RECEIVED
May 11 2022
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Michael S. Holt, Circuit Court Judge

JAYSEN R. HODGE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001288

APPENDIX

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Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEYS FOR RESPONDENT

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State of South Carolina) In the Court of General Sessions
) Fifth Judicial Circuit
County Of Richland) 2014-GS-40-7604
2015-GS-40-2282
2015-GS-40-2289

The State of South Carolina,)
)
Plaintiff,)
)
vs.) Transcript of Record
)
Jaysen Hodge,)
)
Defendant.)
)
)

May 11, 2017
Columbia, South Carolina

B E F O R E:

The Honorable Steven H. John, Judge

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

Maire E. Flynn, Esquire, Assistant Solicitor
Attorney for the State

Ronald W. Moak, Esquire
Attorney for the Defendant

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

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E X H I B I T S

No.	Description	I.D.	Ev.

No exhibits introduced.

THE COURT: Yes, ma'am.

MS. FLYNN: Thank you, Your Honor. May it please the court? Before you is Jaysen Hodge. He's represented by Ron Moak of the private bar. He's here today to plead guilty to one count of burglary in the first degree, one count of grand larceny, one count of shoplifting under the property third enhancement, and, Your Honor, the state is making a recommendation of fifteen years.

(WHEREUPON, THE DEFENDANT IS DULY SWORN.)

THE COURT: And, counsel, tell me, tell me your name again, please, sir.

MR. MOAK: Ron Moak, M-o-a-k.

THE COURT: All right. Thank you, sir.

EXAMINATION BY THE COURT:

Q. All right, Mr. Hodge, give me your attention, sir. You are come before the court pleading guilty to burglary first degree, grand larceny valued 2,000 to 10,000, and shoplifting enhancement third or subsequent offense. Is that correct?

A. Yes, sir.

Q. All right, sir. Now, you have heard the state's recommendation.

THE COURT: Tell me the recommendation again, Solicitor.

MS. FLYNN: Your Honor, it's a recommendation of

fifteen years, and that is to run concurrent for all charges. Just the minimum on burg first.

THE COURT: All right. Very good.

BY THE COURT:

Q. And so you understand the potential sentences here regarding burglary first, the minimum sentence is fifteen years up to life. You understand that?

A. Yes, sir.

Q. The grand larceny 2,000 to 10,000 is a five-year sentence, and the shoplift enhancement could be up to ten years. You understand that?

A. I do.

Q. So, the state's recommendation is the minimum sentence in the burglary first charge; the maximum sentence in the enhancement, which is ten to run concurrent with the burglary; and the maximum sentence in the larceny, which is five, again to run concurrent with the burglary charge. You understand that?

A. I do.

Q. You also understand I don't have to follow those recommendations by the state. Do you understand that?

A. Yes, sir, I do.

Q. Understanding -- and I'm sorry. One other thing. You understand regarding the burglary first charge, that carries a classification of violent and most serious. You

understand that?
A. I do.
Q. And you've talked about those classifications with your attorney, Mr. Moak. Is that correct?
A. I have.
Q. And you understand that the classification, those two classifications carry certain consequences. One of them, it affects how long you're going to stay in the Department of Corrections, and you understand that?
A. Yes, sir.
Q. And it also gives you a strike under the state's most serious offence and if you accumulate two of those, then the state's asking for life in prison without the possibility of parole, parole. You understand that?
A. Yes, sir.
Q. All right. So understanding all these things, then, we've talked about, you want to go forward with your two -- I'm sorry, your three guilty pleas?
A. I do.
Q. Are you currently under the influence of any drugs or intoxicants of any kind or currently have in your system?
A. Not at all.
Q. You suffering from any kind of physical, mental, emotional problem that would keep you from understanding what you're doing here today?

A. No, sir.
Q. You're pleading guilty. You give up constitutional rights. Among those, right to remain silent. You're talking to me and giving that right up. You understand that?
A. I do.
Q. Other rights are the presumption of innocence, the right against self-incrimination at a trial. The state would have to prove you guilty beyond a reasonable doubt. If you plead guilty, you're giving up those rights. You understand that?
A. Yes, sir.
Q. You're entitled to a jury trial. Twelve men and women look at the facts presented by the state to see if there are, indeed, enough facts and evidence to prove you guilty beyond a reasonable doubt. You plead guilty, you're giving up your jury trials. You understand that?
A. Yes, sir.
Q. Now in the jury trials, with your attorney you could question witnesses, the evidence presented by the state. If you wanted to, you could present a defense: testify, call witnesses, present evidence. You plead guilty, you're giving up all those rights. You understand that?
A. I do.
Q. Now, you come before the court, and you're pleading

guilty to crimes of the burglary first, the shoplifting under the enhancement statute, and then the grand larceny valued 2,000 to 10,000. Are you pleading guilty to all three of them freely and voluntarily?

A. I am.

Q. Of your own free will and accord?

A. Yes, sir.

Q. Pleading guilty because you are guilty of all three crimes?

A. Yes, sir.

Q. And now did anybody promise you anything, threaten you, force you in any way to get you to plead guilty?

A. No.

Q. All right, sir. Now, you're here with your attorney, Mr. Moak. Is that correct?

A. I am.

Q. Did you tell him everything you wanted to tell him about all these cases?

A. I did.

Q. And have you had enough time to talk to him?

A. Yes, sir.

Q. Do you need any more time to talk to him?

A. No, I don't think so.

Q. All right, sir. Well, you understand, Mr. Hodge, if you've got a question, now is the time to be asking your

attorney because later on is too late. If you have a question, go ahead and ask him.

A. I, I've asked him. I've asked him. I've just had a lot of time to consider these charges. That's all.

Q. All right, sir. Very good. You satisfied, then, with the representation you've received from your attorney?

A. Yes, sir.

Q. And any complaints about his representation?

A. No, sir.

Q. All right. Very good.

THE COURT: All right, Mr. Moak, you represent the interest of your client, Mr. Hodge, in these three matters?

MR. MOAK: Yes, Your Honor.

THE COURT: And he comes before the court to enter his pleas of guilty to the three offenses. Do you concur?

MR. MOAK: Yes, Your Honor.

THE COURT: And you believe he comes before the court of his own free will and accord?

MR. MOAK: Yes, Your Honor.

THE COURT: And have you explained to him his constitutional rights, any defenses he might have, as well as the information and the evidence in possession of the state?

MR. MOAK: Yes, Your Honor.

THE COURT: Thank you very much.

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All right, Solicitor, the basic facts, please, ma'am.

MS. FLYNN: Thank you, Your Honor. The first incident occurred on December 31st of 2012 at approximately 9:30 PM. Officers responded to a burglary at [redacted] Hearn Drive, which is in the city limits of Columbia. A rock had been used to break the window in the rear of the residence. The defendant then made entry through that window. Removed several televisions, cameras, and laptops. When the owner got home, he discovered the break-in and noticed the flashlight on his bed that did not belong to him.

A DNA swab was taken from that flashlight and logged into evidence and was submitted to SLED for testing. It took two years and on October 30, 2014, they received a CODIS hit matching this defendant.

Investigators located the defendant, who was in Alvin S. Glenn actually on the shoplifting prop third charge. The investigator did speak to Mr. Hodge. He read his Miranda rights and -- he was read his Miranda rights. He waived them. He confessed to the incident. He said he observed the victim leave his home. After he left, he went up to the door and knocked, walked around to the back door, broke in, took the things that, that I stated earlier, Your Honor. He told investigators that he sold those items on the street for crack. He made himself a plate of food.

He did provide a written statement to that effect. He

did indicate that it occurred between 9:30 and 10 PM, and did, did also voluntarily give a Buccal swab, which was confirmed by the CODIS hit.

The shoplifting incident occurred on September 13, 2014. Mr. Hodge was at the Target on Garners Ferry. Took merchandise off the shelves using a key, a universal key of sorts to unlock the shelves. Put the items in a book bag, and it was witnessed by loss prevention, so he was caught.

Your Honor, the state is also dismissing another burglary first and a petit larceny, as well as several accompanying city-level charges, and I have his prior record at the appropriate time.

THE COURT: Go ahead and read that, please.

MS. FLYNN: 1999 resisting arrest, reckless driving, simple possession of marijuana; 2001 PWID marijuana, possession of cocaine; 2002 DUS; 2003 possession of cocaine; 2004 possession of crack DUS; 2006 entering premises after warning, malicious injury to personal property, trespass, DUS; 2007 shoplifting; 2008 burglary second nonviolent; 2012 CDV first offense shoplifting under the prop third enhancement, and assault and battery first degree; in 2014 simple possession of marijuana.

THE COURT: Thank you.

BY THE COURT:

Q. All right, Mr. Hodge, on the matters we are here

about today, the three offenses that you're pleading guilty to, you heard the solicitor talk about the facts of those three cases, and I'll tell you a brief summary of those same facts are set forth in your three indictments. My question to you is are those facts true and correct?

A. Yes, sir.

Q. And you understood you engage in that kind of activity, you're committing a crime. You understand that?

A. I do.

Q. Have you understood my questions here today?

A. Yes, sir.

Q. Have all your answers to me been the truth?

A. Yes, sir.

Q. Anybody tell you how to answer my questions?

A. No.

Q. And you understand you have the right to appeal your guilty pleas within ten days?

A. I do now.

THE COURT: I find there's been a substantial factual basis for the pleas. Find defendant's decision to plead guilty is being done freely, voluntarily, knowingly, and intelligently made. He's had advice of competent counsel with whom he's satisfied. Therefore, Mr. Hodge's decision to plead guilty to burglary first degree, the shoplifting under the enhancement statute, and the grand larceny, the

value 2,000, 10,000, is accepted.

Yes, sir, Mr. Moak.

MR. MOAK: Your Honor, started off -- one of the most powerful powers the prosecutor has in South Carolina is discretion as what charge might place you and what the -- which a -- where it affects the sentencing range.

When I got involved in this case towards the end of it, his previous public defender, their, their strategy appears to have been basically wait it out. Have him take classes at the jail and try to rehabilitate himself as much as he could while he was in there. He has been in, in Alvin S. Glenn at this point for 861 days.

In, you know, my experience -- I was actually an assistant solicitor in this circuit for, what, thirteen years myself, and while -- most cases that works out. But every now and then, you end up with a case where the solicitor declines to exercise his discretion to reduce the charge and, and try to help the defendant out or try to address the actual problem, and that's how you end up with today with a burglary first plea.

Mr. Hodge, his, his main problem is he's an addict. His mother was an addict. He's an addict. His only living relative is here in the courtroom, Mr. John Crawford, my classmate from the Citadel. They're the, they're the only two relatives of each other -- each one of them's got,

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okay? Mr. Crawford's mother died, and that's what led him to try to reconnect with his aunt and Mr. Hodge. Mr. Hodge was already incarcerated at that point. While Mr. Hodge has been incarcerated, his mother died, and now this is the only, only family member that Mr. Crawford has, and he's been very active in trying to help his cousin out. He was active with the public defender that was assisting him before.

But at some point, you know, once it became apparent that the plea offer was fifteen years and there was going to be no, no, no leeway, you know, he got approved for the South Carolina Strong program which is in Charleston and, I think, supervised with a circuit court judge there, that he was approved for that back in September of 2015.

He's taking classes in the jail. He's got the reports where he passed those where actually the scores as far as -- like, the top of the range, the, the scores on the, on the work classes in the jail. And he was taking the, I guess, counseling or spiritual classes in the jail as well. And, you know, he, he's been doing what he can to try to address the problem.

And, quite frankly, me not knowing him when this happened, I'm assuming he was a much different person when he was incarcerated than he is now, but with 861 days of sobriety, you know, he comes across as a bright young man

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who actually may be able to make and has a significant future which, you know, my experience as a former prosecutor was something where, you know, you, you, you take into consideration. And you end up with a lot of people charged with burglary first degree come before the court for burglary second charges on a reduced -- on a, on a, on a charge reduction, and that's what happens.

MS. FLYNN: Your Honor, may we approach, please?

THE COURT: Yes, ma'am.

MS. FLYNN: Thank you.

(OFF-THE-RECORD BENCH CONFERENCE.)

MR. MOAK: Your Honor, ultimately, that is the power of the prosecutor.

He is guilty of burglary first. He's never, he's never denied it. When he was arrested, he cooperated; he gave a full confession. Matter of fact, if you ask him anything he's done, he, he freely admits it because he's ashamed of who he was. That's who he was. That's not who he is now.

He does have people that -- on, on his side. There are some people, the Ritter family who he knew, and I'm guessing this was prior to, to him developing an addiction issue. I've got letters from Mr. Mark Ritter, which I believe is the father of Todd Ritter. Todd Ritter was his friend from school, and basically what the letter says,

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they think a lot of him. And if there's any possibility, which is not really -- not with this plea, that they would actually take him in the home and, and they'd provide him with a vehicle and, and housing and a job and, and, and basically take care of him, try to keep him on the straight and narrow.

I also have a letter from Mr. Crawford, who, who is his, his cousin. He's the only family member he's got. I'm not sure Mr. Crawford wants to address the court.

MR. CRAWFORD: Yes.

MR. MOAK: But he's got a letter he wanted me to at least pass up that -- if, if they want...

THE COURT: I'll be glad to -- let me, let me, let me read the -- let me read the letter.

(A PAUSE.)

THE COURT: Let me have a -- let me ask you a question, Mr. Moak.

MR. MOAK: Yes, Your Honor.

THE COURT: And I appreciate everything that you've said on behalf of your client. You appear to have done a lot of work on behalf of Mr. Hodge since you've become involved in it, and I've read the letter of Mr. Crawford. What are you asking the court to do, understanding that ---

MR. MOAK: Your Honor, we just want to -- the, the family wanted -- Mr. Hodge and the family just wanted to

let you know what was -- who he was and what was -- what, what had happened. But at the end of the day, Mr. Hodge freely admits that he is guilty to burglary first degree.

Fifteen to life is the sentence range for that. That's what the sentence recommendation is, fifteen, and there's nothing we can do about it. And we just wanted to, to let you know and let the world know that we feel that he, he, he is in the category of anybody that we feel should have been -- should have had a reduced charge, but it's, it's...

THE COURT: All right, sir.

MR. MOAK: That's the way life works. He, he just did not get that option.

THE COURT: All right, sir. Thank you, Mr. Moak. I appreciate it very much.

MR. MOAK: I think Mr. Crawford wants to...

THE COURT: Is there something in addition to what you set forth in your letter, Mr. Crawford? I've, I've read the letter. I understand your situation and, and it's been expressed more than adequately by, by Mr. Moak.

MR. CRAWFORD: Your Honor, the only thing is, is that I've recently relocated back to the state of South Carolina just so I can build a support network for Jaysen. We're remodeling the family homestead so that if and when he does reenter society, he does have a stable place. He'll be

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able to work within my business.

And that Jaysen is an addict and given the current climate of what's being done now that there's a huge opioid addiction, I'd like for him to at least get a benefit of the doubt or options. He has two options: fifteen years or twenty-five to life if he exercised a jury trial. I'd like for him to be able to be given some of the same leeway, latitude for help.

Jaysen is an addict. His mother was an addict, and he needs mental health counseling, and he needs rehabilitative services. So whatever sentence he gets, I would hope that that would include some of those mechanisms to help him become an even better person than he is now.

I buried his mother since he's been at Alvin S. Glenn and upon burying her and talking to him, I've seen a totally different person partly because he's clean. He's been there for 800 days waiting for this, so he's clean now.

And the other is I now believe that he's ready to make a difference in his life. Jaysen is thirty-six years old. All the games are over, and the addiction is what we need to deal with. And incarceration, he needs to be punished for what he did, but long-term incarceration is going to have him as a totally different individual than the person who is standing in front of you today who needs help.

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That's all I ask, Your Honor.

THE COURT: Thank you.

MR. CRAWFORD: And thank you for giving me your time.

THE COURT: Thank you, sir.

MR. MOAK: Your Honor, I do believe ATU recommendation would be appropriate, Your Honor.

THE COURT: Yes, sir.

MS. FLYNN: And, Your Honor, if I may respond very briefly?

THE COURT: I, I understand that y'all are on completely opposite ends of this. The state's over here; the defense is over here. Y'all don't agree. I appreciate it. We're done. Thank you.

SENTENCE OF THE COURT:

THE COURT: 2015-GS-40-2282, *State of South Carolina, County of Richland vs. Jaysen Randall Hodge* regarding burglary first degree, the sentence of the court is defendant is committed to the State Department of Corrections determinant term fifteen years. Defendant's given credit for the time that he has served, 861 days. I am recommending the Addictions Treatment Unit.

2014-GS-40-7604, shoplifting, the sentence is ten years concurrent to run at the same time with 2015-2282. Same credit for the time served.

2015-GS-40-2289, the defendant is committed to the

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State Department of Corrections concurrent two thousand -- five years, 2015-GS-40-2282. Thank you very much.

--- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 11TH DAY OF MAY, 2017.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/*Elizabeth B. Harris*, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

OCTOBER 6TH, 2020

ARREST WARRANT

2014A4021602202

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

21 City of Columbia

THE STATE 140026214

against

Jaysen Randall Hodge

Address: [redacted]

Columbia, SC 29203-

Phone: [redacted] SSN: 2[redacted]

Sex: M Race: B Height: 6 1 Weight: 180

DL State: SC DL #: [redacted]

DOB: [redacted] Agency ORI #: SC0400100

Prosecuting Agency: Columbia Police Department

Prosecuting Officer: Kevin L Baum - 22752

Offense: Shoplifting / Value $2000 or less (Enhancement per 16-01-0057)

Offense Code: 2877

Code/Ordinance Sec: 16-13-0110(A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

. The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Jaysen R Hodge on 14 Sept 14

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

City Of Columbia Municipal Court
811 Washington Street
Columbia, SC 29201

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of)
City of Columbia)

AFFIDAVIT

ORIGINAL

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

Personally appeared before me the affiant Kevin L Baum who being duly sworn deposes and says that defendant Jaysen Randall Hodge did within this county and state on or about 9/13/2014 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of City of Columbia) in the following particulars:

CERTIFIED TRUE COPY OF ORIGINAL FILED, J[illegible] Brade C.P.&G.S. RICHLAND COUNTY SOUTH CAROLINA

DESCRIPTION OF OFFENSE: Shoplifting / Value $2000 or less (Enhancement per 16-01-0057)

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

On 09/13/2014 at approximately 1430 hours, the defendant did commit the crime of shoplifting at Target Store located at 6090 Garners Ferry Road, city of Columbia county of Richland. The suspect took locked merchandise off the store shelves by using a key he brought into the store and concealed the items inside a bookbag that he also took from the location to convert into his own personal property. The total of the items were $640. The incident was witnessed by Brandon Nicholson, loss prevention at the location. The incident was also recorded on the stores video camera. The defendant was detained as he tried to leave the location without rendering payment for the items. The defendant has two prior convictions for property crimes, one on 07/24/2007 and also on 11/08/2012.

Signature of Affiant

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of)
City of Columbia)

Affiant's Address Columbia Police Department
Columbia, SC 29201-
Affiant's Telephone (803)545-3500

JEANNETTE W. MCBRIDE C.C.P. & G.S. 2014 SEP 25 PM 4:23 RICHLAND COUNTY FILED

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 9/13/2014 defendant Jaysen Randall Hodge did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of City of Columbia) as set forth below:

DESCRIPTION OF OFFENSE: Shoplifting / Value $2000 or less (Enhancement per 16-01-0057)

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

Sworn to and subscribed before me on 9/14/2014

(L.S.)

Signature of Issuing Judge

Russell T. Spencer

Judge Code: 6674

Judge's Address P.O. Box 644
Columbia, SC 29202
Judge's Telephone (803)545-3128

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

WITNESSES

(S) Kevin L Baum
– Columbia Police Department

ARREST WARRANT NUMBER

2014A4021602202

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: DEC 17 2014

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS4007604

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

DECEMBER TERM 2014

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THE STATE
vs.

Jaysen Randall Hodge

Moak

Indictment for
SHOPLIFTING / ENHANCEMENT FOR 3RD OR SUB. OFFENSE. VALUE $2000 OR LESS (SEE 16-01-0057)

SC Code: **16-13-0110(A)**
CDR Code: **2877**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____ hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jeanette W. Bridges
C.C.C. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

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STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on December 16, 2014, the Grand Jurors of Richland County present upon their oath:

SHOPLIFTING 3RD OFFENSE AND ABOVE

That Jaysen Randall Hodge did in Richland County on or about September 13, 2014, take possession of carry away, transfer to another area of the store; alter, transfer, or remove the price label or tag on; transfer to from its container to another container; and/or willfully conceal certain merchandise to wit: various merchandise, displayed, held, stored, or offered for sale by TARGET, with the intention of depriving said merchant of the possession, use, or benefit of such merchandise without paying the full retail value and having two or more prior convictions, an offense for which the term of imprisonment is contingent upon the value of the property involved. All in violation of § 16-13-110, S.C. Code of Laws, 1976, as amended

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

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
RICHLAND COUNTY
SOUTH CAROLINA

DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF 24 Richland)
STATE VS.)
Jaysen Randall Hodge)
AKA:)
Race: BLACK Sex: M Age: 36)
DOB: [redacted])
[redacted] Road)
City,State,Zip: Columbia, SC 29203)
DL#: 011286090 SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS4007604
A/W#: 2014A4021602202
Date of Offense: 9/13/2014
S.C. Code § : 16-13-0110(A)
CDR Code #: 2877

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Shoplifting / Enhancement for 3rd or sub. offense. Value $2000 or less (see,16-01-0057) (O-10)
in violation of § 16-13-0110(A) of the S.C. Code of Laws, bearing CDR Code # 2877
☒ NON-VIOLENT ☐ VIOLENT ☐SERIOUS ☐MOST SERIOUS ☐Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐§17-25-45
The charge is: ☒ As Indicted, ☐Lesser Included Offense, ☐Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST: Molly Flynn 100927 [signature] [signature] 68461
Flynn, Molly SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 10 days/~~months~~/years or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2015-65-40-2282
☒ 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. 861 Days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

CERTIFIED TRUE COPY OF CRIMINAL RECORDS
[signature]
CLERK OF COURT
RICHLAND COUNTY
SOUTH CAROLINA

SPECIAL CONDITIONS:

☐**RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 61.6 (Public Def/Probation)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$
TOTAL		$

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp.
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

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

Clerk of Court/ Deputy Clerk Jeanette W McBride
Court Reporter: ~~[illegible]~~ Harris
SCCA/217 (07/2016)

*Presiding Judge [signature]
Judge Code: 129
Sentence Date: 5/11/17

KR

ARREST WARRANT

2014A4010700246

STATE OF SOUTH CAROLINA

25

[X] County/ [ ] Municipality of

Richland / Upper Township Magistrate

THE STATE 1301006501 R2

against

Jaysen Randall Hodge

Address: [redacted]

Columbia, SC 29203-4980

Phone: SSN: [redacted]

Sex: M Race: B Height: 6 1 Weight: 180

DL State: SC DL #: [redacted]

DOB: [redacted] Agency ORI #: SC0400000

Prosecuting Agency: Richland County Sheriff

Prosecuting Officer: G Oxendine - 1456

Offense: Burglary / Burglary (After June 20, 1985) - First degree

Offense Code: 0079

Code/Ordinance Sec: 16-11-0311

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Jaysen Hodge on 11/6/14

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Richland County General Sessions
1701 Main Street
P O Box 192
Columbia, SC 29202

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
Richland / Upper Township Magistrate)

AFFIDAVIT

ORIGINAL

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

Personally appeared before me the affiant G Oxendine who being duly sworn deposes and says that defendant Jaysen Randall Hodge did within this county and state on or about 12/31/2012 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Richland / Upper Township Magistrate) in the following particulars:

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

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

That on or about 12/31/2012 through 01/01/2013 while at [redacted] Hearn Drive in the Dentsville Magisterial District of Richland County, one Jaysen Randall Hodge did commit the crime of Burglary 1st / Statue Number 16-11-311. It is believed the defendant committed the crime because the def. did willfully, unlawfully and feloniously breaks into and enters the dwelling of Gregory Smalls without consent with the intent to commit a crime therein during the hours of darkness. The def. gained access to the residence through a broken window on the rear of the residence. Once inside the residence the def. removed two TVS, three cameras and two laptops with a value in excess of $4000.00. The deputies responded to the scene and processed the scene finding a flashlight in the master bedroom of the residence. The DNA collected from the flashlight was confirmed and matched the def. Affiant and others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
Richland / Upper Township Magistrate)

Affiant's Address 5623 Two Notch Road
Columbia, SC 29223-

Affiant's Telephone (803)576-3000

2014 NOV 12 PM 3:55

CLERK OF COURT
RICHLAND COUNTY, S.C.
FILED

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 12/31/2012 defendant Jaysen Randall Hodge did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Richland / Upper Township Magistrate) as set forth below:

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

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

Sworn to and subscribed before me on 10/31/2014

(L.S.)

Signature of Issuing Judge

Tomothy Clinton Edmond

Judge Code: 7154

Judge's Address 4919 Rhett Street
Columbia, SC 29203-

Judge's Telephone (803)576-2570

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

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

WITNESSES

(S) G Oxendine
– Richland County Sheriff

ARREST WARRANT NUMBER

2014A4010700246

ACTION OF GRAND JURY

TRUE BILL

Connie Tumpkin

Foreperson of Grand Jury
Date: MAY 07 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015GS4002282

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

MAY TERM 2015

95

THE STATE

vs.

Jaysen Randall Hodge

Indictment for

BURGLARY / BURGLARY (AFTER JUNE 20, 1985) - FIRST DEGREE

SC Code: **16-11-0311**
CDR Code: **0079**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

26

SCANNED

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on May 6, 2015, the Grand Jurors of Richland County present upon their oath:

BURGLARY, 1ST DEGREE

That Jaysen Randall Hodge did in Richland County on or about December 31, 2012, enter the dwelling of GREGORY SMALLS located at [redacted] Hearn Drive, without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight, the defendant entered or remained during the hours of darkness, in violation of Section 16-11-0311(A), Code of Laws of South Carolina, 1976, as amended.

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

DAN JOHNSON, SOLICITOR

28

STATE OF SOUTH CAROLINA)
COUNTY OF Richland)
STATE VS.)
Jaysen Randall Hodge)
AKA:)
Race: BLACK Sex: M Age: 36)
DOB: [redacted] SS#: [redacted])
Address: [redacted])
City,State,Zip: Columbia, SC 29203-4980)
DL#: [redacted] SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS4002282
A/W#: 2014A4010700246
Date of Offense: 12/31/2012
S.C. Code § : 16-11-0311
CDR Code #: 0079

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Burglary / Burglary (After June 20, 1985) - First degree (15-Life)

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State. 15yrs
ATTEST:

Flynn, Molly	100127	[signature]	[signature] Mook	68461
	SC Bar#	Defendant	Attorney for Defendant	SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 15 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☑ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 861 Days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS: Recommend ATU.

☐**RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 61.6 (Public Def/Probation)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$
TOTAL		$

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

SCANNED

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

Clerk of Court/ Deputy Clerk Jeanette W. McBride
Court Reporter: ~~Anderson~~ Harris
Presiding Judge [signature]
Judge Code: _____
Sentence Date: 5/11/17

SCCA/217 (07/2016)

ARREST WARRANT

2014A4010700247

STATE OF SOUTH CAROLINA

29

[X] County/ [ ] Municipality of

Richland / Upper Township Magistrate

THE STATE 1301006501 R2

against

Jaysen Randall Hodge

Address: [redacted]

Columbia, SC 29203-4980

Phone: [redacted] SSN [redacted]

Sex: M Race: B Height: 6 1 Weight: 180

DL State: SC DL #: [redacted]

DOB: [redacted] Agency ORI #: SC0400000

Prosecuting Agency: Richland County Sheriff

Prosecuting Officer: G Oxendine - 1456

Offense: Larceny / Grand Larceny, value more than $2,000 but less than $10,000

Offense Code: 3420

Code/Ordinance Sec: 16-13-0030(B)

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Jaysen Hodge on 11/6/14

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Richland County General Sessions
1701 Main Street
P O Box 192
Columbia, SC 29202

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
Richland / Upper Township Magistrate)

AFFIDAVIT

ORIGINAL

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

Personally appeared before me the affiant G Oxendine who being duly sworn deposes and says that defendant Jaysen Randall Hodge did within this county and state on or about 12/31/2012 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Richland / Upper Township Magistrate) in the following particulars:

DESCRIPTION OF OFFENSE: Larceny / Grand Larceny, value more than $2,000 but less than $10,000

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

That on or about 12/31/2012 through 01/01/2013 while at [redacted] Hearn Drive in the Dentsville Magisterial District of Richland County, one Jaysen Randall Hodge did commit the crime of Grand Larceny/ Statue Number 16-13-30. It is believed the defendant committed the crime because the def. did willfully, unlawfully and feloniously breaks into and enters the dwelling of Gregory Smalls without consent with the intent to commit a crime therein during the hours of darkness. The def. gained access to the residence through a broken window on the rear of the residence. Once inside the residence the def. removed two TVS, three cameras and two laptops with a value in excess of $4000.00. The deputies responded to the scene and processed the scene finding a flashlight in the master bedroom of the residence. The DNA collected from the flashlight was confirmed and matched the def. Affiant and others are witness to prove same.

Signature of Affiant 1456

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
Richland / Upper Township Magistrate)

Affiant's Address 5623 Two Notch Road
Columbia, SC 29223-
Affiant's Telephone (803)576-3000

JEANETTE W. WALKER, C.P. & Q.S.
2014 NOV 12 PM 3:55
RICHLAND COUNTY FILED

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 12/31/2012 defendant Jaysen Randall Hodge did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Richland / Upper Township Magistrate) as set forth below:

DESCRIPTION OF OFFENSE: Larceny / Grand Larceny, value more than $2,000 but less than $10,000

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

Sworn to and subscribed before me on 10/31/2014

(L.S.)

Signature of Issuing Judge

Tomothy Clinton Edmond

Judge Code: 7154

Judge's Address 4919 Rhett Street
Columbia, SC 29203-
Judge's Telephone (803)576-2570

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

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

WITNESSES

(S) G Oxendine
– Richland County Sheriff

ARREST WARRANT NUMBER

2014A4010700247

ACTION OF GRAND JURY

TRUE BILL

Connie Lumpkin

Foreperson of Grand Jury
Date: MAY 07 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015GS4002289

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

MAY TERM 2015

95

THE STATE

vs.

Jaysen Randall Hodge

Indictment for

LARCENY/GRAND LARCENY, VALUE MORE THAN $2000 BUT LESS THAN $10,000

SC Code: **16-13-0030(B)**
CDR Code: **3420**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

_____
Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

_____
Defendant

Witness:
_____
C.C.C. PLS. AND G.S.

30

SCANNED

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on May 6, 2015, the Grand Jurors of Richland County present upon their oath:

GRAND LARCENY
$2,000 BUT LESS THAN $10,000

That Jaysen Randall Hodge did in Richland County on or about December 31, 2012, take and carry away the personal goods and/or monies of GREGORY SMALLS, valued at more than Two Thousand ($2,000.00) Dollars, but less than Ten Thousand ($10,000.00) Dollars, described as follows: personal goods and/or monies, with the intent to deprive the owner permanently of such property and to convert the goods to his/her own use, in violation of Section 16-13-0030(B)(1), S. C. Code of Laws, 1976, as amended.

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

DAN JOHNSON, SOLICITOR

32

STATE OF SOUTH CAROLINA)
COUNTY OF Richland)
STATE VS.)
Jaysen Randall Hodge)
AKA:)
Race: BLACK Sex: M Age: 36)
DOB: [redacted] SS#: [redacted])
Address: [redacted])
City,State,Zip: Columbia, SC 29203-4980)
DL#: [redacted] SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS4002289
A/W#: 2014A4010700247
Date of Offense: 12/31/2012
S.C. Code § : 16-13-0030(B)
CDR Code #: 3420

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Larceny/Grand Larceny, value more than $2000 but less than $10,000 (10-5)
in violation of § 16-13-0030(B) of the S.C. Code of Laws, bearing CDR Code # 3420
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

ATTEST: Molly Flynn 100927 Jay Hodge [illegible] 88461
Flynn, Molly | SC Bar# | Defendant | Attorney for Defendant | SC Bar#

WHEREFORE, the Defendant is commited to the ☑ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 5 ~~days/months~~/years or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☑ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2015-GS-40-2282
☑ 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. 861 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 61.6 (Public Def/Probation)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$
TOTAL		$

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

SCANNED

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

Clerk of Court/ Deputy Clerk Jeanette W. McBride or
Court Reporter: ~~Ambrosiak~~ Harris
Presiding Judge [signature]
Judge Code: 129
Sentence Date: 5/11/17

SCCA/217 (07/2016)

FORM 5

STATE OF SOUTH CAROLINA)
)
County of Richland)
)
Jaysen R. Hodge 302270)
Full name and prison number (if any) of Applicant)
)
v.)
)
State of South Carolina)
)
)
)

IN THE COURT OF COMMON PLEAS

2018CP4003080

APPLICATION FOR

POST-CONVICTION RELIEF

RICHLAND COUNTY FILED
2018 MAY 15 P 2:47
JEANNETTE W. BRIBER C.C.P. & G.S.

INSTRUCTIONS – READ CAREFULLY

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

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

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

1. Place of detention Kirkland Correctional Institution (KCI), Broad River Road, Columbia SC

2. Name and location of Court which imposed sentence
Fifth Judicial Circuit Court, Columbia SC

3. Name(s) of co-defendant(s) (if any) N/A

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2014GS4007604

(b) 2014GS4002282

34

(c) 2015GS4002289

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

(a) May 11, 2017 - 15yrs SCDC

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty Accepted the plea deal in leau of trial from solicitor's office

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

No

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

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

i. N/A

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) My understanding is that an acceptance of a plea deal negates my right to appeal

(b) _____

(c) _____

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

(a) Inadequate representation

(b) Lack of due process

(c) Plea deal was a contract of adhesion

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

(a) Discovery was never done on my behalf. No evidence or charges challenged. Told to "sit and wait" and eventually waited for more than 2 years instead of bail and independent investigation

(b) I was detained for 1 1/2 years for shoplifting (until indictments for other unsolved cases could be obtained and "connected" to me) Served 971 days before plea ans sentencing

(c) Advised to sign a plea deal for 15yrs because excercising my right to trial would "guarantee" a 25yr-life sentence that would be pursued by the solicitor's office. Solicitor told family member that assisting addicts would not be politically advantageous

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

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

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

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

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. _____

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

I, Jaysen R. Hodge, 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.

5-2-18

Applicant

SWORN or affirmed to and subscribed before me this 2 day of May, 2018.

Debra Eastridge

Notary Public

My Commission Expires: 3/3/2024

HIGHLAND COUNTY
FILED
2018 MAY 16 PM 2:47
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

Revised 3/2003

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS IN THE FIFTH JUDICIAL CIRCUIT
Jaysen R. Hodge, #302270, Applicant,	)	Case No.: 2018-CP-40-2680
v.	)	**RETURN AND MOTION TO DISMISS**
State of South Carolina, Respondent.	)	

The State (Respondent), making its Return to the application for post-conviction relief (PCR) filed by Jaysen R. Hodge (Applicant) on May 16, 2018, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In December 2014, the Richland County Grand Jury indicted Applicant for shoplifting – third offense (2014-GS-40-7604). Applicant was subsequently indicted in May 2015 for grand larceny (2015-GS-40-2289) and first-degree burglary (2015-GS-40-2282). Ron Moak, Esquire, represented Applicant. Assistant Solicitor Molly Flynn, Esquire, prosecuted the case. On May 11, 2017, Applicant pleaded guilty as indicted before the Honorable Steven H. John. Pursuant to the State's recommendation, Judge John sentenced Applicant to imprisonment for concurrent terms of fifteen years for first-degree burglary, ten years for shoplifting, and five years for grand larceny, with credit for time served of 861 days. Applicant did not appeal his conviction or sentence.

II. Current Application

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

1. "Inadequate representation"

a. "Discovery was never done on my behalf. No evidence or charges challenged. Told to sit and wait and eventually waited for more than 2 years instead of bail and independent investigation"

2. "Lack of due process"
   a. "I was detained for 1 ½ years for shoplifting (until indictments for other unsolved cases could be obtained and connected to me) Served 971 days before plea and sentencing"
3. "Plea deal was a contract of adhesion"
   a. "Advised to sign a plea deal for 15 years because exercising my right to trial would guarantee a 25 year-life sentence that would be pursued by the solicitor's office. Solicitor told family member that assisting addicts would be politically advantageous"

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

III. Request for Summary Dismissal Based on Statute of Limitations

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

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.
>
> S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, section 17-27-70(c) of the South Carolina Code authorizes the Court to "grant a motion

by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law."

Applicant pleaded guilty on May 11, 2017. The application was therefore due on May 11, 2018. Applicant signed a sworn verification, signed by a notary, on May 2, 2018; however, this application was not filed with the clerk's office until May 16, 2018 – five days after the statutory filing period expired.

When a statute requires the filing of a paper or document, it is filed when delivered to and received by the proper officer. South Carolina Code section 17-27-40 provides that a proceeding is "commenced" by filing an application with the clerk of court. Under South Carolina law, mailing does not constitute filing. Gary v. State, 347 S.C. 627, 557 S.E.2d 662 (2001). However, "[w]here a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period to ensure fundamental practicality and fairness." Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009). "In sum, if the circumstances warrant, the statute of limitations shall be tolled from receipt of the document by the prison until formally filed with the clerk's office, provided that the applicant can verify by competent evidence the date prison authorities received the document for mailing." Mose v. State, 420 S.C. 500, 510-11, 803 S.E.2d 718, 723 (2017).

Applicant has not provided any reason for why his application was filed after the filing period to warrant equitable tolling, and therefore, Respondent submits the application should be summarily dismissed for failure to comply with the statute of limitations. However, the issue of equitable tolling of the statute of limitations raises an issue that is not directly refuted by the record. Accordingly, in light of Mose, Respondent requests a hearing be held on the limited issue of

whether the statute of limitations should be equitably tolled or whether the application should be summarily dismissed.

IV. General Denial

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

V. Conclusion

WHEREFORE, Respondent requests a hearing be held on the limited issue of whether the statute of limitations should be equitably tolled or the State's motion to dismiss should be granted.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LINDSEY A. MCCALLISTER
Assistant Deputy Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

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

3/16, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Jaysen Randall Hodge, Applicant	)	Case No. 2018-CP-40-2680
	)	
v.	)	**RESPONSE TO STATE'S MOTION TO DISMISS AND MOTION FOR CONTINUANCE**
	)	
State of South Carolina, Defendant.	)	

RICHLAND COUNTY FILED 2020 AUG -5 AM 11:17 JEANNETTE W. McBRIDE C.C.P. & G.S.

PLEASE TAKE NOTICE that Jaysen Randall Hodge ("Applicant"), by and through his undersigned attorney, will move before this Honorable Court on August 10, 2020, or as soon thereafter, for an order denying the State's Motion to Dismiss and allowing Applicant's Motion for a Continuance for a hearing on the grounds of Applicant's Post Conviction Relief Motion to the next available term of court.

I. RESPONSE TO STATE'S MOTION TO DISMISS

A. Background

Applicant was indicted by the Richland County Grand Jury in December of 2014 for Shoplifting- third offense (2014-GS-40-7604) and subsequently indicted in May of 2015 on the charges of Grand Larceny- $2000- $10,000 (2015-GS-40-2289) and Burglary, First Degree (2015-GS-40-2282). Applicant was represented by Ron Moak, Esquire. On May 11, 2017, Applicant appeared before the Honorable Steven H. John and plead guilty to these charges as indicted. Judge John sentenced Applicant to concurrent terms of fifteen years for Burglary, First Degree, ten years for Shoplifting- Third Offense, and five years for Grand Larceny, with credit for 861 days time served. Applicant did not appeal his conviction or sentence for reasons which

were addressed by Applicant in his motion for Post-Conviction Relief and reasons which will be further addressed and discussed. Applicant is currently incarcerated at Evans Correctional Institution.

Applicant completed a motion for Post Conviction Relief and had it notarized on May 2, 2018. Applicant placed his Application in the prison mailbox at the South Carolina Department of Corrections the same day it was notarized. For reasons unbeknownst to Applicant, Applicant's Motion was not stamped as "filed" by the Richland County Clerk's Office until May 16, 2018.

The State filed a Return to Applicant's Post Conviction Relief Motion on March 20, 2020. That same day, the State filed a Motion to Dismiss Applicant's Motion and asked the Richland County Clerk of Court to appoint Applicant an Attorney to represent him in this matter.

B. Argument

As the State noted in its motion for dismissal, S.C. Code Ann 17-27-45(A) states that a Statute of Limitations shall apply to all applications for Post Conviction Relief filed after July 1, 1996, and that an application must be filed within one year after the entry of judgment or within one year after a remitter is sent to a lower court from an appeal or the filing of a final decision on appeal. As the State also noted, the "mailbox rule" has been adopted in South Carolina and a document is not considered "filed" until delivered to and received by the proper officer.

However, the South Carolina Supreme Court has found that the doctrine of equitable tolling may suspend or extend the statutory period where a statute of limitations on an action exists "to ensure fundamental practicality and fairness." Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009). Furthermore, the statute of limitations may be equitably tolled where "circumstances preventing a petitioner from making a timely filing are both beyond the petitioner's control and unavoidable despite due diligence." Ferguson v. State,

382 S.C. 615, 618, 677 S.E.2d 600, 602 (2009) (quoting Commonwealth v. Carneal, 274 S.W.3d 420, 429 (ky. 2008).

In Mose v. State, 803 S.E.2d 718, 420 S.C. 500 (S.C. 2017), this Supreme Court did rule that the "prison mailbox rule" should allow equitable tolling in certain circumstances. Under the "prison mailbox rule", "pro se prisoners' notices of appeal are "filed" at the moment of delivery to prison authorities for forwarding to the (district) court." Houston v. Lack, 487 U.S. 266, 267, 108 S.Ct. 2379 (1988). In *Mose*, a *pro se* inmate's application for Post Conviction Relief was notarized and placed in the prison mailbox 17 days prior to the statute of limitations was set to expire. However, the Clerk of Court did not stamp his application as "filed" until 20 days later. The Court ruled that the "unique conditions of incarceration require a holding that the statute of limitations should be tolled if the circumstances warrant." Mose 803 S.E.2d at 723.

Applicant's circumstances mirror those in *Mose*. Applicant was *pro se* on the day that he had his application notarized and placed it in the prison mailbox. His application was mailed May 2, 2018- 9 days prior to the deadline; yet it was not marked by the Clerk's Office until May 16, 2018. The State argues that Applicant has not provided a reason for why the application was filed after the filing date. Applicant is incarcerated and did his due diligence in attempting to mail his application well in advance of the filing date. Once he placed his application in the prison mailbox, he has no way of knowing why the application was not filed by the clerk's office for an additional 14 days. Due to the aforementioned reasons, the doctrine of equitable tolling should apply to the statute of limitations in this matter and Applicant should be permitted to proceed in his application for Post Conviction Relief.

WHEREFORE, Applicant requests this Court to grant this motion to dismiss the State's Motion to Dismiss and allow him to proceed on his Motion for Post Conviction Relief.

II. MOTION FOR CONTINUANCE

Due to the State's pending Motion for Dismissal, the State has not provided Applicant with a copy of his transcript from his guilty plea. Applicant alleges ineffective assistance of counsel in his PCR application, but without this supporting documentation, Counsel has not had the opportunity to adequately prepare for Applicant's PCR hearing or to assess whether or not any amendments need to be made to the application prior to a hearing.

Additionally, due to the COVID-19 pandemic, Counsel has not been able to make contact with Applicant. Counsel has submitted a request for a phone call; however, Evans Correctional Institution is still on "lockdown" as of the date of this motion.

WHEREFORE, Applicant requests a continuance for a hearing on the grounds of Applicant's PCR motion until Applicant and his attorney have been able to meet and discuss Applicant's case and until Applicant and his attorney have a copy of Applicant's transcript and any other materials necessary to prepare for Applicant's PCR hearing.

Respectfully Submitted,



Cassity A. Brewer, Esq.

July 28, 2020
Rock Hill, S.C.

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Jaysen Hodge, #302270, Applicant, v. State of South Carolina, Respondent.	Case No.: 2018-CP-40-2680 **ORDER DENYING MOTION TO DISMISS**

This matter came before this Court by way of an application for post-conviction relief (PCR) filed by Jaysen Hodge (Applicant) on May 16, 2018. The State made its return and moved to dismiss the action as untimely filed on March 3, 2020. Thereafter, Applicant, through appointed counsel, filed a reply to the State's motion. A hearing upon the State's motion to dismiss Applicant's PCR action was held on August 13, 2020, via Cisco Webex Meetings.[1] For the reasons discussed below, this Court denies the State's motion to dismiss.

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In December 2014, the Richland County Grand Jury indicted Applicant for shoplifting – third offense (2014-GS-40-7604). Applicant was subsequently indicted in May 2015 for grand larceny (2015-GS-40-2289) and first-degree burglary (2015-GS-40-2282). Ron Moak, Esquire, represented Applicant. Assistant Solicitor Molly Flynn, Esquire, prosecuted the case. On May 11, 2017, Applicant pleaded guilty as indicted before the Honorable Steven H. John. Pursuant to the State's recommendation, Judge John sentenced Applicant to imprisonment for concurrent terms of fifteen years for first-degree

[1] The remote hearing was scheduled pursuant to our Supreme Court's administrative orders Re: Operation of the Trial Courts During the Coronavirus Emergency, S.C. Sup. Ct. Order amended Apr. 22, 2020 (Shearouse Adv. Sh. No. 17), and Re: Video/Audio Conferencing Hearings Statewide, Order No. 2020-04-30-01 (S.C. Sup. Ct. Order filed Apr. 30, 2020).

DCB
P. 1 of 3

burglary, ten years for shoplifting, and five years for grand larceny, with credit for time served of 861 days. Applicant did not appeal his conviction or sentence. Applicant filed his application for post-conviction relief on on May 16, 2018.

II. Discussion

The State argues this PCR should be dismissed because it is untimely. This Court disagrees. In general, an application for PCR must be filed within "one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later." S.C. Code Ann. § 17-27-45(a). When a statute requires the filing of a paper or document, it is filed when delivered to and received by the proper officer. Section 17-27-40 of the South Carolina Code provides that a proceeding is "commenced" by filing an application with the clerk of court.

Under South Carolina law, mailing does not constitute filing. *Gary v. State*, 347 S.C. 627, 557 S.E.2d 662 (2001). However, "[w]here a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period to ensure fundamental practicality and fairness." *Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009). "In sum, if the circumstances warrant, the statute of limitations shall be tolled from receipt of the document by the prison until formally filed with the clerk's office, provided that the applicant can verify by competent evidence the date prison authorities received the document for mailing." *Mose v. State*, 420 S.C. 500, 510-11, 803 S.E.2d 718, 723 (2017).

Here, Applicant pleaded guilty on May 11, 2017. The application was therefore due on May 11, 2018. S.C. Code Ann. § 17-27-45(a). Applicant signed a sworn verification, signed by a notary, on May 2, 2018; however, the application was not filed with the clerk's office until May

DCS p.293

16, 2018 – five days after the statutory filing period expired. Applicant's attorney argued the statute of limitations should be equitably tolled from May 2, 2018 to May 16, 2018 because Applicant's PCR application was placed in the prison mailbox the day that it was notarized, May 2, 2018. However, due to riots occurring at the facility where Applicant was housed, Applicant's PCR application was not promptly mailed. Applicant's cousin, Jahari Crawford, testified at the hearing. Crawford testified that he assisted Applicant with completing the application. Crawford testified the application was complete prior to the prison riots. Crawford testified Applicant told him in May 2018 that Applicant had gotten his PCR application notarized and placed it in the prison mailroom that day.

Viewing the facts in the light most favorable to Applicant, this court finds Applicant was prevented from timely filing his PCR application due to circumstances beyond his control. Applicant provided sufficent evidence to warrant tolling of the staute of limitations from receipt of the document by the prison, until formally filed with the clerk's office. Therefore, the one-year statute of limitations shall be tolled from May 2, 2018, until May 16, 2018.

Accordingly, the State's Motion to Dismiss is hereby DENIED.

AND IT IS SO ORDERED this 15 **day of** Jan. **,** 2020.

D. CRAIG BROWN
Presiding Judge
Fifth Judicial Circuit

Florence, South Carolina

DCB p. 3 of 3

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS IN THE FIFTH JUDICIAL CIRCUIT
Jaysen R. Hodge, #302270, Applicant,	)	Case No.: 2018-CP-40-2680
v.	)	**AMENDED RETURN** **(COUNSEL APPOINTED)**
State of South Carolina, Respondent.	)	

The State (Respondent), making its Amended Return to the application for post-conviction relief (PCR) filed by Jaysen R. Hodge (Applicant) on May 16, 2018, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In December 2014, the Richland County Grand Jury indicted Applicant for shoplifting – third offense (2014-GS-40-7604). Applicant was subsequently indicted in May 2015 for grand larceny (2015-GS-40-2289) and first-degree burglary (2015-GS-40-2282). Ron Moak, Esquire, represented Applicant. Assistant Solicitor Molly Flynn, Esquire, prosecuted the case. On May 11, 2017, Applicant pleaded guilty as indicted before the Honorable Steven H. John. Pursuant to the State's recommendation, Judge John sentenced Applicant to imprisonment for concurrent terms of fifteen years for first-degree burglary, ten years for shoplifting, and five years for grand larceny, with credit for time served of 861 days. Applicant did not appeal his conviction or sentence.

II. Current Application

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

1. "Inadequate representation"
    a. "Discovery was never done on my behalf. No evidence or charges challenged. Told to sit and wait and eventually waited for more than 2 years instead of bail and independent investigation"
2. "Lack of due process"
    a. "I was detained for 1 ½ years for shoplifting (until indictments for other unsolved cases could be obtained and connected to me) Served 971 days before plea and sentencing"
3. "Plea deal was a contract of adhesion"
    a. "Advised to sign a plea deal for 15 years because exercising my right to trial would guarantee a 25 year-life sentence that would be pursued by the solicitor's office. Solicitor told family member that assisting addicts would be politically advantageous"

Respondent filed its' Return and Motion to Dismiss on March 16, 2020, requesting a hearing be held on the limited issue of whether the statute of limitations should be equitably tolled or Respondent's motion to dismiss should be granted. On August 12, 2020, a hearing was held before the Honorable D. Craig Brown via Cisco Webex Virtual Platform on the issue of whether Respondent's motion to dismiss should be granted or if Applicant was entitled to tolling of the statute of limitations under *Mose v. State*.[1] On January 25, 2021, Judge Brown issued an order denying Respondent's motion to dismiss and ordering the statute of limitations be tolled, pursuant to *Mose*, to allow Applicant to proceed with this application.

Attached to this Amended Return and incorporated by reference are the records of the current application. Additionally, the following records submitted with Respondent's original Return filed, March 16, 2020 are incorporated by reference: the Richland County Clerk of Court 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.

[1] 420 S.C. 500, 803 S.E.2d 718 (2017).

III. Response to Allegation of Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of plea counsel are without merit. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989).

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). "[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To prove prejudice, the applicant must show a reasonable probability he would not have pleaded guilty and would have insisted on going to trial absent plea counsel's alleged deficiency. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

Strickland requires trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S.at 688-689. "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." *Id.* at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. *Id.* at 689. Where counsel articulates a valid strategic reason for his

action or inaction, counsel's performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). In making a fair assessment of attorney performance, a court must make every effort to "eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Strickland*, 466 U.S. at 689.

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the case. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). To support a claim that trial counsel was ineffective for failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. *Id.*

Applicant cannot satisfy either requirement of *Strickland*. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR

application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

IV. Any Future Amendments and Invocation of Discovery

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *See id.* at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

Pursuant to section 17-27-150 of the South Carolina Code, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Further, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

V. Any and All other Allegations

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

VI. Conclusion

WHEREFORE, the State requests an evidentiary hearing be held on the claim of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

MICHAEL D. DAVIDSON
Assistant Attorney General

By: Michael D. Davidson
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

6/22, 2021

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF RICHLAND) 2018-CP-40-02680

Jaysen R. Hodge,)
)
Plaintiff,)
)
vs.) TRANSCRIPT OF RECORD
)
State of South Carolina,)
)
Defendant.)

July 12, 2021
Columbia, South Carolina

B E F O R E:

THE HONORABLE MICHAEL S. HOLT, JUDGE.

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

CASSITY A. BREWER, ESQ.
Attorney for the Plaintiff

MICHAEL D. DAVIDSON, ASSISTANT ATTORNEY GENERAL
Attorney for the Defendant

DEBORAH M. McCURDY, RPR
Official Court Reporter

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RONALD WADE MOAK

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STATE EXHIBITS

NO	DESCRIPTION	ID	EV
1	Email	42	42

APPLICANT'S EXHIBITS

1	Email	49	49

JULY 12, 2021

(WHEREUPON, the hearing began at 2:09 p.m.)

THE COURT: Jaysen Hodge. Court will come to order. This is 2018-CP-40-2680. This is a post-conviction relief hearing. The Applicant, Jaysen Hodge, is present, and is represented by Cassity Brewer. On behalf of the State is Michael Davidson. I believe all witnesses are present as well.

Anything for the benefit of the Court before we get started?

MR. DAVIDSON: Your Honor, if I may give a brief procedural history?

THE COURT: Yes, sir.

MR. DAVIDSON: Thank you. May it please the Court?

Applicant was indicted in December of 2014 for shoplifting third offense. Then in May 2015, Applicant was indicted for grand larceny and two first degree burglary charges.

On May 11, 2017, Applicant pleaded guilty to the shoplifting charge, grand larceny, and one count of first degree burglary before Judge John.

Applicant was sentenced to concurrent terms of

15 years for first degree burglary, 10 years for shoplifting, and 5 years for grand larceny. Applicant did not appeal.

This PCR action was filed May 16, 2018, five days after the statutory filing period expired.

On March 3rd, 2020, the State made its return and moved to dismiss the action as untimely. The hearing upon the State's motion to dismiss.

Applicant's PCR action was held on August 13, 2020, before Judge Brown. Judge Brown denied the State's motion to dismiss and tolled the statute of limitations allowing Applicant to proceed with his PCR action.

In his application, Applicant alleges inadequate representation explaining that discovery was never done on his behalf. No evidence or charges were challenged. And he was told to sit and wait and eventually waited for more than two years instead of bail and independent investigation.

He alleges secondly lack of due process where he explained he was detained for one and a half years for shoplifting until indictments for other unsolved cases could be obtained and connected to him. He served 971 days before plea and

sentencing.

The third and final allegation is that the plea deal was contract of adhesion, which explained he was advised to sign a plea deal for 15 years because exercising his right to trial would guarantee 25 years to a life sentence that would be pursued by the Solicitor's Office, and that the Solicitor told a family member that assisting addicts would be politically advantageous.

Mr. Hodge is present and he is represented by Ms. Cassity Brewer. And the State is ready to proceed, Your Honor.

THE COURT: All right. Ms. Brewer, are you ready to go forward?

MS. BREWER: Yes, Your Honor.

THE COURT: Anything you need to tell me before we get started?

MS. BREWER: No, sir, Your Honor.

THE COURT: Call your first witness.

MS. BREWER: Thank you, Your Honor. I call the Applicant, Jaysen Hodge.

THE COURT: All right, Mr. Hodge, if I can get you to come up here, sir. Just take your time.

(Witness approaches.)

THE BAILIFF: Place your left hand on the

Bible, and raise your right hand, please.

(Witness complies.)

THE CLERK: Do you swear or affirm the testimony you are about to give in this case will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Thank you. Have a seat in the witness stand, please.

(Witness seated.)

THE COURT: Mr. Hodge, would you tell me your full name, please?

THE WITNESS: Jaysen Randall Hodge.

THE COURT: Mr. Hodge, I don't know if you are shackled. If you need to pull your mask down. You are at a safe distance from everybody.

THE WITNESS: Jaysen Randall Hodge.

THE COURT: Thank you, sir.

Before we get started, there is a witness who wanted to be called by the Applicant, Jahari Crawford.

MS. BREWER: Yes, sir.

THE COURT: Who is not able to be here today, and was asked by counsel, Ms. Brewer, if he could testify virtually. I set up a virtual courtroom,

and he is in the virtual lobby. He is not actually in the courtroom. My experience is if you let somebody in the courtroom, they immediately want to know why they can't be heard. My preference is to leave him in the lobby until we need him, but I certainly defer to y'all for any concerns or objections.

MS. BREWER: I have no objection to that, Your Honor.

MR. DAVIDSON: No objection.

THE COURT: I will get to him as soon as you call that witness, okay?

MS. BREWER: Okay. Is Your Honor able to play it from your -- I am not able to pull it up on my computer.

THE COURT: Well, I set up a virtual courtroom. The court reporter is in it. So if I'm in it and she's in it and he has managed his way to it, I'm hoping that you will be able to get to it. Try again.

MS. BREWER: Okay.

THE COURT: If you can't, let me know.

MS. BREWER: Okay.

THE COURT: The witness has identified himself. Your witness, counsel.

MS. BREWER: Thank you, Your Honor. And does Your Honor have any objection to me standing --

THE COURT: You move where you need to move. It is difficult to hear in this environment. You can stand where you are comfortable and can be heard.

MS. BREWER: Thank you, Your Honor. May it please the Court?

JAYSEN RANDALL HODGE,

after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. BREWER:

Q Mr. Hodge, you have already stated your name for the record. Can you tell the Court what you are currently incarcerated for and how long you have been incarcerated?

A I'm currently incarcerated for burglary in the first degree, and I have been incarcerated six months and approximately nine -- I mean, six years and approximately nine months, since September 13th of 2014.

Q And you are also incarcerated for a shoplifting enhancement offense?

A Yes, ma'am, shoplifting third and a grand larceny.

Q Okay. And what was the sentence that you received

for those three charges?
A Received 15 years, 85 percent for the first degree burglary, 10 years for the shoplifting third enhancement, and 5 years for grand larceny.
Q Okay. And what was the date you were sentenced on those indictments?
A May 16th, 2017.
Q Okay. Can you give the Court a history of your counsel, who represented you in those, on the charges?
A I was basically represented by Public Defenders at first who were advising me that there was really nothing they could do for me.
Q Let me stop you. You were represented by the Public Defender's Office on which charges?
A All three charges, initially.
Q Okay.
A The burglary, the shoplifting third, and the grand larceny.
Q And when you were appointed a Public Defender, were you incarcerated at that time?
A Yes, ma'am. I never made bail since the 13th of September.
Q What was the original charge that you were charged with?

A Shoplifting third.
Q Shoplifting?
A Yes, ma'am.
Q What was the date that you were locked up on shoplifting third, do you remember?
A September 13th.
Q Of?
A 2014.
Q 2014. And how long were you represented by the Public Defender's Office?
A Until January of 2017.
Q Okay. You were represented by a member of the private bar, correct?
A Yes, ma'am.
Q What was that attorney's name?
A Ron Moak.
Q When was he retained to represent you?
A I believe between the month of January and February of 2017.
Q And did you retain him or did you --
A My cousin, the other witness, Jahari Crawford, retained him on my behalf.
Q He's your cousin?
A Yes, ma'am.
Q And he retained him while you were incarcerated?

A Yes, ma'am.
Q Did Mr. Crawford have correspondence with Mr. Moak?
A Briefly. Rarely. And when he did, he let me know when it happened, but it was few and far between.
Q When you were represented by the Public Defender's Office, did they provide you with a copy of your discovery for the shoplifting or the --
A Yes, ma'am, for the shoplifting, for the disorderly conduct, and driving under suspension. They were misdemeanors, that's why I didn't mention them earlier. And I got time served for them, so I wasn't sentenced as a felony when I got sentenced for the first degree burglary, but they represented me in those cases and advised me on my first degree burglary, let me know that there is nothing they could do on my behalf. The Solicitor has offered 15, or either go to trial and face life.
Q So they told that your offer on all chargers, including burglary --
A The most serious charges, they implemented me where I would be in danger of receiving a life sentence. The other charges I was arrested on were really menial compared to what I was facing.
Q Okay.
A Their emphasis was on this first degree burglary,

which was my main concern also.
Q How did the burglary charge come about? When did you get charged with that?
A I was in Richland County awaiting trial for the previous charges that I was arrested for, and I got served with a warrant by Richland County Sheriff's Department. Gregg Oxendine, to be exact.
Q Did any of your attorneys advise you why you were charged with first degree burglary?
A No, ma'am.
Q Okay. How many times were you able to meet with Mr. Moak after he was retained?
A I met with him the initial time when I asked him to contact my cousin, and then the next time I saw him we was in court.
Q Okay. And how long was the time period from that?
A Approximately six months, five to six months, from January to May.
Q Okay. And what did he tell you when you met with him the first time?
A That he would contact my cousin and acquire a method of payment for representation. It was really just an initial meeting. It wasn't -- there was no discussion of -- I just let him know my charges and who to contact on my behalf.

Q Did he ever provide you with a copy of your discovery for first degree burglary?
A No, ma'am.
Q Did he ever go over the discovery with you or discuss it with you?
A No, ma'am.
Q Did he ever talk to you about a plea offer?
A He did when I got -- when I finally got here. He relayed a message through a third party, which was my cousin, and said -- that is how I found out I was going to court -- he said, Look, this is the offer. It is the same offer from before. Your best bet is to take this. You will have one charge dropped and get the minimum for the charge that you are facing. That was my advice from my attorney through my cousin.
Q Did he explain to you what the minimum would be?
A Fifteen years.
Q Okay. And when you went to court, you accepted a plea deal?
A Yes, because that was the best option I was told to get -- that I had.
Q Okay. And he told you that if you went to trial --
A That I would definitely be facing up to life because of the circumstances around this burglary

that I was charged with.
Q Okay. Did he ever explain that you had a right to appeal your sentence?
A Yes, ma'am, if I went to -- if I went to trial I would have the right, but I was -- by that time, I was -- that definitely wasn't a favorable option for me at the time. A life sentence is not favorable for nobody. I took the advice of my attorney and went with the minimum sentence.
Q Okay. Mr. Hodge, would you have pled guilty if Mr. Moak had not represented to you what he had?
A No. I would have literally waited until I could have a better offer. I sat in the county, like he said, for 900 something days. So I was basically told, Look, this is your option. You take this charge or we charge you with both of these and you face life.
Q Okay. So to your knowledge, your cousin Jahari Crawford had most of the communications with Mr. Moak?
A Yes, ma'am.
Q And you only met with him twice?
A Yes, ma'am.
Q Okay. Thank you, Mr. Hodge. Please answer any questions the State has.

THE COURT: Mr. Davidson?

CROSS-EXAMINATION

BY MR. DAVIDSON:

Q Good afternoon, Mr. Hodge. So you just testified that you were represented by Public Defenders up until January of 2017, correct?

A Yes, sir.

Q And you testified that your cousin hired Mr. Moak, correct?

A (Nods affirmatively.)

Q Were you looking to hire a private attorney at that time?

A I was looking for better options at that time, yes, sir.

Q And you thought Mr. Moak might be able to give you better options?

A From my experience, a Public Defender is not as -- yeah. Basically, yeah.

Q And you testified that your Public Defenders went over the discovery for all of the charges with you, correct?

A No. They went over the discovery for the charges I got arrested on. When I got served with the first degree burglary up to six or seven months later, they told me, There is really nothing we can do.

All you can do is wait for a better deal, which never happened.
Q And so you never received discovery for that?
A No.
Q And you said that your Public Defenders communicated that there was a 15 year offer for the first degree burglary, correct?
A Yes, sir.
Q Did you and Mr. Moak discuss any potential better offers?
A No. There was no -- there was only this one deal for the two and a half years I was there. And upon hiring a private attorney, I thought it would be a better offer involved initially, but it never came to fruition.
Q You testified that Mr. Moak did not go over why you were charged with burglary, is that correct?
A He went over nothing about it.
Q But didn't you give a statement to the police confessing that you did commit the burglary?
A I plead the fifth.
Q Do you recall telling the plea judge that you were satisfied with your attorney's services?
A Yes, because I was advised to do so.
Q Do you recall offering any complaints to the plea

judge regarding your counsel's performance?
A Yeah, I mean, he was a out of town judge, he was from Horry County, so it would have been irrelevant.
Q Do you recall telling the judge that no one was promising or threatening you in order to plead guilty?
A It is a part of a plea deal, but doesn't mean it is true.
Q Do you recall telling the judge or the judge telling you that you could appeal in ten days?
A No, I didn't. I didn't find that out until I was actually on the yard.

MR. DAVIDSON: No further questions, Your Honor.

THE COURT: Ms. Brewer, anything else?

MS. BREWER: Nothing further, Your Honor.

THE COURT: I don't have any questions either. You can return to your seat. Thank you for your testimony.

THE WITNESS: Thank you, Your Honor.

(Witness steps down.)

(Pause.)

THE COURT: Mr. Crawford, can you hear me?

THE WITNESS: I can, Your Honor.

THE COURT: We are having some technical difficulties.

All right, Mr. Crawford, my name is Judge Holt. And we're in Richland County. And you've been identified as a witness. And the Court is informed that you were planning to be here to testify in a post-conviction relief hearing on behalf of Jaysen Hodge. You were unable to make it, so counsel, Ms. Brewer, asked that you be allowed to join us virtually.

I'm not sure why something keeps breaking in on us, but, anyway, we are going to try to do this. If you can't see us. We should be able to hear you. And just make sure that you speak clearly. All right?

THE WITNESS: Okay.

THE COURT: All right.

THE WITNESS: Yes. And I can see you.

THE COURT: You can? Okay, fair enough.

All right, so you are Jahari Crawford. Mr. Crawford, do you swear or affirm to tell the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE COURT: He indicates he does.

All right, Mr. Crawford, I am going to turn you over to Ms. Brewer. Ms. Brewer is going to have some questions for you.

Ms. Brewer?

JAHARI CRAWFORD,

after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. BREWER:

Q Mr. Crawford, can you hear me?

THE COURT: Mr. Crawford?

THE WITNESS: Yes. Can you hear me, Your Honor?

THE COURT: I can hear you.

BY MS. BREWER:

Q Mr. Crawford, we will try to get through this. Can you explain your relationship to Jaysen Hodge?

THE COURT: Let's do this. I am going to turn my computer down, and you turn yours up, okay, the volume up? I will mute on my end.

(Pause.)

THE COURT: Ms. Brewer, did you have success?

MS. BREWER: Yes.

BY MS. BREWER:

Q Mr. Crawford, can you hear me?

A Yes, I can hear you.

Q Mr. Crawford, can you --
A I can hear you, Ms. Brewer.
Q Mr. Crawford?
A Yes?
Q Mr. Crawford, can you explain to the Court your relationship to Mr. Hodge?
A Yes, sir. Jaysen is my first cousin. His mother and my mother were sisters.
Q Okay. And you assisted Mr. Hodge in retaining Ron Moak as his attorney in the case?
A Can you repeat your question?
Q You assisted Mr. Hodge in retaining Ron Moak as his attorney in this case?
A I did, yes.
Q Can you describe to the Court your interactions with Mr. Moak and communications that you had with him?
A So I reached out to Ron. Ron and I had both played football together at the Citadel, and I knew that he was a Richland County attorney, and I reached out to him for help with this matter.

Our communications were that because he is coming into the case late, that he would have more work to do, but that his relationships in the office, in the Solicitor's Office where he used to

work, would assist him in being able to properly represent Jaysen and handle the case. So I retained him.

Q And what did he communicate to you regarding any plea offers for Mr. Hodge?

A The plea offer that -- was 15 years. I thought that was excessive for the charge. The first offer that came from the Solicitor's Office was 25 years to life, and we were told that if he did not accept that, if he wanted to go to a jury trial, then he would be facing 25 years. He did not accept the 15 years. It was a contract of adhesion, it was either take it or leave it.

Q So he said if he went to a jury trial he would get a minimum of 25 years?

A Correct. For exercising his right to a jury trial.

Q About how many times did you speak with Mr. Moak?

A I spoke with Mr. Moak more than Jaysen did. I had maybe half a dozen or more conversations with Ron. I had spoken, met with Ron. I was there for the hearing. I met with Dan Johnson via telephone. I met with every attorney who represented him trying to figure out what was going on in this case.

He was arrested in 2014, and as you can see he wasn't convicted until 2017. And in that process,

it was hard to get information or even to get someone to mount a proper defense. After speaking to Ron, Ron had not done discovery on the case. He met with Jason I think twice. And he said to accept the deal because of his relationships in the office he would be able to quote, unquote, work it out. It didn't work out to say the least. And therefore we were put in the situation of having to write this PCR.

Q And you said you had spoken with Dan Johnson. What were your communications with him?

A I called Dan. I told Dan that Jaysen was a relative of mine and gave him Jaysen's background that he was an addict and that he needed mental health counseling and that he needed drug addiction treatment.

I shared with Dan Jaysen's childhood and the fact that he had been in and out of the system due to family issues and I think mental health or addiction issues.

I told Dan that we had programs that we were going to try to get Jaysen into, but we would ask the State for assistance with that. And his words to me were, I don't make deals with addicts, so he is going to have to do the 15 because of that.

I then pointed out to Dan several cases that had come through his office of addicts that did deal with people who were all over the news who got all kinds of deals from his office, but he told me that it wasn't politically expedient at that point for him to make a deal with anyone, it would be harmful, he would not be able to explain that in the upcoming election.

Q And Dan Johnson was the Fifth Circuit Solicitor at the time, correct?

A Correct.

Q Okay.

MS. BREWER: Beg the Court's indulgence.

(Pause.)

A Dan's Assistant DA -- I'm sorry, Dan, the prosecutor -- she thought the sentence was excessive as well, but she relayed that her hands were tied, and the fact that Dan is not budging she didn't understand. No one really understood, but it happened.

Q Okay. Mr. Crawford, I have no more questions for you. The Attorney General is going to ask you some questions now. Please answer any questions they have for you, okay?

A Sure.

THE COURT: Mr. Davidson?

CROSS-EXAMINATION

BY MR. DAVIDSON:

Q Hello, Mr. Crawford?

A Good afternoon.

Q You testified that you reached out to Mr. Moak because of some connections that you had, is that correct?

A Ron and I went to college together. I knew him from the Citadel.

Q And you chose Mr. Moak because of his relationship with the Richland County Solicitor's Office?

A No. He was an attorney that at the late hour the attorney that I was able to retain. He said he had connections, but I hired him because I was able to retain him, I knew him, and I thought I would get adequate or good representation.

Q And you testified that you thought that he would be able to work out a better deal than the 15 years?

A He said he would be able to work out a better deal based upon his relationships and his past management of that office. He thought the deal was excessive. He thought that he would have it reduced. And he told Jaysen don't worry about it, accept the deal, because it would be worked out.

Q Are you aware if he made any efforts to actually work out a deal?
A I know that he had a conversation with the prosecutor who relayed to him as well that Dan was standing hard and fast on this and that there would be no deal, there would be nothing better than that, because Dan was not going to change his position, but we could go to trial and face a minimum of 25 years.
Q Were you aware that Mr. Hodge gave a full confession and written statement to police?
A I understand that Jaysen gave a confession without having counsel present and that he was told by the deputy that if he would confess to those that he would be out soon because he would get time served, all of which are bad advice that I don't think he would make had he had adequate counsel present when any of that took place.
Q Are you aware that he waived his Miranda rights?
A I'm aware that he had already been in jail for a year and a half before he was approached and he was told that if he waived his rights and gave a statement then, they would give him time served and he would be out. I didn't know about that. He didn't have an attorney that was adequate at that

time. I think he was on his third Public Defender who he didn't relieve, they all left on their own. But no one touched the case for a year and a half, so he didn't have counsel present when he gave any of those statements. Had Ron -- he could have brought a motion to suppress, a motion to dismiss. There is all kinds of actions Ron could have taken to mitigate that statement or to get rid of that statement. None of that ever happened. There was never a motion of discovery, so Ron never knew what was really -- what Jaysen was really facing. And he never questioned any of the evidence that was supposedly against Jaysen. He just went and tried to get the deal lowered and then let it ride.

Q Okay. You testified that you hired him because you wanted him to get a lower deal, and then you just testified that he did go in and try to get a better deal, is that correct?

A Ron had a conversation about the deal, but Ron did no legal work to try to get Jaysen adequate time. Ron didn't do discovery. That is the first step. He didn't know what was against Jaysen to even have basic work done on the case. And here we are seven years later and he didn't have adequate counsel. We don't know what would have happened, and we'll

never know what would have happened, but with adequate counsel I think there were steps and missteps that would have never taken place.

MR. DAVIDSON: Beg the Court's indulgence.

THE COURT: Yes, sir.

(Pause.)

MR. DAVIDSON: No further questions.

THE COURT: Ms. Brewer, anything else?

MS. BREWER: Nothing further, Your Honor.

THE COURT: Okay. Mr. Crawford, I appreciate your patience working with us. I know it has been difficult. Thank you for answering our questions.

THE WITNESS: Thank you, Your Honor.

THE COURT: Good luck to you.

THE WITNESS: Thank you.

THE COURT: I am going to close the virtual court.

(Pause.)

MS. BREWER: At this time we have no more witnesses to call.

THE COURT: All right, Mr. Davidson?

MR. DAVIDSON: The State calls Mr. Ronald Moak.

THE COURT: All right, Mr. Moak? Please come forward.

(Witness approaches.)

THE BAILIFF: Place your left hand on the Bible, and raise your right hand, please.

(Witness complies.)

THE CLERK: Do you swear or affirm the testimony you are about to give in this case will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Thank you. Have a seat in the witness stand, please.

(Witness seated.)

THE COURT: Mr. Moak, state your name for the record, please, sir.

THE WITNESS: Ronald Wade Moak.

THE COURT: Thank you, Mr. Moak.

Your witness, sir.

MR. DAVIDSON: Thank you, Your Honor.

RONALD WADE MOAK,

after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DAVIDSON:

Q Good afternoon, Mr. Moak. Thanks for being here today. About how long have you been practicing law?

A Eighteen years.
Q And how much of that time was criminal law?
A Eighteen years.
Q And were you appointed or retained to represent Mr. Hodge?
A Okay. My hearing went bad, so I didn't hear a lot of stuff that was testified here, but to answer that, I am going to have to like explain how I got retained.

I got a phone call from the cousin, who I believe is the one that was on the computer. He played football with me at the Citadel. He was like, I think he was Class of '93, I was Class of '96. How that phone call came about was he had tried to get a hold of Dan Johnson through another guy that we played football with at the Citadel. Dan was the Class of '92, the other guy was Class of '91. I am not going to bring the other guy's name in it, but he is actually one of the people that -- he wanted to get a hold of somebody that played football in the '90's at the Citadel that lives in the Columbia area, get a hold of him, he can get a hold of any one of us. So that is why when he dropped that name, I knew he actually -- I didn't think he would have defrauded me if he was

on the phone, so -- and he was using the right name, so I knew that was his authentication.

What he told me he had went through the other individual to get Dan's personal cell phone number, and he called him up and went into the story about his cousin was in jail, and I think he pretty much laid out a lot of the things that I probably mentioned in the plea, because I think you have got a plea transcript. And whatever -- I don't know how the phone call ended, but he started calling me when Dan -- I don't know if he blocked his phone number or cut off contact after that initial call. Knowing him and what the situation was, because this was a DNA hit burglary first case that he was confronted with, the Defendant was confronted with while he was already in jail and confessed to. You know, if we had went to trial, it wasn't going to -- it was going to end badly. So if this was going to be a negotiation, I told him $500, give me $250 up front, then if it works out for you, give me the other $250. Then if it doesn't, then we are even.

So that was the entire conversation about being retained. I believe that was sometime in 2016.

Q Okay. And when that agreement was made, did you promise that you were going to get a better deal than was offered?
A No. I told him like that was a very poor choice to call the elected Solicitor on his personal cell phone saying, Hey, I know you, my relative is in trouble, can you help him out? I mean, there is a way to do things, there is a way not to do things, and that was the way not to do things.

And the plea offer that he was complaining about was basically a minimum burglary first, and I want to say, because I don't have access to my file, he may have had another burglary charge that was dismissed as part of this. You know, 15 years minimum on a burglary first when you have got two burglary firsts isn't technically too bad of a -- even though it is bad, it is not the worst plea offer, but, you know, that is what he was complaining about.

Q So you never promised him that you would get a better deal?
A No. I told him I was going to try to fix the damage that he caused by calling Dan up front.
Q Okay. And you agreed to $500?
A Yes.

Q $250 up front, and the remaining $250 if you were able to secure a better deal?
A Uh-huh. I assume it is not the deal he wanted because I never -- I haven't heard -- the last time I heard -- the first time I heard his voice since the plea was right there.
Q So you were retained --
A Yes.
Q -- specifically to negotiate a plea?
A Yes.
Q Did you receive the discovery in the cases?
A Yes. Again, I mean, most of the 18 years I was in criminal practice was me at this actual Solicitor's Office, so the paralegal handled discovery. I just called her up and got an email, and I think I emailed -- or I found some of it on the email and I forwarded it to you so you have got a copy of it.
Q And did you go through the discovery materials?
A Yes. He had told me he had already went through it with the Public Defender that preceded me.
Q So did you go through it with him?
A Yes, sir.
Q Did he give you any additional facts or things to investigate in the case?
A Well, there wasn't really anything really, really

pertaining to the case that was like relevant to the guilt or innocence issue. Like I told you on the phone last week, the problem I have with this whole plea is, I thought the plea was extremely excessive. I mean, he was in jail over a year before they hit him with a burglary charge, and when the burglary was committed, you talking about a guy who is on the street, who is addicted to drugs and, you know, he is like barely conscious of what he is going through. And they catch him with a shoplifting, and he is sitting in jail for that. And, you know, by the time they hit him with the burglary charge, you know, he has dried out. He has actually already taken classes at the jail trying to rehabilitate himself. And, you know, usually when you have a negotiation for a charge like this, you know, we start throwing out like, Okay, this is the mitigation.

I don't remember if he -- I forget which specific certificates he had. I think his GED might have been one of them. There was four or five certificates that he had we presented to the plea judge. And as a matter of fact, I got yelled at by the Prosecutor, the actual Assistant Solicitor handling it, after the plea because she

said I went overboard trying to illustrate how unfair the sentence was.

But the problem was, the Solicitor, Dan Johnson, had declared this was the only possible plea offer. The Assistant Solicitor could not change that. I made an appointment to see Dan. They actually set a couple of appointments. I showed up, he wasn't there. It just, you know, it didn't happen.

You know, I have known Dan since I was 18 years old. We played football, we were on the track team together, we coached football at a Pop Warner team over here in Columbia for a few years. You know, we had a great relationship, but, you know, now knowing what was going on in his life, I kind of, you know -- that is outside the scope of this, but, you know, but some things now make sense.

Q You testified earlier that Mr. Crawford reached out to you and retained you on Mr. Hodge's behalf?

A Yes, sir.

Q Because he thought you could work out a better deal?

A Could get -- he wanted me to go talk to Dan and, you know, and that was going to be eventually the

goal, but, like, you know, you don't go straight to the elected Solicitor.

Q Right.

A Now, you have the Assistant Solicitor and you definitely do not approach the elected Solicitor using like personal connections to, you know --

Q Right.

A I mean, I was just going to approach this like, Hey, we have got a lot of serious dispute about a plea offer. Can you help kind of like help us work this out?

Q Did Mr. Hodge ever indicate to you what he would like to do to resolve the charges?

A He was scared that he was going to get 15 years in prison. That is 15 years no parole. I mean, that was his position the whole time. Eventually, once I realized they were really sticking with it, I even came up with the idea -- and I had went over this with Mr. Hodge -- he had two burglary charges, so I came up with the idea of reducing both of them down to burglary second, which is, you know, maximum 15, but it is non-violent, which means there is a different percentage of what you actually have to serve, and run consecutive, and that would still cut like four, like around four or

so years off his sentence. You know, I ran that by him. When we presented that, and, again, the actual Assistant Solicitor that was actually prosecuting the case in court, you know, she indicated that if it was up to her we could do it that same day, but the issue was the Solicitor who the cousin had called was stuck with 15 and would not move.

Q And ultimately the Solicitor, Dan Johnson, --

A Yes.

Q -- makes that decision?

A Yes, because he is the Solicitor -- was the Solicitor, yes. And that is why if you read the plea transcript, that is why I said so much in the plea is because I, like I told you last week, I was of the position like legally, the way the plea took place, and all that, I mean, I don't think it is any problem, but to me morally, like when somebody who had actually went from, you know, barely conscious, addict on the street, to where he was at at the point that we were talking about, Okay, what is court date, I mean, I just -- he was not the same person. You know, he was not a burglar by the time we got to court. And I just think that was morally wrong to sentence him as that.

Q Were you aware of what was taking the shoplifting charges so long to get resolved?
A I wasn't involved. By the time I got involved, the burglary charge was there, and that is what was holding him in jail. I didn't know if it was a bench warrant or what. I mean, I even -- like as part of this, even trying to get to the two consecutive 15 years, I had met with them, I don't know if it was the week before or pretty close to the time of the plea, there had been a double murder over in Cayce or West Columbia, and I had told him like, you know, at this point we need to find out like if there is anything you can cooperate with and we went down that road -- that route. He indicated to me that he may have a name for somebody who had been arrested over a weekend. I put him in -- I told the investigators on the burglary case like, Hey, can y'all contact him?

And, you know, when I talked to them about that, they were like, Why is this even a trial? Why isn't he getting a deal? Even the actual investigators on the burglary case were asking why he wasn't getting a deal. You know, we even tried cooperation, and it didn't work.

Q So you tried more than one way to secure a deal?

A Yes. I mean, that is really the only proper way to do it.
Q And at the end of the day, he had one burglary charge dropped?
A Uh-huh.
Q And the rest ran concurrent?
A Yes.
Q And you did go over the discovery with him?
A Yes. And I don't know if it is in the court file, but I think -- I mean, I may be mistaken because I haven't seen any court papers since that day, we might even have that Kinard sheet with that written Advice of Rights, I think there was one of those prepared too.
Q And Mr. Hodge alleges under his inadequate representation allegation that you didn't ever challenge the evidence or ever challenge the charges. Do you typically challenge evidence at a plea hearing?
A No. Like I say, if he had said, No, I'm not pleading, I want my day in court, I want to go to trial, then that changes the status completely. At that point, you know, we are, okay, making witness lists, we are, you know, going to SLED to look at the -- to go over the DNA analysis to see if there

is anything we can attack that with, and, you know, there has been some things like the drug lab where that got challenged. I think the City of Columbia's drug lab or Lexington, if that is what it was, got challenged, so sometimes it works, but you don't do that unless you are going to go to trial.

Q Okay. And he alleges lack of due process because he was detained for so long before pleading and sentencing.

How long was it between the time that you were retained and he took a plea deal?

A I mean, I want to say it was like summer of 2016 probably and the plea was like, what, May or June 2017? And, you know, with burglary first with no bond, I mean, that is actually pretty quick. But, you know, when you tack on the shoplifting, you know, it is probably about right. I mean, when I was a prosecutor -- I mean, well, there are some outliners. There is a guy up in Marlboro named Johnny Ringo Pearson. It took like 15 years to convict him. We had that as a conflict. He got arrested on Thanksgiving '92 and didn't get convicted until like 2005 or '6. I mean, some of them take longer than others.

Q But from the time that you started representing him, he already had all of the charges, he got no new charges after you --
A No. Again, that is one of the problems I had with it. This guy had actually rehabilitated himself. The cousin had found -- and I think I may have even told the cousin to do it. There was a program in Charleston called Charleston Strong at the time. I don't think it is still running. The circuit court judge down there actually -- actually a circuit court judge and not drug court judge was monitoring it, and it was a residential thing, like he would be monitored. And it was like a really good fit, but like, you know, to do that, he would have to have been on probation, and we couldn't even get off of 15 years, you know, minimum. And, yes.
Q Do you think you got him the best offer that you could have?
A I got him the best deal that he was going to get at that point in time. Now, if we held off, like if we had kind of held off about another year, a little over a year, we might have a -- if it could have got continued another year and a half, he might have got a different deal with the new Solicitor.

Q Okay. May I approach?
THE COURT: Yes, sir.
Q I'm showing you what is --
A Is that the email?
Q -- marked as State's Exhibit 1. Can you look that over and tell us what that is?
A Yes, uh-huh. Yes.
Q Can you tell us what that is?
A Yes. It is an email from Molly Flynn. That was the Assistant Solicitor that was actually handling the case. Basically she gave him until April 1st, 2017, to plead. That was the minimum 15 years for one of the burglaries and the other one gets dismissed. She says that she had same the offer for a year and a half, and that is why it has an expiration date. If he does not intend to plead, let me know when you will be available for trial.
Q And that email was sent to you?
A That one says February 14th, 2017. And it might be that April 2017 date. That might be when I went to meet with him and found -- that might be the day when we tried to -- you know, around the date we tried the corroboration, because I told Molly about -- remember telling Molly about that, like, Hey, he is talking to the deputies. And, you know,

she gave us some more time.

MR. DAVIDSON: The State would move State's Exhibit 1 into evidence.

THE COURT: Ms. Brewer, any objection?

MS. BREWER: No objection.

THE COURT: All right, without objection.

(WHEREUPON, State's Exhibit No. 1 was marked for identification and received into evidence.)

BY MR. DAVIDSON:

Q All right. So you testified that you think you got him the best deal that you could have?

A Yes.

Q And in that email there is an expiration date for the plea offer of 15 years, correct?

A Yes.

Q And so you just testified a little bit earlier that he potentially could have gotten a different deal with a different Solicitor?

A Yes. Well, if he -- about a year and a half later Dan wasn't the Solicitor anymore.

Q But that is just hindsight now?

A Yes. We never would have known that. Yes.

MR. DAVIDSON: No further questions, Your Honor. Please answer any questions Ms. Brewer has.

THE COURT: Ms. Brewer?

MS. BREWER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. BREWER:

Q Good afternoon, Mr. Moak. How are you? So you testified you have been practicing law for 18 years, correct?

A Uh-huh.

Q And most of that was in criminal law?

A Uh-huh, yes, ma'am.

Q Mr. Moak, when -- as you were -- in your representation of Mr. Hodge, you met with him two times, is that correct?

A I believe I met with him more than that, but, I mean, I don't have a -- you know, I'm under suspension right now, so I don't have my files, so I don't have any notes or anything to refer -- to look at.

Q Okay. In the times that you did meet with him, did you -- you were able to go over the discovery? You keep referring to DNA evidence. Was that kind of the extent of what you knew about the discovery?

A Yes. I mean, pretty much what I knew about it, it was, I think there was an incident report, I want to say there was a hammer or something that was

used to break a window out, there was some DNA evidence, and he apparently was already in the database, and so when the -- he matched, and then that is what got the burglary charge, and the deputies met with him, and he confessed.

Q Were you able to go over the elements of burglary first degree with him?

A I think one of the elements was the armed, because there was a hammer involved, I think that was a weapon. And I think there might have been also -- I mean, I haven't read the incident report or anything in a couple of years now. I don't remember if there was a weapon or if a gun was stolen. I don't remember what was stolen, it may have been a gun. But basically the elements of burglary first is an unlawful entry, unlawful breaking into the residence of another with an aggravating factor. Aggravating factors are either nighttime, two or more prior convictions, committing a violent crime, or being armed. And usually getting a weapon like stealing somebody's gun arms you, and they will do that too.

Q And you were able to go over those elements with Mr. Hodge?

A Yes, ma'am.

Q And explain to him that burglary first carries 15 to life, correct?
A Yes, 15 to life. You can get a lot more, yes.
Q And did you discuss with him the elements of burglary second degree?
A Burglary second degree is unlawful entry or a breaking into the dwelling of another without an aggravating factor.
Q So the burglary second degree non-violent and violent carries up to 15 years, correct?
A Yes. And basically since it is non-violent and it is less than a 20-year sentence, it has got roughly like 70 percent max-out date, I think, or parole date.
Q So you were able to review with him all the discovery and explain to him that what they had as far as evidence goes, he could be convicted of burglary first degree and not burglary second degree if he would go to trial?
A Well, I mean, I told him a jury can always find you guilty of burglary second even if it is a burglary first, you know.
Q So in your recollection of your meetings with him, that was all discussed?
A Yes. I met with him -- my initial meeting with him

was like, one, Do you want me to represent you? And I had already gotten a copy of some of the discovery, and I went over that with him, and he wanted me to represent him, and, you know, I went over the elements then. And at no point did he ever say, Hey, I want a trial.

Q Okay. And you just testified that you were approached at one point about him providing evidence about a double homicide that had occurred?

A Yes. Again, I met with him as close to the plea -- I just don't -- I don't have the dates, but I met with him and said, At this point they are not backing off. You know, the only thing left I can think of is cooperation. And then he is telling me about a guy that got arrested the weekend before and there was like a, I think it was a double murder that was in the news from Cayce and a guy had been talking about it. So, you know, when I left the jail, I'm calling the deputies by his permission to come see him to see if they can -- we can try to help him out with cooperation. That is why I called the deputies, and the deputies -- the investigators involved, I think I only talked to one of them, I think he is the one that the actual guilty plea was to. He was like, Why is this guy

still in jail? Why haven't they moved the case yet? Why haven't they gotten a deal? So that is what I was saying earlier, like I didn't understand why they weren't moving off a burglary first 15 years, the deputies didn't understand why they weren't moving off of burglary 15 years. The only person that understood why they weren't moving off the burglary 15 years was Dan Johnson. And even the Assistant Solicitor handling the case didn't really know. All she knew was that was what she was told to do.

Q Okay.

MS. BREWER: Your Honor, may I approach?

THE COURT: Yes, ma'am.

BY MS. BREWER:

Q Mr. Moak, do you recall this email, it is a response to the email that has been previously marked as State's Exhibit A?

A Yes. Yes, that was Stan Smith. I think he was a captain of the Sheriff's Department, he might still be there.

Q Could you read your response there to Ms. Flynn's email to you?

A What I put at the top?

Q Yes?

A He is trying to be a jailhouse snitch. I told him I doubt there was anything he could do to change his fate.

Yes, I told him that, but I was saying that is the only thing I thought of, and that is what I told him, it is the only shot we have got. If it works, it works. If it doesn't, it doesn't.

Q Okay.

A And then the response was from her, I don't know anything about Stan Smith talking to him. No one has told me any of these things. But Thursday sounds good. I will put him on the jail list.

Now, that was April 18th is when I sent the email, which is the day after the other one, the expiration date hit. And --

Q You said, He is trying to be a jailhouse snitch. I doubt there is anything you can do to change his fate?

A Yes, uh-huh.

Q Okay.

A And then the rest of this page is about figuring out what day, what day we are doing it, and also I put, Also I believe Stan Smith may be questioning him about some unrelated. That is what I was talking about.

Q Okay. Thank you.
A I was hoping that they talked to him and we could come up with something they would move on.
Q Right.
MS. BREWER: This has not been previously marked, but I would move it as Applicant's Exhibit.
THE COURT: Any objection?
MR. DAVIDSON: No objection.
THE COURT: Without objection, Applicant's Number 1.
(WHEREUPON, Applicant's Exhibit No. 1 was marked for identification and received into evidence.)
BY MS. BREWER:
Q Mr. Moak, did you discuss with him going to a trial if necessary? You said you were only retained to help negotiate a plea deal. Did you discuss anything he could bring up at trial if he were to go to trial?
A He never -- I had told him, like either plead guilty or you go to trial. And he never picked trial, so we never had a discussion about trial.
Q Okay.
MS. BREWER: Beg the Court's indulgence.
(Pause.)

MS. BREWER: I have no further questions. Thank you.

THE COURT: Mr. Davidson, anything else?

MR. DAVIDSON: No, Your Honor.

THE COURT: Mr. Moak, thank you for your testimony.

THE WITNESS: Thank you, Your Honor.

(Witness steps down.)

THE COURT: Mr. Davidson, what else do you have?

MR. DAVIDSON: No further witnesses for the State.

THE COURT: All right. Ms. Brewer, do you wish to make any kind of closing statement, or are you satisfied?

MS. BREWER: Your Honor, I will make a statement at the appropriate time.

THE COURT: Yes. I will be happy to hear from you.

MS. BREWER: Thank you, Your Honor.

We would ask that Jaysen Hodge's charge be remanded. He pled guilty on the advice of counsel and would not have pled guilty without the advice given to him by Mr. Moak.

Mr. Moak, according to Mr. Hodge, and Mr. Moak

could not testify to the contrary, he only met with him twice. I don't -- there is no testimony that all of the discovery was completely discussed with my client. He wasn't explained that it could have been a lesser degree of burglary first, which would have carried less than 15 years. And under, I believe it is Wolfe v. State, which is 326 S.C. 158, he should have been given a -- where counsel's performance was deficient and there is reasonable probability that but for counsel's errors, the Defendant would not have pled guilty, his motion for post-conviction relief should be granted.

So we're asking that Mr. Hodge's motion be granted.

THE COURT: Mr. Davidson?

MR. DAVIDSON: Thank you, Your Honor. May it please the Court? The State would argue that Mr. Hodge failed to establish ineffective assistance of counsel.

(Pause.)

THE COURT: You may continue.

MR. DAVIDSON: The State would argue that Mr. Hodge has failed to establish ineffective assistance of counsel on the three claims or allegations he put forward.

First, his issue with the plea deal being a contract of adhesion, I'm not sure exactly what he meant by that, but I think there was testimony given by Mr. Moak, Mr. Moak was approached and retained as private counsel with the goal of trying to work out a better plea deal. Not only did he testify that it was the understanding between himself and Mr. Hodge that he would do it, he could. Also, the retainer fee was, If I can work out a better deal, you can pay me the rest of the $500, and if I don't, then you don't have to pay me.

So I think that Mr. Hodge has failed to show how Mr. Moak's performance was deficient in any way. He did exactly what was asked of him. He worked -- took meetings with the head Solicitor, who was the person he was told was putting his foot down to a different plea deal. He even proposed other plea deals with the Assistant Solicitor, and ultimately, although he failed, I feel that Mr. Hodge also failed to prove how he was prejudiced because he got the same plea offer that was offered a year and a half earlier and he was facing up to 25 years to life and instead got 15 years.

As to his allegation that discovery was never done on his behalf and no evidence or charges were challenged, I think testimony given today shows that he got his discovery from his Public Defenders and had been through it. He was in jail for 971 days before taking a plea, meaning he had plenty of time to go over that. And then when Mr. Moak was retained at the last minute, Mr. Moak testified he did go over the discovery and that timeframe that Mr. Hodge had to review all that discovery should have led him to ask any questions that he had of Mr. Moak, and he did not testify what Mr. Moak could have done more.

Additionally, the no evidence or charges challenged. He indicated from the beginning of his relationship with Mr. Moak that he wanted to take a plea deal, so I don't really think that he has proved his burden on that Mr. Moak was constitutionally deficient in his representation.

And the last one is lack of due process. I don't think any testimony was presented on this and would ask that the Court dismiss this for failure to raise the issue, and this also occurred well before Mr. Moak was ever hired, so Mr. Moak had nothing to do with how long he had been in jail.

He, in fact, resolved all of these charges within a couple of months of being retained.

So the State would ask that you deny Mr. Hodge's application and dismiss it with prejudice.

THE COURT: All right, sir.

Okay, nothing further?

MS. BREWER: Nothing further, Your Honor.

THE COURT: Okay. If there is nothing further, then I have heard all of the testimony and evidence for the record. I'll look at the file some more. I'll take the matter under advisement.

And, Mr. Hodge, I will communicate with counsel the Court's ruling in this matter, and you, in turn, will receive a copy of the order, whatever the Court ultimately does, okay? And I will be asking Mr. Davidson to prepare an order at the appropriate time.

MR. DAVIDSON: Okay. Thank you, Your Honor.

THE COURT: Nothing else?

MS. BREWER: Nothing.

THE COURT: Sir, good luck to you. You have been well represented. Court is adjourned.

MS. BREWER: Thank you, Your Honor.

THE COURT: Thank you folks from the

Department of Corrections. I appreciate you being here.

(WHEREUPON, the hearing adjourned at 3:25 p.m.)

(END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth 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 Court of Common Pleas for Richland County, South Carolina, on the 12 day of July, 2021.

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

December 6, 2021

s/*Deborah M. McCurdy, RPR*

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

Michael Davidson

From: Ron Moak <moakatty@gmail.com>
Sent: Thursday, January 14, 2021 1:21 PM
To: Michael Davidson
Subject: Fwd: Jaysen Hodge
Attachments: image001.jpg

---------- Forwarded message ---------
From: **Molly Flynn** <[redacted]>
Date: Tue, Feb 14, 2017 at 3:56 PM
Subject: Jaysen Hodge
To: moakatty@gmail.com <moakatty@gmail.com>

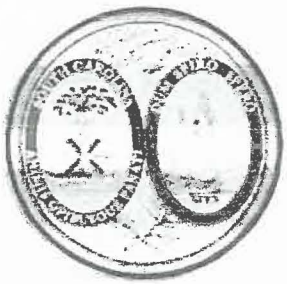


Ron,

I hope this email finds you well. I hope at this point you have had an opportunity to review the discovery on his cases. My offer remains 15 years (the minimum on the Burglary 1st degree) and I will dismiss the other Burglary 1st degree. If your client intends to accept this offer, he has until April 1, 2017 to plead. I have had this exact same offer extended to him for a year and a half which is the reason for an expiration date. If he does not intend to plead, please let me know when you will be available for trial.

Thank you,

Molly



Molly Flynn
Assistant Solicitor
Fifth Judicial Circuit of South Carolina
Richland and Kershaw Counties
1701 Main Street, Suite 302 • P.O. Box 192 (29202)

Michael Davidson

From: Ron Moak <moakatty@gmail.com>
Sent: Thursday, January 14, 2021 1:21 PM
To: Michael Davidson
Subject: Fwd: Jaysen Hodge

---------- Forwarded message ---------
From: **Ron Moak** <moakatty@gmail.com>
Date: Tue, Apr 18, 2017 at 2:53 PM
Subject: Re: Jaysen Hodge
To: Molly Flynn <FlynnM@rcgov.us>

Hes trying to be a jailhouse snitch. I told him I doubt theres anything he can do to change his fate.

Sent from my iPhone

On Apr 18, 2017, at 2:26 PM, Molly Flynn <FlynnM@rcgov.us> wrote:

> Ok. I don't know anything about Stan Smith talking to him (no one has told me anything) but Thursday sounds good. I'll put him on the jail list for then.
>
> **From:** Ron Moak [mailto:moakatty@gmail.com]
> **Sent:** Tuesday, April 18, 2017 2:25 PM
> **To:** Molly Flynn
> **Subject:** Re: Jaysen Hodge
>
> I was thinking thursday morning? I have to be in Columbia anyway. Also I believe Stan Smith may be questioning him about something unrelated
>
> Sent from my iPhone
>
> On Apr 18, 2017, at 10:12 AM, Molly Flynn <FlynnM@rcgov.us> wrote:
>
> > Ron,
> >
> > Are you available this week to do his plea?



STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Jaysen R. Hodge, #302270, Applicant, v. State of South Carolina, Respondent.	Case No.: 2018-CP-40-2680 **ORDER OF DISMISSAL**

RICHLAND COUNTY
FILED
2021 OCT -8 PM 3:55
C.P., G.S., & F.C.

This matter came before the Court by way of Jaysen R. Hodge's (Applicant) action for post-conviction relief (PCR) commenced May 16, 2018. The State made its return and motion to dismiss the Application as untimely on March 20, 2020. On January 27, 2021, the Honorable D. Craig Brown filed an order denying the State's motion to dismiss and equitably tolling the statute of limitations, thereby granting Applicant an evidentiary hearing on his allegations of ineffective assistance of counsel. The State filed its' amended return on June 23, 2021. The Court convened an evidentiary hearing into the matter on July 12, 2021, at the Richland County Judicial Center in Columbia, South Carolina. Applicant was present at the hearing and represented by Cassity Ann Brewer, Esquire. Michael D. Davidson, Esquire, of the South Carolina Attorney General's Office, appeared on behalf of the State.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's cousin, Jahari Crawford, also testified. The State presented testimony from Applicant's plea counsel, Ronald Moak, Esquire. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Clerk of Court regarding the subject convictions, the pleadings, and the exhibits introduced at the evidentiary hearing.

MSH

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted at the December 2014 term of the Richland County Grand Jury for shoplifting – third offense (2014-GS-40-7604). Applicant was subsequently indicted in May 2015 for grand larceny (2015-GS-40-2289) and first-degree burglary (2015-GS-40-2282). Applicant was represented by Ronald Moak, Esquire. Assistant Solicitor Molly Flynn prosecuted the case.

On May 11, 2017, Applicant pleaded guilty as indicted before the Honorable Steven H. John. Pursuant to the State's recommendation, Judge John sentenced Applicant to imprisonment for concurrent terms of fifteen years for first-degree burglary, ten years for shoplifting, and five years for grand larceny, with credit for time served of 861 days. Applicant did not appeal his conviction or sentence.

Applicant commenced this PCR action on May 16, 2018. In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. "Inadequate representation"
    a. "Discovery was never done on my behalf. No evidence or charges challenged. Told to sit and wait and eventually waited for more than 2 years instead of bail and independent investigation"
2. "Lack of due process"
    a. "I was detained for 1 ½ years for shoplifting (until indictments for other unsolved cases could be obtained and connected to me) Served 971 days before plea and sentencing"
3. "Plea deal was a contract of adhesion"
    a. "Advised to sign a plea deal for 15 years because exercising my right to trial would guarantee a 25 year-life sentence that would be pursued by the solicitor's office. Solicitor told family member that assisting addicts would be politically advantageous"

MSH

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Pursuant to section 17-27-80 of the South Carolina Code, this Court makes the following findings based upon all of the probative evidence presented.

Summation of Testimony Presented at the Evidentiary Hearing

Applicant testified he was represented by a Public Defender until January of 2017 when his cousin, Jahari Crawford, helped him retain Counsel. Applicant testified he reviewed the discovery for the shoplifting charge, but not for the burglary charge. Applicant testified he met with Counsel once when he originally retained him and approximately five or six months later at the courthouse. Applicant testified Counsel never gave him discovery and never reviewed discovery with Applicant. Applicant testified Counsel conveyed a plea offer of fifteen years, which was the same offer his prior public defender had relayed to him. Applicant testified he took the plea because it was the best offer he had and if he went to trial, he would be facing a possible life sentence. On cross-examination, Applicant testified he hired Counsel because he thought he would get a better plea deal with a private attorney than with a public defender, but no better deal was offered to Counsel.

Jahari Crawford testified on Applicant's behalf. Crawford testified he was Applicant's cousin and he was the person who reached out to Counsel to retain him on Applicant's behalf. Crawford testified he played football with Counsel at the Citadel. Crawford testified he wanted to retain Counsel because Counsel's relationships in the Solicitor's office, based on Counsel's prior

MSH

employment with the Solicitor's office. Crawford testified Counsel told him that the plea offer was fifteen years, which Counsel thought was excessive for the charge. Crawford testified Counsel informed him if Applicant decided to have a jury trial, Applicant would be facing twenty-five years to life. Crawford testified he met with Counsel several times and attended Applicant's plea hearing. Crawford testified he spoke with Deputy Solicitor Dan Johnson via telephone about Applicant's case. Crawford testified Counsel did not do any investigations or discovery and Counsel told Applicant to take the plea deal because it was Applicant's "best chance." On cross-examination, Crawford testified that Counsel told him he had a conversation with the solicitor on the case who relayed to him that Deputy Solicitor Dan Johnson was standing hard and fast and there would be no better deal than the fifteen years.

Counsel testified he was contacted to represent Applicant by Applicant's cousin, Jahari Crawford. Counsel testified he was specifically retained to negotiate a plea deal for Applicant. Counsel testified he informed Crawford he would take the case for five-hundred dollars and that Crawford could pay two hundred and fifty dollars up front and the remaining balance after the case concluded. Counsel testified he did not promise Crawford or Applicant that he could obtain a better plea deal. Counsel testified he told Crawford that he would try to fix the damage resulting from Crawford calling Deputy Solicitor Dan Johnson, which Counsel did not believe was a good choice.

Counsel testified he received discovery via email after he called the legal assistant at the Solicitor's office. Counsel testified he went over the discovery with Applicant and Applicant also informed Counsel he already went through the discovery with the Public Defenders as well. Counsel testified that Applicant did not give him any additional facts to investigate relevant to the case or regarding the issue of his guilt or innocence. Counsel testified he had a problem with the

plea because Counsel believed the deal was extremely excessive; however, Counsel explained that the Deputy Solicitor determined the deal would not change and therefore, the assistant solicitor couldnot change it. Counsel testified he made appointments to meet with the Deputy Solicitor, but the Deputy Solicitor never showed up.

Ineffective Assistance of Counsel

In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland.* First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than

through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." *United States v. Basham*, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he/she would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to

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contest the validity of such a plea is usually, but not invariably, foreclosed. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

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.

1. Inadequate Representation

Applicant alleges Counsel was ineffective and represented him inadequately because discovery was never done on his behalf and Counsel failed to do an independent investigation. However, this Court disagrees.

"[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." *Strickland*, 466 U.S. at 690-91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular

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investigations unnecessary." *Id.* at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." *Id.* "The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." *Id.* "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." *Id.* "In particular, what investigation decisions are reasonable depends critically on such information."

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. *Harris v. State*, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. *Id.* (citing *Davis v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); *Skeen v. State*, 325 S.C 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.*, 377 S.C. at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

This Court finds that Applicant offered nothing that Counsel could have or should have investigated in furtherance of his defense. Additionally, this Court finds Applicant's allegation that Counsel never reviewed discovery with him not credible. Counsel, on the other hand, demonstrated through his testimony a thorough command of the facts and circumstances of Applicant's charges, and credibly testified to fully reviewing the evidence against Applicant in its

entirety, both independently and with Applicant. Furthermore, Applicant at no point offered any testimony to establish that *but for* Counsel's failure to investigate any particular thing, he would not have pled guilty but would have insisted upon going to trial. Applicant has produced no probative evidence towards meeting his burden as to either prong of *Hill*, and accordingly his demand for relief by way of this allegation is **DENIED**.

2. Lack of Due Process

Applicant alleges Counsel was ineffective and he was denied Due Process because he was detained for one and a half years for shoplifting before his plea and sentencing. However, this Court finds Applicant failed to present ***any*** testimony related to this issue at the evidentiary hearing. *Butler v. State* 286 S.C. 441, 334 S.E.2d 813 (1985) ("The burden of proof is on the applicant in post-conviction proceedings to prove the allegations in his application."). In other words, Applicant has produced no probative evidence towards meeting his burden as to either prong of *Hill*. Accordingly, his demand for relief by way of this allegation is **DENIED**.

3. Plea Deal was a Contract of Adhesion

Applicant alleges Counsel was ineffective, and his guilty plea was not voluntarily entered, because Counsel misadvised him to sign a plea deal for fifteen years. However, this court disagrees.

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he/she would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption

of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); *Richardson v. State*, 310 S.C. 360, 363, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

In the present case, Counsel and Applicant both testified that Counsel was specifically retained to negotiate a plea. Both testified they originally hoped to be able to negotiate a better plea deal than the one originally offered, which was fifteen years. This Court finds Applicant has failed to show how Counsel's performance was deficient, as Counsel did exactly what was asked of him. Additionally, this Court finds Applicant failed to show how he was prejudiced by Counsel's alleged deficiency, as Applicant chose to plead guilty rather than go to trial and risk facing twenty-five years to life. Furthermore, this Court finds Applicant did not plead guilty because he was misadvised by Counsel, but rather (1) because he was guilty, as he stated at the plea proceeding, and (2) because he wished to accept the State's offer, which he knew as the best

deal he would get. Accordingly, Applicant has failed to present any evidence to meet his burden as to either prong of *Hill*, and his claim for relief by way of this allegation is **DENIED**.

CONCLUSION

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

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 30 **day of** SEPT **, 2021.**

MICHAEL S. HOLT
Presiding Judge
Fifth Judicial Circuit

DARLINGTON, South Carolina