affiant

STATE OF SOUTH CAROLINA County/ Municipality of Sumter Municipal

Affiant's Address 107 East Hampton Avenue Sumter, SC 29150- Affiant's Telephone (803)436-2790

ARREST WARRANT

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

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

on or about 2/4/2016 defendant Michael Charles Rose did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Sumter Municipal) as set forth below:

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

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

on 2/9/2016 Signature of Issuing Judge Bryan Keith Griffin Judge Code: 5043

(L.S.)

Judge's Address 190 E. Canal Street Sumter, SC 29151-1428 Judge's Telephone (803)436-2280

Issuing Court: Magistrate Municipality Circuit

RECORDED 2016 FEB 11 AM 10:38 JAMES C. CAMPBELL CLERK OF COURT SUMTER COUNTY, S.C.

113

WITNESSES

Ricky Morse
Dept.

Sumter Police

Amended 10/31/19
DOCKET NO. 2016-GS-43-0619

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

June TERM 2016

THE STATE

vs.

MICHAEL CHARLES ROSE

ARREST WARRANT NUMBER

2016A4320100103

Indictment for

Burglary 2nd Degree

ACTION OF GRAND JURY

TRUE BILL

Robert E. Halloway
Foreperson of Grand Jury

Date: *6/9/16*

Ernest A. Finney III

VERDICT

ERNEST A. FINNEY, III, SOLICITOR

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

INDICTMENT FOR

Burglary 2nd Degree

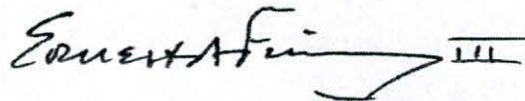
At a Court of General Sessions, convened on June 9, 2016 the Grand Jurors of SUMTER County present upon their oath:

COUNT ONE
BURGLARY 2ND DEGREE

That in Sumter County, on or about February 4, 2016 the Defendant, Michael Charles Rose, did enter the dwelling of Barbara Evans located at [redacted] South Main Street, Sumter, SC without consent and with the intent to commit a crime therein in violation of Section 16-11-312 of the South Carolina Code of Laws (1976, as amended).

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

Solicitor



WITNESSES

Ricky Morse Sumter Police Department

Tod Sims Sumter Police Department

ARREST WARRANT NUMBER

2016A4320100103

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

Charles D
10-31-19

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

**Amended
DOCKET NO. 2016-GS-43-0619**

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

June TERM 2016

THE STATE

vs.

MICHAEL CHARLES ROSE

Indictment for

Burglary 1st Degree

Ernest A Finney III

ERNEST A. FINNEY, III, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

INDICTMENT FOR

Amended
Burglary 1st Degree

At a Court of General Sessions, convened on June 9, 2016 the Grand Jurors of
SUMTER County present upon their oath:

COUNT ONE
BURGLARY 1ST DEGREE

That in Sumter County, on or about February 4, 2016 the Defendant, **Michael Charles Rose**, did enter the dwelling of **Barbara Evans** located at [REDACTED] Sumter, SC without consent and with the intent to commit a crime therein and that **Michael Charles Rose** does have two (2) or more convictions for burglary in violation of Section 16-11-311 of the South Carolina Code of Laws (1976, as amended).

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

Solicitor



COUNTY OF _____ STATE _____

Michael Charles Rose

AKA: _____ Race: Black Sex: M Age: 43 DOB: _____ SS#: _____ Address: _____ City, State, Zip: Sumter, SC 29150 DL#: _____ SID#: _____

INDICTMENT/Case#: 2016-GS-43-0619 A/W#: 2016A4320100103 Date of Offense: 2/4/2016 S.C. Code §: 16-11-0311 CDR Code #: 0079

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No In disposition of the said indictment comes now the Defendant who was TO: Burglary / Burglary (Violent) (After 06/20/85) - Second degree

CONVICTED OF or PLEADS

in violation of § 16-11-0312(B) of the S.C. Code of Laws, bearing CDR Code # 0086 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. The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Margaret McClurkin Held, Margaret McClurkin SC Bar# 3742 Defendant Michael Rose Attorney for Defendant Deborah Johnson SC Bar# 74029

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 8 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDCC. 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 PTUP

Total: \$ plus 20% fee: \$ 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

Table with 3 columns: Description, Amount, Total. Includes items like §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 (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 \$128.25

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund Other:

Clerk of Court/ Deputy Clerk James G. Campbell Court Reporter: Frances B. Ray

Appointed PD or appointed other counsel. Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees. Presiding Judge Judge Code: 2144 Sentence Date: 12-9-19

ARREST WARRANT

2018A4320100452

STATE OF SOUTH CAROLINA

County/ Municipality of

Sumter Municipal

THE STATE

18087172

against

Michael Charles Rose

Address: [Redacted]
Phone:
Sex: M
DL State: 185
DOB: [Redacted]

Prosecuting Agency: Sumter Police Department
Prosecuting Officer: Ricky L Morse - S00206
Offense: Burglary / Burglary (After June 20, 1985) - First degree
Offense Code: 0079
Code/Ordinance Sec: 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the
County/ Municipality of
The accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Michael Rose
on 06/04/2019

Signature of Constable/Law Enforcement Officer 1852

RETURN WARRANT TO:

General Sessions
215 N. Harvin St.
Sumter, SC 29150

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA
County/ Municipality of
Sumter Municipal

AFFIDAVIT

Personally appeared before me the affiant Ricky L Morse who
being duly sworn deposes and says that defendant Michael Charles Rose
did within this county and state on or about 6/23/2018 violate the criminal laws of the
State of South Carolina (or ordinance of County/ Municipality of Sumter Municipal
in the following particulars:

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

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

On 23 June 2018 the defendant entered the Business of Burgess Do It Center 220 Dingle St. in the City of Sumter, without consent
during the hours of darkness by kicking in the Plexiglas on the rear entry door to the Business. Once inside Michael Rose along with
an unidentified codefendant took/carried away a STIHL String Trimmer, two Makita Hammer Drills, a red self-propelled push
mower, two 14 inch Diamond Saw Blades, several misc. saw blades and drill bits and a Lufkin Tape Measure. Total value \$804.
The defendant and codefendant were seen by a witness lifting items described over the fence of the business around 10:00 pm on the
23 of June 2018. The witness positively identified the defendant using a SLED six person photo line-up. The defendant has two or
more prior convictions for Burglary. Law Enforcement will attest to same.

Signature of Affiant

STATE OF SOUTH CAROLINA
County/ Municipality of
Sumter Municipal

Affiant's Address P.O. Box 1119
Sumter, SC 29151-
Affiant's Telephone (803)436-2790

ARREST WARRANT

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

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

on or about 6/23/2018 defendant Michael Charles Rose
did violate the criminal laws of the State of South Carolina (or ordinance of
County/ Municipality of Sumter Municipal) as set forth below.

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

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

on 6/27/2018
Signature of Issuing Judge (L.S.)
Fred H Gordon (Sumter) Jr.
Judge Code: 8189

Judge's Address 190 East Canal Street
Sumter, SC 29150-
Judge's Telephone (803)436-2280

Issuing Court: Magistrate Municipality Circuit

ORIGINAL

ORIGINAL

ORIGINAL

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

RECORDED
18
2018 JUN 26 PM 1:05

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA
CERTIFIED TRUE COPY
OF ORIGINAL FILE

WITNESSES

Ricky L. Morse Sumter Police Department

119

Tod Sims Sumter Police Department

ARREST WARRANT NUMBER

2018A4320100452

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

Charles A.
10-31-19

VERDICT

TRUE

Foreperson of Petit Jury

Date:

DOCKET NO. 2019-GS-43-1099

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

October

TERM

2019

THE STATE

vs.

MICHAEL CHARLES ROSE

Indictment for

Burglary (After June 20, 1985) – 2nd Degree

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

INDICTMENT FOR

Burglary (After June 20, 1985) – 2nd Degree

At a Court of General Sessions, convened on October 31, 2019 the Grand Jurors of SUMTER County present upon their oath:

CERTIFIED TRUE COPY
OF ORIGINAL FILE
Barbara Hager
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

COUNT ONE
BURGLARY, SECOND DEGREE
(VIOLENT)

That **Michael Charles Rose** did in Sumter County on or about June 23, 2018, enter without consent and with the intent to commit a crime therein, a building of Burgess-Brogdon Building Supply located at 220 Dingle Street, and the defendant, **Michael Charles Rose**, did enter the building in the nighttime and/or that **Michael Charles Rose** did have two (2) prior conviction for burglary, in violation of Section 16-11-0312(B), 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.

Solicitor

Ernest A. Fin III

COUNTY OF _____ STATE _____

Michael Charles Rose

AKA: _____ Race: Black Sex: M Age: 43 DOB: _____ Address: _____ City, Stat _____ DL#: _____

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Burglary / Burglary (Violent) (After 06/20/85) - Second degree

INDICTMENT/CASE# 2019-GS-43-1 099 A/W#: 2018A4320100452 Date of Offense: 6/23/2018 S.C. Code § : 16-11-0311 CDR Code #: 0079

121

CERTIFIED TRUE COPY ORIGINAL FILE SENTENCE SHEET SUMNER COUNTY SOUTH CAROLINA

Rec 8 years

CONVICTED OF PLEADS

in violation of § 16-11-0312(B) of the S.C. Code of Laws, bearing CDR Code # 0086 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: Margaret M. Held 3742 x Michael Rose Barnes, Allen Jackson Held, Margaret McClurkin SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 8 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc.

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 PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED Attend Voc. Rehab. or Job Corp. _____

Set by SCDPPPS _____ May serve W/E beginning _____

Recipient: _____ Substance Abuse Counseling Random Drug/Alcohol testing

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

§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 (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

\$ _____ paid to Public Defender Fund Other: _____

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk: James C. Campbell

Court Reporter: Francis B. Ray

Presiding Judge: _____ Judge Code: 2143 Sentence Date: 12-9-19

SCCA/217 (04/2018)