

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Anderson County

Alexander S. Macaulay, Circuit Court Judge

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S.C. Supreme Court

JAMES E. KENNEDY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-212909

APPENDIX

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State of South Carolina	)	In the Court of General Sessions
County of Anderson	)	10th Judicial Circuit
State of South Carolina	)	Transcript of Record
V.	)	2007-GS-04-01283; 01289;
James E. Kennedy,	)	01290; 01292; 01293; 01295;
<u>Defendant.</u>	)	01296; 01297

February 6th & February 9th, 2009

Anderson, South Carolina

B E F O R E:

The Honorable J. C. Nicholson, Jr., Judge

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

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Jennifer Johnson, Assistant Public Defender

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CIRCUIT COURT REPORTER

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****NO EXHIBITS WERE INTRODUCED****

1 Friday, February 6, 2009

2 MR. POTTER: Judge, for the record, I'm here on
3 behalf of Ms. Jennifer Johnson. She is under the weather
4 at this point in time. I have discussed with her this
5 particular case. I actually helped her prepare for it --

6 THE COURT: So you're familiar with it?

7 MR. POTTER: So I'm familiar with the case, yes,
8 sir.

9 THE COURT: Yes, ma'am?

10 MS. REEVES: Your Honor, as you will recall, this
11 is just the guilty plea of this defendant. The sentence
12 is going to be deferred until Monday when the victim can
13 be present.

14 THE COURT: Okay.

15 MS. REEVES: I will read out the indictments and
16 the charges, then if it's okay, when permitted, I will
17 just go through and try to hit the factual elements of
18 the crimes and not go into great detail.

19 THE COURT: That will be fine.

20 MS. REEVES: Before you is James E. Kennedy. He is
21 pleading guilty on several indictments. The first is
22 carnal knowledge of a woman child from 1971 through 1977
23 on indictment number 2007-GS-04-1295; criminal sexual
24 conduct second degree 2007-GS-04-1296; another criminal
25 sexual conduct second degree 2007-GS-04-1283; lewd act on

1 a child 2007-GS-04-1297; CSC first degree
2 2007-GS-04-1293; lewd act 2007-GS-04-1290; CSC second
3 degree 2007-GS-04-1289; and finally, lewd act
4 2007-GS-04-1292.

5 THE COURT: Thank you, ma'am.

6 MS. REEVES: Thank you.

7 THE COURT: All right. Mr. Kennedy, raise your
8 right hand.

9 JAMES E. KENNEDY, after having been duly
10 sworn, testified as follows:

11 THE COURT: All right, Mr. Potter. You and
12 Ms. Johnson represent Mr. Kennedy; is that correct?

13 MR. POTTER: That's correct, Judge.

14 THE COURT: And how long have you all been
15 appointed to represent him?

16 MR. POTTER: Judge, my understanding is there was
17 an appointment made by Judge Maddox in July of '07.

18 THE COURT: '07.

19 MR. POTTER: Yes, sir.

20 THE COURT: And the two of you have been
21 representing him ever since; is that correct?

22 MR. POTTER: Ms. Johnson has been lead counsel.

23 THE COURT: Okay. But you have been assisting her?

24 MR. POTTER: Yes, sir.

25 THE COURT: And I understand she's under the

1 weather today; is that correct?

2 MR. POTTER: Yes, sir.

3 THE COURT: Mr. Kennedy, do you have any difficulty

4 moving forward without Ms. Johnson being here today?

5 THE DEFENDANT: I don't reckon I do.

6 MR. POTTER: Judge, if it pleases the Court?

7 THE COURT: Yes, sir.

8 MR. POTTER: I have spoken with him over in the

9 jury box, discussed with him the nature of the charges,

10 his rights to a jury trial. I explained to him that

11 Ms. Johnson was sick today, she would be available, would

12 handle the case on Monday morning for the final

13 sentencing, ultimately what you decide to do with him.

14 I've explained to him his right to his trial, the

15 rights that he's waiving by entering a guilty plea. He

16 tells me he understands that. He seems comfortable with

17 me, and I don't see any real conflict. I think there's

18 no reason not to go forward today. He seems good with me

19 standing up with him today.

20 THE COURT: Okay. Mr. Kennedy, how old are you?

21 THE DEFENDANT: Sixty-five.

22 THE COURT: Sixty-five. What's your date of birth?

23 THE DEFENDANT:

24 THE COURT: And what's your Social Security number?

25 THE DEFENDANT: I think.

1 THE COURT: Okay. How far did you go in school?

2 THE DEFENDANT: I think I went to the seventh.

3 THE COURT: To the seventh grade. Do you have any
4 trouble reading and writing?

5 THE DEFENDANT: Yeah. I have a little trouble with
6 it but I do anyway, you know.

7 THE COURT: How much can you read?

8 THE DEFENDANT: How much?

9 THE COURT: Yes, sir. Can you read the paper, the
10 headlines of the paper?

11 THE DEFENDANT: Well, it may seem like a lie but I
12 never have, but I guess I could.

13 THE COURT: Well, can you?

14 THE DEFENDANT: I guess I could, yeah.

15 THE COURT: Who reads for you when you need
16 something read?

17 THE DEFENDANT: When I was at home my wife did.

18 THE COURT: Your wife does?

19 THE DEFENDANT: Or whoever I get to, you know.
20 Whoever.

21 THE COURT: Whoever you can get to?

22 THE DEFENDANT: Whoever I can get to read it.

23 THE COURT: All right. Can you count change? Can
24 you count money?

25 THE DEFENDANT: Some. Yeah.

1 THE COURT: Some.

2 THE DEFENDANT: I can count change.

3 THE COURT: You can count change?

4 THE DEFENDANT: (Nodded).

5 THE COURT: Do you know how much change somebody is
6 supposed to give you when you buy something at the store?
7 If you go buy something at the store --

8 THE DEFENDANT: Yeah, yeah, yeah --

9 THE COURT: -- you give them a ten dollar bill can
10 you figure out how much change that you were owed?

11 THE DEFENDANT: Yeah, most of the time.

12 THE COURT: Most of the time. Do you know how to
13 run an adding machine or a calculator? Ever used that?

14 THE DEFENDANT: No.

15 THE COURT: Okay.

16 THE DEFENDANT: I never had no need to.

17 THE COURT: Never need to.

18 THE DEFENDANT: Because I know.

19 THE COURT: Well, the other side of the coin, some
20 people can't add and subtract and do change without the
21 calculator. So I guess it works both ways.

22 Do you understand why you're here today?

23 THE DEFENDANT: Yeah. Halfway. But, yeah.

24 THE COURT: Halfway. Okay. What halfway do you
25 not understand, why you're here?

1 THE DEFENDANT: I don't understand how there was so
2 many charges.

3 THE COURT: Pardon?

4 THE DEFENDANT: I don't understand how there was so
5 many charges. I don't understand it but...

6 THE COURT: Well, let me go through the charges
7 with you. You're charged with having sex with a woman or
8 child, and you could receive up to 30 years on that; do
9 you understand? That's one charge. You understand?

10 THE DEFENDANT: Yeah.

11 THE COURT: You can receive up to 30 years.

12 CSC second, what's the maximum on that, Solicitor?

13 MS. REEVES: Your Honor, I understand it's probably
14 20 years. This is an old statute so it's a little bit
15 unclear, but the best I can guess it's 20 years.

16 THE COURT: You agree with that?

17 MR. POTTER: I do, Judge.

18 THE COURT: All right. You understand on the CSC
19 second you can get up to 20 years? Do you understand?

20 THE DEFENDANT: Yes.

21 THE COURT: And you got a CSC second. You can get
22 20 years; do you understand?

23 THE DEFENDANT: (Nodded).

24 THE COURT: Then you've got a lewd act.

25 What was it, 15?

1 MS. REEVES: Your Honor, prior to 1993 it was
2 discretionary. After 1993 it's 15 years.

3 THE COURT: Discretionary. Didn't have a --

4 MS. REEVES: No range at all.

5 THE COURT: Well, I think on those the max would be
6 10.

7 MS. REEVES: Yes, sir.

8 THE COURT: On lewd act 10; do you understand?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Then CSC first you can get up to 30
11 years. You got another lewd act. That would be 10, and
12 CSC second, 20, and another lewd act; do you understand?

13 THE DEFENDANT: Yes, sir.

14 MS. REEVES: Your Honor, just to -- sorry. Just to
15 be clear. That first indictment, carnal knowledge of a
16 woman child, that actually carries 5 to 40 years.

17 THE COURT: Five to 40?

18 MS. REEVES: Yes, sir.

19 THE COURT: All right, Mr. Kennedy. The carnal
20 knowledge of a woman child carries anywhere from 5 to 40;
21 do you understand?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Now, what has happened, you said you
24 didn't understand why there's so many charges against
25 you, all those are different occurrences, different

1 things that happen. So they've got a charge for each one
2 of those; do you understand? Yes or no?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. Mr. Potter, have you explained
5 to the defendant the charge contained in the indictment?

6 MR. POTTER: Your Honor, I have, as well as
7 Ms. Johnson has.

8 THE COURT: The possible punishment?

9 MR. POTTER: Yes, Your Honor.

10 THE COURT: Constitutional rights, including a
11 right to a jury trial?

12 MR. POTTER: Yes, sir.

13 THE COURT: Have you explained to him -- all these
14 have been indicted, I presume?

15 MS. REEVES: Yes, sir.

16 THE COURT: Does he wish to waive his
17 constitutional rights?

18 MR. POTTER: Judge, if it pleases the Court. He
19 tells me he wishes to waive his constitutional rights and
20 enter guilty pleas on these charges.

21 THE COURT: In your opinion, does he understand the
22 charge?

23 MR. POTTER: I believe he does, Your Honor.

24 THE COURT: The punishment?

25 MR. POTTER: Yes, sir.

1 THE COURT: Does he understand his rights that you
2 and Ms. Johnson have explained to him, in your opinion?

3 MR. POTTER: Yes, sir.

4 THE COURT: How does he wish to plead?

5 MR. POTTER: Judge, he tells me he wishes to enter
6 guilty pleas.

7 THE COURT: Do you agree with his decision to plead
8 guilty?

9 MR. POTTER: I do, Judge.

10 THE COURT: Do you believe from your investigation
11 of the facts and circumstances you feel that the State
12 could produce sufficient evidence to convince a jury of
13 the defendant's guilt beyond a reasonable doubt and if
14 the defendant would stand trial his convictions would be
15 probable?

16 MR. POTTER: Yes, Your Honor. Based on Ms. Johnson
17 and my investigations I think we're both comfortable with
18 that fact.

19 THE COURT: I believe he said he had a sixth grade
20 education.

21 MR. POTTER: Seventh grade.

22 THE COURT: Seventh grade. He cannot read and
23 write, has difficulty with math. Have you had any
24 difficulty communicating with him?

25 MR. POTTER: I have not, and as far as I'm aware

1 Ms. Johnson has not had any difficulty.

2 THE COURT: Do you have any indication he needs to
3 have a mental evaluation?

4 MR. POTTER: No, Your Honor.

5 THE COURT: Has he ever been ordered to submit to a
6 mental evaluation, or competency to stand trial?

7 MR. POTTER: I'm unaware of -- my understanding
8 that these are his first criminal charges. I'm unaware
9 of any mental health history or any mental health
10 evaluations that have been done.

11 THE COURT: Thank you, sir.

12 Mr. Kennedy, have you ever worked during your
13 lifetime?

14 THE DEFENDANT: Oh, yeah, I worked.

15 THE COURT: Where have you worked?

16 THE DEFENDANT: Where did I work?

17 THE COURT: Yes, sir.

18 THE DEFENDANT: Welding, and construction, and tree
19 work.

20 THE COURT: Okay. What kind of tree work did you
21 do?

22 THE DEFENDANT: I was a climber.

23 THE COURT: You were a climber?

24 THE DEFENDANT: (Nodded).

25 THE COURT: You cut the trees?

1 THE DEFENDANT: That's right.

2 THE COURT: And who did you work for?

3 THE DEFENDANT: Jerry Jernigan (ph) but he didn't

4 -- there ain't no -- the company don't exist no more.

5 That one don't.

6 THE COURT: I didn't understand what you said. Who

7 did you work for?

8 THE DEFENDANT: Jerry Jernigan.

9 THE COURT: Okay. And what was his work, tree --

10 THE DEFENDANT: He was the boss. He was the

11 tree --

12 THE COURT: Did you cut back trees for power lines

13 or what?

14 THE DEFENDANT: I've done that, too, yeah.

15 THE COURT: You've done that, too?

16 THE DEFENDANT: Yeah.

17 THE COURT: What kind of construction work did you

18 do?

19 THE DEFENDANT: Worked with Triangle.

20 THE COURT: With where?

21 THE DEFENDANT: Triangle Construction.

22 THE COURT: Triangle Construction. What type of

23 construction work? Did they build bridges, build roads,

24 build --

25 THE DEFENDANT: Homes.

1 THE COURT: Homes? Built homes?

2 THE DEFENDANT: Buildings.

3 THE COURT: All right. What did you do in the home
4 building process? Did you frame, did you do carpentry
5 work or what?

6 MR. POTTER: Were you a framer, were you a brick
7 mason? What did you do in the construction --

8 THE COURT: What did you do in the house industry?

9 THE DEFENDANT: Oh, I was a mud man, they called
10 it. Mixed mortar for brick masons.

11 THE COURT: You make mortar for brick masons. So
12 you mixed up the mortar?

13 THE DEFENDANT: Right.

14 THE COURT: And you carried the mortar to the brick
15 mason?

16 THE DEFENDANT: Right.

17 THE COURT: Can you finish concrete?

18 THE DEFENDANT: Can I?

19 THE COURT: Can you.

20 THE DEFENDANT: I don't know if I can or not.

21 THE COURT: You can't finish concrete?

22 THE DEFENDANT: I never did.

23 THE COURT: But you can mix it up?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. Have you worked anywhere else?

1 THE DEFENDANT: Yeah. I worked at Davey Tree for a
2 while.

3 THE COURT: Davey Tree?

4 THE DEFENDANT: Line clearing.

5 THE COURT: Okay. Anybody else?

6 THE DEFENDANT: I don't know.

7 THE COURT: You don't remember?

8 THE DEFENDANT: I have to think about it. I can't
9 think fast.

10 THE COURT: Okay.

11 THE DEFENDANT: I had a couple of strokes.

12 THE COURT: Well, take your time.

13 THE DEFENDANT: I'm taking my time.

14 THE COURT: Okay. If you have any questions while
15 we're going through this process let me know and I'll
16 stop and I'll let you discuss it with your attorney if
17 you so desire; do you understand?

18 THE DEFENDANT: Right. Yes, sir.

19 THE COURT: How long have you been married?

20 THE DEFENDANT: Last time 20 years, I think.

21 THE COURT: Twenty years. Are you married now?

22 THE DEFENDANT: Yes. Yes, sir.

23 THE COURT: How long have you been married this
24 time?

25 THE DEFENDANT: Twenty years.

1 THE COURT: Twenty years. How about the first
2 time?

3 THE DEFENDANT: The first time I don't remember.

4 THE COURT: You don't remember?

5 THE DEFENDANT: Ten or 15 years, I guess.

6 THE COURT: How many times have you been married?

7 THE DEFENDANT: Three.

8 THE COURT: Three?

9 THE DEFENDANT: Yeah.

10 THE COURT: Okay. How many children do you have?

11 THE DEFENDANT: I'm not quite sure, but I think
12 four.

13 THE COURT: Four. Okay. Do you know their ages?

14 THE DEFENDANT: Nope.

15 THE COURT: No. Do you ever see them?

16 THE DEFENDANT: Do I see them now?

17 THE COURT: Yeah. Yes, sir.

18 THE DEFENDANT: I have seen them. Oh, yes, sir.
19 Not lately I hadn't.

20 THE COURT: Do you know where they live?

21 THE DEFENDANT: Haven't got no idea.

22 THE COURT: Don't have any idea. Okay. Have you
23 ever been treated for abuse of alcohol or drugs?

24 THE DEFENDANT: Have I been treated for --

25 THE COURT: Treated for alcohol abuse.

1 THE DEFENDANT: Yeah. I had to go one time or two
2 times for drunk driving, I think.

3 THE COURT: Okay. How long ago was that?

4 THE DEFENDANT: I don't know. My last ones finally
5 got cleared up. There wasn't no more. They said that
6 there wasn't no charges on me.

7 THE COURT: Have you ever used drugs?

8 THE DEFENDANT: None, except alcohol.

9 THE COURT: You have or you haven't?

10 THE DEFENDANT: I haven't used no drugs.

11 THE COURT: Never used drugs? Never smoked
12 marijuana?

13 THE DEFENDANT: No.

14 THE COURT: You used cocaine or crack?

15 THE DEFENDANT: No. I ain't never used no drugs at
16 all, except whatever my doctors prescribe me, the pills
17 and whatever.

18 THE COURT: All right. Tell me what kind of pills
19 you're taking from your doctor.

20 THE DEFENDANT: I haven't got no idea except a
21 blood pressure pill and a heart pill, but there's several
22 more.

23 THE COURT: All right. You take a blood pressure
24 pill, a heart pill and what else?

25 THE DEFENDANT: Diabetics.

1 THE COURT: Diabetes?

2 THE DEFENDANT: Yeah.

3 THE COURT: Do you take shots for diabetes or pills
4 for diabetes?

5 THE DEFENDANT: I take the pills now.

6 THE COURT: Take the pills. Does that control your
7 blood sugar?

8 THE DEFENDANT: Most of the time.

9 THE COURT: Most of the time. Okay. How about the
10 blood pressure? Does that pill control your blood
11 pressure?

12 THE DEFENDANT: I reckon. Whenever they check it
13 sometimes it ain't, yeah. Yes, sir.

14 THE COURT: You take it every day?

15 THE DEFENDANT: Every day.

16 THE COURT: You take it this morning?

17 THE DEFENDANT: Yes.

18 THE COURT: Does it affect your mental faculties or
19 does it affect your thought process?

20 THE DEFENDANT: I don't know.

21 THE COURT: You don't know. Well, do you
22 understand why you're here?

23 THE DEFENDANT: Yeah. I understand why I'm here.

24 THE COURT: Okay. All right, Mr. Kennedy.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Let me see the attorneys up here just a
2 second.

3 (WHEREUPON, a bench conference was had.)

4 THE COURT: All right, Mr. Kennedy. Do you
5 understand the difference between a jury trial and
6 pleading guilty?

7 THE DEFENDANT: Yeah. Yes, sir.

8 THE COURT: You do. Do you understand that in a
9 jury trial -- you're entitled to a jury trial; you
10 understand?

11 THE DEFENDANT: You're telling me what?

12 THE COURT: A jury trial. Do you understand? If
13 you want a jury trial you can have one; do you
14 understand?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Do you understand in a jury
17 trial -- listen to me now, okay. You understand in a
18 jury trial all 12 jurors would have to find you guilty?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You understand?

21 THE DEFENDANT: Right.

22 THE COURT: Do you understand you could testify at
23 that jury trial if you wanted to? Do you understand your
24 lawyer could ask witnesses questions at the jury trial?

25 THE DEFENDANT: Yeah, I understand that.

1 THE COURT: You understand that. Have you ever
2 seen a jury trial either on television or in real life?

3 THE DEFENDANT: I've seen it on television.

4 THE COURT: Seen it on television. So you sort of
5 know what a jury trial is about, don't you?

6 THE DEFENDANT: Well, I've seen it but I don't know
7 nothing about what it's about, but I've seen it.

8 THE COURT: Okay. All right. Do you want a jury
9 trial?

10 THE DEFENDANT: No, sir. I don't think so.

11 THE COURT: Okay. All right. Do you understand
12 that you have the right to appeal this guilty plea ten
13 days from today? You don't have to but you have that
14 right; do you understand?

15 THE DEFENDANT: I haven't heard nothing about it
16 but I reckon I do.

17 THE COURT: Okay. I'm telling you about it; do you
18 understand?

19 THE DEFENDANT: Right.

20 THE COURT: I'm telling you you have that right; do
21 you understand? Do you understand what I'm telling you?
22 I'm telling you you have the right to --

23 THE DEFENDANT: I can change my mind, right?

24 THE COURT: No, not if you change your mind. You
25 have the right to appeal this guilty plea ten days from

1 today. I'm telling you that. Do you understand what I'm
2 telling you?

3 MR. POTTER: Could I have a brief moment, Judge?

4 THE COURT: Well, let me just say one more thing.
5 You do not have to appeal it. I'm just explaining to you
6 that you have that right.

7 THE DEFENDANT: Right.

8 THE COURT: And I'm asking do you understand that
9 you have that right to appeal it?

10 THE DEFENDANT: Do I understand it, that I have
11 that right to appeal it?

12 THE COURT: Yes, sir. That's what I'm asking.

13 THE DEFENDANT: But that ain't got nothing to do
14 with change your mind about the trial?

15 THE COURT: No, sir.

16 THE DEFENDANT: Well, I don't understand then.

17 THE COURT: You what?

18 THE DEFENDANT: I don't understand what you are
19 taking about then.

20 THE COURT: All right. You are entering a guilty
21 plea today.

22 THE DEFENDANT: Right.

23 THE COURT: Okay. And I'm making the distinction
24 between a guilty plea and a trial.

25 THE DEFENDANT: Right.

1 THE COURT: And if you change your mind about the
2 guilty plea then, yes, you can appeal the guilty plea but
3 not the trial. This is not a trial. It's a guilty plea.

4 THE DEFENDANT: Right.

5 THE COURT: Do you understand the difference?

6 THE DEFENDANT: Right. I do.

7 THE COURT: So what I'm telling you is you have the
8 right to appeal the guilty plea ten days from today; do
9 you understand?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. Do you understand that you have
12 the right to remain silent? No one can force you to
13 testify against yourself; do you understand?

14 THE DEFENDANT: Oh, yeah. Okay.

15 THE COURT: That's referring to on television your
16 right to remain silent or your Fifth Amendment Rights; do
17 you understand? Have you ever seen that on television?

18 THE DEFENDANT: No.

19 THE COURT: Never seen it?

20 THE DEFENDANT: I ain't never paid no attention. I
21 don't watch television much.

22 THE COURT: Okay. Well, have you ever heard that
23 statement, that you have the Fifth Amendment Rights to
24 remain silent?

25 THE DEFENDANT: I've heard of it in jail.

1 THE COURT: Okay. You heard of it in jail. You
2 learned about it in jail.

3 THE DEFENDANT: I don't know nothing about it. I
4 just heard about it.

5 THE COURT: All right, but you have heard that
6 term?

7 THE DEFENDANT: Yeah. I've heard about it.

8 THE COURT: Okay. Well, listen to me. Let me try
9 to explain that term to you, okay. You have the right to
10 remain silent. I can't make you testify, your attorney
11 can't make you testify, nor can this prosecutor make you
12 testify; do you understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. In order to enter a guilty
15 plea you're going to have to give up that right to
16 testify. Excuse me. You're going to have to give up
17 that right to remain silent; do you understand?

18 THE DEFENDANT: No.

19 THE COURT: All right. When you enter a guilty
20 plea, in other words, the Fifth Amendment Right is there
21 to prevent you from acknowledging your guilt or
22 incriminating yourself. Okay. When you enter a guilty
23 plea you're going to tell the Court that you are guilty;
24 therefore, you are admitting guilt. Do you understand?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: In order to admit that guilt you're
2 going to have to give up your right to remain silent; do
3 you understand?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. Now my question to you, are
6 you willing to give up your right to remain silent and
7 enter your guilty plea today?

8 THE DEFENDANT: Right. That's what we're talking
9 about, wasn't it?

10 MR. POTTER: Yes.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: That's what I'm trying to talk about;
13 do you understand?

14 THE DEFENDANT: I just now understand.

15 THE COURT: Okay. All right. Thank you very --

16 THE DEFENDANT: It takes me a little while.

17 THE COURT: Pardon?

18 THE DEFENDANT: It takes me a little while to
19 understand.

20 THE COURT: Okay. That's all right. Just tell me
21 if you need some time to think about it and talk to your
22 lawyer, okay?

23 THE DEFENDANT: (Nodded).

24 THE COURT: Has anybody threatened you to make you
25 plead guilty?

1 THE DEFENDANT: No. No, sir.

2 THE COURT: Has anybody intimidated you or coerced
3 you or made you plead guilty?

4 THE DEFENDANT: No, sir.

5 THE COURT: Are you pleading guilty of your own
6 free will and accord?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Have you had enough time to make your
9 decision to plead guilty?

10 THE DEFENDANT: I've been in jail two years. I
11 guess I have.

12 THE COURT: Have any promises been made to you
13 other than -- is there a recommendation?

14 MS. REEVES: Yes, sir.

15 THE COURT: Other than the recommendation by the
16 State? In other words, the State is going to recommend
17 to this Court what the sentence should be. Has any
18 promises been made to you other than that recommendation
19 to be made by the State? Do you understand what I mean
20 when I say recommendation?

21 THE DEFENDANT: Uh-uh.

22 THE COURT: All right. The State is going to
23 stand --

24 THE DEFENDANT: No, sir.

25 THE COURT: Do you understand the word

1 recommendation?

2 THE DEFENDANT: No, sir.

3 THE COURT: All right. Recommendation, let me see
4 if I can explain it to you this way. Monday morning the
5 State is going to stand up and say, Judge, I want you to
6 give this man 30 years. I want you to give this man 20
7 years. They're going to tell me what they want me to do.
8 Do you understand?

9 THE DEFENDANT: Oh, okay.

10 THE COURT: That's what a recommendation is. Do
11 you understand?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Now, they have promised that they are
14 going to tell me that, to your attorney and to you. All
15 right. Other than that promise has anybody else promised
16 you anything?

17 THE DEFENDANT: No, sir.

18 THE COURT: Do you understand what a promise is?

19 THE DEFENDANT: Yeah. I know what a promise is.

20 THE COURT: Okay. Have you understood all of the
21 questions that we have asked or that we have talked about
22 this morning?

23 THE DEFENDANT: Yes, sir, the best I could have.

24 THE COURT: Do what?

25 THE DEFENDANT: The best that I can understand,

1 yeah.

2 THE COURT: Okay. All right. That's what we're
3 trying to do, the best that you can understand it. Do
4 you need to talk to your attorney about anything we've
5 talked about?

6 THE DEFENDANT: Well, if I did I'd just probably
7 ask him what did we talk about.

8 THE COURT: Okay. All right.

9 MR. POTTER: Do you have any questions for me?

10 THE DEFENDANT: Do you have any questions?

11 MR. POTTER: Yes, sir.

12 THE DEFENDANT: I don't think so.

13 THE COURT: Okay. Are you satisfied with your
14 attorneys?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Have you understood what they've told
17 you?

18 THE DEFENDANT: Yes, sir. They've been treating me
19 right as far as I know.

20 THE COURT: Okay. Do you have any complaint to
21 make against your attorneys?

22 THE DEFENDANT: No. No, sir.

23 THE COURT: Have they done anything that you think
24 they should not have done?

25 THE DEFENDANT: No, sir. I had a hard time trying

1 to get them -- trying to understand to start with. I
2 couldn't.

3 THE COURT: Okay. Have they helped you to
4 understand?

5 THE DEFENDANT: Yes, sir. But like I said, I think
6 a little bit slow, you know, and then I forget it pretty
7 quick, too.

8 THE COURT: Okay.

9 THE DEFENDANT: So I have to go right back over the
10 same thing, and that's when I can't understand sometime.

11 THE COURT: Well, have they gone over it with
12 you --

13 THE DEFENDANT: Oh, yes, sir.

14 THE COURT: -- enough times for you to understand
15 it?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. Do you understand when you
18 enter a plea you have to tell the Court whether you are
19 pleading guilty or not guilty?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you want to plead guilty or not
22 guilty?

23 THE DEFENDANT: I want to plead guilty.

24 THE COURT: You want to plead guilty. Are you sure
25 you want to plead guilty?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand when you tell the
3 Court you're pleading guilty you acknowledge that you did
4 something wrong?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You're acknowledging that you committed
7 these crimes; do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand what the word
10 acknowledge means?

11 THE DEFENDANT: No.

12 THE COURT: All right. You are telling me that you
13 committed these crimes when you plead guilty; do you
14 understand?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. Do you have any questions you
17 would like to ask him concerning his guilty plea?

18 MR. POTTER: Mr. Kennedy, have you understood every
19 question the Judge has asked you today?

20 THE DEFENDANT: Yes, sir.

21 MR. POTTER: And understanding all the questions
22 that the Judge has asked you today you've answered
23 everything truthfully, to the best of your knowledge?

24 THE DEFENDANT: Yes, sir, I have.

25 MR. POTTER: And based upon what the Judge has

1 asked you today do you still wish to enter a guilty plea
2 on these charges? Is that correct?

3 THE DEFENDANT: Yes, sir. Plead guilty, sir. Yes,
4 sir.

5 MR. POTTER: Okay. And when you enter a guilty
6 plea you're agreeing that you committed these crimes and
7 you're asking not to have a trial; is that correct?

8 THE DEFENDANT: Yes, sir.

9 MR. POTTER: I don't think I have anything further,
10 Judge.

11 THE COURT: All right. Mr. Kennedy, I'm going to
12 ask the State to give me the facts of these cases, okay?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And I want you to listen, okay. Then
15 after she gives me the facts I'm going to ask you a few
16 questions about them, okay?

17 THE DEFENDANT: What did you say?

18 THE COURT: After she gives me the facts in these
19 cases I'm going to ask you some questions about them,
20 okay?

21 THE DEFENDANT: Oh, okay. Yes, sir.

22 THE COURT: Now listen. If you want me to stop her
23 and you don't understand some of the words she's using or
24 some of the things she says let me know and I'll let her
25 clarify it, okay?

1 THE DEFENDANT: That's fine. Yes, sir.

2 THE COURT: Solicitor?

3 MS. REEVES: Thank you, Your Honor. This case

4 involved five different victims, and so I will briefly go

5 through and tell you the elements of each.

6 THE COURT: How many does it involve?

7 MS. REEVES: Five.

8 THE COURT: Five different victims?

9 MS. REEVES: Yes, sir.

10 THE COURT: Can we take one victim at the time,

11 please.

12 MS. REEVES: Yes, sir. I plan to. Yes, sir.

13 THE COURT: Okay.

14 MS. REEVES: The first victim, Your Honor, is S. J.

15 She was between 5 and 16.

16 THE COURT: What's the name?

17 MS. REEVES: Her initials are S. J.

18 THE COURT: Okay.

19 MS. REEVES: She was between 5 and 16 years old

20 during January 1st, 1971 and September 9th, 1981. Her

21 mother was married to this defendant. They lived in at

22 least two locations in Anderson County. During that

23 time, the defendant began touching this victim which

24 eventually led to digital penetration. The defendant

25 performed oral sex on her, her being forced to perform

1 oral sex on him, and finally the defendant had sexual
2 intercourse with her on two occasions.

3 As to the second victim, her initials are W. Y.
4 This victim was between 7 and 10 years old when these
5 incidents occurred. This defendant was her father.

6 These incidents happened between January 1st, 1979
7 and November 21st, 1982. They also lived in Anderson
8 County. The defendant began touching the victim after
9 the first victim ran away from home. He touched her on
10 the chest. He digitally penetrated and he forced her to
11 masturbate him.

12 The third victim's initials are T. M. He was
13 between 8 and 9 years old when these incidents occurred
14 between January 1st, 1988 and January 1st, 1989. This
15 defendant was married to the victim's grandmother. They
16 also lived in Anderson County, and the victim lived with
17 the grandmother and the defendant. During that time on
18 three different occasions the defendant would make the
19 victim sleep with him and touched him underneath his
20 clothes in his -- on his penis.

21 As to the fourth victim, her initials are D. J.
22 She was between 5 and 13.

23 THE COURT: You said D. J.?

24 MS. REEVES: D. J. Yes, sir. She was between 5
25 and 13 years old between the dates of January 1st, 1989

1 and January 1st, 1997. She was again the defendant's
2 step grandchild. He was married to her grandmother and
3 did live in the home in Anderson County with this
4 defendant. During that time the defendant began touching
5 the victim's chest and vaginal area and performed oral
6 sex on her, and forced her to touch him as well.

7 Finally, as to the last victim, her initials are
8 S. F. She was between 4 to 5 years old when these
9 incidents occurred on January 1st, 1995 to January 1st,
10 1996. Again, this victim was the granddaughter of the
11 defendant, and he began kissing her neck. She visited
12 the home. She did not live with him. She visited the
13 home in Anderson County. The defendant kissed her neck,
14 touched her on the butt and used his hand to touch her
15 vaginal area under her clothing.

16 THE COURT: All right. Based upon the facts that
17 the State has given the Court finds there's a factual
18 basis for the plea, and the defendant has freely,
19 voluntarily, knowingly and intelligently made the
20 decision to plead guilty with the advice of his
21 attorneys, all the elements of the charges have been met.

22 All right, Mr. Kennedy. Did you understand what
23 the solicitor was telling the Court about these crimes?

24 THE DEFENDANT: Yes, sir, I understand.

25 THE COURT: Do you agree with those -- what she was

1 telling me or do you disagree?

2 THE DEFENDANT: Well, I don't really but I just --
3 I understand.

4 THE COURT: Okay. Well, do you agree with what she
5 told me or do you disagree?

6 THE DEFENDANT: I agree.

7 THE COURT: Okay. All right. Thank you very much.

8 All right. I will accept his guilty plea and I
9 will sentence him, I believe Monday; isn't that correct?
10 That will be February the 9th.

11 MS. REEVES: At 9:30, Your Honor.

12 THE COURT: At 9:30. Mr. Kennedy, I'll see you
13 Monday at 9:30, okay?

14 THE DEFENDANT: Yes, sir.

15 MR. POTTER: Thank you, Judge.

16 THE COURT: I think Ms. Johnson will be here at the
17 time. Thank you very much.

18 THE DEFENDANT: And have a great day.

19 THE COURT: Okay. Take care.

20 THE DEFENDANT: You too.

21 (WHEREUPON, the hearing was recessed for the day.)

22 Monday, February 9, 2009

23 THE COURT: Good morning, Ms. Johnson. How you
24 doing this morning?

25 MS. JOHNSON: Fine. Thank you, Judge.

1 THE COURT: I'm glad you're feeling better.

2 MS. JOHNSON: Thank you.

3 THE COURT: Mr. Kennedy, I took your guilty plea
4 Friday and you're back this morning for sentencing.

5 Who wants to go first?

6 MS. REEVES: Your Honor, if I may, I would like to
7 recap a little bit of what he pled to on Friday.

8 THE COURT: Okay. All right.

9 MS. REEVES: Your Honor, on Friday Mr. Kennedy pled
10 to eight indictments beginning with carnal knowledge of a
11 woman child, criminal sexual conduct in the first degree
12 with a minor, criminal sexual conduct in the second
13 degree with a minor, three counts, and three counts of
14 lewd act. These incidents involved five victims. They
15 span over three decades. And those indictment numbers
16 were 2007-GS-04-1283, 1289, 1290, 1292, 1293, 1295, 96
17 and 97.

18 Your Honor, I will just handle each victim one at a
19 time again like I did on Friday, beginning with the -- as
20 far as we know the first victim, Your Honor. Her
21 initials are S. J. This victim was between 5 and 16
22 years old when these incidents occurred between January
23 1st, 1971 and September 9th, 1981.

24 This victim's mother was married to this defendant.
25 During that time they lived in at least two places in

1 Anderson County; one in Powdersville and one in Piedmont.
2 During that time the defendant began touching the victim
3 which eventually led to digital penetration. He
4 performed oral sex on her and she was forced to perform
5 oral sex on him, and finally it evolved into the
6 defendant forcing her to have sexual intercourse with him
7 on two occasions.

8 The defendant during this time threatened the
9 victim, to hurt her, hurt her mother and she had three
10 other siblings. He threatened to hurt all of them. He
11 was extremely physical abusive to all of them, including
12 their mother.

13 If this case -- obviously this case was on the
14 trial docket for today and was prepared to go to trial.
15 We actually had an eyewitness, a friend of the victims
16 who had spent the night with her when she was 15 years
17 old. They shared a bed. She had a queen size bed at the
18 time, and during the night this defendant came in and
19 crawled into bed with this victim. The eyewitness woke
20 up during this incident, and was prepared to testify
21 about that.

22 At some point when this victim was 15 years old --
23 or almost 16, there was an incident and the defendant ran
24 from the home and was gone for a good while. The victim,
25 having stayed in the home and tried to protect her

1 younger siblings, thought that this defendant was gone.
2 So when she thought he was gone she fled herself. She
3 ran away. Once this victim was out of the house that
4 left vulnerable the three siblings, because the defendant
5 did return to the home.

6 One of those siblings was the next victim, W. Y.
7 She was between the ages 7 and 10 years old during the
8 dates of January 1st, 1979 through November 21st, 1982.
9 This defendant was her father.

10 Again, these incidents happened in the same two
11 locations in Anderson County. The defendant again began
12 touching this victim on her chest, eventually digitally
13 penetrated her and forced her to masturbate him. He
14 again threatened to harm the victim and her siblings and
15 he was also physically abusive to this victim.

16 The defendant eventually divorced those two
17 victims' mother and he remarried a third time, and that
18 woman had three grandchildren living in the home with
19 her. The next victim, whose initials are T. M., he was
20 between 8 and 9 years old during the dates January 1st,
21 1989 and January 1st -- '88, excuse me, to '89.

22 Again, this victim was -- his grandmother was
23 married to this defendant. These incidents occurred in
24 Anderson County. The defendant would have the victim
25 sleep in the bed with him after the grandmother went to

1 work, and on three different occasions the defendant put
2 his hand down the victim's pants, touched his penis under
3 his clothing.

4 The next grandchild, whose initials are D. J., she
5 was between 5 and 13 years old between January 1st, 1989
6 and January 1st, 1997. Again, this defendant was married
7 to her grandmother. He began by touching her chest and
8 her vaginal area and eventually performed oral sex on her
9 and forced her to touch him. He also threatened her if
10 she told as well.

11 The fifth and final victim, whose initials are
12 S. F., she was between 4 and 5 years old between January
13 1st, 1995 and January 1st, 1996. Again, this defendant
14 was her grandfather. She lived in Georgia but was
15 visiting this defendant in Anderson County. On those
16 visits the defendant kissed her neck, touched her butt
17 and used his hand to touch her vaginal area under her
18 clothing.

19 I have two victims present, Your Honor, behind me.
20 They would like to speak at the appropriate time.

21 I did want to inform the Court, Your Honor, that
22 the defendant has been in jail for 731 days, Your Honor.

23 THE COURT: For 731 days?

24 MS. REEVES: Yes, sir.

25 THE COURT: Okay. Ms. Johnson, you agree with

1 that?

2 MS. JOHNSON: Yes, sir.

3 MS. REEVES: There was a recommendation in this
4 case as well, Your Honor.

5 THE COURT: What's the recommendation?

6 MS. REEVES: Thirty years, Your Honor.

7 THE COURT: All right. Ms. Johnson, before we hear
8 from the victims and hear from you let me go through
9 these crimes very briefly. Because of the age and the
10 time limit it's different from what the crimes carry
11 today. The lewd act, I believe we said Friday was 10
12 years; is that correct?

13 MS. REEVES: Yes, sir.

14 THE COURT: The sexual conduct first is how many?

15 MS. REEVES: That's up to 30, Your Honor.

16 MS. JOHNSON: It carried up to 30, right.

17 THE COURT: Up to 30, and the criminal sexual
18 conduct with a minor second was up to 20; is that
19 correct?

20 MS. JOHNSON: Yes, sir.

21 THE COURT: And then the sexual or carnal knowledge
22 of a woman child carried anywhere from 5 to 40; is that
23 correct?

24 MS. JOHNSON: Yes, sir.

25 THE COURT: I'm not even sure, is that still on the

1 books, that particular crime?

2 MS. REEVES: No, sir.

3 MS. JOHNSON: No, sir.

4 THE COURT: Or it's been incorporated with CSC
5 first?

6 MS. REEVES: Correct.

7 MS. JOHNSON: That's right.

8 THE COURT: All right. But at the time of the
9 crime it was 5 to 40.

10 MS. JOHNSON: Yes, sir.

11 THE COURT: You agree with that?

12 MS. JOHNSON: Yes, sir.

13 THE COURT: Okay. I'll be glad to hear from the
14 victims. Yes, ma'am, your name?

15 FEMALE [REDACTED]: M [REDACTED]

16 THE COURT: I'm sorry?

17 FEMALE [REDACTED]: Minor [REDACTED]

18 THE COURT: Minor [REDACTED]

19 FEMALE [REDACTED]: Yes. I just wanted to say that all
20 those years that you instilled fear into me and making me
21 feel like I was worthless, that I would never become
22 anything unless you were there, it has all changed. I
23 look upon you now and I say, what was I afraid of,
24 because all along you were the weak one and I've been the
25 strong one, because that's what you've done. And it's

1 been proven that you need children to make you feel
2 stronger because children are strong.

3 And all these years you've never gotten help for
4 yourself. You've never thought you were in the wrong,
5 but I stand here today to tell you I'm not afraid of you.
6 I am very independent and I've made it without you. I've
7 grown into a wonderful person, and I come today knowing
8 that all of your behaviors that you caused all these kids
9 and all these other people, that it stops today. It
10 stops, and that gives me the peace that I can go on and
11 know that no one else has to go through what you have put
12 all these people through.

13 THE COURT: Anything else?

14 FEMALE [REDACTED]: That's it.

15 THE COURT: Anything you'd like to say to the
16 Court?

17 FEMALE [REDACTED]: I don't think that -- I know he
18 spent some time in jail but I don't think that just
19 letting him go and go to counseling and all this is going
20 to help him. It didn't --

21 THE COURT: That's not going to happen, okay?

22 FEMALE [REDACTED]: Okay.

23 THE COURT: You don't have to worry about that.

24 That's not going to happen, Okay?

25 FEMALE [REDACTED]: Okay.

1 THE COURT: Anything else you'd like to tell me?

2 FEMALE [REDACTED]: I don't think so. No, sir.

3 THE COURT: We took the plea last Friday and I
4 talked to him in detail concerning the plea, and I
5 understand what happened, the case was set for trial and
6 you didn't fly in until yesterday, so you were not here
7 Friday. And I want to thank you very much for being here
8 today and participating in it, okay. Thank you very
9 much.

10 Yes, ma'am?

11 SECOND FEMALE [REDACTED]: Do I have to say my name or
12 can I give my initials? Minor [REDACTED]

13 THE COURT: Okay. Nice to meet you.

14 SECOND FEMALE [REDACTED]: Basically, the point of us
15 being here is not necessarily trying to find punishment
16 or justice for what happened to us but knowing what we've
17 struggled with, you know, 30 some years it's our desire
18 to see that not one more child has to live, whether it's
19 one incident or if it's years worth.

20 And I just think that Eddie is very sick and we
21 know that he needs help. And, you know, we are sure of
22 the fact that he's not going to be back out on the
23 streets but I guess for me what I'm pleading, you know,
24 to not only have gone through it myself and what I
25 endured but to see what it did to my sister, to my

1 family, and what it has done to our thought process as
2 far as our ability to function, you know, in everyday
3 life with our own relationships has really been a
4 challenge.

5 And I just ask that, again, not for our sake but
6 for all the future children that would be in his presence
7 or exposure to please prevent him from ever having access
8 to one more child because if he can't control himself we
9 don't want to see another human being to go through what
10 we've had to go through.

11 THE COURT: Let me ask you, how are the other
12 victims doing, or do you know?

13 SECOND FEMALE [REDACTED]: I don't know, sir.

14 THE COURT: You have no contact?

15 SECOND FEMALE [REDACTED]: No, sir.

16 THE COURT: Okay. All right. Thank you again. We
17 appreciate your being here. Thank you so very much.

18 MS. REEVES: They are in a separate family, Your
19 Honor. The defendant divorced their mother and remarried
20 so the victims are from the third marriage, actually.

21 THE COURT: Okay. Anything else the State would
22 like to say for sentencing?

23 MS. REEVES: No, sir, just the recommendation, Your
24 Honor.

25 THE COURT: Anything from the investigator? I'll

1 be glad to hear anything. You were here Friday and
2 you're here today. I'll be glad to hear anything you
3 would like to tell me.

4 DETECTIVE HAYDEN: Yes, sir. I'm Detective Hayden
5 with the sheriff's office. This is another one of those
6 very complicated cases in order to be able to investigate
7 it and come to some kind of closure today. I don't feel
8 anything that Ms. Reeves or myself can say would have any
9 bearing on how these two ladies feel today.

10 He has preyed on children for way too long,
11 Mr. Kennedy has. We do perceive him to be a threat to
12 our community and to our children. So on behalf of law
13 enforcement we ask that you concur -- or we concur with
14 the solicitor's office recommendation of 30 years.

15 THE COURT: Okay. Thank you very much.

16 Ms. Johnson, I'll be glad to hear from you.

17 MS. JOHNSON: Thank you, Your Honor. Your Honor,
18 obviously there is a recommendation in this case and we
19 are going to ask that the Court accept that
20 recommendation, so I will keep my portion --

21 THE COURT: As I explained to him Friday -- I
22 understand Mr. Potter was here and you were not. As I
23 explained to him Friday, a recommendation is a
24 recommendation. The Court can accept it or reject it.

25 MS. JOHNSON: Yes, sir.

1 THE COURT: The Court is not bound by that
2 recommendation. I explained that to him Friday and he
3 said he understood.

4 MS. JOHNSON: Yes, sir. Yes, sir. He does
5 understand that.

6 Your Honor, Mr. Kennedy is -- he actually will be
7 65 years old next month. So obviously a 30-year sentence
8 is likely to be a life sentence. We've discussed that
9 fact in depth. Just to give you a little of his
10 background he was -- his mother was --

11 THE COURT: The difficulty I have with a 30-year
12 sentence, I would assume -- what's the date of these
13 crimes?

14 MS. REEVES: Your Honor, they begin back in 1971.

15 THE COURT: In '71?

16 MS. REEVES: Yes, sir.

17 THE COURT: The eligibility for parole was of
18 nonexistence at that time.

19 MS. JOHNSON: Yes, sir.

20 THE COURT: So on a 30-year sentence, I assume if
21 he makes parole he'll be eligible in 10 years. Okay.
22 It's not that he's got to serve 85 percent.

23 MS. REEVES: Right. Yes, sir. I understand that.

24 THE COURT: So if he's 64 now he would be eligible
25 for parole at 74. And I understand that's the

1 recommendation and I'm not so sure I concur with that
2 recommendation, to be perfectly honest with you.

3 Okay. But go ahead. I'll listen to you.

4 MS. JOHNSON: Your Honor, the -- sorry. Getting
5 back to --

6 THE COURT: Not because the 30 years is not
7 sufficient but because it's not an 85 percent crime.

8 MS. JOHNSON: Yes, sir, and I understand where the
9 Court is coming from, and I think that frankly my
10 understanding is is that even if at the very long shot
11 that he were released under the sentence the law as it
12 stands today would still require the community
13 supervision, which although that didn't exist at the time
14 it does exist now, to have monitors. And the Court is
15 very well aware of what is going on with sex offenders in
16 terms of if they are released into the community, the
17 kinds of restraints and restrictions that are placed upon
18 them. Separate from that, of course, before he could
19 ever be released he would be considered under the Sexual
20 Violent Predator Act, which again, the Court is aware
21 that's a situation where even if he were to be released
22 from a prison sentence --

23 THE COURT: Then he'll have to go. That's a long
24 drawn out process. He's entitled to a jury trial in
25 civil court and we're having civil trials all over the

1 state right now on sexual predators. I mean, that's not
2 a -- we're here for criminal purposes, okay.

3 MS. JOHNSON: Yes, sir. I understand that.

4 THE COURT: And I understand about the
5 registration, I understand about the monitoring but I
6 think it's a farce. I think it's a farce perpetuated on
7 the public by putting out a pedophile and saying we're
8 going to put him on electronic monitoring and that's
9 protection to the public. It's not. It's a farce.

10 A true pedophile, electronic monitoring is not
11 going to stop him, and it's a farce that the Legislature
12 perpetuated on the public. That's just this Court's
13 opinion. Electronic monitor, the only thing that's going
14 to do is prove he didn't commit the crime. It gives him
15 a defense. It's not going to stop him. Go ahead.

16 MS. JOHNSON: Thank you, Your Honor. I guess I
17 want to address the Court's concerns with sentencing but
18 I also want to give some information about Mr. Kennedy.

19 Your Honor, Mr. Kennedy had kind of an unusual
20 childhood situation. His mother was actually hit and
21 killed by a car when he was two years old. His father
22 was an alcoholic, was in and out of prisons, he said, for
23 robbery, burglary, the like, and he was actually adopted
24 by the Kennedys. They were known to his family but they
25 were not actually relatives. They adopted him when he

1 was about three and a half years old.

2 At the time, he couldn't walk. He had polio as a
3 child, and it took him until about the age of four before
4 he learned to walk. He did still have contact with his
5 biological father during that time, although he was
6 raised by the Kennedys who, you know, he does say were
7 very good, kind people, and very good to him.

8 He has predominantly worked in tree service work.
9 That's what he's done his whole adult life. He worked
10 for Davey's Tree Service for a long time, about 15 years,
11 and also had worked for Reliable Tree Service more
12 recently, but that was about four to six years ago.

13 Your Honor, he is still married to Gaynelle (ph)
14 Kennedy, who she actually has charges relating to this.
15 It's been about a year since he's had any contact with
16 her. Initially, she was still visiting him at the
17 detention center but it's been about a year since she's
18 had any contact with him. I suspect on the advice of her
19 counsel.

20 Your Honor, one thing that Mr. Kennedy did ask me
21 to do, because he wasn't certain he would be able to say
22 it for himself, was to apologize for his actions and
23 behavior. And he understands that a mere apology doesn't
24 erase 35 years of what these victims have lived through,
25 but he realizes that that's all as a practical matter

1 that he has to give them at this point, is to say that he
2 is sorry for what he's put them through. And he is
3 accepting responsibility for his actions with the Court.

4 Getting back to the Court's concern about the
5 sentencing in this case. Again, I would ask the Court --
6 and I know what the concerns are relating to parole
7 eligibility and that sort of thing but I think that there
8 are, you know, number one, given his age. I don't know
9 that frankly he will meet even the parole date much less
10 the max out date. And the second thing is --

11 THE COURT: I understand that. He may, he may not.
12 That's not up to the Court. It's up to the parole board.

13 MS. JOHNSON: Yes, sir. But, again, we're talking
14 about --

15 THE COURT: But I can project that parole date
16 further out in the future.

17 MS. JOHNSON: Yes, sir. You certainly can. I
18 mean, that's certainly your right to do, and I guess I'm
19 asking the Court to consider the safeguards that are in
20 place with the sexual violent predator, with the, you
21 know, conditions.

22 And, again, I realize as a practical matter it's
23 highly unlikely even under the recommended sentence that
24 he will see the outside light of day again, and I know
25 that I can't say that for a hundred percent certainty any

1 more than you can but I think it is a sentence that
2 frankly -- you know, part of the reason when we're
3 talking about pleas as a practical matter is to have
4 some, you know, incentive to keep all of these people
5 from having to go through --

6 THE COURT: If we had truth in sentencing, okay, if
7 30 years meant 30 years I would agree with you, but we
8 don't have truth in sentencing. They tried to pass it
9 every year for the last 10 years and it never has passed.
10 And, you know, there again that's a fraud on the public.

11 MS. JOHNSON: And, again, like I say, I understand,
12 you know, sort of the bigger umbrella concept and what
13 we're talking about as a political matter but I'm trying
14 to focus on this particular case and Mr. Kennedy --

15 THE COURT: I understand you are.

16 MS. JOHNSON: -- with this sentence.

17 THE COURT: I'm just eliciting the Court's
18 concerns.

19 MS. JOHNSON: Yes, sir. And while I agree the
20 Court's concerns are legitimate I do believe that a
21 30-year sentence in this case, given his age, is an
22 appropriate sentence. It is a stiff sentence. In fact,
23 it's the maximum, nearly, for the behavior.

24 And, again, I recognize that the laws have since
25 changed, actually twice since the 1970's relating to the

1 amount of sentence and the actual what the crime carries
2 today but, again, I believe that 30 years does represent
3 something that is, you know, not a situation where he's
4 walking out the door, he's not being slapped on the
5 wrist. It is a significant and a serious sentence.

6 I do believe that there are safeguards in place
7 through the Sexual Violent Predator Act that in the event
8 he is determined to continue to be -- at some point in
9 the future to continue to be a danger to children that is
10 what that act is there for.

11 But I think to say now to have no hope that he ever
12 sees the light of day -- and he may not, but it just --
13 again, I believe that the sentence is appropriate. All
14 circumstances considered it sounds like law enforcement
15 is in agreement with the sentence, and I believe the
16 victims' concerns have been addressed as well.

17 THE COURT: Okay. Thank you so very much. I
18 appreciate your efforts. Anything else you would like to
19 say? Mr. Kennedy, anything you would like to tell me?

20 THE DEFENDANT: Yeah. I'm proud --

21 (The defendant appears to be emotional.)

22 MS. JOHNSON: I think he had told me earlier, Your
23 Honor, that he was proud of how Sylvia had grown up and
24 become a nurse, and he said she was always a good kid.

25 THE COURT: Okay. Anything else from the State?

1 MS. REEVES: Nothing further, Your Honor.

2 THE COURT: Okay. Thank you.

3 THE DEFENDANT: I'm happy to see you.

4 THE COURT: I'm sorry. What?

5 THE DEFENDANT: I'm happy to see them. I'm happy
6 to see them.

7 THE COURT: Okay, Mr. Kennedy. Indictment number
8 1283, that's criminal sexual conduct with a minor second
9 degree, you're sentenced to the State Department of
10 Corrections for a period of 20 years. That's concurrent
11 with the other indictment, give you credit for 731 days.

12 Indictment number 1290, that's a lewd act, you're
13 sentenced to State Department of Corrections for a period
14 of 10 years. That's concurrent with the other
15 indictment, give you credit for 731 days. Concurrent
16 means it runs together.

17 Indictment number 1289, CSC second, you're
18 sentenced to State Department of Corrections for a period
19 of 20 years. That's concurrent with the other
20 indictment, give you credit for 731 days.

21 Indictment number 1292, lewd act, you're sentenced
22 to the State Department of Corrections for a period of 10
23 years. That's concurrent with the other indictment, give
24 you credit for 731 days.

25 Indictment number 1295, carnal knowledge of a woman

1 child, you're sentenced to the State Department of
2 Corrections for a period of 30 years. That's concurrent
3 with the other indictment, give you credit for 731 days.

4 Indictment number 1297, that's lewd act, you're
5 sentenced to the State Department of Corrections for a
6 period of 10 years. That's concurrent with the other
7 indictment, give you credit for 731 days.

8 All right. Indictment number 1296, that's CSC
9 second, you're sentence to the State Department of
10 Corrections for a period of 20 years, give you credit for
11 731 days. That's consecutive with indictment number
12 1293.

13 Indictment number 1293, that's CSC first, you're
14 sentenced to State Department of Corrections for a period
15 of 25 years. That's consecutive with indictment number
16 1296, give you credit for 731 days. Thank you very much.

17 Mr. Cooper [sic], the consecutive sentence just
18 projects your eligibility for parole further out into the
19 future, is all it does. Thank you very much.

20 MS. JOHNSON: Thank you, Your Honor.

21 MS. REEVES: Thank you, Judge.

22 (WHEREUPON, the hearing was concluded.)

23

24

25

1 C E R T I F I C A T E

2

3 I, Sharon L. Vizer-Hanks, Official Court Reporter for
4 the 10th Judicial Circuit of the State of South Carolina,
5 do hereby certify that the foregoing is a true, accurate
6 and complete transcript of record of all the proceedings
7 had and the evidence introduced in the hearing of the
8 captioned case in Circuit Court on the 6th and 9th day of
9 February 2009.

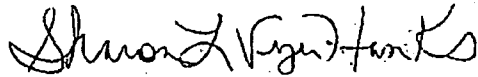
10 I do further certify that I am neither of kin, counsel
11 nor have an interest to any party hereto.

12

13

January 5, 2012

14



15

SHARON L. VIZER-HANKS

16

CIRCUIT COURT REPORTER

17

18

19

20

21

22

23

24

25

WITNESSES

G. HAYDEN, ACSO

DOCKET NO. 2007-65-04-1283

The State of South Carolina,

County of ANDERSON

COURT OF GENERAL SESSIONS

APR 24 2007 TERM

KWR THE STATE

vs.

JAMES E. KENNEDY

ARREST WARRANT NO. DIRECT INDICTMENT

ACTION OF GRAND JURY
TRUE BILL

APR 24 2007

Foreman of Grand Jury

For person.

VERDICT

APR - 5 2011
A TRUE COPY

Foreman of Petit Jury

Date:

Indictment for

CRIMINAL SEXUAL CONDUCT WITH MINOR
SECOND DEGREE
16-3-655 (0397)

2-9-09/amp

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
 ANDERSON)
 COUNTY OF _____)

INDICTMENT FOR
 CRIMINAL SEXUAL CONDUCT
 WITH MINORS,
 2ND DEGREE 16-3-655 (0397)

At a Court of General Sessions, convened on APR 24 2007

the Grand Jurors of ANDERSON County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR 2ND DEGREE

That James E. Kennedy, did in Anderson County, South Carolina, between September 11, 1979 and September 9, 1981, unlawfully engage in sexual battery with Minor whose date of birth is [REDACTED] and the defendant was in a position of familial, custodial, or official authority to coerce the victim to submit or is older than the victim. All in violation of Section 16-3-655 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.

K. R.
 SOLICITOR

WITNESSES
G. HAYDEN, ACSO

DOCKET NO. 2007-65-64-1289
The State of South Carolina,
ANDERSON
County of _____

COURT OF GENERAL SESSIONS
APR 24 2007
TERM _____

KWR THE STATE

ARREST WARRANT NO. JA23746

vs.
JAMES E. KENNEDY

ACTION OF GRAND JURY
TRUE BILL

APR 24 2007

VERDICT

Indictment for

CRIMINAL SEXUAL CONDUCT - WITH MINOR
(VICTIM 11 TO 14 YEARS OF AGE INCLUSIVE)
16-03-0655(2)(b)(0396)

A TRUE COPY
APR - 5 2011
Clerk of Court

2-9-09/emp

Foreman of Petit Jury

Date:

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
 ANDERSON)
 COUNTY OF _____)

INDICTMENT FOR
 CRIMINAL SEXUAL CONDUCT
 WITH A MINOR, VICTIM 11 TO 14
 YEARS OF AGE INCLUSIVE-
 2ND DEGREE 16-3-655(2) (B) (0396)

APR 24 2007

At a Court of General Sessions, convened on _____
 the Grand Jurors of ANDERSON County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR 2ND DEGREE

That James E. Kennedy, did in Anderson County, South Carolina, between the dates of November 5, 1994 and January 1, 1997, willfully and unlawfully commit the crime of Criminal Sexual Conduct With a Minor in the Second Degree by engaging in sexual battery with a minor who was fourteen (14) years of age or less but who was at least eleven (11) years of age, to Minor J., whose date of birth is _____; in violation of § 16-3-655 (B), of the 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.

K. R.
 SOLICITOR

WITNESSES

G. HAYDEN, ACSO

ARREST WARRANT NO. J423747

ACTION OF GRAND JURY

TRUE BILL

APR 24 2007

Foreman of Grand Jury

[Signature]
Foreperson

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 2007-65-04-1290

The State of South Carolina,

County of ANDERSON

COURT OF GENERAL SESSIONS

APR 24 2007 TERM

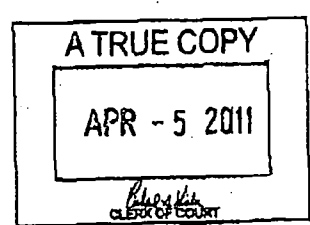
KWR THE STATE

vs.

JAMES E. KENNEDY

Indictment for

COMMISSION OF LEWD ACT UPON A CHILD
UNDER FOURTEEN
16-15-140 (2468)



2-9-09/emp

FORM 32. (12/87)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)

INDICTMENT FOR
 COMMISSION OF
 LEWD ACT UPON CHILD
 UNDER FOURTEEN

APR 24 2007 16-15-0140 [2468]

At a Court of General Sessions, convened on _____

the Grand Jurors of ANDERSON County present upon their oath:**FORM 32. COMMISSION OF LEWD ACT UPON CHILD UNDER FOURTEEN**

That James E. Kennedy, did in Anderson County, South Carolina, between January 1, 1988 and January 1, 1989, willfully and lewdly commit any lewd or lascivious act upon or with the body, or any part or member thereof, Min whose date of birth is Min a child under the age of fourteen years, with the intent or arousing, appealing to, or gratifying the lust or passions or sexual desires of such person or such child. All in violation of Section 16-15-140, 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,

K. H. R.
 SOLICITOR

WITNESSES

G. HAYDEN, ACSO

ARREST WARRANT NO. J423750

ACTION OF GRAND JURY

TRUE BILL

APR 24 2007

Foreman of Grand Jury

Folger

VERDICT

Foreman of Petit Jury

Dure

DOCKET NO. 2007-65-04-1292

The State of South Carolina,

County of ANDERSON

COURT OF GENERAL SESSIONS

APR 24 2007 TERM

KWR THE STATE

vs.

JAMES E. KENNEDY

Indictment for

LEWD ACT UPON A CHILD
UNDER FOURTEEN
16-15-140 (2468)

A TRUE COPY

APR - 5 2011

Clerk of Court

2-9-09/emp

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

INDICTMENT FOR

LEWD ACT UPON A CHILD
UNDER FOURTEEN
16-15-0140 [2468]

APR 24 2007

At a Court of General Sessions, convened on _____

the Grand Jurors of ANDERSON County present upon their oath:LEWD ACT UPON A CHILD UNDER FOURTEEN

That James E. Kennedy, did in Anderson County, South Carolina, between January 1, 1995 and January 1, 1996, being over the age of fourteen years, willfully and lewdly commit or attempt any lewd or lascivious act upon or with the body, or its parts, Minor [REDACTED] whose date of birth is [REDACTED], a child under the age of fourteen years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of such person or of the child. All in violation of Section 16-15-140, 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.

K. R.
SOLICITOR

WITNESSES
G. HAYDEN, ACSO

ARREST WARRANT NO. 1423751

ACTION OF GRAND JURY

TRUE BILL

APR 24 2007

Foreman of Grand Jury

Foreperson

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 2007-65-04-1293

The State of South Carolina,

County of ANDERSON

COURT OF GENERAL SESSIONS

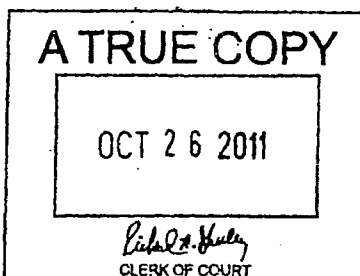
APR 24 2007 TERM

KWR THE STATE

vs.
JAMES E. KENNEDY

Indictment for

CRIMINAL SEXUAL CONDUCT WITH MINOR.
FIRST DEGREE
16-3-655 (0385)



06-15-2007
2-9-09/emp

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT
WITH A MINOR 1ST DEGREE
16-3-655 (A)(1) [0385]At a Court of General Sessions, convened on APR 24 2007the Grand Jurors of ANDERSON County present upon their oath:**CRIMINAL SEXUAL CONDUCT WITH A MINOR, 1ST DEGREE**

That James E. Kennedy did in Anderson County, South Carolina, between January 1, 1979 and November 21, 1982, unlawfully engage in sexual battery with Mi
nor [REDACTED] whose date of birth is [REDACTED], and the defendant, James Kennedy, was at least three years older than the victim. All in violation of Section 16-3-655 (A)(1), 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.

K. L. R.
SOLICITOR

WITNESSES
G. HAYDEN, ACSO

DOCKET NO. 2007-65-DJ-1295
The State of South Carolina,
County of ANDERSON

COURT OF GENERAL SESSIONS
APR 24 2007 TERM

KWR THE STATE

ARREST WARRANT NO. J423753

vs.
JAMES E. KENNEDY

ACTION OF GRAND JURY
TRUE BILL

APR 24 2007

Foreman of Grand Jury *Heath*
Foreperson

VERDICT

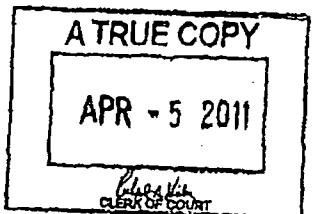
Indictment for

CARNAL KNOWLEDGE OF WOMAN CHILD
16-80 (0385)

Foreman of Petit Jury

Date:

2-9-09/emp



FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)INDICTMENT FOR
CARNAL KNOWLEDGE
OF WOMAN CHILDAt a Court of General Sessions, convened on APR 24 2007 16-80 (0385)the Grand Jurors of ANDERSON County present upon their oath:CARNAL KNOWLEDGE OF WOMAN CHILD

That James E. Kennedy, did in Anderson County, South Carolina, between January 1, 1971 and June 12, 1977, unlawfully and carnally know and abuse Minor whose date of birth is , who was under the age of sixteen. All in violation of Section 16-80, South Carolina Code Annotated (1962), as amended.

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

K. R.
SOLICITOR

WITNESSES

G. HAYDEN, ACSO

DOCKET NO. 2007-145-04-12910

The State of South Carolina,

County of ANDERSON

COURT OF GENERAL SESSIONS

APR 24 2007 TERM

KWR THE STATE

vs.

JAMES E. KENNEDY

ARREST WARRANT NO. J423Z5A

ACTION OF GRAND JURY
TRUE BILL

APR 24 2007

Foreman of Grand Jury
Foreperson

VERDICT

Indictment for

CRIMINAL SEXUAL CONDUCT WITH MINORS
SECOND DEGREE
16-3-655 (0396)

Foreman of Petit Jury

Date:

A TRUE COPY
APR - 5 2011
CLERK OF COURT

2-9-09/amy

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
ANDERSON)
COUNTY OF _____)INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT
WITH MINORS,
2ND DEGREE 16-3-655 (0396)At a Court of General Sessions, convened on APR 24 2007the Grand Jurors of ANDERSON County present upon their oath:**CRIMINAL SEXUAL CONDUCT WITH A MINOR 2ND DEGREE**

That James E. Kennedy, did in Anderson County, South Carolina, between June 13, 1977 and September 10, 1979, unlawfully engage in sexual battery with [REDACTED] ^{Minor} whose date of birth is [REDACTED] and the defendant was at least three years older than the victim. All in violation of Section of § 16-3-655, Code of Laws of South

Carolina (1976), as amended:
the Grand Jurors of _____ County present upon their oath.

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

K. H. Re.
SOLICITOR

WITNESSES
G. HAYDEN, ACSO

DOCKET NO. 2007-65-04-1297
The State of South Carolina,
County of ANDERSON

COURT OF GENERAL SESSIONS
APR 24 2007 TERM

KWR THE STATE

JAMES B. KENNEDY

ARREST WARRANT NO. J423755

ACTION OF GRAND JURY
TRUE BILL

APR 24 2007

Foreman of Grand Jury
Foreperson

VERDICT

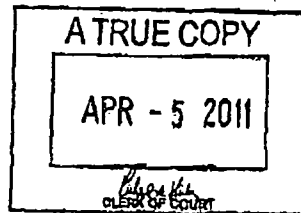
Indictment for

COMMISSION OF A LEWD ACT UPON A CHILD
UNDER FOURTEEN
16-413.1 (2468)

Foreman of Petit Jury

Date:

2-9-09/emp



FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
 COUNTY OF ANDERSON)

INDICTMENT FOR
 COMMISSION OF
 LEWD ACT UPON CHILD
 UNDER FOURTEEN
 16-413.1 [2468]

APR 24 2007

At a Court of General Sessions, convened on _____

the Grand Jurors of ANDERSON County present upon their oath:**COMMISSION OF LEWD ACT UPON A CHILD UNDER FOURTEEN**

That James E. Kennedy, did in Anderson County, South Carolina, between January 1, 1971 and September 9, 1979, willfully and lewdly commit a lewd or lascivious act upon or with the body, or any part or member thereof, of Minor whose date of birth is with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of himself or of the child. All in violation of Section 16-413.1, South Carolina Code Annotated (1962) as amended.

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

K. E. R.
 SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

71

COUNTY OF Anderson
STATE VS.

James Kennedy

AKA:

Race: W

Sex: M

Age: 64

DOB:

SS#:

Address:

Piedmont, SC 29673

DL#:

SID#:

SC00357394

INDICTMENT/CASE#: 2007GS0401283

A/W#: 2007GS0401283

Date of Offense: 9/11/1979 - 9/9/1981

S.C. Code § : 16-03-0655(C)

CDR Code #: 0397

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Sex / Criminal sexual conduct with minor - 2nd Degree *concurrent*

in violation of § 16-03-0655(C) of the S.C. Code of Laws, bearing CDR Code # 0397

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST

Reeves, Kristin

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 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.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$

§ 14-1-206 (Assessments 107.5 %)

\$

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$

§ 56-5-2995 (DUI Assessment)

\$12

\$

§ 35.13 (Public Def/Prob)

\$500

\$

§ 73.3, 1B TP (Law Enforce. Funding)

\$25

\$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge)

\$100

\$

§ 50-21-114(BUI Breath Test Fee)

\$50

\$

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

3% to County (if paid in installments)

\$ 3.90

§ 90.11 TP (SCCJA Surcharge)

\$5

\$ 5.00

TOTAL

\$ 133.90

Caryn M. Phillips

Clerk of Court/ Deputy Clerk

Court Reporter:

Wagner - Hanks

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

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

\$ _____ paid to Public Defender

Other:

APR - 5 - 2011

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

(Plea accepted: February 04, 2009)

PRESIDING JUDGE

Judge Code:

Sentence Date:

SCCA/217 (07/2008)

72 STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Anderson
STATE VS.
James E. Kennedy

INDICTMENT/CASE#: 2007-GS-04-1289

A/V#: J423746

Date of Offense: 11/5/1994 - 1/1/1997

S.C. Code § : 16-03-0655(C)

CDR Code #: 0397

AKA:

Race: W Sex: M Age: 64

DOB: SS#:

Address:

Piedmont, SC 29673

DL#: SID#:



SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Sex / Criminal sexual conduct with minor - 2nd Degree *concurrent*

in violation of § 16-03-0655(C) of the S.C. Code of Laws, bearing CDR Code # 0397

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Reeves, Kristin W.

Defendant

Attorney for Defendant

13413
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ 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.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 35.13 (Public Def/Prob)	\$500	\$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25.00
§ 33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ 3.90
§ 90.11 TP (SCCJA Surcharge)	\$5	\$ 5.00
TOTAL		\$ 133.90

Carry on. Phillips

Clerk of Court/ Deputy Clerk

Court Reporter: *Wyer - Hanks*

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

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

\$ _____ paid to Public Defender Fund

Other:

A TRUE COPY

APR - 5 2011

☐ Appointed PD or appointed other Counsel \$35.13 TP
Requires \$500 be paid to Clerk during probation.

(Plea accepted February 06, 2009)

PRESIDING JUDGE

Judge Code: *117*Sentence Date: *2/2/09*

SCCA/217 (07/2008)

STATE OF SOUTH CAROLINA

COUNTY OF Anderson
STATE VS.

James E. Kennedy

AKA:

Race: W Sex: M Age: 64

DOB: SS#

Address: Piedmont, SC 29673

DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007-GS-04-1290

A/W#: J423747

Date of Offense: 1/1/1988 - 1/1/1989

S.C. Code § : 16-15-0140

CDR Code #: 2468

ENTERED
[Signature]

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Sex / Lewd Act. committing or attempting lewd act upon child Concurrent

in violation of § 16-15-0140 of the S.C. Code of Laws, bearing CDR Code # 2468

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

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

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

ATTEST:

Reeves, Kristin W

James E. Kennedy
Defendant

Attorney for Defendant

13413
SC Bar#

WHEREFORE, the Defendant is committed 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: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

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

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Del/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

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

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

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

§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00

TOTAL \$ 133.90

Cathy M. Phillips

Clerk of Court/ Deputy Clerk

Court Reporter: Wendi Harker

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

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

\$ _____ paid to Public Defender Fund

Other: _____

ATRUE COPY

APR 5 2011

☐ Appointed PD or appointed other counsel \$35.13 TP

Requires \$500 be paid to Clerk during probation.

Plea accepted: February 06, 2009

PRESIDING JUDGE [Signature]

Judge Code: 1171

Sentence Date: 2/6/09

SCCA/217 (07/2008)

COUNTY OF Anderson
STATE VS.James E. Kennedy

AKA: _____

Race: W Sex: M Age: 62

DOB: _____ S#: _____

Address: _____

Piedmont, SC 29673

DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007-GS-04-1292A/W#: J423750Date of Offense: 1/1/1995 - 1/1/1996S.C. Code §: 16-15-0140CDR Code #: 2468

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO: Sex / Lewd Act. committing or attempting lewd act upon child concurrentin violation of § 16-15-0140 of the S.C. Code of Laws, bearing CDR Code # 2468☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.ATTEST: Kristin W. Reeves James E. Kennedy Attorney for Defendant 13413
Reeves, Kristin W. Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 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: _____☒ 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. 731 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

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

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

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

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

3% to County (if paid in installments) \$ 3.90§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00TOTAL \$ 133.90Carry On Phillips

Clerk of Court/Deputy Clerk

Court Reporter: Wizer - Namer

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

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

\$ _____ paid to Public Defender Fund

Other: _____

A TRUE COPY

APR - 5 2011

☐ Appointed PD or appointed other counsel §17-13-13-PP

Requires \$500 be paid to Clerk during probation.

(Plea accepted: February 06, 2009)PRESIDING JUDGE J. J. PhillipsJudge Code: 2017Sentence Date: 2/9/09

SCCA/217 (07/2008)

STATE OF SOUTH CAROLINA

COUNTY OF Anderson

STATE

VS.

James E. Kennedy

AKA:

Race: W Sex: M Age: 62 65

DOB: SS#:

Address: 71

Piedmont, SC 29673

DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007-GS-04-1293

A/W#: J423751

Date of Offense: 1/1/1979 - 11/21/1982

S.C. Code § : 16-03-0655(A)(1)

CDR Code #: 0385



SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO: Sex / Criminal sexual conduct with minor - 1st Degree 30 yrs

in violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385

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

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

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

ATTEST

Reeves, Kristin W.

Defendant

Attorney for Defendant

SC Bar# 1343

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$ 25; 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: 1296

☒ 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. 731 DAYS

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 35.13 (Public Def/Prob) \$500 \$

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$

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

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

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

§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00

TOTAL \$ 133.90

Carry M. Phillips

Clerk of Court/Deputy Clerk

Court Reporter: Wendi Hanks

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

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

\$ paid to Public Defender Fund

Other:

OCT 26 2011

☐ Appointed PD or appointed other Counsel \$35.13 TP Requires \$500 be paid to Clerk during probation.

(Plea accepted: February 06, 2009)

PRESIDING JUDGE

Judge Code: 011071

Sentence Date: 2/9/09

SCCA/217 (07/2008)

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Anderson

VS.

James E. Kennedy

AKA:

Race: W

Sex: M

Age: 36

DOB:

SS#:

Address:

Piedmont, SC 29673

DL#:

SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007-GS-04-1295

A/W#: J423753

Date of Offense: 1/1/1971 - 6/12/1977

S.C. Code §: 16-80

CDR Code #: 0385

SENTENCE SHEET

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

☐ CONVICTED OF or ☒ PLEADS

TO: Sex / Carnal Knowledge of a Woman Child

in violation of § 16-80

of the S.C. Code of Laws, bearing CDR Code # 0385

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Reeves, Kristin W.

Defendant

Attorney for Defendant

1343 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ 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. 731 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

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

Payment Terms: _____

☐ set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 35.13 (Public Def/Prob)	\$500	\$
§ 73.3, 1B.TP (Law Enforce. Funding)	\$25	\$25.00
§ 33.7, 1B.TP (Drug Court Surcharge)	\$100	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$3.90
§ 90.11 TP (SCCJA Surcharge)	\$5	\$5.00
TOTAL		\$133.90

Carry on. Phillips

Clerk of Court/ Deputy Clerk

Court Reporter: Wager - Nank

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

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

\$ _____ paid to Public Defender Fund

Other: _____

A TRUE COPY

APR - 5 2011

☐ Appointed PD or appointed other counsel §35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 0117

Sentence Date: 2/9/09

SCCA/217 (07/2008)

STATE OF SOUTH CAROLINA

COUNTY OF Anderson

STATE

VS.

James E. Kennedy

AKA:

Race: W

Sex: M

DOB:

Address:

Piedmont, SC 29673

DL#:

SID#:

IN THE COURT OF GENERAL SESSIONS

77

INDICTMENT/CASE#: 2007-GS-04-1296

A/W#: J423754

Date of Offense: 6/13/1977 - 9/10/1979

S.C. Code § : 16-03-0655(C)

CDR Code #: 0397



SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO: Sex / Criminal sexual conduct with minor - 2nd Degree

in violation of § 16-03-0655(C) of the S.C. Code of Laws, bearing CDR Code # 0397

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

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

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

ATTEST:

Kristin Recves
Recves, Kristin W.

James E. Kennedy
Defendant

Ar. A. Porter
Attorney for Defendant

13413
SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of ~~30~~ 731 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: 129.3
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

§ 73.3, 1B TP (Law Enforce. Funding)

§ 33.7, 1B TP (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

§ 90.11 TP (SCCJA Surcharge)

TOTAL

Carry on. Phillips

Clerk of Court/ Deputy Clerk

Court Reporter:

Wesley - Hanks

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

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

\$ _____ paid to Public Defender Fund

Other:

A TRUE COPY

APR - 5 2011

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

(Plea accepted: February 06, 2009)

PRESIDING JUDGE

Judge Code:

Sentence Date:

SCCA/217 (07/2008)

COUNTY OF Anderson
 STATE VS.
James E. Kennedy
 AKA: _____
 Race: W
 DOB: 1/1/1971
 Address: Piedmont, SC 29673
 DL#: _____ SID#: _____

INDICTMENT/CASE#: 2007-GS-04-1297

A/W#: J423755

Date of Offense: 1/1/1971 - 9/9/1979

S.C. Code § : 16-413.1

CDR Code #: 2468

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS:
 TO: Sex / Lewd Act. committing or attempting lewd act upon child concurrent 10

in violation of § 16-413.1 of the S.C. Code of Laws, bearing CDR Code # 2468

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

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

ATTEST

Kristin Reeves
 Reeves, Kristin W.

James E. Kennedy
 Defendant

Charles A. Patton
 Attorney for Defendant

13413
 SC Bar#

WHEREFORE, the Defendant is committed 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: _____☒ 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. 231 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

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

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5%) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

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

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

3% to County (if paid in installments) \$ 3.90§ 90.11 TP (SCJA Surcharge) \$5 \$ 5.00TOTAL \$ 133.90

Carry On Phillips
 Clerk of Court/ Deputy Clerk

Court Reporter: Angie Hanks

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

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

\$ _____ paid to Public Defender Fund

Other: _____

A TRUE COPY

APR - 5 2011

☐ Appointed PD or appointed other counsel § 56-5-2942(J) TP
 Requires \$500 be paid to Clerk during probation.

(Plea accepted - February 06, 2009)

PRESIDING JUDGE

Judge Code: 2117Sentence Date: 2/9/09

SCCA/217 (07/2008)

FORM 5

STATE OF SOUTH CAROLINA

County of ANDERSON

JAMES E. KENNEDY

Full name and prison number (if any) of Applicant
185195

v.

IN THE COURT OF COMMON PLEAS

A TRUE COPY

APR - 5 2011

Blair
CLERK OF COURT

APPLICATION FOR

POST-CONVICTION RELIEF

2011 - CP - 04 - 01109

FILED-CLERK'S OFFICE
ANDERSON SC
2011 APR - 5 A 8:11
COMMON PLEAS AND
GENERAL SESSIONS

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 386- REDEMPTION KILBY, MCCORMICK CORRECTIONAL INSTITUTE, MCCORMICK SOUTH CAROLINA - 29599
2. Name and location of Court which imposed sentence ANDERSON COUNTY COURT IN THE COURT OF GENERAL SESSIONS.
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2007-GS-04-1289-CONCURRENT / 2007-GS-04-1292-CONCURRENT / 2007-GS-04-1297-1094
(b) 1290 / 1296 / 1295 / 1283 / 1292 / CONCURRENT.

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 1-9-09 SENTENCES - 20-yrs 10-yrs 20-yrs
- (b) 30-yrs 30-yrs AND 10-yrs ALL Run CONCURRENT.
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No - ATTORNEY PROMISE ME HE WOULD APPEAL, BUT NEVER DID SO.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) MY ATTORNEY PROMISE ME THAT HE WAS GOING TO APPEAL
- (b) "BECAUSE THERE WAS INSUFFICIENT EVIDENCE" TO SECURE A TRIALMENT.

(c) _____

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

- (a) INEFFECTIVE ASSISTANCE OF COUNSELOR.
- (b) PRE JUDICIAL DELAY OF MORE THAN 30 YEARS ON CHARGES OF CAPITAL
- (c) CONDUCT WITH MINOR AND LEWD CONDUCT OR CRFED, VIOLATED DUE PROCESS RIGHTS AND WAS SUBSTANTIAL PREJUDICE.

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

- (a) COUNSELOR FAILED TO FILE APPEAL.
- (b) NO EVIDENCE TO SUPPORT MY CONVICTION.
- (c) 14TH AMENDMENT U.S.C.A. VIOLATION.

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

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

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

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

(a) which grounds have been presented:

i.

ii.

iii.

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

i.

ii.

iii.

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

(a) N/A
 (b) _____
 (c) _____

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

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

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

(a) the name and address of each attorney who represented you:
 i. _____
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Guilty PLEA.
 ii. _____
 iii. _____

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

VACATE SENTENCE AND CONVICTIONS.

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

N/A

STATE OF SOUTH CAROLINA

County of

ANDERSON

VERIFICATION

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

James Kennedy

SWORN to and subscribed before me this 01 day of April, 2011.

J. Franklin (L.S.)
Notary Public

My Commission Expires: 12.16.2019

FILED-CLERK'S OFFICE
ANDERSON SC
2011 APR -5 A 8:52
COMMON PLEAS AND
GENERAL SESSIONS

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

I, James E. Kennedy, 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.

James E. Kennedy
Applicant

SWORN or affirmed to and subscribed before me this

22 day of March, 2011.

J. A. Franklin
Notary Public

My Commission Expires: 12/16/2019

FILED-CLERK'S OFFICE
ANDERSON SC
2011 APR -5 A 8:52
COMMON PLEAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

James E. Kennedy, #185195)

Applicant,)

v.)

State of South Carolina,)

Respondent,)

IN THE COURT OF COMMON PLEAS

2011-CP-04-01109

**RETURN AND PARTIAL MOTION
TO DISMISS**

(Appointment of Counsel Requested)

In response to the post-conviction relief application filed April 5, 2011, the Respondent would show this Court:

I:

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. The Applicant was indicted at the April 2007 term of the Anderson County Grand Jury for three (3) counts of criminal sexual conduct with a minor (2nd degree) (14 years or less but at least 11) (2007-GS-04-1289, -1283, -1296), Carnal Knowledge of a Woman Child (2007-GS-04-1295) and three (3) counts of Commission of a Lewd Act Upon a Child under fourteen. (2007-GS-04-1292, -1296, -1297). Andrew Potter, Esquire, represented the Applicant. On February 9, 2009, the Applicant pled guilty as charged. The Honorable J.C. Nicholson, Jr., sentenced the Applicant to confinement for an aggregate period of thirty (30) years. The Applicant did not appeal his conviction or sentence.

2010. This Application was filed on April 5, 2011, which was well beyond the time that the statutory filing period had expired.

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, S.C. Code Ann. § 17-27-70(c) (1985) 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.” Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

IV.

Applicant claims that he was denied effective assistance of counsel because his trial attorney did not appeal his conviction. The one-year statute of limitations does not apply to a claim that an applicant was denied his direct appeal. Wilson v. State, 348 S.C. 215, 559 S.E.2d 581 (2002).

Respondent submits that trial counsel for the Applicant was diligent in his representation of Applicant and that he performed within the wide range of reasonable professional assistance. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984). In Strickland, the United States Supreme Court held that a convicted defendant’s claim that counsel’s assistance was so defective as to require a reversal of a conviction requires that the defendant show, first, that counsel’s performance was deficient and, second, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. Respondent submits that trial counsel’s performance

was not deficient nor was the Applicant prejudiced in any way by such performance. The decision of the South Carolina Supreme Court, in White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), holds that even though the post-conviction relief court finds that the Applicant had never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. However, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected.

Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000). The Respondent submits that the Applicant cannot satisfy the requirements set forth in the Roe test. However, the allegation of counsel's failure to advise the Applicant regarding the possibility of an appeal probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

V:

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

VI.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue regarding Applicant's belated appeal. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations be dismissed as a matter of law.

VII.

WHEREFORE, Respondent moves to summarily dismiss the application because it was filed after the statute of limitations had expired, except for Applicant's belated appeal claim.

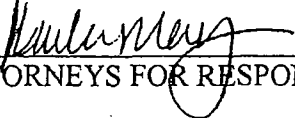
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAELOE E. MAY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

P.O. Box 11549
Columbia, SC 29211

October 20, 2011.

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

2011-CP-04-01109

JAMES E. KENNEDY, #185195)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

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

James E. Kennedy, #185195**McCormick Correctional Institution****386 Redemption Way****McCormick, SC 29899**DATED this 28th day of October, 2011.

Lena Pelishenko, Legal Assistant
For Respondent

1 State of South) In the Court of Common Pleas
Carolina)
2) Case No: 2011-CP-04-01109
County of Anderson)
3
4 James E. Kennedy,)
5)
Applicant,)
6) Transcript of Record
-vs-) Post-Conviction Relief
7) Hearing
State of South)
8 Carolina,)
Respondent.)
9

10 June 5, 2012
Anderson, South Carolina
11
12

13 B E F O R E:

14 The Honorable Alexander S. Macaulay, Judge.
15
16

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

18 Hugh W. Welborn, Esq.
Attorney for the Applicant
19

Kaelon E. May, Esq.
20 Assistant Attorney General
Attorney for the Respondent
21

22 Robin Sue Hild, FCRR, RPR
23 Circuit Court Reporter
24
25

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No.	Description	Exhibits	ID/EV
17	No exhibits were introduced.		

1 ** Start of Requested Certified Transcript of Record **

2 THE COURT: All right. The next matter is James E.
3 Kennedy versus the State of South Carolina,
4 2011-CP-04-1109. Mr. Welborn is here on behalf of the
5 Applicant, Ms. May is here on behalf of the State.

6 Is there anything from the State before we begin?

7 MS. MAY: Just briefly, Your Honor. I'm not sure
8 we're going forward with the hearing entirely; but in
9 the event we do, I have a partial motion to dismiss all
10 of the claims except for the belated appeal claim on the
11 basis that no petition was filed outside of the one-year
12 time limitation.

13 THE COURT: All right, Mr. Welborn.

14 MR. WELBORN: If the Court would bear with me.

15 Your Honor, I note that he filed his application
16 April 5, 2011; that he pled guilty February 9 of 2009.
17 Your Honor, I would like to be able -- well, I will tell
18 the Court and perhaps elicit some testimony:

19 Mr. Kennedy is 68 years old and barely made it
20 through the seventh grade. And I know you probably have
21 read his transcript. But he's very, very difficult to
22 follow and understand various instructions and
23 questions, and there might be an issue about his lack of
24 understanding of when to file this.

25 In fact, I would be rather certain that's what he

1 would say, and I would ask the Court to put him up.
2 Clearly he filed it outside of the statute. The
3 question is, is it excusable.

4 THE COURT: All right. What does the State say?

5 MS. MAY: To the extent that he would claim he was
6 incompetent and unable to file a PCR, if we want to
7 elicit testimony, that would be fine. I have
8 Ms. Johnson as Plea Counsel here, as well. But she
9 wouldn't account for the time he's been in jail after
10 the guilty plea.

11 THE COURT: All right. What I'll do is reserve
12 judgment on the motion to dismiss on the grounds, except
13 for the final ground on which I understand is what?

14 MS. MAY: A belated appeal.

15 THE COURT: A belated appeal?

16 MS. MAY: Yes, sir.

17 MR. WELBORN: Yes, sir.

18 THE COURT: All right. I'm reserving judgment on
19 that. So you may proceed.

20 MR. WELBORN: Yes, sir. May I put up witnesses?

21 THE COURT: First, what are your grounds?

22 MR. WELBORN: Thank you, Your Honor, may it please
23 the Court.

24 The grounds are that Counsel promised he would
25 appeal but never did so. "There is no evidence to

1 support my conviction." That was filed under
2 ineffective assistance of counsel.

3 He alleges a due process violation of more than 30
4 years on charges of criminal conduct with a minor and
5 lewd conduct violated his due process rights, and,
6 therefore, he was prejudiced.

7 THE COURT: All right. As I understand, the
8 grounds are failure to advise the Applicant of his right
9 to appeal, and then the due process, which is
10 ineffective assistance of counsel; and then the due
11 process claim of undue delay in prosecution. And the
12 belated appeal would be I would trust also included in
13 the failure to advise.

14 All right. You may proceed.

15 MR. WELBORN: May it please the Court, I call James
16 Kennedy.

17 THE CLERK: Mr. Kennedy, would you raise your right
18 hand.

19 (Whereupon, the witness was sworn.)

20 THE CLERK: And once you are seated, please give us
21 your full name.

22 THE WITNESS: James Kennedy.

23 THE COURT: Very well. You may proceed.

24

25

1 Whereupon,

2 James Kennedy,

3 Having first been duly sworn, was examined and testified
4 as follows:

5 Direct Examination by Mr. Welborn:

6 Q. Mr. Kennedy, can you hear me from here?

7 A. Oh, yeah, yeah.

8 Q. You are James Kennedy?

9 A. Uh-huh.

10 Q. Mr. Kennedy, how old are you?

11 A. 68.

12 Q. 68?

13 A. (Nodded head.)

14 Q. Yes or no. You have to speak up.

15 A. Oh. 68 going on 69.

16 Q. Now, you were before this Court in February of
17 2009; is that correct?

18 A. Yeah.

19 Q. And during that period of time you pled guilty to
20 several counts of criminal conduct that I'll state in a
21 minute. Is that correct?

22 A. Yeah. Yes, sir.

23 Q. You pled guilty to three counts of criminal sexual
24 conduct with a minor, second degree, 14 years or less,
25 but at least 11. Is that correct?

- 1 A. Yes, sir.
- 2 Q. You pled guilty to carnal knowledge of a woman
3 child. Is that correct?
- 4 A. That's right.
- 5 Q. And three counts of commission of a lewd act on a
6 child under 14. Is that correct?
- 7 A. Yeah. Yeah.
- 8 Q. And you got sentenced by Judge Nicholson to 30
9 years. Is that correct?
- 10 A. Yeah.
- 11 Q. Now, you allege you did not appeal that sentence or
12 conviction. Why did you not appeal?
- 13 A. Why I didn't appeal is I don't, I don't, and I
14 don't know why I didn't appeal. I think I didn't have
15 time, the time went late on it.
- 16 Q. Tell the Court again. Why did you not appeal?
- 17 A. My time done passed to do the appeal. That's it.
- 18 Q. Did your lawyer advise you of your right to appeal?
- 19 A. Yeah, I think so.
- 20 Q. You think so?
- 21 A. Yeah. I think I remember.
- 22 Q. And, just for my understanding and the Court's
23 understanding, can you be a little more concise about
24 why you didn't appeal?
- 25 A. Why I didn't?

1 Q. Yes, sir.

2 A. Why I didn't, I appeal, they would have come back
3 on me, right?

4 Q. Let me ask the question, sir. Do you understand
5 what an appeal is?

6 A. Not totally.

7 Q. Did your lawyer talk to you about what an appeal
8 is?

9 A. No, not that much because I don't, I don't remember
10 what an appeal is.

11 Q. Then how do you know you wanted to appeal?

12 A. Well, it says if I appealed in some length of time,
13 that I might get ten to seven years or something like
14 that, or if I went, it might be 60 or a hundred or
15 whatever, and I didn't know, I didn't understand every
16 word exactly.

17 Q. Well, did you ask them questions about that and ask
18 them to re-explain it to you?

19 A. They never did explain, they never even said but
20 just a little bit.

21 Q. While you were in the courtroom, did you ask her to
22 explain, or whoever your lawyers were at that time, did
23 you ask them to explain what an appeal is?

24 A. No, I don't think so.

25 Q. Is there any reason why you did not do that?

1 A. Well, I didn't know what was exactly going on.

2 That's why.

3 Q. Do you want the Court to grant you the right to
4 have an appeal now?

5 A. An appeal, yeah.

6 Q. Is that what you want now?

7 A. Yeah.

8 Q. Okay. Now, you have alleged in your application
9 that your lawyer was ineffective. I believe you were
10 represented by Mr. Potter and Ms. Johnson? Ms. Johnson
11 and Mr. Potter. Is that correct?

12 A. Yeah.

13 Q. Now, you allege that your lawyer promised he would
14 appeal but he never did so.

15 A. Yeah.

16 Q. Now, a moment ago you didn't know what an appeal
17 was.

18 A. No, I didn't.

19 Q. Would you tell the Judge which is correct here?

20 A. Well, I didn't know. All I know is to plead guilty
21 because I was scared to death.

22 Q. You pled guilty because you were scared?

23 A. Yeah. There's so many things against me or
24 whatever, and that's the only reason I pled guilty to
25 start with.

1 Q. All right. We'll talk about that some more in a
2 minute.

3 You have also alleged that there was "no evidence
4 to support my conviction." Tell me, what do you mean by
5 that?

6 A. What I mean about no evidence?

7 Q. Yes, sir. What did the State not have that they
8 needed to convict you?

9 A. I think just not putting up any kind of proof
10 whatsoever because I ain't done nothing.

11 MS. MAY: Your Honor, I'm gonna object to the
12 insufficiency of the evidence allegation. He pled
13 guilty and waived that.

14 THE COURT: I'll listen, but I think that is the
15 Rule.

16 MR. WELBORN: Okay.

17 By Mr. Welborn:

18 Q. All right. You just told the Court that you pled
19 guilty because you were scared?

20 A. Yeah.

21 Q. Now, I've read the transcript, and there were an
22 awful lot of questions that were given to you that day
23 about understanding what you were doing. And you are
24 now telling the Court that even though you answered
25 those questions, that you still didn't understand what

1 you were doing? Is that what you are trying to tell the
2 Court?

3 A. That's exactly right. Right. I didn't understand.
4 I was kind of in a dazy mind. It must have been
5 medications or something. I don't know.

6 Q. Were you on medications the day you pled guilty?

7 A. Yeah. I was on medications every day.

8 Q. What medication were you on the day you pled
9 guilty?

10 A. The names of it I don't remember at all.

11 Q. You don't know the names?

12 A. No. They got the names on record.

13 Q. So you don't remember what you took that day?

14 A. No. I know I took the insulin and probably my
15 heart pill, but the other stuff, I don't know. I might
16 have took my pain pills, too, because I usually had to
17 take them every day on account of my feet and legs.

18 Q. Well, the Court usually asks if you are under the
19 influence of medication or alcohol. I'm sure they did
20 in this case. Why didn't you tell the Court "I don't
21 know what I'm doing here"?

22 A. I don't remember whether they asked me or not about
23 my medicine.

24 Q. Well, assuming they did, why didn't you tell the
25 Court that "I'm on medicine or medications and I don't

1 know what's going on"? Why didn't you say that?

2 A. Why didn't I tell them?

3 Q. Yes, sir.

4 A. I don't believe they asked me. I don't think I
5 told them at all.

6 Q. Okay. Had they asked that, though, you would have
7 told them, "I don't know what's going on, I'm on
8 medication." Is that correct?

9 A. I probably would have.

10 Q. Okay.

11 A. Just guessing.

12 Q. All right. Now, what else did your lawyers not do
13 for you, Mr. Potter and Ms. Johnson, that you think they
14 should have done for you?

15 A. They should have done? Well, they didn't talk to
16 me long. I never did get to talk to her back there. I
17 was in jail two years, and I didn't get real, real
18 excited about being in jail.

19 Q. Do you think you needed more time to talk to your
20 lawyers?

21 A. I think I do, more counseling or whatever you want
22 to call it. Because I can't think fast. I'm a little
23 bit slow thinking, and they were in too big a hurry.

24 Q. Let's talk about that a little bit. How far did
25 you go in school?

1 A. I went from sixth and passed the seventh but that's
2 as far as I got.

3 Q. And I believe you testified you don't read and
4 write very well. Is that correct?

5 A. No. That's correct.

6 Q. Is it now your testimony that you didn't understand
7 what was going on that day and your lawyer didn't
8 explain it well?

9 A. Right.

10 Q. Okay. What else did your lawyers not do for you
11 that they should have done?

12 A. Well, I don't know what they were supposed to do.

13 Q. I'm sorry?

14 A. I said I didn't know what they were supposed to do.
15 altogether anyway, you know?

16 Q. With all respect --

17 A. The main thing --

18 Q. How do you know they'd done something wrong if you
19 didn't know what they were supposed to do?

20 A. I never had time to talk to them about things.

21 Q. Any reason why you didn't tell the Court that on
22 that particular day?

23 A. Except I was just nervous.

24 Q. Now, you understand that the Court asked you a
25 whole lot of questions about --

1 A. Yeah.

2 Q. -- this. Do you remember that?

3 A. I remember part of it.

4 Q. Okay. Do you know of anything that your lawyers
5 did that you wish they hadn't have done?

6 A. Well, I wish they would have talked to me more.

7 Q. Besides that, sir.

8 A. Now, they what, now?

9 Q. In addition to that, what else did they not do that
10 you wish they would have done for you?

11 A. Well, I never could get to talk to them.

12 Q. All right. You have also alleged, Mr. Kennedy,
13 that there's a due process violation here that more than
14 30 years went by without being indicted on these charges
15 and you say that that's violated your due process
16 rights, I would assume not to have a speedy trial and
17 being able to call witnesses.

18 Tell the Court why you feel that this delay has
19 prejudiced you today. Do you understand what the word
20 "prejudice" means?

21 A. No.

22 Q. Let me see if I can rephrase it.

23 Why has, why did the waiting 30 years cause you to
24 plead guilty when you would never have pled guilty?

25 A. I don't think that's what made me plead guilty. It

1 was, it was all the, all the other things that's said in
2 the background that got me all excited and scared.

3 Like the man that carried me downstairs, whoever he
4 was, the inspector, or whoever goes around and finds out
5 stuff, said, "You already got a hundred years. You may
6 as well say you did it." And that got me all excited.

7 Q. Why didn't you tell your lawyers that, that
8 somebody is trying to make you plead guilty? Why didn't
9 you tell your lawyers or the Court that?

10 A. Well, I didn't, I didn't know. I mean, I didn't
11 know it was necessary.

12 Q. Do you remember the Court asking questions about
13 these types of things?

14 A. Huh-uh.

15 Q. You don't?

16 A. (Shook head.)

17 Q. Well, let's talk a little bit more about this delay
18 of 30 years. Are you telling the Court you would have
19 had a different outcome with your case if you had been
20 charged with these 30 years earlier when the alleged
21 allegations occurred? Would you have had a different
22 result 30 years ago is my question.

23 A. Let me think about it a minute.

24 Q. I'm sorry.

25 A. I got to think about that a minute.

1 Q. Take your time.

2 A. I didn't catch it all. Could you say it one more
3 time?

4 Q. Yes, sir. Let me try and explain it to you. You
5 allege that there's been a 30-year delay in your coming
6 to court?

7 A. In here?

8 Q. Yes, sir. You allege in your application that
9 there's been a 30-year delay, and if these charges had
10 come 30 years earlier, there's a suggestion or
11 implication that you would have had a different outcome.
12 Is that what you are trying to tell the Court?

13 A. If the charges had come earlier.

14 Q. Yes, sir. You would have had a different outcome?

15 A. As far as I know, a different outcome.

16 Q. As far as you know. Now, tell me how you would
17 have had a different outcome. What would the testimony
18 have been 30 years ago that's caused you to have this
19 bad result?

20 A. Mainly one, the 30-year one, I tried to get this
21 girl's mother to carry her to the doctor to find out
22 things and she wouldn't do it, you know, the 30-year
23 sentence.

24 Q. What could she have done 30 years ago that would
25 have helped you?

1 A. Say what?

2 Q. If the mother had carried this girl to the doctor
3 30 years ago, what would that exam have shown?

4 A. They would have found out that nothing went on.

5 Q. Okay.

6 A. That's all.

7 Q. All right. What else has caused you to have this
8 bad result with this guilty plea that it would have been
9 different 30 years ago if they had done something 30
10 years ago?

11 A. Well, the rest of it weren't 30 years ago, though.

12 Q. Well, whatever it was --

13 A. I understand what you're talking about. I haven't
14 done anything since. That's why --

15 Q. You haven't done anything since?

16 A. I ain't done nothing at all.

17 Q. At all. Okay. Let me make sure I'm clear on that.

18 If your lawyer hadn't made these errors that you
19 describe to the Court, would you have insisted on going
20 to trial?

21 A. If the lawyers had done what?

22 Q. You have alleged your lawyer made some errors. You
23 allege that they should have brought up this due process
24 violation, that there's a 30-year delay and that was bad
25 for you. You have alleged that there was no evidence --

1 well, I won't go into that.

2 You have alleged that they promised to appeal and
3 they didn't. So I'm asking you, sir, would you have
4 insisted on going to trial and not pleading guilty if
5 these errors had not happened?

6 A. Yeah. That's what I was trying, that's what I was
7 trying to say.

8 Q. So you wanted to go to trial?

9 A. But I was scared, you know?

10 Q. You would have insisted on going to trial even
11 though being scared. Is that what you are saying?

12 A. I was scared about them telling me all them years
13 that I was supposed to get, or might get or whatever.
14 They were talking way too fast.

15 Q. Listen carefully, sir. Would you have insisted on
16 having a jury hear your case if your lawyers had not
17 done the bad job that you said they'd done?

18 A. I think it would have been better, I think it would
19 have been really better.

20 Q. You think a jury would have found you not guilty?
21 Is that it?

22 A. Well, that's what I think.

23 Q. And you are saying that the result then would have
24 been different?

25 A. Result of what?

1 Q. Of this guilty plea.

2 A. Yeah.

3 Q. You wouldn't have pled guilty?

4 A. No.

5 Q. Is there anything else you want to tell the Court
6 that your lawyers didn't do right for you that I've not
7 asked you?

8 A. Well, I can't think of it right now.

9 MR. WELBORN: Okay. Thank you. Answer anything
10 that opposing counsel has.

11 MS. MAY: I have no questions, Your Honor.

12 THE COURT: Very well. You may step down. Thank
13 you, sir.

14 (Witness leaves stand.)

15 MR. WELBORN: Your Honor, that's our case.

16 THE COURT: All right. Anything from the State?

17 MS. MAY: The State would like to call Ms. Johnson.

18 THE CLERK: Ms. Johnson, would you please raise
19 your right hand.

20 (Whereupon, the witness was sworn.)

21 THE CLERK: And when you are seated, please give us
22 your full name for the record.

23 THE WITNESS: Jennifer Johnson.

24

25

1 Whereupon,

2 Jennifer Johnson

3 Having first been duly sworn, was examined and testified
4 as follows:

5 Direct Examination by Ms. May:

6 Q. Ms. Johnson, were you appointed to represent
7 Mr. Kennedy?

8 A. Yes.

9 Q. Do you recall how many times you met with him prior
10 to the guilty plea?

11 A. It was several times. I can't tell you
12 specifically how many.

13 Q. And during your initial meetings with him, what
14 would y'all have discussed?

15 A. Um, you know, basically the allegations that had
16 been made. These were, as you have heard from his
17 testimony, old cases of alleged child sexual abuse, and
18 really the evidence in these kinds of cases is the
19 victim testimony. I mean, obviously with a 30-year-old
20 case you're not gonna have forensics or something of
21 that nature.

22 Q. Can you briefly explain how the charges arose?

23 A. Yes. From looking -- hang on just one second.

24 From looking back at my notes, it looks like the
25 investigation started -- let's see. In 2006 there was a

1 report to police that Olivia Jordan, my notes say it's
2 his great-granddaughter, but it may have been his
3 granddaughter, I'm not certain, that she made a
4 disclosure to her aunt who was baby-sitting her at that
5 time and basically showed her how her papa did to her,
6 and basically that's what started the criminal
7 investigation. And it was through the investigation
8 that they interviewed others and found that there were
9 other victims in Mr. Kennedy's case.

10 Q. And did you discuss the different charges with
11 Mr. Kennedy?

12 A. Yes.

13 Q. What they meant?

14 A. Yes.

15 Q. Okay. And was Mr. Kennedy able to give you his
16 version of what happened?

17 A. Um, looking back at my notes, I mean, it appears
18 that it's a case where, you know, basically up until the
19 point that there was a trial or plea, he had denied
20 doing anything. Which at the time I was the person who
21 handled all of the child sexual criminal conduct cases
22 for our office, I handled them for about five years.
23 It's not uncommon for someone to deny those kinds of
24 allegations. I mean, it's obviously from one standpoint
25 the evidence I won't say is lacking but it tends to be

1 only testimony. It doesn't tend to be, you know,
2 forensic in nature.

3 However, one of the most compelling pieces of
4 evidence in this case was one of the victims, I believe
5 her name was Sylvia Jones, was living in Arizona at the
6 time that her name came up in the investigation, so the
7 local law enforcement contacted Arizona law enforcement,
8 and she was actually interviewed by law enforcement out
9 there and it was all done on videotape. So, we had a CD
10 depicting this interview that she had given to law
11 enforcement.

12 To me, reviewing that, that tape was sort of the
13 turning point, if you will, in representation. It just
14 appeared to me that she would be a credible witness.
15 She didn't appear to have any sort of ax to grind with
16 Mr. Kennedy. You know, obviously because everything was
17 videotaped, we could see her demeanor and really get a
18 preview of what she might look like, of course, not
19 under Cross-Examination, but a preview of her testimony
20 from the witness stand.

21 Q. And did you review that video with Mr. Kennedy or
22 did you relate to him what was in the video?

23 A. I reviewed it with him.

24 Q. You obtained discovery?

25 A. Yes.

1 Q. And were there videos of all the victims?

2 A. No. That was the only video that I was aware of.

3 At the time there were still minor victims who had been

4 interviewed by the Child Advocacy Center, so we had

5 detailed child interviews for them that were reviewed,

6 and then, you know, the adult witnesses, the ones who

7 were local had simply given statements to law

8 enforcement basically like any other witness would give.

9 Q. And you reviewed all of that with Mr. Kennedy?

10 A. Yes, ma'am.

11 Q. Okay. In your initial meetings and discussions

12 with him, did you question his competency or whether he

13 was understanding all the discussions?

14 A. I didn't question his competency. It's obvious, I

15 think you saw him from the witness stand, it does take

16 him a little longer to comprehend the questions and to

17 comprehend the material that he is presented with.

18 I do feel like that I spent adequate time with him,

19 though, to make up for the deficiency that he may have

20 had in understanding. He certainly was not familiar

21 with the legal process.

22 Q. And I believe that the State was going to call one
23 of the cases for trial; is that correct?

24 A. Yes. And honestly I don't remember which one it

25 was. I think Ms. Jones was the one who had flown in

1 from Arizona. I'm operating from my memory, not notes.
2 But I believe that to be the case. Again, because we
3 had had the opportunity to review the video in that
4 case, certainly, you know, obviously we could have
5 mounted the defense of "I didn't do it and she's just
6 making this up now."

7 We never could come up with a good reason as to why
8 she was making it up, though. She didn't contact law
9 enforcement, they contacted her.

10 Q. All right. So that the innocent defense was the
11 reason that you discussed the -- were there any other
12 defenses that you considered?

13 A. There were really no defenses to -- I mean, all of
14 these were children. Non consent would have been an
15 issue relative to any of these claims. You know, it
16 basically would have been whether the jury believed the
17 victims' testimony or whether they believed, I want to
18 say whether they believed that that was sufficient for a
19 conviction. I don't know whether Mr. Kennedy would have
20 testified or not.

21 Q. And did Mr. Kennedy give any statements that you
22 recall?

23 A. I don't recall if he did. If you will give me a
24 moment, I can review.

25 Usually that's one of the questions that we ask on

1 our initial interview, so if I can put my hands on that,
2 I may be able to quickly answer it.

3 It does indicate that he gave a written statement
4 which would have been included with the discovery
5 materials.

6 I apologize. It's...

7 I actually do not see -- and again, that's from an
8 interview question that our investigator would have
9 asked. Let me just look at the...

10 In looking through the State's Return for the
11 Production of Brady material, I do not see a statement
12 of the Defendant listed, and, like I say, I do not
13 recall him giving a statement in this case, which
14 obviously there's a little mismatch between the note and
15 what appears to be the case.

16 Q. Okay. And were you able to interview any of the
17 victims or just rely on the forensic interviews?

18 A. No. I think the -- I did attempt to contact
19 Ms. Jones because I have her information and spoke with
20 her husband and he said that she did not wish to speak
21 with me.

22 The child victims, frankly, interviewing them is
23 difficult in the best of circumstances. And I think
24 again at the time I'm almost positive Mrs. Jones was the
25 one we were going to trial on that case so, you know, we

1 haven't really reached the point of sort of ultimate
2 disposition as to the other -- as to the child victims.

3 Q. Did you do any type of independent investigation
4 aside from the discovery materials and try to contact
5 the victims?

6 A. Unfortunately, in a case like this there's not,
7 there's not really a whole lot you can do. I mean, it
8 does look like from my notes that I had gone back and --
9 actually, I have it that Mr. Welborn at some point
10 represented the wife, who was, who was a codefendant.

11 And there was also, it looks like I pulled some DSS
12 records and medical records. So, you know, basically I
13 did look at DSS, medical records. But again, in these
14 kinds of cases, generally speaking, it's the testimony
15 of the, of the victim.

16 Q. Okay. And once you obtained all these materials
17 and were able to review them, did you discuss with
18 Mr. Kennedy the doctrines of pleading versus going to
19 trial?

20 A. Yes, I did.

21 Q. And did he seem to understand what you were
22 explaining to him?

23 A. I believe he did. Again, you know, with his sort
24 of limited understanding of the criminal justice system,
25 you know, I tried to educate him about how things would

1 go in Cross-Examination and his right to testify. And I
2 believe that he understood the difference between a
3 trial and a plea and indicated to me that he wished to
4 dispose of his charges by plea.

5 Q. And were there any plea negotiations?

6 A. There were, actually. Because of the age of these
7 cases, there were several -- most of them happened prior
8 to the enactment of the Omnibus Crime Bill in the late
9 1990s where the no-parole offenses are 85 percent came
10 into being, and so we negotiated for him to plead to the
11 ones that happened prior to that so that he would not be
12 under any sort of no-parole offense calculation.

13 And I did, I looked at the information that was
14 provided with your packet and it does look like the
15 sentence was structured or that the Department of
16 Corrections has interpreted it the way that I intended
17 it to through negotiations, which is that he would be
18 eligible for parole and that it would not be an
19 85-percent offense.

20 Q. And you discussed the plea offer and negotiations
21 with Mr. Kennedy?

22 A. Yes.

23 Q. Okay. And I believe the first date, February 6th,
24 Mr. Potter was there with Mr. Kennedy at that plea
25 hearing?

1 A. Yes, that's correct. It looks like from the record
2 that I was out sick that day so Mr. Potter covered the
3 plea portion of it, and then we did the sentencing on
4 Monday and I was there for that portion.

5 Q. Prior to the guilty plea did you have a need to
6 explain to him what a guilty plea entailed and what the
7 hearing would be like?

8 A. Yes.

9 Q. Okay. And with regard to an appeal, I believe
10 Mr. Kennedy was advised by the Judge at both hearings of
11 his right to appeal?

12 A. Yes.

13 Q. Did he ever indicate to you that he had questions
14 about what was done or he wanted to appeal?

15 A. No, he did not.

16 Q. Okay. Looking back, do you see any legal factual
17 basis that would initiate the grounds --

18 A. No. The only thing in reviewing the transcript
19 there had been a recommendation from the State of 30
20 years concurrent on the charges. Judge Nicholson did
21 sentence him to 30 years, but there was a consecutive
22 count of 20 years.

23 And there's a great deal of me sort of going back
24 and forth with the Judge during the sentencing hearing
25 about sentence calculations and how much time 30 years

1 might actually look like. So that was the only thing
2 that happened. But again, I don't -- it was a
3 recommended sentence, it wasn't a negotiated sentence,
4 so I don't believe it formed any sort of legal basis for
5 a challenge.

6 Q. And did you explain to Mr. Kennedy what a
7 recommendation was?

8 A. Yes.

9 Q. And he understood that he wasn't necessarily going
10 to get what the recommendation was?

11 A. I believe so. Yeah, that is one part of the
12 transcript in reviewing where Mr. Potter was there at
13 the initial hearing on Friday and then there was a
14 reference made on Monday during the sentencing to the
15 recommendation of the fact that the Judge didn't have to
16 follow it.

17 Now, having been clear on Monday as part of the
18 plea -- excuse me -- on Friday as part of the plea
19 soliloquy, but he did, you know, state that directly.
20 Of course, I advised that prior to the plea but the
21 Judge again did it during the sentencing phase.

22 Q. Based on your discussions with Mr. Kennedy, do you
23 believe that he made a knowing and intelligent guilty
24 plea?

25 A. Yes.

1 MS. MAY: I have no further questions.

2 THE WITNESS: Thank you.

3 THE COURT: Cross-exam?

4 Cross-Examination by Mr. Welborn:

5 Q. Ms. Johnson, you would agree that Mr. Kennedy has
6 difficulty understanding a lot of these concepts,
7 doesn't he?

8 A. Yes, sir.

9 Q. And by his own admission he had very limited
10 education, didn't he?

11 A. Correct.

12 Q. And, in your doing this for the number of years
13 you've done it, it probably is in there with some of the
14 most difficult to understand what's going on. In other
15 words, you don't find people with much more difficulties
16 in understanding than Mr. Kennedy. Do you agree with
17 that?

18 A. I would say that his knowledge of the criminal
19 justice system was quite limited. As I recall, I
20 don't -- I think he may have had some old DUIs, but I
21 don't recall he had ever been in General Sessions or
22 ever faced a trial or anything before.

23 Q. And his inability to understand and comprehend
24 basic words was very limited, wasn't it?

25 A. Again, it was difficult. I didn't -- I didn't and

1 I still don't have any question as to his competency. I
2 mean, this is a man who held jobs for a long period of
3 time, he had marriages for long periods of time. There
4 were things that indicated that he made it fine.

5 And he did require additional time certainly to
6 educate and go through. But, yes, he had difficulties
7 is the short answer, but I believe that I took the
8 necessary precautions to make sure that he understood.

9 Q. Based on his limited abilities intellectually, is
10 it possible that, that he might not have understood how
11 to timely file one of these applications?

12 A. It's possible.

13 MR. WELBORN: Thank you.

14 THE COURT: Re-exam?

15 MS. MAY: No further questions.

16 THE COURT: All right. You may step down.

17 THE WITNESS: May I be excused, Your Honor?

18 MR. WELBORN: No objection.

19 THE COURT: All right. Without objection you may
20 be excused. Thank you, ma'am.

21 MS. JOHNSON: Thank you, Your Honor.

22 (Whereupon, the Witness was excused.)

23 THE COURT: All right. You may call your next
24 witness.

25 MS. MAY: Nothing further from the State, Your

1 Honor.

2 THE COURT: Any Reply?

3 MR. WELBORN: No, sir. Just a renewal of our
4 motion.

5 THE COURT: All right.

6 MR. WELBORN: That being that the, that the motion
7 to dismiss by the State be denied due to his limited
8 intellectual abilities in being able to file this
9 timely, which I think is up to the Court.

10 THE COURT: All right. Ms. May, what do you say?

11 MS. MAY: Your Honor, with regard to the motion to
12 dismiss, I believe the applicant has the burden to show
13 that he was incompetent to the extent he was unable to
14 file a PCR application. I don't believe there has been
15 any evidence presented to that fact.

16 Even Ms. Johnson testified that she didn't question
17 the competence, that he just needed a little extra time
18 to process ideas and discussions. So, with regard to
19 that, the motion to dismiss is filed outside of the
20 Statute of Limitations.

21 And, with regard to the belated appeal. On both
22 days of the plea Judge Nicholson advised Mr. Kennedy of
23 his rights to appeal, very excessive colloquy with that,
24 the right to appeal.

25 And he never asked Ms. Johnson to appeal. She,

1 reviewing that, she didn't see any legal or factual
2 basis to appeal. And I heavily rely on the transcript
3 of the guilty plea.

4 THE COURT: All right. Mr. Welborn, anything else?

5 MR. WELBORN: No, sir.

6 The Court's Ruling:

7 THE COURT: On the right to appeal, Judge Nicholson
8 went to length to explain that right to the Applicant.

9 On page 20 (reading):

10 THE COURT: All right. Do you understand that you
11 have the right to appeal this guilty plea ten days from
12 today? You don't have to, but you have that right. Do
13 you understand?

14 Having heard nothing about it, I reckon I do.

15 Okay. I'm telling you about it. Do you
16 understand?

17 Right.

18 It goes on on line 24 (reading):

19 You have the right to appeal this guilty plea ten
20 days from today. Do you understand?

21 And then the Defendant later (reading):

22 Do I understand that I have that right to appeal
23 it?

24 Yes, sir. That's what I'm asking you.

25 It ain't got nothing to do change your mind about

1 the trial.

2 No, sir.

3 What I don't understand is that you work.

4 I don't understand what you are talking about.

5 All right. You are entering a guilty plea today.

6 Right.

7 Okay. I'm making that distinction between a guilty
8 plea and a trial.

9 Right.

10 Do you understand the difference?

11 This is on page 22.

12 Right, I do.

13 THE COURT: So what I'm telling you is that you
14 have the right to appeal the guilty plea ten days from
15 today. Do you understand?

16 Yes, sir. (End of reading.)

17 And then, as I say, it's clear that he understood
18 the difference -- or I mean the difference between a
19 trial and a guilty plea and that he had the right to
20 appeal the guilty plea.

21 Now, I haven't heard anything about the -- so I
22 deny the ground of belated appeal.

23 But the 30 years. He was -- at the trial he was
24 given a rather explicit description of all of the
25 charges as to each victim, and he agreed to them. He

1 didn't contest any of them. So, I am not sure that
2 there's, that he's met his burden of proof as to any
3 prejudice that the 30 years would have given. It's just
4 that, fortunately, he was not brought to account for 30
5 years. So I do, again, on that I don't find that there
6 is a sufficient basis for a grant of relief as applied
7 for and, therefore, I will dismiss the application with
8 prejudice.

9 MR. WELBORN: Thank you, Your Honor.

10 THE COURT: All right. Very good.

11 Ms. May, if you would prepare the appropriate
12 Order.

13 (The Post-Conviction Relief hearing was concluded
14 at approximately 4:30 p.m.)

15 ** End of Requested Certified Transcript of Record **

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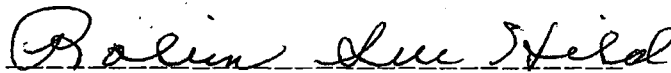
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Certificate of Court Reporter

I, the undersigned, Robin Sue Hild, FCRR, RPR, Official Court Reporter for the Tenth 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 the evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Anderson County, South Carolina, on the 5th day of June, 2012.

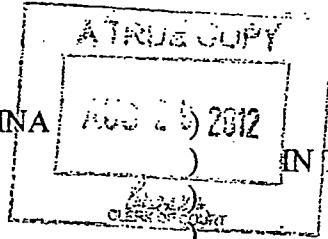
I do further certify that I am neither of kin, counsel nor interest to any party hereto.

November 24, 2012

A handwritten signature in cursive script, reading "Robin Sue Hild", written over a horizontal line.

Robin Sue Hild, FCRR, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON



IN THE COURT OF COMMON PLEAS

James E. Kennedy, #185195

2011-CP-04-1109

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent,

FILED-CLERK'S OFFICE
ANDERSON SC
2012 AUG 29 P 1:08
COMMON PLEAS AND
GENERAL SESSIONS

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed April 5, 2011. Respondent made its Return on October 26, 2011. An evidentiary hearing into the matter was convened on June 5, 2012, at the Anderson County Courthouse. The Applicant was present at the hearing and was represented by Hugh W. Welborn, Esquire. The Respondent was represented by Kaelon E. May of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. The State offered the testimony of Jennifer Johnson, Esquire (Ms. Johnson) Applicant's plea counsel. This Court also had before it the records of the Anderson County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. The Applicant was indicted at the April 2007 term of the Anderson County Grand Jury for three (3) counts of criminal sexual conduct with a minor (2nd degree) (14 years or less but at least 11) (2007-GS-04-

1289, -1283, -1296), Carnal Knowledge of a Woman Child (2007-GS-04-1295) and three (3) counts of Commission of a Lewd Act Upon a Child under fourteen. (2007-GS-04-1292, -1296, -1297). Andrew Potter, Esquire, represented the Applicant. On February 9, 2009, the Applicant pled guilty as charged. The Honorable J.C. Nicholson, Jr., sentenced the Applicant to confinement for an aggregate period of thirty (30) years. The Applicant did not appeal his conviction or sentence.

In his current application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel:
 - a. "Promised me he would appeal, but never did so."
 - b. "no evidence to support my conviction"
2. Due Process Violation
 - a. Pre-indictment delay of more than 30 years on charges of criminal conduct with minor and lewd conduct violated due process rights and was prejudicial

II. SUMMARY OF EVIDENCE AND TESTIMONY PRESENTED AT THE PCR

EVIDENTIARY HEARING

Applicant's Testimony

At the PCR hearing, Applicant testified that he did not file an appeal because the ten-day time period in which Applicant was required to file a notice of appeal expired, that Applicant thought counsel advised Applicant of his right to appeal, but that Applicant did not understand what an appeal was. Applicant testified that he pled guilty because he was scared, that the state did not have evidence against Applicant, and that Applicant did not understand what he was doing because Applicant was taking medication. Applicant testified that he cannot think fast such that Applicant needed more time with counsel, that counsel did not explain everything well

enough for Applicant to understand, and that Applicant did not inform the plea court of this issue because Applicant was nervous.

Applicant testified that he was indicted for a crime nearly 30 years after the crime occurred and that if the charge was brought in a timely fashion the victim could have undergone a medical exam, which would have demonstrated Applicant's innocence. Applicant testified that he did not know whether he should have informed the plea court about his misunderstandings. Applicant testified that he believed if he had proceeded to trial a jury would have found Applicant not guilty.

Ms. Johnson's Testimony

At the PCR hearing, counsel testified that she was appointed to represent Applicant, that she met with Applicant several times, and that she discussed with Applicant the elements of the crimes and what the state was required to prove. Counsel testified that Applicant denied the allegations and charges made against him, that counsel filed a discovery motion, and received the discovery materials. Counsel testified that the discovery materials included: forensic interview of the minor victim, statement given by the adult victims, and a video interview of a victim who resided in Arizona at the time. Counsel testified that she reviewed all the discovery materials with Applicant, that Applicant required extra time to comprehend, and that counsel took extra time to explain and discuss everything slowly with Applicant.

Counsel testified that she discussed possible defenses with Applicant, including Applicant was innocent and the victims were making up stories. Counsel testified that such a defense was going to be successful at a trial because the victim's testimony at trial was going to be compelling and one of the victims was sought out by the police rather than coming forward

herself. Counsel testified that she obtained DSS and medical records of the victims, that she attempted to contact victim J, but that the victim refused to speak with counsel. Counsel testified that she engaged in plea negotiations on Applicant's behalf, that Applicant was offered a plea deal where Applicant would be parole eligible, and that because of the age of the crimes they predated the omnibus crime bill counsel negotiated said deal so Applicant would not have to plead under no-parole.

Counsel testified that she carefully and slowly discussed with Applicant the options available to Applicant in terms of the benefits and drawbacks of pleading guilty versus proceeding to trial as well as what a guilty plea proceeding would entail. Counsel testified that she had no questions as to Applicant's competency because Applicant was able to hold down jobs and was married three times, and that Applicant just needed extra time to process information. Counsel testified that she took extra precautions to ensure Applicant understood. Counsel testified that based on the facts of the case and counsel's discussions with Applicant, counsel believed that Applicant made a knowing and intelligent guilty plea. Counsel testified that Applicant never asked counsel to file an appeal and that counsel did not believe there was any factual or legal basis to appeal.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

At the outset of the hearing, Respondent made a motion to dismiss Applicant's claims, excluding Applicant's claim of a belated appeal, based on Applicant's failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. This Court reserved ruling on the motion to dismiss at the hearing. The Applicant was convicted of the offenses he challenges on February 9, 2009. The Applicant was therefore required to file his application on or before

February 9, 2010. This application was filed on April 5, 2011, well after the one-year statutory filing period expired. This Court grants Respondent's motion to dismiss Applicant's claims, excluding Applicant's claim of a belated appeal, for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act.

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

Applicant asserts that counsel was ineffective for failing to file an appeal. This Court does not find the Applicant credible concerning his testimony regarding requesting that an appeal be filed and that he did not understand what an appeal was. Applicant's right to appeal was discussed extensively by the plea judge at Applicant's guilty plea hearing. (Tr. p.20-22). The

Applicant has not proven that he instructed plea counsel to appeal from his guilty plea. Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995). This Court finds that plea counsel testified credibly that she informed Applicant about his right to appeal and that counsel was not told to file an appeal. When the question is whether counsel was ineffective in failing to file a direct appeal from the conviction and sentence, the United States Supreme Court has held that counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular

defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000). Counsel testified that had Applicant indicated to counsel that he wanted to appeal counsel would have filed an appeal. Under these circumstances, counsel's failure to file an appeal was not unreasonable. This Court finds that counsel was not ineffective in failing to file an appeal; therefore, this allegation is denied and dismissed.

All Other Claims

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

IV. CONCLUSION

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

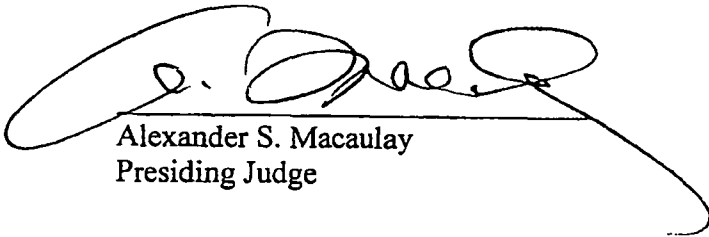
This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. *See* Rule

203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 28 day of August, 2012.


Alexander S. Macaulay
Presiding Judge

Wainalla, South Carolina

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2012 AUG 29 P 1:08
COMMON PLEAS AND
GENERAL SESSIONS