

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County

Honorable George M. McFaddin, Circuit Court Judge

GEORDI JERELL HEYWARD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000710

APPENDIX

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No Exhibits Introduced.

G. HEYWARD - EXAMINATION BY THE COURT

3

1 (PRIOR TO HEARING, THE DEFENDANT IS SWORN.)

2 THE COURT: Yes, ma'am, Ms. Simpson.

3 MS. SIMPSON: Thank you, Your Honor. May it please
4 the court? Standing before you is Geordie Heyward,
5 represented by Bakari Sellers of the private bar. He is
6 also standing along with his public defender on a prior --
7 prior charges regarding a probation revocation which we
8 will need to put on the record at the appropriate time, Mr.
9 Banks with public defender's office.

10 Mr. Heyward is pleading guilty to one count of
11 criminal sexual conduct second degree with a minor, which
12 carries zero to twenty years. He is also facing fifteen
13 years on a probation revocation.

14 Your Honor, with respect to the charges and
15 recommendations, I can give that to you at this time, as
16 well as there are two other codefendants in the case.

17 THE COURT: Yes, ma'am. If you would tell me what the
18 recommendations are.

19 MS. SIMPSON: Okay. With respect to the
20 recommendations, Your Honor, the state is dismissing three
21 counts of human trafficking, as well as one count of
22 contributing -- or two counts of contributing to the
23 delinquency of a minor. This was all one incident. He is
24 pleading guilty to this one charge from that incident, and
25 we've agreed to run it concurrent to the probation

1 revocation which will be heard at a later date. Other than
2 that, there are no additional recommendations with respect
3 to the agreements in this case.

4 I will say that we were scheduled to go forward with
5 trial on Mr. Heyward this week. One of the codefendants in
6 this case is Danielle Burns; the other is Kristopher Davis.
7 Ms. Burns has -- she pled guilty in front of the Honorable
8 Judge Hood and pled guilty to one count of human
9 trafficking. Two others were dismissed at that time, and
10 sentencing was deferred. Mr. Davis, there have been no
11 negotiations, recommendations, or pleas. His case is
12 completely pending at this time.

13 EXAMINATION BY THE COURT:

14 Q. Is it Geordie?

15 A. Yes, ma'am.

16 Q. Heyward. How old are you, sir?

17 A. I'm twenty-five.

18 Q. And how far did you go in school?

19 A. I graduated twelve grade.

20 Q. Before you were arrested, were you employed?

21 A. Yes, ma'am.

22 Q. What did you do?

23 A. I worked at Chilli's.

24 Q. And how long did you work there?

25 A. For two years.

G. HEYWARD - EXAMINATION BY THE COURT

5

1 Q. Are you currently under the influence of any drugs or
2 alcohol or prescription medicines?

3 A. No, ma'am.

4 Q. Do you have any physical or mental conditions that
5 would prevent you from being able to understand your plea
6 here today?

7 A. No, ma'am.

8 Q. Mr. Heyward, you understand that you've been charged
9 with criminal sexual conduct with a minor second degree,
10 which carries up to twenty years in jail. Do you
11 understand that?

12 A. Yes, ma'am.

13 Q. Do you understand it's also considered to be a violent
14 offense and it's considered to be a most serious offense?
15 The most serious offense means that it's a strike. If you
16 are subsequently convicted of other crimes that carry a
17 strike, then at some particular point, depending on how
18 many strikes you amass, whether it's two or three, the
19 state could seek to -- let me back up. The next time
20 you're charged with a crime that carries a strike, the
21 state would be able to serve you with notice that they
22 would intend to seek life without the possibility of
23 parole. Do you understand that?

24 A. Yes, ma'am.

25 Q. Do you also understand that ---

1 THE COURT: I believe this is a no-parole offense. Is
2 that correct?

3 MS. SIMPSON: Yes, Your Honor.

4 MR. SELLERS: Yes, Your Honor.

5 THE COURT: Because it carries twenty years.

6 MR. SELLERS: Yes, Your Honor.

7 BY THE COURT:

8 Q. That means that whatever sentence would be imposed,
9 you would be required to serve 85 percent of that, a
10 minimum of 85 percent of that time before you would be
11 eligible to be released under community supervision.

12 Community supervision is similar to probation, but the
13 way community supervision works is that you'd be released
14 for a two-year period. If you return to the community and
15 you don't have any infractions, no violations, then at the
16 end of that two years your sentence with the Department of
17 Corrections would conclude, and you would not be under any
18 further responsibility in terms of the sentence. If,
19 however, there is a violation under community supervision,
20 the court can return you to jail for up to one year. If
21 you were sent back to prison, then once you are released,
22 you are released again on community supervision and it
23 starts a whole new two-year period, and that continues
24 until you've either served all of your sentence or until
25 you successfully serve community supervision for two years.

G. HEYWARD - EXAMINATION BY THE COURT

7

1 You understand that?

2 A. Yes, ma'am.

3 Q. And with respect to the violent offense, the violent
4 offense basically determines where in the Department of
5 Corrections you would be housed. You understand that?

6 A. Yes, ma'am

7 Q. You are represented by Bakari Sellers. Is that
8 correct?

9 A. Yes, ma'am.

10 Q. And you're represented by Mr. Bank on some other
11 charges. Is that correct?

12 A. Yes, ma'am.

13 Q. Okay, on a probation matter. Is that correct?

14 A. Yes, ma'am.

15 Q. But Mr. Sellers is representing you on this particular
16 plea. Is that correct?

17 A. Yes, ma'am.

18 Q. Did he have the opportunity to explain all of those
19 things to you?

20 A. Yes, ma'am.

21 Q. Did Mr. Sellers explain to you the possible penalties
22 and consequences on this charge?

23 A. Yes, ma'am.

24 Q. Did he explain to you the evidence that the state has
25 against you on this charge?

1 A. Yes, ma'am.

2 Q. And did he explain to you your constitutional rights?

3 A. Yes, ma'am.

4 Q. And let me explain those rights to you, Mr. Heyward.
5 Although you have been charged with this crime, and even
6 though you are currently incarcerated, as you stand before
7 me today, you are still innocent of the charge and you
8 remain innocent unless and until the state is able to
9 convince a jury that you are guilty of this charge or the
10 charges. In connection with that, you have certain
11 constitutional rights, and I'll briefly describe those to
12 you.

13 First of all, you have the right to remain silent;
14 that's known as your right against self-incrimination.
15 That's your right not to say anything or do anything that
16 would give evidence against yourself. That means that you
17 don't have to talk to anybody in law enforcement about
18 these charges. You don't have to talk to anybody in the
19 solicitor's office. You don't have to discuss it with me.
20 But by coming here today and by offering to plead guilty,
21 you give up your right to remain silent because you will be
22 required to make statements that are against your interest
23 in order for me to accept your plea.

24 You also have the right to a jury trial; that's your
25 right to have twelve people decide your guilt or your

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9

1 innocence. And just as I've told you that you're innocent
2 today, the jury is told the same thing: that you are
3 innocent of the charges and that you remain innocent unless
4 and until the state can convince all twelve of those jurors
5 that you are guilty. And the jury is told that before they
6 can find you guilty, the state has to produce enough
7 evidence to convince them that you are guilty beyond a
8 reasonable doubt.

9 Now with a jury trial, that's the time that you get to
10 put up a defense. That means that you can call witnesses
11 who would testify on your behalf. You can get on the
12 witness stand and testify for yourself if that's what you
13 wish to do. You also have the opportunity before the trial
14 begins to raise any legal challenges to the charge or to
15 the evidence so that if there's any reason that you and Mr.
16 Sellers believe that you have to have the charges dismissed
17 or the evidence dismissed, you have the opportunity to do
18 that, but that's normally done before the trial begins.

19 So, for example, if you were searched for whatever
20 reason, you could have a hearing to determine whether it
21 was a valid search and whether the evidence that came about
22 as a result of that search could be used. If you were
23 picked out of a lineup for identification, you can have a
24 hearing to determine whether or not the identification was
25 reasonable, or whether it conformed to what the law

1 requires, and whether that identification was good, and
2 whether it can be used against you at trial. If you've
3 made statements to law enforcement, you can have a hearing
4 to determine whether or not those statements could be used
5 against you at trial.

6 Any one of those reasons or any other reason that you
7 or Mr. Sellers believe that you have to challenge the
8 charge or the evidence, you have the right to do that. But
9 again, that's normally done before the trial begins. So,
10 by pleading guilty today, you will be giving up that
11 opportunity to be able to raise those legal challenges.

12 Additionally, by pleading guilty today you're giving
13 up your right to a jury trial. Do you understand that?

14 A. Yes, ma'am

15 Q. You also have the right to confront your accusers;
16 that's known as your right of confrontation. That is your
17 right to require the state to bring those witnesses here to
18 court. They are required to come to court. They would be
19 placed under oath, and they'd give testimony from the
20 witness stand. So, you have the opportunity to see who
21 those individuals are and to hear them testify in their own
22 words. And then once they've testified, then your attorney
23 has the right to cross-examine them and ask them questions
24 while they're under oath. Do you understand that by coming
25 here and pleading guilty at this point, you're giving up

G. HEYWARD - EXAMINATION BY THE COURT

11

1 your right to confront your accusers?

2 A. Yes, ma'am.

3 Q. Do you also understand that you're giving up your
4 right to remain silent?

5 A. Yes, ma'am.

6 THE COURT: Mr. Sellers, you've heard your client
7 indicate that you've had those conversations with him about
8 these charges. Is that correct?

9 MR. SELLERS: Yes, ma'am, Your Honor.

10 THE COURT: And did you explain to Mr. Heyward the
11 charges, as well as the possible penalties, and the
12 consequences for a conviction?

13 MR. SELLERS: Yes, ma'am, Your Honor.

14 THE COURT: Did you explain to him the evidence that
15 the state has against him on the charges?

16 MR. SELLERS: Thoroughly, Your Honor.

17 THE COURT: And did you explain to him in more detail
18 his constitutional rights?

19 MR. SELLERS: Yes, ma'am, Your Honor.

20 THE COURT: Do you believe that he understood all the
21 conversations that you had with him?

22 MR. SELLERS: Yes, ma'am. Your Honor.

23 BY THE COURT:

24 Q. Mr. Heyward, are you currently under the influence of
25 any drugs or alcohol or prescription medications?

G. HEYWARD - EXAMINATION BY THE COURT

12

1 A. No, ma'am.

2 Q. Do you have any physical or mental conditions that
3 would prevent you from being able to understand a plea here
4 today?

5 A. No, ma'am.

6 Q. Mr. Heyward, before I accept your plea, I'll hear from
7 the state about the facts. I ask that you listen very
8 carefully.

9 MS. SIMPSON: Thank you, Your Honor. These incidents
10 occurred on or between June 26th of 2016 and June 28th of
11 2016 at 1335 Garner Lane here in Richland County, which is
12 the Regency Inn. Officers actually responded to the
13 Richland Memorial emergency room regarding a sexual assault
14 and a possible sex trafficking case involving minors.

15 At that time, officers made contact with Ms.
16 Baughknight, the mother of the victim, one of the minor
17 victims, MINOR 1 [phonetic]. According to her, MINOR 1
18 had run away and left approximately one week prior, and she
19 learned that her daughter was possibly being sold for sex
20 at that time. Her son was ultimately able to locate his
21 sister and found out the identity and location of the
22 defendants in this case.

23 Contact was made. They demanded, I believe, \$1,000
24 for MINOR 1 release. Ms. Baughknight was able to come up
25 with the money, and her son actually went over and paid for

1 the release of one of the minor victims of human
2 trafficking.

3 The officer was able to speak with the MINOR 1
4 who gave names and descriptions of the individuals involved
5 -- Danielle Burns, who is referred to as Toot throughout
6 this; Ghost, who is Kristopher Davis, one of the
7 codefendants; and Jody or JJ, which would be Geordie
8 Heyward -- and informed them that the defendants actually
9 had two other girls located at the hotel as well in
10 different rooms. They were her friends: MINOR 2
11 [phonetic], age fifteen at the time; as well as MINOR 3
12 also age fifteen and the actual victim of the
13 criminal sexual conduct charge here today.

14 According to MINOR 1 the girls were given drugs, their
15 pictures posted on Backpages, and they were forced to have
16 sex with numerous different men. They wanted to leave but
17 were not allowed to go and kind of forced to pay off a
18 so-called debt. She stated that the defendants had at
19 least different hotel -- possibly three different hotel
20 rooms, and they would kind of move them around and keep the
21 girls separated so they would not leave. And part of the
22 fear of leaving is that she was aware that Davis and
23 Heyward were possibly gang members.

24 This case was turned over to investigations, and then
25 on June 28th of 2016 they were able to learn what room the

1 defendants were in. They made contact, and at that time
2 both Heyward and Davis were present in the room. The two
3 minor females were actually in the bathroom. They
4 ultimately gave -- they initially lied about who they were
5 and their age, the female did, but they ultimately gave
6 their real names, and it was also learned that they were
7 actually runaways both out of, I believe, Myrtle Beach and
8 possibly Lancaster or Kershaw County -- Chester County. I
9 apologize.

10 Burns was the one who initially picked them up,
11 according -- throughout this investigation, that was
12 learned. They knew her from before. They previously had
13 been in DJJ at one point, but then they were brought to
14 Heyward and Davis.

15 As for the roles of the defendants, Your Honor, Burns
16 would essentially take their money and give it to this
17 defendant as well. She also bought clothes for them to
18 wear and would post the pictures and set up the
19 prostitution and use the phone to text, but then she will
20 leave. As for this defendant, Mr. Heyward, he was
21 essentially kind of the muscle and would always be around,
22 around the girls so that they would not leave whenever men
23 would come around or they were there in the hotel room.

24 At one point I believe one of the girls leaves with
25 Ms. Burns, and this is when the actual sexual assault

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15

1 happens to MINOR 3 [REDACTED] She is alone in the room with Mr.
2 Heyward. They go into the bathroom and begin having sex.
3 She states, and there are multiple statements about how
4 this occurred, but she initially told law enforcement that
5 she was afraid not to have sex because of what would
6 happen. It started hurting and she told him to stop, and
7 he said you need to just take the pain and learn how to
8 take it and kept going. This was a onetime incident.

9 The defendant was ultimately interviewed as well, Your
10 Honor, and he did admit to having sex with her. However,
11 he indicated it was completely consensual and that he had
12 stopped, and I believe he denied knowing her age. However,
13 Miss MINOR 3 indicates that he did, in fact, know her age
14 although she had initially lied about it.

15 Your Honor, that would be the extent of the facts with
16 respect to the sexual assault. As far as the, the
17 investigation is much more substantial with respect to the
18 human trafficking aspect. However, I will limit the facts
19 to that for now and request any additional follow up in
20 response to defense.

21 THE COURT: Any prior record?

22 MS. SIMPSON: Yes, Your Honor, he does have a prior
23 record. Criminal conspiracy for which he received five
24 years upon credit for time served, suspended to probation.
25 Then in -- that was in 2014. Also in 2014 he pled guilty

1 to strong-arm robbery. That was -- he was sentenced to
2 fifteen years upon four years' probation, and he was
3 actually out on probation when these offenses occurred.
4 And at the appropriate time, I'd like to put on some victim
5 impact as well as with respect to Miss MINOR 3 who is in DSS
6 custody, my conversations with respect to her and her
7 feelings based on my conversations.

8 THE COURT: So, one conspiracy and one strong-arm
9 robbery and that's it?

10 MS. SIMPSON: Yes, Your Honor.

11 THE COURT: For prior convictions?

12 MR. SELLERS: Two strong-arm robberies, Your Honor.

13 BY THE COURT:

14 Q. Mr. Heyward, you've heard the facts as they've been
15 stated. Is there anything that you wish to add or change
16 or correct about what's been stated?

17 A. No, ma'am.

18 Q. And so you would acknowledge with respect to the
19 current charge, that you engaged in sexual intercourse with
20 a minor who was under the age of sixteen?

21 A. Yes, ma'am.

22 Q. Mr. Heyward, has anyone promised you anything to come
23 here and plead guilty to this charge?

24 A. No, ma'am.

25 Q. Has anyone threatened you or coerced you to plead

G. HEYWARD - EXAMINATION BY THE COURT

17

1 guilty?

2 A. No, ma'am.

3 Q. Has there been any hope or promise of any reward or
4 any benefit to you to plead guilty other than the dismissal
5 of the other charges?

6 A. No, ma'am.

7 Q. Mr. Heyward, are you pleading guilty freely and
8 voluntarily?

9 A. Yes, ma'am.

10 Q. And are you pleading guilty to the criminal sexual
11 conduct with a minor second degree because you are, in
12 fact, guilty of that charge?

13 A. Yes, ma'am.

14 THE COURT: Then I will accept your plea. I find that
15 it's freely and voluntarily made, and that you understand
16 that you're giving up your constitutional rights, including
17 your right to a jury trial.

18 Before I hear from you, Mr. Sellers, I'll hear in
19 relation to the victim impact information.

20 MS. SIMPSON: Yes, Your Honor, and with respect to the
21 victim impact, MINOR 1 mother's here and would
22 like to address Your Honor. She is essentially standing in
23 on behalf of all the girls and with respect to the context
24 of this entire case, but understanding that she is not in
25 any relation to MINOR 3, the victim of the sexual

1 assault, but she would like to address Your Honor.

2 THE COURT: Yes, ma'am. Tell me your name, please.

3 MS. BAUGHKNIGHT: Kayla Denise ---

4 THE COURT: I'm sorry. I can't hear you. You need to
5 speak up loudly and clearly so I can hear you and the court
6 reporter can hear you.

7 MS. BAUGHKNIGHT: Kayla Denise Demetra Cherisse Long
8 Baughknight.

9 THE COURT: Yes, ma'am.

10 MS. BAUGHKNIGHT: Your Honor, I'm the mother of
11 MINOR 1 My daughter was missing for over three
12 weeks. I asked the Richland County Sheriff's Department
13 for help. They didn't help me. I was in places that I
14 never thought I would be in to find these girls, not
15 knowing there was three of them, but it didn't matter
16 because they are mine, and I would do what any mother would
17 do to protect a child.

18 What these three people did to those girls will never
19 be acceptable. No time in jail would ever be acceptable,
20 but I'm asking this court today to do what's right. The
21 police department wouldn't come help me find these girls.
22 I did all the work. I'm asking you now to do the work of
23 putting justice where it belongs, and that is making sure
24 he gets the maximum time that's allowed.

25 THE COURT: Thank you.

1 Yes, ma'am, you said you had some information from
2 Miss MINOR 3 as well?

3 MS. SIMPSON: Yes, Your Honor. I actually met with
4 Miss MINOR 3, who has been a runaway for quite some time, and
5 I will say this. That she in no way -- while it is
6 subjective, she is very childlike. She looks like a child,
7 and her demeanor -- I mean, she's not getting counseling.
8 She's not getting the things she needs, but she has clearly
9 been affected by this.

10 Part of -- she is very close friends with MINOR 1 and
11 MINOR 2 role, just so Your Honor is aware, based on my
12 conversations as well as in the discovery, was kind of
13 protective of MINOR 1. She is probably the scared one out of
14 the group, so the others would do things so that she would
15 not have to. I do believe that she was taken advantage of,
16 and she admits that she did not want to do what she did but
17 ended up doing it anyway. So, I just want to put that on
18 there.

19 And as I said, while he is pleading guilty to just the
20 criminal sexual conduct of a minor charge, this is a bigger
21 context of the case and what was going on where a group of
22 individuals took advantage of runaway girls who were
23 clearly dependent upon them. No way of being able, you
24 know, to get away. And as I said, his role as far as being
25 kind of the muscle, Miss MINOR 3 indicated, too -- and I

1 believe I left this out of my factual recitation. At one
2 time they'd indicated they wanted to leave, and some man
3 had come up as well saying he could get them out of the
4 situation. However, at that point they looked up and this
5 defendant was staring down and called them as well and
6 threatening them essentially to stay.

7 So, Your Honor, based on the facts of this case, while
8 it is a one-time thing as far as the sexual assault itself,
9 the state is asking for the twenty years, at a minimum
10 fifteen, definitely the upper end of the range as he was
11 out on probation for two counts of strong-arm robbery, and
12 based on his age, and just the nature of the case.

13 THE COURT: Yes, sir, Mr. Sellers.

14 MR. SELLERS: Thank you so much, Your Honor. Just a
15 few things before we begin. My client is twenty-five years
16 old. He served the last fifteen months in Alvin S. Glenn
17 Detention Center. In the courtroom with him today are his
18 mother, Earleen Williamson who would like an opportunity to
19 speak at the appropriate time, and his godmother, Miss
20 Linda Brown.

21 I want to go through a few of the things. One, the
22 roles of individuals within this quote unquote scheme.
23 We've gone through a period of about a year with the state
24 in various bond motions and other things. This is the
25 first time that we've heard my client be referred to as the

1 muscle. In fact, when that was said, I glanced at him and
2 looked at him again and he is, with all due respect to him,
3 not an imposing figure and not quote unquote the muscle.
4 In fact, it was relayed to me at one point, the theory was
5 he was the ringleader. My client was actually present for
6 a matter of hours. He was not present during an entire
7 long timeframe.

8 With that being said, Your Honor, my client is
9 pleading guilty today to criminal sexual conduct with a
10 minor because he did, in fact, have sex with MINOR 3
11 who at the time was fifteen years old. And while there are
12 various statements that Miss MINOR 3 has given -- in fact,
13 one of the statements that the state alluded to but did not
14 elaborate on, she stated that my client was unaware of her
15 age. We do understand and we're walking very gently and
16 acknowledging that mistake of age is not an excuse. Not
17 knowing someone's age is not an excuse, but I would like to
18 present to the court just a -- the picture ID from
19 discovery that Miss MINOR 3 had on her possession, as well as
20 the driving record of the individual so you can actually
21 see the identification and Social Security card that Miss
22 MINOR 3 had on her possession.

23 The reason that I, I bring that to you is not making
24 any defense for the act of criminal sexual conduct, but
25 instead to offer some mitigation, Your Honor, and simply

1 saying that my client is not a predator. My client is not
2 a sexual predator by any stretch. So, I don't want Your
3 Honor to have any hesitance on that. He doesn't prey on
4 young girls. In fact, he was unaware of, of her age.

5 My, my client, we've had conversations many times.
6 Most of them have been -- when you go into one of the
7 higher security pods over there at Alvin S. Glenn, and we
8 walk up the stairs and we chat and we talk. He understands
9 exactly what he did wrong. He understands that he was in
10 -- he put himself in a very bad situation. He understands
11 that out of all these things, he disrupted a family. I
12 think he's heard Ms. Baughknight. He's heard MINOR 1
13 mother speak numerous times and the pain in her voice, and
14 he understands the harm he has caused, and he understands
15 the harm he has caused to the victims. He understands the
16 harm that he's even caused to his family.

17 And, and that segues me to what happens next. We
18 understand that there is going to be some active jail time.
19 We also understand and hope that he would get fifteen and a
20 half months of credit for the time he already served. But,
21 Your Honor, when he gets out -- and what this is about is
22 rehabilitation. There are a few things in his life that he
23 has to change. He understands that, but there are a few
24 things that will remain sturdy and remain the same. Those
25 are his family.

1 In the courtroom today is Ms. Earleen Williamson, and
2 she would like to stand up and says some things. She's a
3 state employee. She had the ability to take some time off
4 today and come and be with us. And we also have Ms. Linda
5 Brown, who is his godmother who had an opportunity to come
6 and be with us. His father couldn't be here today because
7 like most Americans at 11:00 today, as much as he wanted to
8 be here with his son going through this extremely hard
9 process, his boss said you leave, you're done. And so he
10 had to remain at work. And so at that appropriate time, I
11 would like to hear from Ms. Williamson, and then we would
12 make a recommendation to Your Honor as well.

13 THE COURT: Yes. Tell me your name again, please.

14 MS. WILLIAMSON: My name is Earleen Williamson.

15 THE COURT: Yes, ma'am.

16 MS. WILLIAMSON: I'm the mother of Geordi Heyward.
17 Judge Lee, I work for the Department of Corrections. I've
18 been working for the Department of Corrections for
19 thirty-two years, so I raised my son with morals and
20 values, and I brought him up in church.

21 Geordi is a good kid. He would never ever go out and
22 have sex with a young girl because we come from a big
23 family, and there is a lot of fourteen and fifteen years --
24 he have nieces in our family. My family couldn't be here,
25 but we are from Florence, South Carolina, but Geordi, like

1 Attorney Sellers said, he would never ever have sex with a
2 young girl not knowing her age. Geordi have a girlfriend.
3 She's been with him the whole entire time, even 'til now.

4 The day before this happened, I was transporting
5 Geordi back and forth to work. He had a good job. The
6 night when I dropped him off to work, the next night he's
7 being locked up for these charges. So, he wasn't out there
8 looking for these girls. These girls down here, they was
9 runaways. Geordi was living with me, so there was nothing
10 that he had anything to do with those girls.

11 His friend brought the girls to him, and they went to
12 the hotel. The girl told Geordi she was overage. Whatever
13 they had, they had, but he would never, Judge Lee, go out
14 and have sex with a young girl. I did not raise my son
15 like that. His father is not. He is not that way.

16 And I'm asking you today to be compassionate and find
17 favor on behalf of my son because he is not a sex predator,
18 and he would never ever have sex with a young girl. Yes,
19 he did make one mistake. That's life, but we all deserve a
20 second chance. Thank you.

21 THE COURT: Yes, ma'am. Tell me your name.

22 MS. BROWN: Good morning. My name is Linda Brown. I
23 also work for the Department of Correction for twenty-seven
24 years. This is unacceptable what Geordi, what he, what he
25 say he did.

1 First of all, I want to just say he was always a good
2 kid. I was around him growing up as a kid, as a young man,
3 going in and out of church with his mother and him. I also
4 just want to say show compassion for him because he is a
5 good kid. He always was in church with us.

6 I also wanted just give compassion for family.

7 MS. WILLIAMSON: Yes, yes.

8 MS. BROWN: Just tell the mother that we're sorry.

9 MS. WILLIAMSON: Yes.

10 MS. BROWN: I'm sorry as a godmother for what he did
11 because it's unacceptable. I'm sorry for the victim, for
12 you, for our family. I'm just so sorry that this had to
13 happen because if he would have known her age, he wouldn't
14 have done that because he have, he have nieces and nephews.
15 He have a mother, grandmother. He wouldn't have done this
16 thing. I just want you -- show compassion, and I'm so
17 sorry from my family to your family for what happened to
18 the victim. Thank you.

19 MR. SELLERS: Your Honor, if I may? I just want to
20 clarify just one thing. That we are not, we are not saying
21 that this did not occur, and no one is saying that. In
22 fact, he pled guilty. He will make some brief remarks as
23 well.

24 But what we are saying is that Geordie is a young man
25 who has found himself in the system and I believe, we

1 believe deserves a second chance, Your Honor. Not because
2 of his quote unquote role in this quote unquote scheme
3 which we can go back and forth on, but we're not here for
4 that today, but due to some mitigation.

5 But even, Your Honor -- I would say that he has to
6 serve 85 percent, as you stated. When he gets out, he is
7 going to be a sex offender, so not only will he be a felon
8 having served prison time, but he will also be a sex
9 offender, but Geordi is someone who can recover. He has
10 the family structure to do so. And, Your Honor, we would
11 ask for a sentence between the ranges of three to five
12 years. We don't have any hesitation about that. We think
13 that that would not only fit the punishment for the crime,
14 Your Honor, that he's here for today, but that would take
15 into account his family structure when he gets out, and
16 that would also take into account many of the mitigation
17 factors that we've put forth.

18 With that, Geordie would like to simply apologize to
19 the victim and his family.

20 THE COURT: Yes, sir.

21 DEFENDANT: Yes, ma'am, I would like to address the
22 court and everybody here to say I apologize for what
23 happened. During the situation, you know, I don't know
24 what was going on, and I just felt sorry and I felt bad.

25 I'd like to apologize to Miss MINOR 1 mother

G. HEYWARD - EXAMINATION BY THE COURT

27

1 and her family about what happened with her daughter. Even
2 though I didn't know what was going on, I just want to
3 apologize for that and, you know, apologize to my family
4 about my situation that I'm in.

5 THE COURT: Thank you.

6 MS. SIMPSON: Yes, Your Honor, if I can just address a
7 couple things? With respect to the term muscle, that is my
8 term. However, on October 2nd we did turn over, pursuant
9 to *Riddle* and our discovery, that both girls indicated that
10 this defendant was almost like a security guard. Even
11 though he was not in the room with them, he was watching
12 them from some place else. They recalled one instance
13 where he thought they were going to run away, and he called
14 the -- so he called the phone, threatening them to stay.

15 And I know he handed up the driving photos. I will
16 show you two pictures both of MINOR 1 and MINOR 2 as these
17 girls ---

18 THE COURT: Have you seen them?

19 MR. SELLERS: I've never seen her face.

20 MS. SIMPSON: These were provided in discovery but --
21 of two of the girls that were actually there. And even if
22 you see her in person, it's different. And I understand
23 we're talking about looks here, but she indicates she told
24 him her age as well.

25 So, Your Honor, just respectfully while he's facing

1 fifteen, we would ask for that at the minimum. However, we
2 are asking for a sentence that's appropriate. He has
3 received a substantial benefit with the reduction of these
4 charges or the dismissal of the other charges. So, we
5 would respectfully ask for the higher end of the range,
6 fifteen to twenty years.

7 THE COURT: Anything further you want to say, Mr.
8 Bakari?

9 MR. SELLERS: No, Your Honor. I mean, we, we would,
10 we would just reiterate everything that we've said, Your
11 Honor. And again she, she brought up statements, so I feel
12 as if I need to reiterate that there were multiple
13 statements given by Miss [REDACTED] MINOR 3 and although she is a
14 minor, in one of her statements she did actually admit that
15 the defendant did not know her age. And I'm not going to
16 play guessing games with the young lady's age on how we
17 think she looks, but I will tell you the evidence, the hard
18 evidence that we do have is what was in her possession
19 which we showed to Your Honor.

20 BY THE COURT:

21 Q. Mr. Heyward, you do understand that when you are
22 released from the Department of Corrections that you would
23 be required to register as a sex offender?

24 A. Yes, ma'am.

25 Q. And you understand that if you fail to register or you

1 fail to report to the sheriff in the county in which you
2 live, or if you move to another state, if you fail to
3 report to the sheriff in that particular -- law enforcement
4 in that particular county to register, that those are
5 separate criminal offenses? So, your failure to register
6 is a separate crime; your failure to go back and renew your
7 registration is also a crime. Do you understand that?

8 A. Yes, ma'am.

9 SENTENCE OF THE COURT:

10 THE COURT: I understand the charge that Mr. Heyward
11 has pled guilty to today. I understand that there are
12 other charges that were dismissed in conjunction with this
13 charge, with this particular plea. I note that all the
14 charges are very serious in nature. What I've heard today
15 seems to imply that while this was one particular incident
16 that occurred, that there was other activity taking place
17 around the same time. And I understand he's pleading to
18 the criminal sexual conduct with a minor under the age of
19 sixteen and that one charge, and that was one offence with
20 that one particular individual. And there's no evidence
21 otherwise at this particular point that's been presented to
22 me, and he's not charged with anything else in the form of
23 criminal sexual conduct.

24 But I can't ignore that there apparently is some other
25 activity that's taking place. And I understand that those

1 charges are being dismissed, that he's not pleading to
2 those charges, but it certainly involves, seems to involve
3 some activity and not just a situation where he shows up at
4 this place and ends up having sex with someone who's under
5 the age of sixteen. And so I don't think that a three to
6 five year prison time is appropriate under those
7 circumstances. And I am giving him some benefit from the
8 idea that he is -- that there are other charges that are
9 being dismissed, and that that was in exchange for his plea
10 today, and also understanding that it's 85 percent time as
11 well.

12 And so, Mr. Heyward, on this particular charge, I'm
13 going to sentence you to the Department of Corrections for
14 a period of fifteen years. I'll give you credit for the
15 eighteen months that you've currently served in jail. Good
16 luck to you, sir.

17 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 12TH DAY OF OCTOBER, 2017.

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

S/ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

JULY 15TH, 2018

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF GENERAL SESSIONS
FOR THE FIFTH JUDICIAL CIRCUIT

The State of South Carolina,

Warrant Number: 2016A4010202086

vs.

**NOTICE OF MOTION AND MOTION TO
RECONSIDER SENTENCE**

Geordi Jerrell Heyward,

Defendant.

COPY

TO: The Honorable Alison Renee Lee:

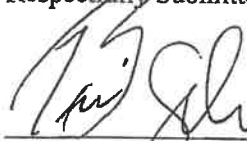
YOU WILL PLEASE TAKE NOTICE that as soon as counsel may be heard, the defense will move before the Court for an order setting aside the sentence passed by the Honorable Alison Renee Lee upon the above named Defendant on October 12, 2017.

This motion is made on the basis that on Thursday, September 7, 2017, an email from the Fifth Circuit Solicitor's Office relayed an offer for the Defendant to plead guilty with no recommendation from the State and both sentences would run concurrent with any probation revocation. Subsequently, on October 4, 2017, a further offer was made by the Fifth Circuit Solicitor's Office to dismiss the Human Trafficking charges and Defendant to plead guilty to the Criminal Sexual Conduct with a Minor, 2nd degree, with no recommendation to sentencing. On the morning of October 12, 2017, Counsel reaffirmed the offer with the State for no sentencing recommendation for a plea of guilty to the CSC with a Minor 2nd degree offense which the Fifth Circuit Solicitor's Office reestablished. However, during the hearing before the Honorable Alison Renee Lee, the Assistant Solicitor made specific sentencing recommendations on numerous occasions including to sentence Defendant to the maximum penalty of 20 years or, inversely and at minimum, to the higher end of the required maximum sentenced allowed, specifically between 15 to 20 years. This is in clear violation of the offer of a plea deal and the acceptance of a plea deal made by the Defendant, Geordi Heyeward.

[SIGNATURE PAGE TO FOLLOW]

FILED
OCT 11 2017
CLERK OF COURT
FIFTH JUDICIAL CIRCUIT
SOUTH CAROLINA

Respectfully Submitted,



Bakari T. Sellers, Esquire
Attorney for the Defendant

STROM LAW FIRM, LLC
2110 N. Beltline Boulevard
Columbia, South Carolina 29204
(803) 252-4800

Columbia, South Carolina

This 18th day of October, 2017.

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND	)	2017-GS-40-00540
	)	
	)	
	)	
State of South Carolina	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Geordi Jerell Heyward	)	)
<u>DEFENDANT</u>	)	December 4, 2017
		Columbia, South Carolina

B E F O R E:

THE HONORABLE ALISON RENEE LEE, JUDGE.

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

NICOLE SIMPSON, ASSISTANT SOLICITOR
Attorney for the State

BAKARI SELLERS, ESQ.
Attorney for the Defendant

KESHIA REED
Official Court Reporter

I N D E X

(WHEREUPON, no witnesses were called.)

1 THE COURT: Yes, Ms. Simpson.

2 MS. SIMPSON: Thank you, Your Honor. May it
3 please the Court, standing before you is Geordi Heyward
4 represented by Bakari Sellers of the private bar. We are
5 here for the defendant's motion to reconsider sentence.
6 He did plead before you, I believe, back on October 12th
7 of this year prepared to go forward with trial, but he
8 pled to one count of criminal sexual conduct with a minor
9 second degree. The State dismissed all the companion
10 human trafficking charges as well as contributing to the
11 delinquency of a minor and that would be the extent. I'll
12 be happy to remind you of any additional.

13 THE COURT: And the sentence was?

14 MS. SIMPSON: Fifteen years to run concurrent to
15 a probation revocation on which he was also facing 15
16 year. I'm not sure what he actually got on that
17 revocation.

18 MR. SELLERS: It's not been handled yet.

19 MS. SIMPSON: Oh, it's not ---

20 MR. SELLERS: Until this is resolved.

21 THE COURT: Fifteen years on the CSC with a
22 minor second?

23 MS. SIMPSON: Yes, Your Honor.

24 THE COURT: And then the probation matter was
25 separate?

1 MR. SELLERS: The probation matter, Your Honor,
2 has not been handled yet until these charges are resolved,
3 Your Honor.

4 MS. SIMPSON: And he was concurrently on
5 probation for two counts of common law strong armed
6 robbery for which he actually received 15 years suspended
7 to four years of probation as well as the charge of
8 criminal conspiracy.

9 THE COURT: I'm sorry 15 years suspended to four
10 years probation and what?

11 MS. SIMPSON: And a criminal conspiracy charge.

12 THE COURT: Which is five years or what?

13 MS. SIMPSON: Five years suspended to four years
14 probation.

15 THE COURT: And I believe I remember the facts.
16 There were several young ladies he was accused of having
17 some sexual contact with. One of the young ladies not
18 connected to the trafficking.

19 MS. SIMPSON: Well, she was involved in the
20 trafficking ---

21 THE COURT: She was involved in it, but he was
22 not directly involved with the trafficking. He was the
23 one who was suppose to be guarding them more less.

24 MS. SIMPSON: So he was charged with the
25 trafficking, but that is not what he pled to.

1 THE COURT: Okay. So I basically got the facts
2 kind of correct.

3 MS. SIMPSON: And I'll add in, Your Honor, too
4 there were two other and are two other co-defendants. Mr.
5 Bates has not been resolved yet. And Danielle Burns who
6 is going to cooperate with the State she did plead guilty
7 to one count of human trafficking and that sentence was
8 deferred.

9 THE COURT: Yes, sir, Mr. Sellers.

10 MR. SELLERS: Thank you, Your Honor. The reason
11 that we come before the Court with this motion is on
12 September 7th -- or we're asking that the sentence be set
13 aside. On September 7th, we received an e-mail from the
14 Fifth Circuit Solicitor's office that related to an offer
15 for the defendant to plead guilty with no recommendation
16 from the State and both sentences would run concurrent
17 with any probation revocation. Subsequently on
18 October 4th 2017, a further offer was made by Fifth
19 Circuit Solicitor's office to dismiss the human
20 trafficking charges and the defendant to plead guilty to
21 CSC with a minor second degree again with no
22 recommendation for sentencing, that was reaffirmed on
23 October 12th.

24 However, during the hearing before Your Honor,
25 the assistant solicitor made specific sentencing

1 recommendations on numerous occasions including to
2 sentence the defendant to the maximum penalty of 20 years
3 or adversely at a minimum to the higher end of the
4 required maximum sentence allowed specifically 15 to 20
5 years, Your Honor. I want to approach Your Honor and I
6 have an e-mail from the Solicitor's office on
7 September 7th and then another e-mail on October 4th
8 relaying these offers, Your Honor.

9 Your Honor, it's pretty clear that the
10 Solicitor's office violated the terms of this offer, deal
11 in acceptance and we feel as if to maintain, you know, the
12 sanctity of the defense counsel working with the
13 Solicitor's office that there has to be some ability for
14 us to have that level of trust as we go back and forth.
15 With that being said in the violation of this plea offer
16 that was made and plea deal that was made, we would ask
17 that you set aside the sentence and that my client be
18 allowed to be resentenced. And if, Your Honor, would like
19 to hear that resentencing at the appropriate time so be
20 it. If she feels as if because that violation was made in
21 front of her and needs to be heard in front of another
22 judge, so be it as well.

23 MS. SIMPSON: And, Your Honor, if I may with
24 respect to what counsel has handed up, the initial offer
25 was for CSC with a minor second and one count of human

1 trafficking at that time as stated there was no
2 recommendation. In the mean time, defense counsel came
3 back and wanted him to be allowed to plead to CSC third
4 degree, which was not on the table. So we were back and
5 forth with respect to conversations and negotiations. As
6 to the October 4th, my response indicated that we would be
7 willing to dismiss the human trafficking charges, but your
8 client would need to plead to the criminal sexual conduct
9 with a minor second degree. I did not put that there
10 would be no recommendation at that time.

11 Additionally, Your Honor, with respect to the
12 actual plea and I do not have a transcript in front of me.
13 Negotiations were put on the record and made clear and
14 gone through. At no point did I say the State was taking
15 no position with respect to sentencing. And at that time
16 counsel had an issue with the plea, he should have brought
17 it up, but it was my understanding that the offer changes
18 as we discussed different things. And I specifically did
19 not put in the recommendation as to once we dismissed the
20 human trafficking.

21 MR. SELLERS: Your Honor, the basic tenants of
22 contract law are offer and acceptance are pretty clear. I
23 mean, she made an offer. Your Honor, the offer was CSC
24 second human trafficking with no recommendation. I ask
25 that that be reduced to a CSC third. She said no. With

1 that being stated that she said no, she dropped the human
2 trafficking charge. I mean, it's pretty clear that the
3 remaining tenants of that offer remain in place. I mean,
4 that's fundamental contract law. No recommendation stays
5 in place and she made very gross recommendations on the
6 record, Your Honor. She said 15 years, 15 to 20 years, 20
7 years multiple times, that's a clear violation of the
8 deal.

9 MS. SIMPSON: And, Your Honor, if I may as well
10 with respect to that, it is a recommendation. I believe,
11 Your Honor, if you're inclined to consider defense's
12 motion, you indicated that you consider all the facts and
13 it was just a recommendation and that he could be
14 sentenced anywhere within that range. And as I stated
15 even in Mr. Sellers response to mine is we accept your
16 offer to plead to the sole charge of CSC second with a
17 minor as well as handle his outstanding probation
18 violation concurrently. So our agreement -- my
19 understanding is we would take a position. If I was going
20 to state, I would not take a position. I would have done
21 that when asked about the plea negotiation. And just for
22 the record too, Ms. Bouknight who's not the victim, the
23 mother of the victim who was actually the victim of the
24 CSC that she's the victim -- is the mother of one of the
25 minors that was involved. She is present here in the

1 courtroom.

2 MR. SELLERS: As a matter of policy, I'll be
3 brief, Your Honor. Adversely, what the Solicitor said
4 would also be true. I think, that if she wanted to make a
5 recommendation and then would have been stated in any of
6 these documents and that was never stated at all. The
7 only thing that was stated throughout this entire
8 negotiation that there would be no recommendation.
9 However, Your Honor, if we were to go down the path that
10 the Assistant Solicitor wants you to go, which simply
11 states that you can make an offer, that offer states no
12 recommendation. And then you can come in and make a
13 recommendation to Your Honor based upon the State's
14 position. Then as defense counsel, I mean, what does that
15 mean for us. I mean, that sets the standard for bad
16 policy because now the Solicitor's office can come in with
17 unfettered ability to make any recommendation that they so
18 choose. We just ask that the offer remain intact and we
19 have a fair balance of defense counsel to defend our
20 client, ask for a plea, a reasonable plea, a reasonable
21 sentence with no recommendation for sentencing and we
22 believe that the -- not only with the spirit, but the
23 actual text of the offer was violated..

24 THE COURT: If you all would give me just a
25 moment please.

1 (WHEREUPON, a pause in the proceedings.)

2 THE COURT: The only information -- I received
3 an e-mail about the plea that Mr. Heyward was going to
4 plead guilty to one count of CSC with a minor second. The
5 State is dismissing three counts of human trafficking and
6 minors under age 18 as well as a charge for contributing
7 to the delinquency of a minor. Defendant's facing 15
8 years on probation revocation. The State will recommend
9 that the sentence run concurrent to the probation
10 revocation and that the victim would be present and that
11 was the only thing that was expressed to me. I don't have
12 anything written in my notes otherwise.

13 At the time that the plea was presented, there
14 was no recommendation by the State. After the victim
15 impact, there was request for 15 to 20 years. I heard
16 from the victim's mother or godmother. And then there was
17 a recommendation of three to five years and I think I
18 indicated that I would not be inclined to do three to five
19 years. That based upon the facts and the prior record, I
20 thought that -- and the fact that there was a pending
21 revocation that would run concurrent, that was one of the
22 reasons why I impose the sentence that I did. What I hear
23 you asking, Mr. Sellers, is that I just consider simply
24 the information that was sent regarding the offer, the
25 plea offer and the fact that the plea offer doesn't say

1 specifically that the State was going to make any argument
2 relating to the sentence to be imposed.

3 MR. SELLERS: Correct, Your Honor. As you
4 stated, the State did make that argument of 15 or 20
5 years. And I believe the exact quote was 20 years. If
6 not 20 years, then the high end being 15 or 20, Your
7 Honor. And to clarify, Your Honor, there is no
8 relationship between the person who testified and the
9 alleged victim.

10 THE COURT: Yes, I understood that. I
11 understood that the person who spoke at the hearing is the
12 same person who's here today, who was not related to the
13 victim in this particular instance with this particular
14 charge.

15 MR. SELLERS: Correct.

16 THE COURT: I did understand that at the time.
17 But I think what I considered at the time were the
18 circumstances in which everything occurred and not
19 necessarily -- I understand that he was not directly
20 implicated or the argument was not that he was directly
21 implicated in coercing the girls to be at the location
22 where they were ---

23 MR. SELLERS: Correct.

24 THE COURT: --- based upon the facts that I have
25 at that particular time, but that he was aware of what was

1 going on even though he may not have played apart in
2 initially convincing the girls to be there at that place
3 or taking the girls and having them be at that particular
4 place.

5 I'm going to deny the motion. I think it's one
6 of those situations which could be close, but given the
7 last statements in the October 4th e-mail that says as to
8 the offer we would be willing to dismiss the human
9 trafficking charges which your client will need to plead
10 to CSC with a minor second degree which says to me, you
11 know, plead straight up to that charge. And then what I
12 hear you saying is that if they were planning to make an
13 argument with the range of sentencing, then they should
14 have said that in the e-mail.

15 MR. SELLERS: I'm actually stating that the
16 original terms of the first offer because I made a counter
17 offer, then those terms still apply. The only thing that
18 changed from that was a reduction of the human
19 trafficking, so the terms of no -- the terms of offer and
20 acceptance of no recommendations still apply. The only
21 thing -- nothing's changed in the offer other human
22 trafficking has been dismissed. The CSC second still
23 remains as does the no recommendation, Your Honor.

24 THE COURT: I can't say that I necessarily agree
25 with that.

1 MR. SELLERS: Fair, Your Honor.

2 MS. SIMPSON: Thank you, Your Honor.

3 MR. SELLERS: Thank you, Your Honor.

4 THE COURT: Thank you.

5 END OF REQUESTED TRANSCRIPT

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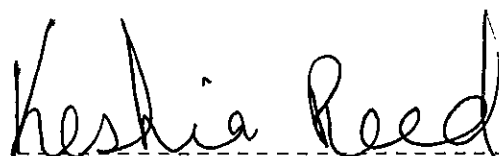
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed paged, numbered 1 through 14, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of General Sessions for Richland County, South Carolina, on the 4th day of December, 2017.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 9th day of July 2018.



Keshia Reed, Court Reporter

17
540STATE OF SOUTH CAROLINA
COUNTY OF RICHLANDIN THE COURT OF GENERAL SESSIONS
FOR THE FIFTH JUDICIAL CIRCUIT

State of South Carolina

Indictment No.: 2017GS4000540

vs.

Geordi Jerell Heyward,

**ORDER DENYING MOTION TO
RECONSIDER SENTENCE**

Defendant.

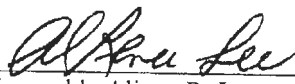
This matter came before me on December 4, 2017 by motion of Defendant's attorney, Bakari T. Sellers, who petitioned this Court for a reconsideration of sentence. The defendant was present alongside his aforementioned attorney. The State was represented by Assistant Solicitor Nicole M. Simpson of the Richland County Solicitor's Office.

The Court finds the following facts to exist in this case:

1. The Defendant was arrested on or about June 29, 2016 and charged with Contributing to the Delinquency of a Minor, CSC with Minor < 16 years of age 2nd degree, Promoting the Prostitution of a Minor (3 counts), and a Violation of Probation.
2. That the Assistant Solicitor made an offer to the Defendant prior to and after the scheduled date of trial.
3. That there was not a violation of the plea offer by the Assistant Solicitor in their request for a consideration for the higher end of the maximum sentence allowed.

THEREFORE, the Motion to Reconsider Sentence is DENIED.

IT IS SO ORDERED.


Honorable Alison R. Lee
Fifth Judicial Circuit

Columbia, South Carolina

This 21st day of March, 2018

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on July 19, 2017, the
Grand Jurors of Richland County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR
2nd DEGREE (AGE 11-14)

That Geordi Jerell Heyward did in Richland County, State of South Carolina, on or about June 27, 2016 willfully, unlawfully and feloniously engage in sexual battery with a minor, who was less than fourteen (14) years of age but who was at least eleven (11) years of age, whose date of birth is November 23, 2000, and the said Defendant was in a position of familial, custodial, or official authority to coerce the said victim to submit and/or the defendant was older than the victim, in violation of Section 16-03-655(C) [formerly Section 16-3-655(3)], S. C. Code of Laws, 1976, as amended.

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



DAN JOHNSON, SOLICITOR

WITNESSES

(S)

MALDANADO - TCSO

B. Post

ARREST WARRANT NUMBER

DP17013

ACTION OF GRAND JURY**TRUE BILL**

Kitt
 Foreperson of Grand Jury
 Date:

JUL 20 2017

VERDICT

Foreperson of Petit Jury
 Date:

DOCKET NO. 2017GS4000540

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JULY TERM 2017

42

THE STATE

vs.

Geordi Jerell Heyward

Indictment for
 SEX / CRIMINAL SEXUAL CONDUCT WITH
 MINOR, OR ATTEMPT - VICTIM UNDER 16
 YEARS OF AGE - SECOND DEGREE

SC Code: 16-03-0655(B)(2)
 CDR Code: 0397

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

Defendant

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

Defendant

Witness:

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

FILED
 OF CRIMINAL
 JUDGE
 G. C. C. PLS. AND G.S.
 RICHLAND COUNTY
 SOUTH CAROLINA

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

51

COUNTY OF Richland
 STATE VS.
Geordi Jerrell Heyward

AKA:

Race: BLACK Sex: Age: DOB: SS#: Address: City, State, Zip: DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

☐ CONVICTED OF or ☒ PLEADSTO: Sex / Criminal sexual conduct with minor, or Attempt - victim under 16 years of age - Second degreein violation of § 16-03-0655(B)(2) 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's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST: Nicholas M. Simpson 77500 SC Bar# Defendant Attorney for Defendant 79714 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 15 days/months/years 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. 18 mos☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

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

TOTAL

\$ Clerk of Court/ Deputy Clerk Jeanette McBrideCourt Reporter: Harris

SCCA/217 (07/2016)

PTUP days/hours Public Service EmploymentObtain 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 FundOther: Register Sex Offender☐ Appointed PD or appointed other counsel.

Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge Judge Code: Sentence Date: 04/05/2017

FORM 5

2019CP400 0775

STATE OF SOUTH CAROLINA)

County of Richland)Geordi Jervell Heyward #374238)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McCormick Correctional Institution, 386 redemption way, McCormick, S.C. 29899
2. Name and location of Court which imposed sentence Richland County Court of General Sessions 1701 main st. Columbia, S.C. 29201
3. Name(s) of co-defendant(s) (if any) danielle burns, Kristopher davis
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2017654000540 / criminal sexual conduct with minor 2nd degree
 - (b) _____

RICHLAND COUNTY
 FILED
 2019 FEB -6 PM 3:01
 JEANNETTE W. MCBRIDE
 C.C.P. & G.S.

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Sentenced on October 12, 2017
- (b) Criminal sexual conduct with minor 2nd degree 15 years
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Applicant appellate attorney stated it was no issue that he could
- (b) raise on direct appeal.

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See attachment
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attachment
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- 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?

N/A

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? yes
 (b) your trial, if any? _____
 (c) your sentencing? yes
 (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. Bakari Sellers 2110 N. beltlane boulevard columbia,
S.C. 29204
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. plea bargain
 ii. _____
 iii. _____

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

Vacate my sentence for a lesser sentence or a New
trial

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

No

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Richland)

I, Geordi Jerrell Heyward, 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.

Geordi Jerrell Heyward

SWORN to and subscribed before me this 15
day of January, 2019

Robert D. Waldeman (L.S.)
Notary Public

My Commission Expires: 9-30-26

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

I, Geovani Jervell Heyward, 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.

Geovani Jervell Heyward
Applicant

SWORN or affirmed to and subscribed before me this

15 day of January, 2019.

B. D. J. Woleman
Notary Public

My Commission Expires: 9-30-26

(A) Applicant was denied the right to effective assistance of counsel, guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution by trial counsel failure to investigate an enhancement of charge.

(B) The ground for relief states the relevant facts. see *Strickland v Washington*, 466 U.S. 668 (1984)

(C) Applicant was denied the right to effective assistance of counsel, guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution by trial counsel failure to inform defendant of state of plea offer.

(D) Applicant was denied the right to effective assistance of counsel, guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution by trial counsel failure to move to withdraw guilty plea and unhelpful plea bargains.

(E) Applicant was denied the right to effective assistance of counsel, guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution by trial counsel failure to object to sentence.

(F) Applicant was denied the right to effective assistance of counsel, guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution by trial counsel failure to advise Applicant prior to the plea of the potential sentence for the crimes.

0. and ii Grounds for Relief with Supporting Facts
60

DEC) resulting in Applicant entering an involuntary and unknowing guilty plea. Had applicant recieved proper counseling, he would not have entered a guilty plea, but would have proceeded to trial.

Deese Legend
Geordi Hayward

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
Geordi Jerrell Heyward, # 374238,	)	Case No.: 2019-CP-40-0775
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

FILED
 2020 FEB 10 AM 10:43
 JEROME L. MCBRIDE
 C.C.P. & G.S.

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed by Geordi Jerrell Heyward (Applicant) on February 6, 2019, and received by Respondent on April 15, 2019,¹ would respectfully show this Court:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In February 2017, the Richland County Grand Jury indicted Applicant on three counts of human trafficking in persons under the age of eighteen (2017-GS-40-0539, -0736, -0737) and two counts of contributing to the delinquency of a minor (2017-GS-40-0538). Subsequently, in July 2017, the Richland County Grand Jury indicted Applicant for second-degree criminal sexual conduct (CSC) with a minor (2017-CP-40-0540). The charges arose from an incident in which Applicant, along with two codefendants, kept the minor victim and two of her friends at hotel; drugged them; and forced them to have sex with various men in order to pay off an alleged debt. Plea Tr. p. 13. Applicant also sexually assaulted the minor victim. Plea Tr. pp. 14-15. The minor victim's brother located

¹ Respondent did not receive the transcript of the underlying guilty plea until January 15, 2020.

her at the hotel and paid a ransom of one-thousand dollars for her release. Guilty Plea Tr. p. 12.

Bakari Sellers, Esquire, represented Applicant. Assistant Solicitor Nicole Simpson prosecuted the case on behalf of the State. On October 12, 2017, Applicant pleaded guilty before the Honorable Alison R. Lee to one count of second-degree CSC with a minor. In exchange for the plea, the remaining charges were dismissed. The State made a sentencing recommendation of fifteen-to-twenty years. Judge Lee sentenced Applicant to imprisonment for fifteen years.

Applicant filed a motion for reconsideration, alleging the State had violated the plea agreement, which was heard by Judge Lee on December 4, 2017. Judge Lee declined to enforce the “original” agreement or alter Applicant’s sentence. Applicant did not appeal.

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

II. ALLEGATIONS

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

1. Ineffective Assistance of Counsel, in that:
 - a. Plea counsel failed “to investigate an enhancement of charge;”
 - b. Plea counsel failed “to inform defendant of state of plea offer;”
 - c. Plea counsel failed “to move to withdrawl (sic) guilty plea and unkempt (sic) plea bargains;”
 - d. Plea counsel failed “to object to sentence;”
 - e. Plea counsel failed “to advise Applicant prior to the plea of the potential sentence for the crimes resulting in Applicant entering an involuntary and unknowing guilty plea. Had

Applicant received proper counseling, he would not have entered a guilty plea but would have proceeded to trial.”

III. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant’s allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding

would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegations of ineffective assistance of counsel probably raise questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV. RESPONSE TO ALLEGATION OF INVOLUNTARY GUILTY PLEA

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

or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases.” Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between the court and defendant, between the court and defendant’s counsel, or both.” Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, “[a] guilty plea is a solemn, judicial admission of the truth of the charges” against the applicant; thus, a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, at 137-38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions “made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). “In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing.” Id. at 138-39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant’s plea. However, allegations regarding the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d

247 (1983).

V. PROCEDURE FOR AMENDMENTS TO APPLICATION

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has retained an attorney, the attorney, and not Applicant, is the only person authorized to file amendments to this application. See Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to Love v. State, Op. No. 27921 (S.C. Sup. Ct. filed Oct. 2, 2019) (Shearouse Adv. Sh. No. 39 at 14), or, alternatively, the State will request a continuance in the matter. See Love, at 24 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

VI. DENIAL OF ALL OTHER ALLEGATIONS

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

VII. PRAYER FOR RELIEF

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel and involuntary guilty plea.

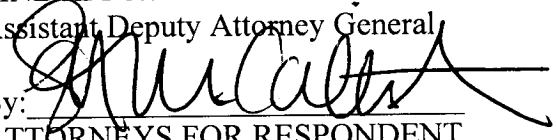
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LINDSEY A. MCCALLISTER
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

2/5, 2020

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEA

GEORDI JERELL HEYWARD)

Applicant,)

v.)

STATE OF SOUTH CAROLINA,)

Respondent.)

AMENDED APPLICATION
 FOR
 POST-CONVICTION RELIEF
 2019-CP-40-00775

RICHLAND COUNTY
 FILED
 2021 JUN 14 PM 2:09
 JEANETTE M. McBRIDE
 C.C.P., G.S., & F.C.

The Applicant alleges that his right to effective assistance of Counsel, as guaranteed by the Sixth and Fourteenth Amendments to the U. S. Constitution, as well as Article I, § 14 of the South Carolina Constitution was violated, prior to and during his trial. The Post-Conviction Relief Application previously filed *pro se* is hereby amended to include the following additional allegations of errors and omissions by plea counsel:

- 1 A) Plea Counsel neglected to bring the terms of his agreement with the Assistant Solicitor assigned to this matter to the attention of the plea judge at the plea proceeding and at the time of sentencing.
- 2 A) Plea Counsel neglected to introduce as a Defendant's Exhibit documentary evidence that would have corroborated the terms of an agreement with the State concerning the sentencing in this case.
- 3 A) Plea Counsel neglected to preserve Applicant's right to be fully and fairly heard on the question of the existence of a plea agreement in his case by neglecting to introduce an email between Plea Counsel and the Assistant Solicitor assigned to this case as a Defendant's Exhibit.
- 4 A) Plea Counsel neglected to object, at the first available opportunity, when the prosecutor in this matter failed to honor the terms of an agreement she had made with Applicant, through his Plea Attorney.
- 5 A) Plea Counsel was ineffective for failing to discuss with Applicant the issue of whether he wished to make a Motion to Withdraw his plea based upon the failure of the State to honor the terms of the plea agreement.

LS

6 A) Plea Counsel was ineffective for failing to fully argue the issues relating to the State's failure to honor an express agreement with Applicant, and for failing to introduce documentary evidence which supported the existence of that agreement, and thereby prejudiced Applicant's ability to fully argue that issue on direct appeal.

7 A) Plea Counsel was ineffective for failing to explain to Applicant the weaknesses in the State's cases on the two counts of trafficking pending against him, where the scarcity of competent evidence on those charges, bore directly on Applicant's ability to engage in a thorough analysis of the benefits and risks of going to trial versus entering a plea of guilty under the plea agreement to Criminal Sexual Conduct with a minor to which Applicant pleaded guilty.

9 A) Applicant's plea of guilty was not freely and intelligently entered inasmuch as it was entered in reliance upon information provided to him by Plea Counsel which the State subsequently denounced as untrue and not binding upon the prosecution.

10 A) Applicant's plea was not knowingly and voluntarily entered inasmuch as it was entered in strict reliance upon Plea Counsel's advice that the prosecution was not going to make any recommendation as to sentence if he agreed to plead to one count of Second Degree CSC with a minor. Applicant asserts that he would not have waived his right to trial by jury and pleaded guilty if he had know that counsel had not obtained written confirmation that the state agreed not to make any recommendation at his plea and sentencing proceeding.

11 A) Plea counsel was ineffective for neglecting to verify in writing all the terms of the plea deal in place, as extended by the State and accepted by Applicant, prior to the Plea proceeding held in this matter.

12 A) Please Counsel was ineffective for failing to establish in writing, prior to accepting a plea deal with the State on behalf of Applicant, that the State's agreement not to recommend any sentence, as expressed in its first plea offer, remained part of the plea deal after they agreed to dismiss trafficking charges against Applicant.

13 A) Plea Counsel was ineffective for failing to advise Applicant of his right to pursue a Motion to Withdraw his plea as an alternative request to the Motion to Reconsider Sentence that was filed on his behalf.

14 A)Plea Counsel was ineffective for neglecting to immediately bring to the Court's attention the fact that the State was violating a term of the plea agreement once Assistant Solicitor Simpson began arguing for a harsh sentence in this case.

15 A) Plea Counsel was ineffective for failing to present the plea judge with copies of all the emails exchanged between him and Assistant



Solicitor Simpson concerning plea negotiations in response to an request from the Judge's law clerk for documents relevant to plea offers.

16 A) Plea Counsel was ineffective for neglecting to confirm on the record which emails were handed up to the Judge during the hearing on his MTRS, by date and sender, thereby establishing some kind of reliable record of what was before the court. This was crucial where the documents sent to the Plea Judge prior to the hearing did not include multiple relevant emails.

17 A) Plea counsel was ineffective for neglecting to investigate what offers had been extended to Applicant's female co-defendant who was, as revealed through the discovery process, the main player in the alleged trafficking conspiracy, and for failing to present that information to the Plea Judge in mitigation of sentencing. Applicant submits he was prejudiced thereby where, despite the fact that his trafficking charges were dismissed, the fact that he was charged in connection to this conspiracy was well known to the Court and where the Court was aware that those counts were dismissed as part of a plea bargain, leaving the realistic possibility that those factors might influence the sentence in the charge pleaded to; second degree CSC with a minor.

18 A) Pleas counsel was ineffective for allowing his client to plead guilty on an indictment which alleged he had sexual relations with a girl over the age of 11, but under the age of 14.

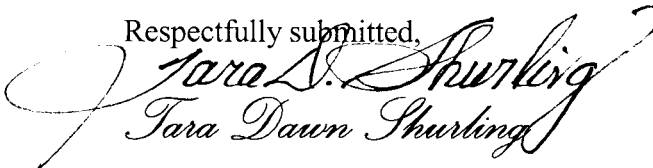
19 A) Plea Counsel was ineffective for sending Assistant Solicitor Simpson an email, acting on behalf of Applicant, accepting her offer to plead to Second Degree CSC with a minor, with all other charges being dropped, without expressly mentioning his understanding that the plea bargain included the original agreement that the state would not recommend any sentence.

20 A) Plea Counsel was ineffective for neglecting to argue in support of his argument, in his motion and at the MTYRS hearing, that the "second offer" was not in fact a new offer separate from the first, where Assistant Solicitor Simpson made the offer to plead to 2nd degree CSC with a minor, with the state dismissing the trafficking counts, without reiterating the earlier agreement to dismiss other counts against Applicant, thereby creating a reasonable belief that the dismissal of the trafficking counts was an addition to the original offer, not a superseding plea offer.

21 A) Plea Counsel was ineffective for Volunteering a proposed Order to Judge Lee denying Applicant's motion to reconsider sentence where the order presented, reflected a finding that there had been no violation of a plea bargain. Applicant was prejudiced by this error where it effectively denied Counsel for the Applicant the opportunity to argue a motion to reconsider that ruling.



The Applicant has no further amendments at this time. For the reasons set forth herein, as well as those set forth in his original application, the Applicant asserts that his right to effective assistance of Counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14, of the South Carolina Constitution, were violated prior to and during his jury trial in the Court of General Sessions. He additionally argues that his plea was not voluntarily and intelligently entered inasmuch as it was entered in reliance upon advice of counsel concerning the terms of the plea agreement with the prosecution which Plea Counsel had failed to get in writing and which the state refused to acknowledge. A copy of amendments 1A – 9A were served on opposing Counsel, Megan Jameson, Assistant Attorney General, by email on April 9, 2021 and Amendment 10 A – 21 A were served by email on April 14, 2021. Copies of these Amendments have also been served upon Plea Counsel, Bakari Sellers, and Plea Prosecutor, Nicole Marie Simpson, former Assistant Solicitor for the Fifth Judicial Circuit on today's date.

Respectfully submitted,

Tara Dawn Shurling

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SC Bar No. 5099

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ATTORNEY FOR APPLICANT.

June 10, 2021

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEA

GEORDI JERELL HEYWARD)

Applicant,)

v.)

STATE OF SOUTH CAROLINA,)

Respondent.)

**SECOND
 AMENDED APPLICATION
 FOR
 POST-CONVICTION RELIEF
 2019-CP-40-00775**

RICHLAND COUNTY
 FILED
 2021 JUN 14 PM 2:09
 JEANNETTE W. McBRIDE
 C.C.P., G.S., & F.C.

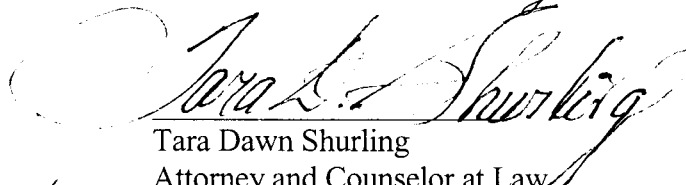
The Applicant alleges that his right to effective assistance of Counsel, as guaranteed by the Sixth and Fourteenth Amendments to the U. S. Constitution, as well as Article I, § 14 of the South Carolina Constitution was violated, prior to and during his trial. The Post-Conviction Relief Application previously served *Amended Application for PCR is hereby* amended to include the following additional allegation:

22 A) Counsel was ineffective for neglecting to use available information to more thoroughly make an argument that the last statement of an offer amounted to an amendment to the original offer as opposed to a "new" offer as has been argued by the state.

The Applicant has no further amendments at this time. For the reasons set forth herein, as well as those set forth in his original application, the Applicant asserts that his right to effective assistance of Counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14, of the South Carolina Constitution, were violated prior to and during his jury trial in the Court of General Sessions. He additionally argues that his plea was not voluntarily and intelligently entered inasmuch as it was entered in reliance upon advice of counsel concerning the terms of the plea agreement with the prosecution which Plea Counsel had failed to get in writing and which the state refused to acknowledge. A copy of amendments 1A – 9A were served on opposing Counsel, Megan Jameson,

Assistant Attorney General, by email on April 9, 2021 and Amendment 10 A – 21 A were served by email on April 14, 2021. Copies of these Amendments have also been served upon Plea Counsel, Bakari Sellers, and Plea Prosecutor, Nicole Marie Simpson, former Assistant Solicitor for the Fifth Judicial Circuit on today's date.

Respectfully submitted,

Tara Dawn Shurling

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ATTORNEY FOR APPLICANT.

This 10th June, 2021.

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

I N D E X

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End Applicant's Case in Chief

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End of Case by the State

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E X H I B I T S

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1 MS. JAMESON: May it please the court?

2 THE COURT: Yes, ma'am.

3 MS. JAMESON: Your Honor, Megan Jameson on behalf of
4 the State of South Carolina. This is the post-conviction
5 relief matter of *Geordi Heyward v. The State of South*
6 *Carolina*, docket number 2019-CP-40-0775. This is an
7 application challenging a guilty plea and sentence for
8 second degree criminal sexual conduct with a minor stemming
9 from his involvement in a human trafficking ring where
10 three fifteen-year-old girls were involved, and sexual
11 intercourse with one of those girls.

12 During the February 2017 term, the Richland County
13 grand jury indicted Mr. Heyward for three counts of
14 trafficking in persons, one count of contributing to the
15 delinquency of a minor, and then thereafter in July he was
16 indicted for second degree criminal sexual conduct with a
17 minor, and he was represented by Bakari Sellers. The case
18 was prosecuted by Nicole Simpson.

19 On October 12, 2017, he appeared before Judge Lee and
20 pled guilty as indicted to criminal sexual conduct with a
21 minor in the second degree. And pursuant to plea agreement
22 entered into between applicant and the state, the three
23 counts of human trafficking were dismissed, as well as the
24 contributing to the delinquency of a minor charge, and any
25 sentence he received was to run concurrently to a probation

1 revocation he was to receive for two counts of strong-armed
2 robbery and a criminal conspiracy conviction for which he
3 was on probation at the time of the incident and plea to be
4 handled at a different time in the future. Mr. Sellers did
5 not represent him on those probation revocation offenses.
6 Judge Lee accepted the plea and sentenced Mr. Heyward to
7 fifteen years' imprisonment.

8 Thereafter, Mr. Heyward, through his counsel, Bakari
9 Sellers, filed a motion to reconsider his sentence,
10 asserting the state had violated a plea agreement by asking
11 for a sentence of fifteen to twenty years when the
12 agreement indicated the state would not seek a specific
13 sentence. A hearing on this motion was convened before
14 Judge Lee on December 4, 2017, and at this hearing Mr.
15 Sellers presented the court with two email exchanges
16 between himself and the state regarding the plea offers
17 dated September 7 and October 4.

18 Following argument from both parties, Judge Lee orally
19 denied the motion on the record, stating she sentenced Mr.
20 Heyward to fifteen years based on the victim impact
21 statements, his prior record, and his status as a
22 probationer awaiting revocation at the time of the
23 offenses, and found that the emails did not indicate an
24 agreement for the state to remain silent as part of the
25 plea agreement.

1 On December 13, Mr. Heyward filed a notice of appeal
2 and an explanation of an appealable issue from the guilty
3 plea pursuant to Rule 203 of the appellate court rules.
4 After review by the Court of Appeals, there was a
5 determination that he could proceed forward with his appeal
6 pursuant to Rule 203, and thereafter Mr. Heyward moved to
7 withdraw his appeal, submitting two different affidavits
8 stating that he had been advised of the risks of
9 withdrawing his appeal, and he wished to withdraw his
10 appeal.

11 On January 9, 2019, the Court of Appeals issued an
12 order dismissing the appeal, and the remittitur was
13 returned to the Circuit Court on January 25 of 2019. About
14 a week later, he filed this instant PCR action on February
15 6, 2019, asserting various claims of ineffective assistance
16 of plea counsel. The state filed its return and asked for
17 an evidentiary hearing. He later retained Tara Shurling,
18 and Ms. Shurling has served two amended applications
19 setting forth twenty additional grounds for relief.

20 And at this time, the judge's packet that was
21 previously provided to Your Honor, we would ask that it be,
22 by consent, be made a Court's Exhibit Number 1. And
23 additionally, there are three chains of emails that have
24 been premarked as Applicant's 1, 2, and 3, and I believe
25 those will also be moved in by the applicant by consent.

1 I'll turn it over to Ms. Shurling unless Your Honor has any
2 questions for the state.

3 THE COURT: Is that ---

4 MS. SHURLING: Thank you.

5 THE COURT: --- correct, Ms. Shurling, about the
6 exhibits and the email chain? Is that correct?

7 MS. SHURLING: I absolutely do so.

8 THE COURT: Okay.

9 MS. SHURLING: We've reviewed them together and
10 stipulated that I would ---

11 THE COURT: Okay.

12 MS. SHURLING: --- do it by consent.

13 THE COURT: All right.

14 (COLLECTION OF DOCUMENTS MARKED INTO EVIDENCE AS
15 COURT'S EXHIBIT NUMBER 1.)

16 (EMAIL MARKED INTO EVIDENCE AS APPLICANT'S EXHIBIT
17 NUMBER 1.)

18 (EMAILS MARKED INTO EVIDENCE AS APPLICANT'S EXHIBITS
19 NUMBER 2.)

20 (EMAIL MARKED INTO EVIDENCE AS APPLICANT'S EXHIBIT
21 NUMBER 3.)

22 COURT REPORTER: Your Honor, I need everyone to speak
23 into the microphones. I'm having some difficulty hearing.
24 Thank you.

25 MS. SHURLING: Thank you.

N. SIMPSON - DIRECT EXAMINATION BY MS. SHURLING

8

1 COURT REPORTER: Can you pull that toward you?

2 MS. SHURLING: Absolutely.

3 COURT REPORTER: Thank you.

4 MS. SHURLING: People rarely have a problem with me
5 not talking loud enough but if I don't, let me know.

6 Your Honor, if I might have two seconds?

7 THE COURT: Okay.

8 (COUNSELORS CONFER.)

9 MS. SHURLING: Your Honor, at this time I'd like to
10 ensure that Your Honor has both my first amended
11 application and my second. The second one only has one
12 issue.

13 THE COURT: I do. I do.

14 MS. SHURLING: Sir?

15 THE COURT: I do.

16 MS. SHURLING: Thank you very much. Your Honor, at
17 this time I would call Nicole Simpson as my first witness.

18 NICOLE SIMPSON, BEING DULY SWORN,
19 TESTIFIES AS FOLLOWS:

20 DIRECT EXAMINATION BY MS. SHURLING:

21 Q. Good morning.

22 A. Good morning.

23 Q. Ms. Simpson, do you recall prosecuting this particular
24 case involving Geordi Jerell Heyward?

25 A. I do.

1 Q. And prior to you taking this case over, it was
2 initially handled in the Fifth Circuit Solicitor's Office
3 but Lamar F-y-a-l-l, correct?

4 A. Actually, I can clarify because that isn't correct.
5 Luck Campbell was the initial prosecutor. That is the
6 number you see on the indictment, and we worked as a group.
7 So, it wasn't taken over by anyone, as we were preparing
8 this case for trial. So, myself, Luck Campbell, and Lamar
9 Fyall were all three the prosecutors with respect to this
10 case.

11 Q. So, you would have all three participated in terms of
12 any plea offer that was made prior to your communications
13 with Mr. Sellers about a plea?

14 A. I mean, if you can clarify participation because this
15 was actually scheduled to go to trial. So, due to the
16 nature of the case, the co-defendants, and the fact that we
17 have numerous cases that we're preparing at one time -- so,
18 we all communicated.

19 Q. This has been premarked as Applicant's 1.

20 A. Okay.

21 Q. I'm just going to hand you a copy. This is an email
22 from Mr. Fyall dated April 14, 2021. I think that's one of
23 his recent -- excuse me, September 7, 2017. Would you read
24 the second paragraph where the plea offer being extended is
25 found?

N. SIMPSON - DIRECT EXAMINATION BY MS. SHURLING

10

1 A. Okay, it might be actually -- if I can just read the
2 whole email if ---

3 Q. Sure.

4 A. --- that's fine?

5 Q. That's fine.

6 A. Okay:

7 Hey, Bakari. Attached is the changes, additions
8 to the statement made by Danielle Burns. The
9 offer in this case for Mr. Heyward to plead
10 guilty to one count of CSC second with a minor
11 and one count of human trafficking, with no
12 recommendation. Both sentences will run
13 concurrent to each other, as well as his
14 probation revocation.

15 Q. Okay. So, an expressed term of that plea as extended
16 in September of 2017 was not only that he would plead to
17 one count of CSC second with a minor and one count of
18 trafficking, but also that the sentences would run
19 concurrent with each other and with a pending probation
20 matter?

21 A. That is correct.

22 Q. Okay, and, in fact, there were three counts of human
23 trafficking, correct?

24 A. I believe, based on what I just heard. I don't have
25 independent recollection ---

1 Q. Okay.

2 A. --- of all the charges. Number of cases since and
3 prior, but everything that the AG indicated sounds correct.

4 Q. Sure, and there was at least one count of contributing
5 to the delinquency of a minor and possibly two, correct?

6 A. I'm not sure of the possibly two. I would have to
7 have the clerk's office records before me. Like I said, as
8 far as this case was years ago, and I had a number of
9 things going on, so I don't want to misrepresent anything.

10 MS. SHURLING: Your Honor, I am approaching with a
11 copy of the transcript of the October 12, 2017, guilty plea
12 proceeding. There's a copy in your packet, I'm sure.

13 BY MS. SHURLING:

14 Q. If you could take a look on page 3, starting at line
15 19 through 23? Who's the speaker in that paragraph?

16 A. That would be me.

17 Q. And what do you say with regard to the contributing to
18 the delinquency of a minor count?

19 A. Do you just want me to read all of it because I -- I'd
20 be happy so it's in context.

21 Q. That's fine.

22 A. Okay:

23 Thank you, Your Honor. May it please the court?
24 Standing before you is Geordi Heyward,
25 represented by Bakari Sellers of the private bar.

1 He is also standing along with his public
2 defender on a prior -- or prior charges regarding
3 a probation revocation which we will need to put
4 on the record at the appropriate time, Mr. Banks
5 [sic] with the public defender's office. Mr.
6 Heyward is pleading guilty to one count of
7 criminal sexual conduct second degree with a
8 minor, which carries zero to twenty years. He is
9 also facing fifteen years on a probation
10 revocation. Your Honor, with respect to the
11 charges and the recommendations, I can give that
12 to you at this time, as well as there are two
13 other co-defendants in this case.

14 THE COURT: Yes, ma'am. If you would, tell me
15 what the recommendations are.

16 ME: Okay. With respect to the recommendations,
17 Your Honor, the state is dismissing three counts
18 of human trafficking, as well as one count of
19 contributing or two counts of contributing to the
20 delinquency of a minor. This was all one
21 incident. He is pleading guilty to this one
22 charge from that incident, and we have agreed to
23 run it concurrent to the probation.

24 I'm assuming it says revocation on the next page.

25 Q. Thank you much. So, at least by the account given to

1 Judge Lee at the guilty plea proceeding, you were
2 dismissing three counts -- excuse me -- three counts of
3 trafficking and two counts of contributing to the
4 difficulty of a minor?

5 A. The best way I can put it, because I don't know when
6 you read from the transcript how I was doing it, is that I
7 know he pled guilty to one count of criminal sexual conduct
8 with a minor second degree, and all other charges would be
9 dismissed.

10 Q. And as I understand it, part of the deal was also that
11 they would be concurrent with each other and concurrent
12 with the probation revocation?

13 A. Yeah, with the revocation to be held at a later date.

14 Q. Right, but ---

15 A. Of course.

16 Q. But there was ---

17 A. Yes, that was ---

18 Q. --- at the time ---

19 A. --- the actual ---

20 Q. --- of the plea bargain ---

21 A. --- recommendation.

22 Q. Exactly.

23 COURT REPORTER: Excuse me, Your Honor. There's a lot
24 of crosstalk.

25 THE COURT: Ma'am?

N. SIMPSON - DIRECT EXAMINATION BY MS. SHURLING

14

1 COURT REPORTER: There's a lot of crosstalk here.

2 WITNESS: Sorry.

3 MS. SHURLING: Sorry.

4 THE COURT: Okay.

5 MS. SHURLING: That was me and I apologize. I will do
6 better.

7 BY MS. SHURLING:

8 Q. Okay, moving forward to October 5, 2017, there is a --
9 an email from Bakari Sellers to you accepting your offer to
10 plead on the sole charge of CSC second with a minor, as
11 well as an outstanding probation violation to run
12 concurrently. Below that is an email from you, and right
13 up from your signature you ---

14 MS. JAMESON: For record purposes, are you handing her
15 Applicant's Exhibit Number 2?

16 MS. SHURLING: Yes, Number 2. I apologize.

17 MS. JAMESON: Thank you.

18 MS. SHURLING: Your Honor, Applicant's Exhibit Number
19 2.

20 THE COURT: All right. Thank you.

21 BY MS. SHURLING:

22 A. Okay, may I have just a second to read it?

23 Q. Sure.

24 (A PAUSE.)

25 A. Okay, and you want me to read just the October 4 ---

1 Q. The ---

2 A. --- 2017?

3 Q. Yes, please. Publish it for the record, please.

4 A. Yes: I've attached the pages you need.

5 All right, this email, for the record, is from myself
6 to Bakari Sellers. Copied on this email would be Ms. Luck
7 Campbell, as well as Lamar Fyall, who were also prosecutors
8 in this case.

9 I've attached the pages you need. Additionally,
10 the statements were made during our interviews
11 with the witnesses on September 21. Investigator
12 Culler with our office, Lamar, and I were
13 present. Please note there are no additional
14 witness statements. This is just information
15 from our notes. With respect to Cheeto, the
16 information we've provided to you is all we know
17 about the identity of Cheeto. The redacted cell
18 phone extraction was left out front for you to
19 pick up on August 31 and is still available out
20 front. As for the offer, we would be willing to
21 mend -- dismiss the human trafficking charges,
22 but your client will need to plead to criminal
23 sexual conduct with a minor second degree. See
24 you tomorrow. Thank you. Nicole.

25 Q. Okay. So, despite what it says on this email on

N. SIMPSON - DIRECT EXAMINATION BY MS. SHURLING

16

1 October 5, what was remaining as part of the plea bargain
2 was the fact that the contributing to the delinquency of a
3 minor charge was going to be dismissed, right?

4 MS. JAMESON: Your Honor, I'd object. This is direct.
5 I think we need some testimony from her. Tara is
6 testifying at this point, so.

7 MS. SHURLING: Okay.

8 THE COURT: Okay.

9 MS. SHURLING: I'll back up.

10 THE COURT: All right.

11 BY MS. SHURLING:

12 Q. He had one count of criminal sexual conduct with a
13 minor second degree?

14 A. Correct.

15 Q. To which he was agreeing to plead, and you were
16 agreeing to dismiss the human trafficking charges, of which
17 there were three?

18 A. Correct.

19 Q. But there was also one, possibly two -- there were
20 also one, possibly two counts of contributing to the
21 delinquency of a minor, were there not?

22 A. That were also going to be dismissed. That is ---

23 Q. And they were ---

24 A. --- correct.

25 Q. --- also going to be dismissed as part of this plea?

1 A. Yes, and ---

2 Q. Okay.

3 A. --- based on my email, and you have to understand.

4 The email only embodies certain portions. We also had

5 numerous conversations outside of it. So, it was

6 understood that he would be pleading to only one charge as

7 we were scheduled to go to trial that week.

8 Q. Okay.

9 A. So, the only charge he would be pleading guilty to

10 would be the criminal sexual conduct with a minor, and

11 essentially all other charges would be dismissed.

12 Q. I understand, and I'm sure you're familiar with the

13 Supreme Court cases expressing a very strong preference for

14 plea negotiations to all be in writing, correct?

15 A. No, I'm not.

16 Q. Okay. Well, in any ---

17 A. I'll be happy to review it if you can provide it to

18 me.

19 Q. Okay. In any event, the original offer included --

20 and I'll pick it up and make sure I get it exactly right --

21 pleading to one count of CSC second with a minor, one count

22 human trafficking with no recommendation, both sentences to

23 run concurrent not only with his probation revocation but

24 with each other, right?

25 A. Let me see that, and when you say original offer,

N. SIMPSON - DIRECT EXAMINATION BY MS. SHURLING

18

1 understand -- I just want to clarify. I don't know that
2 this was the original offer necessarily. This case has
3 been ongoing. We were scheduled for trial. Had there been
4 previous offers? I don't know, but I know at this point,
5 based on the email, this was the offer.

6 Q. Okay, and in any event, the one that was made in
7 September of 2017 before the October 15 ---

8 A. Trial date, yes.

9 Q. --- that's ---

10 A. That's the ---

11 Q. --- the previous offer?

12 A. --- offer, yes. Correct.

13 Q. And in the October 5 email, again it, it says that you
14 will: Dismiss the human trafficking charges, but your
15 client will need to plead to CSC second. Right?

16 A. Correct.

17 Q. And it doesn't reiterate the part of the September
18 email referencing that they will run concurrent with,
19 quote: The probation revocation and with each other?

20 A. The emails themselves, no, do not reflect that.

21 Q. So, the written documentation of what the plea bargain
22 is doesn't contain that information moving forward from the
23 September -- in that email to the October 5 email?

24 A. That is -- if you can restate that again? I'm sorry.

25 Q. The October 5 email following the September -- I

1 believe it's 7 email.

2 A. Yes.

3 Q. Changes in regard to the fact that you're going to
4 dismiss all three trafficking charges, but it doesn't say
5 anything about the other charges, the one of two
6 contributing to the delinquency of a minor, and it doesn't
7 reiterate that the concurrency will apply both to each
8 other and to the probation violation.

9 A. The emails themselves do not; however, conversations
10 may prove otherwise.

11 Q. Okay.

12 A. Sorry.

13 Q. And when a motion to reconsider was done in this case
14 and there was a hearing held -- well, first off. You got a
15 copy of the motion to reconsider prior to that hearing, did
16 you not?

17 A. I did receive that.

18 Q. Okay, and you're aware that there is mention in the
19 motion itself, the motion for reconsideration, to the fact
20 that he had confirmed with you the terms of the plea
21 bargain that morning before the hearing?

22 A. I need to see a copy of the transcript, if you don't
23 mind, and what you're referring to.

24 MS. SHURLING: A moment's indulgence, Your Honor.

25 THE COURT: Yes.

1 (COUNSELORS CONFER.)

2 WITNESS: And if it helps, I probably do have a copy
3 of it. I just -- I would have to find it.

4 MS. SHURLING: Okay. Well, I'll hand you this one.

5 WITNESS: Okay.

6 (A PAUSE.)

7 BY MS. SHURLING:

8 Q. Okay, in the second paragraph starting with: On. It's
9 not highlighted. But it indicates that Mr. Sellers in the
10 motion to reconsider said he had confirmed the no
11 recommendation term with you on the morning of the plea and
12 sentencing, correct?

13 A. As this is not my document, I would need to take a
14 moment.

15 Q. Certainly.

16 A. To look over it.

17 Q. I wasn't rushing you. If I sounded like that, I
18 apologize.

19 (A PAUSE.)

20 A. Yes, and I would just note this is the motion to
21 reconsider sentence, so this is not my agreement
22 necessarily, but this is what was represented by Mr.
23 Sellers.

24 Q. I understand. Do you recall your conversation with
25 Mr. Sellers that morning? I know it's been a long time.

1 A. Independent recollection, to be honest with you, I do
2 not.

3 Q. Okay. Do you dispute that you had that conversation
4 with him?

5 A. As I can't recall -- I'm sure we had a conversation.
6 The specifics of that conversation, I cannot tell you.

7 Q. Okay.

8 A. I don't independently recall ---

9 Q. Okay.

10 A. --- the nature of that.

11 MS. SHURLING: Your Honor, I want to get a copy of
12 that when we take a break to introduce as Applicant's 4.

13 MS. JAMESON: No objection, but it's already been
14 introduced as a copy of Court's 1 in the clerk's record.
15 It's in there.

16 MS. SHURLING: It's in that bundle?

17 MS. JAMESON: It's in that bundle.

18 MS. SHURLING: Then, Your Honor, that's superfluous.
19 We don't need to repeat it. Thank you.

20 BY MS. SHURLING:

21 Q. During the guilty plea proceeding -- wait. Let's go
22 to before the guilty plea proceeding. Was it your intent
23 to ask for a strenuous sentence in this case?

24 A. My intent was to go to trial initially, but we were
25 able to work out a plea bargain where there were no

1 recommendations, a straight-up plea. However, that means
2 Mr. Sellers could argue for what he wanted, and the state
3 could argue for what we wanted. There was no
4 recommendation except for the fact that the sentences were
5 to run concurrent to the probation violation. That is the
6 actual recommendation, which I believe I made clear on the
7 record.

8 Q. And in the original offer as extended in September, it
9 very clearly said it would also be concurrent, the charges
10 would be concurrent to each other, which became moot when
11 he was pleading to one. But it also referenced dismissing
12 the -- offer in September talked about pleading to one and
13 dismissing the trafficking charges, but it was silent on
14 dismissing the contributing to the delinquency of a minor
15 charge. Is that correct? Let me take another quick...

16 A. I believe it doesn't address that charge, based on my
17 review. I just want to clarify. Every time you say
18 original offer, I can't confirm that that was the original
19 offer ---

20 Q. Okay.

21 A. --- in this case as it was ongoing up until the point
22 of trial.

23 Q. Okay. Well, at least on September 7 of 2017, the
24 offer as articulated was to plead to one count of CSC
25 second with a minor and one count human trafficking with no

1 recommendation. Both sentences will run concurrent to each
2 other, and I apologize. I misspoke. On the first offer,
3 there were two, so they -- it says both sentences will run
4 concurrent to each other and to his probation revocation.
5 So, the -- not the -- I'm going to quit using that word. I
6 apologize. September 7, 2017, the offer was to plead to
7 one count CSC with a minor second and one count human
8 trafficking, and they were to be concurrent to each other
9 and to the probation revocation, which would be held at a
10 later day?

11 A. All right, that's the email sent from Lamar Fyall just
12 so I know which one you're referring to.

13 Q. Yes.

14 A. That I was copied on? Correct.

15 Q. And he was part of the prosecution team?

16 A. Correct.

17 Q. So, I mean, you don't ---

18 A. I don't dispute that was the offer.

19 Q. Okay.

20 A. If that's where you're going.

21 Q. Now, when you -- and I'm ---

22 MS. SHURLING: Your Honor, I'm not going to backtrack
23 much. I don't want to beat the horse too long.

24 BY MS. SHURLING:

25 Q. But when you extended your offer, so to speak, you

1 spoke next about an offer. On October 5, 2017, you said:

2 As for the offer, we'd be willing to dismiss the
3 human trafficking charges, plural, but your
4 client will need to plead to CSC with a minor
5 second degree.

6 And that's all it says. You agree?

7 A. That's what the email says, correct.

8 Q. So -- but it was still your intent to dismiss the one
9 or two contributing to the delinquency of a minor charge?

10 A. Yeah. Any other related charges would have been
11 dismissed; he was only going to plead to the one count.

12 Q. And you were not changing your position about the
13 sentences being concurrent to each other and concurrent to
14 the probation revocation either, were you?

15 A. Based on my review of the transcript -- because, like
16 I said, a number of cases going on -- that's what I
17 conveyed to the court and as an officer of the court,
18 that's what the agreement was.

19 Q. Exactly. So, the fact that you did not reiterate your
20 commitment not to recommend a sentence was not unique in
21 terms of the other terms of the plea bargain, was it?

22 A. I'm afraid I don't exactly understand your question.

23 Q. Okay. Well, let me rephrase. If I wasn't being
24 articulate, I apologize. You had an offer that was
25 extended by another member of the team in September of

1 2017?

2 A. Yeah. We're all the state, so ---

3 Q. Right.

4 A. --- the offers ---

5 Q. All.

6 A. --- would have come from all of us.

7 Q. And I'd have made that point if you didn't. Then when
8 you talked about the change to the plea -- in the plea
9 negotiation on October 5, you're talking about dismissing
10 the trafficking charges, plural, and pleading to one count
11 of CSC second, correct?

12 A. Correct.

13 Q. Okay. My point is you didn't reiterate the other
14 terms of the plea agreement, which was to dismiss either
15 one or two -- the record's a little muddy on that point --
16 two, one or two counts of contributing to the delinquency
17 of a minor, right?

18 A. In the email, no, but if I could just kind of clarify
19 things, a couple of things?

20 Q. If, if you'll let me ask my questions first.

21 A. Oh, I thought ---

22 Q. The state ---

23 MS. JAMESON: No. I'd, I'd ask that the witness be
24 able to fully explain her answers.

25 THE COURT: Okay. Please do so, ma'am.

1 WITNESS: Thank you, Your Honor.

2 BY MS. SHURLING:

3 A. Just briefly, just so you understand. Of course that
4 is exactly what the email says. We have lots of
5 conversations outside of that, but it was made clear on the
6 record in the transcript that I reviewed in front of the --
7 during the plea -- the actual plea, not the motion to
8 reconsider -- and that would have been what the offer was.

9 Q. Okay, and in that...

10 MS. SHURLING: One moment, Your Honor, please.
11 Court's indulgence.

12 (A PAUSE.)

13 BY MS. SHURLING:

14 Q. Going back, do you have your copy of the guilty plea
15 transcript?

16 A. I do. I'll have to see where it is in there, but I
17 can get it.

18 (A PAUSE.)

19 A. Thank you, and we're looking at the plea transcript,
20 I'm sorry, from October 12?

21 Q. Yes.

22 A. Okay.

23 Q. And looking at the last paragraph on page 3 going over
24 to the top of page 4.

25 A. Okay. Would you like me to publish it for the court

1 because this is me speaking, correct?

2 Q. You're welcome to.

3 MS. SHURLING: Your Honor, we're referencing page 3,
4 line 19 through four, line 3.

5 MS. JAMESON: Your Honor, just for expediency, Ms.
6 Simpson already published all of page 3 at the start of her
7 testimony.

8 THE COURT: Okay, but doesn't it also include part of
9 page 4 at the top that I'm looking at?

10 MS. SHURLING: Yes, sir, Your Honor, and I won't
11 digress far, but I just have one question.

12 THE COURT: Go ahead.

13 BY MS. SHURLING:

14 Q. Ms. Simpson, you've already said that the agreement
15 was -- when he pled to the one count of CSC with a minor
16 second, you were dismissing all the other charges, correct?

17 A. Correct.

18 Q. And you didn't say that on the record here, but you've
19 acknowledged that that was your intent?

20 A. I believe in full context, it's understood that he was
21 pleading to the one charge, and any other charges related
22 to this incident would be dismissed.

23 With respect to this one paragraph, I don't see that
24 that's it, but it's contained -- the terms of the plea
25 agreement are contained in my statement to the court.

N. SIMPSON - DIRECT EXAMINATION / CROSS-EXAMINATION

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1 Q. Well, with regard to what the court was told, it
2 referenced dismissing the trafficking charges and -- as
3 well as one count of contributing or two counts
4 contributing to the delinquency of a minor, correct?

5 A. Correct.

6 Q. Okay.

7 MS. SHURLING: No further questions at this time.

8 THE COURT: Ma'am.

9 MS. JAMESON: Moment's indulgence, Your Honor.

10 (A PAUSE.)

11 CROSS-EXAMINATION BY MS. JAMESON:

12 Q. Good morning, Ms. Simpson.

13 A. Good morning.

14 Q. For clarity of the record, and some of the allegations
15 involved, other things in the plea agreement, I'm going to,
16 I'm going to have you go back a little bit. Where were you
17 -- how long had you been in the solicitor's office when you
18 took over this case, or when were you assigned to this
19 case?

20 A. I'll say -- oh, you're going to ask me about numbers
21 and age and years. So, I started after I clerked for Judge
22 -- 2009 with the Fifth Circuit. I eventually went in 2015
23 to the Greenville -- the 13th Circuit Solicitor's Office,
24 and then I came back to prosecute here.

25 Q. And I believe you testified on direct that you were

1 part of a trial team on this case with Luck Campbell and
2 Lamar ---

3 A. Correct.

4 Q. --- Fyall, correct?

5 A. Correct.

6 Q. What type of cases did you generally handle when you
7 were at the solicitor's office?

8 A. Well, from the beginning of time, pretty much
9 everything, but towards the -- I hate to say the end of my
10 time at the solicitor's office, primarily violent crimes.
11 I was actually on the violent crimes grant at one point,
12 which included murder, armed robbery, anything deemed
13 violent pursuant to the statute. I worked significantly in
14 Kershaw County with criminal sexual conduct with minor
15 cases; that was the one kind of, I guess, niche in Kershaw
16 County, but I was primarily focused here in Richland
17 County.

18 Q. Okay, with an emphasis on criminal sexual conduct with
19 a minor cases?

20 A. All violent crimes.

21 Q. All violent crimes, okay. Can you give the court a
22 brief background on the facts giving rise to this charge
23 and the dismissed charges? It was one incident, correct?

24 A. Correct.

25 Q. Can you describe -- perhaps start with the trafficking

1 ring?

2 A. Basically this case -- and bear with me. Like I said,
3 without reading directly from my notes from the transcript,
4 I had very similar cases. It involved three co-defendants,
5 to include Geordi Heyward, a.k.a. Ghost, as well Kristopher
6 Davis, and Danielle Burns. Ms. Burns was actually in DJJ
7 custody, I believe, with the three minor victims in this
8 case. And the mother of MINOR 1 [phonetic] was
9 extremely involved.

10 So, the girls had gone missing, runaways-deemed
11 status. Somehow encountered these individuals at some
12 point, at which time essentially the ring -- and it's, it's
13 not like a hand of one, hand of all. Every person had a
14 role to play within this case, and it was deemed that Mr.
15 Heyward was essentially the muscle. Ms. Burns was familiar
16 with the minor victims as she, herself, was younger, and
17 Kristopher Davis was associated with Mr. Heyward.

18 So, during the course of this, of course the girls
19 were provided clothing, kept essentially against their
20 will, and I believe, you know, sexual favors posted on
21 whatever website at the time. And with respect to Mr.
22 Heyward, he specifically is the only one that was charged
23 with criminal sexual conduct with a minor due to the
24 statements from MINOR 3, who would have been the minor
25 in this case, and that is the charge that he pled guilty

1 to.

2 Q. Okay. So, to back up a little bit, there were three
3 minor victims, three fifteen-year-old ---

4 A. Correct.

5 Q. --- children, correct, and they were being trafficked
6 out of various hotels in Richland County, correct?

7 A. Correct.

8 Q. And you said everyone had a role, and I think Ms.
9 Burns, you said, might have been more, like, more of a
10 communicator, organizer? Is that a fair assessment?

11 A. Yes. That's very fair.

12 Q. Okay, and you describe now and, I think, also at the
13 plea that Mr. Heyward was the muscle. Can you elaborate on
14 that a little bit or where that comes up?

15 A. Yeah. That's kind of -- I just use general
16 terminology in the way I speak, so if it's not the correct,
17 you know, politically correct way to put it, but basically
18 after speaking and interviewing -- and you have to
19 understand that we were preparing for -- this case for
20 trial. So, it wasn't just like reading statements from law
21 enforcement or anything else. It was actually speaking
22 with the victims themselves, too.

23 So, pretty much based on their testimony, as best as I
24 recall, he was always around. Did he physically harm them?
25 I had no indication of that, but he was the guard. He was

N. SIMPSON - CROSS-EXAMINATION BY MS. JAMESON

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1 basically, like, I'm not going to let you leave was how
2 they perceived it as well. So, he was around. If someone
3 came around, for lack of a better word john, whatever, to
4 have sex, he, he would be present.

5 Q. Okay, and I believe you put on the record at the plea
6 transcript, but one of the minor victims also said that
7 when they potentially were going to get some help and try
8 to escape at one time, Mr. Heyward called and threatened
9 them that they'd better not leave. Is that correct?

10 A. If that's in the transcript. I do recall where they
11 did attempt to get away, and he was the one in the way, and
12 if you point me to the transcript, I'll be happy to look at
13 it. I just don't recall where it is at this time.

14 Q. If you will look at page 14 on to 15 of the guilty
15 plea transcript.

16 A. Yes, ma'am.

17 Q. Starting on line 15, and just kind of review it to
18 yourself.

19 MS. SHURLING: I'm sorry, could you repeat the page
20 cite again?

21 THE COURT: 14 on to 15.

22 MS. SHURLING: Thank you.

23 (A PAUSE.)

24 BY MS. JAMESON:

25 A. Okay, I just -- I've ended on the line:

1 It started hurting, and she told him to stop, and
2 he said you just need to take the pain and learn
3 how to take it and kept going.

4 Q. And is that ---

5 A. It was a onetime incident.

6 Q. Is that in reference to his sexual assault of, of Miss
7 [REDACTED] MINOR 3?

8 A. Yes, ma'am.

9 Q. And was he the only one of the three co-defendants who
10 the evidence showed sexually assaulted one of these
11 fifteen-year-old children?

12 A. Based on our investigation and review, that is
13 correct.

14 Q. And he was indicted for three counts of human
15 trafficking, correct?

16 A. Correct.

17 Q. And at least one count of contributing to the
18 delinquency of the minor?

19 A. Yes.

20 Q. Minors, and was he the only -- he was the only one who
21 was indicted for criminal sexual conduct with a minor based
22 on his assault of [REDACTED] MINOR 3, correct?

23 A. Correct. He was the only individual that we had
24 actual evidence and statements that they had sex with one
25 of the minors.

N. SIMPSON - CROSS-EXAMINATION BY MS. JAMESON

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1 Q. Did the state ever consider seeking kidnapping charges
2 against Mr. Heyward?

3 A. Did we consider it? I don't know. I just -- for the
4 record, like I said, Luck Campbell probably would've been
5 technically the lead on this case, but we all worked
6 together as a team. Law enforcement pursued the charges
7 they did, and that's how we proceeded. So, we didn't seek
8 an amended or -- to directly present an indictment for
9 kidnapping.

10 Q. And at the time of the incident, Mr. Heyward was on
11 probation for some prior sets of charges, correct?

12 A. I believe it was two strong-arm robberies.

13 Q. And perhaps a criminal conspiracy as well?

14 A. Yes, perhaps. Yeah. Oh, yeah, it's right here,
15 criminal conspiracy. He actually received credit -- five
16 years upon credit for time served, suspended to probation
17 that I guess ran concurrent with the strong-arm robberies.

18 Q. And based on the evidence, did Mr. Heyward admit to
19 having sex with a fifteen-year-old child?

20 A. He did at the plea. I don't have the actual file in
21 front of me.

22 Q. Did he ever in any statements to law enforcement?

23 A. I would have to go through my recitation of the facts,
24 but if you can point me to it because I don't have the
25 actual physical files. I'm no longer in the solicitor's

1 office, and so I really don't want to make any comments
2 without seeing the actual statements of the defendant
3 himself.

4 Q. You did have statements from all three of the
5 fifteen-year-old minor victims, correct?

6 A. That is correct.

7 Q. And you had interviewed them because you were gearing
8 up for trial, correct?

9 A. Correct. We actually had to locate them. Like I
10 said, they were in DJJ, DSS runaway, you know. So -- but
11 we located them, tracked them down, had them ready to go to
12 trial.

13 Q. Were there any cooperating co-defendants?

14 A. Yes.

15 Q. Who was cooperating and what level of cooperation?

16 A. Danielle Burns, she had actually pled, and I don't --
17 I believe it's to one count of human trafficking prior to
18 Mr. Heyward's trial. Of course, no promises or hope of
19 reward were made, but she was going to testify against him.
20 And, of course, it was understood that the state would
21 convey her cooperation against Mr. Heyward should it be
22 truthful testimony.

23 And with respect to Mr. Davis, I don't believe he was
24 cooperating. He was, he was the outlier. Like, he -- I
25 don't think anything was done with respect to him.

N. SIMPSON - CROSS-EXAMINATION BY MS. JAMESON

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1 Q. And you said that Ms. Burns, Danielle Burns, was going
2 to testify at trial and you guys were gearing up for trial.
3 Trial was imminent?

4 A. Trial was that week of the plea.

5 Q. And had you conveyed to Mr. Sellers that Ms. Burns
6 would be cooperating and likely testifying?

7 A. Absolutely. In some of the emails additionally, which
8 probably may or may not be included, I don't know. But as
9 we prepare for trial, we not only turn over discovery but
10 whenever we have conversations with the witnesses, we do
11 turn over what is required pursuant to the ongoing duty to
12 disclose discovery and any statements that we would
13 potentially use at trial.

14 MS. JAMESON: Your Honor, may I approach?

15 THE COURT: Yes, ma'am.

16 BY MS. JAMESON:

17 Q. I'm going to hand you Applicant's 1, 2, and 3, which
18 are email chains. I have some questions to ask you about
19 those. If you'll look at Applicant's Number 1, which is
20 the September 7 email?

21 A. Yes, ma'am.

22 Q. The offer was that Mr. Heyward plead guilty to one
23 count of human trafficking and one count criminal sexual
24 conduct with a minor in the second degree, correct?

25 A. Correct.

1 Q. And the sentences to be concurrent to each other,
2 correct?

3 A. Yes.

4 Q. And to the probation revocation, the two counts of
5 strong-arm robbery and criminal conspiracy, correct?

6 A. Yes.

7 Q. And I know this is sent from Lamar, but you were part
8 of the trial team, and you're copied on this email,
9 correct?

10 A. Oh, yeah. We all would've agreed to the offers.

11 Q. Was your understanding that there would be -- as part
12 of the plea agreement, you would remain silent, the state
13 would remain silent as to sentencing?

14 A. At that time with no recommendation, I don't
15 specifically say that I would remain silent in this email.
16 I typically do but with no recommendation, you could think
17 that I wasn't, I wasn't making a recommendation except for
18 the fact that the sentences were to run concurrent along
19 with the probation revocation.

20 Q. I heard you say typically do. Can you expand on that?

21 A. Okay. So, there's three types of pleas as we, like,
22 we viewed it. A straight-up plea, that means, you know,
23 you can ask for what you want, no recommendations or
24 anything of that nature. If I'm making a recommendation,
25 which I do believe is indicated on the sentencing sheet,

1 that recommendation is made clear, which would be the
2 probation to run concurrent. Doesn't have to be with
3 respect to time, whatever aspect of the plea it may be.
4 And then there are negotiated sentences, which, of course,
5 should the judge choose not to accept it, we would stand
6 down and move forward. However, during a straight-up plea,
7 essentially the defense is allowed to ask for what they
8 want to and the state can ask, ask for what we want to.

9 Q. And so your, your understanding was that this was a
10 recommendation as to the probation revocation being
11 concurrent but no further recommendations as to sentencing,
12 correct? It was just straight up as to sentencing?

13 A. Correct. Once we got to the actual plea, I will say
14 this. The concurrent to the probation revocation, that was
15 part of the ongoing negotiations -- I will say that --
16 which is clearly indicated here that it would run
17 concurrent to whatever charges he pled to. But on the eve
18 of trial, we decided and worked out to dismiss the human
19 trafficking and still, as I put on the record, the
20 recommendation was for the probation revocation to run
21 concurrent to that charge.

22 Q. If you are, as part of the plea agreement, agreeing to
23 remain silent as to sentencing, do you typically put that
24 in writing with plea offers?

25 A. Typically -- and it's hard to say typically, but as a

1 general rule, I'm going to put it on the record at the
2 time. Also, you got to understand we have a number of
3 verbal conversations with different attorneys, and I will
4 indicate that I am going to remain silent, but I will also
5 put that on the record at the pleas as a general rule.

6 Q. And you did not do that in this case?

7 A. I did not.

8 Q. And so your understanding of the plea agreement was
9 not that the state would remain silent. It was that the
10 state could ask for what sentence they believed to be
11 appropriate, and Mr. Sellers could ask for what sentence he
12 believed to be appropriate?

13 A. Correct.

14 Q. I think you mentioned at the beginning one of the
15 human trafficking victim's mother was very involved?

16 A. Yeah. That would be MINOR 1's mom. She was -- as I
17 stated, these were runaway girls, which are typical victims
18 of people like Mr. Heyward and of human trafficking rings,
19 but she was very involved. MINOR 1 actually happened to
20 be one of, I believe, the best friends of MINOR 3, too,
21 because when we went out there -- that's just my
22 independent recollection, but she was involved for every
23 girl. And at every hearing, every motion to reduce bond,
24 every bond hearing, she was present speaking for --
25 speaking out for all of the victims in this case.

1 Q. Okay. You mentioned she was very involved at every
2 possible hearing you had in this case before the guilty
3 plea?

4 A. Every hearing, any time we needed to speak with her,
5 trial preparation, whatever we needed, she was always
6 actively involved in this case.

7 Q. Did you expect her to ask for the maximum sentence at
8 the plea?

9 A. Quite frankly, yes. Absolutely.

10 Q. And at the plea, she actually did ask for the maximum
11 sentence, correct?

12 A. Yes.

13 Q. Do you recall asking Judge Lee to impose a sentence,
14 impose a particular sentence?

15 A. Initially, I believe during my initial presentation of
16 the facts -- because a plea is fluid, too, so I get to
17 respond after the defense responds. I believe I just
18 presented the victim impact as well. I didn't ask for
19 anything specifically. However, when defense counsel came
20 back and asked for three to five years, that's when I
21 followed up and expanded upon, upon -- like I said, he was
22 pleading guilty to -- let me back up. I apologize.

23 He was pleading guilty to the criminal sexual conduct
24 with a minor, so that was the focus. However, after
25 defense counsel's response, too, I feel it necessary to put

1 everything in context, especially when three to five years
2 was asked for, which I certainly would never agree to. And
3 at that time, I asked for a fifteen to twenty-year range
4 based on, too, the fact that he was out on two counts of
5 strong-arm robbery for probation where he was facing up to
6 fifteen years as well, and I believe something in that
7 range was appropriate, and Judge Lee issued the sentence
8 she believed was appropriate.

9 Q. Do you have a copy of the plea transcript in front of
10 you?

11 A. I do.

12 Q. If you'll look at page 27 and the top paragraph of 28
13 and read that yourself? I have a few questions.

14 A. You said page?

15 A. 27 to top of the 28.

16 MS. SHURLING: Pardon me, but beginning on what page,
17 what line?

18 MS. JAMESON: 27.

19 MS. SHURLING: 27

20 MS. JAMESON: 6.

21 MS. SHURLING: Thank you.

22 (A PAUSE.)

23 BY MS. JAMESON:

24 A. How far down would you like me to read on page 28?

25 Q. Just to Line 6 where, where you finish speaking.

N. SIMPSON - CROSS-EXAMINATION BY MS. JAMESON

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1 A. Okay.

2 Q. Before the court asks Mr. Sellers ---

3 A. Okay.

4 Q. --- if he has anything else. Okay, before I asked you
5 to read that, I was asking you about when you made your
6 recommendation to Judge Lee as to the sentence you would,
7 would like Mr. Heyward to receive, and you mentioned you
8 reminded the court of the substantial benefit from the
9 dismissal of all charges. Is that, that ---

10 A. That's correct.

11 Q. --- what you do at that time? All right, and then you
12 asked for a sentence of fifteen to twenty years, correct?

13 A. Correct.

14 Q. And again, he had three counts of human trafficking
15 dismissed where he was facing exposure of fifteen years on
16 each, correct?

17 A. I believe that's correct.

18 Q. And at least one count of contributing to the
19 delinquency of ---

20 A. Yeah.

21 Q. --- a minor, correct?

22 A. Correct.

23 Q. And there's been a little bit of -- you were
24 questioned about whether you put on the record that this
25 resolved all charges. Was Judge Lee aware that this would

1 resolve all charges related to this human trafficking ring
2 regarding Mr. Sellers?

3 MS. SHURLING: Objection, Your Honor.

4 Q. Excuse me. Regarding Mr. Heyward?

5 MS. SHURLING: It's hearsay.

6 THE COURT: Hold on. What is your objection?

7 MS. SHURLING: Hearsay, Your Honor. Judge Lee's not
8 here.

9 THE COURT: Okay.

10 BY MS. JAMESON:

11 Q. Was Judge Lee made aware at any point that this would
12 resolve all of the pending charges on or off the record?

13 A. Most likely. Here's what I can tell you. I don't
14 know what Judge Lee was aware of, but it was clear.

15 Myself, Mr. Sellers, my prosecution team, and to the judge
16 that this was a complete resolution. We wouldn't just
17 leave a charge outstanding from the same incident.

18 Q. And the complete resolution ---

19 A. If that makes sense.

20 Q. Sorry.

21 A. No.

22 Q. The complete resolution was dismissal of all charges
23 pursuant to the plea agreement, correct?

24 A. Correct.

25 Q. Okay, and 27 earlier is the spot I was trying to

N. SIMPSON - CROSS-EXAMINATION BY MS. JAMESON

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1 direct you to before. You told the court that there was
2 one instance where the girls were trying to perhaps get
3 away, and it was Mr. Heyward who threatened and they needed
4 to stay, correct?

5 A. I did -- I believe. Yeah:

6 They recalled one instance where he thought they
7 were going to run away, and he called them -- so,
8 he called the phone, threatening them to stay,
9 and I know he handed up driving photos. I will
10 show you two pictures of both MINOR 2 and MINOR 3
11 [phonetic], as well as the girls.

12 That's probably not relevant to what you're asking me,
13 so -- but, yes, that is what I recall.

14 Q. The evidence established that Mr. Heyward was an
15 active participant in human trafficking?

16 A. Absolutely.

17 Q. He wasn't just merely present at the hotel room for a
18 few hours?

19 A. No.

20 Q. You had a motions hearing before Judge Lee on the
21 motion to reconsider the sentence, correct?

22 A. That is correct.

23 Q. Do you recall -- have you had an opportunity to review
24 the transcript before coming today?

25 A. I have.

1 Q. At that time, Mr. Sellers indicates on the record that
2 he passed some emails up to Judge Lee, correct?

3 A. Correct.

4 Q. And he references the specific date of September 7,
5 correct?

6 A. I believe -- are those the dates on the emails I have
7 in front of me? Yes.

8 Q. If you will look at page 6 of that ---

9 A. Transcript.

10 Q. --- transcript, it might help. 5 on to 6. It's
11 specific ---

12 A. Yes: I want to approach, Your Honor; I have an email
13 from the solicitor's office on September 7. Yes.

14 Q. And another email on October 4 relaying these offers,
15 correct?

16 A. Correct.

17 Q. So, these were provided to Judge Lee at the time of
18 the motion to reconsider hearing, correct?

19 A. Yes. That is correct.

20 Q. And Judge Lee ultimately denies the motion to
21 reconsider the sentence, correct?

22 A. Yes.

23 Q. Do you recall the grounds on which she denied or the
24 rationale she gave for why she imposed the sentence she
25 did?

N. SIMPSON - CROSS-EXAMINATION BY MS. JAMESON

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1 A. Judge Lee made a very clear record, if I recall, and
2 if you'll bear with me just a second.

3 (A PAUSE.)

4 A. Yes. Actually, I believe from page 11 to 12, she
5 dictates all the outline -- or at least outlines all the
6 bases for her denying the motion.

7 Q. Including the dismissal of the other charges, correct?

8 A. Yes.

9 Q. And his prior record, correct?

10 A. Yes.

11 Q. And that he was on probation at the time of these
12 offenses, correct?

13 A. Yes.

14 Q. And the, the statement from MINOR 1's mother, the
15 victim impact, correct?

16 A. Victim impact, yes. It was a totality of
17 circumstances.

18 Q. And she specifically found that the plea agreement did
19 not include terms that the state would remain silent as to
20 sentencing, correct?

21 A. That is correct.

22 Q. Have you had an opportunity to review the indictments
23 before coming to court today?

24 A. I did.

25 Q. Do you recall whether the criminal sexual conduct with

1 a minor in the second degree indictment was amended?

2 A. Yes. We actually -- and I will have to look at it
3 again because I -- sorry, I looked at it before the prior
4 hearing, but I ---

5 MS. JAMESON: Your Honor, might I approach?

6 THE COURT: Yes, ma'am.

7 MS. JAMESON: Tara, these are both in Court's Exhibit
8 1, but it is a copy of the amended -- or the altered
9 indictment and the original indictment which were provided
10 to you.

11 MS. SHURLING: Thank you, Your Honor. I'm familiar
12 with those documents, and I have no objection.

13 BY MS. JAMESON:

14 Q. If you'll take a look at ---

15 A. Yes.

16 Q. --- those two documents, please, which are part of
17 Court's Exhibit 1?

18 A. Okay. So, I have the sentencing sheet in front of me,
19 and then the indictment did have to be amended. While it
20 was clear that MINOR 3's birthday was correct and her
21 age, we actually, myself and Mr. Sellers, either we
22 approached the bench or Judge Lee called -- I can't tell
23 you exact circumstances, but we amended it at the time of
24 the plea is my understanding.

25 Q. And the indictment, both the original and the amended,

N. SIMPSON - CROSS-EXAMINATION / REDIRECT EXAMINATION

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1 both have [REDACTED] 's birthday on there, correct?

2 A. Correct, November 23 of 2000.

3 Q. And the face of the indictment clearly says victim
4 under sixteen years of age, correct?

5 A. Correct.

6 Q. So, everyone knew -- excuse me, based on your
7 conversations with Mr. Sellers and the rest of the
8 prosecution team, it was clear the victim was fifteen years
9 old, correct?

10 A. Yeah. There was no doubt the victim, victim was
11 fifteen at any point in time among any of the parties. And
12 I would just note the sentencing sheet that you handed me
13 clearly notates the actual charge as it should have been.

14 MS. JAMESON: Moment's indulgence, Your Honor.

15 THE COURT: Yes, ma'am.

16 (A PAUSE.)

17 MS. JAMESON: No further questions, Your Honor.

18 THE COURT: All right.

19 Ma'am, cross?

20 MS. SHURLING: Briefly, Your Honor.

21 REDIRECT EXAMINATION BY MS. SHURLING:

22 Q. Ms. Simpson, with regard to your statement -- pardon
23 me -- on direct ---

24 THE COURT: I'm sorry, not cross. Redirect

25 MS. SHURLING: Pardon?

1 THE COURT: I'm sorry, ma'am. Not cross. Redirect.
2 I got my terms mixed up.

3 MS. SHURLING: Pardon?

4 THE COURT: I said I made a mistake. I meant
5 redirect, not cross, for what it's worth.

6 MS. SHURLING: I'm sorry. I didn't hear you.

7 THE COURT: I know. I love these screens here. I
8 just wanted to correct myself. I said cross and I meant
9 redirect.

10 MS. SHURLING: Thank you.

11 BY MS. SHURLING:

12 Q. Ms. Simpson, going back to the October 12, 2017,
13 record of the guilty plea proceeding.

14 A. Yes, ma'am.

15 Q. Okay, you've got that up there with you?

16 A. I do.

17 Q. Okay. Now, earlier in your testimony, you
18 acknowledged that it was your intent that he would plead to
19 one count CSC with a minor second degree, that all other
20 related charges would be dismissed, and that it would be
21 concurrent both to each other and to the probation
22 revocation, correct?

23 A. Well, basically at the plea agreement, he was only
24 pleading to one charge. So, it would run concurrent only
25 with the probation revocation. All other ---

1 Q. Exactly.

2 A. --- charges would be dismissed.

3 Q. But in terms of the -- I'm sorry, we're going
4 backwards to the September offer. The September 7 offer,
5 it was clear that it was going to involve concurrency
6 between the charges themselves and the probation
7 revocation, which became moot as regards the first prong of
8 that after it was only a plea to one count, right?

9 A. Well, the only thing that became moot was that it
10 would run concurrent to any other charge, as he was only
11 going to plead to the sole count.

12 Q. Exactly.

13 A. But at all times, we'd agreed to run it concurrent
14 with the probation revocation.

15 Q. Certainly, but certainly as of the October 12, 2017,
16 proceeding, it was, according to even your testimony
17 earlier today, still your intent to dismiss not just the
18 human trafficking charges but all related charges, which
19 included at least one, if not two, counts of contributing
20 to the delinquency of a minor?

21 A. That's correct.

22 Q. And you didn't say anything about that on the record
23 before the court on October 12, 2017, did you?

24 A. I believe that basically I said:

25 Okay, with respect to recommendations, Your

1 Honor, the state is dismissing three counts of
2 human trafficking, as well as one count of
3 contributing, or two counts of contributing to
4 the delinquency of a minor. This was all one
5 incident. He is pleading to -- pleading guilty
6 to this one charge from that incident, and we
7 have agreed to run it concurrent to the probation
8 revocation, which will be heard at a later date.
9 Other than that, there are no additional
10 recommendations ---

11 Q. Okay. So ---

12 A. --- or agreements.

13 Q. At that point, you weren't real clear on whether it
14 was one or two counts of contributing?

15 A. I'm pretty sure I was clear. I may have misspoke.
16 Like I said, I don't have the file in front of me, but if I
17 was prepared to go to trial, I would have known what
18 charges we were going forward on.

19 Q. Okay.

20 A. But that was just during the plea hearing. So, I
21 mean, whatever he was charged with would be dismissed
22 except for the criminal sexual conduct with a minor second
23 degree.

24 Q. Do you know ---

25 MS. JAMESON: She has the, the emails, Tara.

N. SIMPSON - REDIRECT EXAMINATION BY MS. SHURLING

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1 Q. Do you have the emails?

2 A. I do. I have Applicant's 1, 2, and 3.

3 MS. SHURLING: May I approach, Your Honor?

4 A. Do you want them all back?

5 Q. Okay. So to recap quickly, on September 7 there's a
6 written offer made by the team for him to plead to one
7 count CSC second with a minor and one count human
8 trafficking with no recommendation. Both sentences will
9 run concurrent with each other and to the probation
10 revocation, correct?

11 A. Correct.

12 Q. Okay, and then your email from October 5 indicates
13 that:

14 As for the offer, we will be willing to dismiss
15 the human trafficking charges, plural, but your
16 client will need to plead to CSC with a minor
17 second degree.

18 A. Yes.

19 Q. Okay, and at that point, you don't reiterate that it's
20 going to still be concurrent with the probation revocation
21 to be held at a later date, do you?

22 A. In the email do I? I do not, clearly.

23 Q. Right.

24 A. That's in front of you.

25 Q. And you don't say anything about and, of course, we're

1 also dismissing the contributing to the delinquency of a
2 minor charge or charges?

3 A. Per the email, no, and you have to understand per the
4 email absolutely not. What you see is what is in the
5 email, but we have had conversations before. So, I mean,
6 it was understood by all parties that we would still ask
7 that it run concurrent to the probation revocation.

8 Q. Well, are there any other written documents confirming
9 what the terms of the plea bargain were?

10 A. If ---

11 Q. Other than the email?

12 A. If you have them, I can see them.

13 Q. To your knowledge, was the plea bargain reduced to
14 writing in any other format other than these emails?

15 A. Plea bargain -- unlike federal court, we don't really
16 do written plea agreements. We might put offers in the
17 email, but cases are worked out as they go. So, you're
18 asking me if I actually recall if I sent another email? Is
19 that correct? Is that what you're asking me?

20 Q. No. I'm asking if there's any other written document
21 in which you set forth specifically what the agreement was
22 with your office that the quid pro quo -- that if he
23 pleaded to one count of criminal sexual conduct second
24 degree, what he would get in exchange was, and you very
25 specifically document what you're giving in exchange for

N. SIMPSON - REDIRECT EXAMINATION BY MS. SHURLING

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1 the plea. Is there anything other than these emails that
2 does that, to your knowledge?

3 A. I can't say whether there are other email -- like I
4 said, the document's probably archived. The system's gone.
5 I don't know about emails, but I know what I said on the
6 record as an officer of the court, and we put exactly the
7 terms of the agreement, and we went through the plea, which
8 Mr. Heyward did plead guilty to the charge.

9 Q. What ---

10 A. Understanding clearly the recommendations in the case,
11 and Mr. Sellers had done an excellent job in negotiating on
12 his behalf.

13 Q. Well, Ms. Simpson, what is your understanding of the
14 benefit of having a written plea agreement? What's the
15 advantage? Why does the court like to see them?

16 A. I don't think I can speculate as to why. I mean, you
17 got to narrow it down. I mean, federal court's a little
18 different; circuit court acts differently. There are a
19 number of cases going on. The plea agreement terms, the
20 judge at the plea clearly goes through the terms. If there
21 are any issues, we would have stood down, or we would have
22 approached the bench and we would've discussed it, and if
23 his client didn't understand them, we would have gone from
24 there.

25 Q. Well, would you agree with me that one of the benefits

1 of having a written agreement is that it gives defense
2 counsel something ---

3 MS. JAMESON: Your Honor, I have to object. She said
4 she didn't want to speculate. It depends on the court, the
5 judge, the type of charges, and so I think this line of
6 questioning is improper.

7 THE COURT: Sustained.

8 MS. SHURLING: Your Honor, I'll address those
9 arguments for the end.

10 BY MS. SHURLING:

11 Q. But isn't it true that one of the reasons you put
12 offers in writing is so that everybody will be on the same
13 page?

14 A. Yeah, that's the benefit.

15 Q. Okay, and if what's in writing isn't all of it, does
16 it not leave room for your ---

17 (CELL PHONE RINGS.)

18 MS. SHURLING: Is that mine? Your Honor, I turned
19 them both off. I don't know what's -- I apologize.

20 THE COURT: Okay.

21 (A PAUSE.)

22 MS. SHURLING: Your Honor, just for the sake of my
23 integrity, I had it off. I don't know why it went off.

24 THE COURT: Ma'am, I would much rather hear a phone
25 ring than a gunshot.

1 MS. SHURLING: Me, too.

2 BY MS. SHURLING:

3 Q. But will you agree with me that part of the reason
4 written plea agreements are encouraged is to make sure
5 there's no misunderstanding as to the terms of an
6 agreement?

7 A. In part I can agree, but like I said, it's the nature
8 of the court and how you're working. So, in federal court,
9 of course, they have written plea agreements with very
10 specific statutes, standards, all of that. However,
11 working at Richland County as a prosecutor in the Fifth
12 Circuit and Kershaw, we don't necessarily do written plea
13 agreements. And it's fluid and as I stated, this wasn't a
14 plea that happened long before we were ready to go to
15 trial. This was on the eve of trial. So, communication,
16 dialogue between myself, Mr. Sellers, Mr. Fyall, and Ms.
17 Campbell were ongoing. And it's not the only case that
18 we're working on, too. So, not every single conversation
19 is going to be documented necessarily.

20 However, it does come forth when we are at the plea
21 hearing, and I put on the record what the recommendations
22 are. If there are any issues, as I stated before, we would
23 stand down; I would speak with Mr. Sellers or whatever
24 defense attorney and discuss it. They'd have the
25 opportunity to discuss it with their client, and the judge

1 would make it clear, as well as general practice, since
2 you're asking me kind of generally what happens.

3 Q. But let's go back to the September 7 offer and your
4 testimony here this morning. And you have acknowledged
5 that it -- part of the plea, as you understood it, was that
6 you were dismissing all charges relating to this incident,
7 correct?

8 A. Except for the criminal sexual conduct with a minor.

9 Q. But with regard to everything other than what he was
10 pleading to, it was your intent to dismiss everything else?

11 A. Absolutely, and I'm certain that dismissal paperwork
12 is in the clerk's office file where I would have filled out
13 our disposition sheets and dismissed all the charges.

14 Q. Okay, but when it came time to do the motion to
15 reconsider, it was your position, was it not, that this --
16 your offer as of October 5 was a whole new offer, right?

17 A. Absolutely. Once, once the offer changes, it's a
18 different offer, and you don't get the benefit necessarily
19 of the offer that may have been given from day one. I
20 mean, like I said, we were prepared to go to trial. So,
21 the offer was dismissed. Get rid of a human trafficking,
22 another human trafficking which, quite frankly, he had
23 rejected, in my opinion, and we'd come to an agreement to
24 where he would plead to the criminal sexual conduct with a
25 minor.

1 Q. Okay, but going back to the original point, you have
2 admitted that it was in your -- intent to dismiss not just
3 the trafficking charges but also the contributing to the
4 delinquency charges, right?

5 A. As of the date of the plea, absolutely.

6 Q. Okay.

7 A. That is what I conveyed to the court.

8 Q. Well, and as of the date of the plea, you had not put
9 Mr. Sellers on notice in writing that you were no longer
10 intending to make no recommendation, had you?

11 A. Like I said before, I can only base what emails you
12 put -- but we have oral conversations. It is what it is
13 and there may -- if there's another email, I don't know.
14 If you hand it up and I can look at it, but this was a
15 while ago, and I don't have any independent recollection of
16 that.

17 Q. Okay, but between September 7 and October 5, you
18 didn't change your mind about dismissing the contributing
19 to the delinquency charge or charges, did you?

20 A. Well, change my mind about dismissing? Quite frankly,
21 my goal was on trial preparation. So, while we're working
22 out pleas, I might be thinking about dismissal, but I'm
23 going to trial on all charges that are pending that I
24 believe I can prove beyond a reasonable doubt.

25 Q. Well, with no disrespect intended, Ms. Simpson, this

1 isn't about you being ready for trial. This is about that
2 if -- you have testified that it was your intent to dismiss
3 all related charges.

4 A. I believe what you asked me was from September 7 to
5 October whatever date was it my intent. Had he accepted an
6 offer. That's one thing, but you have to understand. I
7 was preparing for trial, and when one offer is not
8 accepted, yes, we still continue to perhaps negotiate, but
9 I'm not thinking -- I don't want to answer your question
10 incorrectly or misrepresent or mislead you that I was
11 always going to dismiss a contributing. If we went to
12 trial, I was going to trial on the charges that were
13 indicted.

14 Q. I haven't asked you questions about what you were
15 going forward on at trial, have I? That's not my question.
16 My question is you have said in your testimony this morning
17 that if he pled to one count criminal sexual conduct with a
18 minor second degree, that it was still your intent to
19 dismiss all related charges and to run it concurrent with
20 probation revocation with the proceeding to be held
21 sometime in the future, correct?

22 A. Correct.

23 Q. And according to your testimony this morning, it was
24 still your intent to dismiss not just the trafficking
25 charges but any related charge.

N. SIMPSON - REDIRECT EXAMINATION BY MS. SHURLING

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1 A. Well, if you're referring to the September human
2 trafficking ---

3 A. No, I'm referring ---

4 A. --- offer ---

5 MS. JAMESON: Your Honor, I would object. I think we
6 need to clarify for the record. It's, it's getting a
7 little confusing whether Ms. Shurling is referring to the
8 day of the plea, the first email in September, or the
9 second in October because, as Ms. Simpson testified, it was
10 a fluid situation.

11 So, if you could ask on specific dates, please.

12 MS. SHURLING: I will articulate it more clearly, Your
13 Honor. I was trying to avoid the dates on top of dates.

14 BY MS. SHURLING:

15 Q. September 7, the first offer that was extended by the
16 team, you have testified this morning that it was
17 referencing what he would be required to plead to. And
18 although it's silent on it, that the intent was to not
19 pursue any other charges other than the ones that are --
20 he's asked to plead to in the September 7 email, correct?

21 A. Okay, I just want to clarify to -- you indicated first
22 offer. You know, I can't ---

23 A. Okay.

24 A. --- backtrack and say ---

25 Q. I'll rephrase again.

1 A. --- that was the first. The first based on the email.
2 Yes, the human trafficking, one count of criminal sexual
3 conduct with a minor to run concurrent to the probation
4 revocation was the offer.

5 Q. And then logically you're saying all you're asking him
6 to plead to ---

7 A. Right.

8 Q. --- is the one count of CSC and the other count of one
9 of the three trafficking counts, correct?

10 A. Right, and all the rest would be dismissed as they are
11 part of one incident.

12 Q. Okay. So, moving forward to the October 5 email,
13 you're addressing that you'll let him plead -- you'll
14 dismiss the remaining trafficking charge, but he's still
15 got to plead to one count of CSC with a minor second
16 degree, correct?

17 A. Correct. Based on ongoing negotiations, that's what
18 we came to.

19 Q. And ---

20 A. And that's ultimately what happened at the plea, and
21 as I indicated, that was put on the record before Judge
22 Lee.

23 Q. And inferentially, the other terms with regard to
24 dismissing related charges remained the same, correct?

25 A. That I was going was to -- are you asking was I going

N. SIMPSON - REDIRECT EXAMINATION BY MS. SHURLING

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1 to dismiss them?

2 Q. Yes.

3 A. Absolutely.

4 Q. Okay. Well, how was my client or even Mr. Sellers,
5 for that matter, to know that the element of no
6 recommendation was not still on the table ---

7 MS. JAMESON: Objection. This is a
8 mischaracterization of Ms. Simpson's testimony that there
9 was a recommendation as to sentencing would remain silent.

10 MS. SHURLING: I'll rephrase it, Your Honor.

11 THE COURT: Please do.

12 BY MS. SHURLING:

13 Q. September 7, your team says he will be offered to
14 plead to one count CSC with a minor second and one count of
15 trafficking, with the sentences to be concurrent to each
16 other and to a probation revocation that has yet to be
17 determined in the future, right?

18 A. If you show me the email. I guess you're asking me
19 the exact words. Just so I'm clear on what we're referring
20 to. I'm not very good with dates.

21 Q. That's okay. This is September 7.

22 A. Okay. Thank you. Okay, and do you want me just to
23 read it because it is what it is: Attached the changes ---

24 And this is from Lamar, but I am copied on the email
25 and as our team, Luck Campbell is as well, and our victim

1 advocate:

2 Hey, Bakari. Attached is the changes, additions
3 to the statement made by Danielle Burns.

4 Which was part of our ongoing *Riddle* to turn over.

5 The offer in this case is for Mr. Heyward to
6 plead guilty to one count of CSC second with a
7 minor and one count of human trafficking with no
8 recommendation. Both sentences will run
9 concurrent to each other and to his probation
10 revocation.

11 Q. And it's your position, if I understood your earlier
12 testimony correctly -- if I didn't, correct me -- but the
13 sentence says he is to plead to one count CSC second and
14 one count of human trafficking, but inferentially you're
15 acknowledging that all other charges related to this
16 incident would be dismissed.

17 A. Yes, and I'm sure Mr. Sellers as well as myself or Mr.
18 -- Ms. Campbell or Mr. Fyall -- and he'll be testifying,
19 too, I assume. It, it was definitely understood by all
20 parties that we would dismiss. We wouldn't leave several
21 charges outstanding from the same incident.

22 Q. Okay.

23 A. That was part of the plea negotiations.

24 Q. And it also, of course, contains the condition that
25 they would be concurrent to each other and to the probation

1 revocation, right?

2 A. Correct.

3 Q. Now, I understand that by the time you get to October
4 5, the concurrency to each other is a moot point because
5 he's down to pleading to one charge?

6 A. Right. He's getting the benefit of another dismissal.

7 Q. Okay.

8 A. So, the plea offer had changed at that point.

9 Q. But it does not repeat the condition that it will be
10 concurrent to the probation revocation once a hearing is
11 held.

12 A. Based on the email and document you have in front of
13 you, no, it does not.

14 Q. But you acknowledge that that was still the intent?

15 A. Absolutely.

16 Q. Okay. So -- and you don't mention specifically that
17 in this argument, nor do you mention that no recommendation
18 that is found in the September 7 email, right?

19 A. No, not in that document that you have.

20 Q. So, one thing that you didn't mention in the October 5
21 email you just didn't put in there, but you still intended
22 to give him, right?

23 A. Actually, I guess technically I'd have to see the
24 email again. I believe I didn't, I didn't indicate
25 anything about the revocation running concurrent or the

1 sentences or the dismissals. I think I just said he will
2 need to plead to criminal sexual conduct with a minor
3 second degree.

4 Q. That's my point.

5 A. Okay.

6 Q. At this point on your email to Bakari Sellers, all you
7 say is that you'll agree to dismiss the remaining human
8 trafficking count, the third of the three because you'd
9 already agreed to dismiss the first two, but your client
10 will need to plea to CSC with a minor second degree.
11 That's it. That's all it says, isn't it?

12 A. I can read you what it says.

13 Q. Just refresh your own recollection, please; you've
14 read it several times. The record will reflect it.

15 A. Yeah, and then I would like to note that on
16 Applicant's 2, it does say from Bakari Sellers in response
17 to me:

18 My client accepts your offer to plead to the sole
19 charge of CSC second with a minor, as well as
20 handle his outstanding probation violation to be
21 run concurrently.

22 Q. Okay. I take it back. Read what you said.

23 A. Okay.

24 Q. Your email October 5.

25 A. It's actually October 4, just to clarify, 2017:

1 I've attached the pages you need. Additionally,
2 the statements were made during our interviews
3 with the witnesses on September 21. Investigator
4 Culler (with our office), Lamar, and I were
5 present. Please note there are no additional
6 witness statements. This is just information
7 from our notes. With respect to Cheeto, the
8 information we have provided you ---

9 I'm sorry.

10 The information we've provided to you is all we
11 know about the identity of Cheeto. The redacted
12 cell phone extraction was left out front for you
13 to pick up on August 31 and is still available
14 out front. As for the offer, we would be willing
15 to dismiss the human trafficking charges, but
16 your client will need to plead to CSC with a
17 minor second. See you tomorrow. Thank you.
18 Nicole.

19 Then Bakari responds: My client accepts your offer.

20 And he responds on October 5, 2017:

21 My client accepts your offer to plead to the sole
22 charge of CSC second with a minor, as well as
23 handle his outstanding probation violation to run
24 concurrently.

25 Q. I got that. My question is you say that even though

1 you didn't mention it in your October 5 email, that it was
2 your intent to also honor your commitment to run the
3 probation revocation concurrent just as Mr. Sellers says in
4 his later email, correct?

5 A. Yes, with the plea negotiations, and understand, too.
6 Like I said, we weren't going to trial on the probation
7 violation strong-arms for which Mr. Bank and the public
8 defender's office represented him on. So, the issue of Mr.
9 Sellers would be the human trafficking case as a whole, and
10 that's what we were negotiating. But we did agree and we
11 kept that in place, which he acknowledges. Whether we had
12 a oral conversation, I don't know, but at no point did I
13 state that I would take the run concurrent with the
14 probation violation, if he pled, off the table.

15 Q. And at what point did you say in writing that you were
16 taking the no recommendation off the table?

17 A. I don't know that I ---

18 MS. JAMESON: Your Honor, I would object again.

19 A. If you can point it ---

20 MS. JAMESON: That's a misrepresentation of Ms.
21 Simpson's earlier testimony. I don't believe she ever
22 testified that part of the plea agreement was no
23 recommendation as to sentencing.

24 THE COURT: Well, she's answered now two or three
25 times that she did not put that in writing. We know that.

N. SIMPSON - REDIRECT EXAMINATION BY MS. SHURLING

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1 MS. SHURLING: Pardon me, sir?

2 THE COURT: I said she has stated at least two or
3 three times now that she did not put that in writing.

4 MS. SHURLING: I understand, but she also said that it
5 was a prosecution team, and the gentleman who had done the
6 September 7 email most certainly did make it part of the
7 plea that they were offering, and it was never withdrawn in
8 writing.

9 Interestingly enough, there was a -- other term that
10 was part of the agreement, the probation revocation
11 concurrency, and she didn't put that in her October 5 email
12 either. So, the question becomes sometimes she's doing it
13 and sometimes she's not, and how is my client or his
14 attorney supposed to know which is which?

15 THE COURT: Yeah, and I know that's my most central
16 issue ---

17 MS. SHURLING: Thank you.

18 THE COURT: --- in this whole case. I understand that.

19 MS. SHURLING: Then I will stop.

20 THE COURT: I got it.

21 MS. SHURLING: Thank you.

22 I believe you have one of the emails.

23 WITNESS: I do. I have Applicant's Number 2.

24 MS. SHURLING: Thank you very much.

25 WITNESS: You're welcome, and I also have the

1 transcripts.

2 MS. SHURLING: That's an extra. You may leave it
3 there. Mr. Sellers may need it.

4 THE COURT: Recross?

5 MS. JAMESON: Very, very briefly, Your Honor.

6 RECROSS-EXAMINATION BY MS. JAMESON:

7 Q. Ms. Simpson, at any time during plea negotiations as
8 you're gearing up for trial, was the term of the agreement
9 that the state would remain silent as to sentencing?

10 A. When we got down to the final plea on the day of trial
11 -- you know, at some point during the negotiations, there
12 might have been a point where I'd say we'd remain silent,
13 no position, whatever. However, as we got to the plea, the
14 negotiations changes. Every agreement, you don't get the
15 benefit of an initial agreement, even if that was said,
16 which I don't recall independently. But I put all the
17 negotiations on the record. If I were going to say we take
18 no position on sentencing, I would have said it on the
19 record at the plea.

20 Q. So, that was not part of the negotiation on the day of
21 the plea?

22 A. No. That is correct.

23 Q. And that was your position at the motion to reconsider
24 hearing before Judge Lee, correct?

25 A. Correct.

N. SIMPSON - FURTHER DIRECT EXAMINATION BY MS. SHURLING

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1 MS. JAMESON: No further questions.

2 MS. SHURLING: Your Honor, may I ask one ---

3 THE COURT: Yes.

4 MS. SHURLING: --- more question?

5 THE COURT: Proceed.

6 MS. SHURLING: Quickly.

7 FURTHER DIRECT EXAMINATION BY MS. SHURLING:

8 Q. If you don't spell out the exact terms of the plea
9 agreement until you're in the midst of a guilty plea
10 proceeding, how is defense counsel supposed to be
11 definitive with his client concerning ---

12 MS. JAMESON: Your Honor, I, I would object at this
13 point. I think this is testimony ---

14 THE COURT: Well, well ---

15 MS. JAMESON: --- and misrepresents what she just
16 testified to.

17 THE COURT: Well, again I ---

18 MS. SHURLING: Well, Your Honor ---

19 THE COURT: I go back to the fact that that has been
20 already asked and addressed, to a certain degree anyway.
21 You either asked that or mentioned that earlier.

22 MS. SHURLING: Your Honor, with all due respect, I
23 haven't asked that specific question, and the reason I
24 bring it up is that she has repeatedly testified that I
25 always just bring it up during -- I put the terms on the

1 record during the plea.

2 Well, in the case law about the court's preference and
3 encouragement of written plea agreements, you know, it's
4 clear that the entire point is accuracy and communication
5 between all parties, including the defendant. And if the
6 state doesn't put the terms of the plea as they understand
7 it in writing until the actual guilty plea proceeding,
8 that's a little late for Mr. Sellers ---

9 THE COURT: Okay.

10 MS. SHURLING: --- or any defense attorney to have the
11 benefit of that information in counseling his client.

12 THE COURT: Okay. All right, your question ---

13 MS. SHURLING: So, that was the purpose ---

14 THE COURT: Your question to her is ---

15 MS. SHURLING: --- of my question.

16 THE COURT: --- how did -- how would he know it,
17 right?

18 MS. SHURLING: Right.

19 THE COURT: Okay, go ahead and ask that question, but
20 I have heard this before in this trial, but go ahead and
21 ask that question, okay.

22 BY MS. SHURLING:

23 Q. If you don't put the terms of the agreement -- if you
24 don't delineate them in writing prior to the guilty plea
25 proceeding, then how is that useful to defense counsel in

1 ensuring that his client has a concrete knowledge of what
2 the quid pro -- pardon me, quid pro quo is, what he's
3 getting in exchange for his plea?

4 A. Okay, and I'll answer your question again. It's a
5 little lengthy, but with respect to how defense counsel
6 conveys or speaks with their client, that's between them.
7 It is clear on the record we were prepared to go to trial.
8 So, I'm pretty sure Mr. Sellers had advocated to his client
9 all the terms, and the terms of the plea agreement were
10 placed in front of the judge on the record.

11 And as I stated before, I believe, in my testimony is
12 if Mr. Sellers or Mr. Heyward had an issue with those
13 terms, or did not understand those terms, or believed those
14 terms to not be consistent with what we had discussed prior
15 to the plea, that would have been addressed. We would have
16 stood down; we would talked. We would have communicated,
17 and he easily could have not gone forward with the plea, or
18 we could have clarified on the record what the deal was.
19 But at no point did I state I was taking no position with
20 respect to the plea offer that was given at that time on
21 that day during the plea that we did in front of Judge Lee.

22 Q. And neither had you withdrawn that written term from
23 the previous offer extended on September 7.

24 A. With respect to offers, quite frankly, the offer is
25 what it is on the day. Now on Tuesday, Friday, Wednesday,

1 however many days previously, the offers change throughout
2 the preparation of cases. That's just the general rule.
3 This was the ultimate offer where he got the benefit of
4 pleading to one count, one count of having sex with Miss
5 **MINOR 3**, who was fifteen years old at the time, while he was
6 out on probation for two counts of strong-arm robbery, and
7 that was the plea offer. And the recommendation, as noted,
8 is that it would still run concurrent to the probation
9 violation, which is acknowledged by Mr. Sellers in his
10 email in response to mine.

11 Q. Did you ever notify Mr. Sellers that the element of no
12 recommendation had been rescinded?

13 A. Basically, the understanding is when you reject and
14 we're at trial, then we discuss another offer. If I was
15 going to make no recommendation, I would have put that --
16 you know, we would have discussed. But he went on and
17 asked for three years, which I certainly would agree not to
18 stand silent if he gets to ask for three years and I can't
19 ask for anything.

20 Q. And while I agree that he did not say anything on the
21 record about this, the fact is it wasn't apparent that you
22 were going to be asking for a specific sentence until
23 sentencing, correct, because that's when you started asking
24 for a specific sentence.

25 A. I can't agree to that. You say apparent. I mean, you

N. SIMPSON - FURTHER DIRECT EXAMINATION BY MS. SHURLING

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1 hand me three emails. We have a lot of discussion, a lot
2 of preparation before trial. So ---

3 Q. The ---

4 A. --- I can tell you if you ask me what's in the email,
5 that's what's in the email. What's on the record and the
6 transcript, as an officer of the court, that is what I
7 argued. That's what I said. That was my understanding.

8 MS. SHURLING: Thank you.

9 Your Honor. The timing with which -- the discussion
10 from the state regarding sentencing will be apparent in the
11 transcript. Thank you. No further questions

12 MS. JAMESON: Nothing else, Your Honor.

13 THE COURT: You may step down.

14 WITNESS: Thank you, Your Honor.

15 (THE WITNESS EXITS THE STAND.)

16 MS. SHURLING: Your Honor, may we take a brief break?

17 THE COURT: I was going to ask y'all the same thing.

18 MS. SHURLING: Thank you.

19 THE COURT: We'll take fifteen minutes.

20 MS. JAMESON: Thank you, Your Honor.

21 (OFF THE RECORD.)

22 THE COURT: All right, ma'am.

23 MS. SHURLING: Thank you. Your Honor, at this time we
24 call Mr. Bakari Sellers.

25 THE COURT: Okay.

B. SELLERS - DIRECT EXAMINATION BY MS. SHURLING

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1 BAKARI SELLERS, BEING DULY SWORN,
2 TESTIFIES AS FOLLOWS:

3 MS. SHURLING: Thank you. Excuse me. I have to get
4 my glasses.

5 DIRECT EXAMINATION BY MS. SHURLING:

6 Q. Good morning, Mr. Sellers. Have you been able to
7 review a copy of the amended application for
8 post-conviction relief and the second amended application?

9 A. Yes, ma'am.

10 Q. Okay. Thank you.

11 MS. SHURLING: I'm going to try, Your Honor, to follow
12 these in order so that we can get through them a little
13 quicker. I can't swear that they're necessarily in the
14 order of significance to each other, but I can straighten
15 that out in a memo.

16 BY MS. SHURLING:

17 Q. Mr. Sellers, do you recall representing Geordi
18 Heyward?

19 A. Yes.

20 Q. Okay, and at the time of the guilty plea proceeding,
21 did you believe that the state's commitment not to make a
22 representation as to sentencing was still intact?

23 A. Yes.

24 MS. JAMESON: Objection. Leading. This is direct.

25 MS. SHURLING: Pardon?

B. SELLERS - DIRECT EXAMINATION BY MS. SHURLING

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1 THE COURT: Ask him what he thought, ma'am, please.

2 MS. SHURLING: I'm sorry?

3 THE COURT: Ask him straight up what he thought the
4 plea was regarding the recommendation.

5 BY MS. SHURLING:

6 Q. What did you think the plea was?

7 A. I thought that Geordi Heyward would plea to a CSC
8 second with a minor. That would resolve all that charges
9 that he had pending, outstanding, including probation
10 revocation, and also that there would be no recommendation
11 by the state.

12 COURT REPORTER: I need you to speak up, please.

13 WITNESS: I've got a little cold. Also, my
14 microphone's acting up. I'll do my best. I'm fighting
15 through a little toddler cold.

16 MS. SHURLING: Your Honor, with leave of court, I'm
17 going to stand a little closer since I'm having a little
18 difficulty with my own hearing.

19 THE COURT: Yes, ma'am.

20 MS. SHURLING: Thank you.

21 BY MS. SHURLING:

22 Q. What was your understanding? Well, actually I think
23 you've already stated.

24 A. Yes, ma'am.

25 Q. And you indicated in your motion for reconsideration

1 of sentencing ---

2 MS. SHURLING: Which is in Your Honor's packet ---

3 Q. --- that on the morning of the plea, you confirmed
4 with Nicole Simpson that the terms were the same that you
5 had originally believed them to be?

6 A. Yes, ma'am.

7 Q. Can you recall exactly what she ---

8 A. No.

9 Q. --- you asked and exactly what she said back?

10 A. No, ma'am.

11 Q. Whatever you said, did you believe it sufficient to
12 confirm that the state was honoring the commitment not to
13 make a recommendation as to sentencing?

14 A. Yes, ma'am.

15 Q. So, at the plea and subsequent sentencing proceeding,
16 when Ms. Simpson initially delineated the terms of the plea
17 for His Honor, she -- Her Honor. Pardon me. It was Judge
18 Lee. She didn't say anything about that they'd agreed not
19 to make a recommendation, correct?

20 A. Correct.

21 Q. But that would not be terribly unusual, would it, as
22 far as you not expect -- you don't expect the solicitor to
23 say that in the presence ---

24 MS. JAMESON: Your Honor.

25 Q. --- of the family?

B. SELLERS - DIRECT EXAMINATION BY MS. SHURLING

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1 MS. JAMESON: Again, this is direct and she's leading
2 and testifying.

3 THE COURT: Yes, ma'am. If you'll change ---

4 MS. SHURLING: I'll rephrase.

5 THE COURT: Rearrange it, ma'am. Thank you.

6 BY MS. SHURLING:

7 Q. When she did not make reference to that component of
8 the plea agreement as you believed it to be, were you
9 particularly concerned about it, given the fact that the
10 family was in the courtroom?

11 A. I don't think that had anything to do with the family,
12 but I wasn't concerned about it all, no.

13 Q. Okay. Well, once it became apparent that she was very
14 much going to argue for a stiff sentence in this case, why
15 didn't you ask to be heard on the question of the term of
16 the plea agreement as reflected in the September 7 email
17 that the state would not make a recommendation?

18 A. Because in the totality of the argument that was made
19 before the court, the circumstances surrounding the plea, I
20 felt that we were still in a reasonable position to get the
21 sentence which I thought was fair and reasonable during
22 that time. I was shocked, as well as the family and
23 Geordi, that the plea was -- that the sentence was so high.
24 But, you know, that nobody is bound by anything.

25 Q. Okay.

1 A. That Your Honor is not bound by anything. She can
2 make the ruling she deems fit.

3 Q. Well, in your experience as a defense attorney, are
4 judges more likely to give a harsh penalty if the state is
5 asking for one?

6 A. In this case, I will be, as I told you prior to, as
7 honest as I can. I believe that the sentence that was
8 given was more indicative on a very, very, very, very, very
9 outspoken victim's mother in this case. I'm surprised
10 she's not here today. She literally has been at every
11 proceeding that there was. And when the state does make a
12 recommendation, of course that goes into the calculation of
13 Your Honor.

14 Even with that, though, my offer was strategically
15 lower than I thought he would get. I told the family. I
16 told his mother going into this we would ask for about four
17 years. Even with her recommendation of fifteen to twenty
18 or whatever she stated -- I can't recall -- I was still
19 decently hopeful that Your Honor would split the baby, and
20 he would get a sentence between eight and ten years. Of
21 course that didn't happen, but that was somewhat of the
22 sausage going into this.

23 Q. Would you agree that it is easier to have impact on a
24 judge's sentence before the sentence is announced from the
25 bench than trying to change it after it's been entered?

B. SELLERS - DIRECT EXAMINATION BY MS. SHURLING

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1 A. No question.

2 Q. No question, right?

3 A. Correct.

4 Q. Okay. So, once Nicole Simpson started very much
5 recommending the sentence, why didn't you object?

6 A. I didn't feel like that was going to have -- I, I knew
7 that the greatest obstacle we were going to have in this
8 case wasn't Nicole Simpson and her fifteen years. I didn't
9 think she was going to ask for it. I mean, it didn't
10 necessarily caught me off guard -- catch me off guard, but
11 when there is a victim in a case -- and I'm not sure many
12 people in the courtroom practice criminal defense. When
13 the facts are set out the way they are, you know, I have to
14 whisper to Geordie and have conversations with him, like,
15 you know, make sure -- she's going to call you everything
16 but a child of God. Do not make eye contact with her,
17 don't. Don't even look over there.

18 You just had a victim's mother that was very
19 persistent, as I probably would be for my child. Very
20 outspoken, as I probably would be for my child, and she
21 raised her voice and her voice was heard. I still believe
22 to this day that the overarching -- I mean, I've stated to
23 everyone who would listen that the overarching reason we,
24 we got the sentence we did is because of the victim's
25 activism.

B. SELLERS - DIRECT EXAMINATION BY MS. SHURLING

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1 Q. And would you agree that when you have, shall I say, a
2 zealous mother.

3 A. Correct. Fair.

4 Q. Or other family member.

5 A. Fair.

6 Q. And the solicitor is mirroring what they are asking
7 for, that it validates in the minds of everyone, including
8 potentially the judge, the reasonableness of what the
9 victim's family is asking for?

10 A. No doubt. You're asking a legitimate question about
11 the doubling up effect of a, of a state asking something
12 and a victim asking for something, and would it resonate
13 with Your Honor.

14 I don't have the privilege of wearing that black robe,
15 but I would assume that, yes, that does have some impact.
16 But I would also tell you that we cannot look at this in a
17 vacuum because if I would have walked away from that plea,
18 my client would have been looking at seventy years in
19 prison, and we would have been scheduled for trial. And so
20 while we want to just look at this plea in an isolated
21 vacuum, the decisions that I was making, whether ---

22 WITNESS: Your Honor will determine whether or not my
23 decision-making at that time was right, wrong, or
24 indifferent, and I'll respect that ruling.

25 A. One of the things I was thinking about for Mr.

B. SELLERS - DIRECT EXAMINATION BY MS. SHURLING

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1 Heyward, though, was the fact that coming down from that
2 plea, if that's something we did, we were -- seventy years
3 was back on the table, and I still had a chance even after
4 her allocution to get him a sentence of eight to ten years,
5 which I thought I was going to get up until the time I
6 didn't.

7 Q. And there's really no way of knowing how much that
8 impacted Judge Lee's decision, is there?

9 A. No. No. I mean, I -- you know, not at all.

10 Q. I, I -- well, I'll...

11 A. You know, I think one of the things that you're
12 getting at is I made a strategic decision. Whether or not
13 that strategic decision was wrong or not is for Judge
14 McFaddin to, to rule on, but that is the reason why I made
15 the decision I did.

16 Q. Could you not have at least made a motion for specific
17 enforcement of the plea bargain?

18 A. I've never seen that done before. The answer is yes,
19 but I've never seen that done before. And I would argue
20 knowing my opposition as I do, with Luck Campbell, Lamar,
21 and Nicole, there's a, there's a great opportunity that I
22 would have been sitting at that table next week with no
23 offer and going to trial.

24 Q. Did you discuss with your client whether or not he
25 wanted to go forward with the plea once it became clear

1 that the state was not going to honor the previous
2 commitment to not make a recommendation as to sentence?

3 A. No.

4 Q. So, you made that decision for him?

5 A. I didn't have any apprehension or reason to believe
6 that we weren't going to get it, but to answer your
7 question. Made it for him? No, I didn't make it for him.
8 We did not have any other discussions about whether or not
9 we were going to go forward or not. The discussions we had
10 were not as narrow as, as you are articulating it to be. I
11 appreciate your attempt.

12 Our discussions were whether or not we were going to
13 take a plea to a CSC with a minor, and the reason being is
14 because there was not only witness statements but his own
15 testimony that he had sex with a minor. Therefore, I was
16 in a position where I got the best possible deal I could
17 get. And I still think to this day that we got a really,
18 really good deal and a really, really good offer, and that
19 offer was all of the charges dismissed except for the one
20 that I knew in trial I could -- had no chance to beat
21 because he testified to that.

22 And my decision was, at that point in time, to answer
23 your question fully, with full context, my decision was
24 whether or not I would take Mr. Heyward forward on that day
25 at that particular time with this particular charge or

B. SELLERS - DIRECT EXAMINATION BY MS. SHURLING

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1 whether or not we would back down, which never crossed my
2 mind, and we would be back with seventy years in front of
3 Mr. Heyward and his family.

4 Q. Well, let's discuss that. Once she began, once you
5 saw the first inkling that she was going to be making a, a
6 very strong recommendation as to sentence and that had not
7 been your understanding coming into the plea, could you not
8 have made a motion for specific enforcement of the plea,
9 presented Her Honor with the documentation in the form of
10 emails concerning the progression of the discussions about
11 what the plea offer was?

12 A. I asked ---

13 MS. JAMESON: Your Honor, objection. Asked and
14 answered. This specific question has already been asked.

15 THE COURT: I thought it ---

16 MS. SHURLING: Well, if I'd finished ---

17 THE COURT: I think it has, too.

18 MS. SHURLING: At the tail end.

19 BY MS. SHURLING:

20 Q. What would the prejudice to -- even assuming it was
21 denied, the plea would have continued.

22 A. That's, with all due respect, that's -- that -- that's
23 not practical and that, that may work in theory. That does
24 not happen in the real-life practice of law.

25 So, if I would have attempted to make a specific -- a

1 motion for a specific enforcement of that agreement, as
2 you're stating, or had any issue with the plea agreement,
3 then that would've been pulled down, which has happened
4 with me many times before. Maybe not a particular motion
5 as you're stating because I've never actually seen that,
6 but I have seen people pull down their plea agreements.

7 We usually go to the back at that time. You go to the
8 back and you make any type of -- go to the back is loose
9 language, I guess. Maybe we need things to be more rigid
10 in this Fifth Circuit, but we would go to the back and have
11 any other type of discussions about coming to an agreement
12 or understanding on the plea.

13 It was, it was pretty clear, though, if we were not
14 agreeable to the plea at that time, then we would be going
15 to trial. So, you know, would, would it have prejudiced my
16 client? I do think that my, my, my biggest fear for Mr.
17 Heyward and my big fear throughout this entire process was
18 that we were not in a position to go to trial on a CSC, CSC
19 second degree with a minor. And because we were not in a
20 position to go to trial on that, that there were other
21 human trafficking charges which would have put him in a
22 much worse possible position than he was in.

23 Q. Okay, but again, the plea proceeding had already
24 begun?

25 A. Correct. Yes, ma'am.

B. SELLERS - DIRECT EXAMINATION BY MS. SHURLING

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1 Q. The state was committed at minimum to what Ms. Simpson
2 says today the deal was, correct?

3 A. Correct. Yes, ma'am.

4 Q. So, if you had asked for a specific performance of all
5 of the terms of the plea bargain and encompassing the
6 commitments made in the September 7 ---

7 A. If, if ---

8 Q. --- email ---

9 A. --- you're asking me did I make a mistake? I would
10 say that, I would say that I still today believe in my
11 strategy. However, in hindsight, if I would have done
12 that, would he have received a better -- a lesser sentence?
13 We do not know; I can't answer that question. I mean, I
14 promised Geordie's mother I would do the very best that I
15 could do for him, and at the time I made the best decision
16 for him at that, at that time. I mean, in hindsight, did
17 it work? I mean, you know, I don't, I don't, I don't know
18 the answer to that.

19 Q. Okay. Let's talk about the direct appeal you filed,
20 correct?

21 A. The direct ---

22 Q. You did file a ---

23 A. --- appeal?

24 Q. You did file a direct appeal?

25 A. Yeah, and I filed a direct appeal and I filed a motion

1 for reconsideration.

2 Q. Okay. At the time of the trial, you have to be
3 mindful of creating an appellate record, correct?

4 A. We didn't have a trial.

5 Q. Pardon me, trial or plea. You still have to be
6 mindful of creating an appellate record, and you realized,
7 did you not, that if you didn't tell Judge Lee what the
8 deal had been, in your estimation, your understanding, and
9 if you did not introduces those emails ---

10 A. With, with all due ---

11 MS. JAMESON: Objection, Your Honor. Leading and
12 testifying.

13 THE COURT: Well.

14 BY MS. SHURLING:

15 Q. What's your understanding of how you would have ---

16 THE COURT: Okay.

17 Q. --- needed to preserve the record for that issue?

18 THE COURT: That's good.

19 A. I don't think that there was any issue with the
20 preservation of the record due to the simple fact that --
21 and you asked me about prejudice earlier, and I just for
22 some reason didn't answer the question appropriately. But
23 you asked me about prejudice earlier. Of course we weren't
24 prejudiced because we actually revisited that a week later,
25 or we filed the motion a week later for reconsideration.

B. SELLERS - DIRECT EXAMINATION BY MS. SHURLING

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1 So, he wasn't prejudiced because I didn't bring it up. In
2 fact, I did bring it up through a motion for
3 reconsideration, and that in itself was preserved, and that
4 in itself could be appealed. And so there was no prejudice
5 and there was no lack of preservation because I didn't do
6 that.

7 If the question is should I have done it at the
8 hearing, okay, I, I understand that, and my heart still
9 aches because maybe that was the wrong decision. But if
10 you're asking me was it legally sound, or did I not
11 preserve it, or did I not have the ability to bring it up
12 again, we did because we did bring it up again.

13 Q. Well, at the reconsideration hearing.

14 A. Yes, ma'am.

15 Q. Did you introduce copies of the emails documenting the
16 plea negotiation process?

17 A. I'm, I'm sure that I -- I'm sure that -- I don't know
18 the answer to that without looking at what I put up, but
19 I'm absolutely certain that the emails were published at
20 least or read or somebody -- that Your Honor saw them.

21 Q. Well, if the transcript of the reconsideration hearing
22 does not reflect any exhibits were entered, would you agree
23 with me that means you did not introduces those emails?

24 A. No. No. Are you asking me -- I'm -- if I'm not -- if
25 -- I don't recall I handed up emails.

1 Q. Okay.

2 MS. JAMESON: Tara -- excuse me, Ms. Shurling. For
3 the record, there is an entire transcript, and I would
4 prefer if he could look at the entire transcript instead of
5 excerpts of it.

6 WITNESS: I don't even have excerpts. I have a front
7 page and the back page.

8 MS. JAMESON: Are the two transcripts up there from
9 ---

10 MS. SHURLING: All I showed him was that there were no
11 exhibits.

12 (A PAUSE.)

13 BY MS. SHURLING: Now that you have a copy of that
14 transcript, I apologize. I thought it was sitting in front
15 of you.

16 A. No, it wasn't. That's fine.

17 Q. Did you introduce any exhibits at that proceeding?

18 A. I don't know if I, I don't know if I introduced any
19 exhibits, but I -- if I'm not mistaken, I, I handed up, if
20 I recall correctly, I thought I remembered handing up
21 emails to Your Honor. But regardless, I mean, I hear your
22 point but I, I don't -- I mean, I think it's somewhat moot
23 because my argument at the hearing was actually pretty
24 sound. In fact, I recapped everything that would have been
25 in the emails. Everything was on the record. And, I mean,

B. SELLERS - DIRECT EXAMINATION BY MS. SHURLING

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1 I don't need to read it because it's published for the
2 court, or you had it. But I went in detail about
3 everything that was in the email and my conversations with
4 Ms. Simpson.

5 Q. Well, absent the written documents being introduced as
6 an exhibit, the court was in the middle of a disagreement
7 between you and Ms. Simpson as to what the agreement was,
8 weren't they?

9 A. I don't believe that to be the case. I mean, if --
10 you know, I -- if that's your opinion, then I can't argue
11 with that. I don't believe there -- I've always been of
12 the, of the -- and I stated this to whomever would ask.
13 I've always been of the opinion that Judge Lee was going to
14 give the sentence that Judge Lee was going to give
15 regardless because of the circumstances and facts
16 surrounding this case. And I've said that multiple times,
17 and I -- whether or not my errors are the reason, whatever,
18 we will -- Judge McFaddin will make that ruling. But I've
19 never -- and I don't think you can get me to testify I
20 honestly believed anything other than that fact.

21 Q. Well, Mr. Sellers, you admitted a few moments ago that
22 it would be harder to get a judge to change their mind
23 about a sentence after a sentence was entered than before,
24 correct?

25 A. No question.

1 Q. Okay. So, your task, if you will, on reconsideration
2 was to ask her to change a sentence she had already made,
3 correct?

4 A. Yes.

5 Q. If you had introduced those emails before she
6 announced her sentence at the sentencing proceeding at the
7 time of the plea, she would've had the opportunity to
8 decide for herself what the parameters of the plea bargain
9 were before she announced sentence, right?

10 A. But, I mean -- so, you're asking me a question in
11 theory that's not practical, and so let me just explain it
12 this way. She would've been able to give Geordie whatever
13 she wanted to give him up to -- I don't know. The higher
14 range was fifteen to twenty years. And you're asking me a
15 question of do I believe that she would've gone lower if
16 she would have known that there was an agreement for the
17 state to remain silent. And my response is even if I may
18 have erred in that, the answer is no.

19 I also want to go back to something that you
20 challenged me on earlier about the information that the
21 court had in this motion to reconsider. And the court
22 states that: The only information I received, an email
23 about the plea. And so the court did have the plea and
24 although it wasn't an, although it wasn't an attachment, as
25 I told you, I handed up to Your Honor the emails, which she

B. SELLERS - DIRECT EXAMINATION BY MS. SHURLING

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1 clearly states right here in this motion to reconsider she
2 has when she made her ruling on the motion to reconsider.

3 Q. Let's go take a quick look at those emails.

4 A. Okay. Am I done with this transcript for now?

5 Q. Pardon?

6 A. Am I done with this transcript for now?

7 Q. For the moment.

8 A. Yes, ma'am.

9 Q. You don't read these emails verbatim in the motion to
10 reconsider transcript, do you?

11 A. I don't know; I can't answer that. I would have to
12 read those and then read this. I don't know. I mean ---

13 Q. Well.

14 A. --- what's the question?

15 Q. I, I, I apologize because I know you sat through all
16 this, but on the September 7 one, there is a reference to
17 the agreement for him to plead to one count of trafficking
18 -- one count CSC second with no recommendation, all -- you,
19 you know what's in there.

20 A. Oh. Now, if the question is was there a recommend --
21 was, was the state going to make a recommendation at any
22 point, I would argue that they were not, and I would argue
23 that -- I mean, if you're asking me did my good friend
24 Nicole violate the plea agreement, I made that argument. I
25 stood on my word and made that argument in front of the

1 court. She knows that I think that she -- thought that she
2 did. So, the answer to that is yes.

3 Q. And in the November 5 email, 2017 -- that was actually
4 from Ms. Simpson -- she reiterates the offer to dismiss the
5 human trafficking charges, for him to plead to one count of
6 second degree criminal sexual conduct with a minor second
7 degree, correct?

8 A. Yes. Okay. Yes.

9 Q. Okay. She doesn't repeat that she's dismissing at
10 least one, possibly two contributing to the delinquency of
11 a minor charges, did she?

12 A. No.

13 Q. But you've heard her say that was her intent?

14 A. Undoubtedly. I mean, just as a matter of practice --
15 I mean, the question of my lawyering ability is one in
16 front of the court today, but I'm not going to plea a
17 client with remaining or outstanding charges. So, I mean,
18 not only would that be her intent, but that would be my
19 understanding as well.

20 Q. And it was also your understanding that she was not
21 going to make a recommendation as to sentencing, correct?

22 A. Correct.

23 Q. Okay. Where there were -- there was at least the one
24 element, the dismissal of the contributing to the
25 delinquency of minor element, and in the October 4 email,

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1 she doesn't mention anything about running the probation
2 revocation concurrent either, does she?

3 A. No.

4 Q. Okay. Given the fact that those elements were not
5 articulated in that October 4 email or 5 -- it's a little
6 confusing -- but in either one of them, did that give you a
7 heightened sense of expectation with regard to the fact
8 that the other components of the September 7 agreement were
9 still in place?

10 A. No. I mean, it -- I mean, with all due respect to
11 this proceeding, she testified up here and read the
12 transcript. And I believe that it was, like, no
13 recommendation and no other recommendations or something.
14 So, I didn't have any belief that they would say anything
15 in regards to a sentence, but...

16 Q. Okay, but she didn't, she didn't live up to that
17 expectation in the courtroom, right?

18 A. No. I filed a motion in response to that.

19 Q. Okay. At that hearing, why did you not feel it was
20 necessary to physically introduce this series of emails to
21 document what your agreement with the state was?

22 A. Because I've put on the record, and I don't -- I mean,
23 you can read the arguments. Your Honor can read the
24 arguments, but I put on the record what I felt sufficiently
25 -- and I handed up those documents to Your Honor.

1 Q. And how would an appellate court be able to know what
2 those document said exactly if you didn't introduce ---

3 A. They were ---

4 Q. --- them as an exhibit?

5 A. They were not only recapitulated by myself -- I mean,
6 these are not substantive -- I mean, these are not lengthy
7 emails. They are substantive but not lengthy. And Your
8 Honor, actually if you go through this, she lays out her
9 reasoning pretty well. That's the same thing I articulated
10 multiple times sitting in this chair, but she also somewhat
11 recites what was in the emails as well.

12 I mean, to, to prevent me from being in this chair,
13 will I attach the emails next time? Yes. Is that
14 substantive? No.

15 Q. It's not substantive evidence of what the agreement
16 was?

17 A. I -- we may differ, but I put that on the record
18 multiple times, and I handed them to Your Honor, and she
19 recited them for the record. I don't know what else -- I
20 mean, the -- what was encapsulated in these emails is in my
21 motion verbatim. And I think that if you read my motion
22 and read this, you see that. It's also recited in the
23 hearing verbatim.

24 Q. It's your position that the content of the emails were
25 recited verbatim in the record?

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1 A. It's -- if the motion is a part of that, yes.

2 MS. SHURLING: The record will speak for itself on
3 that, Your Honor.

4 BY MS. SHURLING:

5 A. Is the motion, is the motion a part of the record?

6 Q. Yes.

7 A. Okay. Well, then I have no problem saying that.

8 Q. Mr. Sellers, with all due respect and, and I'm
9 familiar with what a good lawyer you are and your
10 reputation, but you have seen lawyers misrepresent
11 documents in court before, haven't you?

12 A. No question.

13 Q. And how is the court to be able to confirm that what
14 you're saying is accurate, the appellate court, if you
15 don't provide them the documentation to compare with what
16 else is said?

17 MS. JAMESON: Your Honor, objection. This is
18 misrepresenting the transcript. Judge Lee was provided a
19 copy of these emails. The record speaks for itself on
20 that.

21 THE COURT: Sustain the objection.

22 BY MS. SHURLING:

23 A. I need be clear, though, because this is me in this
24 chair, not anybody else. I don't appreciate the
25 insinuation that I was hiding or not providing a document.

1 It's extremely clear that I passed up those documents in
2 making the ruling to the judge in this case. And so if
3 there's any question about whether or not what I stated and
4 whether or not the facts of what I stated were accurate in
5 either my recitation or my motion, I also provided those
6 documents to the court so there would be no question
7 whether or not what I stated was factual or not, and there
8 would be no question whether or not I was an officer of the
9 court misstating any facts because I was not.

10 Q. First off, if I led you in any way to believe that I
11 was questioning your word, I apologize. I wasn't, but I
12 was pointing out that with regard to an appellate court
13 being able to ascertain what is accurate in the record, the
14 best evidence of that would, in fact, have been those
15 emails if they had them as an exhibit, is it not?

16 A. That's -- I mean, it -- I don't, I don't disagree with
17 your opinion. I, I am just making sure that when we're old
18 and gone and somebody is reading this transcript that there
19 will be no misconceptions about my position.

20 Q. And again, my only -- I, I asked you if you had ever
21 seen lawyers misrepresent things on the record.

22 A. No question.

23 Q. And I would say for the record, since we've crossed
24 the Rubicon, so to speak, on this is that half the time
25 when it happens, it's not really clear whether the lawyer

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1 is doing it intentionally or whether they're just mistaken.
2 But the fact remains lawyers don't always get it right,
3 whether it's intentional or unintentional, and written
4 documentation is the best insurance against that, correct?
5 Would you agree?

6 A. Yes, ma'am.

7 Q. Okay. Allegation 4 addresses your failure to object
8 the first and every opportunity when it became apparent
9 that the prosecution was not going to honor what you
10 believed to be a term that was still in place. Do you feel
11 you've already fully answered that question?

12 A. Yes, ma'am.

13 Q. Okay. Let's move on. When it became clear that Ms.
14 Simpson was, in fact, going to ask for a specific sentence,
15 whether she had agreed not to, whether the defense -- the
16 prosecution team had agreed not to or not, did you at any
17 point discuss with your client whether he wanted to go
18 forward with the plea?

19 A. I don't recall, but I would, knowing myself -- I don't
20 think that would be something that I would -- you would
21 have to ask Geordie that. I don't recall that, though.

22 Q. Okay. During the ---

23 A. Let me back up. I do know that Geordi didn't want to
24 go to trial, as I didn't either, on these particular
25 charges. And I believe that we, we evaluated kind of

1 together that that was probably our looming alternative,
2 but proceed. I'm sorry.

3 Q. Would you agree with me that in the hearing on the
4 motion to reconsider sentence, the state's position
5 essentially was that the October 5 offer was a separate and
6 distinct new offer, separate from what had been extended on
7 September 7?

8 A. I mean, I, I think it's probably more appropriate for
9 them to tell you what they believe their offer to be. But
10 regardless I, I, I still thought that -- I, I to this day
11 believe we made a deal that included no recommendation. I
12 think they even wrote that on the plea sheet maybe. I
13 don't know, but I, you know, I think that that was
14 violated.

15 Q. And would the fact that she agreed at the plea and
16 sentencing to elements of the plea agreement that were not
17 covered in her October 5 email have furthered that
18 impression in your mind?

19 A. I mean, I will repeat. I have since that day and
20 continued to today believe that we had an agreement that no
21 recommendation for sentence would be made. They made a
22 recommendation. That was violative of that agreement.
23 However, I'm still not of the belief that would have
24 changed much.

25 Q. Okay, but again you did not discuss with your client

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1 whether he wanted to tell the judge she -- tell Her Honor
2 that he did not wish to go forward with ---

3 A. I did ---

4 Q. --- the plea?

5 A. I don't -- I do not recall. I mean, I -- knowing --
6 we, we had a lot of conversations standing side-by-side
7 together, especially during that plea. I could hear his
8 heart beating, as was mine. I know his mother was behind
9 me. We have a great relationship. I have the most respect
10 for Ms. Williamson. And we had a very zealous advocate for
11 not just her daughter but three other young ladies, and I
12 knew the facts were not, were not good facts, and so I made
13 strategic decisions as we went through. This was not the
14 easiest case to plea.

15 Q. Is the decision to waive the right to trial by jury
16 one that a lawyer typically makes for his client?

17 A. No, not at all. I didn't make that decision to waive
18 it. No, we didn't. No.

19 Q. Did you not, by going forward with the plea without
20 having those discussions with your client, in effect make
21 that very decision for him?

22 A. Not at all. In fact, I mean, I, I -- no, not at all.
23 I have, I have a client who is on probation for serious
24 charges, who was accused of being in a human sex
25 trafficking ring, and who admitted to law enforcement that

1 he had sex with a fifteen-year-old girl. They were
2 runaways. I have a courtroom packed, a mother speaking
3 loudly on behalf of not the girl who he had sex with but
4 the other young lady that was involved.

5 My client was looking at seventy, maybe seventy-five
6 years in prison. I got him an offer that he only pled
7 guilty to the crime that we all in the room knew he
8 committed, which was a CSC, which was a very good offer. I
9 actually thought I did my job extremely well, and I got him
10 in front of a judge what we thought we were going to get --
11 gave him the best possible chance to get a, a sentence
12 which I thought he was going to get, and I made a great
13 argument, I thought.

14 Asking for three to five years may have been a bit
15 aggressive, but I honestly thought that the, the crime --
16 and I told Ms. Williamson this beforehand -- was an eight
17 to ten-year crime. I remember having this conversation,
18 and I was shocked that, I was shocked that he got fifteen
19 years. But I don't -- I mean, I was -- everything that I
20 did was a part of a strategy to, to get -- put him in the
21 best possible situation.

22 Q. With regard to the trafficking charges, did you
23 believe the state had a strong case against your client?

24 A. I, I think I'm a really good lawyer, and so I would
25 have loved to try those cases, but forty-five years is a

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1 long time that I don't have to serve.

2 Q. I understand all that, but the question is did you
3 believe the state's case for his complicity in trafficking
4 these young girls was a strong one?

5 A. That's not a yea or no question. That's a bit unfair.
6 I will say this. They had cooperating witnesses against
7 him. I made the argument in front of Your Honor -- because
8 I think she inquired as to why they were being dropped --
9 that he wasn't present throughout the entire time. In
10 fact, I think I said that he might have been present less
11 than -- I can't remember my argument, but less than
12 twenty-four hours of the three-day kind of trafficking
13 thing. He also didn't put any of their pictures on the
14 website. Didn't take them. Didn't put them -- I think it
15 was Backpage or MySpace or FaceBook, something, I don't
16 know.

17 And so, you know, we would have -- if, if we would
18 have decided to try it, I don't know what would've
19 happened, to answer your question directly.

20 Q. Okay. Would you agree that at the time you discussed
21 the opportunity to plead with your client, that you told
22 him the state had agreed not to make any recommendation as
23 to sentencing?

24 A. Of course.

25 Q. So, would you agree that at the time of the plea, he

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1 was relying on the accuracy of the information given to him
2 by his lawyer?

3 MS. JAMESON: Your Honor, objection. That calls for
4 speculation. That's an issue better addressed by the
5 applicant himself.

6 THE COURT: Sustained.

7 MS. SHURLING: I will rephrase, Your Honor.

8 BY MS. SHURLING:

9 Q. To your knowledge, had anybody met with your client
10 without you being present?

11 (CELL PHONE ALARM RINGS.)

12 A. Hold on. My kid's alarm went off. Say that again.

13 Q. Sorry. Had anybody met with your client without you
14 being present? Anybody from prosecution or law
15 enforcement?

16 A. I don't know. I don't think so. I mean, law
17 enforcement met with him.

18 Q. Okay. So, as far as you know, the information that
19 you gave him, which was that the state was not going to
20 make a recommendation as to sentencing, was all the
21 information he had to go on?

22 A. Oh, correct.

23 Q. Okay.

24 A. I mean, I had, I had multiple conversations with his
25 mother as well about that, but everything that I would have

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1 -- I didn't disclose any confidential information to her,
2 but everything regarding the plea that he allowed me to
3 tell her, I did.

4 Q. Mr. Sellers, have you ever had clients go to trial
5 when you thought it was a very foolish move?

6 A. Yes.

7 Q. If they wanted to?

8 A. Yeah.

9 Q. And regardless of your personal opinion concerning
10 that decision, it was your client's place to make the
11 choice, right?

12 A. In the one case that I recall that I felt like my
13 client was being foolish, my client had an offer of four to
14 seven years for traffic -- trafficking cocaine third. He
15 was looking at a mandatory minimum of three. The state's
16 star witness was Strom Thurmond, Jr., himself. We got the
17 case moved. He ended up -- I actually argued a really, a
18 really, really good case, but he ended up getting found
19 guilty, and he could have already been home, and instead he
20 got sentenced to twenty-five years. That was a vastly
21 different case than this, though.

22 Q. Okay.

23 A. But yes, to answer your question, I did have that one
24 case. This was different.

25 Q. Once you got the October 5 email from Nicole Simpson

1 and it said ---

2 MS. SHURLING: Your Honor, may I?

3 A. Here you go.

4 Q. Ah. I've got too many pieces of paper here. It said
5 only:

6 As for the offer, we would be willing to dismiss
7 the human trafficking charges, but your client
8 will need to plead to CSC with a minor second
9 degree.

10 Once you got that email, why didn't you email her back
11 and say I assume that the other concessions that were made
12 in previous discussions with regard to dismissing all other
13 related charges and the state not making a recommendation
14 as to sentence still stand?

15 A. I don't -- I mean, I don't know why I didn't email
16 her, but, I mean, pursuant to my notes and everything I
17 had, I got confirmation the day of. I might have picked up
18 the phone and called; I might have spoken to Lamar. I
19 don't, I don't know.

20 Q. Mr. Sellers, at that point, it became your word versus
21 Nicole Simpson's word, did it not?

22 A. I don't think that there's any disagreement in terms
23 of that fact. I mean, I still stand on what I say, and I
24 have the emails here and what I thought was contemporaneous
25 notes.

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1 Q. When you say that you confirmed with Nicole Simpson
2 the morning of the plea ---

3 A. I, I -- or let me -- it may not even -- I had a
4 conversation. I can't, I can't recall with who and it's
5 stated in my, my motion. I don't know if it was Nicole or
6 -- I'm certain it wasn't Luck or Lamar. I speak to both of
7 them regularly.

8 Q. Okay, but if you're -- and it's in the record. The
9 judge can read it for himself.

10 A. Sure.

11 Q. When it says that you confirmed as late as that very
12 morning that the state wasn't going to make recommendations
13 as to sentencing, Nicole Simpson subsequently denied that,
14 didn't she?

15 A. I don't -- you'd have to ask her. I mean, at the end
16 of the day, if you ask me what happened, I got up there and
17 asked for three to five years. They had a zealous
18 advocate, and I think that she felt compelled to do
19 something even if it did violate the plea agreement.

20 Q. I'm sorry. I'm obviously not being as articulate as I
21 try to pride myself on being. But if you had done a
22 responsive email and said Nicole, this offer that you're
23 extending does still include dismissing all related charges
24 and your commitment not to make a recommendation as to
25 sentencing, is that correct?

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1 A. I mean, I got confirmation, and so I don't understand.
2 I mean, that's not -- again, and you're, you're asking me
3 should I have gotten it codified in writing, and my
4 response to you is I got a confirmation otherwise and that
5 was noted. And that's why we were able to note that
6 confirmation and put it in the motion.

7 Q. Mr. Sellers, I'm not trying to beat you up, but if all
8 you're doing is reciting ---

9 A. You're not beating me up.

10 Q. --- a conversation that you had with opposing counsel,
11 oral conversation ---

12 A. Correct.

13 Q. --- with opposing counsel, you have nothing with which
14 to prove ---

15 A. I, I can't answer your question ---

16 MS. JAMESON: Your Honor, objection.

17 A. --- any more.

18 MS. JAMESON: Asked and answered several times.

19 A. Correct. I can't answer your question any more.

20 THE COURT: Sustained. It has been answered.

21 BY MS. SHURLING:

22 Q. Would have -- having -- if you had had that in
23 writing, would that not have strengthened your position ---

24 A. I've answered your question multiple times.

25 MS. JAMESON: Your Honor, objection.

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1 THE COURT: All right.

2 MS. JAMESON: Asked and answered.

3 MS. SHURLING: He -- the record will speak for itself.

4 THE COURT: Sustained.

5 BY MS. SHURLING:

6 Q. You haven't answered that specific question.

7 THE COURT: Sustained. Sustained.

8 BY MS. SHURLING:

9 Q. Okay. Let's move on. When Judge Lee's law clerk
10 responded to you after you had advised that you were
11 accepting the offer in the October 5 email, you got an
12 email at some juncture from Judge Alison Lee's law clerk,
13 Lauren Barnes. Do you recall that?

14 A. Yes.

15 Q. October 4 right where ---

16 A. I'm sure for scheduling or something, yeah.

17 Q. And at that point, they actually asked you for a copy
18 of any documentation relevant to plea negotiations, didn't
19 they?

20 (A PAUSE.)

21 A. No. I mean, if that's the way you read it, but I can
22 read it exactly, and people can interpret it as they wish,
23 but it says:

24 Judge Lee would like to know whether there have
25 been any offers made to the defendant, if the

1 defendant has taken any of those offers, and how
2 long the trial is set to last.

3 Q. At that point, did you not think it prudent to provide
4 Her Honor with copies of those emails in response to that
5 email?

6 A. No. She didn't ask for them, one. And two, usually
7 when Your Honor asks for that, and I don't know how many --
8 again going back to the practice of criminal law. When
9 we're in the court prior to the trial in a case like this
10 that carries this much time, as a benefit to all involved,
11 we usually put the offers that were made and rejected on
12 the record.

13 MS. SHURLING: Moment's indulgence.

14 THE COURT: Yes.

15 BY MS. SHURLING:

16 Q. The email says -- one second.

17 (A PAUSE.)

18 Q. Judge Lee would like to know whether there have
19 been any offers made to the defendant, if the
20 defendant has taken any of those offers.

21 That's the portion you just read at. Toward the end,
22 doesn't this email say the judge would like copies of
23 certain materials by 1 PM the following day?

24 A. For trial, yes.

25 Q. Did you not think it would be beneficial for her to be

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1 able to review the documentation concerning plea offers by
2 that time table as well?

3 A. No. That's not what the email says. In fact, I'm
4 going to read it so we're clear. It says:

5 Additionally, Judge Lee requests the following
6 materials no later than tomorrow at 1 PM:
7 pretrial briefs, a list of any pretrial matters,
8 a list of witnesses you intend to call, voir dire
9 questions, proposed jury instructions, and any
10 scheduling issues.

11 At no point did the judge say that she wanted anything
12 to go with plea offers; that's not what this email says.

13 Q. Mr. Sellers, I -- my question was did you not think
14 since the judge wanted to review the delineated documents
15 and have them in hand by 1 PM the day before ---

16 A. No.

17 Q. --- the ---

18 A. If Judge ---

19 MS. JAMESON: Objection. Asked and answered, Your
20 Honor.

21 THE COURT: Sustained. He's answered.

22 MS. SHURLING: Moving on, Your Honor.

23 BY MS. SHURLING:

24 Q. In the motion to reconsider sentence, do you feel you
25 sufficiently delineated on the record exactly which emails

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1 you had handed up to Judge Lee?

2 A. If I, if I did not sufficiently delineate them, they
3 were delineated by way of her having the physical copies.

4 Q. But how does the reader in appellate court, for
5 example, know what she had copies of?

6 MS. JAMESON: Objection. Calls for speculations as to
7 what the appellate court would do.

8 THE COURT: Sustained.

9 MS. SHURLING: Your Honor, with all due respect, he's
10 offering the fact that he says he handed the emails up to
11 the judge, but the transcript does not clearly delineate
12 what emails: how many, the dates.

13 MS. JAMESON: Your Honor, I think the transcript does
14 speak for itself in regards to that as to what emails and
15 what dates. And this is an appropriate argument to make at
16 the end, not questioning through this witness.

17 THE COURT: I agree. Sustained.

18 MS. SHURLING: The record will speak for itself, Your
19 Honor.

20 BY MS. SHURLING:

21 Q. Did you go over the discovery with your client?

22 A. Multiple times.

23 Q. Okay. All of it?

24 A. Yes.

25 Q. Okay, and did you discuss with him the elements of the

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1 various offenses with which he had been charged?

2 A. Of course.

3 Q. Okay, and did you then review with regard to the
4 discovery which parts of the discovery would satisfy
5 different elements of the crimes he was charged with?

6 A. Yes.

7 Q. At some point, a -- an indictment was issued alleging
8 that he was guilty of criminal sexual conduct second degree
9 with a girl over the age of eleven but under the age of
10 fourteen, and that's the way it had gone to the grand jury
11 and been true billed, correct?

12 A. I believe you -- I recall that from you questioning me
13 on that prior to this hearing.

14 Q. Okay, and the record, as has already been introduced,
15 indicates that there was a consent of consensual amendment
16 to that, to change it to under sixteen?

17 A. Yeah. He did not have sex with anybody between the
18 age of eleven and fourteen.

19 Q. Okay, he did not what?

20 A. Have sex.

21 Q. With anyone under fourteen?

22 A. Between the ages of eleven and fourteen, correct.

23 Q. Okay. Was there any particular reason that you
24 consented to the amendment to the indictment as opposed to
25 requiring that it go back to the grand jury?

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1 A. He admitted to it.

2 Q. And again, I, I -- do you believe you've given us your
3 full answer for why you didn't document that the state,
4 whether or not the state ---

5 MS. JAMESON: Objection. Asked and answered.

6 THE COURT: Sustained.

7 WITNESS: That's not fair. I don't even know what she
8 was going to ask.

9 MS. SHURLING: Well, I'm glad you find this amusing.

10 WITNESS: No, I was actually on your side there. I
11 said I didn't even know what you were going to ask.

12 BY MS. SHURLING:

13 Q. If -- do you agree that the Supreme Court has shown a
14 strong preference for written plea agreements?

15 A. You've said that multiple times. I, I don't -- I, I
16 haven't read that order from the -- I'm not familiar with
17 it because I haven't read it.

18 Q. Okay. Would you agree that written plea agreements
19 ensure better communication between the parties?

20 A. Yes.

21 Q. And would you agree that it makes it easier for you to
22 speak with authority with your client when you can show
23 them in writing what the state has and has not committed
24 to?

25 A. Yes. Even in this case when we had it in writing,

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1 though, there, there was still a discrepancy of whether or
2 not what portions of the offer remained and what didn't. I
3 still contend that the writing is what the writing is, and
4 that there was a contract made that was broken.

5 Q. And your reason for not verifying what was still in
6 place and what wasn't?

7 A. That's not true.

8 Q. Was what?

9 A. That's not accurate.

10 Q. In writing?

11 A. Because just the normal course of practice, and I felt
12 as if I made an agreement with someone and got confirmation
13 of that agreement, that that agreement would be more than
14 enough.

15 Q. Did you consider arguing that the so-called second
16 offer -- or, pardon me, more recent offer, the October
17 offer was not, in fact, a separate and distinct offer, and
18 in making the legal argument that if it were, it would have
19 needed to repeat all of the elements that were agreed upon
20 and clearly did not?

21 A. I, I can't answer your question.

22 Q. Why did you volunteer to write the order denying the
23 motion for reconsideration?

24 A. I don't know the answer to that.

25 Q. Well, the judge signed the order that you provided,

1 correct?

2 A. I mean, we go back and forth with that, with those
3 orders. The way that it's -- volunteer, I'm not sure. I'd
4 have to look at the transcript to see who volunteered, but
5 usually in the practice thereof, Your Honor will state such
6 and such or whomever that he or she delineates to write the
7 order. And then, as you know, there's an exchange back and
8 forth.

9 Q. Sure.

10 A. Correct.

11 Q. But typically the party that wins writes the order,
12 not the party that loses, correct?

13 A. I mean, I can't say that, no. I mean, I've been in,
14 I've been in this chair multiple times. I've been in that
15 courtroom multiple times. I've been on the winning side
16 and losing side multiple of arguments, and I've had to
17 draft arguments. There's nothing -- just as you were
18 scolding me earlier on the, the writing of the Supreme
19 Court, this is not a -- that's not a hard and fast fact.
20 Anyone can write those orders.

21 Q. Do you have a copy of the proposed order as you
22 submitted it to Judge Lee in your file?

23 A. Maybe. I mean, if, if you have a copy, it may be...

24 Q. That's one thing I did not find in your file.

25 A. I don't -- I mean, I can look through it. It would,

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1 it would arguably be in -- it would be in my file. It
2 would be in the file of the state. It would be in the file
3 of Your Honor.

4 Q. Do you have any recollection of drafting the language
5 in that order wherein it stated that there -- it made a
6 finding that there had been no violation of a plea bargain?

7 A. I don't recall that. I was, I was disappointed in the
8 ruling.

9 Q. Okay. Do you file your proposed orders with the clerk
10 of court?

11 A. Me personally?

12 Q. Yes, as a practice.

13 A. We usually do. If the -- if Your Honor asks, I mean,
14 I, I mean -- I don't -- what is this? Let me see what this
15 is. I honestly don't recall or know the answer to your
16 question.

17 Q. Last question.

18 A. Sure.

19 Q. Believe it or not. In response to the state's
20 position that the October 5 email reflected a -- an
21 entirely new plea offer, did you not consider it necessary
22 to point out that there were certain components of the
23 September 7 offer that the state was honoring and they were
24 not reflected in the most recent offer of October 5?

25 A. You'll have to repeat your question. I'm sorry.

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1 Q. Okay. It was the state's position, as is articulated
2 pretty much throughout the transcript of the motion to
3 reconsider sentence, that October 5 email reflected a brand
4 new offer, that it was separate and apart from the offer
5 that had made on -- been made on September 7. Did you ever
6 consider arguing that the October 5 offer didn't reflect at
7 least two things, the dismissal of the contributing to the
8 delinquency of a minor charge or the previous offer to run
9 the charges concurrent to each? On the later one, I will
10 admit that ended up being moot because you were down to one
11 charge. But the state agrees that although they didn't
12 articulate it on October 5, that they still fully intended
13 to honor the commitment to run the probation revocation
14 sentence, whatever it might turn out to be, concurrent with
15 whatever he got on their charge, their offer for him to
16 plead to one count of CSC with the minor second, right?

17 A. Yes.

18 Q. Okay, and based on that, you had a reason to believe
19 that there were components of the September 7 argument that
20 they were still honoring but not articulating in the
21 October 5 email, right?

22 A. Yes.

23 Q. So, did you consider arguing the fact that you had
24 been told they were still going to argue -- going to honor
25 it being concurrent with the probation revocation, and

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1 that's not covered in the October 5 email? Did you
2 consider that as evidence of the fact that this was a
3 modification of the September 7 agreement, not a whole new,
4 whole new plea offer? And I realize you, you argued under
5 theories of contract law.

6 A. I did.

7 Q. That, that it was, and I, and I appreciate the
8 argument you made, but my point being did you consider
9 pointing out to the court that on one hand they're saying
10 there were things that were committed to in the September 7
11 offer ---

12 A. I, I, I don't doubt that what you're saying are, are
13 sound. I just felt like I made the strongest argument I
14 could at the time, I thought.

15 Q. Okay.

16 A. Not -- I mean, that's the best way I can answer it,
17 and I did think that the theories of contract law, I mean,
18 clearly show what I thought it showed. I just didn't win
19 my argument.

20 Q. With regard -- have you had an opportunity, and I
21 apologize. I did forget about this. Have you had an
22 opportunity to review the pro se application for
23 post-conviction relief that was filed by Mr. Heyward
24 himself?

25 A. I believe I read everything in this case.

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1 MS. SHURLING: Your Honor, real -- if I may real
2 quickly go over this?

3 BY MS. SHURLING:

4 Q. He has alleged he was denied the right of effective
5 assistance of counsel by your failure to investigate
6 enhancement of the charge. Now, it is true, is it not,
7 that he was originally charged with third degree CSC with a
8 minor?

9 MS. JAMESON: Your Honor, objection. I don't, I don't
10 think there's any basis for that based on the clerk's
11 records we have or the testimony we've received today.

12 MS. SHURLING: Do what?

13 MS. JAMESON: I think that's a misleading question
14 that he was originally charged with third based on the
15 clerk's records we have and the testimony we've received.
16 Your question is assuming testimony we don't have in the
17 record.

18 MS. SHURLING: And you represented to me that you'd
19 gotten the entire clerk of court's records.

20 MS. JAMESON: Yes, we do.

21 MS. SHURLING: And there is an arrest warrant for ---

22 MS. JAMESON: Your Honor, we're on direct, and I
23 believe those questions need to be asked or some foundation
24 needs to be laid.

25 THE COURT: I would agree with that.

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1 BY MS. SHURLING:

2 Q. Mr. Sellers, do you agree that initially your client
3 was arrested for third degree criminal sexual conduct?

4 A. I mean, I -- yeah. I mean, I'm reading the emails
5 here.

6 Q. And you reference that in one of the emails, don't
7 you?

8 A. Yeah, and I would, I would ask that he be able to
9 plead to CSC third degree as originally charged.

10 Q. Okay. So in your email, you're pointing out that he
11 was originally charged with third degree?

12 A. Uh-huh. Yeah. This was an email where we were
13 requesting -- back to your discovery question, we were
14 requesting, we were requesting more discovery that was
15 missing from...

16 Q. And did you discuss the elements of second degree CSC
17 with your client? I'll say asked and answered on that one,
18 but with regard to that, did you discuss with him the
19 differences between third degree and second degree?

20 A. I, I can't remember our exact conversations, but I'm
21 pretty sure I did because usually one of the things I do
22 when I, when I lay out -- in an initial meeting when I lay
23 out -- and I believe I do it for, for family as well -- we
24 go through the charges and we actually lay out the amount
25 of time that's associated with it so everybody's

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1 understanding the circumstances that we're in. I, I can't
2 remember the specific conversations, and I don't want to
3 misrepresent anything here.

4 Q. In item B in the pro se application, Mr. Heyward says
5 you were ineffective for failure to inform him of the state
6 of the plea offer.

7 A. The state of the plea offer?

8 Q. In other words ---

9 A. The change or the ---

10 Q. Yes. Well, the state of it at the time he entered his
11 plea. That if anything changed, that he wasn't aware.
12 He's saying that you failed to inform him of the state of
13 the plea offer. So, once circumstances developed at the
14 plea proceeding which indicated that the element of not
15 making a recommendation was not going to be honored, he's
16 saying you didn't inform him of that, you didn't discuss it
17 with him. Is that -- and I gather from your earlier
18 testimony ---

19 A. Correct.

20 Q. --- you agree with that?

21 A. I would, I would actually leave that to his
22 recollection about our conversations because I can't recall
23 and he may, he may recall. I mean, he is in a much better
24 position to recall that conversation than I.

25 Q. Thank you.

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1 MS. SHURLING: And, Your Honor, I would like to note
2 for the record that the pro se application was filed way
3 before I was hired.

4 THE COURT: Yes.

5 BY MS. SHURLING:

6 Q. With regard to his pro se application, he also says
7 that you failed to move for a withdrawal of the guilty plea
8 based on unkept plea bargains. So, he is putting forth the
9 idea that you didn't give him a chance to decide for
10 himself whether he wanted to withdraw his plea. Same
11 answer?

12 A. Same answer to what? That's not -- you didn't ask a
13 question.

14 Q. Would your answer be the same as your answer to the
15 previous question, that you want to rely on his
16 recollection or ---

17 A. I mean, that's not a question. So, what are you --
18 what's the -- what are you asking me?

19 Q. He has alleged that you failed to move to withdraw the
20 guilt -- excuse me. You failed to move to withdraw the
21 guilty plea on unkept plea bargain.

22 A. That's accurate. I did not move to withdraw the
23 guilty plea. I mean, that's an accurate statement that
24 he's making.

25 Q. And you failed to inform him of that as an option.

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1 A. I would rely on his recollection to ---

2 Q. Okay.

3 A. --- determine that.

4 Q. Then you failed to make a formal objection on the
5 record to the sentence as being entered based on failure of
6 the state to honor their commitments in earlier plea
7 negotiations. Do you think your early -- earlier answers
8 cover that?

9 A. I'm just trying to get the question. I mean, sorry.
10 So, his assertions are, I believe, a matter of fact because
11 I -- other than the fact that I was ineffective. I think
12 his assertions that, that I didn't make a motion, that's a
13 fact. His assertion of me having a conversation with him,
14 I don't recall that conversation, but I would rely on him.
15 I've had many cases before and after, but as, as we all
16 know, this is -- Geordie Heyward is the one who's been
17 living with this and his family day in and day out. So,
18 he's probably in a much better position to answer that
19 question than I. So, I don't want to misrepresent that.

20 But then if you're asking me did I, did I not file
21 something or did I not state something or did I not
22 withdraw something, those are not subjective questions.
23 There's a record. I mean, those are a matter of fact.

24 Q. The question is, based on his pro se application, is
25 your failure to object to the sentence. I believe that

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1 your earlier answers cover that question. I'm trying to
2 respect him and cover his own allegations. Is there
3 anything else you would like to add?

4 A. I will repeat to Geordi and everyone else. As I've
5 stated before, if I made an error by not objecting to the
6 sentence because of their violation, you know, I completely
7 understand that. I live with it as well. But my only
8 point is that Your Honor stipulated in her order -- in her
9 recitation, not order, recitation of the facts, and I still
10 maintain today that either we withdraw that and go to trial
11 -- he's looking at seventy years or -- because of all the
12 circumstances surrounding that. Even, even with that
13 violation by the state, Your Honor was still going to do
14 the same thing that she did.

15 Q. I would draw your attention to item -- I think it's F
16 in his pro se application where he says that his plea was
17 not -- was involuntarily and unknowingly entered. I'm
18 paraphrasing. And that had he received proper counseling,
19 he would not have entered a guilty plea but would have
20 proceeded to trial. Do you agree that that's really a
21 question only he can address in his testimony? That you
22 ---

23 A. No. I mean, I disagree with that.

24 Q. Okay. How can you know what he would have done if you
25 had told him he would have a right to do that?

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1 A. Because Geordi and I had many conversations, and
2 there's one piece of evidence that we keep overlooking in
3 the entire situation. I mean, I -- we've -- the question
4 was the sentence. That was the question. The question was
5 not the guilt or innocence of a CSC with a minor. That was
6 not, that was not at issue. Geordie and I had that
7 discussion. No one -- there was not a question of guilt or
8 innocence over that.

9 I mean, I, I will -- you know, the remainder of his
10 PCR application I have -- you know, he stated fact. I have
11 no objection to that, and in one instance he stated
12 something that his recollection would be fresher than mine.
13 But in that instance, I can tell you that ain't true
14 because there is one fact in here which we all know to be
15 certain in this entire hearing, which is his admission of
16 that.

17 Q. However, when he was having his discussions with you
18 about wanting to plead, he was doing so at the same time
19 you were telling him that the state was not going to ask
20 for any particular sentence, correct?

21 A. No question. That is accurate. That is accurate.

22 MS. SHURLING: No further questions, Your Honor.

23 THE COURT: Cross?

24 MS. JAMESON: The state does not have any questions
25 for Mr. Sellers at this time but would ask that he remain

1 until all the witnesses are finished testifying.

2 MS. SHURLING: You thought she was going to ---

3 MS. JAMESON: Sorry.

4 WITNESS: I know.

5 THE COURT: Mr. Sellers, if you'd just stay with us,
6 please, sir.

7 Or did you have anything else?

8 WITNESS: Do I have to stay present in the courtroom,
9 or can I just be readily available to be called back?

10 MS. JAMESON: Readily available at this time.

11 WITNESS: Okay.

12 THE COURT: All right.

13 (THE WITNESS EXITS THE STAND.)

14 MS. SHURLING: Your Honor, may we have that brief
15 recess we had discussed earlier for me to consult with my
16 client?

17 THE COURT: Oh sure, by all means. How many minutes,
18 and I ask you that only ---

19 MS. SHURLING: Fifteen.

20 THE COURT: How many?

21 MS. SHURLING: Fifteen.

22 THE COURT: Well, that's fine because I've got to go
23 upstairs. I'll be back.

24 (OFF THE RECORD.)

25 MS. SHURLING: Your Honor, at this time I call the

1 applicant, Geordi Heyward.

2 GEORDI HEYWARD, BEING DULY SWORN,
3 TESTIFIES AS FOLLOWS:

4 DIRECT EXAMINATION BY MS. SHURLING:

5 Q. Mr. Heyward, I'm going to sound like a bit of a broken
6 record since you and I have been talking about this a lot
7 the last few days, but I have to get it on the record. Do
8 you understand?

9 A. Yes, ma'am.

10 Q. Okay. Now, you're a very soft spoken person, but the
11 court reporter sitting next to you has to take down every
12 word you say. So, I would ask that you sit up and talk
13 straight into the microphone and speak up just a little
14 bit, okay?

15 A. Yes, ma'am.

16 Q. Won't do us any good to get your testimony if His
17 Honor can't hear you and understated it, all right?

18 A. Yes, ma'am.

19 Q. Okay. You and I have discussed the potential risks of
20 going forward with this PCR application, haven't we?

21 A. Yes, ma'am.

22 Q. I have explained to you, have I not, that there is at
23 least an argument to be made that if His Honor grants
24 relief, the relief he should grant should be tailored to
25 the issues as the Supreme Court has said in some cases, as

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1 you and I talked about, and if he grants my request, the
2 remedy he would grant would be only a resentencing. If he
3 found that trial counsel was ineffective, plea counsel was
4 ineffective but only as it regards how he handled the issue
5 that impacted sentencing, then he would have the authority
6 to grant only a resentencing, not a complete new trial. We
7 discussed that, right?

8 A. Yes, ma'am.

9 Q. And we discussed asking for a resentencing only as the
10 remedy you want, correct?

11 A. Correct.

12 Q. And what decision have you made if the judge were to
13 conclude that it is not within his authority to only grant
14 resentencing? And so if he grants relief, that he's going
15 to be granting a complete new trial. Would you want to go
16 forward with this PCR application anyway even though it may
17 mean starting completely over with all the original charges
18 and a new trial?

19 A. Yes, ma'am.

20 Q. And I have explained to you, have I not, that there is
21 a constitutional right to a jury trial, right?

22 A. Correct.

23 Q. But I've also explained to you that there is no
24 constitutional right to plea bargaining, correct?

25 A. Correct.

1 Q. Okay. I've got to quit saying correct so much; I'll
2 train that out of my speech. But I did tell you that
3 there's no constitution right to a plea bargain?

4 A. Yes, ma'am.

5 Q. You don't have a right to force the Fifth Circuit
6 Solicitor's Office to plea bargain with you. They could
7 just come back and say no, no deal. You're going to trial
8 just as you're charged. You understand that?

9 A. Yes, ma'am.

10 Q. Notwithstanding that risk, is it your desire here
11 today to go forward with this PCR?

12 A. Yes, ma'am.

13 Q. You and I discussed the fact that if there were two
14 counts of contributing to the delinquency of a minor, your
15 maximum sentencing exposure was seventy-one years and if
16 there's only one, it's sixty-eight years, right?

17 A. Yes, ma'am.

18 Q. Okay. So, there's a lot of difference between even
19 sixty-eight years and fifteen but knowing that, you still
20 want to do this PCR?

21 A. Yes, ma'am.

22 Q. Okay, then let's talk about the issues here. When you
23 were discussing with Mr. Sellers whether you were going to
24 plead guilty or go to trial, what did he tell you was the
25 state's plea offer?

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1 A. He told me that there would be a no time
2 recommendation.

3 Q. You were to be pleading to what?

4 A. CSC second.

5 Q. Okay, and he did explain to you that it would carry
6 with it a mandatory sex offender registry, right?

7 A. Yes, ma'am.

8 Q. Okay, but he told you that you could plead to that one
9 count?

10 A. Yes, ma'am.

11 Q. Okay, and did he tell you that the three trafficking
12 charges would be dismissed?

13 A. Yes, ma'am.

14 Q. Did he tell you that the contributing to the
15 delinquency of a minor would be dismissed?

16 A. Yes, ma'am.

17 Q. What was your understanding as to how many
18 contributing charges there were?

19 A. From my understanding, maybe two; I'm not sure but
20 maybe two.

21 Q. Okay, but in any event, from your discussions with
22 your lawyer, it was your understanding that you would be
23 pleading to one charge, CSC with a minor second degree, and
24 that the three trafficking charges, the contributing to the
25 delinquency of a minor charge would all be dismissed?

1 A. Yes, ma'am.

2 Q. Okay, and what other benefit from pleading guilty did
3 you lawyer tell you you were going to get? You may have
4 said this and I just didn't hear it, but...

5 A. Benefit wise, he told me there would be a no time
6 recommendation if I plead out to the charge.

7 Q. Okay, and what did you understand that to mean?

8 A. Well, to me, when he told me that, I'm thinking maybe,
9 you know, time served or whatever's best, that he feel
10 would be best for me.

11 Q. Okay.

12 A. But I was thinking there's no time recommendation, so
13 just time served.

14 Q. Well, the phrase no recommendation, what did your
15 lawyer tell you that meant?

16 A. He didn't explain it to me. He just told me that the
17 state was just seeking for a no time recommendation.

18 Q. Okay. So, did you understand that to mean they
19 weren't going to be asking for any particular sentence?

20 A. Yes, ma'am.

21 Q. If you had understood in advance of your plea and your
22 sentencing that once they dropped that last trafficking
23 charge they were no longer going to be willing to say we
24 won't ask for anything in particular when it comes to
25 sentencing, we're, we're no longer going to say no

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1 recommendation, we've, we've dropped another charge and so
2 now the, the no recommendation is off the table, if you had
3 understood that, would you still have pled guilty?

4 A. No, ma'am.

5 Q. Would you have gone to trial on all these charges even
6 though they carried that much time?

7 A. Yes, ma'am.

8 Q. You're sure?

9 A. Yes, ma'am.

10 Q. I have explained to you in one of our conversations
11 that if you win a new trial, whether -- and the state maybe
12 enters in some kind of a plea agreement. Maybe they don't.
13 Maybe you get a trial, but in any event, if you were in
14 front of the same judge as last time, Judge Lee, that she
15 would have to articulate a reason for going up on your
16 sentence if you had had a jury trial. But that where you
17 attack a guilty plea and you're going to trial on
18 everything, that Her Honor would not necessarily be bound
19 by the sentence she originally imposed. Do you understand
20 that?

21 A. Yes, ma'am.

22 Q. Do you understand that second degree carries up to
23 twenty years?

24 A. Yes, ma'am.

25 Q. Second degree CSC with a minor. Should have said the

1 whole thing, okay. You understand?

2 A. Yes, ma'am.

3 Q. And trafficking, each one of those carries fifteen
4 years. You understand that?

5 A. Yes, ma'am.

6 Q. And the contributing to the delinquency of a minor
7 charges carry three apiece, up to three apiece. You
8 understand all that?

9 A. Yes, ma'am.

10 Q. Okay. I just want to be real clear so that the record
11 shows that you, at least today, you know what you're doing,
12 okay?

13 A. Okay.

14 Q. All right. Moving forward. Are you sure that if you
15 had known that the state was not going to stick with the no
16 recommendation agreement, you would not have pled and you
17 would have gone to trial?

18 A. Yes, ma'am.

19 Q. During the actual plea and sentencing when the
20 prosecutor started asking for a harsh sentence for you, a
21 high sentence, did you expect your lawyer to say anything,
22 object or anything? What, what -- how did you feel?

23 A. I felt that Mr. Sellers should object to the Judge Lee
24 sentence because basically from what he told me, that it
25 would have been no time recommendation. So, if Ms. Simpson

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1 at the time was referring to fifteen years or more, I would
2 have felt he should object to it or at least withdraw me
3 from my plea bargain because that was not the plea deal
4 that he, that he told me.

5 Q. Now, I have court appearances where some clients have
6 just about pulled the sleeve off my jacket. Have -- did
7 you make any attempt to get Mr. Sellers's attention and ask
8 him why he wasn't objecting?

9 A. I kind of looked at him, but I really didn't, you
10 know, touch him or anything. I just looked at him.

11 Q. You -- did you know that you could interrupt the
12 proceeding yourself?

13 A. No, ma'am.

14 Q. Did Mr. Sellers say anything to you, write you a note,
15 do anything asking you what you wanted to do once it became
16 apparent that she was going to ask for a high sentence?

17 A. No, ma'am.

18 Q. Would you have wanted him to object as soon as that
19 became obvious that's what was going to happen?

20 A. Yes, ma'am.

21 Q. Okay. Again, did he ever discuss with you the fact
22 that you could ask the judge to just stand down and not
23 finish the plea proceeding based on that misunderstanding?

24 A. No, ma'am.

25 Q. Okay. You didn't know you could do that?

1 A. No, ma'am.

2 Q. And he never discussed it with you?

3 A. No, ma'am.

4 Q. Would you have wanted him to discuss that with you
5 rather than make the decision for you?

6 A. Yes, ma'am, because if the, if the solicitor offered a
7 no time recommendation at the beginning, I would accept
8 that, but not knowing what I was pleaing to what I was
9 going up for, I wouldn't have -- I would have never did it.

10 Q. What do you mean not knowing what you were pleading
11 to?

12 A. Like, well, really how I was confused was the CSC
13 enhancement was what I was confused about, and then going
14 to the second because how it was -- the definition of it
15 was that CSC second degree, age eleven through fourteen,
16 and I didn't really understand that. I couldn't -- I
17 didn't know what was going on with that.

18 Q. Did -- in between when you had your plea and your
19 sentencing and when you went to court for a hearing on the
20 motion to reconsider sentence, did you have an opportunity
21 to talk to Mr. Sellers anymore?

22 A. No, ma'am.

23 Q. He never came to see you?

24 A. No, ma'am.

25 Q. Did you ever have any phone conversations with him

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1 where he discussed with you what had happened?

2 A. Only time we discussed what happened was after the
3 plea hearing, I called him from Alvin S. Glenn phone, and I
4 asked him if they was referring -- the no time
5 recommendation, why is the solicitor asking for fifteen
6 years. And he said it was up to the judge to do the
7 sentencing, and we really didn't even talk that long after
8 that. I never talked -- spoke with him again.

9 Q. So, even then he didn't discuss with you -- well, let
10 me rephrase that. At some point, did you ask him to file a
11 motion to revisit your sentence, to reconsider your
12 sentence?

13 A. No, ma'am. He decided to do that for himself.

14 Q. Okay, and when you found out he was going to do that,
15 did you have any discussions with him about the fact that
16 if Judge Lee was not willing to reconsider your sentence
17 and give you a lesser sentence, that you could still ask to
18 withdraw your plea?

19 A. No, ma'am, I didn't know that.

20 Q. If you had known that, would you have wanted to ask
21 him -- would you have asked him to, as an alternative
22 remedy, to ask for you to be allowed to withdraw your plea?

23 A. Yes, ma'am.

24 Q. Okay, and you were never given that option?

25 A. No, ma'am.

1 Q. Okay. I've, I've hammered you with this, and I'm
2 tired and you're tired, but I really don't want to face a
3 day, one day when you call me and have gotten a lot more
4 time than you've gotten, okay? So, I've got to be real
5 sure. Have you thought this through? You're sure you'd
6 rather take a new trial than stick with what you've got?

7 A. Yes, ma'am.

8 Q. Okay. That's your decision to make. Let's go over a
9 couple more things right quick. Did Mr. Sellers ever go
10 over with you the elements of each of the crimes that you
11 were originally charged with?

12 A. No, ma'am, he didn't. When I had discussed with him
13 about this CSC -- because when I was first originally
14 arrested, I had three counts of human trafficking, maybe
15 one or two counts of contributing to the delinquency of a
16 minor, and my CSC was a third degree. And when I tried to
17 explain to him because when I, when I hired Mr. Sellers, he
18 told me that my CSC was a second degree, and I was trying
19 to figure out how did my charge change without -- you know,
20 it's not changed in the system, nor did I have, you know,
21 indictments or some type of proof that it got changed to a
22 second.

23 Q. Okay. Bakari -- you understand that Mr. Sellers who's
24 testified -- you were sitting right here the whole day,
25 right?

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1 A. Yes, ma'am.

2 Q. You understand that he appears to genuinely believe
3 that he made the right decision in your case. You
4 understand that?

5 A. Yes, ma'am.

6 Q. But he made a decision for you, right?

7 A. Correct.

8 Q. Is that what you have a problem with?

9 A. I mean, that, too, because I feel like if they -- if I
10 would have heard the original plea, which was the no time
11 recommendation, I wouldn't be sitting here right now. I
12 would be at home with my family, with my daughter, taking
13 care of her, and being the man and responsibility, taking
14 care of my family. So, I would have accept that plea, but
15 that wasn't how he came to me with it. I, you know, I
16 never -- before my plea hearing, I never even get to speak
17 with him to know what was going on.

18 Q. Okay. Let's explore that. Let's be clear. You've
19 never told me that before, have you?

20 A. No, ma'am.

21 Q. Okay. So, you're saying here today that the first
22 offer that's in the September 7 email we've been talking
23 about to plead to one count of trafficking and one count of
24 CSC with a minor but to run concurrent with each other and
25 concurrent with your pending probation revocation, you

1 never knew about that offer?

2 A. No, ma'am.

3 MS. JAMESON: Objection, Your Honor. I, I think he
4 talked about just an initial offer. He didn't say that it
5 was the September offer, so we need to be clear for the
6 record about when that was conveyed.

7 MS. SHURLING: I referenced it as the September 7
8 offer.

9 THE COURT: That's what I understood.

10 MS. SHURLING: But I'll make it clear.

11 BY MS. SHURLING:

12 Q. The September 7 offer which was for one count of human
13 trafficking, one count CSC with a minor second degree, no
14 recommendations, to run concurrent with each other and
15 concurrent with the pending probation revocation matter,
16 did you or did you not know about that offer?

17 A. I did not.

18 Q. He never came and told you about that offer?

19 A. Only thing that Mr. Sellers offered that he told me
20 was, was that I guess during the time that Ms. Luck
21 Campbell was my solicitor ---

22 Q. Right.

23 A. --- and she's going to offer ten years or more. He
24 never told me that that was no time recommendation for the
25 September 7, I guess, email that him and Ms. Simpson

G. HEYWARD - DIRECT EXAMINATION BY MS. SHURLING

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1 shared. But the time, during the time between September
2 and October when he came to speak with me, he only told me
3 that Ms. Campbell would offer ten years.

4 Q. Okay. You, you've just said something really
5 important that I need you to understand, okay? Do you
6 understand that the offer that was made in the email dated
7 September 7 was -- you just said you understood it to be a
8 no time recommendation.

9 A. Yes, ma'am.

10 Q. Okay. Do you understand what actually -- it actually
11 says is no recommendation? Not, not that they were going
12 to recommended no time or agree to no time, but that they
13 simply were not going to make a recommendation as to
14 sentencing. I'm showing you this right there. No
15 recommendation. See it?

16 A. Yes, ma'am.

17 Q. Okay. So, do you now understand that on September 7,
18 nobody was recommending that you not get any jail time, any
19 prison time? They were simply saying at that juncture with
20 that offer, September 7, no recommendation?

21 MS. JAMESON: Your Honor, objection. I don't -- I
22 think that's reading too much into the email. We have the
23 testimony from Ms. Simpson that that was not the state's
24 understanding of the offer. So, I want to be very clear
25 for the record the state does not agree with the

1 characterization that that offer in September was that the
2 state would remain silent as to sentencing or there would
3 be no recommendation as to sentencing.

4 MS. SHURLING: I'll rephrase.

5 THE COURT: Please.

6 MS. SHURLING: But my question that disturbed -- what
7 disturbed me is he had just for the first time in my
8 representation uttered something that indicated he -- his
9 understanding of that September 7 offer was that it was a
10 recommendation for no time, and I'm getting -- he's...

11 BY MS. SHURLING:

12 Q. You're looking at that September 7 email right now,
13 aren't you?

14 A. Yes, ma'am.

15 Q. And you understand that it, it doesn't say anything
16 about a recommendation for no time. It's a no
17 recommendation. Now, we can argue about the state's
18 interpretation of that and your defense lawyer's
19 interpretation of that, but are you clear on the fact that
20 it doesn't -- nobody is saying that they ever said no time,
21 no time in the sense of no prison time?

22 A. Yes, ma'am. He -- on my day of my plea hearing, he
23 told me there would be a no time recommendation. That's
24 why he was asking the judge for three to five years.

25 Q. Mr. Sellers, if he believed that there was going to be

G. HEYWARD - DIRECT EXAMINATION BY MS. SHURLING

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1 a recommendation for no time, why would he ask for three to
2 -- how many years did you ---

3 A. Three to five.

4 Q. Three to five? Why did he ask for three to five if
5 there was a no -- recommendation for no time on the table?

6 A. Honestly, I ask myself that same -- I ask myself that
7 question all the time honestly.

8 Q. Okay, but do you now understand that regardless of
9 your interpretation of that phrase, the phrase used by the
10 state was no recommendation on sentence, okay? Not no
11 time, not recommending no time, nothing like that. It was
12 simply that there would be no recommendation as to
13 sentencing. You understand that?

14 A. Yes, ma'am.

15 Q. Does that change your position at all with regard to
16 whether you want to go forward with this?

17 A. No, ma'am, it doesn't.

18 Q. Okay. You did a pro se application for
19 post-conviction relief before I was ever hired in this
20 case. I went over those issues quickly with Mr. Sellers.
21 Was there anything in your pro se application that you
22 think I neglected to adequately cover?

23 A. No, ma'am.

24 Q. Okay. Are there any issues based on the testimony
25 that's been heard today that you would want to raise that I

1 have not raised?

2 A. No, ma'am.

3 Q. Okay, and you do understand that CSC with a minor is
4 -- if they prove that it happened, it doesn't matter if she
5 looked twenty-five. It doesn't matter if she consented.
6 It doesn't matter if she begged you to have sex with her.
7 If she was under sixteen, it's a straight out crime without
8 proving any more than the sex took place and she was
9 underage. You understand that?

10 A. Yes, ma'am, I do.

11 Q. Okay, and you're aware of the statement that you had
12 given to the police yourself?

13 A. Yes, ma'am.

14 Q. Okay. Is there anything I've left out that you want
15 to bring -- His Honor's got to decide your case, and I've
16 tried to do my best covering everything, but if I've missed
17 anything, I certainly want you to tell him Ms. Shurling
18 forgot something. So, have I neglected to cover something
19 you've wanted me to cover?

20 A. No, ma'am, that -- not that I know of.

21 Q. Okay.

22 MS. SHURLING: No further questions.

23 MS. JAMESON: Very briefly, Your Honor. Let me find
24 Applicant's Number 2 first.

25 CROSS-EXAMINATION BY MS. JAMESON:

G. HEYWARD - CROSS-EXAMINATION BY MS. JAMESON

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1 Q. Mr. Heyward, you admitted to having sex with MINOR 3
2 [REDACTED], correct?

3 A. Yes, ma'am.

4 Q. And you gave a statement to law enforcement that you
5 had sex with MINOR 3 [REDACTED], correct?

6 A. Yes, ma'am.

7 Q. And that's what you pled guilty to, correct?

8 A. Correct.

9 Q. That's the only charge you ultimately pled guilty to,
10 correct?

11 A. Correct.

12 Q. And all three of those human trafficking charges
13 against the three fifteen-year-old children, they were
14 dismissed, correct?

15 A. Yes, ma'am.

16 Q. And the contributing to the delinquency of a minor
17 charges?

18 A. Yes, ma'am.

19 Q. You wanted those charges dismissed, correct?

20 A. I didn't wanted them dismissed, but that's, I guess,
21 how the case went. That how they came to me with the plea
22 bargain.

23 Q. You wanted to proceed to trial on all of those
24 charges?

25 A. Yes, ma'am.

1 Q. Pursuant to your plea agreement dismissing those
2 charges, it dropped your exposure by fifty years, correct?

3 A. Yes, ma'am.

4 Q. And you understood that, that with the charges being
5 dismissed, you were facing a lot shorter of a sentence,
6 correct?

7 A. With them being dismissed, the only thing that I
8 thought it was, it would have been a no time recommendation
9 once I pleaded these charges.

10 Q. Okay, when you say no time recommendation, I think you
11 said before that you thought you were going to be going
12 home that day. So, you thought it would be a time-served
13 sentence, and you would have no active incarceration,
14 correct?

15 A. Yes. Yes, ma'am.

16 MS. JAMESON: No further questions, Your Honor.

17 MS. SHURLING: Nothing further, Your Honor.

18 THE COURT: All right, you may step down, sir. Thank
19 you.

20 (THE WITNESS EXITS THE STAND.)

21 MS. SHURLING: Your Honor, at this time I would
22 request, and I have spoken with opposing counsel -- I don't
23 believe she objects -- that we be permitted to order a
24 transcript ---

25 MS. JAMESON: I still have a case to put up.

B. SELLERS - DIRECT BY MS. JAMESON / CROSS BY MS. SHURLING 146

1 MS. SHURLING: I'm sorry.

2 MS. JAMESON: I would like to call Mr. Sellers if it
3 -- if you're done with your case.

4 MS. SHURLING: I'm, I'm done.

5 THE COURT: Okay.

6 MS. SHURLING: I didn't realize you were going to call
7 him.

8 MS. JAMESON: Just very briefly, the state would very
9 briefly recall Bakari Sellers to the stand.

10 THE COURT: Mr. Sellers?

11 Mr. Sellers: I'm still here, Your Honor.

12 THE COURT: You're still under oath.

13 Mr. Sellers: Yes, sir.

14 THE COURT: As you know.

15 (HAVING BEEN PREVIOUSLY SWORN, BAKARI SELLERS TAKES
16 THE STAND.)

17 DIRECT EXAMINATION BY MS. JAMESON:

18 Q. Did you ever advise Mr. Heyward he would receive a
19 time-served sentence?

20 A. No.

21 MS. JAMESON: No further questions, Your Honor.

22 THE COURT: Ms. Shurling.

23 CROSS-EXAMINATION BY MS. SHURLING:

24 Q. Did you ever explain to your client what the term no
25 recommendation in the September 7 email meant, what the

1 phrase no recommendation meant? Did you explain that to
2 him?

3 A. Excuse me. I went over the plea in detail.

4 Q. Pardon?

5 A. I went over the plea in detail. Today is the first
6 that I've been made aware that he thought -- and I don't
7 say, I don't say a recommendation of no time. That's just
8 not the phraseology that I use. In my conversations with
9 him and his family, if we had a conversation, which I'm
10 sure we did, about the recommendation, that they would not
11 make a recommend -- that they would not make a
12 recommendation of any sentencing or anything like that. I
13 just don't say no time.

14 Q. And I understand that, but my, my question is we as
15 lawyers sort of have this shorthand lingo that we get used
16 to.

17 A. Sure.

18 Q. And clients don't always necessarily understand what
19 those things mean. Did -- when you explained the various
20 offers, did you explain to him what it meant when the state
21 said no recommendation?

22 A. Yeah, in, in a larger -- I explained it in a larger
23 setting because I, like I said, I remember vividly the
24 conversation I had with Ms. Williamson separately and then
25 Geordie as well. I actually met with Geordie. I recall we

B. SELLERS - CROSS-EXAMINATION BY MS. SHURLING

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1 were upstairs. I was inside in the pod. We were upstairs
2 for some reason at Alvin S. Glenn. I vividly remember that
3 because we were -- I'm not usually -- for some reason, I
4 was upstairs in a pod, which was rare to me. That's why it
5 sticks out. But the way that I described it was I'm going,
6 I'm going to ask for three to five years.

7 WITNESS: Which admittedly, Judge, is a bit aggressive
8 for the charges and the circumstances.

9 A. And the reason I was asking for that was because I
10 wanted the judge to come slightly above that. And in every
11 conversation I had with the family, it was the amount of
12 time that Geordie was going to get, not that he was going
13 home.

14 Q. Understand. Now ---

15 A. And hence, that -- that's why the question you asked
16 of Mr. Heyward was appropriate because that's why I asked
17 for three to five years.

18 Q. Okay. Let me ask you a question. He has testified
19 that he never knew about the deal, if you will, the plea
20 bargain that was proposed in the September 7 email. Do you
21 have an independent recollection of discussing that deal
22 with him?

23 A. I make it a point to -- so, independent recollection,
24 the answer is no. I will just tell you that pattern and
25 practice of being in my office is that we always notify of

1 offers.

2 Now, the offer did get drastically better, as I think
3 you've even acknowledged. We went from CSC to -- and, and
4 trafficking to just the CSC. So, it did get better, and I
5 even made one more pitch for -- I think you might have seen
6 it in the emails. I even asked for the CSC second to be
7 reduced to a CSC third.

8 Q. Okay.

9 A. So, we were in constant negotiation.

10 Q. Well, let's talk about that for a minute because as of
11 September 7, the deal that was on the table was a plea to
12 one count of criminal sexual conduct with a minor second
13 degree, which carries up to twenty years, correct?

14 A. Correct.

15 Q. And there were three counts of human trafficking.
16 They carry up to fifteen?

17 A. Correct, each.

18 Q. But there was also an agreement that whatever sentence
19 was given on those crimes would be concurrent to each other
20 and concurrent with the probation revocation, right?

21 A. Which was fifteen.

22 Q. So, how was he better off with the offer that you
23 accepted following the October 5 email than he was at the
24 time of the September 7 one? The September 7 one, he could
25 get up to twenty years for CSC with a minor and up to

B. SELLERS - CROSS-EXAMINATION BY MS. SHURLING

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1 fifteen for each of the trafficking charges, up to three
2 for each of -- any of the contributing to the delinquency
3 charge, but they were all going to run concurrent, correct?

4 Yes?

5 A. Yeah.

6 Q. Okay, according to that email?

7 A. Correct.

8 Q. Okay. So, whatever sentence he got on the lead
9 charge, the, the most serious, the one that carried the
10 most time, those sentences he received on the other counts,
11 even if they went forward on every one of them, they were
12 going to run concurrent, right?

13 A. Yeah.

14 Q. And concurrent with the probation revocation?

15 A. Correct.

16 Q. So, what was the real advantage to this next
17 generation offer on October 5?

18 A. So to be clear, the question is what's the advantage
19 of pleaing to one charge versus six?

20 Q. Certainly. The judge still -- let ---

21 A. So, the advantage, the ---

22 Q. Let ---

23 MS. JAMESON: I ask that he be able to answer.

24 BY MS. SHURLING:

25 A. The advantage, the advantage I -- in my mind would be

1 this. I think you stipulated earlier that when the state
2 makes a recommendation and a victim is being an advocate,
3 that that compounds it and, therefore, the judge is more
4 inclined to give a higher sentence. I would also argue
5 that if you're charged with six sex offenses, including
6 human trafficking, the judge is inclined to probably max
7 you out at that twenty instead of fifteen.

8 So, in my judgment, you're correct in terms of the
9 definition of concurrence, but any time I have a chance to
10 plea a client where his -- to, to one charge versus six --
11 and also, I honestly -- I mean, this is probably in dispute
12 with Nicole. She'd probably frown up, but I don't think he
13 was a part of human trafficking, I mean. So, for me, it
14 was just, it was -- that, that makes the most sense.

15 Q. But Judge Lee was, regardless of whether he actually
16 pled on those charges, she was fully apprised of the fact
17 that they had three counts against him for trafficking ---

18 A. No question.

19 Q. --- human trafficking and two counts of -- one or two
20 counts of contributing to the delinquency, right?

21 A. Yes, ma'am.

22 Q. So, in terms of influencing her sentence, she was
23 going to know about them either way?

24 A. I dare not sit in this chair or any chair and tell you
25 what influenced the judge and what did not in terms of her

B. SELLERS - CROSS-EXAMINATION BY MS. SHURLING

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1 ruling. She made a sound ruling based on her judgment, and
2 I think that she, she laid out some of those grounds in
3 the, in the hearing, but I'm not going to go into Judge
4 Lee's thinking.

5 Q. That wasn't my question, Mr. Sellers.

6 A. Oh.

7 Q. I said the sentencing authority, the judge at the
8 guilty plea proceeding.

9 A. Correct.

10 Q. Was going to be aware of those three ---

11 A. Correct.

12 Q. --- trafficking charges and at least one, maybe two
13 contributing to the delinquency of a minor charge. Anyway,
14 whether he pled to them or not.

15 A. Correct.

16 MS. JAMESON: Your Honor, I do need to object for the
17 record. This is way beyond the scope of the recall of Mr.
18 Sellers.

19 THE COURT: I would agree.

20 MS. SHURLING: I'm satisfied with his answer. Thank
21 you.

22 MS. JAMESON: The state has no additional witnesses to
23 call.

24 THE COURT: You may step down, Mr. Sellers.

25 MS. JAMESON: And I would ask that Mr. Sellers and Mr.

1 -- Ms. Simpson be allowed to go.

2 MS. SHURLING: Absolutely.

3 WITNESS: Thank you.

4 (THE WITNESS EXITS THE STAND.)

5 MS. SHURLING: I wish I could go with them.

6 MS. JAMESON: Thank you.

7 THE COURT: All right. Now, Ms. Shurling, you had
8 started -- something about a transcript.

9 MS. SHURLING: Yes, and I apologize to opposing
10 counsel. I wasn't sure she was going to recall Mr.
11 Sellers. I should've asked. I apologize.

12 Your Honor, I would ask at this time. I've mentioned
13 this to opposing counsel, and I don't believe she has any
14 objection. Given the, the nature of the testimony here
15 today, I would like to order a copy of the transcript for
16 this proceeding and ask that both sides be allowed to
17 present Your Honor -- I don't know what your personal
18 preference is, whether you would like a memorandum from
19 each of us concerning our respective positions, or whether
20 you would like us to do a proposed order that would, in
21 effect, be a memorandum in the form of a proposed order, or
22 do both. I typically do both, but this...

23 THE COURT: Here's what I would prefer. I have tons
24 of things to read, but at the same time, I like to hear
25 from lawyers from trials as to what you think the ruling

1 should be. So, can you send me something -- I don't want
2 to say bullet exhibition, but just give me what you think
3 the ruling should be and enough meat to go with it, and
4 then I'll pick one of the two or blend them together and
5 send them back to you.

6 MS. SHURLING: Yes, sir. May I have leave of court to
7 order the transcript to prepare that?

8 THE COURT: Do you object, ma'am?

9 MS. JAMESON: No objection.

10 THE COURT: Okay. That's fine. Sure.

11 MS. SHURLING: Thank you, Your Honor.

12 THE COURT: I've got so much to read now, it'll
13 probably be a week, month before I get to it anyway.

14 MS. SHURLING: Thank you.

15 THE COURT: It's not going to be a month, but I got
16 lots to read all the time.

17 MS. SHURLING: I know the feeling. Thank you very
18 much.

19 THE COURT: Thank y'all.

20 **--- END OF TRANSCRIPT OF RECORD ---**

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 14TH DAY OF JUNE, 2021.

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

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

COLUMBIA, SOUTH CAROLINA

NOVEMBER 17TH, 2021

Megan Jameson

229
Applicant's
1
6-14-21 F

From: Bakari Sellers <BSellers@stromlaw.com>
Sent: Wednesday, April 14, 2021 7:52 AM
To: Stephanie Jones
Subject: FW: Geordi Heyward- Offer and more discovery
Attachments: Interview with Danielle Christine Burns.docx

From: Lamar Fyall <FyallL@rcgov.us>
Sent: Thursday, September 7, 2017 11:07 AM
To: Bakari Sellers <BSellers@stromlaw.com>
Cc: LUCK CAMPBELL <CAMPBELL@rcgov.us>; NICOLE SMITH <SMITHN2@rcgov.us>
Subject: Geordi Heyward- Offer and more discovery

Hey Bakari,

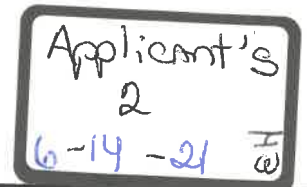
Attached is the changes/additions to the statement made by Danielle Burns.

The offer in this case is for Mr. Heyward to plead guilty to 1 count of CSC 2nd with a minor and 1 count of Human Trafficking with no recommendation. Both Sentences will run concurrent to each other and to his probation revocation.



Lamar Fyall

Assistant Solicitor
Fifth Judicial Circuit
1701 Main Street, Suite 302 • PO Box 192 (29202)
Columbia, SC 29201
Phone: 803.576.1840 • Fax: 803.576.1718



Stephanie Jones

From: Bakari Sellers
Sent: Tuesday, April 13, 2021 8:44 AM
To: Stephanie Jones
Subject: FW: State v. Heyward et.al

From: Bakari Sellers <BSellers@stromlaw.com>
Sent: Thursday, October 5, 2017 9:10 AM
To: NICOLE SIMPSON <SIMPSONN@rcgov.us>
Cc: LUCK CAMPBELL <CAMPBELL@rcgov.us>; Lamar Fyall <Fyall@rcgov.us>
Subject: Re: State v. Heyward et.al

My client accepts your offer to plea to the sole charge of CSC 2nd with a minor, as well as, handle his outstanding probation violation to be run concurrently.

Can we do this plea on the am of 10/11 or 10/12?

Sent from my iPhone

On Oct 4, 2017, at 3:42 PM, NICOLE SIMPSON <SIMPSONN@rcgov.us> wrote:

I have attached the pages you need. Additionally, the statements were made during our interviews with the witnesses on September 21st. Inv. Culler (with our office), Lamar, I were present (please note that there are no additional written statements – this is just information from our notes). With respect to Cheeto, the information we provided to you is all we know about the identity of Cheeto.

The “redacted” cell phone extraction was left out front for you to pick up on 8/31 and is still available out front.

As for the offer, we would be willing to dismiss the Human Trafficking charges, but your client will need to plead to CSC with a Minor 2nd Degree.

See you tomorrow.

Thank you,

Nicole

From: Bakari Sellers [<mailto:BSellers@stromlaw.com>]
Sent: Wednesday, October 04, 2017 12:54 PM
To: Lamar Fyall; ctruluck@trulucklawfirm.com
Cc: LUCK CAMPBELL; NICOLE SIMPSON; Stephanie Jones
Subject: RE: State v. Heyward et.al

All,

There are a few things we are missing from the discovery:

1. Page 4 of Danielle Burns' statement dated 6/29/16
2. Page 2 of Gayla Bouknight's statement dated 6/28/16
3. The CD of the pull of Geordi's phone (referenced in the SW and a copy of a disc attached)

As for the email below, please let me know the time, date and officer to whom these amended statements were made.

In a previous amended statement from "Toot" (defendant Burns) she states that Cheeto was in fact Ghost, however, all the victims refer to a separate Cheeto. Do you have any further information in regards to who this "Cheeto" may be?

Lastly, once we receive all the aforementioned, outstanding discovery, it is my hope to review the cell "footage" tomorrow am. My client has informed me he wanted to just see the outstanding discovery items and he would be prepared to plea. Therefore, this matter can be taken off the trial docket and I look forward to setting a date to plea this matter. We have reviewed your offer, and we are hopeful the state would be willing to allow his plea to CSC to be third degree as originally charged.

Please let me know your thoughts and a possible date this case can be plead.

BS

From: Lamar Fyall [<mailto:FyallL@rcgov.us>]
Sent: Monday, October 02, 2017 9:08 AM
To: Bakari Sellers; ctruluck@trulucklawfirm.com; johnduncanlaw@gmail.com
Cc: LUCK CAMPBELL; NICOLE SIMPSON
Subject: State v. Heyward et.al

Here is the additional information provided by § MINOR 3 and § MINOR 2, other than what was in their statements

Both:

- Ghost was involved but did not know the full extent of what was going on
- Geordi was like a security guard almost, even when he was not in the room with them, he was watching them from someplace else. They recalled one instance where he thought they were going to run away and he called the phone threatening them to stay.
- They got to the hotel they were found at earlier that morning

§ MINOR 3

- Geordi knew how old she was when they had sex and when they had sex it was when toot left her with Geordi
- She would answer the phone because toot said she had a nice voice and she would tell the men to text, toot would then answer the text messages

§ MINOR 2

- they met toot in DJJ
- Toot made it seemed like she owned them and if they didn't work for the money they couldn't stay

**Lamar Fyall**

Assistant Solicitor

Fifth Judicial Circuit

1701 Main Street, Suite 302 • PO Box 192 (29202)

Columbia, SC 29201

Phone: 803.576.1840 • Fax: 803.576.1718

<statement pages requested.pdf>



Stephanie Jones

From: Bakari Sellers
Sent: Tuesday, April 13, 2021 8:44 AM
To: Stephanie Jones
Subject: FW: State v. Geordi Heyward

From: Bakari Sellers <BSellers@stromlaw.com>
Sent: Wednesday, October 4, 2017 5:27 PM
To: Lee, Alison Renee Law Clerk (Lauren A. Barnes) <ALeeLC@sccourts.org>
Cc: campbellll@rcgov.us
Subject: Re: State v. Geordi Heyward

The defendant has accepted the states most recent offer and will be looking to schedule a plea next week.

Sent from my iPhone

On Oct 4, 2017, at 4:51 PM, Lee, Alison Renee Law Clerk (Lauren A. Barnes) <ALeeLC@sccourts.org> wrote:

Good afternoon Counsel,

It is my understanding that the above-mentioned trial is set to move forward next week. Judge Lee would like to know whether there have been any offers made to the Defendant, if the Defendant has taken any of those offers, and how long the trial is to last.

Additionally, Judge Lee requests the following materials no later than tomorrow at 1 PM.

Pre-trial briefs

A list of any pre-trial matters including a brief synopsis of the motion and whether witness testimony is needed

A list of all witnesses you intend to call at trial and an estimation of how long you expect their testimony to last

Voir dire questions

Proposed jury instructions

Any scheduling issues

Please let me know if you have any questions. Thanks.

Best,

L.A. Barnes

Lauren A. Barnes, Esq.

Law Clerk to the Honorable Alison Renee Lee
Fifth Judicial Circuit
Richland County Judicial Center
1701 Main Street

Columbia, South Carolina 29202
(803) 576-1767 (Phone)
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aleelc@sccourts.org

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STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

Geordi Jerrell Heyward, # 374238, )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2019-CP-40-0775

**ORDER OF DISMISSAL**

RICHLAND COUNTY  
FILED  
2022 APR 22 AM 8:14  
JERRELL, GEORDI  
CCP, O.S., & F.C.

This matter comes before this Court by way of Applicant Geordi Jerrell Heyward's application for post-conviction relief challenging his guilty plea and sentence for second-degree criminal sexual conduct with a minor stemming from his involvement in a human trafficking ring involving three fifteen-year-old girls and his sexual intercourse with one of those girls.

In response, Respondent the State of South Carolina filed a return and requested an evidentiary hearing to resolve the claims set forth in the application. Thereafter, Applicant, though retained counsel Tara D. Shurling, served two amended applications on Respondent with specific claims of ineffective assistance of counsel and involuntary guilty plea.

An evidentiary hearing on this action was convened June 14, 2021, before this Court at the Richland County Courthouse. Applicant appeared alongside counsel Shurling. Respondent was represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson of the South Carolina Attorney General's Office. Applicant proceeded forward on the claims raised in his two amended applications. This Court heard testimony from Applicant, plea counsel, Bakari Sellers, and prosecutor Nicole Simpson.

Following a thorough review of the record in its entirety, along with the testimony and

evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismissed this action with prejudice. Specific findings of fact and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 are set forth below:

### **FACTUAL AND PROCEDURAL HISTORY**

The records before this Court establish Applicant is presently confined within the South Carolina Department of Corrections. During its February 2017 term, the Richland County Grand Jury indicted Applicant for three counts of trafficking in persons under eighteen (2017-GS-40-0539, -0736, -0737) and contributing to the delinquency of a minor (2017-GS-40-0538). Thereafter, during its July 2017 term, the Richland County Grand Jury indicted Applicant for second-degree criminal sexual conduct with a minor (2017-CP-40-0540). The charges arose from an incident in which Applicant and two co-defendants brought three minor victims to a hotel in Richland County, drugged them, held them against their will, and forced them to have sexual relations with various men. Applicant also sexually assaulted one of the minor victims. The evidence reflects Applicant was the “muscle” who was responsible for keeping the minor victims at the hotel against their wills. Applicant also gave a voluntary statement to law enforcement wherein he admits to having sexual intercourse with the fifteen-year-old child victim.

Applicant retained Bakari Sellers, Esquire, to represent him on these charges. The matter was prosecuted by the Fifth Circuit Solicitor’s Office, with Assistant Solicitors Kathryn Luck Campbell, Lamar Fyall, and Nicole Simpson handling the case.

Following extensive plea negotiations with the State, a plea agreement was reached on the cusp of trial for Applicant to resolve all of his pending indictments in exchange for a guilty plea



to second-degree criminal sexual conduct with a minor—the very charge to which he had already given a statement implicating himself and the evidence was overwhelming to support a conviction. On October 12, 2017, Applicant, alongside counsel, appeared before the Honorable Alison R. Lee, circuit court judge, and pled guilty as indicted to second-degree criminal sexual conduct with a minor. Pursuant to the plea agreement between the State and Applicant, the State dismissed the three counts of human trafficking and contributing to the delinquency of a minor, and any sentence he received was to run concurrently to any probation revocation he received for two strong armed robbery convictions and a criminal conspiracy conviction for which he was currently on probation to be handled at a later date.<sup>1</sup> After a thorough colloquy with Applicant, Judge Lee accepted his plea and sentenced him to fifteen years of imprisonment.

On October 18, 2017, Applicant, through counsel Sellers, filed a motion to reconsider his sentence, asserting the State had violated the terms of the plea agreement by asking the Judge Lee to impose a sentence between fifteen to twenty years imprisonment when he believed the terms of the agreement were that the State would not seek any specific sentence and leave sentencing to the discretion of the court. A hearing on this motion was convened December 4, 2017, before Judge Lee. At this hearing, Applicant, through counsel Sellers, presented Judge Lee with two email exchanges between himself and the State regarding the plea offers (dated September 7, 2017 and October 4, 2017). Both parties argued vigorously in support of their positions. Counsel, on behalf of Applicant, argued that the plea offer contained a term requiring the State to remain silent as to sentencing recommendations, a term he asserts that was carried over from an earlier plea offer to

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<sup>1</sup> Applicant was represented by Assistant Public Defender Robert L. Bank, Jr., on those probation revocation matters, which were not resolved at the plea. Mr. Bank was present at the plea hearing.

A handwritten signature in black ink, appearing to be the initials 'R.L.B.' followed by a stylized flourish.

which Applicant counteroffered, followed by another counteroffer from the State and then acceptance by Applicant of this final counteroffer. He argued that basic contract principle prevented the State from now arguing this term of silence was not included in the offer, as well as made public policy arguments as to why the offer as he understood it to be should be upheld. In contrast, the State argued that no such term was included in the plea agreement, either in written or oral communications, and the plea was straight-up, allowing both Applicant and the State to argue for what sentenced each believed to be appropriate based on the facts and circumstances of the case. Following argument from both parties, Judge Lee orally denied the motion on the record, stating she sentenced Applicant to fifteen years based on the victim impact statements and Applicant's prior record and status as a probationer for violent crimes for which he was awaiting a revocation hearing. Judge Lee also found the emails did not indicate the agreement was for the State to remain silent as to sentence at the plea and that such a term was not part of the plea agreement.

On December 13, 2017, Applicant filed a notice of appeal and an explanation of appealable issues from the guilty plea pursuant to Rule 203(d)(1)(B)(iv), SCACR. The Court of Appeals reviewed the guilty plea explanation and determined the appeal could proceed forward to briefing. However, before the submission of briefs, Applicant moved to withdraw his appeal, submitting two affidavits stating that he had been advised on the risk of withdrawing his appeal and wished to drop his appeal. On January 9, 2019, the Court of Appeal issued an order dismissing the appeal. The remittitur was sent on January 25, 2019.

#### **ALLEGATIONS BEFORE THE COURT**

In his *pro se* application for post-conviction relief, filed on February 6, 2019, Applicant

alleges he is being held in custody unlawfully based on the following grounds:

- trial counsel was ineffective for failing to investigate the enhancement of charge
- trial counsel was ineffective for failing to inform him of the State of the plea offer
- trial counsel was ineffective for failing to move to withdrawal his guilty plea based on an un-kept plea bargain
- trial counsel was ineffective for failing to object to sentence
- trial counsel was ineffective for failing to inform him of the potential sentences for the crimes
- plea was involuntary based on ineffective assistance of counsel

As requested relief, Applicant states he is seeking vacation of his sentence for a less sentence or a new trial.

In response, Respondent filed its return to the application and asked for an evidentiary hearing to resolve these claims of ineffective assistance of counsel and involuntary guilty plea. Attached to this return and before this Court are the records from Applicant's general sessions proceedings (including his guilty plea transcript and motion to reconsider hearing transcript), his appellate records, his SCDC records, and the records from this current PCR proceeding.

Jonathan Waller, Esquire, was appointed to represent Applicant in this proceeding pursuant to Re: Appointment of Counsel in Post-Conviction Relief Cases before the Circuit Court (S.C. Sup. Ct. Order filed Oct. 6, 2008) and Rule 71.1(d), SCRCF (providing for appointment of counsel only where there is a question of law or fact which necessitates a hearing). Thereafter, Applicant retained Tara D. Shurling, Esquire, to represent him and an order of substitution of counsel was issued in December of 2019.

On June 10, 2021, Applicant, through counsel Shurling, served an amended application, adding the following grounds for relief:

1 A) Plea Counsel neglected to bring the terms of his agreement with the Assistant Solicitor assigned to this matter to the attention of the plea judge at the plea proceeding and at the time of sentencing.

2 A) Plea Counsel neglected to introduce as a Defendant's Exhibit documentary evidence that would have corroborated the terms of an agreement with the State concerning the sentencing in this case.

3 A) Plea Counsel neglected to preserve Applicant's right to be fully and fairly heard on the question of the existence of a plea agreement in his case by neglecting to introduce an email between Plea Counsel and the Assistant Solicitor assigned to this case as a Defendant's Exhibit.

4 A) Plea Counsel neglected to object, at the first available opportunity, when the prosecutor in this matter failed to honor the terms of an agreement she had made with Applicant, through his Plea Attorney.

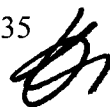
5 A) Plea Counsel was ineffective for failing to discuss with Applicant the issue of whether he wished to make a Motion to Withdraw his plea based upon the failure of the State to honor the terms of the plea agreement.

6 A) Plea Counsel was ineffective for failing to fully argue the issues relating to the State's failure to honor an express agreement with Applicant, and for failing to introduce documentary evidence which supported the existence of that agreement, and thereby prejudiced Applicant's ability to fully argue that issue on direct appeal.

7 A) Plea Counsel was ineffective for failing to explain to Applicant the weaknesses in the State's cases on the two counts of trafficking pending against him, where the scarcity of competent evidence on those charges, bore directly on Applicant's ability to engage in a thorough analysis of the benefits and risks of going to trial versus entering a plea of guilty under the plea agreement to Criminal Sexual Conduct with a minor to which Applicant pleaded guilty.

9 A) Applicant's plea of guilty was not freely and intelligently entered inasmuch as it was entered in reliance upon information provided to him by Plea Counsel which the State subsequently denounced as untrue and not binding upon the prosecution.

10 A) Applicant's plea was not knowingly and voluntarily entered inasmuch as it was entered in strict reliance upon Plea Counsel's advice that the prosecution was not going to make any recommendation as to sentence if he agreed to plead to one count of Second Degree CSC with a minor. Applicant asserts that he would not have waived his right to trial by jury and pleaded guilty if he had know that counsel



had not obtained written confirmation that the state agreed not to make any recommendation at his plea and sentencing proceeding.

11 A) Plea counsel was ineffective for neglecting to verify in writing all the terms of the plea deal in place, as extended by the State and accepted by Applicant, prior to the Plea proceeding held in this matter.

12 A) Plea Counsel was ineffective for failing to establish in writing, prior to accepting a plea deal with the State on behalf of Applicant, that the State's agreement not to recommend any sentence, as expressed in its first plea offer, remained part of the plea deal after they agreed to dismiss trafficking charges against Applicant.

13 A) Plea Counsel was ineffective for failing to advise Applicant of his right to pursue a Motion to Withdraw his plea as an alternative request to the Motion to Reconsider Sentence that was filed on his behalf.

14 A) Plea Counsel was ineffective for neglecting to immediately bring to the Court's attention the fact that the State was violating a term of the plea agreement once Assistant Solicitor Simpson began arguing for a harsh sentence in this case.

15 A) Plea Counsel was ineffective for failing to present the plea judge with copies of all the emails exchanged between him and Assistant Solicitor Simpson concerning plea negotiations in response to and request from the Judge's law clerk for documents relevant to plea offers.

16 A) Plea Counsel was ineffective for neglecting to confirm on the record which emails were handed up to the Judge during the hearing on his MTRS, by date and sender, thereby establishing some kind of reliable record of what was before the court. This was crucial where the documents sent to the Plea Judge prior to the hearing did not include multiple relevant emails.

17 A) Plea counsel was ineffective for neglecting to investigate what offers had been extended to Applicant's female co-defendant who was, as revealed through the discovery process, the main player in the alleged trafficking conspiracy, and for failing to present that information to the Plea Judge in mitigation of sentencing. Applicant submits he was prejudiced thereby where, despite the fact that his trafficking charges were dismissed, the fact that he was charged in connection to this conspiracy was well known to the Court and where the Court was aware that those counts were dismissed as part of a plea bargain, leaving the realistic possibility that those factors might influence the sentence in the charge pleaded to; second degree CSC with a minor.

18 A) Plea counsel was ineffective for allowing his client to plead guilty on an indictment which alleged he had sexual relations with a girl over the age of 11, but under the age of 14.

19 A) Plea Counsel was ineffective for sending Assistant Solicitor Simpson an email, acting on behalf of Applicant, accepting her offer to plead to Second Degree CSC with a minor, with all other charges being dropped, without expressly mentioning his understanding that the plea bargain included the original agreement that the state would not recommend any sentence.

20 A) Plea Counsel was ineffective for neglecting to argue in support of his argument, in his motion and at the MTYRS hearing, that the "second offer" was not in fact a new offer separate from the first, where Assistant Solicitor Simpson made the offer to plead to 2nd degree CSC with a minor, with the state dismissing the trafficking counts, without reiterating the earlier agreement to dismiss other counts against Applicant, thereby creating a reasonable belief that the dismissal of the trafficking counts was an addition to the original offer, not a superseding plea offer.

21 A) Plea Counsel was ineffective for Volunteering a proposed Order to Judge Lee denying Applicant's motion to reconsider sentence where the order presented, reflected a finding that there had been no violation of a plea bargain. Applicant was prejudiced by this error where it effectively denied Counsel for the Applicant the opportunity to argue a motion to reconsider that ruling.

On the same date, Applicant, though counsel Shurling, also served a second amended application, adding the following additional claim for relief:

22 A) Counsel was ineffective for neglecting to use available information to more thoroughly make an argument that the last statement of an offer amounted to an amendment to the original offer as opposed to a "new" offer as has been argued by the state.

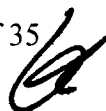
At the evidentiary hearing convened June 14, 2021, Applicant proceeded forward on these twenty-two grounds as set forth in his amended and second amended applications.

#### **SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING**

An evidentiary hearing was convened before this Court at the Richland County Courthouse on June 14, 2021. Applicant was present alongside counsel Shurling. Respondent was represented

by Senior Assistant Deputy Attorney General Megan Harrigan Jameson. Testimony was taken from Assistant Solicitor Nicole Simpson, plea counsel Bakari Sellers, and Applicant. By consent of both parties, three emails were also introduced as Applicant's Exhibits: Ex. No. 1) a September 7, 2017 email from Assistant Solicitor Lamar Fyall to Bakari Sellers, Ex. No. 2) an October 4, 2017 email chain between the prosecution team and Sellers, and Ex. No. 3) an email between Judge Lee's law clerk and the prosecution and defense.

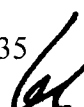
Assistant Solicitor Simpson testified first. She testified she was part of the prosecution team alongside Lamar Fyall and Kathryn Luck Campbell. She testified that the case was prepared for trial and Applicant elected to accept an extremely favorable offer from the State the week of trial, including for the dismissal of three human trafficking charges and a contributing to the delinquency of a minor charge. She testified this plea offer was reached after extensive negotiations between the State and Applicant, though his counsel, which included emails back and forth and contemporaneous verbal discussions. She consistently and unwaveringly testified that the plea offer did not include any sort of term that the State would remain silent during sentencing. She testified that if this had been a term of the plea agreement, she likely would have included it in the written emails summarizing the plea agreements and would have put it on the record during the plea proceeding. As she did neither, this was not a term of the plea agreement according to her testimony and is consistent with what she told Judge Lee during the motion to reconsider hearing. She testified that the plea offer was for Applicant to receive a concurrent sentence as to a probation revocation to occur at a later date, but that there were no additional terms as to sentencing. She elaborated that this meant that Applicant, though counsel, was able to argue for whatever sentence he thought was appropriate (the record reflects he requested three to five years of imprisonment)



and the State was able to argue what sentence it deemed as appropriate (which was between fifteen to twenty years of imprisonment). She testified one of the victims of the human trafficking charge had a very involved mother who was extremely vocal on behalf of all three minor victims at every proceeding and she expected her to ask the court for the maximum sentence (which she did). She testified that her position is the exact same as it was at the motion to reconsider the sentence hearing—that there was never an agreement (express or implied) that the State would remain silent during sentencing and the plea agreement was not violated when she requested a sentence of between fifteen to twenty years of imprisonment at the plea.

Regarding the indictment for second-degree criminal sexual conduct with a minor, Assistant Solicitor Simpson testified that everyone was well-aware that the minor victim was fifteen years of age, but the indictment had a scrivener's error that was corrected before the plea.

Plea counsel Bakari Sellers testified next. He testified that he believed there was a term in the plea agreement that the State would not make any recommendation as to sentence based on the emails and contemporaneous conversations with the prosecution team. He was surprised when Assistant Solicitor Simpson made a request for a sentence of fifteen to twenty years of imprisonment at the end of the plea. However, he testified this was after the extremely involved mother of one of the victims had forcefully requested the court sentence Applicant to the maximum sentence possible, which had a great impact on the court and sentencing (as evidenced by Judge Lee's comments during the motion to reconsider hearing). When questioned as to why he did not immediately object, ask to stand-down, or otherwise bring this purported plea agreement to the court as soon as the State made its sentencing request at the plea, counsel testified he made a strategic decision not to do so because this was an open plea (meaning the court was free to



sentence Applicant to whatever sentence it deemed appropriate) and he still believed that his Applicant would receive a sentence in between the two ranges recommended by him and the State. Counsel elaborated that he always believed his client would receive a sentence of eight to ten years of imprisonment based on the crime, which he conveyed repeatedly to Applicant and his mother, but he strategically requested a low sentence to counteract what he anticipated to be a forceful request from the victim's mother for a maximum sentence in the hope and belief that the court would "split the baby" and give him a sentence around ten years of imprisonment.

Counsel also testified that there was no legitimate defense to the second-degree criminal sexual conduct with a minor charge based on the overwhelming evidence of his guilt—including Applicant's own admission to having sexual relations with the fifteen-year-old child. Based on this, he did not want to object or otherwise move to withdrawal or stop the plea because he understood that this would stop plea negotiations and Applicant would be facing a trial on all of the charges and an all-but-certain conviction and harsher sentence of seventy or more years. It is this very real concern that caused him to proceed forward with the extremely favorable plea to resolve all pending charges, which he adamantly testified was *still* favorable even with the State requesting a sentence in the higher range. Counsel testified that Applicant did *not* want to proceed to trial on these charges. He also testified repeatedly that Applicant always admitted he was guilty of the second-degree criminal sexual conduct with a minor charge and had no defense to this charge.

Counsel testified this same strategic logic applied as to why he moved to reconsider the sentence rather than withdrawal the plea entirely—he was trying to avoid a much harsher sentence after a trial where his client did not have a viable defense. Counsel testified he presented the court

with the emails supporting his assertions that a plea agreement term was that the State would remain silent as to sentencing and argued that position based on contract law. He testified he believes he preserved all of these issues for appellate review and filed an appeal on his client's behalf, along with an explanation as to preserved appellate issues.

Regarding the indictment scrivener's error with the body of the indictment indicating the minor victim was between eleven and fourteen years old (despite correctly listing her birthday to indicate her actual age was fifteen years old), counsel testified he did not object to an amendment because Applicant had already admitted to having sexual relations with the fifteen-year-old child and the amendment comported with the facts and evidence for which he was on notice.

Applicant testified next. Applicant testified that based on his conversations with counsel, he believed that he would be pleading guilty to second-degree criminal sexual conduct with a minor for a time-served sentence and dismissal of all other charges. He testified that if he had known the State was not going to recommend a time-served sentence, he would have not pled guilty and would have proceeded to trial on all charges. He testified he wanted counsel to object when the State made a recommendation for fifteen to twenty years of imprisonment but did not object or otherwise let counsel know of his concern. He testified he talked to counsel once after the plea and expressed concern that the State had made a recommendation, but counsel said it was up to the judge to sentence him within the range. He testified that he did not ask counsel to file a motion to reconsider his sentence and that counsel did this on his own volition. He said he wanted to withdraw his plea but was never given this option. He testified counsel never went over his charges or the elements of the offenses with him. He claimed he did not know about the earlier plea offer which would have required him to plead to a human trafficking count in addition to the



second-degree criminal sexual conduct count. Applicant testified that he believed the recommendation was for him to receive a sentence that did not require him to serve *any* time of incarceration and he would go home the day of his plea, but yet acknowledged that counsel asked for a sentence of three to five years.

On cross-examination, Applicant admitted to having sexual relations with the fifteen-year-old child and giving a statement to law enforcement where he admitted to this. Despite this, he still believed he would receive no active incarceration as a result of his guilty plea.

On recall, counsel testified he never advised Applicant he would receive a time-served sentence.

At the close of the hearing, the Court requested memorandums from both parties outlining each parties' positions as to the issues raised. Applicant's counsel requested time to order and review the transcript of this proceeding before submitting a memorandum, which this Court granted. Respondent submitted a memorandum to this Court on March 24, 2022. Applicant did not submit a memorandum.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Applicant has alleged various claims of ineffective assistance of plea counsel and asserts that as a result of counsel's purported errors, he is entitled to have his guilty plea undone and proceed back to the court of general sessions for a new disposition of his case.

#### ***Standard of Review***

Under the Uniform Post-Conviction Procedures Act, an applicant may seek post-conviction relief upon the following types of allegations:



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

S.C. Code Ann. § 17-27-20(A).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRPC.

Applicant's twenty-two claims for relief as set forth in his amended and second amended application pertain to ineffective assistance of counsel. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, post-conviction relief allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in post-conviction relief actions). The allegation of denial of such representation sets

forth a prima facie violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

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

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, "does not guarantee perfect representation[—]only a 'reasonably competent attorney.'" Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair



proceeding. Strickland, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” Harrington, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

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

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

The Strickland standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” **not** whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

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

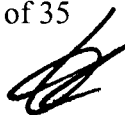


would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” Strickland, 466 U.S. at 694. Thus, it is not enough “to show the errors had some conceivable effect” on the outcome of the proceeding—counsel’s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

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel.” Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel’s performance was deficient; and second, evidence that counsel’s deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

The analysis of counsel’s performance under the first prong of Strickland remains unchanged—the applicant must show counsel’s representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” Hill, 474 U.S. at 56.

The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” Id. at 58–59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant



“must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” Id. at 59. This inquiry “focuses on a defendant’s decisionmaking” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. \_\_\_, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Surmounting Strickland’s high bar is never an easy task, and the strong societal interest in finality has “special force with respect to convictions based on guilty pleas.” Lee, 582 U.S. \_\_\_, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 (“[R]equiring a ‘prejudice’ showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel ‘will serve the fundamental interest in the finality of guilty pleas.’”). Reviewing “[c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney’s deficiencies. Lee, 582 U.S. \_\_\_, 137 S. Ct. at 1967. Rather, judges should “look to contemporaneous evidence to substantiate a defendant’s expressed preferences. Id. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harres, 282 S.C. at 134, 318 S.E.2d at 361.

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” Id. at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” Id. at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

***Findings as to Specific Claims Raised***

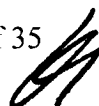
Applicant has alleged twenty-two claims of ineffective assistance of plea counsel and asserts that as a result of counsel’s purported errors, he is entitled to have his guilty plea undone. This Court finds has failed to meet his requisite burden of proof as to each allegation. Each allegation is addressed below:

***1 A) Plea Counsel neglected to bring the terms of his agreement with the Assistant Solicitor assigned to this matter to the attention of the plea judge at the plea proceeding and at the time of sentencing.***

Applicant first asserts plea counsel neglected to bring the terms of his plea agreement with the State to the attention of the plea judge at the time of the plea. Specifically, Applicant asserts that the plea agreement included a term that the State would remain silent as to sentencing and not make a recommendation and that counsel was constitutionally ineffective for failing to inform the plea court of this term of the plea agreement during the plea proceeding, rather than at a subsequent motion to reconsider hearing.

As an initial matter, this Court finds that this claim must fail as a matter of law because Judge Lee already expressly found that there was no such term in the plea agreement and Applicant failed to challenge this ruling when he abandoned his direct appeal. See e.g., State v. Black, 400 S.C. 10, 28, 732 S.E.2d 880, 890 (2012) (“Since Petitioner does not challenge the use of this conviction to impeach Bush’s credibility, this ruling, right or wrong, becomes the law of the case.”); Carolina Chloride, Inc. v. Richland County, 394 S.C. 154, 714 S.E.2d 869 (2011) (stating an unchallenged ruling, right or wrong, becomes the law of the case); Sheppard v. State, 357 S.C. 646, 662, 594 S.E.2d 462, 471 (2004) (holding when a ruling goes unchallenged, right or wrong, it becomes the law of the case); Caprood v. State, 338 S.C. 103, 525 S.E.2d 514 (2000) (observing where the appealing party does not challenge a ruling, it becomes the law of the case and will not be considered by a reviewing court). Accordingly, it is the law of the case that no such term existed in this plea agreement and Applicant is estopped from now arguing that such a term existed when he failed to appropriately challenge it on appeal. Because no such term existed, counsel cannot be deemed deficient for his handling of a non-existent term.

Next, this claim must fail because counsel articulated a valid, well-reasoned strategic basis for not interjecting or otherwise objecting during the plea proceeding as it would have likely let to the plea falling apart and all-but-certain conviction at trial (at least as to the second-degree criminal sexual conduct with a minor charge). Counsel knew that his client had *no* viable defense to the charge to which he was pleading guilty, knew the plea offer was extremely advantageous because it resolved all pending charges while only having Applicant acknowledge guilt for the crime to which he had always acknowledged guilt, and avoided a trial where he very likely would have been convicted on all counts based on the evidence presented in discovery, including statements from all victims



implicating him as an active participant in the human trafficking scheme. Counsel logically concluded that any sort of objection would have led to a withdrawal of the plea and an immediate trial to his client's detriment. He strategically decided to remain silent to preserve the advantageous plea agreement with a hope that his client would receive a sentence in the middle of the range (around ten years). This strategic decision was reasonable based on the circumstances and counsel was not deficient.

Additionally, this claim also fails because there was no such term requiring the State to remain silent as to an appropriate sentence, as Judge Lee correctly found during the general sessions proceeding (specifically during the motion to reconsider his sentence). Assistant Solicitor Simpson testified to this at length—there was never a provision that the State would remain silent as to sentencing, despite what Applicant or his counsel might have *wished* would have happened at the plea. The record does not support a conclusion that Applicant's assertions that such a term existed.

Finally, this claim also must fail because Applicant cannot establish any prejudice where Judge Lee was expressly presented with this argument and rejected it, instead finding she sentenced Applicant based on the victim impact statement, the extremely favorable disposition of his related charges (complete dismissal), and his prior record (that included probation violations as a result of these very charges). The plea court was made aware of this argument and expressly rejected it, and then put all of the independent reasons for its sentence on the record. (Mot. To Recons. Tr. p. 10). Applicant cannot establish that his proceeding would have been different had counsel informed the court of this term because no such term existed, and even if it had, the plea court articulated distinct and independent reasons for its sentence. Additionally, this purported term was not what induced the plea, as Applicant incredibly testified that he believed he would receive a time served sentence in

exchange for his plea to a sex crime against a child. This Court finds this claim fails and relief is denied.

***2 A) Plea Counsel neglected to introduce as a Defendant's Exhibit documentary evidence that would have corroborated the terms of an agreement with the State concerning the sentencing in this case.***

Applicant next argues that counsel was ineffective for failing to present the emails with the State as documentary evidence of the plea agreement term that the State would remain silent as to sentencing. However, as this Court found as to claim number one, there simply was no such plea agreement term that required the State to remain silent. Judge Lee correctly found this during the motion to reconsider the sentence, Applicant failed to challenge this factual finding on appeal, and, accordingly, it is now the law of the case that no such term existed for the same reasons set forth above. Counsel cannot be deficient for his handling of a non-existent term. Moreover, counsel articulated a reasonable strategy in electing not to object or otherwise stop the plea.

Moreover, the record is clear that these emails *were* in fact provided to Judge Lee during the motion to reconsider proceeding. See Mot. To Recons. Tr. p. 6. Judge Lee reviewed these emails, as she repeatedly indicates during the motions hearing, found that such an agreement did not exist based on these emails, and rejected this claim. This Court finds that counsel cannot be deficient for failing to present something to the court that eventually was presented and had no impact on the outcome of the proceeding. This Court finds that this claim lacks merit and denies relief.

***3 A) Plea Counsel neglected to preserve Applicant's right to be fully and fairly heard on the question of the existence of a plea agreement in his case by neglecting to introduce an email between Plea Counsel and the Assistant Solicitor assigned to this case as a Defendant's Exhibit.***

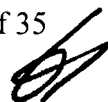
This claim is nearly identical to the claim above and this Court's ruling is it the same—there simply was no such plea agreement term that required the State to remain silent. Judge Lee correctly

found this during the motion to reconsider the sentence, Applicant failed to challenge this factual finding on appeal, and, accordingly, it is now the law of the case that no such term existed. Counsel cannot be deficient for his handling of a non-existent term. Again, Judge Lee was also presented with these exact emails and arguments at the motion to reconsider and the emails and arguments had no change of the outcome of the proceeding. Counsel properly presented the plea court with these emails, which were “presented to the Court” for purposes of Rule 210, SCACR (“The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. The Record shall not, however, include matter which was not presented to the lower court or tribunal.”). This Court finds counsel properly preserved the issue for appellate review and was not deficient. This Court finds Applicant has not met his burden of proof as to this claim and denies relief.

***4 A) Plea Counsel neglected to object, at the first available opportunity, when the prosecutor in this matter failed to honor the terms of an agreement she had made with Applicant, through his Plea Attorney.***

This claim is directly related to the three previous claims, and the same reasons for the denial of relief apply. First, Applicant is precluded from now arguing that there was a term for the State to remain silent when the plea court expressly rejected this claim and he failed to challenge it on appeal. Moreover, Judge Lee correctly found such a term did not exist when she was presented with this information at the motion to reconsider proceeding. This Court finds counsel was not deficient for not advising the court of a non-existent term, and counsel provided a reasonable, strategic basis for why he did not interject or otherwise stop the plea. Applicant has not established any deficiency of counsel.

Additionally, this Court finds Applicant cannot establish prejudice where the plea court was presented with this information and the result remained unchanged. The Applicant also testified it



was not this term that induced the plea, but rather, a wildly incredible claim that he would receive no active imprisonment for this sex crime against a minor. This Court finds Applicant cannot meet his burden of proof and denies relief.

***5 A) Plea Counsel was ineffective for failing to discuss with Applicant the issue of whether he wished to make a Motion to Withdraw his plea based upon the failure of the State to honor the terms of the plea agreement.***

To the extent that this claim relies upon the assumption that there was a plea agreement that the State would remain silent as to sentencing, this Court finds this claim must fail as such a term simply did not exist as the prosecutor testified at the evidentiary hearing and Judge Lee found at the motion to reconsider hearing.

Regardless of this faulty assumption, this Court finds this claim still fails because it is not credible that Applicant would have forgone an extremely favorable plea offer for the dismissal of *all* related charges (including three human trafficking charges) and proceeded to trial on all charges. Assistant Solicitor Simpson testified the case was on the cusp of trial when Applicant agreed to plead guilty and his main concern appeared to be the dismissal of human trafficking charges, as evidenced by his rejection of the earlier plea offer that would have required him to plead to one count of human trafficking. Had counsel moved to withdrawal the plea, Applicant would have been facing all his original charges and an all-but-certain conviction at trial based on the significant evidence of his guilt, including his own confession to having sexual relations with a fifteen-year-old child. Additionally, Applicant testified that he only pled guilty because he believed he would receive a sentence requiring no active incarceration, not that the State would remain silent as to sentencing. This is clearly refuted by the record. This Court finds this lack is without merit and denies relief.



***6 A) Plea Counsel was ineffective for failing to fully argue the issues relating to the State's failure to honor an express agreement with Applicant, and for failing to introduce documentary evidence which supported the existence of that agreement, and thereby prejudiced Applicant's ability to fully argue that issue on direct appeal.***

This Court notes this claim is the essentially the same as claim number three and must fail for the same reasons. As this Court found as to claim number three, counsel did present the documentary evidence (the emails) to the plea court at the motion to reconsider hearing. Accordingly, these emails were "presented to the court" for purposes of appellate review and nothing precluded them from being included in a record on appeal pursuant to our appellate court rules. See Rule 210(c), SCACR (discussing the contents of a record on appeal, with prohibits matters not presented to the lower court). Instead of presenting this claim (and these emails) for appellate review of Judge Lee's finding that the plea agreement was not violated and did not include a term that the State would remain silent, Applicant made a knowing, intelligent, and voluntary decision to withdrawal his direct appeal. This was not due to any failing or deficiency of counsel. This Court finds this claim must fail and denies relief.

***7 A) Plea Counsel was ineffective for failing to explain to Applicant the weaknesses in the State's cases on the two counts of trafficking pending against him, where the scarcity of competent evidence on those charges, bore directly on Applicant's ability to engage in a thorough analysis of the benefits and risks of going to trial versus entering a plea of guilty under the plea agreement to Criminal Sexual Conduct with a minor to which Applicant pleaded guilty.***

Initially, this Court finds that in making this allegation, Applicant inaccurately describes the State's evidence as "scarce" as it relates to two of the human trafficking charges. However, as the record from the plea proceeding and the testimony of Assistant Solicitor Simpson reflect, the evidence against Applicant was incredibly strong as to all charges, including all three human trafficking charges. All three minor victims gave statements that described Applicant's active participation in the



human trafficking ring, including that he acted as the “muscle” to keep these children in a constant state of sexual assault through fear and intimidation (and, as to one of the minor victims, his own sexual assault of her). Applicant has failed to present any credible evidence or argument as to why there was a “scarcity of competent evidence” as to the two human trafficking charges. Accordingly, this Court finds Applicant has failed to meet his requisite burden of proof and this claim must fail.

***9 A) Applicant’s plea of guilty was not freely and intelligently entered inasmuch as it was entered in reliance upon information provided to him by Plea Counsel which the State subsequently denounced as untrue and not binding upon the prosecution.***

This Court finds this claim must fail because it is not supported by the record. At the evidentiary hearing, Applicant incredibly testified he pled guilty based on the advice of counsel that he would receive no active incarceration and would walk out of the courthouse on the day of the plea despite pleading guilty to a sex crime involving a child. Counsel adamantly disagreed with this testimony, stating unequivocally that he never gave Applicant such advice. Applicant has presented no evidence whatsoever that his plea was induced by an agreement that the State would remain silent as to sentence. As Applicant has failed to meet his burden of proof as to this claim, this Court finds this claim must fail and relief must be denied.

***10 A) Applicant’s plea was not knowingly and voluntarily entered inasmuch as it was entered in strict reliance upon Plea Counsel’s advice that the prosecution was not going to make any recommendation as to sentence if he agreed to plead to one count of Second Degree CSC with a minor. Applicant asserts that he would not have waived his right to trial by jury and pleaded guilty if he had know that counsel had not obtained written confirmation that the state agreed not to make any recommendation at his plea and sentencing proceeding.***

This Court finds this claim is nearly identical to claim number nine above and also must fail because it is not supported by the record. At the evidentiary hearing, Applicant incredibly testified he pled guilty based on the advice of counsel that he would receive no active incarceration and would

walk out of the courthouse on the day of the plea despite pleading guilty to a sex crime involving a child. Counsel adamantly disagreed with this testimony, stating unequivocally that he never gave Applicant such advice. Applicant has presented no evidence whatsoever that his plea was induced by an agreement that the State would remain silent as to sentence. As Applicant has failed to meet his burden of proof as to this claim, this Court finds this claim must fail and relief must be denied.

***11 A) Plea counsel was ineffective for neglecting to verify in writing all the terms of the plea deal in place, as extended by the State and accepted by Applicant, prior to the Plea proceeding held in this matter.***

This Court notes this claim is strikingly similar to prior claims made and the argument against it remains the same. Applicant failed to challenge Judge Lee's factual ruling that no plea offer existed, and, accordingly, it is the law of the case that no such term of silence regarding sentencing was part of the plea agreement. Additionally, the credible evidence before this Court establishes that no such term was included in the plea offer, as testified to by the prosecution and determined by Judge Lee. Moreover, this position was advanced to Judge Lee and rejected, with Applicant's sentence remaining unchanged. This Court finds Applicant cannot meet his requisite burden of proof as to deficiency or prejudice, and, accordingly, denies relief.

***12 A) Plea Counsel was ineffective for failing to establish in writing, prior to accepting a plea deal with the State on behalf of Applicant, that the State's agreement not to recommend any sentence, as expressed in its first plea offer, remained part of the plea deal after they agreed to dismiss trafficking charges against Applicant.***

This Court again notes this claim is strikingly similar to prior claims made and the argument against it remains the same. Applicant failed to challenge Judge Lee's factual ruling that no plea offer existed, and, accordingly, it is the law of the case that no such term of silence regarding sentencing was part of the plea agreement. Additionally, the credible evidence before



this Court establishes that no such term was included in the plea offer, as testified to by the prosecution and determined by Judge Lee. Moreover, this position was advanced to Judge Lee and rejected, with Applicant's sentence remaining unchanged. Applicant cannot meet his requisite burden of proof as to deficiency or prejudice, and, accordingly, this claim fails and relief is denied.

***13 A) Plea Counsel was ineffective for failing to advise Applicant of his right to pursue a Motion to Withdraw his plea as an alternative request to the Motion to Reconsider Sentence that was filed on his behalf.***

This Court notes that this claim is similar to claim number five and must fail for the same reasons as set forth above. Counsel provided a strategic reason for not moving to withdrawal the plea based on the facts and circumstances of this case, and this strategic decision was objectively reasonable. Accordingly, this Court finds Applicant cannot establish any deficiency of counsel and relief is denied.

***14 A) Plea Counsel was ineffective for neglecting to immediately bring to the Court's attention the fact that the State was violating a term of the plea agreement once Assistant Solicitor Simpson began arguing for a harsh sentence in this case.***

This Court again notes that this claim is the same as prior claims made and the findings for deny the claim remain the same. Applicant failed to challenge Judge Lee's factual ruling that no plea offer existed, and, accordingly, it is the law of the case that no such term of silence regarding sentencing was part of the plea agreement. Additionally, the credible evidence before this Court establishes that no such term was included in the plea offer, as testified to by the prosecution and determined by Judge Lee. Moreover, this position was advanced to Judge Lee and rejected, with Applicant's sentence remaining unchanged. Counsel also provided a valid, strategic reason for not objecting or otherwise stopping the plea. For all these reasons, this Court finds Applicant cannot meet his requisite burden of proof as to deficiency or prejudice, and this claim is denied.

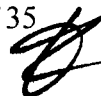
***15 A) Plea Counsel was ineffective for failing to present the plea judge with copies of all the emails exchanged between him and Assistant Solicitor Simpson concerning plea negotiations in response to and request from the Judge's law clerk for documents relevant to plea offers.***

This Court notes this claim is essentially the same claim as claim number two and number six and must fail for the same reasons as set forth above. These emails *were* presented to Judge Lee and she nevertheless found that the plea agreement did not contain a provision requiring the State to remain silent. This issue was preserved for appellate review, and rather than pursue a challenge to Judge Lee's decision, Applicant made a knowing, intelligent, and voluntary decision to withdrawal his direct appeal. This Court finds this claim must be denied.

***16 A) Plea Counsel was ineffective for neglecting to confirm on the record which emails were handed up to the Judge during the hearing on his MTRS, by date and sender, thereby establishing some kind of reliable record of what was before the court. This was crucial where the documents sent to the Plea Judge prior to the hearing did not include multiple relevant emails.***

This Court notes this claim is essentially the same claim as claim number two, number six, and number sixteen and must fail for the same reasons as set forth above. The record is abundantly clear which emails were provided to Judge Lee and, at the motion to reconsider hearing, Judge Lee confirms that she has read the emails and considered them in her denial of the motion to reconsider the sentence. This Court finds this claim must be denied.

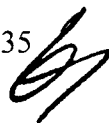
***17 A) Plea counsel was ineffective for neglecting to investigate what offers had been extended to Applicant's female co-defendant who was, as revealed through the discovery process, the main player in the alleged trafficking conspiracy, and for failing to present that information to the Plea Judge in mitigation of sentencing. Applicant submits he was prejudiced thereby where, despite the fact that his trafficking charges were dismissed, the fact that he was charged in connection to this conspiracy was well known to the Court and where the Court was aware that those counts were dismissed as part of a plea bargain, leaving the realistic possibility that those factors might influence the sentence in the charge pleaded to; second degree CSC with a minor.***



This Court finds this claim must fail as a matter of law and fact because it does not comport with the reliable record made at the plea proceeding, motion to reconsider proceeding, or the testimony presented at the evidentiary hearing. Initially, Applicant's assertion that someone else was the "main player" in the human trafficking ring and that he was just an unfortunate bystander who was unjustly indicted for human trafficking is absurd and not based on the record before this Court. All competent and credible evidence before this Court establishes that Applicant was active participant in the human trafficking ring, with the minor victims describing him as the threatening figure that prevented them from escaping their repeated sexual assaults. All three minor victims gave statements that implicated Applicant as a participant in the human trafficking ring. The prosecutor described the human trafficking ring as all co-defendants having their own, active role in the ring, including Applicant. This information was provided to Judge Lee to give her an accurate portrayal as to how the crimes occurred and the extraordinarily substantial benefit Applicant was receiving as a result of his plea agreement. This information was properly considered by the plea court. This Court finds counsel was not deficient for failing to object to information that was properly before the plea court and Applicant cannot establish any resulting prejudice. This Court finds this claim must be denied.

***18 A) Plea counsel was ineffective for allowing his client to plead guilty on an indictment which alleged he had sexual relations with a girl over the age of 11, but under the age of 14.***

This Court finds this claim fails as a matter of law because Applicant did *not* plead to an indictment which alleged he had sexual relations with a girl over the age of eleven but under the age of fourteen. Applicant was properly indicted for second-degree criminal sexual conduct with a minor who was under the age of sixteen, as clearly indicted on the face of the indictment issued



during the July 2017 term. The body of the indictment also properly includes the minor victim's birthday, reflecting that she was fifteen years old at the time of the sexual assault. However, the indictment did originally contain a scrivener's error indicating the victim was less than fourteen but at least eleven, despite the birthday clearly indicating the victim's age in the same sentence. This scrivener's error was corrected by the consent of the parties prior to the plea to properly reflect the charge to which Applicant was pleading guilty. This Court finds counsel was not deficient for consenting to the amendment, as it comported with the facts of the case and the discovery he had been provided and allowed his client to accept an extremely favorable plea offer to a charge for which he had *no* viable defense and to which Applicant always agreed he was guilty. This Court finds this claim must be denied.

***19 A) Plea Counsel was ineffective for sending Assistant Solicitor Simpson an email, acting on behalf of Applicant, accepting her offer to plead to Second Degree CSC with a minor, with all other charges being dropped, without expressly mentioning his understanding that the plea bargain included the original agreement that the state would not recommend any sentence.***

As an initial matter, this Court notes that it has found numerous above times in relation to similar claims that there simply was not a plea agreement that the State would remain silent as to sentencing. Had counsel expressly mentioned this term, it would have been rejected as expressed by Assistant Solicitor Simpson at the evidentiary hearing and would have resulted in Applicant proceeding to trial on three counts of human trafficking, second-degree criminal sexual conduct with a minor, and contributing to the delinquency of a minor with strong evidence of guilt supporting convictions as to each charge. Because no such term existed, as determined by Judge Lee and expressed by Assistant Solicitor Simpson at the motions hearing, counsel cannot be deficit for failing to clarify or request a term that did not exist and would not have been agreed to by the



State. This Court finds Applicant has failed to meet his burden of proof as to this claim and denies relief.

***20 A) Plea Counsel was ineffective for neglecting to argue in support of his argument, in his motion and at the MTYRS hearing, that the "second offer" was not in fact a new offer separate from the first, where Assistant Solicitor Simpson made the offer to plead to 2nd degree CSC with a minor, with the state dismissing the trafficking counts, without reiterating the earlier agreement to dismiss other counts against Applicant, thereby creating a reasonable belief that the dismissal of the trafficking counts was an addition to the original offer, not a superseding plea offer.***

This Court finds this claim must fail as it is directly refuted by the record. At the motion to reconsider Applicant's sentence, counsel did in fact argue that the "second" offer was an extension of the first offer, and, accordingly, all terms should remain. See Mot. To Recons. Tr. p. 5-8, p. 12. This Court finds this claim is directly refuted by the record and is denied.

***21 A) Plea Counsel was ineffective for Volunteering a proposed Order to Judge Lee denying Applicant's motion to reconsider sentence where the order presented, reflected a finding that there had been no violation of a plea bargain. Applicant was prejudiced by this error where it effectively denied Counsel for the Applicant the opportunity to argue a motion to reconsider that ruling.***

This Court finds Applicant has failed to present any plausible arguments to support his theory that he would have been precluded from filing a motion to reconsider the denial of his motion to reconsider his sentence based on his drafting of a barebones proposed order for the Court's consideration *after* the Court had already orally denied his motion and *after* he had already filed a notice of appeal that was held in abeyance until a formal written order was issued. This Court finds counsel prudently acted to protect his client's appellate rights by ensuring a formal order was entered so as to not delay his right to seek redress on appellate review. This Court finds this claim lacks merit and denies it.



***22 A) Counsel was ineffective for neglecting to use available information to more thoroughly make an argument that the last statement of an offer amounted to an amendment to the original offer as opposed to a "new" offer as has been argued by the state.***

This Court notes this claim is essentially the same as claim number twenty above and must fail for the same reasons as set forth above. This claim is directly refuted by the record. At the motion to reconsider Applicant's sentence, counsel did in fact argue that the "second" offer was an extension of the first offer, and, accordingly, all terms should remain. See Mot. To Recons. Tr. p. 5-8, p. 12. This Court finds this claim is directly refuted by the record and must be denied. This Court also finds Applicant has failed to present any additional "information" that he asserts should have been used to more thoroughly make an argument in support of this motion. This Court finds Applicant has failed to meet his burden of proof and denies relief.

### **CONCLUSION**

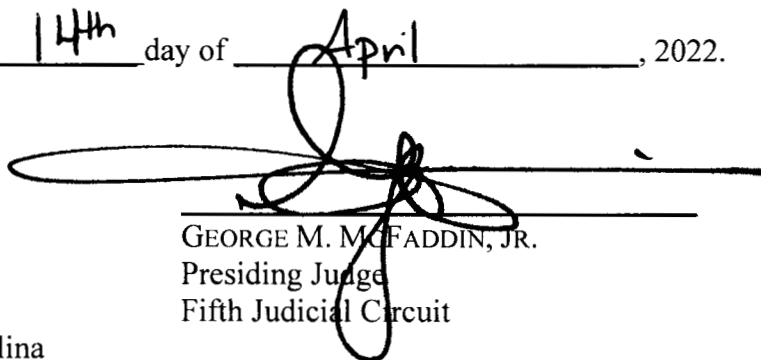
Based on all the foregoing, this Court finds Applicant has not established any other constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

This Court notes that if Applicant wishes to appeal this order, Applicant, through his counsel of record, must file and serve a notice of appeal within thirty days from the receipt of this Order. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant Geordi Heyward shall remain remanded to the custody of the State of South Carolina.

AND IT IS SO ORDERED this 14<sup>th</sup> day of April, 2022.

  
\_\_\_\_\_  
GEORGE M. MCFADDIN, JR.  
Presiding Judge  
Fifth Judicial Circuit

Sumter, South Carolina