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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County

Honorable William H. Seals, Circuit Court Judge

BRUCE M. RICHARDSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000922

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry) 2018-GS-26-06630

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

(Plea Hearing)

vs.)

May 6, 2019

BRUCE M. RICHARDSON,)

Defendant.)

B E F O R E:

Honorable William A. McKinnon
Horry County Courthouse
Conway, South Carolina

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

Scott A. Graustein, Esquire
Attorney for State of South Carolina

Clay W. Pinkerton, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

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MAY 6, 2019

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E X H I B I T S

No.

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(There were no exhibits marked or admitted.)

State v. Richardson - 2018-GS-26-06630
PLEA HEARING

3

1 MAY 6, 2019 - 10:46 A.M.

2 BRUCE M. RICHARDSON, HAVING BEEN DULY
3 SWORN, TESTIFIED AS FOLLOWS:

4 THE COURT: Yes, sir?

5 MR. GRAUSTEIN: Yes, Your Honor. Before you is the
6 matter of the State v. Bruce M. Richardson on indictment 2018-
7 GS-26-6630. That is a true-billed indictment for burglary the
8 first degree, and the defendant is here with his attorney to
9 plead guilty to the lesser offense, burglary second degree
10 violent. The state is recommending a sentence of 15 years.

11 THE COURT: Thank you, sir.

12 Mr. Richardson, what's your full legal name, sir?

13 MR. RICHARDSON: Bruce McNeil Richardson.

14 THE COURT: And how old are you, sir?

15 MR. RICHARDSON: Forty-eight.

16 THE COURT: How far did you go in school?

17 MR. RICHARDSON: Tenth grade.

18 THE COURT: Have you ever been treated for drug abuse,
19 alcohol abuse or had any mental health treatment?

20 MR. RICHARDSON: I've been -- I'm taking mental health
21 meds now, sir.

22 THE COURT: Okay. What are you taking now?

23 MR. RICHARDSON: I'm taking Seroquel for bipolar and
24 Prazosin for PTSD.

25 THE COURT: Okay. Are those drugs gonna affect your

1 ability to understand what's happening in court today?

2 MR. RICHARDSON: No, sir.

3 THE COURT: Are you taking any other doctor prescribed
4 medication or any illegal drugs or alcohol?

5 MR. RICHARDSON: No, sir.

6 THE COURT: And do you have any other mental or physical
7 or emotional condition that would prevent you from
8 understanding what's happening in court today?

9 MR. RICHARDSON: No, sir.

10 THE COURT: Okay. Mr. Richardson, I understand you're
11 here to plead guilty to one count of burglary second degree
12 violent; is that correct?

13 MR. RICHARDSON: Yes, sir.

14 THE COURT: All right. Do you understand under South
15 Carolina law, this is a both a violent and a serious offense?

16 MR. RICHARDSON: Yes, sir.

17 THE COURT: Do you understand that the violent part of it
18 means that will affect the amount of time you will likely have
19 to serve on the sentence I give you today; do you understand
20 that?

21 MR. RICHARDSON: Yes, sir.

22 THE COURT: Have you discussed that with your lawyer?

23 MR. RICHARDSON: Yes, sir.

24 THE COURT: Okay. And the second part is this is a
25 serious offense. Under South Carolina law, we have a system

State v. Richardson - 2018-GS-26-06630
PLEA HEARING

5

1 of strikes. If you get three, a combination of serious or
2 most serious offenses, you're eligible for life without parole
3 sentence; do you understand that?

4 MR. RICHARDSON: Yes, sir.

5 THE COURT: Have you discussed that with your lawyer?

6 MR. RICHARDSON: Yes, sir.

7 THE COURT: And you understand that this charge is a
8 serious offense, it's a strike under this system South
9 Carolina?

10 MR. RICHARDSON: Yes, sir.

11 THE COURT: Okay. You understand that burglary second
12 degree violent carries up to 15 years in prison?

13 MR. RICHARDSON: Yes, sir.

14 THE COURT: And you understand in this case, the state is
15 recommending the maximum under that range, 15 years?

16 MR. RICHARDSON: Yes, sir.

17 THE COURT: Okay. Knowing all this, do you still want to
18 go ahead and plead guilty?

19 MR. RICHARDSON: Yes, sir.

20 THE COURT: Okay. Mr. Richardson, the biggest right
21 you're giving up is -- now he's initialed here under the Grand
22 Jury waiver, but it looks like it's true-billed.

23 MR. GRAUSTEIN: It is true-billed, Your Honor.

24 MR. PINKERTON: Yes, Your Honor. I had him initial it.
25 I couldn't remember if it had been true-billed or not. There

1 were issues with the indictments but it is correct; yes, sir.

2 THE COURT: Okay.

3 Now, Mr. Richardson, the biggest right you're giving up
4 is the right to a jury trial. You are presumed innocent of
5 this charge and you can't be convicted unless a jury of 12
6 Horry County citizens hears all the evidence at a trial and
7 then votes to find you guilty, and their vote has to be
8 unanimous and beyond a reasonable doubt. Do you understand
9 that?

10 MR. RICHARDSON: Yes, sir.

11 THE COURT: Do you understand you have the right to have
12 an attorney represent you at trial and that lawyer could speak
13 for you, give you legal advice, and possibly get evidence
14 suppressed?

15 MR. RICHARDSON: Yes, sir.

16 THE COURT: Do you understand that you have the right to
17 participate in your own trial and you can speak if you chose
18 to speak?

19 MR. RICHARDSON: Yes, sir.

20 THE COURT: Do you understand you have the right to
21 remain silent and if you chose to exercise that right, it
22 cannot be used against you in any way?

23 MR. RICHARDSON: Yes, sir.

24 THE COURT: Do you understand you have the right to call
25 witnesses into court in your defense and you can subpoena them

State v. Richardson - 2018-GS-26-06630
PLEA HEARING

7

1 if you need to?

2 MR. RICHARDSON: Yes, sir.

3 THE COURT: And finally, do you understand you have the
4 right to cross examine or confront all the government's
5 witnesses?

6 MR. RICHARDSON: Yes, sir.

7 THE COURT: Do you understand all the rights we just
8 talked about?

9 MR. RICHARDSON: Yes, sir.

10 THE COURT: And do you want to give them all up and plead
11 guilty today?

12 MR. RICHARDSON: Yes, sir.

13 THE COURT: Mr. Pinkerton?

14 MR. PINKERTON: Yes, Your Honor.

15 THE COURT: Okay. Thank you. Just making sure.

16 Okay. Is that your attorney, Mr. Pinkerton there with
17 you?

18 MR. RICHARDSON: Yes, sir.

19 THE COURT: Have you had enough time to discuss your case
20 with him?

21 MR. RICHARDSON: Yes, sir.

22 THE COURT: Has he done everything you've asked him to
23 do?

24 MR. RICHARDSON: Yes, sir.

25 THE COURT: Are you completely satisfied with his

1 services?

2 MR. RICHARDSON: Yes, sir.

3 THE COURT: Do you have any complaints about Mr.
4 Pinkerton or anyone else in the legal system?

5 MR. RICHARDSON: No, sir.

6 THE COURT: Is your choice to plead guilty today your own
7 decision made freely and voluntarily?

8 MR. RICHARDSON: Yes, sir.

9 THE COURT: Other than recommendation of the maximum 15
10 years, has anyone promised you anything or threatened you in
11 any way to get you plead guilty?

12 MR. RICHARDSON: No, sir.

13 THE COURT: Mr. Pinkerton, do you concur with your
14 client's decision to plead?

15 MR. PINKERTON: I do, Your Honor.

16 THE COURT: Have you discussed his constitutional rights
17 with him, the evidence against him and any possible defenses?

18 MR. PINKERTON: I have, Your Honor.

19 THE COURT: Okay. Yes, sir?

20 MR. GRAUSTEIN: Yes, Your Honor. This occurred on August
21 20th, 2018 in the Conway section of Horry County. About 5:30
22 in the morning, a business -- a car dealership business was
23 broken into. The incident was captured on video, and from the
24 video, police obtained some snapshots of the perpetrators.
25 From those snapshots, they were able to identify the defendant

State v. Richardson - 2018-GS-26-06630
PLEA HEARING

9

1 as being one of the individuals involved in the burglary.
2 Later that same day, the defendant was apprehended along with
3 the codefendant, taken into custody. In a post-Miranda
4 statement, he admitted his involvement in this burglary, as
5 well as disposing of the property in exchange for drugs
6 earlier in the day.

7 Your Honor, this was on the trial roster. It was
8 indicted for a burg first but, upon looking at the case, the
9 appropriate charge is the burg second violent and that is
10 appropriate for these circumstances. The state is
11 recommending the maximum sentence. The defendant has -- the
12 state in conjunction with this plea will be dismissing a burg
13 first and ---

14 THE COURT: Is that a separate incident?

15 MR. GRAUSTEIN: That is a separate incident. And we're
16 also dismissing another burg second in conjunction with this
17 plea. So, he had three outstanding burglaries right now. And
18 given his, his record, he's got a burglary from 1988, a
19 burglary from 1993, he had three burglary firsts in 2002, and
20 he pled to three burglary seconds in 2015.

21 THE COURT: Three burglary seconds in 2015?

22 MR. GRAUSTEIN: Yes, Your Honor.

23 THE COURT: Okay. Mr. Richardson, did you hear what the
24 prosecutor said happened in your case?

25 MR. RICHARDSON: Yes, sir.

State v. Richardson - 2018-GS-26-06630
PLEA HEARING

10

1 THE COURT: Is that in fact what happened?

2 MR. RICHARDSON: Yes, sir.

3 THE COURT: Do you still want to plead guilty to one
4 count of burglary in the second degree, violent?

5 MR. RICHARDSON: Yes, sir.

6 THE COURT: Are you guilty of that charge?

7 MR. RICHARDSON: Yes, sir.

8 THE COURT: Do you understand if you don't like my
9 sentence, you have 10 days to appeal it?

10 MR. RICHARDSON: Yes, sir.

11 THE COURT: Is everything you've told me in court today
12 the truth?

13 MR. RICHARDSON: Yes, sir.

14 THE COURT: All right. I find there is a substantial
15 factual basis for the plea. It's been made freely,
16 voluntarily, knowingly, and intelligently. I find Mr.
17 Richardson has had the advice and counsel of a very competent
18 lawyer with whom he says he's totally satisfied, so I'm gonna
19 accept the plea.

20 Mr. Pinkerton?

21 MR. PINKERTON: Yes, Your Honor. Thank you.

22 Mr. Richardson is 48 years old. He did go to 10th grade
23 in high school, but he has obtained his GED since then. He's
24 also certified to work air conditioning units. As you've
25 heard from Mr. Graustein, Mr. Richardson does have a pretty

State v. Richardson - 2018-GS-26-06630
PLEA HEARING

11

1 substantial record, Your Honor. He has been in and out of the
2 legal system most of his adult life, Your Honor. This -- most
3 of this has stemmed from a drug problem. He got hooked on
4 drugs at a very young age, started racking up charges, and has
5 just spiraled since then, Your Honor.

6 As for the charges that I believe was 2015 where he pled,
7 he had only been out of jail two or three months before this
8 incident occurred. He had been out of jail for about two
9 months, had been doing fine, but then his mother passed away
10 unexpectedly, which unfortunately he didn't have a strong
11 family system which sent him down spiraling in drugs again,
12 which brings us before Your Honor. Mr. Richardson fully
13 admits that he's the one that committed this crime. He's
14 cooperated with police from the beginning, Your Honor. And we
15 would respectfully ask for a range of 10 to 12 years, Your
16 Honor, and ask mercy of the Court. And Mr. Richardson would
17 like to address the Court at the appropriate time.

18 THE COURT: All right.

19 Mr. Richardson?

20 MR. RICHARDSON: I just want to say, Your Honor, that I
21 accept my responsibilities for my actions. I accept whatever
22 sentence you hand down today. I have been -- had a drug
23 problem for a lot a years and I asked that you consider a
24 sentence a little bit less than the max, maybe. And I ask for
25 mercy of the Court, Your Honor.

State v. Richardson - 2018-GS-26-06630
RULING OF THE COURT

12

1 THE COURT: Thank you, Mr. Richardson.

2 MR. PINKERTON: Your Honor, we would also ask for a
3 recommendation for the ATU program.

4 THE COURT: Okay. I definitely can do that.

5 I mean, I commend you for your cooperation, but I think
6 from what the state is telling me that's been taken into
7 account because you also were facing a separate burglary first
8 that the state has dropped; is that correct?

9 MR. GRAUSTEIN: That's correct, Your Honor.

10 THE COURT: Mr. Richardson, given your record, I --
11 again, I commend you for your cooperation but it sounds like
12 the state's taken that into account. And, given your
13 extensive history of burglaries, I'm not inclined to depart
14 from the recommendation in this case.

15 MR. PINKERTON: Yes, Your Honor.

16 RULING OF THE COURT:

17 THE COURT: The State of South Carolina versus Bruce M.
18 Richardson, indictment 2018-GS-26-06630, charges of burglary
19 in the second degree violent. The sentence of the Court is
20 Mr. Richardson is committed to the custody of the South
21 Carolina Department of Corrections for a period of 15 years,
22 and recommending the ATU while he's in SCDC.

23 MR. GRAUSTEIN: Thank you, Your Honor.

24 MR. PINKERTON: Thank you, Your Honor.

25 ADJOURNED - 10:55 A.M.

State v. Richardson - 2018-GS-26-06630
CERTIFICATE OF COURT REPORTER

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus Bruce M. Richardson, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on May 6, 2019.

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

Kay H. Richardson
Official Court Reporter

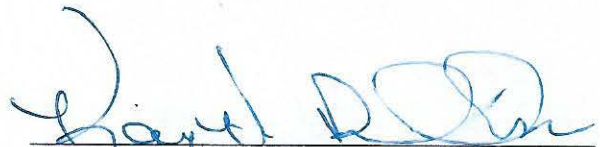
January 18, 2020.

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus Bruce M. Richardson, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on May 6, 2019.

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



Kay H. Richardson
Official Court Reporter

January 18, 2020.

STATE OF SOUTH CAROLINA)

County of Horry)

Bruce M. Richardson)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2019 CP26 7234

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LEE Correctional Institution
2. Name and location of Court which imposed sentence Horry County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2018-GS-26-04630 - First Degree Burglary
 - (b) _____

FILED
HORRY COUNTY
2019 NOV - 7
RECEIVED
CLERK OF COURT
HORRY COUNTY

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

(a) Nov 6, 2019 - 15 yrs

(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. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

(c) the date of each such result:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

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

(a) Was advised by Counsel not to Appeal

(b) _____

(c) _____

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

- (a) Ineffective Assistance of Counsel.
- (b) Violation of Due Process under the Sixth and Fourteenth Amendments.
- (c) Court acted without Subject Matter Jurisdiction over offense.

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

- (a) SEE ATTACHED MEMORANDUM OF LAW
- (b) _____
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

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

- (a) the specific nature thereof:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

NO

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

(a) which grounds have been presented:

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

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

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

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

- (a) Was Advised by Counsel not to appeal
- (b) _____
- (c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. Clay Pinkerton, Horry County Public Defender
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. At Plea and Sentencing
 - ii. _____
 - iii. _____

State clearly the relief you seek in filing this application:

Petitioner respectfully asks the Honorable Court
to vacate the conviction.

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

NO

STATE OF SOUTH CAROLINA)

County of LEE)

VERIFICATION

2019 CP26 7234

I, Bruce Richardson, 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.

Bruce Richardson

SWORN to and subscribed before me this 14th
day of NOV, 2019.

Jenna M'Zelle (L.S.)
Notary Public

My Commission Expires: 09/04/2029

FILED
Horry County
2019 NOV -7 P. 2: 17
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

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

20 19 GP26 7234

I, Bruce Richardson, 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.

Bruce Richardson
Applicant

SWORN or affirmed to and subscribed before me this

14th day of NOV, 2019.

Terma McTeke
Notary Public

My Commission Expires: 09/04/2029

FILED
Horry County
2019 NOV -7 P 2:17
RENEE N. ELVIS
CLERK OF COURT
Horry County, SC

STATE of South Carolina,
County of Horry.

Bruce Richardson,

Petitioner,

v.

State of South Carolina,
Respondent.

In The Court of Common Pleas

20 19 CP26 7234

Memorandum of Law in Support
of Post Conviction Relief

FILED
HORRY COUNTY
2019 NOV -7 P 3:17
RENEE NIELSEN
CLERK OF COURT
HORRY COUNTY, SC

Now come Petitioner on Post Conviction Application. In support of Petitioner's allegations will respectfully show the Court the following:

Defense Counsel's failure to challenge First Degree Burglary indictment for Burglary of "Haynes Auto Sales" in which no one lived violated the Sixth and Fourteenth Amendment right to Due Process and was wholly ineffective.

Petitioner was indicted by the Grand Jurors of Horry County at a Court of General Sessions and present upon their oath:

Burglary First Degree
CDR: 0079 16-11-311

That Bruce M. Richardson did in Horry County, ON OR ABOUT August 20, 2018 enter the dwelling of Hayner Auto Sales without consent and with the intent to commit a crime therein and when effecting entry or while in the dwelling or in the immediate flight, has a prior record of two or more convictions for burglary, in violation of section 16-11-311(A), S.C. Code of Laws, 1976, as Amended.

First Degree Burglary requires the entering of a dwelling without consent. S.C. Code Ann. § 16-11-311 (Supp. 1996). "Dwelling" is defined as any building in which a person sleeps or lodges and all other buildings within two hundred yards of it. S.C. Code Ann. § 16-11-10 (1985). Additionally, "Dwelling" is defined as a living quarters of a building which are normally used for sleeping, living, or lodging by a person. S.C. Code Ann. § 16-11-310 (2). Due legislature, in all its wisdom, did not intend that a person could be indicted for First Degree Burglary of any building other than a "Dwelling." Padgett v. State, 484 S.E.2d 101 (S.C. 1997).

Counsel was ineffective in not challenging the insufficient indictment. Petitioner could not have been indicted for First Degree Burglary involving the burglary of Hayner Auto Sales as it is a place of business and not a dwelling. For purposes of first degree burglary the evidence is insufficient to meet the essential element of "enters a dwelling." Further, as indicated on the sentencing sheet, Petitioner was pleading to Burglary second degree as a lesser included offense and did not waive presentment to the Grand Jury.

The indictment was defective and Petitioner was denied due Process of Law under the Sixth and Fourteenth Amendments to the United States Constitution. Counsel was ineffective in advising Petitioner to plead guilty and not challenging the sufficiency of the indictment before the plea was accepted.

Furthermore, the circuit court for Horry County acted without subject matter jurisdiction to accept the plea and to sentence Petitioner as indicted.

For the foregoing reasons, Petitioner is entitled to have the conviction vacated as a matter of law.



ALAN WILSON
ATTORNEY GENERAL

September 10, 2020

The Honorable Renee Elvis
Horry County Clerk of Court
Post Office Box 677
Conway, South Carolina 29528

FILED
HORRY COUNTY
2020 SEP 14 P 1:11
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

Re: Bruce M. Richardson, #291292 v. State of South Carolina
2019-CP-26-7234

Dear Ms. Elvis:

Enclosed please find the original **Return and Partial Motion to Dismiss** of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,

/s/ William H. Ray
William H. Ray
Assistant Attorney General

WHR/ec

Enclosures

cc: Carla F. Grabert-Lowenstein, Esquire

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
)
 BRUCE M. RICHARDSON, #291292)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2019-CP-26-7234

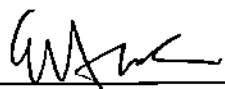
AFFIDAVIT OF SERVICE BY MAIL

FILED
 HORRY COUNTY
 2020 SEP 14 P 1:12
 RENE E. N. ELVIS
 CLERK OF COURT
 HORRY COUNTY, SC

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 and Partial Motion to Dismiss** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Carla F. Grabert-Lowenstein, Esquire
Law Offices of Carla Grabert-Lowenstein LLC
 211 Laurel Street
 Conway, South Carolina 29526

DATED this 10th Day of September, 2020.



 Eva D. Cook, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
 COUNTY OF HORRY)
 Bruce M. Richardson, SCDC No. 291292)
 Applicant,)
 v.)
 State of South Carolina)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTEENTH JUDICIAL
 CIRCUIT

Case No. 2019-CP-26-7234

**RETURN AND PARTIAL
 MOTION TO DISMISS**

FILED
 HORRY COUNTY
 2020 SEP 14 P 1:12
 JENNIE N. ELVIS
 CLERK OF COURT
 HORRY COUNTY, SC

NOW COMES Respondent, the State of South Carolina, in response to Applicant Bruce M. Richardson’s November 17, 2019 application for post-conviction relief. Respondent would respectfully show this Court:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted for Burglary, First Degree by the Horry County Grand Jury during its December, 2018 term. (2018-GS-26-06630). Applicant was represented by Clay W. Pinkerton, Esquire. Assistant Solicitor Scott Graustein, Esquire, of the Fifteenth Circuit Solicitor’s Office prosecuted the case. On May 6, 2019, Applicant entered a guilty plea to the lesser included offense of Burglary, Second Degree before the Honorable William A. McKinnon. Applicant was then sentenced to Fifteen years imprisonment upon the recommendation of the State. Applicant did not appeal the judgment of conviction or the imposition of the sentence.

II. FACTUAL HISTORY

Early in the morning of August 20, 2018, video cameras captured Applicant and another individual breaking into a car dealership in Conway, South Carolina. (Tr. 8, 20 – Tr. 9, 1). Later

that same day Applicant was arrested and confessed to the burglary, claiming that he stole and disposed of property in exchange for drugs. (Tr. 9, 1-6).

III. PRESENT APPLICATION

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

1. Ineffective Assistance of Counsel
2. Violation of Due Process under the Sixth and Fourteenth Amendment
3. Court acted without subject matter jurisdiction over offense

In a memorandum attached to his application supporting the above allegations, Applicant asserts the following (verbatim):

Defense counsel's failure to challenge First Degree Burglary indictment for burglary of "Hayner Auto Sales" in which no one lived violated the Sixth and Fourteenth Amendment right to Due Process and was wholly ineffective.

Applicant argues that the crime of First Degree Burglary requires the entering of a dwelling without consent, and as such, his burglary of a car dealership did not meet the elements of the offense. Therefore, according to Applicant, "counsel was ineffective in not challenging the insufficient indictment." Applicant further claims that counsel was ineffective in advising him to plead guilty and the Horry County Circuit Court lacked subject matter jurisdiction to accept the plea and sentence him to incarceration for fifteen years.

In his prayer for relief Applicant requests the following (verbatim):

- Petitioner respectfully asks the Honorable Court to vacate the conviction.

Attached and incorporated herein are the Horry County Clerk of Court's records regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the plea transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

IV. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant's allegations of ineffective assistance of plea counsel are without merit. 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 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance of counsel is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. *Id.* at 668; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." *Cherry v. State*, 300

S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). 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.

Strickland, however, “does not guarantee perfect representation [–] only a ‘reasonably competent attorney.’” *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (quoting *Strickland*, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” *Harrington*, 562 U.S. at 110.

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-90; see also *Harrington*, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial.) Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” *Strickland*, 466 U.S. at 689; see also *Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel,

and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. *Harrington*, 562 U.S. at 105.

A fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. *Id.* Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts "must judge the reasonableness of counsel's challenged conduct on the facts of a particular case, viewed at the time of counsel's conduct." *Strickland*, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." *Id.* The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." *Id.*

The second, or "prejudice" prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691-92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding

would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. Thus, it is not enough “to show the errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to deprive the defendant of a fair trial.” *Id.* at 687.

With respect to guilty plea counsel, an applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52 (1985). The “prejudice prong ordinarily requires more than simply a defendant’s assertion that but for counsel’s deficient performance he would not have pled but would have gone to trial.” *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009). “A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977)). “Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea.” *Garren v. State*, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); See *Jamison v. State*, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that “guilty plea[s] must be treated as final in the vast majority of cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”).

These standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Strickland*, at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry

if the defendant makes an insufficient showing on one.” *Id.* at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

Applicant alleges that his plea counsel was ineffective for failing to challenge the indictment for Burglary, First Degree, because the building in question was not a “dwelling.” South Carolina law defines a “dwelling” as follows:

With respect to the crimes of burglary and arson and to all criminal offenses which are constituted or aggravated by being committed in a dwelling house, any house, outhouse, apartment, building, erection, shed or box in which there sleeps a proprietor, tenant, watchman, clerk, laborer or person who lodges there with a view to the protection of property shall be deemed a dwelling house, and of such a dwelling house or of any other dwelling house all houses, outhouses, buildings, sheds and erections which are within two hundred yards of it and are appurtenant to it or to the same establishment of which it is an appurtenance shall be deemed parcels.

S.C. Code Ann. §16-11-10. Whether a structure is itself a dwelling, or is appurtenant to a dwelling, is a question of fact. *State v. Massey*, 430 S.C. 349, 362, 844 S.E.2d 667, 674 (2020). A trial court may not quash a facially valid indictment for first-degree burglary on the basis that the premises entered did not qualify as a dwelling. See *Id.* See also § S.C. Code Ann. 17-19-20 (stating that sufficient indictments shall include allegations as to time, place, charges of the crime substantially in the language of the statute, and that the offense be alleged to be contrary to the statute). It is not necessary that the entire building be devoted to dwelling purposes. *State v. Steadman*, 257 S.C. 528, 186 S.E.2d 712 (1972). Furthermore, the dwelling area may be in a building, a portion of which is devoted to business purposes. *Id.* Finally, the building invaded need not be physically

attached to the dwelling or even be on the same parcel of land to fall within the language of the statute. *Massey*, 430 S.C. at 362-64, 844 S.E.2d at 674.

Respondent submits that Applicant cannot satisfy either requirement of the *Strickland* test for his claim of ineffective assistance of counsel based upon his plea counsel's failure to challenge the indictment. However, the allegation of ineffective assistance of counsel based upon plea counsel's alleged advice that he should accept the plea offer probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve these allegations of ineffective assistance of counsel. *Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. RESPONSE TO ALLEGATION OF LACK OF SUBJECT MATTER JURISDICTION

Applicant alleges that the court lacked subject matter jurisdiction because the indictment was defective. However, defects in the indictment do not affect subject matter jurisdiction. See *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); See also *U.S. v. Cotton*, 535 U.S. 625 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). See also S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. See *Gentry*, 363 S.C. 93, 610 S.E.2d 494; *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 442 S.E.2d 598 (1994).

In post-conviction relief, an applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). A claim of this nature is subject to the procedural bars in the Uniform-Post

Conviction Procedure Act – notably the statute of limitations and successiveness. See S.C. Code §§ 17-27-45, -90 (2003).

An applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See *Brown v. State*, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by *Gentry*, 363 S.C. 93, 640 S.E.2d 494. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” *Gentry*, 363 S.C. at 101, 610 S.E.2d at 499; See also S.C. Const. Art. V., § 7. More specifically, an indictment for first-degree burglary is sufficient to confer subject matter jurisdiction upon the circuit court. *State v. Smalls*, 336 S.C. 301, 519 S.E.2d 793 (1999).

Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant entered a guilty plea to the criminal charge of Burglary, Second Degree in the Horry County Court of General Sessions. Thus, the circuit court had subject matter jurisdiction. Therefore, Respondent respectfully requests that the Court dismiss Applicant’s claim that the circuit court lacked subject matter jurisdiction.

VI. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

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 an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCPP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. See *Id.* at 245, 834

S.E.2d at 203. (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

Pursuant to § 17-27-150 of the South Carolina Code, 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. Further, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State 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 the State. See *Love*, 428 S.C. 231, 834 S.E.2d 196.

VII. RESPONSE TO ANY AND ALL OTHER ALLEGATIONS

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

VIII. CONCLUSION

WHEREFORE, having made its Return, Respondent respectfully requests that this Court dismiss Applicant’s claims of lack of subject matter jurisdiction and an evidentiary hearing be held on the allegations of ineffective assistance of counsel as set forth in the application.

[Signature Page Follows]

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

WILLIAM H. RAY
Assistant Attorney General

By: /s/ William H. Ray
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

September _____, 2020

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF Horry)	FIFTEENTH JUDICIAL CIRCUIT
)	
)	CASE NO.: 2019-CP-26-7234
Bruce Richardson,)	
S.C.D.C. No. 291292,)	
Applicant,)	MORE DEFINITIVE STATEMENT:
)	POST-CONVICTION RELEASE
vs.)	
)	
State of South Carolina,)	
Respondent.)	
_____)	

The following is the *More Definitive Statement* on Applicant's Petition for Post-Conviction Relief filed on behalf of the Applicant, Bruce Richardson #291292 by his attorney, Carla Grabert-Lowenstein.

FACTS OF CASE

The Applicant was arrested on or about August 20, 2018, for burglary and indicted for burglary the first degree on or about December 12, 2018. He entered a plea on May 6, 2019.

INEFFECITE ASSISTANCE OF COUNSEL

Mr. Richardson was prejudiced by counsel's actions and inactions in the following ways.

1. Mr. Richardson was prejudiced because his counsel, Mr. Clay Pinkerton, did not sufficiently discuss with him the difference between first degree burglary and the lessor second degree burglary with violence. It is clear from the plea transcript that Mr. Pinkerton did not have a grasp of the facts of the case and admitted he did not remember whether the case had been true-billed. (Plea Transcript, p.5 at 1-25, and, p.6 at 1)

2. The Applicant did not enter a residence and thus should not have been indicted on first degree burglary. Mr. Pinkerton did not discuss whether or not the court had jurisdiction over Mr. Pinkerton nor did Mr. Pinkerton challenge the jurisdiction. If the court found it did not have jurisdiction there would have been no indictment for which to enter a plea.

The situation in the instant case represents the same situation as in Padgett v. State (19770 324 SC.22), where trial counsel was found ineffective for not challenging the indictment. The indictment was for first degree burglary but the building was a barn not a home. [*Id* at 29]

3. Mr. Pinkerton also did not discuss if there was another manner for the state to show Mr. Richardson was guilty of first-degree burglary. Thus Mr. Richardson was prejudiced in making a decision to enter a guilty plea upon incomplete and inaccurate information.

4. Further, Mr. Pinkerton did not discuss the possible evidence available for the State to show first degree or second degree burglary.

5. Mr. Pinkerton not having full and sufficient knowledge of the existing evidence could not fully advise Mr. Richardson concerning the plea and options. Thus, Mr. Richardson could not receive a fully advised and voluntary plea to the lesser and included charge, especially in light of the fact Mr. Richardson had a history of taking mental health medications; Seroquel for bi-polar condition, and, Prazosin for Post-Traumatic Stress Disorder (PTSD). (Plea Transcript p.3 at 20-24)

CONCLUSION

Mr. Richardson was denied adequate assistance of counsel. Mr. Pinkerton did not examine the consequences of the offense if convicted in order to adequately advise Mr. Richardson. Mr. Richardson was prejudiced by Mr. Pinkerton's inability and failure to fully advise Mr. Richardson as to his plea.

With such an egregious error Counsel is asking this Honorable Court to grant the Applicant's Post Conviction Relief to overturn his conviction.

Respectfully Submitted,

June 10, 2021
Conway, South Carolina

s/ Carla F. Grabert-Lowenstein

Carla F. Grabert-Lowenstein
Attorney for Plaintiff
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Myrtle Beach, SC 29579
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1 State of South Carolina) **TRANSCRIPT OF RECORD**
 2 COUNTY OF HORRY) CASE NO. : 2019-CP-26-7234

3 -----

4 June 24, 2021

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

6 -----

7 State of South Carolina,))
 8)
 9 Plaintiff,)
 vs.)
 10 Bruce M. Richardson,)
 11 Defendant.)

12 -----

13 APPEARANCES:

14 William H. Ray, Esquire
 15 Attorney for the State of South Carolina

16 Carla F. Grabert-Lowenstein, Esquire
 17 Attorney for the Defendant.

18

19

20

21 Julie A. Kevish
 22 Official Court Reporter

23

24

25

1 June 24, 2021

2 **P-R-O-C-E-E-D-I-N-G-S**

3 MR. RAY: This next one we have is the matter of
4 Bruce M. Richardson versus the State of South Carolina. The
5 Case Number is 2019-CP-26-7234. Mr. Richardson is presently
6 incarcerated within the Department of Corrections. He was
7 indicted for burglary first degree by the Horry County Grand
8 Jury in December of 2018. He was represented by Mr. Clay
9 Pinkerton who is here today and on May 6, 2019 he entered a
10 guilty plea to the lesser included offense of burglary second
11 degree before Judge McKinnon. He was sentenced to 15 years
12 imprisonment upon the recommendation of the State and he did
13 not appeal the judgment of conviction or imposition of the
14 sentence. He filed his current application for post-conviction
15 relief on November 17, 2019. The State made its return on
16 September 14, 2020 is when our return was filed and we have
17 received some amended allegations from Mr. Richardson's
18 counsel, I believe a couple weeks ago. I do have copies of the
19 materials today, if the Court wishes I'll pass those up.

20 THE COURT: Thank you.

21 MR. RAY: Your Honor, with that, the State is ready
22 to proceed. I'll hand it over to Ms. Lowenstein.

23 THE COURT: Yes, ma'am?

24 MS. LOWENSTEIN: Your Honor, we call Clay Pinkerton.
25 Clay Watson Pinkerton, P-i-n-k-e-r-t-o-n.

1

2 THE CLERK: Please take a seat and spell your last
3 name for the court reporter.

4 THE WITNESS: Clay Watson Pinkerton,
5 P-i-n-k-e-r-t-o-n.

6 **CLAY WATSON PINKERTON WAS DULY SWORN AT THIS TIME AND**
7 **TESTIFIED AS FOLLOWS:**

8 **DIRECT EXAMINATION**

9 BY MS. LOWENSTEIN:

10 Q. Sir, did you represent Mr. Richardson in his plea in
11 this case?

12 A. I did.

13 Q. When was that?

14 A. That was May of 2019, I believe.

15 Q. And how long had you been assigned to the case?

16 A. Probably about a year, maybe a little less.

17 Q. How many times did you visit with him?

18 A. I'd say, I know we had at least weekly phone calls but I
19 saw him out at the jail probably at least 25 times, maybe.

20 Q. I'm sorry, how many?

21 A. At least 20, 25 times, probably, throughout my whole
22 representation.

23 Q. Now, during that time did you have a discussion with him
24 about: I've been indicted for first degree burglary but it
25 wasn't a residence?

1 A. Yes, I did.

2 Q. And did you investigate that?

3 A. I did. I actually went out there myself. It was a car
4 auto lot, it was not an actual dwelling that he had been
5 indicted for.

6 Q. And did you also discuss with him that he may have been
7 on some mental health medications?

8 A. Yes, ma'am, I did. I believe he said he was on several
9 medications at the time.

10 Q. And did you investigate at all how that could have
11 affected his guilt or innocence in the case?

12 A. No, ma'am, I did not. However, when I was speaking with
13 Mr. Richardson throughout my representation he never gave me
14 any doubt that he knew what his charges were, he understood the
15 gravity and he understood what he was being charged with and
16 what evidence the State would have presented was.

17 Q. Now, the day of the plea you had him sign a waiver of
18 indictment?

19 A. Yes, ma'am.

20 Q. And the case had already been indicted?

21 A. Yes, ma'am, it had been wrongly indicted first a
22 burglary first degree.

23 Q. And there was never a first degree burglary here?

24 A. Not that he plead to, he did have a pending first degree
25 burglary charge that was dismissed.

1 Q. And I'm sorry, I should have been a little bit clearer,
2 that's what I was asking. So are you familiar with a case
3 Pageant versus State 324-SC-22?

4 A. I am, that's for challenging indictments, I believe.

5 Q. And in that case, because counsel didn't challenge the
6 indictment he was found to be ineffective, correct?

7 A. Yes, however, they did plea the day of trial. My next
8 step if he wasn't pleaing was to challenge the indictment, we
9 just never got to that point.

10 Q. But did you have a discussion with Mr. Richardson about
11 challenging the indictment at all?

12 A. I did.

13 Q. And yet, were you the one who counseled him to go ahead
14 and plea guilty to the lesser included?

15 A. I did, I counseled him to plead guilty but there was a
16 lot of evidence against him. He confessed post Miranda. There
17 were, I believe, pictures in the case taken from the people
18 breaking into the auto sales lot. I did counsel him to plead
19 guilty because I do believe he would have been found guilty.

20 Q. But was he pretty adamant that he hadn't been properly
21 indicted?

22 A. He was, but I had had that conversation with him that I
23 was going to challenge the indictment if they did call it to
24 trial.

25 Q. Did you think with all the mental health medications he

1 was on that he truly understood the choice he was making?

2 A. I absolutely do. He never gave me any reason to doubt
3 he did not know what was going on or understand what he was
4 facing.

5 MS. LOWENSTEIN: I have no further questions.

6 THE COURT: Cross?

7 **CROSS-EXAMINATION**

8 BY MR. RAY:

9 Q. How are you doing, Mr. Pinkerton?

10 A. I'm good, sir, how are you?

11 Q. I am doing alright. How long have you been practicing
12 law?

13 A. Five years now.

14 Q. Five years. And how much of that has been criminal
15 defense?

16 A. Every five years, all five years. I with the Public
17 Defender for five years, one year in Lancaster, four years
18 here, or three years here, I mean.

19 Q. Okay. So you said that you met with Mr. Richardson
20 about 25 times?

21 A. Probably 20, 25 times. We used to go out to the jail on
22 monthly visits, and he would also call and I'd talk to him on
23 the phone at least weekly.

24 Q. So you met with him in person 25 times, plus additional
25 phone calls?

1 A. I'd say roughly, yes, but I did have additional phone
2 calls weekly with him.

3 Q. And had you received discovery in this case?

4 A. Yes, we had all discovery.

5 Q. And you reviewed that with him?

6 A. I did. I also provided him copies of what I could,
7 basically all the paper reports and everything, he had copies
8 of.

9 Q. So let me ask you just a little bit about the evidence
10 against him, video evidence?

11 A. I believe there are still shots.

12 Q. Still shots. What else was there?

13 A. He did confess post Miranda completely to it on body
14 camera when the officer arrested him.

15 Q. And do you know what time of day this offense occurred?

16 A. Yeah, the charges there, they said about 5:30 in the
17 morning because I believe the police said they responded at
18 about 5:45 to an alarm call.

19 Q. Was it daytime or nighttime?

20 A. Definitely nighttime.

21 Q. Did you discuss with Mr. Richardson any prior
22 convictions that he may have had?

23 A. I did. He had numerous burglary convictions in the
24 past.

25 Q. So let me ask you about the indictment. Did you discuss

1 this issue with the Solicitor?

2 A. I did. Mr. Scott Graustein was the Solicitor at the
3 time. That's one of the reasons he came back with the plea for
4 a burglary second because he did agree that it was not indicted
5 correctly but he let Mr. Richardson plea to what the correct
6 indictment would have been.

7 Q. And the State recommended the maximum sentence; is that
8 correct?

9 A. They did. I believe that was based on his lengthy
10 record.

11 Q. So if he had been properly indicted do you think the
12 State would have been inclined to engage in a plea agreement
13 with the lesser included offense?

14 A. I don't believe so, because he still had pending
15 burglary first charges that were correctly indicted and so they
16 probably would have taken him to trial on those, I don't
17 believe they would have played ball, as they say.

18 Q. But several of those burglary firsts were dismissed?

19 A. Yes. He had a burglary first and a burglary third
20 dismissed based upon his plea to what he pled to.

21 Q. In your understanding did the Court have jurisdiction to
22 accept Mr. Richardson's plea?

23 A. Yes. All the offenses occurred here in Horry County and
24 he pled in Horry County.

25 Q. The Court of the General Sessions?

1 A. Yes.

2 Q. And you explained to him the difference between burglary
3 first and burglary second?

4 A. I did, yes.

5 Q. He was well aware?

6 A. He was, I believe he was.

7 Q. And he was concerned about the indictments; is that
8 correct?

9 A. He was, and like I said, I discussed with him I
10 was going to move to challenge it if they did move forward on
11 the case but we never got to that point.

12 Q. And you believe that he was concerned because he had an
13 understanding of the elements of the offense?

14 A. Yes.

15 Q. Now, he ultimately pled to the burglary second, correct?

16 A. Yes.

17 Q. Not burglary first?

18 A. No.

19 Q. Did you discuss with him the requirement that the State
20 proved his guilt beyond a reasonable doubt?

21 A. I did.

22 Q. And did you believe that they could have done so?

23 A. On the burglary second, I absolutely do.

24 Q. And so even if you had challenged these indictments do
25 you believe Mr. Richardson would have benefited materially in

1 terms of his conviction?

2 A. I do not because the Solicitor told me he was going to
3 directly indict him back for what the proper charge would have
4 been if we had challenged it, it would have been nothing but a
5 delay tactic, essentially, at that point.

6 Q. And you don't believe that would have been beneficial?

7 A. No, I do not.

8 Q. Now, let me ask you about his mental health. Did you
9 all have discussions about his mental health?

10 A. I was aware he was on several medications, we had
11 discussed that, however, with my interactions with him he never
12 gave me any reason to believe that was actually affecting what
13 was going on and his understanding, his ability to assist in
14 his defense and that sort of thing.

15 Q. Now, did he tell you what his medications were?

16 A. I used to know, I believe one was Seroquel, I don't know
17 off the top of my head exactly what they all were.

18 Q. And was he taking medications at the time of the
19 offense?

20 A. I believe he was, but I cannot speak to that
21 100 percent.

22 Q. But he was during the course of his --

23 A. Yes. From my understanding once he was at J. Reuben he
24 was taking his medications.

25 Q. And so you had no concerns about his competency?

1 A. I did not, no.

2 Q. No concerns about his mental capacity?

3 A. No.

4 Q. And did he assist you in preparing a defense?

5 A. He did, he did. He was able to, especially if one of
6 the charges dismissed he was very beneficial to help me on that
7 defense, but we didn't go to trial on that.

8 MR. RAY: The Court's indulgence for just one moment,
9 Your Honor. No further questions.

10 MS. LOWENSTEIN: I have just a couple questions.

11 **REDIRECT EXAMINATION**

12 BY MS. LOWENSTEIN:

13 Q. Mr. Pinkerton, why before the plea deal was made did you
14 not challenge the indictment?

15 A. Because I was planning on challenging that at trial or
16 before we actually started trial but there was not a reason to
17 challenge it as to them actually calling him to trial on it.

18 Q. Now, you mentioned you didn't think that the Solicitor's
19 office would negotiate if it had been properly indicted?

20 A. No. I believe they still would have offered the 15
21 years. I don't believe they would have offered anything less.

22 Q. Now, it is not unusual, though, even when there's a
23 record for when a case has been properly indicted for the
24 Solicitor's office to negotiate, is it?

25 A. It's not uncommon, no.

1 Q. So did you at all attempt to negotiate less than the --

2 A. I did attempt to negotiate less than the 15 years and I
3 argued for less than 15 years when he did the plea, but the
4 judge agreed with the State's recommendation.

5 Q. Then you would agree with me it's not unusual for them
6 to come down from the max of a properly indicted --

7 A. I would say it's not unusual, however, he did still
8 have the pending burglary first degree charge that was properly
9 indicted.

10 MS. LOWENSTEIN: Thank you. No further questions.

11 THE COURT: Anything else?

12 MR. RAY: Just one question real quick.

13 **RECROSS-EXAMINATION**

14 BY MR. RAY:

15 Q. Mr. Pinkerton, if you had gone to trial would you have
16 gone to trial on all the burglary firsts at once?

17 A. No, no, they all happened on separate incident dates,
18 there's no way the State could have tried them all together.
19 It was only on this charge because he actually pled the morning
20 the trial was supposed to start and it was only on the charge
21 that we're here today on.

22 Q. So they dismissed separate charges from separate
23 incidents in exchange for this plea?

24 A. They did.

25 MR. RAY: No further questions.

1 THE COURT: Anything else?

2 MS. LOWENSTEIN: Your Honor, I have no further
3 questions of this witness.

4 THE COURT: How about you, Mr. Richardson, do you
5 have any questions?

6 THE APPLICANT: Sir, could I take the stand, please?

7 THE COURT: I just meant do you have any questions
8 for him?

9 MS. LOWENSTEIN: We can excuse Mr. Pinkerton, I have
10 no further questions of him, but I'd like to call Mr. Robert
11 Hayner.

12 THE COURT: Let me hear from him first. Yes, sir?

13 THE APPLICANT: I just want to say, Your Honor, that
14 the evidence didn't support an indictment for first degree
15 burglary and that's my argument.

16 THE COURT: Okay. Call you next witness. Have a
17 good day.

18 MS. LOWENSTEIN: If I could just call Mr. Hayner.

19 **ROBERT HAYNER WAS DULY SWORN AT THIS TIME AND**
20 **TESTIFIED AS FOLLOWS:**

21 THE CLERK: Please state your name for the court and
22 spell your last name for the court reporter, please.

23 THE WITNESS: Robert Hayner, H-a-y-n-e-r.
24
25

DIRECT EXAMINATION

1

2 BY MS. LOWENSTEIN:

3 Q. Thank you, sir. Now you're here because of a subpoena,
4 correct?

5 A. Correct.

6 Q. And thank you for coming. Are you familiar with Hayner
7 Auto Remarketing in Conway?

8 A. Correct, yes.

9 Q. Were you the owner of that in 2018?

10 A. Yes.

11 Q. And that was a business?

12 A. Correct.

13 Q. And had there at any time, just before this case was
14 charged or after, had there ever been a residence there?

15 A. At one time there was a residence.

16 Q. How long ago?

17 A. It was at least ten years earlier.

18 Q. Okay. But not in recent time?

19 A. No.

20 MS. LOWENSTEIN: I have no further questions.

21 THE COURT: Cross?

22 MR. RAY: No questions for this witness, Your Honor.

23 THE COURT: You have a good day.

24 THE WITNESS: Thank you.

25 THE COURT: Call your next witness.

1 MS. LOWENSTEIN: That would be Mr. Graustein.

2 **SCOTT GRAUSTEIN WAS DULY SWORN AT THIS TIME AND**
3 **TESTIFIED AS FOLLOWS:**

4 THE CLERK: State your last name for the court
5 reporter.

6 THE WITNESS: Scott Graustein, G-r-a-u-s-t-e-i-n.

7 **DIRECT EXAMINATION**

8 BY MS. LOWENSTEIN:

9 Q. Sir, thank you for coming today. First of all, could
10 you explain to the Court the circumstances of why -- excuse me,
11 let me back up. You were the Solicitor assigned to this the
12 case, correct?

13 A. Yes, I was.

14 Q. And as the Solicitor assigned can you explain to the
15 Court the circumstances that caused you to determine that this
16 wasn't a residential burglary first degree burglary case but a
17 second?

18 A. It came from my discussions with his attorney and we
19 discussed it and we talked about the actual facts on of the
20 case and whether or not this was a business or whether it was a
21 residence, and after discussing it I believe that it was not a
22 residence, and therefore, the burglary second violent was the
23 appropriate charge for that incident, and that's why we had him
24 plea to that.

25 Q. Now, Mr. Pinkerton was asked about he didn't think that

1 there would be a negotiation if the case had been properly
2 indicted as a second. As a prosecutor and now a defense
3 attorney is it unusual to have the Solicitor's office negotiate
4 down from the maximum on a case that is properly charged?

5 A. It's not uncommon but all of the moving parts have to be
6 considered in whether or not -- in that negotiation, and that's
7 considered by both sides.

8 Q. So it could have possibly happened if you weren't
9 starting with a first degree burglary?

10 A. Well, this wasn't the only first degree burglary I was
11 starting with. I had another first degree burglary that was
12 also pending at the time, and therefore, that factored into the
13 negotiations and the fact that I would ultimately dismiss that
14 charge based on his guilty plea to the burglary second.

15 Q. But you still negotiate even though when there's other
16 charges dismissed, am I correct?

17 A. Well, it's usually part of the negotiations.

18 MS. LOWENSTEIN: I have no further questions.

19 THE COURT: Yes, sir?

20 **CROSS-EXAMINATION**

21 BY MR. RAY:

22 Q. Mr. Graustein, let me ask you about the discussions you
23 had with Mr. Pinkerton. He brought it to your attention that
24 the indictment was for the first, not the second?

25 A. Yes. He brought it to my attention and said if we're

1 gonna go I'm gonna have to make this motion. We talked about
2 it and to avoid this case getting kicked down the road further
3 and realizing that the facts supported a burglary second
4 violent charge instead of a burglary first, I offered for him
5 to plead to that with my recommendation to avoid further
6 delaying the case from where it was at.

7 Q. So was the only issue with the indictment the first
8 degree versus second degree issue?

9 A. Yes.

10 Q. There were no issues with time, place?

11 A. No. The time was appropriate. In fact, I believe, and
12 quite possibly incorrectly, one of the factors into that
13 burglary first indictment was his prior convictions for
14 burglaries, so that was factored into making for that being
15 indicted as a burglary first, but after my discussions with Mr.
16 Pinkerton I believe the appropriate charge was the one he pled
17 to.

18 Q. And do you believe that his prior convictions would have
19 supported the burglary second violent?

20 A. I think it supported the sentence in my recommendation,
21 yes.

22 Q. So you were not inclined to negotiate down from the
23 maximum sentence on the burglary second; is that correct?

24 A. No, I was not, and because of the pending burglary first
25 and because of my prior dealings with Mr. Richardson, I

1 personally had prosecuted him before on burglaries.

2 Q. So let me just ask you one more question about these
3 negotiations. What compelled you to dismiss the other
4 burglaries?

5 A. I believed that my recommendation of 15 years with given
6 my history and my knowledge of Mr. Richardson, I believed that
7 15 years on a nonviolent offense was a sufficient penalty for
8 him, and that I did not think he needed to be 15 to life on an
9 85 percent offense, so I factored that into my consideration.
10 If he wanted to go to trial on the burglary first I'd be more
11 than willing to do that.

12 Q. And would you have directly indicted Mr. Richardson if
13 the burglary first indictment in the instant case had been
14 quashed or challenged?

15 A. Absolutely.

16 Q. For burglary second; is that correct?

17 A. For burglary second violent, yes.

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

19 THE COURT: Anything else?

20 MS. LOWENSTEIN: No further questions. No further
21 witnesses, Your Honor.

22 THE COURT: You have a good day.

23 THE WITNESS: Thank you.

24 MS. LOWENSTEIN: Your Honor, my client wants to
25 testify, so if we could call him at this time.

1 **BRUCE M. RICHARDSON WAS DULY SWORN AT THIS TIME AND**
2 **TESTIFIED AS FOLLOWS:**

3 THE CLERK: Please state your name for the Court and
4 spell your last name for the court reporter.

5 THE APPLICANT: Bruce M. Richardson,
6 R-i-c-h-a-r-d-s-o-n.

7 BY MS. LOWENSTEIN:

8 Q. Mr. Richardson, you are the Applicant in this case here;
9 is that correct?

10 A. Yes, ma'am.

11 Q. And you understand that you don't have to take the
12 stand?

13 A. I understand, yes, ma'am.

14 Q. But you want to?

15 A. Yes, ma'am.

16 Q. What would you tell the Court about your perspective on
17 the issues that you alleged in your application?

18 A. Well, I specifically remember speaking with my attorney,
19 Mr. Pinkerton about the other indictments. I was told that I
20 was in my warrant for the first degree burglary which was a
21 true first, it was a residence. I was told that they had my
22 fingerprint from inside the building and when the discovery
23 came down I got paperwork from SLED saying that there was no
24 match of the fingerprint and I showed that to Mr. Pinkerton and
25 it was my understanding that that's why that indictment didn't

1 go forward. As pertaining to the other indictment, it was, in
2 fact, another charge of Hayner Auto Sales, and it was indicted
3 for first degree burglary, also. It was four days prior to the
4 one that I pled guilty to. And I'm not arguing guilt or
5 innocence, I'm guilty for what I did and I was wrong, I'm here
6 to testify that the evidence didn't support an indictment for
7 first degree burglary, I should have been indicted for second
8 degree burglary, and we did have that discussion. Right here
9 where it talks about, I remember him saying something about I
10 waived presentment to the Grand Jury. I never waived
11 presentment to the Grand Jury, and it's in the plea in here
12 where the judge, he's asked -- he was speaking to me, he says:
13 Okay, Mr. Richardson, the biggest right you're giving up, and
14 he stops, and starts talking to Mr. Graustein, he said: Now,
15 he's initialed under the Grand Jury waiver, but it looks like
16 its a true bill. Mr. Graustein says: It is a true bill, Your
17 Honor. My lawyer says: Yes, Your Honor, I had him initial it,
18 I couldn't remember if it was true billed or not. That's why
19 he had me initial it because he didn't remember if it was true
20 billed, but it was true billed. So that's not a proper waiver,
21 I mean, how do you waive presentment on an indictment that's
22 been presented? I don't understand that. And that's what I
23 want to argue here. I never waived presentment to the grand
24 jury on that indictment. He did have me initial the box,
25 however, the box was not checked, and a waiver was never

1 mentioned inside my -- nowhere in my plea. I mean, it was not
2 mentioned that I waived presentment. It was mentioned that the
3 indictment was true billed on several occasions.

4 THE COURT: Anything else that you would like to say
5 to the Court?

6 THE APPLICANT: On the next page, Mr. Pinkerton says:
7 There were issues with the indictments, but it is correct. But
8 the indictments weren't correct. Later on Mr. Graustein was
9 given the evidence to the Court, the Court says: Yes, sir.
10 Mr. Graustein says: Yes, Your Honor, this occurred on August
11 the 5th -- I mean, August the 20, 2018 in the Conway section of
12 Horry County. At about 5:30 in the morning the car dealership
13 business was broken into. The next page he states: Your
14 Honor, this was on the trial roster. It was indicted for a
15 burg. first but upon looking at the case the appropriate charge
16 is burglary second violent and that is appropriate for these
17 circumstances. I was never indicted for second degree
18 burglary, I was indicted for entering a dwelling. The evidence
19 that was submitted at the plea was a business. I'm just here
20 to say that the evidence, again, it didn't support. I mean, in
21 the Pageant case the South Carolina Supreme Court said that a
22 lawyer was ineffective for not being able to distinguish, in
23 that case a barn from a dwelling. In this case it's a car
24 dealership, not a dwelling. However, the Supreme Court vacated
25 the conviction because of that, because the evidence didn't

1 support an indictment for first degree burglary, and that's all
2 I wanted to argue here.

3 MS. LOWENSTEIN: I have no other questions, Your
4 Honor.

5 THE COURT: Cross?

6 **CROSS-EXAMINATION**

7 BY MR. RAY:

8 Q. Mr. Richardson --

9 A. Yes, sir?

10 Q. Did you consider going to trial and challenging the
11 State's evidence at trial rather than pleaing guilty?

12 A. No, sir. I didn't want to go to trial because I was
13 guilty, and I mean, I'm not arguing guilt or innocence, I'm
14 guilty for what I did and I was wrong. I'm not arguing guilt
15 or innocence, I didn't want to go to trial because I was guilty
16 for the crime.

17 Q. And so this waiver of the indictment is an indictment
18 for first degree burglary, correct?

19 A. I still don't see where there's a waiver.

20 Q. Well, the supposed waiver where your attorney states
21 that he had you initial it and he wasn't sure if it had been
22 true billed --

23 A. Right.

24 Q. -- and the waiver that you never made was a waiver of an
25 indictment for first degree burglary; is that correct?

1 A. I don't think it was a waiver, no, sir.

2 Q. No, the waiver you did not make --

3 A. Right.

4 Q. -- is being referenced to, the indictment that they're
5 talking about --

6 A. Right.

7 Q. -- was the indictment for first degree burglary?

8 A. The indictment is for first degree burglary, yes, sir.

9 Q. And you pled guilty to second degree burglary?

10 A. Yes, sir.

11 Q. And you discussed that with your attorney?

12 A. Yes, sir.

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

14 THE COURT: Anything else?

15 MS. LOWENSTEIN: No further questions, Your Honor.

16 Thank you.

17 THE COURT: You may step down. Thank you. Any other
18 witnesses?

19 MS. LOWENSTEIN: I'm sorry, Your Honor, no further
20 witnesses.

21 THE COURT: How about from the State?

22 MR. RAY: The State has no further witnesses, Your
23 Honor.

24 THE COURT: Is there anything else you would like to
25 tell me?

1 MS. LOWENSTEIN: No other evidence, Your Honor.

2 Thank you.

3 THE COURT: I'll take it under advisement and I'll
4 study the file and the transcript and rule at some time soon.

5 Thank you.

6 MR. RAY: Thank you, sir.

7 THE APPLICANT: Thank you, Your Honor.

8 **CERTIFICATE**

9 STATE OF SOUTH CAROLINA

10 COUNTY OF HORRY

11 I, Julie A. Kevish, Official Court Reporter for the
12 State of South Carolina, do hereby certify that the foregoing
13 is a true, accurate and complete Transcript of Record of the
14 proceedings had and evidence introduced in the Court of Common
15 Pleas for Horry County, South Carolina, on the 24th of June,
16 2021.

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

19

20 June 24, 2021

21

22

23 _____
24 JULIE A. KEVISH
25 OFFICIAL COURT REPORTER

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
)	
Bruce M. Richardson, SCDC No. 291292)	Case No. 2019-CP-26-7234
)	
Applicant,)	ORDER OF DISMISSAL
)	
v.)	
)	
State of South Carolina)	
)	
Respondent.)	

FILED
 HORRY COUNTY
 2021 AUG 16 P 1:46
 REBECCAH M. EDWARDS
 CLERK OF COURT
 HORRY COUNTY, SC

This matter comes before the Court by way of Applicant Bruce M. Richardson’s application for post-conviction relief, filed on November 17, 2019. Respondent made its return and partial motion to dismiss on September 14, 2020. An evidentiary hearing was convened on Thursday, June 24, 2021. Applicant was present and represented by Attorney Carla F. Grabert-Lowenstein. Assistant Attorney General William H. Ray represented Respondent.

Applicant testified on his own behalf at the hearing. Plea counsel Clay W. Pinkerton, Assistant Solicitor Scott Graustein, of the Fifteenth Circuit Solicitor’s Office, and Robert Hayner also testified. The Court had before it Applicant’s records from the South Carolina Department of Corrections, the Horry County Clerk of Court’s records, the plea transcript, and both the original and amended PCR applications. The Court has reviewed the pleadings and the record, has observed the witnesses, and finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. During its December 2018 term, the Horry County Grand Jury indicted Applicant for first-degree burglary (2018-GS-26-06630) stemming from his August 20, 2018, break-in of a car dealership in Conway, South Carolina, wherein he stole various property. The burglary was captured by surveillance

cameras and Applicant was identified as a suspect. He was apprehended later that day and gave statements implicating himself in the burglary.

Applicant was represented by Attorney Clay W. Pinkerton and Assistant Solicitor Scott Graustein, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On May 6, 2019, Applicant appeared before the Honorable William A. McKinnon and entered a guilty plea to the lesser included offense of burglary, second degree (violent). Applicant was sentenced to fifteen years' imprisonment upon the State's recommendation. Applicant did not appeal his conviction or sentence.

III. CURRENT APPLICATION

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

1. Ineffective Assistance of Counsel
2. Violation of Due Process under the Sixth and Fourteenth Amendment
3. Court acted without subject matter jurisdiction over offense

Applicant served Respondent with amended allegations on June 10, 2021. At the hearing Applicant proceeded forward with these allegations, which alleged he is being held in custody unlawfully for the following reasons:

1. Mr. Richardson was prejudiced because his counsel, Mr. Clay Pinkerton, did not sufficiently discuss with him the difference between first degree burglary and the lesser second degree burglary with violence. It is clear from the plea transcript that Mr. Pinkerton did not have a grasp of the facts of the case and admitted he did not remember whether the case had been true-billed (Plea Transcript, p. 5 at 1-25, and, p.6 at 1).
2. The Applicant did not enter a residence and thus should not have been indicted on first degree burglary. Mr. Pinkerton did not discuss whether or not the court had jurisdiction over Mr. Pinkerton nor did Mr. Pinkerton challenge the jurisdiction. If the court found it did not have jurisdiction there would have been no indictment for which to enter a plea.

The situation in the instant case represents the same situation as in *Padgett v. State*, 19770 324 SC.22), where trial counsel was found ineffective for not challenging the indictment. The indictment was for first degree burglary but the building was a barn not a home. [*Id* at 29].

3. Mr. Pinkerton also did not discuss if there was another manner for the state to show Mr. Richardson was guilty of first-degree burglary. Thus Mr. Richardson was prejudiced in making a decision to enter a guilty plea upon incomplete and inaccurate information.
4. Further, Mr. Pinkerton did not discuss the possible evidence available for the State to show first degree or second degree burglary.
5. Mr. Pinkerton not having full and sufficient knowledge of the existing evidence could not fully advise Mr. Richardson concerning the plea and options. Thus, Mr. Richardson could not receive a fully advised and voluntary plea to the lesser and included charge, especially in light of the fact Mr. Richardson had a history of taking mental health medications; Seroquel for bi-polar condition, and, Prazosin for Post-Traumatic Stress Disorder (PTSD). (Plea Transcript p.3 at 20-24).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

A. Ineffective Assistance of Counsel

Applicant has alleged various claims of ineffective assistance of counsel. In a PCR action, an applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just

result.” *Strickland v. Washington*, 466 U.S. 668, 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*. First, Applicant must prove that counsel’s performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRPC. 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). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109-10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”). 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 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. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland's* prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." *United States v. Basham*, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he/she would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *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."). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. *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)).

“[These] standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed.” *Strickland*, 466 U.S. at 670.

Failure to Challenge the Indictments and Jurisdiction of the Trial Court

Applicant alleges that his counsel provided constitutionally ineffective representation by failing to challenge his first degree burglary indictment and also failing to challenge the court’s jurisdiction. This Court finds the allegation to be without merit.

South Carolina’s first-degree burglary statute requires that the State must prove that a criminal defendant entered a dwelling without consent with intent to commit a crime therein, plus an enumerated aggravating factor. S.C. Code Ann. §16-11-311. Second degree burglary can be proven by either showing that the person entered a dwelling without consent and with intent to commit a crime therein, or that the defendant entered a building with the same criminal intent, plus an enumerated aggravating factors. S.C. Code Ann. §16-11-312. The South Carolina Supreme Court found in *Padgett v. State*, 324 S.C. 22, 484 S.E.2d 101 (1997) that defense counsel’s failure to challenge a first-degree burglary indictment may amount to ineffective assistance of counsel if the crime did not take place in a dwelling and the defendant is nevertheless convicted of first-degree burglary. There, a criminal defendant entered a guilty plea to six counts of first degree burglary arising out of a string of burglaries into several dwellings as well as one barn. *Id.* 324 S.C. at 28, 484 S.E.2d at 104. Counsel failed to challenge the indictment relating to the barn, and the Supreme Court found that such a decision cannot be considered trial strategy because the

defense attorney in that case did not recognize a distinction between a barn and a dwelling, and articulated no strategy explaining his shortcomings. *Id.* 324 S.C. at 29, 484 S.E.2d at 104.

An Applicant may challenge the subject matter jurisdiction of the trial court and such a claim is one that may be raised at any time. *Brown v. State*, 343 S.C. 342, 346, 540 S.E.2d 846, 848-49 (2001) (overruled in part by *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005)). However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters. *Gentry*, 363 S.C. at 101, 610 S.E.2d at 499, *see also* S.C. Const. Art. V, §11. “[S]ubject matter jurisdiction of the circuit court and sufficiency of the indictment are two distinct concepts and the blending of these concepts serves only to confuse the issue.” *Gentry*, 363 S.C. at 101, 610 S.E.2d at 499. “[A]n indictment is merely a notice document.” *State v. Baker*, 390 S.C. 56, 62, 700 S.E.2d 440, 442 (Ct. App. 2010) (citing *Gentry*, 363 S.C. at 102-103, 610 S.E.2d at 500. Therefore, a motion to quash an indictment does not challenge the sufficiency of the State’s evidence; the sufficiency of the evidence can properly be challenged only by a motion for a directed verdict following the State’s presentation of its case at trial. *State v. Massey*, 430 S.C. 349, 358, 844 S.E.2d 667, 671 (2020).

At the PCR hearing plea counsel explained that he was aware that Applicant had not broken into a dwelling, and was therefore indicted for the wrong offense. He explained that the evidence showed that Applicant broke into a car dealership—not a dwelling—at night. He stated that he would have challenged the indictment had Applicant proceeded to trial, but did not believe it was worthwhile because Applicant accepted a plea offer to the proper charge of second degree burglary.

He explained that he had spoken with the solicitor about the indictment and was told that Applicant would simply be reindicted for second degree burglary if the indictment was

successfully challenged. It would have simply amounted to a delay tactic. Given that Applicant was entering his plea to the appropriate charge, he saw no reason to challenge the indictment at that point. He stated that he did not believe the State would be willing to negotiate the plea further because of Applicant's lengthy prior record, but did attempt to argue for less time at the plea hearing.

Robert Hayner, the victim in this case and owner of the car dealership, testified that the building in question was not a dwelling and had not been used as one for at least ten years at the time of the crime.

Assistant Solicitor Scott Graustein testified that he was the solicitor who handled the case, and agreed that second degree burglary was the appropriate charge. He confirmed that plea counsel had brought the issue with the indictments to his attention and he offered Applicant the opportunity to enter a plea to second degree burglary. He also confirmed that he was not willing to negotiate anything less than that because of Applicant's prior record.

Applicant testified and stated that a first degree burglary charge was not supported by the evidence. He stressed that the indictments were incorrect and he was never properly indicted for second degree burglary. On cross-examination he stated that he never intended to go to trial because he was guilty of the crime. His guilt compelled him to enter the guilty plea to second degree burglary.

This Court finds that Applicant's allegation regarding the indictments and jurisdiction are without merit. Applicant cannot meet his burden of showing prejudice from his counsel's performance as a matter of law because he testified that he was guilty of the crime and never intended to go to trial. His admission of guilt is consistent with what he told police after he was arrested, and what he told the plea court at his plea hearing. There simply is no indication that

Applicant ever intended to take the case to trial. Furthermore, the record is clear that Applicant entered his guilty plea to the appropriate offense of second degree burglary. Both the State and his plea counsel were in agreement that he would not have received a friendlier plea offer, even if he had been indicted the second degree burglary offense. Finally, even if a motion to quash the indictment had been made, it would have failed because the indictment is facially valid. Applicant's proffered challenge is a challenge to the sufficiency of the evidence against him, which is not grounds for challenging an indictment before trial. Therefore, Applicant has failed to meet the burden of proving that his counsel's performance prejudiced him.

While the indictment may have charged a greater offense than necessary, plea counsel was aware of the issue and used it to negotiate a plea to a lesser, more appropriate offense. Such is common practice in the Court of General Sessions. This Court finds plea counsel's testimony that he would have challenged the indictment had Applicant proceeded to trial to be credible, and agrees that it would have been largely pointless considering that Applicant was not at risk of being convicted of that offense because he would have challenged it before trial. Applicant's case is distinguishable from *Padgett* because here counsel was aware of the distinction between first and second degree burglary, offered a reasonable strategic explanation for not challenging the indictment, and did not allow his client to enter a plea to a greater offense than the law allows. Furthermore, Applicant has not presented any proof that the plea court lacked jurisdiction over his case, and has made no showing as to what his counsel should have done differently regarding jurisdiction. Therefore this Court finds that Applicant has failed to meet his burden of proving that plea counsel's performance was deficient.

Failure to Properly Advise Applicant Regarding First Degree Burglary

Applicant alleges that his counsel did not sufficiently discuss with him the difference between first degree burglary and the lesser second degree burglary with violence, did not discuss if there was another manner for the state to show Mr. Richardson was guilty of first degree burglary, and did not discuss the possible evidence available for the State to show first degree or second degree burglary. This Court finds these allegations to be without merit.

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty, but would have insisted on going to trial. *Roscoe v. State*, 345 S.C. 16, 546 S.E.2d 417 (2001).

Plea counsel credibly testified that he made weekly phone calls with Applicant and met with him approximately twenty to twenty-five times while Applicant was in jail. He stated that he had received the discovery of the case, reviewed it with Applicant, and provided him copies. They also discussed Applicant's prior record and his mental health issues. He explained the requirement that Applicant be proven guilty beyond a reasonable doubt. He explained that he never doubted Applicant's ability to understand the charges against him and their consequences, and Applicant had been helpful in developing a defense against the charges. Applicant testified that he had spoken with his attorney about his other burglary charges, which were dismissed as part of his plea agreement. (Tr. 9, 7-22).

This Court finds that Applicant has failed to meet his burden of proving his counsel was deficient in advising him about his case. Plea counsel's testimony shows that he reviewed the discovery and the elements that the State would have to prove. Furthermore, as addressed above,

discussions regarding whether the State could prove Applicant guilty of first degree burglary at trial is of little significance because Applicant stated that he did not intent to proceed to trial and plea counsel stated that he would have challenged the indictments if Applicant had wished to proceed to trial.

Additionally, the plea court explained to Applicant that he was pleading to the lesser included offense of second degree burglary (Tr. 3, 5-10; Tr. 5, 19), that the state must prove his guilt beyond a reasonable doubt (Tr. 6, 3-10), and he agreed with the State's recitation of the facts and asserted that he was guilty of the crime (Tr. 8, 20 – Tr. 10, 7). He has not shown that he would have rejected the plea offer and proceeded to trial but for his plea counsel's advice, nor has he shown any other prejudice resulting from the representation he received. It is clear that he entered his guilty plea because he was guilty, not because of any confusion regarding his charges, or the evidence against him. Therefore Applicant has failed to meet the burden imposed upon him of proving ineffective assistance of counsel, and this Court finds that the application must be denied and dismissed with prejudice.

CONCLUSION

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

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

IT IS THEREFORE ORDERED

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the South Carolina Department of Corrections.

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



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

Munir, South Carolina

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

Bruce M. Richardson, #229315

Applicant,

v.

State of South Carolina,

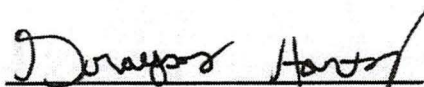
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order of Dismissal** have been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to:

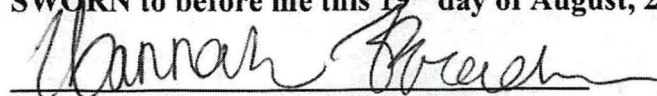
**Carla Faye Grabert Lowenstein, Esquire
Carla Faye Grabert-Lowenstein, LLC
PO Box 51105
Myrtle Beach, SC 29579**

This 19th day of August, 2021.



Grayson Horton
Legal Assistant for Respondent

SWORN to before me this 19th day of August, 2021.



Notary Public for South Carolina.
My Commission Expires: September 11th 2021



ALAN WILSON
ATTORNEY GENERAL

August 19, 2021

Carla Faye Grabert Lowenstein, Esquire
Carla Faye Grabert-Lowenstein, LLC
PO Box 51105
Myrtle Beach, SC 29579

Re: Bruce M. Richardson, #229315 v. State of South Carolina
2019-CP-26-7234

Dear Ms. Lowenstein:

Enclosed is a copy of the filed Order of Dismissal in the above-captioned case signed by The Honorable William H. Seals, Jr. and filed with the Horry County Clerk of Court.

Sincerely,

William H. Ray
Assistant Attorney General

WHR/geh
Enclosure(s)

RECEIVED

AUG 30 2021

S.C. SUPREME COURT



ALAN WILSON
ATTORNEY GENERAL

August 13, 2021

The Honorable Renee Elvis
Horry County Clerk of Court
P.O. Box 677
Conway, SC 29528-0677

FILED
HORRY COUNTY
2021 AUG 16 P 1:46
RENEE M. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

Re: Bruce M. Richardson, #229315 v. State of South Carolina
2019-CP-26-7234

Dear Ms. Elvis:

Enclosed please find the original Order of Dismissal signed by The Honorable William H. Seals Jr., in the above-captioned case, for filing in your office.

In addition, please forward proof of service and a time stamped copy back to our office for our file.

Sincerely,

William H. Ray
Assistant Attorney General

WHR/geh

CC: Carla Faye Grabert Lowenstein, Esquire

ARREST WARRANT

2018A2610700837

STATE OF SOUTH CAROLINA

[X] County/ [] Municipality of

Horry

THE STATE

18076661

against

Bruce M Richardson

Address: Meadowlark Cir
Conway, SC 29526-

Phone: SSN: 2-8
Sex: M Race: W Height: 5 10 Weight: 180
DL State: DL #:

Agency ORI #: SC0260400

Prosecuting Agency: Horry County Police Department

Prosecuting Officer: Heath F Reisinger - S00271

Offense: Burglary / Burglary (Non-Violent) - Second degree

Offense Code: 0080

Code/Ordinance Sec: 16-11-0312

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 Bruce M Richardson on 8/21/2018

Cpl. Jones D1139
Signature of Constable or Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
PO Box 677
1301 2nd Avenue
Conway, SC 29528

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

[X] County/ [] Municipality of

Horry

Personally appeared before me the affiant Heath F Reisinger

being duly sworn deposes and says that defendant Bruce M Richardson

did within this county and state on or about 8/20/2018

State of South Carolina (or ordinance of [X] County/ [] Municipality of

in the following particulars:

DESCRIPTION OF OFFENSE: Burglary / Burglary (Non-Violent) - Second 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 Monday, August 20, 2018 at approximately 0530 hours at 1130 E. Hwy 501 (Hayner Auto Sales) in the Conway section of Horry County, the defendant and his codefendant did force entry to a utility room. While inside the utility room the defendant and codefendant did take, carry away and steal an air compressor, hose reel, and a chain saw. The Defendants made a post Miranda confession to this incident. Since this incident took place during nighttime hours, the act of the accused constitute the offense of Burglary second degree. case# 18076661 R/O Reisinger

Signature of Affiant

STATE OF SOUTH CAROLINA

[X] County/ [] Municipality of

Horry

Affiant's Address 2560 North Main Street

Conway, SC 29526-

Affiant's Telephone

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 8/20/2018

defendant Bruce M Richardson

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

[X] County/ [] Municipality of Horry

) as set forth below:

DESCRIPTION OF OFFENSE: Burglary / Burglary (Non-Violent) - Second 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 8/21/2018

(L.S.)

Signature of Issuing Judge
Bradley Dwyer Mayers
Judge Code: 3081

Judge's Address

Conway, SC 29526-5105

Judge's Telephone

(843)915-5290

Issuing Court: [X] Magistrate [] Municipal [] Circuit

[X] Magistrate [] Municipal [] Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
S.C. Judiciary General
April 21, 2003
SCGA 518

AFFIDAVIT

FILED
HORRY COUNTY

2018 AUG 27 AM 8:55

RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

BAIL set by

WITNESSES



Judge Adam Bush

on 8/24/2018

Type and Amount: \$10000

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____

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

Disposition: _____

Sentence: _____

JURORS

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

CHIEF CLERK
8/24/18
M. RICHMOND

WITNESSES

Heath F Reisinger Horry County Police Department

Tina Vaughn

ARREST WARRANT NUMBER

2018A2610700837
CDR: 0079 16-11-0311
DOA: 8/21/2018

ACTION OF GRAND JURY

TRUE BILL

NOV 14 2018

Kathleen Shaffer

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2018GS2606630

The State of South Carolina
County of Horry

Scott A. Graustein 18H04822

COURT OF GENERAL SESSIONS

November, 2018 TERM

THE STATE

vs.

Bruce M Richardson
W/ M
Meadowlark Cir
Conway, SC 29526

ATTORNEY: Clay Pinkerton

Indictment for

BURGLARY, FIRST DEGREE

Jimmy A. Richardson, II, Solicitor

ORIGINAL

FILED
HORRY COUNTY
2018 NOV 19 PM 12:32
RENEE L. ELYS
CLERK OF COURT
HORRY COUNTY, SC
DATE RECEIVED FROM
GRAND JURY

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on November 14, 2018, the Grand Jurors of Horry County present upon their oath:

BURGLARY, FIRST DEGREE

CDR: 0079 16-11-0311

That Bruce M Richardson did in Horry County, on or about August 20, 2018 enter the dwelling of Hayner Auto sales without consent and with the intent to commit a crime therein and when in effecting entry or while in the dwelling or in immediate flight, has a prior record of two or more convictions for burglary, in violation of Section 16-11-0311(A), S. C. Code of Laws, 1976, as amended.

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



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

15 yrs

COUNTY OF Horry
 STATE VS.
Bruce M Richardson
 AKA: _____
 Race: WHITE Sex: M Age: 48
 Address: Meadowlark Cir
 City, State, Zip: Conway, SC 29526
 DL#: _____ SID#: _____

INDICTMENT/CASE#: 2018GS2606630
 A/W#: 2018A2610700837
 Date of Offense: 8/20/2018
 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, 2nd Degree, Violent (after 06/20/85) (0 - 15 years)

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 §17-25-45
 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. B.R. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] SCB68532 Bruce Richardson SC102561
Graustein, Scott A. SC Bar# Defendant Pinkerton, Clay SC Bar#
Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 15 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 SCDPCC.
 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: _____
 Set by SCDPPPS _____

Recipient: _____
 *Fine: _____ \$
 §14-1-206 (Assessments 107.5 %) \$
 §14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 §14-1-211(A)(2) (DUI Surcharge) \$100 \$
 §56-5-2995 (DUI Assessment) \$12 \$
 §56-1-286 (DUI Breath Test) \$25 \$
 Proviso (Public Def/Probation) \$500 \$
 §14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 §14-1-213 (Drug Court Surcharge) \$150 \$
 §50-21-114(BUI Breath Test Fee) \$50 \$
 §56-5-2942(J) (Vehicle Assessment) \$40/ea \$
 3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75
 Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ 25.00 beginning 6-2-18
 \$ _____ paid to Public Defender Fund
 Other: ATU in SCDCC

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

Clerk of Court/ Deputy Clerk Renee Elvis
 Court Reporter: Ken Richardson

Presiding Judge [Signature]
 Judge Code: 2241
 Sentence Date: 5-6-18

FILED
 2018 MAY -6 PM 11:15
 CLERK OF COURT
 Horry County, SC