

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Newberry County

Honorable J. Mark Hayes, Circuit Court Judge

MAURICE ODOM,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2021-000950

APPENDIX

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ATTORNEYS FOR RESPONDENT

RECEIVED

Mar 24 2022

S.C. SUPREME COURT

INDEX

INDEX i

GUILTY PLEA TRANSCRIPT DATED JANUARY 5, 2015 1

NOTICE OF APPEAL.....18

GUILTY PLEA EXPLANATION PURSUANT TO
RULE 203(d)(1)(B)(iv), SCACR.....22

ORDER DISMISSING APPEAL24

REMITTITUR25

APPLICATION FOR POST-CONVICTION RELIEF26

RETURN.....33

POST-CONVICTION RELIEF HEARING TRANSCRIPT
DATED JANUARY 26, 202138

APPLICANT’S EXHIBIT NO. 1 (ORDER FOR RECORDS).....103

STATE’S EXHIBIT NO. 1 (LETTER FROM ODC)104

ORDER OF DISMISSAL.....106

INDICTMENT122

SENTENCE SHEET124

State of South Carolina)
) Court of General Sessions
 County of Newberry)

2012-GS-36-0156

State of South Carolina)
) Transcript of Record
)
 vs.)
)
 Maurice Anthony Odom)
 _____ DEFENDANT)

January 5, 2015
 Newberry, South Carolina

B E F O R E:

Honorable Eugene C. Griffith, Jr., Judge

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

Dale Scott, Deputy Solicitor
 Attorney for the State

Russel Brown, Esq.
 Attorney for the Defendant

Joy E. Holston
 Official Court Reporter

1 NO EXHIBITS WERE INTRODUCED IN THIS CASE

2 THE COURT: Are you ready, Mr. Scott?

3 MR. SCOTT: Yes, sir. The State versus Maurice
4 Anthony Odom. Indictment 12-GS-36-156. True billed
5 indictment for burglary second violent. And he is here to
6 tender a straight-up plea to that charge.

7 THE COURT: Your name is Maurice Anthony Odom?

8 MR. ODOM: Yes, sir.

9 THE COURT: I have indictment number
10 12-GS-36-indictment 156 for burglary second degree. And
11 that indictment reads that you while in Newberry County on
12 the 7th day of October, 2011 did unlawfully enter a
13 dwelling, a building without consent with the attempt to
14 commit a crime therein. This being in violation of
15 16-11-312. It is my understanding that you wish to enter
16 a plea to that offense as indicted. Is that right?

17 MR. BROWN: Your Honor, Mr. Odom will be entering an
18 Alford plea, Your Honor.

19 THE COURT: Okay.

20 MR. SCOTT: I don't think, it just occurred to me
21 that he is not pleading to a lessor. I don't know if that
22 would qualify for an Alford unless it has some benefit of
23 a lessor included. I am dismissing the grand larceny. So
24 perhaps that would qualify him.

25 THE COURT: Now, if he went to trial would he not be

1 facing a life without parole?

2 MR. BROWN: That is correct.

3 MR. SCOTT: That is a good point, Your Honor.

4 THE COURT: Mr. Odom, do you understand that by
5 entering this plea you are facing 15 years total as
6 opposed to a life without parole potential sentence?

7 MR. ODOM: Yes, sir.

8 THE COURT: So understanding you are pleading guilty
9 under the North Carolina versus Alford case. Mr. Brown,
10 you are representing Mr. Odom in this matter?

11 MR. BROWN: That is correct, Your Honor.

12 THE COURT: And have you advised him the elements of
13 this offense and his potential punishment?

14 MR. BROWN: I have, Your Honor.

15 THE COURT: And do you believe the State has
16 sufficient evidence to convict him if he were to stand
17 trial?

18 MR. BROWN: Yes, Your Honor.

19 THE COURT: And considering your negotiations as to
20 the avoiding the life without parole as well as dismissal
21 of a related grand larceny do you believe this is in your
22 client's best interest?

23 MR. BROWN: I do, Your Honor.

24 THE COURT: Madam Clerk, place him under oath for me.

25 MAURICE ANTHONY ODOM, being

1 first duly sworn, testified as follows:

2 THE COURT: Mr. Odom, in the last twenty-four hours
3 have you taken any alcohol, drugs or medications?

4 MR. ODOM: No, sir.

5 THE COURT: Are you clearheaded right now?

6 MR. ODOM: Sir?

7 THE COURT: Are you clearheaded right now?

8 MR. ODOM: Yes, sir.

9 THE COURT: Do you have any disabilities whatsoever,
10 mental, physical or emotional which would affect your
11 understanding of why you are here or what is going on?

12 MR. ODOM: I have an understanding, sir.

13 THE COURT: Okay. Now, under North Carolina versus
14 Alford plea, you have to be conferred a benefit. We
15 discussed that on the record, that in this plea to a
16 burglary second violent carries up to 15 years. But by
17 entering this plea you are avoiding the potential life
18 without parole sentence should you have gone to trial on
19 this offense because of your prior record. Is that
20 correct?

21 MR. ODOM: Can you repeat that, sir.

22 THE COURT: All right. In order to plead guilty
23 under North Carolina versus Alford case you have to be
24 conferred some sort of benefit to avoid trial to enter a
25 plea of this type. Do you have a belief or understanding

1 of the benefits that you are receiving is avoiding the
2 potential life without parole sentence in exchange for a
3 cap of 15 years, which is on this case?

4 MR. ODOM: Yes, sir.

5 THE COURT: Is that a benefit to you? I believe it
6 is. The most you can get is 15 years. Otherwise you
7 would be a sentence for the balance of your life.

8 MR. ODOM: Yes, sir.

9 THE COURT: Also the State is dismissing a related
10 grand larceny charge. Is that right?

11 MR. ODOM: Yes, sir.

12 THE COURT: Now, if you went to trial do you
13 understand the facts that the State would advance for a
14 jury's consideration, do you have a belief that if a jury
15 heard those facts, the State's version through its
16 witnesses and exhibits, do you have a belief that more
17 probably than not that you would be convicted as the
18 result of a jury trial because of your defense? Is that
19 right?

20 MR. ODOM: That I would be convicted?

21 THE COURT: Yes.

22 MR. ODOM: I didn't want to take the chance, I don't
23 want to take the chance because of my mother, she is sick.
24 And I am doing 15, I don't want to take that chance, I
25 just want to get it over with.

1 THE COURT: So you do have the belief that if you
2 went to trial the State's witnesses would be believed and
3 you could be convicted?

4 MR. ODOM: Yes, sir.

5 THE COURT: And that is the belief you have to have
6 to submit an Alford plea to the Court. Do you understand
7 that?

8 MR. ODOM: Yes, sir.

9 THE COURT: Now, have any other promises been made to
10 you to get you to plead guilty other than burglary second
11 violent, which is a serious and a violent offense. You
12 already have convictions of that type on your record,
13 correct?

14 MR. ODOM: Yes, sir.

15 THE COURT: So you understand you have got to waive
16 any defenses, any rights to confront those accusing you of
17 this crime in order to enter this plea?

18 MR. ODOM: Yes, sir.

19 THE COURT: And you are giving up those rights to
20 defend yourself at trial freely and voluntarily?

21 MR. ODOM: Yes, sir. I don't want to take the
22 chance.

23 THE COURT: Nobody is making you take, part of
24 avoiding the potential right without parole, one
25 motivating factor. But you realize that you have got to

1 give up an opportunity to challenge or confront those
2 accusing you of this crime in order to enter this plea.

3 MR. ODOM: Yes, sir. Not just because of the life
4 sentence. I don't want to get the time, period.

5 THE COURT: All right, fair enough. All right,
6 listen carefully to Mr. Scott, Mr. Scott is going to tell
7 me the facts the State would present if you went to trial.

8 MR. SCOTT: Your Honor, October 7th of 2011 about
9 4:57 a.m. the Sheriffs Department responded to Around the
10 Clock BP, that is on Highway 34. The owner was there when
11 officers got there and he complained that his gas station
12 had been broken into. The officers found a side window
13 was propped open and that was believed to be the subject's
14 point of entry. There had been a case taken out of the
15 register as well as a cabinet under the register. They
16 had primarily taken cigarettes. That is where all the
17 restitution figures come from, just cartons and cartons of
18 cigarettes which was Mr. Odom's MO. I think he would go
19 around to various gas stations, clean them out of their
20 cigarettes and then sell them on the street or some other
21 entity. They did review the camera footage and it showed
22 two black males, their faces were covered so they were
23 unable to make an ID at that time. About a month later
24 over in Clinton the same kind of thing happened at a BP
25 just right off of 385 up there. And the same thing. They

1 had seen a car nearby and ran the tag on it thinking it
2 was just an abandoned automobile on the interstate. It
3 came back as Maurice Odom and shortly thereafter the
4 break-in had occurred at the BP. And, again, they had
5 camera footage. And again, two black males had masks on
6 but had kind of put two and two together. After
7 bloodhounds tracked a scent that went from the gas station
8 to the car they had seen prior, they put two and two
9 together and maybe Maurice Odom was someone to speak with.
10 He is from Barnwell so officers with, Tyrone with the City
11 of Clinton and Robert at the Sheriffs Department here went
12 down to Barnwell with arrest warrants for Mr. Odom. The
13 second male was a younger man named Christopher Nix,
14 (phonetic), and they spoke with him and he kind of
15 admitted that that was us on the camera, here is how we
16 did it and implicated Mr. Odom in it. Warren and I tried
17 Mr. Odom in Laurens last year at some point, that is where
18 he got the 15 years. That charge came after the Newberry
19 charge, that incident in Clinton is the one that broke the
20 Newberry charge and kind of ID'd him. I tried to give him
21 concurrent time, he was not amenable at that point. So
22 today he has agreed to tender a straight-up plea at this
23 point.

24 THE COURT: All right, Mr. Odom and Mr. Brown, are
25 those the facts outlined by the State, the facts that

1 y'all were presented by the State that they would present
2 at trial if it went to a jury trial?

3 MR. ODOM: Yes, sir.

4 THE COURT: Those are the facts that you wish not to
5 challenge at trial to avoid and enter this plea on Alford,
6 that you have a belief that if those facts were believed
7 would stand a conviction?

8 MR. BROWN: Yes, sir.

9 THE COURT: All right. Mr. Odom, have any other
10 promises been made to you to get you to plead guilty other
11 than this Alford plea, straight-up plea, 0 to 15,
12 avoidance of life without parole and the dismissal of a
13 related grand larceny?

14 MR. ODOM: No, sir.

15 THE COURT: Do you understand that this conviction,
16 under Alford, will still carry with it an indication that
17 you will be classified as a violent offender at the
18 Department of Corrections, which I believe you already are
19 and it will be a serious conviction on your record giving
20 you at least two, one in Laurens and one here in Newberry.
21 That would put you in a position of any future serious
22 offense charge gets you, would place the State in the
23 position to seek another life without parole sentence upon
24 you. Do you understand that?

25 MR. ODOM: Yes, sir. That is what I wanted to avoid.

1 I understand.

2 THE COURT: So this will be a serious conviction on
3 your record.

4 MR. ODOM: Yes, sir.

5 THE COURT: And the fact of a violent offender under
6 both pleas.

7 MR. ODOM: Yes, sir.

8 THE COURT: Basically nothing changes other than you
9 have got a second additional serious conviction or second
10 small strike.

11 MR. ODOM: The only thing it changes is at the
12 Department of Corrections, it depends on where I will be
13 housed at when I get there.

14 THE COURT: Okay, that is where you are classified as
15 a violent offender.

16 MR. ODOM: Yes.

17 THE COURT: And you have got to deal with the
18 Department of Corrections housing requirements for violent
19 offender. That is between you and the Department of
20 Corrections.

21 MR. ODOM: Yes, sir.

22 THE COURT: Have you had enough time with Mr. Brown,
23 discuss the case and your defenses and potential going to
24 a trial?

25 MR. ODOM: Not really, sir. But I just wanted to

1 plead and get it over with.

2 THE COURT: What is it that you need to talk to your
3 attorney about. He is here today.

4 MR. ODOM: No, I am ready to get this over with, just
5 want to get it over with.

6 THE COURT: I am going to ask you again, do you need
7 any additional time to talk to your attorney?

8 MR. ODOM: No, sir.

9 THE COURT: And after talking to him has he discussed
10 with you the potential defenses and how a jury trial will
11 work. He has told you that?

12 MR. ODOM: Yes, sir.

13 THE COURT: Are you satisfied with the advice he has
14 given to you?

15 MR. ODOM: Yes, sir. I wish it had been resolved
16 differently. Not the facts to the jury.

17 THE COURT: You are not challenging the facts. You
18 are agreeing with this plea. I want to avoid a trial
19 because the facts the State, I believe, can prove to
20 convict me even though I dispute that I am guilty of that
21 crime. I don't want a trial because I am afraid of what a
22 trial conviction would be.

23 MR. ODOM: Yes, sir.

24 THE COURT: Life without parole.

25 MR. ODOM: Yes, sir.

1 THE COURT: So aside from your challenges to the
2 facts outlined by the State, you understand the State made
3 no waiver or any type of mediation as to what they think
4 they can prove at trial. They told you that, we can prove
5 these five things or these ten things, we believe it would
6 sustain a conviction for burglary second?

7 MR. ODOM: Yes, sir.

8 THE COURT: You want to avoid that?

9 MR. ODOM: Yes, sir.

10 THE COURT: And that is why you are in here pleading
11 under Alford, so you won't have to admit you did what they
12 said?

13 MR. ODOM: Yes, sir.

14 THE COURT: And your benefit is a 0 to 15 year
15 sentence rather than a life without parole sentence. Is
16 that correct?

17 MR. ODOM: Yes, sir.

18 THE COURT: And so has Mr. Brown failed to explain
19 that fully to you. It seems you understand it.

20 MR. ODOM: Yes, sir.

21 THE COURT: Do you need any further time with him
22 right now before we go further?

23 MR. ODOM: No, sir.

24 THE COURT: Now, are you entering this plea under
25 Alford to burglary second violent freely and voluntarily?

1 MR. ODOM: Yes, sir.

2 THE COURT: Anybody make you do it?

3 MR. ODOM: No, sir.

4 THE COURT: Any complaints with the Newberry County
5 Sheriffs Office in their investigation of this burglary
6 second degree charge?

7 MR. ODOM: No, sir. I think most, because of my
8 record and because had been involved, the guy was younger
9 than I was and they thinking I was the aggressor because
10 of my age, I assume. But I really wasn't the aggressor.

11 THE COURT: You don't have any complaints against
12 them other than you believe they, because you were with a
13 younger guy and your prior record.

14 MR. ODOM: Yes, sir. I wasn't the aggressor.

15 THE COURT: And are you comfortable and freely and
16 voluntarily entering this plea under North Carolina versus
17 Alford, all things considered, 0 to 15 years, time running
18 along with your other plea. No recommendations by the
19 State other than the 0 to 15 years?

20 MR. ODOM: Yes, sir.

21 THE COURT: Regarding indictment 12-GS-36-indictment
22 156. I find that Maurice Anthony Odom has made a free,
23 knowing and intelligent plea under the terms of North
24 Carolina versus Alford. He has entered this plea with the
25 benefit of counsel who has explained to him his rights,

1 that he is receiving a benefit of avoidance of potential
2 life without parole sentence as to this grand larceny
3 charge. The State has provided to the Court facts to
4 support this Alford plea and the Court will accept it
5 under those terms. Mr. Odom, I want to hear from you and
6 Mr. Brown. And I also advise you you have a limited
7 number of days from today's date in which to file a notice
8 of intent to appeal if you wish to appeal this guilty
9 plea. Okay?

10 MR. ODOM: Yes, sir.

11 THE COURT: Mr. Brown, let me hear from you.

12 MR. BROWN: May it please the Court, Your Honor.

13 Before you is Mr. Maurice Odom. He is 39 years old, he is
14 a resident of Barnwell County, he is currently in SCDC,
15 Your Honor. In talking to Mr. Odom, this is an incident,
16 I think, at the time that these incidents happened he was
17 at a low point in his life. He did some things that he
18 fully regrets and really wants to move on so he can be
19 with his family and mother. His mother is seriously ill.
20 He is married and has some children that he wants to spend
21 some time with and to be an active part of their lives.
22 And, Your Honor, to avoid a life without parole sentence,
23 again he is pleading guilty today in furtherance of
24 admitting his guilt so that he can move on and get back
25 with his family as soon as possible.

1 THE COURT: Mr. Odom, you want to say anything?

2 MR. ODOM: Yes, sir. I apologize again. Some things
3 that I made bad decisions on and I ask you, I took a jury
4 trial several months ago. And they did offer me a plea of
5 10 years and I didn't take it. At first I can beat the
6 charge but at the same time, Ms. Elizabeth Wiygul, she
7 didn't really, that was one charge.

8 THE COURT: There was an issue with your lawyer,
9 there was something that went on with the jury that caused
10 her not to be able to go forward with that plea. I
11 remember because I appointed Mr. Brown sometime later that
12 week because it was an issue with the jury trial. That is
13 unrelated to today's plea.

14 MR. ODOM: I want it to be known, he told me about
15 taking the plea offer here, we might have did, I got
16 convicted at the time. But if I would have known, if I
17 was in my right state of mind, if I had of known that I
18 could have plead and got the ten years and got it on out
19 of the way at one time that is what I would have done.
20 This might not have to do this right here. And go through
21 the appeals issues. And I asked the Court to please have
22 mercy on me, please give me another chance.

23 THE COURT: Mr. Scott, anything.

24 MR. SCOTT: I don't think so, Judge.

25 THE COURT: When does the days start, Mr. Brown.

1 MR. BROWN: I believe his convicted date was, I want
2 to say July 24th of 2014. I would ask for a concurrent
3 sentence, Your Honor.

4 MR. SCOTT: Judge, I don't have his booking sheet.

5 THE COURT: Does that sound right, July 24th, 2014.

6 MR. BROWN: Yes, that is an estimation, Your Honor.

7 THE COURT: I have already accepted the plea. The
8 sentence is 15 years concurrent. Credit for the time he
9 has served. Okay.

10 MR. SCOTT: It is June 16th, 2014.

11 THE COURT: Okay.

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

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CERTIFICATE OF REPORTER

State of South Carolina)
)
County of Newberry)

I, Joy E. Holston, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the County of Newberry, South Carolina on the 5th day of January, 2015.

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

June 4, 2016

Joy E. Holston

Joy E. Holston, Court Reporter

My Commission expires: March 13, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
 Court of General Sessions
EUGENE C. Griffith, Circuit Court Judge

Case Nos. 12-GS-36-0156

RECEIVED

JAN 15 2015

State of South Carolina

SC Court of Appeals

Respondent,

^{v.}
Maurice Anthony Odom,

Appellant.

NOTICE OF APPEAL

Maurice Anthony Odom Appeals his conviction under Alfred plea and sentence in the case. THE sentence was imposed by the Honorable Eugene C. Griffith ^{Jr.} on January 5th 2015

January 12th, 2015

Maurice Anthony Odom #19967
 B.R.C. I. Murray #259A
 4460 Broad River Rd.
 Columbia, S.C. 29210

Other Counsel of Record:

C. Dale Scott

Assistant Solicitor for Newberry-
 -County

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM NEWBERRY COUNTY
Court of General Sessions
EUGENE C. GRIFFITH JR., Circuit Court Judge

Case Nos: 12-GS-36-0156

RECEIVED

JAN 15 2015

State of South Carolina

Respondent, **SC Court of Appeals**

v.

Maurice Anthony Odom

Appellant.

PROOF OF SERVICE

I certify that I have served the Motion of Notice of Appeal on assistant solicitor C. Dale Scott by sending through mail on January 12th 2015 to the Newberry County Clerk of Court at January 5th 2015

January 12th 2015

Maurice A. Odom
Maurice A. Odom #199677
J.R.C.I. Murray #259A
4460 Broad River Rd.
Columbia, S.C. 29210

To whom this may concern,
I'm not sure if Mr. Russell O.
Brown filed an appeal for me
on this case but I rather be
safe than sorry and go ahead
and file it because I only
have 10 days "working days"
so thank you very much and
may God Bless You.

Respectfully

Submitted

[Handwritten signature]

RECEIVED

JAN 15 2015

SC Court of Appeals

THE Honorable Jenny Abbot Kitchings
 clerk, South Carolina of Appeals

1-12-2015

P.O. Box 11629
 Columbia, S.C. 29211

Re: state v. Maurice Anthony Odom

RECEIVED

Indictment Nos: 12-GS-36-0156 JAN 15 2015

SC Court of Appeals

Dear Ms. Kitchings:

Enclosed for filing is the original of the notice of Appeal in the above case.

The Court Reporter in this trial or sentence date 1-5-2015 was - Joy Holston

Please Feel Free to contact me if you require any further information.

Respectfully Submitted,
 Maurice Anthony Odom
 & ~~Yane A. Odom~~

cc: Assistant Solicitor / C. Dale Scott

Robert M. Dudek, Chief Appellate Defender

Maurice Anthony Odom

Maurice Anthony Odom # 199677

B.R.C.I. Murray # 2597A

4460 Broad River Rd.

Columbia, S.C. 29210

22

South Carolina Court of Appeals
Jenny Abbott Kitchings, Clerk
P.O. Box 11629
Columbia, S.C. 29211

1-29-15

Maurice Anthony Odom #199677
B.R.C.I. Murray #259A
4460 Broad River Rd.
Columbia, S.C. 29210

RECEIVED

JAN 30 2015

SC Court of Appeals

The State, Respondent,

v.

Maurice Anthony Odom, Appellant.

Re: The State v. Maurice A. Odom
Appellate Case No. 2015-000118

Dear Mrs. Jenny Abbott Kitchings,

I was basically threatening by assistant solicitor Christopher Dale Scott, by when he told me that he didn't like me, he didn't like what I stand for that I manipulated young people to do things for me, right in front of my attorney Russell & Brown and the other assistant solicitor to all verify it and also said that he go make sure I get a life sentence if I did plead guilty when I didn't want to plead guilty to the charge. I strictly specifically to my attorney Russell Brown this. He even told me I had a fighting chance but my trial was going to start

I told him I'm not pleading to anything
 and I wasn't going to trial because we never
 even had a discussion in this case or about
 the case or even talked about a defense or
 had he evaluated or investigated the case
 nor have I seen the videos on the case
 that I was accused of, so why would I go
 to trial and I requested to speak to the
 judge and let him determine it but he
 said they not go let that happen. All of
 this was personal from the solicitor instead
 of professional and I'm the victim of him
 and a crime I did not commit and
 there's no evidence that says I committed
 any of these crimes but someone who says
 he did it and I did it with him
 lying through his teeth. They nastily force
 me to plead to nolle contendere by saying
 he go make sure I get a life sentence
 without parole. What man in there right mind
 would take that chance, especially when I have
 17 kids, 1 grandson, and another grand on the
 way and a sick mother who has heart problems.
 When he threatened me and said he go make sure
 I get that life that's all I can think about and
 what man wants that, knowing sometimes the justice system
 isn't right and justice is not prevail. I pray the court
 serves and grants me relief and may God Bless You
 Respectfully Submitted/

The South Carolina Court of Appeals

The State, Respondent,

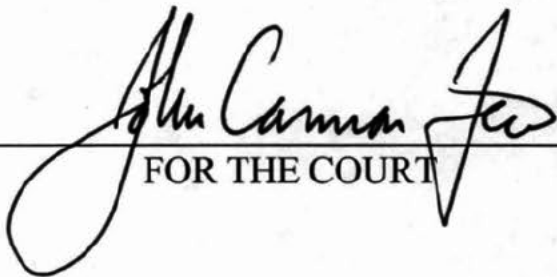
v.

Maurice Anthony Odom, Appellant.

Appellate Case No. 2015-000118

ORDER

Appellant has failed to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules (SCACR). Accordingly, this matter is dismissed, and the remittitur will be sent as required by Rule 221(b), SCACR.


FOR THE COURT

Columbia, South Carolina

cc:
Russell O. Brown, Esquire
Robert Michael Dudek, Esquire
Christopher Dale Scott, Esquire
Salley W. Elliott, Esquire
Alan McCrory Wilson, Esquire

FILED
March 3, 2015



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
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March 20, 2015

The Honorable Jackie S. Bowers
PO Drawer 10
Newberry SC 29108-0010

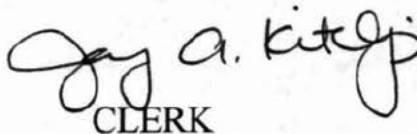
REMITTITUR

Re: The State v. Maurice A. Odom
Lower Court Case No. 2012GS3600156
Appellate Case No. 2015-000118

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,


CLERK

Enclosure

cc: Russell O. Brown, Esquire
Robert Michael Dudek, Esquire
Christopher Dale Scott, Esquire
Salley W. Elliott, Esquire
Alan McCrory Wilson, Esquire

FORM 5

STATE OF SOUTH CAROLINA)

County of NEWBERRY)

MAURICE ANTHONY ODOM)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2016-CP-36-00057

FILED
NEWBERRY COUNTY
2016 JAN 26 PM 04
JACKIE S. BOWERS
CLERK OF COURT

APPLICATION FOR
POST-CONVICTION RELIEF

I, Jackie S. Bowers, Clerk of Court, Newberry, South Carolina, do hereby certify that this is a true copy of the original filed in this case.
JAN 26 2016 Jackie S. Bowers
Clerk of Court

INSTRUCTIONS B 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 BROAD RIVER CORR INST
2. Name and location of Court which imposed sentence NEWBERRY GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) CHRISTOPHER MIXON,
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 12-GS-36-0156

- (b) _____
- (c) _____

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

- (a) Jan. 5, 15
- (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?

YES

8. If you answered Ayes@ to (7), list:

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

- i. South Carolina Court of Appeals
- ii. _____
- iii. _____

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

- i. DISMISSED
- ii. _____
- iii. _____

(c) the date of each such result:

- i. Feb. 2015
- 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 Ano@ to (7), state your reasons for not so appealing:

- (a) _____

- (b) _____
- (c) _____

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

- (a) INEFFECTIVE COUNSEL / UNLAWFUL DETAINMENT
- (b) malicious prosecution
- (c) violation of my 8th Amendment

11. State concisely and in the same order the facts which support each of the grounds set out in (10): Also once at the prison for like 40 minutes telling who he is,

- (a) I Didn't meet Mr. Brown until the day of trial
- (b) They had me in the jail with no bond no attorney for 3 years, and day before trial had me on a floor in jail with no light forcing me to take in
- (c) I was denied my preliminary hearing for not meeting the fine required when the officers misplaced my preliminary paper and admitted to it

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

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

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

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

iv. _____

(c) the disposition thereof:

i. NA

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. NA

ii. _____

iii. _____

iv. _____

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

i. NA

ii. _____

iii. _____

iv. _____

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. _____

ii. _____

iii. _____

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

i. _____

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) NO / Mr. Russell Brown did the application himself also
- (b) I never even spoke to any one, no attorney for
- (c) an appeal or etc.... I didn't even know the case was
dismissed until almost a year later of Jan 2016.

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. Mr. Brown, 907 Calhoun, Columbia S.C 29201
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. plea
 - ii. _____
 - iii. _____

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

REVERSE AND REMAND

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of Newberry)

VERIFICATION

I, Marie Anthony Odum, 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.

[Signature]

SWORN to and subscribed before me this 25 day of January, 2016.

[Signature] (L.S.)
Notary Public

My Commission Expires: 6/10/2018

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

I, Maurice Anthony Odom, 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.

Maurice Anthony Odom
& Mary F. Odom
Applicant

SWORN or affirmed to and subscribed before me this

25 day of January, 2016

[Signature]
Notary Public

My Commission Expires: 6/10/2018

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	OF THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF NEWBERRY)	
)	2016-CP-36-0057
Maurice Odom,)	
S.C.D.C. No. 199677,)	
)	
Applicant,)	RETURN
)	
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed January 26, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Newberry County Clerk of Court. Applicant was indicted at the February 2012 term of the Newberry County Grand Jury for burglary (2012-GS-36-0156). Applicant was represented by Russell Brown, Esquire. On January 5, 2015, Applicant appeared before the Honorable Donald Hocker, Jr., and pled under North Carolina v. Alford. Judge Hocker sentenced Applicant to fifteen years imprisonment.

Applicant filed a notice of appeal. On March 3, 2015, the Court of Appeals issued an order dismissing the appeal for Applicant's failure to file a sufficient explanation pursuant to SCACR 203(d)(1)(B)(iv). The Remittitur was sent March 20, 2015.

II.

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

1. Ineffective Assistance of Counsel
2. Malicious prosecution
3. Violation of 8th Amendment

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCP(a).

Attached herewith and incorporated herein are the Newberry County Clerk of Court records regarding the subject convictions, 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.

III.

Respondent submits plea counsel rendered effective assistance of counsel. In a Post-Conviction Relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, Applicant must prove that counsel's performance was deficient.

Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

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

[Signature block on following page]

IV.

Respondent denies each allegation that is not expressly admitted, qualified or explained.

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

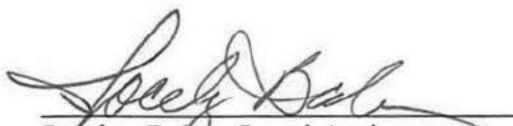
November 1, 2016

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY)	
)	
)	2016-CP-36-0057
)	
MAURICE ODOM, #199677,)	
)	
Applicant,)	
)	
vs)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	

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

Laura M. Saunders, Esquire
The Law Offices of Laura M. Saunders, LLC
PO Box 731
Laurens, SC 29360-0731

DATED this 1st day of November, 2016.


 Jocelyn Baker, Legal Assistant
 For Respondent

State of South Carolina)
) Court of Common Pleas
County of Newberry)

2016-CP-36-00057

Maurice A. Odom)
 Applicant)
 vs.) Transcript of Record
)

State of South Carolina) PCR
 Respondent)

January 26, 2021

Virtual Court, Newberry, South Carolina

B E F O R E:

Honorable J. Mark Hayes, Judge

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

Brianna, L. Schill, Assistant Attorney General
Attorney for the State

Laura M. Saunders, Esq.
Attorney for the Applicant

Joy E. Holston
Official Court Reporter

I N D E X O F W I T N E S S E S

(IC) - Denotes In Camera
(AW) - Denotes Applicant's Witness
(SW) - Denotes State's Witness

(AW) Russell Brown

Direct examination by Ms. Saunders:	7
Cross-examination by Ms. Schill:	18
Redirect examination by Ms. Saunders:	23

(AW) Maurice Odom

Direct examination by Ms. Saunders:	25
Cross-examination by Ms. Schill:	45

(SW) Dale Scott

Direct examination by Ms. Schill:	53
Cross-examination by Ms. Saunders:	56

(SW) Elizabeth Wiygul

Direct examination by Ms. Schill:	61
Cross-examination by Ms. Saunders:	63

Certificate of Reporter	65
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E X H I B I T S

Applicant's

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
1	Telephone Records-Cell Tower		X	14

State's

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
1	Office of Disciplinary Counsel		X	55

1 THE COURT: You are Maurice Anthony Odom?

2 MR. ODOM: Yes, sir.

3 THE COURT: It is a pleasure meeting you. I am sorry
4 it has to be like this where we are not together face to
5 face or in person. But during the time of COVID this is
6 the way Court Administration is allowing us to take care
7 of some matters. Now, just to let you know, we are making
8 a recording of everything that happens today, we do have a
9 Court Reporter who is with us. I tell you because when
10 you speak today, speak slowly so we all can understand you
11 and also speak loud enough so that we all can hear you.

12 MR. ODOM: Yes, sir.

13 THE COURT: And, Mr. Odom, if ever during this
14 process you can't hear me or one of the lawyers or anybody
15 else when they are speaking immediately let us know and we
16 will try to speak up as well. But, again, it is a
17 pleasure meeting you. If you would, sir, I am going to
18 turn this matter over to the Attorney General, she is
19 going to announce the case for us. Okay.

20 MR. ODOM: Yes, sir.

21 MS. SCHILL: Thank you, Your Honor, may it please the
22 Court. This is Maurice Anthony Odom versus the State of
23 South Carolina. Case number 2016-CP-36-0057. Mr. Odom
24 was indicted the February 2012 term of the Newberry County
25 Grand Jury for second degree burglary. He was represented

1 by Russell Brown, Esq.; and Christopher Dale Scott
2 prosecuted the case. On January 15th of, excuse me,
3 January 5th, 2015 he plead guilty under North Carolina v.
4 Alford for the second degree burglary charge and was
5 sentenced by the Honorable Donald Hocker to 15 years in
6 prison. And a related grand larceny charge was dismissed
7 as a result of the plea. Mr. Odom filed a direct appeal
8 on March 3rd, 2015. The Appeal's issued an order
9 dismissing the appeal for Applicant's failure to file a
10 sufficient explanation pursuant to Rule 203(d)(1)(b)(4) of
11 the South Carolina Code of Court rules. And the
12 remittitur was sent on March 20th of 2015. On January
13 26th, 2016 Mr. Odom filed his PCR application alleging the
14 following grounds. One, ineffective assistance of Counsel
15 of what Respondent interprets as a failure to prepare; and
16 two, prosecutorial misconduct; and three, a violation of
17 the Eighth Amendment. And Mr. Odom is present today
18 virtually and represented by Ms. Laura Saunders, Esquire.

19 THE COURT: Thank you, ma'am. Good morning, Ms.
20 Saunders.

21 MS. SAUNDERS: Good morning, Judge Hayes, how are
22 you?

23 THE COURT: Well, thank you.

24 MS. SAUNDERS: It's good to see you. So I do
25 represent Mr. Odom on the Newberry charges only. We

1 flip-flopped this to allow Carson Henderson time to
2 (inaudible), with the Laurens case that was tried. I
3 would like to point out, Ms. Schill, this is a very
4 complicated situation as Mr. Odom has convictions in
5 several different counties. He was sentenced actually by
6 Judge Griffith to 15 years on January 5th, 2015 for the
7 Newberry case. I think she said Hocker but I think he was
8 sentenced by Hocker at a later date. But Russell Brown
9 was his Defense attorney at the time. So I would like to
10 call Mr. Brown and then my client, Mr. Odom. I don't know
11 if you want any more background from me, Your Honor,
12 before we get started or I can call my first witness.

13 THE COURT: Whichever you prefer. So you want to
14 call your first witness?

15 MS. SAUNDERS: I will be happy to. I call Russell
16 Brown to the stand, Your Honor.

17 THE COURT: Mr. Brown.

18 MR. BROWN: Yes, sir.

19 THE COURT: If you would, sir, I have to administer
20 an oath to you. Please raise your right hand.

21 Russell Brown, being
22 first duly sworn, testified as follows:

23 THE COURT: I am going to turn this over to Ms.
24 Saunders. Mr. Brown, if ever during this process you
25 can't hear Ms. Saunders or I or the Attorney General just

1 immediately let us know and we will speak up. Okay.

2 MR. BROWN: Yes, sir.

3 MS. SAUNDERS: Thank you, Your Honor, may it please
4 the Court.

5 DIRECT EXAMINATION

6 By Ms. Saunders:

7 Q Mr. Brown, good morning, I am Laura Saunders. As you
8 know I represent Mr. Odom. It has been a long time coming
9 to get to this point. You and I talked a long time ago
10 back in 2018. And here we are finally. But do you
11 recognize Mr. Odom on your screen there?

12 A Yes.

13 Q Okay. So I guess, is it safe to say that you did
14 represent him or you recall representing him in the past?

15 A Yes.

16 Q Were you appointed or retained to represent him?

17 A I was appointed to represent Mr. Odom on June 27,
18 2014.

19 Q And were you a contract attorney at that time or were
20 you, how were you appointed. Was it like a 608 contract
21 at that time or was that before that time started?

22 A Before that time.

23 Q All right. So did you regularly take clients in
24 Newberry County or was this just kind of a random
25 appointment?

1 A Regularly.

2 Q Okay. So do you have, in your notes from your file,
3 when you first met Mr. Odom?

4 A Yes. Yes. On, I was appointed on June 27, 2014. On
5 July 1st I filed a discovery motion with the Clerk of
6 Court. The motion was served on the Solicitor, well, it
7 was filed on, mailed to the Clerk of Court on 7/1/2014.
8 Filed by the Clerk of Court on 7/3/2014. Served on the
9 Solicitor on 7/8/2014. I faxed a letter over to SCDC so I
10 could visit with Mr. Odom. That visit took place on
11 7/14/2014. Then there were subsequent visits thereafter
12 on 8/1/2014; 8/15/2014; bear with me here; 9/29/2014; I
13 think I missed a date, and 8/29/2014.

14 Q So do you have any knowledge as to why he had been
15 sitting in the jail from around 2011 until you were
16 appointed. Do you know any back story on that, just for
17 the Court's information?

18 A No. I just got the order of appointment, I believe
19 Ms. Wiygul was representing him prior to and then I got
20 the appointment order, like I said, on June 27th.

21 Q So moving on with regard to Newberry, I think he was
22 in on a third burglary charge as well as a grand larceny.
23 Can you inform the Court and everybody involved in the
24 hearing what your negotiations were and with whom as it
25 relates to Newberry County on working the case out?

1 A The primary prosecutor was Dale Scott, I think he was
2 the Deputy Solicitor at that time and Taylor, they worked
3 together. And that is primarily who I dealt with. I
4 can't remember Taylor's last name, it is slipping right
5 now but primarily Dale. And Dale and I did the plea for
6 Mr. Odom.

7 Q Okay. So when did you start discussing with Dale the
8 possibility of working the case out. Were you aware of
9 the Laurens conviction at the time and the fact that there
10 was an LWOP potential with this case. If you can just
11 kind of describe that.

12 A Okay. Bear with me here. In talking to Deputy
13 Solicitor Scott, I knew that Mr. Odom had some prior
14 charges, convictions in other counties. And, you know, my
15 primary concern was Newberry but I believe that, I believe
16 the other charge was Laurens, in the same Circuit. And so
17 they felt, the State felt they had a pretty good case.
18 And on 9/5/2015 they filed a notice of intent to seek life
19 without parole. And that is when I, I hand delivered that
20 notice to Mr. Odom. I went to SCDC, that was one of those
21 visits. And so that kind of, not a whole lot of -- well,
22 that kind of opened some things up for Mr. Odom in the
23 sense that we knew the seriousness of the State's
24 position. And that kind of, you know, it opened Mr.
25 Odom's eyes up, I think, a little bit, again, how serious

1 the State was.

2 Q I just want to make one clarification. You said
3 9/5/15; I think it was 9/5/14, right, that they filed the
4 LWOP notice on him for the Newberry case.

5 A Okay, yes, I am -- I misspoke on the date, I am
6 sorry.

7 Q No worries, I just want to make sure we are all
8 staying on track. Okay, so at that point he had been
9 noticed for a life without parole for Newberry based off
10 of the Laurens and other previous convictions. So and,
11 did you, how did you approach Dale Scott about negotiating
12 the LWOP notice off the table?

13 A Well, bear with me and let me look at my notes again.
14 I am sorry. I received an email from the State basically
15 stating that, I apologize, I am trying to find this email
16 of Newberry County. Okay. Taylor Daniels was the other
17 Assistant Solicitor. On September 14th, September 18th,
18 2014 I received the email, that is when they sent the
19 notice about life without parole. The offer was burglary
20 second, violent; no LWOP; concurrent time with his current
21 SCDC sentence. And he is serving for a charge out of
22 Laurens County. So that was their offer and that is also
23 the offer I took to Mr. Odom.

24 Q Okay. So did Mr. Odom, when did he initially deny
25 that offer and want to proceed to trial or did he take it

1 immediately or did you just have to kind of leave it on
2 the table and come back to him later?

3 A If I remember correctly, I went to SCDC and spoke
4 with Mr. Odom. Again, I think that is when he saw the
5 seriousness of the State's position with the life without
6 parole. And he accepted that offer. Originally there was
7 a, also trial notice date. I think the trial notice was
8 going to be, they wanted to have it resolved by October
9 1st. I believe his trial date would have been October
10 27th, 2014. So received both of those notifications, the
11 LWOP and the notice of trial. And that is what kind of
12 spurred Mr. Odom to say, look, I need to accept this deal.

13 Q So moving on, at a later date he had or he had some
14 pending charges out of Edgefield too, which ultimately
15 resulted in an LWOP sentence. Did you have any
16 conversations or communications electronically with
17 anybody out of Edgefield regarding dismissing any of those
18 charges in exchange for a plea in Newberry?

19 A I don't recall that. I just covered Newberry, of
20 course Laurens is in the same Circuit but I don't recall
21 any emails or conversations with any Assistant Solicitor
22 in that particular County.

23 Q Okay. Do you recall that Edgefield was pending, did
24 you even know about that at that point?

25 A I can't recall, I can't recall.

1 Q So Mr. Odom will tell us in a little bit that there
2 was a plea offer of 10 years on the table at some point
3 that related to this Newberry County case. Was there ever
4 a plea offer of 10 years concurrent with any other County?

5 A I am sorry, my video went off. I am sorry.

6 Q I can hear you.

7 A No, I believe in, in reading the transcript I believe
8 that applied, I believe that that was an offer that they
9 presented to Mr. Odom when he was preparing for trial or
10 getting ready for the trial in Laurens County. That had
11 nothing to do with the charges in Newberry.

12 Q And when you refer to the transcript, you are
13 referring to page eight of the transcript where, I think
14 Mr. Scott, lines 18 through 23; Mr. Scott in his
15 recitation of the facts noted that there was a concurrent
16 time offered and there was an --

17 A Which page?

18 Q Page eight.

19 A You said line 18, yeah. That was dealing with
20 Laurens. And --

21 Q -- right, so the concurrent offer -- excuse me, go
22 ahead.

23 A When he was speaking to the Judge, they were
24 referring to, I think, a prior offer that they had set for
25 for Mr. Odom.

1 Q Do you have any knowledge of what that offer was?

2 A No, other than what they, well, we had spoke about
3 it, Mr. Scott and I. But that was Laurens County, that
4 was, you know, handled over there prior, during or I guess
5 during his trial, right before his trial. So didn't have
6 any impact on Newberry as far as I was concerned, the
7 Newberry case.

8 Q Okay. So did Mr. Odom ever talk to you about a 10
9 year offer that you remember?

10 A Not from Newberry, it related everything back to
11 Laurens, when he was at trial.

12 Q And so you advised him to take the plea in Newberry
13 for 15 years concurrent with Laurens under North Carolina
14 versus Alford, correct?

15 A Yes, other then the LWOP, yes.

16 Q Okay. And, yes, with the exchange of taking LWOP off
17 the table. All right. Do you ever, as part of the
18 practice, go look at the Clerk's file, your client's file
19 with the Clerk's office?

20 A It depends, it depends.

21 Q All right. So there is --

22 A -- I would have -- for Mr. Odom's file.

23 Q Ms. Schill and I have consented to the admission of
24 this exhibit and this is the only exhibit for today's
25 hearing on my end.

1 MS. SAUNDERS: I would like to introduce it as
2 Petitioner's exhibit number 1, Your Honor, by consent. It
3 is an order for telephone records and cell tower locations
4 with regard to Mr. Odom. I have emailed it to you this
5 morning.

6 THE COURT: I have a copy of that. And, Madam Court
7 Reporter, it is an order, it is a document titled order
8 for telephone records and cell tower locations in the
9 matter of the State versus Maurice Anthony Odom; signed by
10 the Honorable Eugene C. Griffith, Jr.; Eighth Judicial
11 Circuit in Newberry, South Carolina dated November 17th,
12 2011.

13 COURT REPORTER: Okay, Judge, I don't know if y'all
14 want me to mark that, y'all can email it to me and I can
15 mark it and send it back to the Clerk or however y'all
16 want to do it.

17 MS. SAUNDERS: I can email it right now.

18 COURT REPORTER: Okay and I will mark that and get it
19 back to the Clerk as an exhibit in this case.

20 MS. SAUNDERS: I just sent it to you, thank you.

21 (Whereupon, Petitioner's Exhibit 1 was admitted into
22 evidence.)

23 MS. SAUNDERS: So, may I proceed, Judge?

24 THE COURT: Yes, ma'am.

25 MS. SAUNDERS: Thank you.

1 Q So, Mr. Brown, I just want to know, were you aware of
2 this order, I don't know if you have seen it but it is an
3 order that was presented by Lieutenant Robert Dennis to
4 Judge Griffith to request telephone records and cell tower
5 locations?

6 A I have seen a copy of it. I didn't see it at that
7 time. I just saw it, I think, yesterday.

8 Q So were you aware of it during the pendency of Mr.
9 Odom's Newberry cases or during your representation of
10 him?

11 A No.

12 Q Okay. So you weren't aware of the existence of the
13 order or any records produced as a result of that order
14 from the cell provider?

15 A Correct.

16 Q Okay. So had there been some of those records would
17 you have, I mean could it have produced exculpatory
18 evidence for Mr. Odom?

19 A That is possible. But also we had a Codefendant and
20 if I remember correctly some photos, not the best photos.
21 But the primary thing that I recall correctly, Mr. Odom's
22 Codefendant was willing to come forth and testify.

23 Q And testify against Mr. Odom?

24 A Mr. Odom, yes.

25 Q -- (inaudible) an order to proceed to trial?

1 A Yes.

2 Q So, all right. And I wasn't aware of that order, we
3 received it, Mr. Henderson received it from Mr. Odom. And
4 I then was able to obtain it. So it wasn't a part of the
5 Clerk's file necessarily but it was not produced as a
6 result of your discovery request, is that correct?

7 A That is correct.

8 Q All right. So a couple of follow-up questions. Did
9 you have, did you ever have any discussions with Mr.
10 Charles Verner from Newberry?

11 A About this particular case. I don't recall, I mean
12 Mr. Verner and we speak, we are pretty good friends. I
13 don't recall anything about Mr. Odom, per se.

14 Q So there wasn't ever a time where Mr. Verner was
15 representing Mr. Odom?

16 A I don't recall. I know he is a Chief Public Defender
17 with the Newberry, well, I think the whole Circuit. But
18 that case was assigned to me.

19 Q Okay. All right, so it is your testimony that you
20 advised Mr. Odom to plead guilty to the 15 years
21 concurrent with Laurens in order to keep the LWOP off the
22 table, is that correct?

23 A Yes, ma'am.

24 Q All right. And so your testimony reveals that you
25 met with him one, two, three, four, at least five times in

1 your representation of him between July 2014 and his plea
2 in January of 2015?

3 A Yes.

4 Q All right. And there were no 10 year concurrent or
5 10 year offers out there to resolve the Newberry case?

6 A No, ma'am. But I will say, one good thing about
7 Newberry, they do write, I mean it is like in Federal
8 Court. They write it out, either email it to you or they
9 got a standard form, so it is written. So a lot of times
10 what I do is I provide my client with the actual form or
11 the actual letter, see the actual email that the Assistant
12 Solicitor sent to me or the actual form, you know, I am
13 not making this up, this is the State's offer. And I also
14 provided it to Mr. Odom with a copy of the statute. That
15 is another thing I do. In my, I actually print the
16 statutes out so they can see the statutes, we can go over
17 the elements and such.

18 Q All right.

19 MS. SAUNDERS: I don't believe I have any further
20 questions, Your Honor. I will turn it over to Ms. Schill.
21 Thank you, Mr. Brown.

22 THE COURT: Thank you, Ma'am. Yes ma'am, Ms. Schill.

23 MS. SCHILL: Thank you, Your Honor, may it please the
24 Court.

25 CROSS-EXAMINATION

1 By Ms. Schill:

2 Q Mr. Brown, how long have you been practicing law?

3 A This is going on what, 15 years. Well, 16 years.

4 Q Okay. How much of that has been criminal law?

5 A Percentage, I would say about 85 percent, Federal and
6 State.

7 Q Okay. I know you had, named some dates during which
8 you met with your client, Mr. Odom. Were those
9 conversations over the phone or in person?

10 A In person because he was at SCDC.

11 Q Okay.

12 A I always like to see my clients so I, and try to get
13 there as soon as possible. So I sent an email or fax to
14 SCDC so they will have him ready when I get there.

15 Q Do you remember just sort of an estimation or the
16 length of those meetings, general?

17 A No less than an hour each time. Going over
18 discovery, at least an hour.

19 Q Okay. And did you discuss the possible sentences he
20 was facing during those meetings?

21 A Yes, ma'am. Again, with the statutes, the statute
22 has the penalty and we would go over that.

23 Q Did you discuss possible defenses and the likelihood
24 success of those defenses with Mr. Odom?

25 A Yes.

1 Q Okay. Did you discuss the elements of the offenses
2 that the State would have to prove?

3 A Yes, ma'am.

4 Q And I know you kind of mentioned some things here and
5 there but I was just wondering, can you just sort of
6 summarize the evidence that the State had against Mr.
7 Odom?

8 A There were still photos of the break-in. There was,
9 of course, his Codefendant was willing to testify against
10 Mr. Odom. And those are the main pieces of physical
11 evidence that they had. Also I think Mr. Odom,
12 activities, it was similar scheme and pattern of some
13 other break-in's in some other convenient stores. And I
14 believe, I think tracked Mr. Odom's vehicle with a K-9
15 Unit. And so, the still pictures and a very kind of
16 grainy video, recording rather.

17 Q Okay. Did you advise Mr. Odom of his constitutional
18 rights?

19 A Yes.

20 Q Okay. And did you inform him that if he were to
21 plead guilty, as he did, he would be waiving those rights?

22 A Yes.

23 Q Did you discuss the advantages and disadvantages of
24 going to trial versus pleading guilty?

25 A I did.

1 Q And did you review all of the discovery you received
2 with Mr. Odom?

3 A Yes.

4 Q Okay. And in your opinion, based on the evidence,
5 did the State have the ability to prove every element
6 beyond a reasonable doubt had he gone to trial?

7 A Yes.

8 Q Can you sort of just describe your investigation that
9 you performed in relation to Mr. Odom's case?

10 A Well, I think it is a thorough review of the
11 discovery. And you look at how law enforcement kind of
12 put the dots, you know, connected the dots. And he and I
13 went over that. Again, in my practice, I am going to go
14 over the discovery with the client. I take my laptop out
15 there, if it is recorded, if it is on a DVD or, I believe
16 the client needs to see the evidence. Again, this is not
17 something I am going to make up that the State says they
18 have. They need to see the evidence because actually it
19 is your case, it is your life that, you are the person who
20 is going to be penalized. So that is just standard
21 procedure for me.

22 Q Did Mr. Odom give you the names of any witnesses or
23 leads to investigate that you did not investigate?

24 A No, he didn't give me any information.

25 Q Okay. Was it ultimately Mr. Odom's decision to plead

1 guilty?

2 A Yes.

3 Q Did you coerce him in any way to plead guilty?

4 A No.

5 Q Did you tell him how he had to answer the Judge's
6 questions at the plea hearing?

7 A No. Well, I told him the questions that a Judge
8 would ask. But he has to answer the questions, I can't
9 answer them for him.

10 Q Okay. If he had wanted to go to trial, ultimately
11 would you have taken his case to trial?

12 A Yes.

13 Q Do you feel you had time preparing the case?

14 A What was the question?

15 Q Did you feel that you had enough time to prepare the
16 case?

17 A Yes.

18 MS. SCHILL: I beg the Court's indulgence, Your
19 Honor.

20 Q I know you talked a little bit about the plea offer.
21 So was it your understanding that the 10 year plea offer
22 was given prior to his Laurens charge, before his trial
23 and that he had turned that down?

24 A Yes, that would have been the Laurens County trial.

25 Q Okay. So he had, he was offered a plea, offered

1 prior to Laurens County trial and turned that down and
2 went to trial in Laurens County. Is that your
3 understanding?

4 A It was.

5 Q And he was found guilty at the Laurens trial, is that
6 correct?

7 A Yes.

8 Q And the trial date, is it your understanding that it
9 was in June of 2014, prior to when you were appointed?

10 A Yes, it was.

11 Q Okay. Generally do you communicate each and every
12 plea offer you receive for your clients?

13 A Yes, that is my standard practice. I am going to
14 either, in writing. Especially in Newberry County, like I
15 said, they do a good job at that.

16 Q Okay. Do you think it was in Mr. Odom's best
17 interest to plead guilty?

18 A Yes, based on the time he was facing, potentially
19 facing.

20 Q I believe you testified that you did file a Rule 5
21 Brady motion and that you went over all of the discovery
22 with the Applicant. Is that correct?

23 A Yes.

24 Q Were Mr. Odom's indictments true billed?

25 A Yes.

1 Q Okay.

2 MS. SCHILL: I believe those are all the questions I
3 have, Your Honor.

4 THE COURT: Any redirect limited to what she went
5 into, Ms. Saunders?

6 MS. SAUNDERS: Yes, Your Honor. Just one quick
7 follow-up or a couple of quick follow-ups.

8 REDIRECT EXAMINATION

9 By Ms. Saunders:

10 Q Mr. Brown, you were, Ms. Schill was asking you about
11 the 10 year offer and that that was previous to Newberry
12 and related to Laurens. Were you, did you know or did the
13 Laurens offer of 10 years that existed why back when, did
14 that ever include the Newberry charge?

15 A No, no.

16 Q It did not?

17 A No.

18 Q So there was never any information related to that 10
19 year offer that would have included Newberry?

20 A No.

21 Q In the mix?

22 A No.

23 MS. SAUNDERS: Okay, no further questions, Your
24 Honor. Thank you, Mr. Brown.

25 THE COURT: Thank you, Mr. Brown. Any reason why Mr.

1 Brown cannot be excused?

2 MS. SAUNDERS: No objection.

3 MS. SCHILL: Your Honor, I think he should be free to
4 go.

5 THE COURT: Okay.

6 MS. SCHILL: I was just going to say, as long as the
7 Applicant sort of stays within the confines of what was
8 discussed with Mr. Brown. If for reason, if something
9 else is brought up we might need to bring Mr. Brown back.

10 THE COURT: Okay. Well, I will release you, Mr.
11 Brown. You may be subject to be recalled. So we are
12 doing this remotely.

13 MR. BROWN: I will be available, Your Honor.

14 THE COURT: Thank you. We are going to take about a
15 five minute break. We will come right back and we will
16 let you call your next witness.

17 MS. SCHILL: Thank you.

18 MS. SAUNDERS: Thank you, Your Honor.

19 (Whereupon, a short break was taken.)

20 THE COURT: Okay. Your next witness is going to be
21 the Applicant?

22 MS. SAUNDERS: Yes, Your Honor, Mr. Maurice Odom.

23 THE COURT: Okay. Is everybody ready. Mr. Odom, I
24 need you to unmute yourself or get somebody to unmute you.
25 Is someone there to unmute you, Mr. Odom, on the computer?

1 All right. Thank you, Mr. Odom. Mr. Odom, I have got to
2 administer an oath to you so please raise your right hand.

3 Maurice Odom, being
4 first duly sworn, testified as follows:

5 THE COURT: Mr. Odom, please answer any questions
6 that your lawyer may have, please.

7 MS. SAUNDERS: Thank you, Your Honor, may it please
8 the Court.

9 DIRECT EXAMINATION

10 By Ms. Saunders:

11 Q Mr. Odom, I am glad we are finally here today, it has
12 been a long time coming in getting here on your PCR out of
13 Newberry and Laurens which is going to happen later today.
14 So I just have a couple of questions. I am using the
15 State's return, kind as of reference, because it contains
16 a lot of the documents that are important in your case.
17 So I am looking at the arrest warrant for the Newberry
18 charge and it looks like you were served an arrest warrant
19 for Newberry on or about November 22nd, 2011. That was 10
20 years, almost 10 years ago. Were you in jail and where
21 were you in jail, do you remember?

22 A Yes, they transferred me from Barnwell County jail to
23 Newberry County jail.

24 Q Okay. So you weren't in Laurens at the time?

25 A No, ma'am. I was in Barnwell County because that is

1 why I knew about it and they came and got me at Barnwell
2 County jail and Newberry County picked me up. And I
3 stayed in Newberry for about a year, maybe a year and I
4 got transferred from Newberry to Laurens County jail.

5 Q Okay. All right. So you went to Laurens eventually?

6 A Yes.

7 Q But there was a hold on you for Newberry or for
8 Laurens. I just don't understand why you went to Newberry
9 first and not to Laurens. Do you remember?

10 A Well, actually I had charges with Newberry County
11 jail and Laurens County jail. So they hold me there for
12 Newberry first. And I guess since, I think since I had
13 more charges in Laurens County, they transferred me to,
14 they wanted me to deal with the Laurens County charges
15 even though they was in the same Circuit.

16 Q Okay, all right, sounds good. So had you already
17 been tried, by the time you plead guilty in Newberry in
18 2015, you had already been tried and convicted in Laurens,
19 correct?

20 A That is right.

21 Q So you got 15 years out of Laurens?

22 A Yes, ma'am.

23 Q All right. Was the Laurens conviction considered a
24 second strike?

25 A Yes, ma'am.

1 Q All right. So then, I think going back to Mr.
2 Brown's testimony as you heard a few minutes ago. They
3 noticed you for life without parole in Newberry. Am I
4 correct?

5 A Yes, ma'am.

6 Q So then I think Mr. Brown's testimony revealed that
7 he was able, in discussions after received the LWOP
8 notice, notice of trial, then he was able to get that off
9 the table for you. Is that correct?

10 A Yes, I think, if I can look at --

11 Q -- you can elaborate on that. Tell me what you are
12 talking about.

13 A Well, when I took my jury trial first in Laurens
14 County, they offered me 10 years, they offered me 10 years
15 for dealing with the Laurens County charges and the
16 Newberry County charges. Okay. But however, my attorney
17 at the time, Ms. Elizabeth Wiygul, she said it was only
18 for one charge. So therefore, and I am like, I rejected
19 that deal. I rejected that deal of 10 years, non-violent
20 for the simple fact that I got my 13 charges stated. And
21 I say, well, if I am going to plea I am going to plea to
22 everything right now. I am going to take all my charges
23 together right now. And she said, well, that is not the
24 deal. They offered 10 years for one charge, only for one
25 charge. So that didn't make sense to me, I already been

1 sitting in the County jail for three and a half years. So
2 why am I going to plead guilty to one charge when I have
3 got 10, 11, 12 more charges in the same Circuit --

4 MS. SCHILL: Your Honor --

5 MS. SAUNDERS: Mr. Odom, hold on.

6 MS. SCHILL: Sorry to interrupt but I am not sure
7 that this is proper to get into with this case. I mean,
8 considering the allegations against Mr. Brown for this
9 case.

10 A Yes --

11 THE COURT: Mr. Odom. Yes ma'am, go ahead and
12 finish.

13 MS. SCHILL: Really, yes, that is just my objection,
14 Your Honor.

15 THE COURT: Ms. Saunders, you wish to --

16 MS. SAUNDERS: Thank you, Your Honor. I questioned
17 Mr. Brown about the 10 year offer. Obviously his answers
18 are a lot different than what Mr. Odom is going into. But
19 I do think it is relevant to this case, that you are able
20 to hear everything about this 10 year offer. That is all,
21 that has been the sticking point for my client from the
22 very beginning, that that was on the table at some time.
23 And I believe he should be able to elaborate about that.

24 MS. SCHILL: My understanding though is that he is
25 sort of alleging that Ms. Wiygul told him something

1 incorrect about the offer, is my understanding of what he
2 is saying. And that is my issue.

3 THE COURT: Okay. I am going to allow him to go
4 into, first of all, we don't have a jury so if there is
5 any confusion I think I can probably sort through it.
6 Also it goes to the issue of credibility. The State will
7 be allowed to cross-examine him. All right, you may
8 proceed, Ms. Saunders.

9 MS. SAUNDERS: Thank you, Your Honor.

10 Q Mr. Odom, if you will kind of pick up where you left
11 off. I know we are back in Laurens talking about that 10
12 year offer and your discussions with Ms. Wiygul. If you
13 can just go from there.

14 A She told me it was 10 years for one charge. And I,
15 in my head I am thinking why would I take 10 years for one
16 charge when I got 12 or 13 charges in the same Circuit. I
17 would have picked up with everything, I wanted to get it
18 out of the way. She said, well, Mr. Warren, the Solicitor
19 offered 10 years. So I decided to take a jury trial. So
20 when I took the jury trial and the Solicitor stated to the
21 Judge, he said, Your Honor, I see Mr. Odom taking under 15
22 years, because of all 15 years, everything, he said I
23 rejected it. So now I am asking my attorney, you didn't
24 tell me that. And so she said there was a
25 misunderstanding, it was her misunderstanding. But she

1 rejected to say there was a misunderstanding and that is
2 why I didn't take the 10 years. But she said there was no
3 misunderstanding and she told me, misunderstand what they
4 gave to her and she gave to me. It was a misunderstanding
5 but the whole time was 10 years for everything. But I was
6 under the impression, from what she told me, the 10 years
7 for one charge. That is why I didn't take it which wasn't
8 my fault. She gave me the wrong information. I would
9 never have taken the jury trial if I know about to just
10 get it out of the way then. I didn't want to put my
11 family through this right here, I can just plead to 10
12 years and non-violent and get it out of the way. If I
13 found out what the deal was I would have took it and just
14 got out quicker. But I didn't want to go through this, I
15 didn't want to put my family through this.

16 Q Okay. So you are saying it was an offer for 10 years
17 non-violent on how many different charges?

18 A It was everything.

19 Q So that would have included Laurens, Newberry?

20 A And Newberry, yes, and Newberry. I am sure the
21 Solicitor and Ms. Wiygul, they agree with what I am
22 saying, they would agree with that.

23 Q Well that will probably be part of your discussions
24 with the Court and Mr. Henderson this afternoon. So let's

25 --

1 A I got to the Newberry charge and the only reason I
2 plead, Mr. Scott was there, Mr. Dale Scott was there. Mr.
3 Dale Scott cussed at me and saying, you are going to take
4 these charges.

5 Q When did that happen?

6 A Mr. Dale Scott cursed at me. He said you are going
7 to take these charges in front of Mr. Brown. Mr. Brown
8 was standing there. And so, Mr. Brown, we never, ever
9 talk about a strategy for a jury trial. When I got to the
10 County jail he said, well, if you don't take these charges
11 you are going to trial on that Monday.

12 Q Hold on, let's back it up a little bit. Let's try to
13 keep on track. So you heard Mr. Brown talk about how many
14 times y'all met, it was like at least five times because
15 he only represented you from July of 2014 until you plead
16 guilty in January of 2015. Did you meet with him around
17 five times?

18 A Honestly I was, one or twice, honestly.

19 Q So you are saying you met with him only twice?

20 A I want to say twice, I am not one-hundred percent but
21 I am going to say around twice. It has been a long time.

22 Q Well, tell me what happened to get you to plead
23 guilty in Newberry. If you only met with Russell Brown
24 twice, did you never receive any letters from him or
25 correspondence?

1 A Yes, ma'am. I did receive a letter, I received a
2 letter, it was, something about the statute. I think he
3 sent me something like that, something, he did send me a
4 letter. The letter just stated that nobody can call him,
5 you can't call him and they don't talk to third party.
6 Like I said, when he sent me to the Newberry County jail,
7 I saw him at the Court House. And they offered me a deal,
8 like I didn't want to take the deal. Why would I take a
9 deal when they got search warrants that nothing is found;
10 they got cell phone records with nothing found. They even
11 found gloves, they found gloves.

12 Q Hold on, hold on. Let's stay on track, let me come
13 back a little bit. I am sorry to interrupt, Judge Hayes.

14 THE COURT: Mr. Odom, I appreciate your passion for
15 yourself. I think, I applaud you for wanting to advocate
16 and for the Court to know things that you want us to know.
17 But, again, we are making a recording of everything that
18 happens. I need you to slow down, talk slowly and to be
19 sure you do speak loud enough but you don't have to yell
20 at us in order to hear it.

21 MR. BROWN: I apologize.

22 THE COURT: It is coming across as you are yelling at
23 me, Mr. Brown. Calm down and one more thing. The Court
24 Reporter can only write down one person at a time. When
25 your lawyer is speaking do not talk and she is going to do

1 the same thing for you. Calm down, Mr. Odom. Okay, thank
2 you.

3 MS. SAUNDERS: Thank you, Judge.

4 Q All right. So let's back it up a little bit. You
5 are saying you met with Mr. Brown around two times and got
6 one letter from him?

7 A Yes.

8 Q Did you ever have a bond hearing?

9 A I had a bond hearing, that was before I had, that was
10 before I had Mr. Brown. And Judge Griffith, he told me
11 that once I take care of my extra charge he would give me
12 a bond, one of the Judge's. I forget what Judge it was.
13 But at one time I had a bond hearing.

14 Q Okay.

15 A Yes.

16 Q So what were the negotiations or what was said that
17 got you to plead guilty in Newberry. Like, why did you
18 decide to plead guilty. We have got a transcript that
19 shows your admission and your willingness to plead. So
20 that is a roadblock but I want the Court to hear why you
21 decided to plead guilty for Newberry only.

22 A Okay, well, my original plan, when I went to Newberry
23 County jail was to go forth with the jury trial. However,
24 me and Mr. Brown never discussed, we never discussed any
25 strategies of a jury trial. So when he got me to the

1 court over there in Newberry, they gave me a plea offer.
2 And he said, well, if you don't take the plea you are
3 going to stay in the County jail for over the weekend and
4 we are going to try you Monday. So that scared me and so
5 he came back to see me in the room, Mr. Brown and Mr. Dale
6 Scott. Mr. Scott cursed at me and he F'd me. He said you
7 are going to take this thing, he cussed at me, you said
8 you are going to take this, profanity, whatever it was he
9 said, in front of Mr. Brown. He said it in front of Mr.
10 Brown. And he asked me, they really wanted --

11 Q Let me stop you right there for a second. So you
12 had, right before you went to trial, you had a meeting
13 with Mr. Brown and the Solicitor, Dale Scott back in one
14 of the jail interview rooms. Is that correct?

15 A They came into, they had a room in the Newberry Court
16 House and Mr. Scott and Mr. Brown came in the room. You
17 are going to take this, you are going to take this plea.
18 I can't remember the curse word he used, but he used a
19 curse word. And I looked at Mr. Brown like, and he didn't
20 say anything. And so that scared me to take the jury
21 trial.

22 Q So your attorney, let me ask you this, your attorney
23 was present during that meeting, is that true?

24 A Yes, yes.

25 Q But it is your testimony that Mr. Scott threatened

1 you and said, you are going to take these charges?

2 A Yes.

3 Q Okay. But was it known to you at the time that the
4 life without parole sentence or potential for life without
5 parole was coming off the table in exchange for this plea
6 out of Newberry?

7 A Well, they already had come to me, already. I think,
8 those two Solicitors and with Charles Verner had already
9 come to me, they said that they talked to the Solicitor in
10 Edgefield. They said, well, take this plea, you take this
11 plea for 15 years, 15 years, they are going to drop the
12 charges in Edgefield. That is what he told me.

13 Q Okay, stop. All right, stop. Who is they, who are
14 you talking about, they?

15 A Charles Verner and Dale Scott.

16 Q That was way before Mr. Brown came on board, correct?

17 A Yes.

18 Q Is that while you were sitting in the County for
19 three years?

20 A Yes, yes.

21 Q So, but tell the Court ultimately why you decided to
22 take that plea for Newberry for the 15, concurrent with
23 Laurens?

24 A I felt, originally I felt intimidated from when they
25 kept coming to me in the room, coming back in the room

1 with Mr. Scott, Mr. Scott. And when he cursed at me and
2 told me I am going to take that plea and everything, well,
3 you are going to do this and do that, which was
4 unprofessional.

5 Q Well, when you say he was going to do this or do
6 that, what was that. What are you talking about?

7 A He is going to make sure I get this time. But he
8 cursed with it though. We are going to make sure that,
9 (inaudible), that I make sure of it.

10 Q Okay. So let me switch gears a little bit. Did you
11 ever get any promises, this is not relevant to that
12 conversation, this is like looking back in the past. Did
13 any Solicitor or Prosecutor come meet with you and make
14 any promises to you about any sentence that you would
15 receive in exchange for a plea?

16 A The thing that happened, the thing that happened in
17 Laurens County. That was the only thing that happened in
18 Laurens County, (inaudible), but them telling me in
19 Newberry, no. They come in that room to talk to me.

20 Q Okay. So you never got approached by the Solicitor
21 without your attorney present, what I am basically asking.

22 A I don't think. I don't think so. It has been so
23 many years ago, I don't think.

24 Q Okay. All right. So how did you get your hands on
25 that order which introduces, is the Applicant or

1 Petitioner's exhibit number 1 on the cell tower. How did
2 you know about that?

3 A I think it was Charles Verner that gave it to me, if
4 I am not mistaken, I think it was Charles Verner. They
5 say they didn't know anything about it but I had it at my
6 trial, they don't know anything about that. But here it
7 is, they say they don't know anything about it. I think
8 it was Charles Verner, if I am not mistaken it was Charles
9 Verner, if I am not mistaken.

10 Q Did you ever talk to Mr. Brown about it?

11 A I am, I don't really remember if I did, I am certain
12 I might of did. But I don't know if I did or didn't. I
13 don't remember.

14 Q Okay. But, you know, we don't have any evidence to
15 show that there were any records produced as a result of
16 this order. Do you have any information you want to give
17 the Court on that?

18 A Yes. I had, I saw the records, that is why it is
19 right here. They didn't, they said they didn't have any
20 frequency or something. I think it was, but it was saying
21 something in the nature about, basically from my
22 understanding that I wasn't in the area by that cell phone
23 tower, by that cell phone tower.

24 Q Hold on. So you have possession of some records
25 responsive or that were produced in response to this

1 order. Are you saying that you have those in your
2 possession?

3 A Hold on one second. Just one quick minute. It was
4 something else I had. Look at this right here. But I
5 thought and then, I had to dig into my paper, I had a lot
6 of legal paperwork. But it was something, I thought this
7 was the main thing that I needed. I had something else to
8 go with that though. But it was saying basically what
9 y'all reading about the cell phone towers. There is a
10 letter paper I had to go with this. I think that Charles
11 Verner gave to me, if I am not mistaken.

12 THE COURT: Mr. Odom, I believe that you are pointing
13 to the order that is already marked as Applicant or
14 Petitioner's 1. Is that correct. You are pointing at the
15 cell phone tower order?

16 A Yes, sir.

17 THE COURT: Okay. Thank you.

18 A Yes, that is correct.

19 Q All right. So it is your belief, even though we
20 haven't seen any of the records responsive to this order,
21 that that contained exculpatory evidence as to you and put
22 you in a different location or not in that location of the
23 alleged, of the crime at all?

24 A Yes.

25 Q But we don't have any of that evidence to produce to

1 the Court today?

2 A Yes, I think that is just -- they didn't have, I had
3 this just out of all my, (inaudible), I had to get this
4 from another attorney.

5 Q Okay. So what do you think the outcome would have
6 been if you had gone to trial in Newberry?

7 A I would have been found not guilty.

8 Q Okay. Do you believe that those cell tower records
9 would have given enough exculpatory evidence to put you
10 somewhere else or away from the scene or not at the scene?

11 A Yes, yes.

12 Q Okay. So your grounds for PCR are ineffective
13 assistance of Counsel. Do you, do you allege that against
14 Mr. Brown because he, you say he only met with you twice
15 and sent you approximately one letter?

16 A Yes, ma'am. And there wasn't an hour, I think the
17 time, that he would come see me, maybe thirty minutes,
18 maybe. And we didn't really discuss any strategy about a
19 trial at all.

20 Q Okay. So you believe that he failed to properly
21 prepare for your case and investigate it by not looking
22 into these cell tower records and also not meeting with
23 you enough and sending you correspondence?

24 A That is correct. As he stated, he never seen these
25 right here before. For one, my search warrants, he never

1 seen any of those right here --

2 Q Well, sorry. I do believe that in his testimony he
3 admitted to knowledge of that cell phone tower, cell tower
4 order, just for clarification purposes. But let me ask
5 you this. In your application you also allege
6 prosecutorial misconduct and I think it relates to that
7 meeting with your attorney and Mr. Scott. You are saying
8 that Mr. Scott yelled at you and cursed at you and said,
9 you better take this plea?

10 A Yes, that is correct.

11 Q Okay. So you are maintaining that allocution as
12 grounds for the PCR?

13 A Yes, yes.

14 Q Okay. And your grounds for PCR and you understand
15 that if you are granted PCR that, that your Newberry
16 charges will go back to the County and be re-noticed for
17 trial at some point in the future if the Solicitor chooses
18 to do that. You know, it would give you, it would grant
19 you a new trial in this case based on the allegations you
20 are making?

21 A Yes.

22 Q And you want that?

23 A Yes because, as I stated, I want this because first
24 of all, I, (inaudible), if they had done the proper, what
25 is the word, the proper instructions I would just got it

1 out of the way. I would have took the 10 years and got it
2 out of the way. But I was not given the proper
3 information instruction. I would have took this, this is
4 why I have to go through this right here. Because I lost
5 a lot, I lost two grandparents, I lost my father. I lost
6 my brother and my papa. I didn't want to have to go
7 through all of this right here. I lost my grandmother, I
8 lost my grandfather.

9 Q I didn't realize you have been through all of that,
10 Mr. Odom and I am sorry.

11 A Yes. But all because I hadn't been properly
12 instructed I would, (inaudible), was improperly informed,
13 improperly informed.

14 Q Okay. Okay. Well and remember, you are going to get
15 to go into a little bit of that. Mr. Henderson is going
16 to take care of that for you this afternoon. But do you
17 have anything you want to add to the Court while you, Ms.
18 Schill is going to ask you a few questions on
19 cross-examination. But do you have anything you want to
20 add to the Court before I give her the floor to ask you
21 some questions.

22 A Is there anything I want to ask the Court?

23 Q Add, do you want to tell the Court anything else?

24 A Yes. Real quick. I felt that, I felt that I was
25 going to be framed, I felt like I was not going to get my

1 proper, I wasn't going to be tried fairly. Why wasn't I
2 going to be tried fairly. Because my codefendant plead
3 guilty to three years, non-violent. He plead guilty. Two
4 weeks before my trial, the charges back up, they say it
5 was a mistake.

6 MS. SCHILL: Your Honor, I am sorry to interrupt, I
7 am going to object. I don't know what this has --

8 A Well, my --

9 THE COURT: Wait. Mr. Odom, when anybody objects let
10 me make a ruling and then depending on my ruling you just
11 stop. I am going to let him finish. Go ahead, Mr. Odom.
12 Breathe, Mr. Odom, breathe.

13 A Yes, sir. He plead guilty to three years,
14 non-violent on all the charges. And the charges needed to
15 be disposed of. But three weeks before my trial, two
16 weeks before my trial they brought the charges back up on
17 here after he plead guilty. Like two or three years later
18 they take the charges back. So my attorney ask why did
19 they do that. Well, the Solicitor stated it was a
20 mistake. The Solicitor said it was a mistake. So before
21 the mistake, why didn't y'all go back and dismiss the
22 charges, if it was a mistake. The charges were still on
23 him, it wasn't my trial. They never went back, after he
24 plead guilty to them which tells me that, (inaudible),
25 which he testified against me. There wasn't no way you

1 are going to plead guilty, (inaudible), when the charges
2 are disposed of. Why do they go back up, that is
3 prosecution misconduct all day long. They did it with the
4 intent to make sure you testified against me. And so
5 therefore when he did this, my charges in Newberry, I am
6 thinking they are going to do the same thing again. The
7 same guy, the same charges. I think they did the exact
8 same thing again, you know. Because if they, if they are
9 capable enough to pick the charges back up on a
10 codefendant after, (inaudible), for my charge. They said
11 it was a mistake.

12 Q Let me ask you another question before I let Ms.
13 Schill ask you some cross-examination questions. So you
14 were served your arrest warrant for the Newberry charges
15 on November 22nd, 2011, when you were in the County jail?

16 A Yes. They served warrants on me about three days
17 after.

18 Q And you never got out of jail after that, right?

19 A No.

20 Q So your sentencing sheet for the Newberry plea shows
21 that you got credit backdated from, excuse me, to June
22 16th, '14 and that is in the State's return off your
23 sentencing sheet on Newberry. Are you asking the Court
24 for some relief on your sentencing as well to reflect a
25 backdated sentence to 11/22/11, credit for time served?

1 A That is correct. I spoke to my attorney about that
2 and he said he was going to have that credit.

3 Q Okay.

4 A He said he was going to take care of it.
5 (Inaudible).

6 COURT REPORTER: Judge, I am not able to understand
7 what he is saying.

8 THE COURT: We have got a lot of static going on. So
9 take a deep breath, Mr. Odom. You are getting a little
10 bit, I appreciate your passion but in your presentation,
11 when you get excited, Mr. Odom, you tend to start really
12 talking fast and talking a little loud into that
13 microphone. So calm down and just relax. It is more
14 important to hear your words, than for you to put
15 emotions.

16 A It might be the medication but, yes sir, I
17 understand.

18 MS. SCHILL: So, Your Honor, just for the record, I
19 would object to his allegation regarding his sentence.
20 One, I think it was, the State wasn't given any notice.
21 But, two, I don't think, from my understanding of what he
22 is saying, is about calculations, how SCDC is calculating
23 sentence or credit for time served or whatever he is
24 arguing. So that is my position.

25 THE COURT: You are noted for the record. Anything

1 else, Ms. Saunders.

2 MS. SAUNDERS: I don't have anything, any other
3 questions to ask at this time. I may have a few on
4 follow-up on redirect but that is it for now. Thank you.

5 THE COURT: Thank you. Is the Attorney General
6 ready?

7 MS. SCHILL: Yes, Your Honor. Thank you. I will try
8 to keep this brief as I can.

9 CROSS-EXAMINATION

10 By Ms. Schill:

11 Q Did Mr. Brown review the discovery with you?

12 A Discovery?

13 Q Yes, the evidence the State had against you, did he
14 review that with you?

15 A No. He spoke with me about some things. I showed
16 him the evidence that I had.

17 Q Okay. What do you mean when you say he discussed
18 some things?

19 A I think about the case or whatever. We talked about
20 the case and I wanted to take a jury trial but we never
21 talked about strategy to take a jury trial. I guess, I am
22 assuming he didn't, I am assuming because when, I didn't
23 want, I did not want to go to the County jail. Sort of
24 like, just tell me, I am going to the County jail. And so
25 when I got to the County jail and they put me before the

1 Court. And I spoke to Mr. Brown, had a plea deal for me.
2 And say, if I don't have a plea, if I don't take the plea
3 I will take the trial that Monday. If I didn't take the
4 plea I am going to court that Monday.

5 Q Okay. So did he discuss the advantages and
6 disadvantages of pleading guilty versus going to trial
7 with you?

8 A I didn't hear you.

9 Q Did Mr. Brown discuss the advantages and
10 disadvantages of going to trial versus pleading guilty
11 with you.

12 A I think he did, I think so. I think he did, yes.

13 Q He did, yes. Did he, did Mr. Brown discuss the
14 elements of the offenses with you?

15 A I think, that was in the letter about, I think, you
16 say elements?

17 Q Yes, what the State had to prove to convict you?

18 A I think that might have been something he sent me in
19 the letter right here, if I am not mistaken.

20 Q Okay. And did he discuss the possible sentences you
21 were facing?

22 A Well, I think, I do, I was facing 15 years, I knew
23 that right there. But the other stuff that he come up,
24 for the charge, 15 years. I think I got the LWOP notice,
25 a month or two maybe, I think, a month or two before,

1 maybe when I was at the County jail. I think they found I
2 was being held by the Edgefield County which I guess, they
3 LWOP'd me. I am not going to take the chance. That is
4 one of the reason's that I plead, I didn't want to take
5 the chance of taking the life sentence. That they can
6 convict you, that is where Alford came involved for that.

7 Q Did Mr. Brown discuss the possible defenses with you?

8 A Possible defense. I do not remember.

9 Q Okay. So you don't recall either way, is that what
10 you are saying?

11 A You mean by defenses. You mean --

12 Q Defense you would use if you had gone to trial to
13 try, so that the jury may find you not guilty?

14 A We didn't discuss anything about a trial until I got
15 to the Court House. That is when they threatened me.

16 Q Do you recall telling the plea Court that Counsel had
17 discussed the defenses with you?

18 A Say that again, please.

19 Q Do you recall telling the plea Court at your plea
20 hearing that you and Counsel had discussed possible
21 defenses to your case?

22 A I may have but I don't remember. I am not going to
23 say I didn't, I may have.

24 MS. SCHILL: Just for the record I direct the Court
25 to page 11 of the plea transcript.

1 Q Did you and Mr. Brown discuss your constitutional
2 rights and the fact that you were --

3 A Discuss the constitutional rights and what now?

4 Q Do you recall, did you and Counsel discuss your
5 constitutional rights such as to confront witnesses and
6 your right to a jury trial?

7 A No.

8 Q No. Do you recall the plea Court going over this
9 with you?

10 A Who?

11 Q The plea Court, the plea Judge. I believe it was
12 Judge Griffith.

13 A I don't recall but I know he did, I know he, I am
14 sure he did because that is what they do. I am sure they
15 did.

16 Q Okay. Do you recall telling the plea Court you had
17 not consumed any drugs or alcohol within 24 hours of your
18 plea?

19 A I am sure that I did.

20 Q You did not tell the plea Court that, is that what
21 you just said?

22 A No, ma'am. I am certain I did, I am certain I did.

23 Q You did. Okay. Just real quick. You had mentioned
24 Mr. Verner, in that Mr. Verner represented you prior to
25 Mr. Brown representing you, is that true, what you

1 testified to?

2 A You say Mr. Verner represented me?

3 Q Yeah, of these charges. Did I understand that right?

4 A Well, he wasn't actually, he wasn't appointed to me
5 but he filled in. He was never appointed to me. I had an
6 attorney by the name of Thomas Broadwater.

7 Q Thomas?

8 A Thomas Broadwater. Thomas Broadwater filed a speedy
9 trial for me. I know about that.

10 Q But the point is, you had other attorneys before Mr.
11 Brown in this case. Is that right?

12 A Yes. Well, yes, yes.

13 Q So Mr. Brown and you say Mr. Verner filled in but was
14 not officially appointed to you, but was not officially
15 appointed to you. And then Mr. Broadwater, is there
16 anyone else that you can think of?

17 A They saw that I didn't have an attorney so I think
18 they just stepped in, however that went.

19 Q Do you recall telling the plea Court you were
20 clearheaded at the time of your guilty plea?

21 A I don't recall but I am sure I did, I am sure I did.
22 If he asked me I probably would say yes.

23 Q Okay.

24 MS. SCHILL: And just for the record I will direct
25 the Court to page 4 of the guilty plea transcript.

1 Q Do you recall telling the plea Court you did not have
2 any mental or physical disabilities that would prevent you
3 from understanding what was occurring during your plea
4 hearing?

5 A I am sure I told him that but I don't recall that but
6 I know I did, I am sure I did.

7 Q Okay.

8 MS. SCHILL: I would also direct the Court to page
9 four of the guilty plea transcript.

10 Q And do you recall telling the plea Court you were not
11 promised anything other than the terms of your plea
12 agreement in exchange for pleading guilty?

13 A Same as the last. I am sure I might have been. I am
14 sure I did.

15 Q Okay. And do you recall telling the Court you were
16 pleading freely and voluntarily?

17 A Yes, ma'am.

18 Q And do you recall telling the plea Court you do not
19 need any more time to speak with Mr. Brown regarding this
20 case?

21 A I think so, I think so.

22 Q Okay.

23 MS. SCHILL: I beg the Court's indulgence, Your
24 Honor. I believe that's all the question I have, Your
25 Honor.

1 THE COURT: Any redirect limited to what the State
2 went into?

3 MS. SAUNDERS: No redirect, Your Honor.

4 THE COURT: I have one question for the lawyers. All
5 right. My understanding is, that it has not been
6 contested that the Newberry charge, he was served with an
7 LWOP notice. Now, my understanding, based on the
8 questions from the lawyers is that, that if Applicant was
9 asked, do you understand that you will go back and redo
10 things. But it was not a question, specifically did he
11 understand that he could be subject to the LWOP notice if
12 we go forward with this PCR and I find in his favor. Is
13 that a correct statement. Is he subject to an LWOP notice
14 if I grant the PCR?

15 MS. SAUNDERS: Well, Your Honor, he is currently
16 serving a life without parole sentence out of Edgefield.
17 So the chips, the way the chips fell is, Laurens was the
18 second strike. He skipped it with Newberry and then was
19 noticed LWOP for Edgefield in which he was subsequently
20 convicted. There was an appeal that had some interesting
21 arguments with the Edgefield case. But the remittitur has
22 already been issued on that and that case is closed. But
23 answering that question since he is already serving an
24 LWOP notice. But if there was an outcome positive on his
25 Laurens case it could affect the Edgefield LWOP and then

1 cause this Newberry case to become an LWOP notice in the
2 future, if you can follow me. If it all fell apart that
3 way.

4 THE COURT: I think I have, the historical nature of
5 this case is complex when it comes to the LWOP notice. I
6 was just wondering, do we need to make a proper record
7 that in the, that if he is successful with this PCR and
8 the matter goes back, will he be subject to another LWOP
9 case.

10 MS. SAUNDERS: That is correct, Your Honor, yes.

11 THE COURT: Mr. Odom, do you understand what I just
12 asked your lawyer?

13 MR. ODOM: Yes, sir.

14 THE COURT: And do you still wish to proceed with
15 this post conviction relief application?

16 MR. ODOM: Yes, sir.

17 THE COURT: Okay. All right. Well, listen, thank
18 you very much. Anything else, Ms. Saunders?

19 MS. SAUNDERS: Nothing further, Your Honor.

20 THE COURT: And does the State intend to call any
21 other witnesses?

22 MS. SCHILL: Yes, Your Honor. I guess the State
23 would call Mr. Dale Scott.

24 THE COURT: Mr. Scott, I need to administer an oath
25 to you. Please raise your right hand.

1 Dale Scott, being
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 By Ms. Schill:

5 Q Mr. Scott, so you were the primary Solicitor assigned
6 to this case, is that correct?

7 A Which case?

8 Q The Newberry plea.

9 A That's correct.

10 Q Okay. I am not sure if you had heard any part of Mr.
11 Owen's testimony. There was some issue regarding a plea
12 offer for 10 years that was given prior to the Laurens
13 trial. Do you recall that, you were also assigned to the
14 Laurens trial, is that correct?

15 A That's correct.

16 Q Do you recall the 10 year plea offer that was given
17 to him?

18 A Let me, let me speak deliberately because I am trying
19 to remember all the facets to this case. Judge Hayes kind
20 of hit on it, it was a lot of in's and out's in this
21 thing. Let me be clear, I had never, ever offered Mr.
22 Odom a 10 year deal on any of his charges. He was a
23 horrific offender. I would never LWOP somebody on one
24 hand and then offer them 10 years non-violent on the
25 other. That simply did not happen. So I certainly object

1 to any insinuation that I ever offered him 10 years on any
2 of these charges. That is incorrect.

3 Q Okay. Did Mr. Odom ever file any complaints against
4 you?

5 A He did and I did listen of his recitation of
6 allegations that I intimidated him. Specifically what he
7 left out in the recitation today, that he filed with
8 disciplinary counsel, that I spit in his face, I cussed at
9 him and threatened him. My recollection was, we had Mr.
10 Odom in and out of court multiple times, before Judges
11 where he would say he was going to plead guilty, withdraw
12 it and then leave the courtroom. My recollection was this
13 happened more than once. Finally we had to put him on the
14 trial docket. In a last ditch effort we had him in court,
15 I believe it was the Friday before the following term
16 where Mr. Brown was able to talk to me into extending the
17 plea. And my recollection, it was straight-up and taking
18 the LWOP notice off the table. It was very difficult to
19 explain to Mr. Odom there were two choices and that was a
20 trial or a plea. He had somebody -- that there was a
21 third choice and we could never really explain it to him.
22 My recollection is that that Friday Mr. Russell and I
23 spoke to him, that if the plea was not accepted that it
24 would be a trial and he would be facing life without
25 parole. And I certainly do object to any insinuation that

1 I ever threatened him in front of his Defense Attorney.

2 Q Okay. And so could you just explain to the Court,
3 just for the record, what the outcome, his ODC complaint
4 was?

5 A And I believe I gave you, I happen to have that saved
6 in my desk drawer but they determined there was no ground
7 for, and they closed finding and they closed the
8 investigation with whomever they spoke with.

9 MS. SCHILL: Well, Your Honor, just to make things
10 clear for the record, I sent you and Ms. Saunders the ODC
11 letter that was sent to Mr. Odom, for State's exhibit 1.
12 I believe Ms. Saunders had consented to that.

13 THE COURT: I have reviewed it. Yes, I have it.

14 MS. SCHILL: So I would just like for the record that
15 that be State's exhibit 1, the ODC letter addressed to
16 Maurice Odom.

17 THE COURT: You will need to email it to the Court
18 Reporter but it will be State's 1.

19 (Whereupon, State's Exhibit 1 was admitted into
20 evidence.)

21 MS. SCHILL: Thank you. Those are all the questions
22 I have for Mr. Scott.

23 THE COURT: Yes ma'am, Ms. Saunders.

24 MS. SAUNDERS: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 By Ms. Saunders:

2 Q I don't know if this came up on direct. I guess we
3 went over all of the issues regarding the offer and any
4 prosecutorial misconduct. But did you ever receive any
5 records or knowing anything about the November, 2011 order
6 regarding the cell records. I mean, did that ever come up
7 as part of your discussions with Mr. Brown?

8 A What case is that, is it the Newberry or, if it is a
9 Laurens, which Laurens case is it.

10 Q That would have been the Newberry case, not the
11 Laurens case.

12 A I heard you reference that earlier. But what exactly
13 is the order that you are referencing.

14 Q It is the, well, it is the Applicant's exhibit number
15 1 that Ms. Schill and I have consented to its admission.
16 It is an order for telephone records and cell tower
17 locations that Robert Dennis presented to Judge Griffith
18 and was able to get that signed. I mean, it may have not
19 produced any records at all because I haven't seen
20 anything. But I figure I would ask you about it.

21 A And the specific question regarding them is, do I
22 remember?

23 Q Do you recall that order being a part of your file,
24 did you receive any records responsive to that order?

25 A Not as I sit here thinking about it. I could look

1 through my discovery and look for it but I don't recall
2 telephone records in his Newberry case. I don't recall
3 that being anything that, let me think, I don't recall
4 that being anything that would have been incriminating or
5 exculpatory regarding phone records. I don't remember
6 phone records being a part of that case.

7 Q So maybe this order was just standard investigation
8 procedure but didn't produce any evidence one way or
9 another?

10 A That is possible. And I don't know if this is a
11 possibility but I am happy to review the discovery in this
12 case and see if I can go back in time and piece together
13 any relevance at all regarding that order and whether
14 anything was produced.

15 Q Okay. So, did you ever have a discussion with Mr.
16 Brown and Mr. Odom where Mr. Odom alleged that you yelled
17 at him, do you recall having a meeting with the three of
18 y'all?

19 A Yes, I sure do.

20 Q So, was there any heated discussion in that meeting?

21 A Laura, what I was describing earlier, if I use
22 colorful language, that is a possibility. I will concede
23 that sometimes I may use colorful language. Did I
24 intimidate or threaten Mr. Odom, absolutely not. As an
25 Officer of the court, I will attest to that. What I will

1 say is, again, I remember it being exceedingly difficult
2 to explain to him the ramifications of, if you take it to
3 trial you are facing life without parole. This offer I am
4 giving you will not be on the table forever. If I draw a
5 jury I am not extending that offer to you, you are going
6 to trial. And so he was always looking for the third
7 option is what I am explaining. It was never just a plea
8 for a trial, you know, there was some elusive third
9 option, I think he was looking for. And maybe that was a
10 10 year offer to wrap up everything, maybe in his mind
11 that is what he wanted. I certainly never offered it.
12 But to answer your question, no, I never intimidated him;
13 yes, I do recall that conversation between Mr. Odom, Mr.
14 Brown and myself.

15 Q And let me go back, one step backwards back to those
16 cell tower records. Do you have your file with you?

17 A I don't have a hard file, a hard copy of the file.
18 What I have, we keep this in our case management system.
19 I could pull this up on my laptop. I don't know if I will
20 be able to keep Webex up while I peruse through it. If we
21 can keep the record open for some brief period of time I
22 can look through it and see if I can answer some of these
23 questions that are specific to this order.

24 Q Okay. And I may ask the Judge to do that. So if you
25 are telling me you would be willing to search CMS for any

1 documents responsive to that order, if they existed and
2 provide them to the Court if the Court allowed us to keep
3 the record open for that sole reason.

4 A Yes, I am happy to do that.

5 Q Okay. Thank you.

6 MS. SAUNDERS: Your Honor, I have no further
7 questions.

8 THE COURT: Any redirect limited to what she went
9 into?

10 MS. SCHILL: No, Your Honor.

11 THE COURT: All right. Any reason why Mr. Scott
12 cannot be excused?

13 MS. SCHILL: No, I believe he can be excused.

14 MS. SAUNDERS: No objection.

15 THE COURT: Thank you, Mr. Scott, you may be excused.

16 MR. SCOTT: Thank you all.

17 THE COURT: Does the State have any other witnesses?

18 MS. SCHILL: Your Honor, if I may request just like a
19 two or three minute recess to make a phone call, I might
20 have one witness just for a very, very brief questioning
21 regarding the plea offer. I guess, my concern, Your
22 Honor, and I know I expressed this before is that he
23 obviously has the Laurens case at 2:00 p.m. And I think
24 in that transcript there is other information regarding
25 the plea offer and Ms. Wiygul represented him at that

1 time. So I don't know if Your Honor would be willing to
2 or thinks it is necessary to have Ms. Wiygul here briefly
3 for just a couple of minutes, since he is bringing up this
4 issue.

5 THE COURT: That is your call, not mine.

6 MS. SCHILL: Okay. Yes, if Your Honor is willing to
7 hear her just for a minute I think it would clarify
8 something.

9 THE COURT: All right. Do you need the break for a
10 couple of minutes?

11 MS. SCHILL: Yes, Your Honor, just like two minutes
12 would be good.

13 THE COURT: All right. We will take a break for a
14 couple of minutes. We will come right back.

15 MS. SCHILL: Okay, thank you.

16 (Whereupon, a short break was taken.)

17 THE COURT: Okay. Mr. Odom, is the person, is the
18 officer there with you that can unmute you? Just want to
19 be sure that they are there in the event that you are
20 needed. But she doesn't need to unmute you right now. Is
21 Ms. Wiygul present.

22 MS. SCHILL: I think Ms. Wiygul said she is muted and
23 couldn't unmute herself. I think she needs to be enabled
24 to be presented.

25 THE COURT: All right. Mr. Odom, is the officer

1 coming back?

2 MR. ODOM: No, sir.

3 THE COURT: Okay. Do you know how to mute yourself,
4 Mr. Odom?

5 MR. ODOM: Sir?

6 THE COURT: Do you know how to mute yourself?

7 MR. ODOM: I think so.

8 THE COURT: Okay, try to mute yourself. I will get
9 you muted from this end. You need to mute Mr. Odom. You
10 are muted, thank you very much. All right. Is the State
11 ready to call their next witness?

12 MS. SCHILL: Yes, Your Honor. The State calls Ms.
13 Elizabeth Wiygul.

14 THE COURT: Ms. Wiygul, please raise your right hand.
15 Elizabeth Wiygul, being
16 first duly sworn, testified as follows:

17 THE COURT: Yes ma'am, you may proceed.

18 MS. SCHILL: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 By Ms. Schill:

21 Q Thank you, Ms. Wiygul, I will keep this very short.
22 Do you represent or did you represent Mr. Odom in a case
23 out of Laurens County for related charges?

24 A I did.

25 Q Okay. And that case went to trial?

1 A It did.

2 Q And I believe you have been listening in and heard a
3 little bit about Mr. Odom's testimony regarding a plea
4 offer. Could you, could you explain what happened with
5 regard to the plea offer?

6 A I could. Just prior to trial Warren Mowry, Assistant
7 Solicitor Warren Mowry did make a 10 year offer that, and
8 I will read from my notes. He made a 10 year offer to
9 plead to burglary, conspiracy and grand larceny with a
10 recommendation of 10 years, non-violent, that would take
11 care of all the charges within that Circuit. And the
12 alternative he made the offer of Mr. Odom being permitted
13 to plead to accessory before and after the fact with no
14 recommendation. Both of those offers were relayed to Mr.
15 Odom prior to starting trial. Immediately after Mr.
16 Odom's sentencing where he received the 15 years, Dale
17 Scott relayed an offer to Mr. Odom offering to permit him
18 to plead to the Newberry charges for concurrent time and
19 at that time Mr. Odom refused that offer.

20 Q Okay. So to be clear, I think his concern, from my
21 understanding was, the first one before he went to trial
22 in Laurens. So that is the one where he was offered 10
23 years for, that would have taken care of both the Laurens
24 charges that you represented him for as well as the ones
25 that are at issue today for which Mr. Brown represented

1 him. Is that correct?

2 A That's correct.

3 Q Okay. But you had informed, did you inform Mr. Odom
4 that the 10 year sentence that Mr. Mowry offered would
5 have taken care of both, the charges in Laurens as well as
6 the charges in Newberry?

7 A I did.

8 Q And he turned the offer down?

9 A He did, he chose to go to trial.

10 Q Okay. So he was aware of the times of that offer?

11 A He was.

12 Q Okay. Those are all the questions that I have.

13 THE COURT: Yes ma'am, Ms. Saunders, any questions?

14 MS. SAUNDERS: Briefly, Your Honor.

15 CROSS-EXAMINATION

16 By Ms. Saunders:

17 Q Ms. Wiygul, how are you doing today, good to see you.

18 A Good to see you, Ma'am.

19 Q Just with regard to that 10 year non-violent offer
20 from Mr. Mowry, that was prior to going to trial in
21 Laurens, correct?

22 A It was relayed on Monday, June 9th, prior to going to
23 trial.

24 Q And so that was turned down by Mr. Odom?

25 A It was.

1 Q Okay.

2 MS. SAUNDERS: I have no further questions, Your
3 Honor, thank you.

4 THE COURT: Any redirect limited to what she went
5 into?

6 MS. SCHILL: No, Your Honor.

7 THE COURT: Any reason why Ms. Wiygul cannot be
8 excused for now?

9 MS. SCHILL: I don't believe so.

10 THE COURT: Thank you, Ms. Wiygul. Anything else
11 from the State?

12 MS. SCHILL: No, Your Honor, the State rests.

13 THE COURT: Any reply witnesses from the Applicant?

14 MS. SAUNDERS: No witnesses in reply, Your Honor.

15 THE COURT: All right. Okay. Well, I will take a
16 look at it and let you know.

17 MS. SAUNDERS: Thank you, Judge, I appreciate your
18 time this morning and everybody.

19 MS. SCHILL: Thank you.

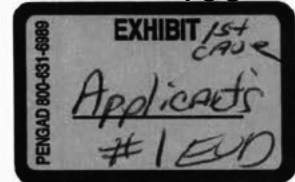
20 THE COURT: Mr. Odom, it is pleasure meeting you,
21 stay in touch with your lawyer, Mr. Odom.

22 MR. ODOM: Yes, sir.

23 THE COURT: So we will adjourn again at 2:00 o'clock.

24 MS. SAUNDERS: Thank you.

25 *** END OF REQUESTED TRANSCRIPT OF RECORD ***



STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)
)
The State)
 V.)
Maurice Anthony Odom)
)
In re: Burglary)

IN THE COURT OF GENERAL SESSIONS
EIGHTH JUDICIAL CIRCUIT

ORDER

FOR TELEPHONE RECORDS AND CELL

TOWER LOCATIONS

This matter comes before me upon motion of Lt. Robert Dennis, Investigator for the Newberry County Sheriff's Office, requesting a Court Order for telephone records and cell tower locations relating to the investigation which is described in greater detail in the attached affidavit of Lieutenant Robert Dennis. The State is investigating a Burglary that occurred at 11746 Highway (Around the Clock BP) Newberry County and three other Burglaries in Laurens County that are connected. That the State has linked the last Burglary to a suspect named Maurice Odom or AKA, "Horace Franklin Odom" of Barnwell County. The State contends these records are not overly intrusive to the Subject and believes that the State is entitled to such records. The State has set forth in its affidavit in support of this Order specific and articulable facts, which meet the Probable Cause threshold requirements of 18 USC 2703 (d) as well as the promulgations under State v. Odom S.C. Sup. Ct. Order dated March 30, 2009 (Shearhouse Adv. Sh.. No. 26624).

NOW THEREFORE, IT IS ORDERED THAT:

Allied Wireless Communications Corporation (AWCC) is ordered to furnish any and all subscriber information, credit information, and cell tower location information on the following mobile phone numbers for the listed dates:

██████████-5555

██████████3448

Information is requested for the following dates and time periods: 10/06/2011 2200hrs to 10/07/2011 0500hrs and 11/11/2011 2400hrs to 11/11/2011 0500hrs.

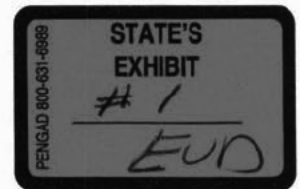
You may surrender the above named records to Lt. /Inv. Robert Dennis of the Newberry County Sheriff's Office, Newberry, SC at (803) 405-7705, by facsimile at (803) 405-7805 or email rdennis@ncso.sc.gov.

AND IT IS SO ORDERED.

The Honorable Eugene C. Griffith, Jr
Eighth Judicial Circuit Judge

Signed at Newberry, SC

November 17th, 2011



The Supreme Court of South Carolina OFFICE OF DISCIPLINARY COUNSEL

Lesley M. Coggiola
Disciplinary Counsel

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Assistant Disciplinary Counsel

Post Office Box 12159
Columbia, South Carolina 29211

Telephone: (803) 734-2038
Fax: (803) 734-1964

March 18, 2015

PERSONAL & CONFIDENTIAL

Maurice Anthony Odom #199677
Broad River Correctional Institution
4460 Broad River Road
Murray #259-A
Columbia, SC 29210

Re: Lawyer: Christopher Dale Scott, Esquire
Case Number: 15-DE-L-0035

Dear Mr. Odom:

This office has conducted an investigation concerning the allegations of lawyer misconduct raised in the complaint you filed in connection with the above-referenced matter. This investigation focused on those grounds for misconduct set out in the Rules for Lawyer Disciplinary Enforcement (RLDE), Rule 413, SCACR, adopted by the Supreme Court of South Carolina.

This office is not authorized to give advice concerning a legal dispute or dealings with a lawyer; nor is it empowered to intervene in a case. We cannot seek to cause things to be done by a lawyer on behalf of a complainant; nor can we seek to change the outcome of a case. Instead, this office deals solely with issues of misconduct or incapacity related to lawyers under these rules. We do so to preserve institutional values of the legal system in South Carolina for the benefit of the public as a whole, not to obtain individual benefit for a complainant.

The provisions of RLDE do not apply to legal matters related to whether or not the outcome of a dispute was fair or to errors of law or judgment that might have been made by a lawyer or judge. These are legal matters, which can only be addressed at trial or on appeal using appropriate procedures.

Maurice Anthony Odom
March 18, 2015
Page Two

In your letter of complaint, you allege that Christopher Dale Scott, Esquire had ex-parte communications with the judge about your case prior to your sentencing and that Mr. Scott was uncivil in his communications with you. As a result of your letter, this office conducted an investigation to ascertain if Mr. Scott's conduct violated the Rules of Professional Conduct and the RLDE.

From our investigation, this office has determined that there is no clear and convincing evidence of any such lawyer misconduct on the part of Mr. Scott arising out of the events mentioned in your complaint and that further investigation would not likely reveal any such evidence.

Accordingly, you are hereby notified of the intent of this office to dismiss your complaint pursuant to the provisions of Rule 19(d)(1) of RLDE. You may seek a review of this decision by an investigative panel of the Commission on Lawyer Conduct by filing a written request, which must be received in this office no later than April 17, 2015. If you request a panel review, the lawyer will be given an opportunity to respond. Your request and the lawyer's response, if any, will be considered at the next investigative panel meeting. You will then be notified of the panel's decision. Feel free to contact me if you have any questions regarding this process.

Sincerely,


Kelly B. Arnould

KBA/

cc: Christopher Dale Scott, Esquire

STATE OF SOUTH CAROLINA)
)
 COUNTY OF NEWBERRY)
)
 Maurice Odom,)
 S.C.D.C. No. 199677,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE EIGHTH JUDICIAL CIRCUIT

Case No. 2016-CP-36-0057

ORDER OF DISMISSAL

FILED
 NEWBERRY COUNTY
 2021 AUG 10 AM 11: 21
 ELIZABETH P. FOLK
 CLERK OF COURT

This matter comes before this Court by way of Maurice Odom’s (Applicant) post-conviction relief application, filed on January 26, 2016. Respondent made its Return on November 1, 2016, requesting an evidentiary hearing be convened. The evidentiary hearing was held on January 26, 2021, via the WebEx Virtual Courtroom platform. Applicant was present at the hearing and represented by Laura M. Saunders, Esquire. Assistant Attorney General Brianna L. Schill of the South Carolina Attorney General’s Office represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Russell O. Brown, Esquire, Deputy Solicitor C. Dale Scott, and Elizabeth P. Wiygul, Esquire, also testified. After a thorough review of all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof in establishing he is entitled to post-conviction relief and hereby denies and dismisses this application with prejudice. Specific findings of fact and conclusions of law are set forth below.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted at the February 2012 term of the Newberry County Grand Jury for burglary

(2012-GS-36-0156). Applicant was represented by Russell Brown, Esquire (Counsel). On January 5, 2015, Applicant appeared before the Honorable Donald Hocker, Jr., and pled under *North Carolina v. Alford*. Judge Hocker sentenced Applicant to fifteen years of imprisonment.

Applicant filed a notice of appeal. On March 3, 2015, the Court of Appeals issued an order dismissing the appeal for Applicant's failure to file a sufficient explanation pursuant to SCACR 203(d)(1)(B)(iv). The Remittitur was sent March 20, 2015.

SUMMARY OF THE FACTS

The State presented the underlying facts at Applicant's guilty plea as follows:

"[...] October 7th of 2011 about 4:57 a.m. the Sheriff's Department responded to Around the Clock BP, that is on Highway 34. The owner was there when officers got there and he complained that his gas station had been broken into. The officers found a side window was propped open and that was believed to be the subject's point of entry. There had been a case taken out of the register as well as a cabinet under the register. They had primarily taken cigarettes. That is where all the restitution figures come from, just cartons and cartons of cigarettes and then sell them on the street or some other entity. They did review the camera footage and it showed two black males, their faces were covered so they were unable to make an ID at that time. About a month later over in Clinton the same kind of thing happened at a BP just right off of 385 up there. And the same thing. They had seen a car nearby and ran the tag on it thinking it was just an abandoned automobile on the interstate. It came back as Maurice Odom and shortly thereafter the break-in had occurred at the BP. And, again, two black males had masks on but had kind of put two and two together. After bloodhounds tracked a scent that went from the gas station to the car they had seen prior, they put two and two together and maybe Maurice Odom was someone to speak with. He is from Barnwell so officers with, Tyrone with the City of Clinton and Robert at



the Sheriff's Department here went down to Barnwell with arrest warrants for Maurice Odom. The second male was a younger man named Christopher Nix (phonetic), and they spoke with him and he kind of admitted that that was us on the camera, here is how we did it and implicated Mr. Odom in it...."

(GP Tr. 6-8).

CURRENT ACTION BEFORE THIS COURT

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

1. Ineffective Assistance of Counsel
 - i. Failure to Prepare Applicant's case/ Communicate with Applicant
2. Malicious prosecution
 - i. "They had me in the jail with no bond and not attorney for three years, and day before trial had me on a floor in jail with bright light forcing me to take [illegible]."
3. "Violation of 8th Amendment"
 - i. Denied preliminary hearing

An evidentiary hearing, Applicant indicated he was going forward on the three allegations listed in his initial PCR application.

SUMMARY OF TESTIMONY

Counsel's Testimony

Counsel testified he represented Applicant in the past in connection with other charges, but he was appointed to Applicant's case in this instance on June 27, 2014. Counsel testified he is not a contract attorney but he regularly took clients in Newberry County.

Counsel testified he filed a discovery motion on July 1, 2014. Counsel testified the motion was filed on July 1st, served upon the solicitor on July 3rd, and on July 8, 2014, he faxed a letter to SCDC to visit Applicant. Counsel testified his first meeting with Applicant was on July 14, 2014.



Counsel testified he had subsequent visits on August 1, August 15, August 29, and September 29, 2014. Counsel testified he was represented by Elizabeth Wiygul prior to his appointment.

Counsel testified Applicant had other charges in Laurens County. Counsel testified the State felt it had a pretty good case. On September 5, 2015, the State filed and served an LWOP notice for Applicant. Counsel testified the LWOP notice made Applicant realize the seriousness of his case. Counsel testified the offer for his plea was for second-degree burglary violent, for which his sentence would be served concurrent to his sentence for the Laurens County charges. Counsel testified this plea offer would also have taken LWOP out of consideration. Counsel testified he took this offer to Applicant for his consideration. Counsel testified he spoke to Applicant about the seriousness of the charges and he was provided a trial date of October 27, 2014, so at that time he decided to accept the plea offer to the burglary second. Counsel could not recall if Applicant's Edgefield charges were pending at the time. Counsel testified he advised client to take the fifteen years to run concurrent with his sentence from his Laurens charges instead of risking getting life without parole.

Counsel testified he was not aware of an Order authorizing access to cell phone and telephone tower locations during his representation of Applicant, and similarly was not aware of any records that might have been produced pursuant to that Order. Counsel testified the evidence in this case consisted of testimony from his co-defendant and pictures from the scene. Counsel testified there was no ten year plea offer to resolve his Newberry case during his representation of Applicant.

On cross-examination, Counsel testified he has been practicing law for sixteen years and approximately eighty five percent of that has been in criminal law. Counsel testified his meetings

with Applicant were primarily in person and each lasted at least an hour. Counsel testified he and Applicant discussed the charges against him and the State's case against him.

Counsel reiterated the evidence against Applicant primarily consisted of still photos of the break in, statements from his co-defendant who was willing to testify against Applicant, information regarding the fact that Applicant's prior criminal activities had a similar scheme and pattern, and the police tracking of his vehicle. Counsel testified his investigation primarily consisted of thorough view of the discovery and analyzed how law enforcement connected the dots to build a proper defense. Counsel testified Applicant did not give him the name of any witnesses or leads to investigate that he did not investigate.

Counsel testified it was ultimately Applicant's decision to plead guilty, that he did not tell Applicant how to answer the judge's questions, and that he did not coerce him into pleading guilty. Counsel testified he did advise Applicant what questions the judge would ask him and that he had to answer them truthfully. Counsel testified he would have been prepared to go to trial and had adequate time to prepare the case.

Applicant's Testimony

Applicant testified that prior to his guilty plea in this case, he was tried and convicted in Laurens County and received fifteen years of imprisonment for those charges. Applicant testified the solicitor's office then put him on notice for his potential LWOP in this case. Applicant testified Counsel was able to get the LWOP off the table by way of his plea offer in this case. Applicant testified he only met with Counsel once or twice, not five times as Counsel testified.

Applicant testified he pleaded guilty because he was scared about the thought of taking his case to trial the following week, and because Dale Scott cursed at him. Applicant testified the solicitor never spoke to him without Counsel present. Applicant testified Charles Verner gave him

the copy of the order authorizing cell phone tower records. Applicant could not recall whether or not he discussed this with Counsel.

Applicant testified he is alleging ineffective assistance of plea counsel because Counsel only sent him one letter, and rarely met with him. Applicant testified his meetings with Counsel were only approximately thirty minutes long and not one hour per meeting as Counsel had testified. Applicant also testified he is alleging ineffective assistance of plea counsel for failure to investigate cell phone records obtained by the prosecution. Applicant testified he is alleging prosecutorial misconduct based on the meeting that involved Verner and Dale Scott, in which Scott cursed at him. Applicant testified he was represented by Charles Verner for a period of time and also Mr. Broadwater for a period of time. Applicant claims he would have taken his initial ten year plea offer that would have covered all of his pending Newberry and Laurens County charges.

On cross-examination, Applicant testified he and Counsel did not review discovery, nor did they discuss trial strategy. Applicant testified Counsel informed him that if he did not accept a plea, he was going to be going to trial the following Monday. Applicant testified he and Counsel did discuss the elements of the offense and the advantages and disadvantages of going to trial. Applicant testified they did not discuss the possible sentences he was facing. Applicant testified he believed the State filed an LWOP notice in order to coerce him to plea. Applicant testified he could not recall whether he and Counsel discussed possible defenses. Applicant testified he could not recall if Counsel discussed his constitutional rights with him, but he believed the plea court discussed them with him. Applicant testified he recalled telling the plea court he did not consume any drugs or alcohol on the day of his plea. Applicant testified he did not recall telling the plea court he was clearheaded at the time of the plea. Applicant could also not recall if he told the plea court he did not need any more time to discuss his case with Counsel.

Dale Scott's Testimony

Scott testified he was the primary prosecutor in Applicant's case. Scott testified he did not offer Applicant a ten-year plea offer in this case. Scott testified Applicant filed a complaint against him with the Office of Disciplinary Counsel (ODC) on the basis that Scott had allegedly threatened Applicant; however, after reviewing the allegations ODC found the allegation was unfounded. Scott testified he believed the prosecution did not obtain any cell phone or cell phone tower records pursuant to the Order authorizing phone and cell phone tower records.

Elizabeth Wiygul's Testimony

Wiygul testified he represented Applicant for his charges in Laurens County. Wiygul testified just prior to the trial for his Laurens charges, Assistant Solicitor Mowry extended a 10 year plea offer to plead to burglary, conspiracy, and grand larceny, and that this plea offer would have handled all charges pending in the Eighth Judicial Circuit, including the charges at issue in this case. Later the prosecution offered accessory before or after the fact with no recommendation. However, Applicant opted to go forward with the trial for his Laurens charges. Wiygul testified that also before his trial Scott offered Applicant the chance to plead to concurrent times, meaning the sentence for his Newberry charges would have run concurrent to his Laurens charges, but Applicant rejected all offers. Wiygul testified Applicant was informed the offers would cover both his Laurens and his Newberry charges.

Findings of Fact and Conclusions of Law

This Court has reviewed the pleadings, records submitted by the parties, and applicable law. Before this Court are Applicant's Newberry County Clerk of Court Records, Applicant's South Carolina Department of Correction records, the plea transcript, Applicant's direct appeal records, and the PCR action records. Pursuant to South Carolina Code Annotated, Sections 17-27-



70 and -80, this Court dismisses the application based upon the following findings:

Ineffective Assistance of Counsel

In his application, Applicant alleges Counsel was ineffective for failing to communicate with him and failing to investigate phone and cell phone tower records. This Court disagrees and denies and dismisses the application with prejudice.

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel’s performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel’s actions fell outside of the zone of “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRPC (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”). Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1,

5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters "only in the rarest case" because "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pleaded guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d



347, 350 (4th Cir. 1975)).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. 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. *Id.* at 696-97.

a. Failure to Communicate with Applicant

Applicant testified he is alleging ineffective assistance of counsel for failure to communicate with Applicant because Counsel, according to Applicant, only sent him one letter and rarely met with him. This Court disagrees and denies and dismisses this allegation with prejudice.

"The brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012) (citing *Harris v. State*, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008)). An applicant must present evidence to show how additional time spent in consultation would have resulted in a different outcome; mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.*, 404 S.C. at 500-01, 745 S.E.2d at 382 (citing *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998); *Skeen v. State*, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997)).

Applicant testified his meetings with Counsel were only approximately thirty minutes long and not one hour long as Counsel had testified. Applicant testified he pleaded guilty because he was scared about the thought of taking his case to trial the following week. Counsel testified

his first meeting with Applicant was on July 14, 2014. Counsel testified he had subsequent visits on August 1, August 15, August 29, and September 29, 2014. Counsel testified his meetings with Applicant were primarily in person and each lasted at least an hour.

This Court finds Counsel's testimony on this issue credible, while also finding Applicant's testimony credible only to the extent he testified he was scared to take his case to trial because he was facing LWOP. This Court finds Applicant's remaining testimony on this issue not credible. Applicant has not met his burden as to deficiency for failure to communicate with Applicant, as a lack of communication in and of itself, even if true, does not necessitate this Court to grant post-conviction relief. *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012). Moreover, the credible testimony shows Counsel met with Applicant many times between his appointment and Applicant's plea. Accordingly, Applicant has wholly failed to show Counsel was deficient for failing to communicate with Applicant.

With respect to prejudice, Applicant has failed to show how additional time spent in consultation would have resulted in a different outcome. *Smith*, 404 S.C. at 500-01. Applicant cannot show he would have taken his case to trial but for this alleged deficiency. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). In fact, Applicant acknowledged he was facing LWOP and testified he was afraid to take his case to trial and risk receiving LWOP. Applicant received a substantial benefit for pleading guilty, and decided to plead guilty to receive the benefit of his plea offer. Applicant has not shown how any additional communication reasonably would have caused him to take his case to trial. Accordingly, Applicant has failed to meet his burden as to both deficiency and prejudice, and this Court denies and dismisses this allegation with prejudice.



b. Failure to Investigate Phone Records

In his application, Applicant alleges Counsel was ineffective for failing to investigate cell phone records and telephone tower records allegedly obtained by the prosecution. This Court disagrees and denies and dismisses this allegation with prejudice.

Strickland makes clear that defense counsel “has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” 466 U.S. at 691. When highlighting failure to investigate as a ground for a larger ineffective assistance of counsel claim, judicial determination of this claim’s validity is evaluated for “reasonableness [under] all the circumstances” with “a heavy measure of deference to counsel’s judgments” applied. *Id.* Applicant is required to present evidence or witnesses he alleges Counsel did not properly investigate. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Additionally, whether Applicant was prejudiced by Counsel’s failure to investigate is contingent on whether the evidence presented would have led Counsel to change her recommendation regarding the plea. *Stalk v. State*, 383 S.C. 559, 562, 681 S.E.2d 592, 594 (2009).

Applicant testified Charles Verner gave him a copy of an order authorizing cell phone tower records. Applicant could not recall whether or not he discussed this Order with Counsel. Counsel testified he was not aware of an Order authorizing access to telephone records and phone locations during his representation, and similarly was not aware of any records that might have been produced pursuant to that Order. Counsel testified Applicant did not give him the name of any witnesses or leads to investigate that he did not investigate. Scott testified he believed the prosecution did not obtain any cell phone or telephone tower records pursuant to the Order.

This Court finds Counsel’s and Scott’s testimony credible, while also finding Applicant’s testimony on this issue credible only to the extent he testified he was aware an Order authorizing

phone records and telephone tower records existed. Although an Order authorizing cell phone records and telephone tower was issued, this Court finds the evidence does not show records were ever obtained by the prosecution pursuant to this Order. *See Glover*, 318 S.C. at 498-99. It appears the prosecution did not obtain phone records or cell phone tower records pursuant to the Order, and therefore, neither the prosecution nor Counsel were in possession of any such records. Counsel investigated all of the disclosed discovery materials and performed an investigation. Applicant did not give Counsel any leads or witnesses to investigate that Counsel did not investigate. Accordingly, Applicant has failed to show Counsel was deficient.

Moreover, Applicant has failed to meet his burden as to prejudice, requiring him to show that but for this alleged deficiency, he would have taken his case to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant has failed to show that records were actually obtained and that these records would have helped his case such that he would have taken his case to trial if Counsel investigated the records. Rather, the evidence shows Applicant accepted the guilty plea to receive the extremely favorable benefit to his plea offer, particularly the elimination of the possibility of LWOP. Applicant has failed to meet his burden as to both deficiency and prejudice, and therefore, this Court denies and dismisses this allegation with prejudice.

Prosecutorial Misconduct/Malicious Prosecution

Applicant alleges Scott committed prosecutorial misconduct in the form of malicious prosecution and he is entitled to post-conviction relief on that basis. This Court disagrees and denies and dismisses the allegation with prejudice.

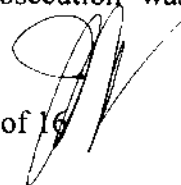
Courts have recognized that prosecutors have many powers within the criminal justice system. Included in this, is “discretion in choosing how to proceed with a case, including whether to prosecute in the first place and whether he brings it to trial or offers a plea bargain.” *State v.*

Langford, 400 S.C. 421, 435 n. 6, 735 S.E.2d 471, 479 n. 6 (2012). Additionally, prosecutors can use “punishment of the offender” as a proper motivation behind their behaviors and punitive motivations do not render otherwise lawful activity unlawful. *State v. Blakely*, 402 S.C. 650, 658, 742 S.E.2d 29, 33 (2013) (citing *State v. Fletcher*, 322 S.C. 256, 260, 471 S.E.2d 702, 704 (Ct.App.1996)).

However, a conviction will be reversed if the applicant can show prosecutorial vindictiveness, in that “the prosecutor acted with genuine animus toward the defendant” and “the defendant would not have been prosecuted but for that animus.” *State v. Odon*, 412 S.C. 253, 263, 772 S.E.2d 149, 154 (2015) (quoting *United States v. Wilson*, 262 F.3d 305, 314 (2001)) (quotations omitted). Otherwise, a “prosecutor’s charging decision is presumptively lawful.” *Id.* at 263-64 (quoting *United States v. Goodwin*, 457 U.S. 368, 384 n. 19 (2015)). The case in which an applicant can overcome the presumptive validity of the prosecutor’s actions is rare. *Id.* at 264 (quoting *Goodwin*, 457 U.S. at 384 n. 19).

Applicant testified he is alleging prosecutorial misconduct based on a meeting that involved Applicant, Verner and Scott, in which Scott allegedly cursed at Applicant. Scott testified Applicant filed a complaint against him with the Office of Disciplinary Counsel (ODC) on the basis that Scott had allegedly threatened Applicant; however, after reviewing the allegations ODC found the allegation was unfounded. Scott testified he could not specifically recall but might have used “colorful language” with Applicant.

This Court finds Scott’s testimony credible, while also finding Applicant’s testimony on this issue not credible. This Court finds Applicant has failed to show that any prosecution was conducted because of genuine animus towards Applicant, so that he would not have been prosecuted but for the animus. Applicant’s prosecution was based upon evidence against



Applicant, including, but not limited to, statements from his co-defendant implicating him and photos from the crime scene. Based upon the standard above, this Court finds Applicant has failed to meet his burden as to malicious prosecution.

Denial of Preliminary Hearing

In his application, Applicant alleges Applicant was denied his right to a preliminary hearing. This Court disagrees and accordingly dismisses and denies this allegation with prejudice.

In South Carolina, there is no constitutionally protected right to a preliminary hearing. *State v. Keenan*, 278 S.C. 361, 296 S.E.2d 676 (1982). Additionally, a preliminary hearing is not held if the defendant is indicted by a grand jury or waives presentment before the preliminary hearing occurs. Rule 2(b) SCRCrimP. Further, a preliminary hearing can be waived through “[p]lea negotiations and silence before the trial court regarding the desire for a preliminary hearing when entering a guilty plea. *O’Neil v. State*, 277 S.C. 230, 231, 285 S.E.2d 352, 353 (1981) (citing *Bonnettee v. State*, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981)).

This Court finds Applicant’s allegation is without merit. Applicant is not constitutionally entitled to a preliminary hearing. Moreover, Applicant was true-bill indicted during the February 2012 term of the Newberry County grand jury. Accordingly, this Court finds Applicant has failed to meet his burden imposed upon him, and therefore, this Court denies and dismisses this allegation with prejudice.

Conclusion

Based on all the forgoing, this Court finds and concludes 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.

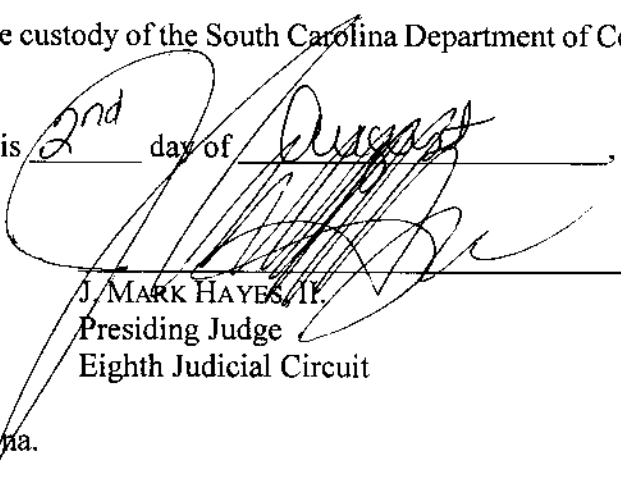
The Court notifies Applicant must file and serve a notice of appeal within thirty days from

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

IT IS THEREFORE ORDERED:

1. That the PCR application must be denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 2nd day of August, 2021.


 J. MARK HAYES, II
 Presiding Judge
 Eighth Judicial Circuit

Newberry, South Carolina.

✓
SCANNED

WITNESSES

Robert Dennis
Newberry County Sheriff

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

February Term, 2012
Indictment # 12GS36-0156

WARRANT NUMBER

M481156

THE STATE

vs.
Maurice Anthony Odom

TRUE BILL

Maie M. Shelton

Foreman of the Grand Jury

Date: 2-3-12

VERDICT

INDICTMENT FOR

BURGLARY
16-11-0312

Foreman

THE STATE OF SOUTH CAROLINA**INDICTMENT FOR**

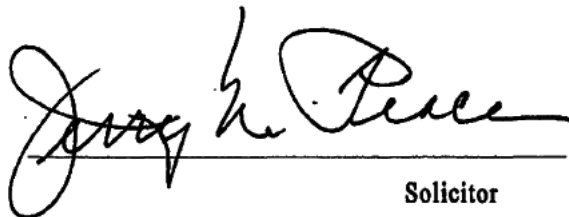
COUNTY OF NEWBERRY

**BURGLARY
16-11-0312**

At a Court of General Sessions, convened on the 3rd day of February, 2012 the Grand Jurors of Newberry County present upon their oath:

That Maurice Anthony Odom, did in Newberry County, state aforesaid, on or about the 7th day of October, 2011 willfully and unlawfully enter a building without consent and with intent to commit a crime therein, when such entering or remaining occurred in the nighttime, the said building being owned and/or occupied by Around the Clock BP Station, in violation of Section 16-11-312 of the South Carolina Code of Laws, 1976, as amended.

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



Solicitor

STATE OF ¹²⁴SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Newberry
STATE VS.
Maurice Anthony Odom

INDICTMENT/CASE#: 12GS36-0156
A/W#: M481156
Date of Offense: 10/7/2011
S.C. Code § : 16-11-0312
CDR Code #: 0086

AKA: _____
Race: AFRICAN AME Sex: M Age: 39
DOB: _____ SS#: _____
Address: 217 Canna Street
City, State, Zip: Barnwell, SC 29812
DL#: _____ SID#: SC00839101

SENTENCE SHEET

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

CONVICTED OF or PLEADS

in violation of § 16-11-0312 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. _____ (defendant's initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: _____ 73081 _____ 72682
Scott, C. Dale SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 15 days/months/years 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: June 16, 2014
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Since July 14, 2014
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

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

Payment Terms: _____ Obtain GED

Set by SCDPPS _____ Attend Voc. Rehab. or Job Corp. _____

Recipient: _____ May serve W/E beginning _____

*Fine: \$ _____ Substance Abuse Counseling

§ 14-1-206 (Assessments 107.5 %) \$ _____ Random Drug/Alcohol testing

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ pmts. of \$ _____ beginning _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____ \$ _____ paid to Public Defender Fund

§ 56-1-286 (DUI Breath Test) \$25 \$ _____ Other: _____

Proviso 47.9 (Public Def/Prob) \$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/ca \$ _____

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

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

Presiding Judge _____

Judge Code: _____

Sentence Date: 1-5-15

Clerk of Court/ Deputy Clerk Gookin S. Bowles
Court Reporter: Goy Holston
SCCA/217 (03/2011)