

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Richland County

L. Casey Manning, Circuit Court Judge

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S.C. Supreme Court

DANIEL BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-213495

APPENDIX

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State of South Carolina

Court of General Sessions

County of Richland

2007-GS-40-06132

The State of South Carolina :

-VS-

TRANSCRIPT OF RECORD

Daniel Brown :

January 20, 2010
Columbia, South Carolina

B E F O R E:

The Honorable J. Michelle Childs, Judge.

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

Margaret Fent, Esquire
Attorney for the State

Joenathan Chaplin, Esquire
Gwendlyne Y. Smalls, Esquire
Attorneys for the Defendant

Daphne D. Helms
Circuit Court Reporter

1 (Court Reporter's note: Judge Childs heard two
2 unrelated guilty pleas at the same time. This record
3 reflects all questions directed to Mr. Daniel Brown and his
4 responses, as well as all colloquy pertaining to Mr. Brown's
5 plea. Responses by Mr. Taft and colloquy pertaining to his
6 plea have been omitted.)

7 Ms. Fent: Daniel brown and Christopher Taft.

8 Daniel Brown, after being duly sworn, testified as
9 follows:

10 The Court: Are either of you under the influence of any
11 alcohol, drugs, or medication?

12 Mr. Brown: No, ma'am.

13 The Court: Have you ever been evaluated for your mental
14 or psychological health?

15 Mr. Brown: No, ma'am.

16 The Court: All right. Mr. Brown, you are -- you have
17 an indictment for criminal sexual conduct with a minor second
18 degree. You'll be pleading to assault and battery of a high
19 and aggravated nature, indicating in Richland County on or
20 about June 4, 2007, that you willfully, unlawfully, and
21 feloniously engaged in a sexual battery with a minor who was
22 14 years of age but less than 11 -- but at least 11, excuse
23 me, Minor who was 14 years of age or less which
24 indicates 12 but at least 11. How do you wish to plead?

25 Mr. Brown: Guilty.

1 The Court: Okay. As to each of you, do you understand
2 that by pleading guilty you're giving up your constitutional
3 right to go to a jury trial?

4 Ms. Brown: Yes, ma'am.

5 The Court: And you realize that you give up all such
6 other constitutional rights including your right to remain
7 silent?

8 Mr. Brown: Yes, ma'am.

9 The Court: Is anyone forcing or threatening you to
10 plead today?

11 Mr. Brown: No, ma'am.

12 The Court: Are you doing so of your own free will?

13 Mr. Brown: Yes, ma'am.

14 The Court: And have you had enough time to speak with
15 your attorney about the nature of the charge, your maximum
16 possible punishment, and your constitutional rights?

17 Mr. Brown: Yes, ma'am.

18 The Court: And has your attorney spent enough time with
19 you to address any issues, questions, or concerns that you
20 might have?

21 Mr. Brown: Yes, ma'am.

22 The Court: And do you need any additional time to speak
23 with your attorney at this time?

24 Mr. Brown: No, ma'am.

25 The Court: With respect to your plea, are you aware

1 that if you had gone to a jury trial you would have had the
2 requirement of the State proving you guilty beyond a
3 reasonable doubt and they could not have required you to
4 testify against yourself?

5 Mr. Brown: Yes, ma'am.

6 The Court: And you're also aware that you are innocent
7 until proven guilty, so in that regard the State could not
8 make you testify against yourself, but also you don't have to
9 put up any defenses, evidence, nor do you have to testify in
10 your own behalf. Do you understand that?

11 Mr. Brown: Yes, ma'am.

12 The Court: Do you feel like you are satisfied with the
13 representation by your attorney?

14 Mr. Brown: Yes, ma'am.

15 The Court: Do you need any additional time to speak
16 with your attorney?

17 Mr. Brown: No, ma'am.

18 The Court: Okay. With respect to your plea as well, do
19 you realize that by pleading here today you give up any
20 ability to challenge any of the State's evidence? That's
21 present defenses, testimony, or to challenge whatever they
22 were going to put up through cross-examination or motions to
23 suppress evidence or in any way get your attorneys to ask the
24 Court to just throw out any evidence essentially. Are you
25 aware of that?

1 Mr. Brown: Yes, ma'am.

2 The Court: Okay. Based on these offenses and the
3 allegations that are therein and my questioning of the Court
4 -- of you all, did you understand my questioning to you?

5 Mr. Brown: Yes, ma'am.

6 The Court: And have your answers been truthful?

7 Mr. Brown: Yes, ma'am.

8 The Court: Okay. The Court will accept your plea.
9 You'll have ten days to appeal any guilty plea and/or
10 sentence. Do you understand those rights?

11 Mr. Brown: Yes, ma'am.

12 The Court: Okay. All right. State, you can begin with
13 Mr. Daniel Brown.

14 Ms. Fent: Thank you, Your Honor. This occurred back on
15 June 3rd of 2007 at Brook Pines apartment complex. The
16 victim was 12 years old. The defendant, I believe, was
17 20 years old. The victim on that particular day -- the
18 victim on that particular day got into an argument with her
19 mother. She left the home not wearing any shoes, crying.
20 Basically her intention was to walk all the way to her
21 grandmother's house.

22 She was walking down the road and said that the
23 defendant starts basically driving up next to her. They get
24 to a gas station parking lot. The defendant drives up next
25 to her. She does not know him, has never met him before. He

1 drives up next to her, is asking, "What's wrong? Why are you
2 crying?"

3 She says she got into a fight with her mom and that
4 she's walking to her grandmother's house. He offers her a
5 ride. She initially says no and then says okay and gets into
6 the car. He starts driving her to the grandmother's house.
7 Then he says he needs to stop at his house first, drives over
8 to his house, I believe an apartment.

9 He goes inside. It's approximately maybe 10:00 at
10 night, so it's dark outside. She says she doesn't want to
11 wait in the car, so she goes up to the apartment with him.
12 She sits down on a chair. The defendant goes into the back
13 of the apartment and then comes back and basically sits down
14 next to her and starts rubbing on her, touching her, picks
15 her up, takes her into the bedroom, and she describes him
16 vaginally sexually assaulting her.

17 She says that he did wear a condom. She didn't know
18 what he did with the condom. Afterwards, he just laid there
19 for awhile. She got herself up, put her clothes back on. He
20 eventually got his clothes back on and said, "Now, you know,
21 don't tell anybody." She did indicate that in the car he
22 asked her how old she was, and she told him that she was 12
23 and that he made some type of noise after she said she was
24 12 years old. She recalls that basically she didn't do
25 anything---

1 The Court: When you say he asked her how old she was,
2 that was where?

3 Ms. Fent: In the car on the way to his apartment on the
4 way to his---

5 The Court: Prior to the assault.

6 Ms. Fent: Correct, prior to the assault. She indicates
7 that she was afraid, this was a stranger, and that based on
8 his size -- and she described him in her statement -- before
9 he was arrested, she described him being a little over six
10 feet tall and over 200 pounds, and I think on the
11 documentation that he wrote on his plea paperwork that he's
12 6'4" and 255 pounds, that she was just too afraid really to
13 do anything about it.

14 He then drives her to her grandmother's house and
15 leaves. I think it's sometime around 1:00 in the morning
16 that she's then left at her grandmother's house.
17 Approximately two days later she discloses to her aunt what
18 happened. Her aunt then tells her mom. They immediately
19 take her to the hospital, and she gets a sexual assault
20 examination.

21 In that sexual assault examination they actually do note
22 an abrasion in the genital exam. They describe the female
23 genitalia, if you consider it as a clock, that she had an
24 abrasion at the 6:00 position, that sexual assault nurse
25 examiners will commonly refer to this injury at the 6:00

1 position as a mounting injury.

2 She's able to recall -- she memorizes his tag number:

3 [REDACTED], I believe, and she remembers that his apartment
4 number was [REDACTED]. She's able to specifically describe the car
5 that he was driving and other facial features about him.

6 Sometime later she takes her mom driving around to see if
7 they can find the apartment complex, and they see the car,
8 get that information to the police.

9 The police basically I think pull the tag, see that it's
10 registered to him. They do also pull then his lease
11 agreement with the apartment complex, and it is apartment
12 [REDACTED], as she said, and the tag number is exactly what she
13 remembered the tag number being. They get his photo and put
14 together a photo line-up, and she positively identifies the
15 defendant in a photo line-up.

16 She is also taken to the ARC for an interview, and they
17 find that to be compelling for a sexual assault. The
18 victim's mom is here and would like to speak at the
19 appropriate time, but that's the extent of the facts, Your
20 Honor.

21 The Court: Okay. Okay. I'm ready to hear from her.

22 Ms. Fent: Ms. McKnight? This is Crystal McKnight.

23 Your Honor, she had written out a statement that she was
24 planning on reading, but she's a little too upset to actually
25 read it out loud because she was just going to read it. I

1 haven't shown it to defense counsel yet.

2 Mr. Chaplin: Say that again.

3 Ms. Fent: She was going to read this but she...

4 Mr. Chaplin: You can hand it up to Your Honor.

5 Ms. Fent: Okay.

6 The Court: Okay. (The court reads the document.)

7 Okay. Thank you, but I'll hold on to this for a moment.

8 Okay. Okay. Let me just indicate in my notes a letter by

9 Ms. McKnight. And that's her mother.

10 Ms. Fent: This is the victim's mom present in the
11 courtroom, Ms. Crystal McKnight.

12 The Court: Okay. Let me just go back over what you
13 told me to make sure I've got it all. Did the ARC do a
14 report?

15 Ms. Fent: They did.

16 The Court: Okay. And then you said they put together a
17 photo line-up. What was the result of that?

18 Ms. Fent: She positively identified the defendant as
19 the person who sexually assaulted her.

20 The Court: And what is the actual assault that she's
21 claiming? Because it can come in various forms.

22 Ms. Fent: He vaginally penetrated her with his penis
23 wearing a condom. She also indicated that he had asked her
24 to perform oral sex on him, but she said no and covered her
25 mouth. He asked her -- I don't know if I said that right.

1 He asked her...

2 The Court: Okay. All right. And then you can give me
3 that report.

4 Ms. Fent: This is just a copy of the interview. (Ms.
5 Fent hands a document to the Court.)

6 The Court: Okay. All right. Sir, do you disagree with
7 any of those facts as presented at this time?

8 Mr. Chaplin: Your Honor, we do have two -- well, one
9 main disagreement. We do admit that the sexual act did take
10 place, but actually it was oral sex, not any type of
11 penetration.

12 The Court: Who was the oral sex committed by?

13 Mr. Chaplin: Say that again, Your Honor.

14 The Court: How was the oral sex committed? When you
15 say admit, tell me what he said---

16 Mr. Chaplin: We admit that she performed oral sex on my
17 client.

18 The Court: Okay. Okay. All right. Any other
19 disagreements?

20 Mr. Chaplin: Your Honor, she stated that in -- the
21 individual stated -- the victim stated to my client that she
22 was 21, and the only issue I have with that is she gave a
23 report on June the 5th of '07 and that was the first one, the
24 Richland County Sheriff's Department. Then I have another
25 one in my hand from the Columbia Police Department, and

1 they're a little different and I'd like to just pass that up
2 to Your Honor.

3 The Court: Okay.

4 Ms. Fent: I think he meant to say 12 instead of 21.

5 Mr. Chaplin: Oh, excuse me, 12.

6 Ms. Fent: That she was 12.

7 Mr. Chaplin: My fault, Your Honor. I had the right
8 numbers in the wrong order.

9 The Court: Okay. So you're saying the victim stated to
10 the defendant that she was 12?

11 Mr. Chaplin: Well, you asked the question did she --
12 did she tell him that she was 12---

13 The Court: Oh, okay.

14 Mr. Chaplin: ---and in the original one, no.

15 The Court: Okay.

16 Ms. Fent: Was that just the incident report you gave to
17 that?

18 Mr. Chaplin: Yeah.

19 The Court: The incident report. Okay.

20 Mr. Chaplin: Other than that, Your Honor...

21 The Court: Okay. All right, sir. Any other disputes?
22 Any other disputes?

23 Mr. Chaplin: Not at this time, Your Honor.

24 The Court: Okay. All right. Then does he have a prior
25 record?

1 Ms. Fent: No prior record, Your Honor.

2 The Court: Okay. I'm ready to hear from defense.

3 Mr. Chaplin: Your Honor, Mr. Brown is 23 years old.

4 He's from Walterboro, South Carolina, my hometown. He works
5 there. He works for Brown's Landscaping. He's been there
6 for about two, two and a half years. Immediately when this
7 incident occurred, he reached out to me and his family
8 reached out to me to let me know what was going on, and from
9 that point we've been talking back and forth to the
10 solicitor's office this entire time and he's been showing up
11 for court.

12 Your Honor, he has lots of family support, and the issue
13 of that being his mom and dad have showed up a couple of
14 times when -- for other appearances which I informed them
15 they didn't have to show up for roll calls and that type
16 thing. Because he's never been in trouble before, they
17 showed up anyway thinking, okay, well... But now they've
18 burned a lot of their days from work and other things that
19 they have used up in the last two years.

20 Your Honor, it being -- that being said, I want to speak
21 for them and say that they've been behind him 150 percent
22 since this incident occurred. They have met at my office on
23 numerous occasions, after hours, 6, 7, 8:00 at night,
24 whatever time deemed fit for him to be in place.

25 He does not live in Columbia. He lives in Walterboro at

1 [REDACTED] [REDACTED] [REDACTED], Walterboro, South Carolina.

2 He's been there ever since. Your Honor, we're asking -- this
3 matter has -- did take place back in '07. As of this point,
4 he's trying to move on with his life. I'm sure the other
5 individuals involved want to move on with their life as well.

6 In turn, Your Honor, he wants to put this matter behind
7 him. He understands that the black letter law deals with
8 age. He understands fully. I've went over it countless
9 times with him and explained to him from this point on and on
10 further if he can't -- if he got any indiscretion in his mind
11 about someone's age, always favor to the negative, meaning
12 just to assume the person is not of age.

13 In turn, Your Honor, I say all this to say that, believe
14 me, he won't grace any court or any other court in the near
15 future with his presence for nothing like this unless he's
16 testifying for someone else. Your Honor, we're asking and
17 I'm asking and his family is asking for some type of
18 probationary sentence if you see fit. If not, Your Honor,
19 he's gainfully employed. He's worked ever since. Even then,
20 when he was arrested, he was employed.

21 Your Honor, I ask that some type of weekend time be
22 imposed where he can still maintain his employment. This
23 incident obviously occurred on one day when obviously
24 approximately three days later is when the first person
25 actually became knowledgeable of something occurring. After

1 the incident, as said by the solicitor, the individual -- the
2 victim in this case actually rode with my client to her
3 grandmother's house following that. After that, obviously he
4 went his way; she went hers. Again, then later on, 72 hours
5 later is when he became aware that there was some type of
6 problem.

7 Your Honor, I say this to say: Again, I'm asking for
8 some type of probationary stint. Also, Your Honor, as to the
9 registry, Your Honor, I think -- I'm asking that he is not
10 imposed or put upon the registry for numerous reasons but,
11 therefore, the information that was provided by law
12 enforcement -- a lot of that information is based on
13 obviously what she said against what he said. But again,
14 Your Honor, this is not an Alford plea because he does want
15 to put this matter behind him. I'm asking for no registry,
16 some type of probation or either some type of weekend time.
17 I think Ms. Smalls would like to address the Court.

18 Ms. Smalls: Your Honor, we've had extensive
19 conversations with him regarding the ramifications of the
20 actual charge. He understands that regardless of her age --
21 because of her age he is in this position. He readily admits
22 what his involvement was, and I explained to him even if
23 there was any type of consent, that's not an issue here.
24 Because of her age, she's not of the age to consent. He
25 understands that. He takes this matter extremely seriously.

1 He would like to address the Court as well, Your Honor.

2 The Court: Okay.

3 Mr. Brown: Yes, ma'am. I'll say good evening to you,
4 Your Honor, and I apologize to the family and I'm going to
5 say thank you to my lawyers who are representing me. You
6 know, they did a great job so far and, you know, I was -- I
7 just, you know, wanted to help someone, you know, that was in
8 need to, you know -- that didn't have any shoes and she told
9 me about her situation, you know. I just want to say I
10 apologize to the family.

11 The Court: Okay.

12 Ms. Fent: Your Honor?

13 The Court: State?

14 Ms. Fent: The victim's mom wants to make it clear that
15 she believes that the fullest sentence and sex offender
16 registry is appropriate and is asking Your Honor to assess
17 that. With regards to the victim's age, she does clearly say
18 in her statement that she told him she was 12 years old.

19 The other thing is this is a picture of her that they
20 took at the hospital, the sexual assault examination. This
21 little girl -- to look at that photo and to say even that she
22 is most definitely 12 years old could be a leap. Some people
23 could look at that little girl and think that she is under
24 12 years of age. She looks incredibly young. So just
25 looking at her, he was clearly on notice that she was too

1 young to consent.

2 Mr. Chaplin: Your Honor---

3 Ms. Fent: And her reactions afterwards are completely
4 reasonable with a little girl who has run away from home, has
5 gotten herself into an incredibly scary situation and wants
6 to just get back in that car and hopefully be taken back to
7 her grandmother's house and, you know, forget and move on
8 from this incredibly scary situation. It's very reasonable
9 how she behaved.

10 Mr. Chaplin: Nothing further, Your Honor.

11 The Court: Okay. Anything further?

12 Mr. Chaplin: Your Honor, lastly I forgot to say: When
13 he was -- he actually spent 30 days in jail before he made
14 bond.

15 The Court: Okay. I'm trying to see if she has anything
16 else.

17 Ms. Fent: She was indicating that she might want to
18 speak, but I don't think there's anything additional that she
19 wanted to say but---

20 The Court: If she wants to, that's fine.

21 Ms. Fent: Okay.

22 The Court: Because you all keep going back and forth.
23 Maybe she needs to say what she needs to say.

24 Ms. Fent: All right.

25 The Court: Okay. Sir, if you can go to the side so I

1 can see her. Thank you. Just state your name on the record.

2 Ms. McKnight: My name is Crystal McKnight. I'm
3 Brittany's mom, the victim's mom. Your Honor, I noticed he
4 said that he just wants to move on with his life. Well, my
5 daughter, she can't. She's reminded of this every day. He
6 raped my 12-year-old baby, and he deserves to be in prison
7 with the sex offender registry, and I pray and I beg you to
8 sentence him to the full extent---

9 The Court: Thank you.

10 Ms. McKnight: ---so that he won't be able to harm
11 anyone else's child.

12 The Court: Thank you, ma'am. Is there someone else who
13 wishes to speak?

14 Mr. Wilson: Yes, ma'am. My name is Shawn Wilson.

15 The Court: Shawn Wilson?

16 Mr. Wilson: Yes, ma'am.

17 The Court: Okay.

18 Mr. Wilson: And that was my daughter. To this day, if
19 I touch my daughter like that, she jumps. She don't come and
20 ask me nothing no more, and that's been going on since that
21 time. I was at work that night when I got the call that she
22 was missing. Then she was at her grandma's house and until
23 -- she don't like to go nowhere or nothing no more, and she's
24 a teenager. So all I'm asking is you give him the full
25 extent of this prison term. Thank you.

1 The Court: Okay. Anything further from the State?

2 Ms. Fent: No, Your Honor.

3 The Court: For the defense?

4 Mr. Chaplin: No, Your Honor.

5 The Court: Okay. I know that you all have been waiting
6 on this and trying to schedule it for sometime, but I really
7 do need to look at all these documents---

8 Mr. Chaplin: I understand, Your Honor.

9 The Court: And I'm going to look at it and I'm going to
10 take it under advisement, and then I'll reconvene you all.

11 Mr. Chaplin: Thank you.

12 Ms. Smalls: Thank you.

13 Ms. Fent: Thank you.

14 (Whereupon, the proceedings were concluded. There were
15 no exhibits introduced.)

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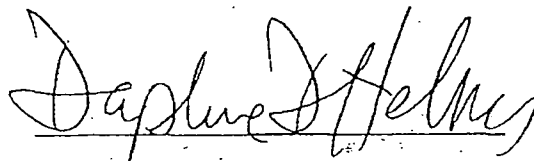
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I, the undersigned Daphne D. Helms, official court reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the circuit court for Richland County, South Carolina, on the 20th of January, 2010.

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

December 5, 2011

A handwritten signature in cursive script that reads "Daphne D. Helms". The signature is written in dark ink and is positioned above the typed name.

Daphne D. Helms, court reporter

1	STATE OF SOUTH CAROLINA	}	COURT OF GENERAL SESSIONS
2	<u>COUNTY OF RICHLAND</u>	}	

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STATE OF SOUTH CAROLINA,	}	TRANSCRIPT
PLAINTIFF,	}	OF
VS.	}	RECORD
DANIEL BROWN,	}	2007-GS-40-6132
DEFENDANT.	}	

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March 19th, 2010
Columbia, South Carolina

B E F O R E :

THE HONORABLE J. MICHELLE CHILDS, Judge.

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

MARGARET FENT
ASSISTANT SOLICITOR
Attorney for the State

JOE NATHAN CHAPLIN and GWEN SMALLS
ESQ.
Attorneys for the Defendant

PRISCILLA NAY
Circuit Court Reporter

Transcribed by Pamela E. Green, Circuit Court Reporter

I N D E X

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(There were no exhibits marked or testimony taken during this hearing.)

1 PROCEEDINGS

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SOLICITOR FENT: The State calls Daniel Brown in 07-GS-40-6132 represented by Mr. Joe Chaplin and Ms. Gwen Smalls of the private bar.

Mr. Brown, the defendant, pled guilty in front of you on January 20th of this year. He was originally charged with CSC with a minor in the second degree and we reduced it down to an assault and battery of a high and aggravated nature, straight up to Your Honor, registry, and the sentence was left up to Your Honor.

My understanding is that the defendant is not here. So, first, I guess we'd just ask for the attorneys to put on whatever they, terms of his notification.

THE COURT: Sure.

SOLICITOR FENT: I don't know if the Court also feels the need for the deputies to call his name to make sure he's not somewhere in the courthouse.

Daniel Brown.

THE COURT: Okay. If you would talk to me about your efforts in notifying him of the hearing and contact.

MR. CHAPLIN: Your Honor, customary hearing of my office, we contact two or three days out from a court date, contact that individual, let them know where to be, what to wear, and that type of thing. This call actually took place

1 three or four days ago, but also took place yesterday at
2 3:39 p.m. My paralegal spoke to him in-depth letting him
3 know where to be and where to sit in this courtroom.

4 THE COURT: Yesterday she spoke to him?

5 MR. CHAPLIN: Physically spoke to him at 3:39 p.m.

6 Tara Langler is my paralegal who spoke to him. In turn, we
7 always make notes of that in case something like this does
8 occur. We have it.

9 We also reached out to family members this morning.
10 Spoke to I think one of his uncles or someone in his family
11 and let him know too to find out maybe if he was in an
12 accident or what may have happened. I actually spoke to
13 Mr. Brown yesterday. He called me around four o'clock and I
14 explained to him where to be and where to come and he did
15 not explain to me any problems with being here. That is the
16 extent of our talking with Mr. Brown concerning this Court
17 appearance.

18 THE COURT: Did Mr. Brown seem to indicate if he knew
19 of the courtroom or understood--

20 BAILIFF: First floor, called his name five times and
21 did not answer.

22 MR. CHAPLIN: Excuse me.

23 THE COURT: Let me indicate for the record, Mr. Owens,
24 the bailiff called out and sounded Mr. Brown's name on I
25 believe the first floor and second floor. He is not

1 indicated to be in the building at least anywhere in the
2 vicinity of this courtroom.

3 You said you spoke to Mr. Brown.

4 Is that the father?

5 MR. CHAPLIN: I spoke to my client yesterday and spoke
6 to him as well.

7 THE COURT: An attorney -- he didn't indicate any
8 problems that---

9 MR. CHAPLIN: That is correct. My paralegal spoke to
10 him at 3:39. So, I assume he called in immediately after
11 speaking to my paralegal somewhere right before four o'clock
12 he called me and I explained to him too where to be and
13 whatever my paralegal told him to do, that's what he needed
14 to do and he said okay.

15 THE COURT: And the court's record will reflect he was
16 here for the sentencing on January 20, 2010. The court had,
17 as usual when you're doing a lot of pleas, a tough week that
18 week and I do apologize to the family for taking it under
19 advisement. But I like to be right as a sentence and read
20 all the materials. We do so many matters and a lot of them
21 are emotionally involved for all parties. So, that takes a
22 while.

23 I did not look at my schedule. I did not realize I was
24 on General Sessions until this week. And, so, that's why
25 you-all end up being here.

1 So, I have to go through Court Administration to then
2 get jurisdiction to do it. Anyway, we're here, but he was
3 at the hearing for the plea because he pled guilty, and I
4 heard you-all's mitigation and I heard the State's rendition
5 of the facts. So, he had his open notice from the Court's
6 mouth to speak.

7 MR. CHAPLIN: Correct, Your Honor.

8 THE COURT: As far as you-all, you're here asking,
9 requesting to be relieved from the matter?

10 MR. CHAPLIN: Your Honor, at this point we're
11 requesting to be relieved from the matter, but---

12 THE COURT: Okay.

13 MR. CHAPLIN: ---we are requesting to be relieved from
14 this matter after the sentencing of this individual.

15 THE COURT: State's request as to how I would proceed
16 with sentencing?

17 SOLICITOR FENT: We're asking you sentence him and put
18 that sentencing under seal and a warrant will be issued for
19 the defendant's arrest, and that sentence, upon him getting
20 arrested on the warrant, that sentence could be read to him
21 and in court.

22 We're asking that, Your Honor, because I mean we did
23 have a full hearing. There was no expectations of a
24 deferred sentence on January 10. We were all prepared for a
25 sentence to be handed down that day. Everybody spoke. The

1 victim's mom spoke asking he be punished to the fullest,
2 placed on the registry.

3 The court, of course, felt it necessary to think about
4 everything that had been presented to Your Honor. Also, to
5 take into consideration his complete disregard for the court
6 system and him answering -- he was given a privilege of, of
7 not being taken into custody on January 10 and to remain out
8 on bond under his, you know, reputation, that he would
9 return to court for his, for his sentencing.

10 So, we want the Court to take, you know, not only the
11 facts of this case, of sexually assaulting a 12 year old
12 girl, who was a complete stranger to him---

13 MR. CHAPLIN: Your Honor, I think we have already
14 covered the record in full mitigation.

15 SOLICITOR FENT: Basically asking the Court to take the
16 facts into consideration, but his failure to appear here
17 today---

18 MR. CHAPLIN: Understand fully, Your Honor, that's why
19 we put that on the record.

20 THE COURT: Having had a trial in absence of a
21 defendant who jumped bond or, you know, went to another
22 state and failed to appear and actually tried him in his
23 absence, then the sealed sentence, I'm to write it on here,
24 and then literally let it be sealed because it is not
25 supposed to be in public court.

1 SOLICITOR FENT: Correct.

2 THE COURT: No one is suppose to run from this
3 courtroom. Who -- I don't know everybody who's in here, and
4 then go tell the Court and further give him reasons to not
5 appear. So, I have to write it down and have it sealed.

6 SOLICITOR FENT: Correct. Like I said, upon his
7 arrest, we would notify the victim's mom to come back, you
8 know, to be present during that hearing when the sentence is
9 read.

10 THE COURT: Okay. I will indicate there will be a
11 sentence and then he will get credit for the 30 days time
12 served, which y'all didn't have any problem with that
13 anyway, and that's generally the law anyway. I have written
14 my sentence down.

15 MR. CHAPLIN: And relieved us?

16 SOLICITOR FENT: Warrant issued for his arrest?

17 THE COURT: Warrant issued for his arrest. Thank you.

18

19 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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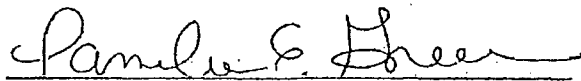
25

C E R T I F I C A T E

1
2
3 I, Pamela E. Green, Official Court Reporter for the
4 Seventh Judicial Circuit of the State of South Carolina, do
5 hereby certify that the foregoing is a true, accurate and
6 complete Transcript of Record of the proceedings had and
7 evidence introduced in the trial of the captioned case,
8 relative to appeal, in the Court of General Sessions for
9 Spartanburg County, South Carolina, on the 19th day of
10 March, 2010, as reported by Priscilla Nay and transcribed by
11 myself to the best of my ability.

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

14
15 October 13th, 2010
16

17
18 

19 PAMELA E. GREEN, Court Reporter
20
21
22
23
24
25

State of South Carolina)	
)	Court of General Sessions
County of Richland)	
)	
State of South Carolina,)	
)	
Plaintiff,)	Case No: 2007-GS-40-06132
)	
versus)	Date: June 9, 2010
)	
Daniel Brown,)	Columbia, South Carolina
)	
Defendant.)	

TRANSCRIPT OF RECORD

B E F O R E:

The Honorable Michelle Childs

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

Margaret Fent, Esquire
ATTORNEY FOR THE PLAINTIFF

Daniel Brown
PRO SE DEFENDANT

PROVIDED FOR: Office of the Attorney General

FOR COPIES CONTACT: DeeAnne Varnadoe
dvarnadoe@sccourts.org
Official Court Reporter
South Carolina Judicial Department

TRANSCRIPT PREPARED FOR OFFICE OF THE ATTORNEY GENERAL

I N D E X

HEARING 4

CERTIFICATE 7

E X H I B I T S

FOR THE PLAINTIFF:

(NONE WERE SUBMITTED FOR THIS HEARING)

FOR THE DEFENDANT:

(NONE WERE SUBMITTED FOR THIS HEARING)

P R O C E E D I N G S

1
2 THE COURT: Okay. The Court is ready.

3 MS. FENT: Thank you, Your Honor. Standing before you
4 is the defendant Daniel Brown in indictment 2007-GS-40-
5 06132.

6 He is before you for the reading of his sentence that
7 was under seal.

8 But just for continuity of the record, he plead guilty
9 on January 20th of 2010 in front of Your Honor. At that
10 time sentence was deferred for Your Honor's consideration.

11 The Court called us back on March 19th of 2010.

12 Mr. Joe Nathan Chaplain was representing the defendant
13 throughout the entirety of the case and was present for the
14 plea and showed up for the sentencing.

15 The defendant did not show up for his sentencing.

16 Mr. Chaplain stated on the record that not only had
17 his support staff contacted the defendant to be present on
18 March 19th, but he, himself, Mr. Chaplain, had personally
19 spoken with the defendant and provided him notice to be
20 present in court on March 19th for his sentencing.

21 Your Honor proceeded with that sentence and put that
22 sentence under seal.

23 And then at the conclusion of that hearing, Mr.
24 Chaplain requested to be relieved as counsel on the case
25 and Your Honor granted that.

1 And I spoke with Mr. Chaplain this morning and let him
2 know that I was bringing the defendant over for the reading
3 of his sentence and just confirmed that he had been
4 relieved from the case, and so he would not be here.

5 And the victim's Mother is present here today for the
6 reading of his sentence.

7 THE COURT: Okay.

8 MS. FENT: And I guess what was left out is that at
9 that March 19th hearing I did request a warrant for his
10 arrest for his failure to appear, so he has been arrested
11 on that bench warrant.

12 THE COURT: Okay. And then when was he actually
13 arrested?

14 MS. FENT: I believe he was picked up sometime last
15 week. He had been actually arrested in another county on a
16 charge, and I'm not sure what that charge was.

17 THE COURT: Okay.

18 MS. FENT: They notified us. They saw that the
19 warrant was in the system and they notified us they had him
20 in custody.

21 THE COURT: Okay.

22 MS. FENT: And he was brought back from that other
23 county.

24 THE COURT: Okay. This file that was given to me by
25 the clerk has this marked as the TIA Sealed Sentence on

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March 19, 2010 by Judge Childs, so this was sealed when it was given to me.

For indictment case number 2007-GS-40-06132, Mr. Daniel M. Brown is committed to the State Department of Corrections for a determinate term of ten years. You will be given credit for the thirty days you have served and you will be placed on the Sex Offender Registry.

MS. FENT: Thank you, Your Honor.

(WHEREUPON, THE HEARING IN THE ABOVE-ENTITLED MATTER WAS CONCLUDED.)

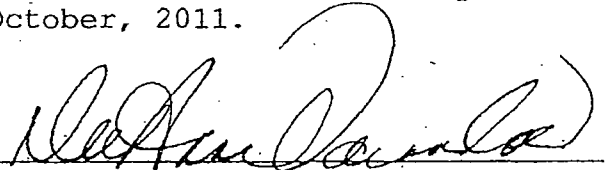
STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

CERTIFICATE

Be it known that I, the undersigned DeeAnne Varnadoe, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing transcript represents a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, before the Court of General Sessions for Richland County, South Carolina, so given on June 9, 2010 to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

IN WITNESS WHEREOF I have here unto set my hand and seal this 20th day of October, 2011.



DeeAnne Varnadoe.
 Official Court Reporter
 Notary Public for South Carolina
 My commission expires 3/15/2016.

STATE OF SOUTH CAROLINA

County of Richland

2010 P450 8916
In the Court of Common Pleas

Daniel M. Brown, 341265
Full name and prison number (if any) of Applicant,

vs.

The State
Name of Respondent.

APPLICATION FOR
POST-CONVICTION RELIEF

RICHLAND COUNTY
FILED
2010 DEC 14 AM 10:58
JEANNETTE W. JERRIGE
C.C.P. CLERK

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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention Evans Correction Institution

2. Name and location of Court which imposed sentence Richland County Judicial Center / 1701 Main Street Columbia, S.C. 29201

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

- (a) IND # 07, GS40 # 6132
- (b) _____
- (c) _____

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

- (a) March 19, 2010 / 10 years
- (b) _____
- (c) _____

5. Check whether a finding guilty was made

- (a) after a plea of guilty
- (b) after a plea of not guilty
- (c) after a plea of nolo contendere

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

Yes

7. If you answered "yes" to (6), list

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

- i. General Sessions
- ii.
- iii.

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

- i. Criminal Sexual Conduct with A Minor 2nd
- ii. Assault + Battery of a High Aggravated Nature
- iii.

(c) the date of each such result:

- i. July 2007
- ii.
- iii.

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

- i.
- ii.
- iii.

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a)
- (b)
- (c)

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

- (a)
- (b) Answer to this question is on the back.
- (c)

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) Answer to this question is on the back.
- (b)
- (c)

11. Prior to this application have you filed with respect to this conviction

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

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

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No

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

12. If you answered "yes" to any part of (11), 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. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

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

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

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

15. If any ground set forth in (9) 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) _____
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? ~~No~~ ^{DB} Yes
- (b) your trial, if any? No
- (c) your sentencing? No
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Joenathan S. Chapline
4511 Main Street Columbia, S.C. 29203
- ii. _____
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Arraignment and plea
- ii. _____
- iii. _____

18. State clearly the relief you seek in filing this application.

To be release from prison, have these charges drop, over turn the guilty plea to ~~have~~ have my rights back, and restore my good nam

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

No

STATE OF SOUTH CAROLINA

VERIFICATION

County of Richland

I, Daniel Brown, 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.

Daniel Brown
Daniel Brown

SWORN to and subscribed before me this 10

day of December, 2010

Pamela Rogers McDowell
Notary Public

My Commission Expires: August 18, 2018

2010 DEC 14 AM 10:58
JEANETTE W. MCBRIDE
C.C.P. & G.S.
FILED
RICHLAND COUNTY

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

I, Daniel Brown, 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 therefor.

Daniel Brown
Applicant

SWORN or affirmed to and subscribed before me this

10 day of December, 2010

Pamela Rogers McDowell
Notary Public

My Commission Expires August 18, 2018

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

BROWN Daniel M -
00341265,

2010CP4008716

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post conviction relief (PCR) filed December 14, 2010, would respectfully show this Court:¹

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was represented by Joenathan S. Chaplin, Esquire. On March 18, 2010, the Applicant pled guilty and was sentenced by The Honorable J. Michelle

¹ <http://www4.rcgov.us/publicindex/PICaseDetails.aspx?County=40+&Casenum=2010CP4008716&CourtType=G&CaseType=Civil&CourtAgency=40002>

Childs. The Applicant had been indicted and/or pled guilty to the following:

CSCWM/ABHAN - (2007-GS-40-6182).²

<u>Offender Type</u>	Adult-straight Sentence
<u>Offense</u>	Assl&battery-high&agg Nat
<u>Sentence Start Date</u>	04/28/2010
<u>Sentence Length</u>	10 YRS, 0 MOS, 0 DYS
<u>Admission Date</u>	06/15/2010
<u>Committing County</u>	Richland
<u>Location</u>	Evans
<u>Projected Release Date</u>	05/24/2015
<u>Projected Parole Date</u>	04/16/2012
<u>Supervised Furlough Eligibility</u>	Not Eligible
<u>Sex Offender Registry</u>	Yes

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

III.

For the purposes of this Return, the Respondent interprets each of the Applicant's unspecified allegations to be claims that he received ineffective

² <https://sword.doc.state.sc.us/incarceratedInmateSearch/incarceratedInmateFaceSheet.do?id=00341265&youth=N&type=F>

assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance

must have prejudiced 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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the 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.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis

that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Mark S. Barrow, Esquire regarding when the hearing should be set.³

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

February 4, 2011

³ The current PCR Roster for the 5th Circuit is available at <http://www.scattorneygeneral.com/inside/pdf/5th.pdf>
State's Return - (2010CP4008716) - Applicant: BROWN Daniel M
Page 6 of 6

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

BROWN Daniel M -
00341265,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

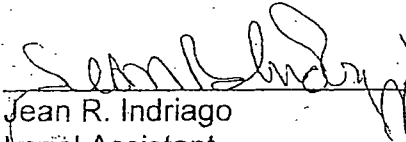
2010CP4008716

CERTIFICATE OF SERVICE

- 19. I am an employee of the Respondent in the above-captioned action.
- 20. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
- 21. I have this day served a copy of the a letter in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Mark S. Barrow
Post Office Box 12129
Coulmbia, SC 29211

DATED February 9, 2011.



Jean R. Indriago
Legal Assistant

- (c) Sex Offender Registry.
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:
N/A
- (b) the result in each such Court to which you appealed:
N/A
- (c) the date of each such result:
N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Plea counsel did not advise Applicant that he was able to make an appeal.
- (b) Plea counsel terminated attorney-client relationship prior to sentencing and passage of ten days.
- (c) Applicant was not given the opportunity to appeal because plea counsel did not file an appeal following sentencing.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) My conviction or sentence violates United States or South Carolina Constitution because I received ineffective assistance of counsel prior to pleading guilty.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) I entered a plea upon the advice of my plea counsel, Joenathan S. Chaplin. Because of Mr. Chaplin's ineffective assistance of counsel, I entered the plea unknowingly and involuntarily. Had it not been for Mr. Chaplin's errors, I would

not have pled guilty. The solicitor promised that she would recommend a lesser sentence than she actually did. Plea counsel failed to tell me about an earlier plea offer that was better than the one I was given. Mr. Chaplin specifically told me that the solicitor was recommending a lesser sentence as part of a plea deal. If I had known I was receiving a ten year sentence, I would not have agreed to the plea. Mr. Chaplin did not tell me the truth regarding the plea agreement and incorrectly advised me. I would not be in prison here today if it were not for Mr. Chaplin's ineffective assistance of counsel. As my attorney, it was Mr. Chaplin's responsibility to obtain any plea offer in writing. By not doing so, plea counsel demonstrated a complete lack of assistance and failed to uphold my side of the plea bargain. Mr. Chaplin also said things at the plea hearing that were not true. The things that he said, I was not told he would say. Those misstatements made my sentencing and case worse. An effective attorney would not misstate facts to make his clients worse off if he is really an effective attorney. Plea counsel also failed to arrange that the plea hearing and sentencing were on the same day. Additionally, during the hearing, Mr. Chaplin did not object when the alleged victim's mother submitted a letter to the Court which was not reviewed by Mr. Chaplin. Furthermore, Mr. Chaplin was difficult to make contact with and conducted himself as if this case were his first, although he indicated that he had handled similar cases before.

12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 - (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
N/A

- (b) the name and location of the Court in which each was filed:
N/A
- (c) the disposition thereof:
N/A
- (d) the date of each such disposition:
N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
N/A
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
N/A
- (b) the proceedings in which each ground was raised:
N/A
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:
N/A
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? N/A
- (c) your sentencing? No
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? None, other than this application.
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. Joenathan S. Chaplin
4511 Main Street
Columbia, South Carolina 29203

ii. Ryan Holt
P.O. Box 12129
Columbia, SC 29211

(b) the proceedings at which each such attorney represented you:

i. Arraignment and plea – Mr. Chaplin

ii. PCR Application – Mr. Holt

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

I am seeking post-conviction relief. I respectfully request that the Court determine that I received ineffective assistance of counsel during my guilty plea, and that the ineffective assistance of counsel led to my making an unknowing and involuntary plea. Further, I respectfully request that the Court determine that I was prejudiced by the ineffective assistance of counsel I received. I respectfully request that the Court grant my application for post-conviction relief and return me to the position I was in prior to making my guilty plea.

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

No.

STATE OF SOUTH CAROLINA)
)
County of Marlboro)

VERIFICATION

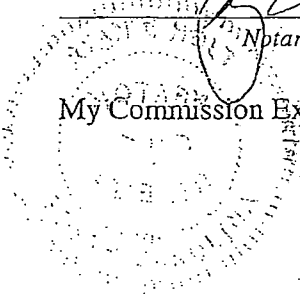
I, Daniel M. Brown, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that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

Daniel Brown
DANIEL M. BROWN

SWORN to and subscribed before me this 27
day of September, 2011.

[Signature] (L.S.)
Notary Public

My Commission Expires: May 12, 2021



FILED
2011 SEP 29 AM 10:56
JEANETTE W. McBRIDE
C.C.P. & A.S.

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

I, Daniel M. Brown, 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.

Daniel Brown

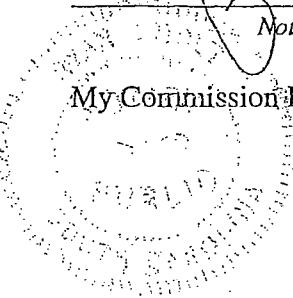
DANIEL M. BROWN

SWORN or affirmed to and subscribed before me this
27 day of September, 2011.

[Signature]

Notary Public

My Commission Expires: May 12, 2021



FILED
2011 SEP 29 AM 10:56
JEANETTE W. HERRIDGE
C.C.P. & G.S.

1 STATE OF SOUTH CAROLINA) IN COMMONS PLEAS COURT

2 COUNTY OF RICHLAND)

3 DANIEL BROWN,)
4 PLAINTIFF.)

5 -V-)

6 STATE OF SOUTH) TRANSCRIPT OF RECORD
7 CAROLINA)
8 DEFENDANT.) 2010-CP-40-8716

9 MAY 22, 2012
10 RICHLAND, SOUTH CAROLINA

11 B-E-F-O-R-E:
12 HONORABLE CAYCE L. MANNING, JUDGE;

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

14 FOR THE PLAINTIFF:
15 MR. HOLT, ESQ.

16 FOR THE DEFENDANT:
17 MR. CORNEY, ESQ.
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I-N-D-E-X

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MOTIONS 3

CERTIFICATE OF REPORTER: 32

(REPORTER'S NOTE: THERE WERE NO EXHIBITS ENTERED.)

1 (The following proceedings were held on
2 May 22, 2012.)

3 MR. CORNEY: This is PCR of Daniel Brown. It's
4 Docket Number 2010-CP-40-8716. Mr. Brown was true billed
5 indicted August 2007 by the Richland County Grand Jury for
6 criminal sexual conduct with a minor in the second-degree.
7 He pled guilty January 20th, 2010 before Judge Childs of the
8 lesser included assault and battery of a high and aggravated
9 nature. Sentencing was deferred after that plea. The
10 matter was reconvened for sentencing March 19th, 2010. Mr.
11 Brown was not present at the sentencing hearing at that time
12 so the sentence was sealed and a warrant was issued for his
13 arrest.

14 Mr. Chaplin was -- who had represented him on the
15 plea was relieved at that point in time. Mr. Brown was
16 brought back before the Court on June 9th, 2010 at which
17 time the sentence was unsealed and he was sentenced to ten
18 years imprisonment on that charge. Mr. Brown filed a PCR
19 application November 12th, 2010. The State moved to
20 summarily dismiss that application for a failure to include
21 the verification page on the back of the application.
22 He filed another -- a second PCR application December 14th,
23 2010, which is the current application before this Court.
24 Gwendlyne Smalls was cocounsel for Mr. Chaplin. She is a
25 family court, Judge, now. She's not here today to testify.

1 I did speak with her before this, and we're prepared to go
2 forward with Mr. Chaplin present and ready to testify today,
3 Your Honor. Mr. Brown is represented by Ryan Holt.

4 THE COURT: [Check] Mr. Holt, what does the C stand for.

5 THE COURT: So, Mr. Holt, what does the C stand
6 for?

7 MR. HOLT: Charles.

8 THE COURT: Charles?

9 MR. HOLT: Yes, sir.

10 THE COURT: All right.

11 MR. HOLT: Not -- not Casey. Perhaps it should be
12 today. But it's Charles.

13 May it please the Court?

14 THE COURT: Yes, sir.

15 MR. HOLT: Ryan Holt for the applicant, Mr. Brown.

16 I agree with the facts as stated by the Attorney General but
17 with one exception. The -- we did file an amended PCR
18 application on September 29th, 2011, without any issue. It
19 doesn't state too much in addition to the others. It's just
20 more concise and lays out what exactly we're praying for
21 today.

22 Of course, we're alleging ineffective assistance
23 of counsel by Mr. Chaplin during the course of his
24 representation of Mr. Brown. Of course he pled guilty, and
25 we believe that -- that a guilty plea was not given in an

1 understanding and a fully knowing way due to the
2 representation of Mr. Chaplin. And we begin, Your Honor,
3 with that by calling Mr. Brown to the --

4 THE COURT: All right. Come around, Mr. Brown.

5 THEREUPON,

6 DANIEL BROWN,
7 after having been duly sworn, testified as follows.

8 THE COURT: All right. Please take a seat, Mr.
9 Brown.

10 Tell us your full name and spell your last name
11 for the record.

12 MR. BROWN: Daniel Morris P. Brown, B-R-O-W-N.

13 MR. HOLT: May it please the Court.

14 DIRECT EXAMINATION

15 BY MR. HOLT:

16 Q Mr. Brown, tell us how you know Joenathan Chaplin,
17 please.

18 A He was my attorney during the -- during the plea offer.

19 Q And when did you first retain him to represent you on
20 the charge that you had received for -- in 2007.

21 A In July 2007.

22 Q Tell us about the first time that you and Mr. Chaplin
23 discussed your pleading guilty to the charges that were
24 against you?

25 A -- it was if I can recall it was around July 2007; and

1 he was telling me, you know, how -- should take the --

2 THE COURT: Mr. Brown, could you speak up just
3 little bit please, sir? Just speak up.

4 MR. BROWN: All right.

5 BY MR. HOLT:

6 Q And -- and Mr. Chaplin came to you and told you about
7 this plea opportunity; is that right?

8 A Correct.

9 Q And what did he tell you was the essence of that plea?

10 A He told me that a plea -- no prison time, a lesser
11 charge of assault battery of high and aggravated
12 nature. That was it.

13 Q Okay. So, to recap, you understood the plea from
14 Mr. Chaplin to be that you would plead guilty to the
15 lesser included offense of assault and battery of a
16 high and aggravated nature; is that right?

17 A That -- yes. Yes, sir.

18 Q You understood that your name would not be placed on
19 the sexual offense registry; is that right?

20 A Yes, sir.

21 Q And you understood that you would have no prison time?

22 A Yes, sir.

23 Q And that you would be on probation?

24 A Probation.

25 Q Is that right?

1 A Probation -- probation office, yes, sir.

2 Q And based on that being told to you, did you decide
3 that you wanted to plead guilty?

4 A Yes, sir.

5 Q And had the plea deal been any different, would you
6 have gone forward with your guilty plea?

7 A I would have.

8 Q If the -- if you -- if Mr. Chaplin was unable to have
9 you off the sexual registry, would you have still pled
10 guilty?

11 A No, sir.

12 Q Okay. So that was very important to you that not be on
13 the sexual offense registry; is that right?

14 A Yes, sir.

15 Q Did you ever see the plea deal in writing?

16 A No, I didn't.

17 Q Tell us some of the ways that you believe Mr. Chaplin
18 was ineffective in his representation of you during the
19 course of your guilty plea.

20 A Well, I didn't -- he didn't advise me to even get it in
21 writing from what -- everything was verbal. He said
22 that -- you know, he was telling me that -- that I
23 should -- that that's the best thing for me to do is
24 to, you know, take the plea right then. There were
25 other things. There was something that was said, you

1 know, during the plea that -- that wasn't true also.

2 Q And what was that -- that was -- was that said by Mr.
3 Chaplin?

4 A Yes, it was.

5 Q And what -- what did Mr. Chaplin say at the plea
6 hearing that wasn't true?

7 A He said that -- gave oral and, you know, I -- I noticed
8 it in -- in the transcript that they didn't, you know,
9 what I'm saying they specifically didn't say that
10 either, you know, which I saying that that happened.

11 Q Did you --

12 A One thing that I noticed that was, you know what I'm
13 saying, you know, was different from what he said right
14 then and there in the court, you know what I'm saying.

15 Q Did you authorize Mr. Chaplin during the course of your
16 plea to tell the Court that you had had oral sex with
17 the victim?

18 A No.

19 Q Did Mr. Chaplin ever advise you of the possibility that
20 you could move to reconsider the judge's sentencing?

21 A No, not right then. No, not right then; no he didn't.

22 Q Now, isn't it true that you were unable to attend your
23 first sentencing hearing on March 19th, 2010?

24 A Yes, sir.

25 Q And why were you unable to attend that sentencing

1 hearing?

2 A I had a death in my family, my grandfather.

3 Q Did Mr. Chaplin ever confirm or try to confirm with you
4 that you would be present on that day to hear your
5 sentence?

6 A Yeah, I was -- yeah, I was told about it, you know,
7 about a date. Yeah, I was.

8 Q But you didn't show up because of that death in your
9 family; is that right?

10 A Oh, right. Correct.

11 Q Is there anything else that you'd like to share with
12 the Court at this opportunity to let him know why you
13 brought this PCR application and why you believe
14 Mr. Chaplin was ineffective in his representation of
15 you?

16 A Because I didn't fully the plea. I knew what me and
17 Mr. Chaplin talked about. We talked, you know, the --
18 you know, probation and no registry, anything like
19 that, and no prison time, and lesser charge assault and
20 battery of a high and aggravated nature. And I took
21 that so I wouldn't have to, you know, go through any
22 trial situation, you know what I'm saying, because I --
23 I never knew, you know -- you know, how -- how -- how,
24 you know, that process went. You know, being that, you
25 know, as my attorney, you know, I was listening to him

1 to Mr. Chaplin, you know, as he advised. You know,
2 never been in that type of situation or anything like
3 that, never been accused of anything so, you know, I --
4 I was going by, you know, by, you know, advice of my
5 attorney. You know, and he was saying, you know, that
6 offer that plea right there would be something, you
7 know, to look into, you know, be something in your best
8 interest rather than going to trial, yeah.

9 Q That's -- that's all the questions I have for you,
10 Mr. Brown. Please answer any that the Attorney General
11 or the Court may have for you.

12 THE COURT: Mr. Corney.

13 MR. CORNEY: Bear with me, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. CORNEY:

16 Q Mr. Brown, you said never saw this plea offer that you
17 allege was made in writing; is that right?

18 A Yes, sir.

19 Q But you don't have anything today to introduce to the
20 Court to show that that plea offer was actually
21 extended, do you?

22 A No, sir.

23 Q Okay. As far as Mr. Chaplin's comments about -- about
24 the -- about oral sex and what took place, that was --
25 that was in response to the State saying that it

1 actually was sexual intercourse that had occurred,
2 right?

3 A -- yes. And that's -- that's what Joenathan Chaplin
4 said, but Judge -- I know in the -- in the transcript
5 it said nothing like that happened so.

6 Q Right. And -- but the reason he said that it was oral
7 sex is because the State in it's -- in it's recitation
8 of the facts that said that it was sexual intercourse,
9 right? And he was saying that in response to the
10 Solicitor's facts that the Judge asked him if you -- if
11 you agreed with the facts, and he said, actually it
12 was -- it was oral sex, not -- not sexual intercourse,
13 right?

14 A I believe that's how he was saying it.

15 Q Okay. He didn't just bring that out on his own and
16 decide he just wanted to say, Oh, we admit that this
17 happened. He was responding to the facts of the State
18 by Solicitor --

19 THE COURT: But this was a guilty plea, right?

20 MR. CORNEY: Right.

21 THE COURT: Okay.

22 MR. CORNEY: And I'll move on along, Your Honor.

23 THE COURT: No, no, no. I was just --

24 MR. CORNEY: Just making sure.

25 THE COURT: -- just want to make sure there's no

1 confusion in my own mind.

2 BY MR. CORNEY:

3 Q At the plea, there was never any mention of a
4 negotiation or a recommendation or anything that the
5 State was asking as for as the sentence, was there?

6 A Yes. There was a plea.

7 Q That's part of the plea transcript where they talked
8 about that it's going to be a negotiated sentence and
9 you know what you're going to get on that?

10 A I knew what I was going get versus Mr. Chaplin telling
11 me about it, but I didn't -- it wasn't said -- it
12 wasn't spoken at the -- you know, at the plea hearing.

13 Q Okay.

14 A It wasn't spoken and any kind of renegotiation or
15 anything like that was spoken of. You know, she just
16 said it was a -- that it was going to be a plea deal.

17 Q Okay. And at the close of your -- at the close of your
18 plea, you actually in the record on Page 15, and I
19 don't know if you've got a copy of it up there with you
20 or if you'd like to look at first, but you make the
21 statement saying that you want to thank your lawyers
22 because they've done an outstanding job of representing
23 you, right? .

24 A Right.

25 Q Okay. And I could show it to you if you want to take a

1 look at it.

2 A Uh-huh.

3 Q Okay --

4 A I saw -- all right.

5 Q All right.

6 MR. CORNEY: Your Honor, I beg the Court's
7 indulgence for just --

8 THE COURT: Yes, sir.

9 MR. CORNEY: -- just one minute.

10 BY MR. CORNEY:

11 Q And just as a final question, you also told the -- the
12 Court that you were entering that guilty plea of your
13 own will and that you weren't being forced to do so,
14 correct?

15 A Correct.

16 Q Okay.

17 MR. CORNEY: That's all I have for him.

18 THE COURT: Anything on redirect?

19 MR. HOLT: Nothing on redirect, Your Honor.

20 THE COURT: All right. You may step down,

21 Mr. Brown.

22 Call your next witness.

23

24 MR. HOLT: That's all for the Applicant, Your

25 Honor.

1

2

THE COURT: All right.

3

Mr. Corney?

4

MR. CORNEY: Your Honor, the State will call Joe
Chaplin to the stand.

6

THE COURT: Come around, Mr. Chaplin.

7

THEREUPON,

8

JOENATHAN CHAPLIN,

9

after having been duly sworn, testified as follows:

10

THE COURT: All right. Please state your full
name for the record and spell your last name.

11

12

MR. CHAPLIN: Joenathan Chaplin, last name

13

C-H-A-P-L-I-N.

14

MR. CORNEY: May it please the court, Your Honor.

15

THE COURT: Yes, sir.

16

DIRECT EXAMINATION

17

BY MR. CORNEY:

18

Q Mr. Chaplin, thank you for being with us here today.

19

Do you recall becoming involved in Mr. Brown's
case?

20

21

A Yes, I do.

22

Q All right. And do you have any recollection of the

23

date that you were retained and took over that

24

representation? And if you don't have the exact date,

25

just a rough estimation.

1 A July 30, '07.

2 Q Okay. And you -- did you take on cocounsel in this
3 case, somebody just kind of sit second chair, help you
4 out in this matter?

5 A Actually, at that time, Ms. Gwendlyne Smalls was of
6 counsel from my office, and she had a very extensive
7 history in these type cases previously, so any type
8 case like that, she immediately became second chair to
9 me.

10 Q Okay. If you would, just start off by giving us just a
11 real brief overview of your work background as an
12 attorney and, specifically, in criminal defense.

13 A Well, I started working for Dick Harpootlian at the
14 Solicitor's office while in law school actually as a --
15 a clerk. And then right after that, he hired me at the
16 Solicitor's office. Following that, I worked for
17 Barney Giese at the Solicitor's office handling all
18 various type cases on both levels for both individuals.
19 After that, I went into private practice and actually
20 worked for Debra Chapman handling quite -- you know,
21 quite a few different types of cases there as well. So
22 at this point, I probably had, you know, 11 or 12 years
23 of experience in -- in these type cases.

24 Q Okay. And I'll try to move through pretty quickly to
25 get to the actual allegations. But I think it's

1 important to start with the background.

2 Do you remember meeting with him to discuss the
3 charges the charges that he was facing taking?

4 A I sure do.

5 Q Okay. And did you have an opportunity to review the
6 indictments with him and the -- the -- his
7 constitutional rights regarding those?

8 A Yeah. I did and we did. Every time I met with him,
9 Ms. Smalls was present, or either/or Ms. Smalls and a
10 private investigator was -- was present.

11 Q Okay. Were you able to go over the -- the potential
12 sentences and consequences he was facing as a result of
13 those charges?

14 A Yea. Quite extensively because when you -- no matter
15 how we expressed it to him, he would then relay it back
16 to us and -- basically, on how he felt -- you know,
17 what he thought he heard. Then we would then come back
18 at it again and explain, No, Mr. Brown, this is -- this
19 is our options right here.

20 Q Okay. Did you ever have any problems in your
21 communications with him or understanding what he was
22 relying back to you, anything like that?

23 A Oh no, none. When I --

24 Q Did you have the opportunity to -- to review his
25 discovery file?

1 A Yes, I did.

2 Q Is that something you were able to review with him?

3 A Yes. He actually went through it with myself and he
4 went through it with Ms. Smalls and he went through it
5 with the investigator.

6 Q Okay. At some point in time after that, did you have
7 the opportunity to try to enter into plea negotiations
8 on his behalf?

9 A Yes. Yes, we did.

10 Q Okay. And what do you recall from those negotiations?
11 Anything that was --

12 A Well, the Solicitor -- obviously, everyone wants,
13 obviously, probation if they -- if they're going to
14 plea they want probation. What spoke to the Solicitor,
15 the Solicitor was adamant that she wasn't going to
16 agree to probation and the victim's family was not
17 going to agree to probation. But in turn, what they
18 would do is reduce the charge down to assault and
19 battery of a high and aggravated nature and then leave
20 us the possibility of being able to get probation if
21 the judge saw -- you know, saw fit, as well as the
22 registry. We wanted to take the registry out of play
23 as well, being we wanted them to agree for him not to
24 go on the registry. Again, what they did was leave
25 that up to Judge Childs. And we took that -- we went

1 with that agreement because we felt we had strong, you
2 know, inferences in order to try and accomplish both
3 things because he was working and he had a lot of good
4 things going for him.

5 Q Okay. And were you able to relay that plea negotiation
6 to him and kind of break it down for him exactly what
7 it entailed?

8 A In quite -- and extensively because the other thing
9 was, when we decided to do the plea and we spoke him
10 before then, he explained that he wanted more time
11 because he wanted to be able to put some things
12 together. We were able to actually facilitate that as
13 well. So the Judge took the case under advisement and
14 then set it for a new date.

15 Q Now, did you -- based on your discussions, was it --
16 did you believe that Mr. Brown was able to understand
17 what the plea offer was and how it would affect him?

18 A He did.

19 Q Okay. Any other plea offers that were ever given after
20 that point in time that -- that, maybe, could have been
21 more inline with what Mr. Brown's alleging?

22 A No. I wish it was, but, no, that's it.

23 Q Okay. So he ended up entering that plea to assault and
24 battery of a high and aggravated nature as a lesser
25 included offense without recommendation or -- or

1 without negotiations, I should say?

2 A That's correct, without negotiations.

3 Q And the Solicitor was going to make a recommendation,
4 or she was not going to make a recommendation?

5 A No, she was not. She spoke to the victim's family, and
6 again, they were -- they were actual vehemently opposed
7 to it being reduced. That was not an agreement by
8 them. It -- it was based on what the Solicitor of the
9 case, the Solicitor had before her, and she felt that
10 it was -- she felt comfortable reducing it down.

11 Q Okay. And you were -- were you able to explain that to
12 Mr. Brown, that he would be pleading with possibility
13 of receiving the maximum if that's what the Judge saw
14 fit?

15 A From zero to ten.

16 Q And as you said, sentencing was deferred at that point
17 in time at the end of that plea hearing?

18 A It was.

19 Q Okay. And you came back before the Judge for
20 sentencing some time after that?

21 A We did.

22 Q Okay. Mr. Brown did not appear at the sentencing
23 hearing?

24 A No, he did not.

25 Q Could you tell me just a little bit about -- about how

1 that transpired, what -- what efforts you made to try
2 to communicate with him prior to that?

3 A Normally, somewhere between four to five days before an
4 individual comes in to plea, we call that individual,
5 that -- people -- that individual's family as well. If
6 we can't reach that person, we reach the family to say,
7 Hey, what happened, is there something wrong, if the
8 person's in hospital, if anything they can provide us
9 so that when we go in front of the judge, obviously, we
10 won't look stupid.

11 In turn, we reached out to the family, and they
12 said he was fine, everything was okay. We tried to
13 reach him, tried to speak to him, and we couldn't speak
14 to him. Then we got kind of leery about that, but
15 then, which again, we figured he was nervous and he
16 was -- you know, knew that that day was coming that,
17 that, you know, put up or shut up. And at that point,
18 the morning of, we contacted as well, and I spoke to
19 him two or three days prior myself and then it seemed
20 to me everything was a go. I never was put on notice
21 about anybody -- a death in the family. I would have
22 immediately had told Judge Childs something about the
23 death, and then she'd probably said, obviously, bring
24 in your information concerning it and so she could
25 verify it. But we didn't have anything to go on.

1 Q Okay. And at -- at the sentencing hearing when he
2 didn't show up, there was a sealed sentence issue by
3 Judge Childs?

4 A It was.

5 Q Okay. Did you ever have the opportunity to speak with
6 Mr. Brown after that sentencing hearing, any time after
7 that?

8 A No, I did not.

9 Q Okay. And you made a motion at that sentencing hearing
10 --

11 A No. I take that back. He did call one time. He
12 called from -- from jail one time after that just to
13 say, basically -- I don't know, it's been a long time.
14 I can't remember exactly. He did reach out to me and
15 say, Hey, you know, I thought that I was going to get
16 this sentence or that sentence. And then I explained
17 to him that all bets were off when he didn't show up.
18 When he didn't show up the Judge has the leeway to go,
19 you know, the length of her -- of her arm at that
20 point.

21 Q Okay. And you made a motion to be relieved and -- and
22 the Judge granted that --

23 A Yes. The Judge took us off the same day.

24 Q Okay. You feel you gave Mr. Brown all the advice and
25 information necessary to make a intelligent and advised

1 decision on whether to accept the plea offer?

2 A I felt I gave him a lot of advise, but I know

3 Ms. Smalls gave him even -- even more, and then again,

4 we -- the investigator even more, so yes.

5 Q Okay. Had you ever promised him a particular sentence

6 or particular result from this plea?

7 A Never. I never promise anyone anything because, again,

8 you know, I don't have the black rob on and I do not

9 know the -- the nature of what's going to occur, you

10 know, based on, you know, what's happening at that

11 time.

12 Q Okay.

13 MR. CORNEY: I believe that's all the questions I

14 have.

15 THE COURT: All right.

16 MR. CORNEY: Thank you.

17 MR. HOLT: May it please the Court.

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. HOLT:

21 Q Mr. Chaplin, I want the make sure I understand your --

22 MR. HOLT: May I approach the witness?

23 THE COURT: Yes, sir.

24 BY MR. HOLT:

25 Q I want to make sure I understand the plea deal as it

1 was presented to everybody, all the parties involved
2 here. Do I understand correctly that the Solicitor
3 indicated that they -- they'd be willing to accept the
4 plea for ABHAN and that the issues of probation and
5 registry would be left up to the Court?

6 A Correct.

7 Q On Page 15 of the transcript I've handed you, which is
8 January the 20th, 2010, the date of the plea, would you
9 read lines 14 through 17 for me, which is the testimony
10 of Ms. Fent?

11 A The victim mom wants to make it clear that she believes
12 that the fullest sentence and sex offender registry is
13 appropriate and is asking Your Honor to assess that.

14 Q So, upon hearing that, I would imagine you were -- you
15 were surprised that Solicitor indicating that they
16 would leave those issues up to the Court was now
17 presenting those to the Court for consideration.

18 A No, I wasn't surprised.

19 Q Tell me your -- tell me your thoughts about -- about
20 that comment made by the Solicitor.

21 A Okay. I can definitely explain it based on what I've
22 already told you -- or said to the Court earlier.

23 The victim family was not in agreement with the
24 case being reduced down to anything. They felt
25 every -- the charge was what it was and it should go

1 forward as how it was -- how it was first relayed.

2 The -- if you read it, it says, the victim mom wants to
3 make it clear. But it doesn't say, I, the Solicitor,
4 feel that this is what needs to occur. She just -- she
5 has to repeat what the victim says.

6 Q So, you distinguished that presentation from what can
7 traditionally be referred to as a recommendation? You
8 don't consider that a recommendation?

9 A No. What would normally -- no, I wouldn't. I would --
10 I would say that the point would be, she could have --
11 the Solicitor could have said, the victim and I both
12 feel; however, and -- and by reading Lines 15 through
13 17, all I hear about is what the victim wants.

14 Q Turn to Page 9 if you would of that same transcript.

15 A What page?

16 Q Page nine.

17 A (Witness complies.)

18 Q And you can just read to yourself, Lines 1 through 5.

19 A (Witness complies.)

20 Q You know what's being referred to there in that
21 exchange?

22 A Concerning a statement that was -- that she was
23 planning on reading?

24 Q Right. Does that -- do you remember that exchange
25 happening in the court?

1 A Yeah, I do.

2 Q Did you have a chance to read that letter that was
3 being handed up to the judge?

4 A Yeah, we -- I did and Ms. Smalls read that letter.

5 Q Okay. Did you present that to your client, Mr. Brown,
6 for his review?

7 A I don't know if he -- I don't know if we presented it
8 to him, but I -- I know that we relayed to him that the
9 victim had family had written out a statement and
10 that -- that a statement was going to be introduced.
11 But I don't know if we went into him actually reading
12 it, no.

13 Q Now, if you would join me on page 10, and read Lines 8
14 through 11 for me, which is your statement from the day
15 of the hearing.

16 A Okay. I'm ready.

17 Q Okay. Go ahead.

18 A Do you want me read it?

19 Q For the Court, please. Yes.

20 A Okay. Eight from -- starting at 8?

21 Q Yes.

22 A Your Honor, we do have two -- well, one main
23 disagreement. We do admit that sexual act did take
24 place, but actually it was oral sex and not any type of
25 penetration.

1 Keep on?

2 Q No. That's fine.

3 Did Mr. Brown authorize you to make that admission
4 to the Court?

5 A This was a plea, and at -- and we -- all we
6 acknowledged to the Solicitor, and also through the
7 course of negotiations with the Solicitor, making it
8 clear because her -- her point and actually the reason
9 the charge was reduced down from what it was, it was --
10 it was the young lady's assertion that sex actually --
11 that someone actually penetrated her. They didn't have
12 anything to back that up if she was actually penetrated
13 other than the fact that obviously oral sex did exist,
14 but no penetration.

15 So I went back to, as attorney here has just
16 stated, I went back to make sure that the Judge was
17 clear on the fact there was no penetration, but,
18 obviously, we were there to plea, so we were pleading
19 to something. And that's what we were pleading to.

20 Q Well, and I can understand your desire to lighten the
21 force of it, but if your client doesn't authorize you
22 to make such an admission, do you think that it's
23 appropriate to do that?

24 A He didn't -- he didn't sign anything until -- telling
25 me that, if this was brought up, I could talk about

1 what actually occurred, no.

2 Q Did you make a motion to reconsider Judge Child's order
3 in this case -- or sentence, rather?

4 A No, I wasn't -- I wasn't the attorney then.

5 Q Okay.

6 A I was relieved.

7 Q So Mr. -- so is it your understanding that Mr. Brown
8 stood without representation at the time he -- the
9 sentence was read to him?

10 A Or with the public defender.

11 Q Do you know if there was public defender?

12 A Not positive at all. I know that I was informed
13 that -- was called to let me know. Obviously, I was
14 not on the case, but they did find him or turn himself
15 in, either way. And at this point, he was going in
16 front of the Judge. And that's what I was notified of.

17 Q Did you notify Mr. Brown that you were ending your
18 attorney/client relationship with him?

19 A Did I notify him of that?

20 Q (Nodded head.)

21 A Yeah. Actually, he -- he called again before he --
22 before he actually turned himself in; a call was made.
23 And then after he turned himself, a call was made. And
24 he knew I was no longer on anything. Actually -- I
25 actually explained, I wasn't on anything, Ms. Smalls

1 wasn't on anything at that time, and that's where we
2 were.

3 Q Did you take the initiative, though, after that
4 March 19th sentencing where the sentence was placed in
5 a sealed envelope, did you take the initiative after
6 that time to tell Mr. Brown that you were no longer
7 representing him?

8 A I would think that we sent a letter out. I'm not
9 positive on that -- go through there. But I know I
10 spoke to him prior to him going in front of the Judge
11 and he knew I wasn't his attorney.

12 Q Did you have that letter in your file?

13 A No. I -- I said, I would think we did. I don't -- I
14 don't know if I have that or not. But I know that he
15 did speak with me. I'm positive of that.

16 Q That's all I have. Please answer any of the other
17 questions.

18 THE COURT: Mr. Holt?

19 MR. CORNEY: Just one question, Your Honor.

20 THE COURT: Redirect.

21 Mr. Corney. I called you Mr. Holt. I apologize to both of
22 y'all.

23 MR. CORNEY: That's -- that's fine, Judge.

24 REDIRECT EXAMINATION

25 BY MR. CORNEY:

1 Q Mr. Chaplin, will it be fair to say, in your
2 understanding, the plea is a judicial -- is admission
3 of the charge. I mean, that's -- that's a requirement
4 of the plea is a -- is a admission to charges that
5 you're charged with?

6 A Yeah, most definitely. And if -- and if that don't
7 take place, most times the judge will them stand down.

8 Q Okay. So this -- so this talk about oral sex being
9 committed, I mean, that's what he was pleading to, he
10 was admitting to those charges. It doesn't make a
11 difference of whether you said that on the -- on the
12 record or not. I mean, if he's already admitted to
13 them by pleading; is that correct?

14 A Correct.

15 MR. CORNEY: That's all the questions I have, Your
16 Honor. Thank you.

17 THE COURT: All right. Anything for this witness?

18 Mr. Chaplin, you may step down, sir.

19 MR. CHAPLIN: Thank you, Your Honor.

20 THE COURT: Anything further, Mr. Holt?

21 MR. HOLT: No, Your Honor. We have some closing
22 remarks --

23 THE COURT: Go ahead.

24 MR. HOLT: -- at this time.

25 As -- as Your Honor has heard through the short

1 presentation today, the position of the Applicant is that
2 there were various examples of ineffectiveness of the
3 counsel. There's no indication that Mr. Chaplin is a poor
4 lawyer by any means, but lawyer make mistakes and the
5 constitution guarantees effective representation to my
6 client and the others who bring these applications.

7 There were examples here of ineffectivenesses of
8 counsel. The attorney/client relationship was terminated
9 prematurely without my client being informed of that, the
10 plea deal was not obtained in a more permanent manner to
11 ensure the Applicant of what its terms were, the letter
12 which was submitted by the victim to the Court was not given
13 to the Applicant for his review, once the Solicitor's
14 recommendation -- it is disputed I don't know whether
15 recommendation is the right word -- but once her
16 presentation was made, there was no effort by the
17 Applicant's attorney to raise an objection of any kind, a
18 continuance was not requested when it was learned that
19 Mr. Brown had a death in the family and could not attend,
20 and trial or plea counsel stated that the Applicant engaged
21 in a sexual activity she did not authorize to be shared with
22 the Court.

23 These are, together, an example of ineffectiveness
24 of counsel. We ask that the Court grant the application as
25 presented here today.

1 THE COURT: All right. Thank you, Mr. Holt.

2 MR. HOLT: Thank you, Your Honor.

3 THE COURT: Mr. Corney?

4 MR. CORNEY: Your Honor, I think Mr. Chaplin's
5 testimony covered just about everything. It was very on
6 point. I think it's important to note at the plea hearing
7 at the close, Mr. Brown even goes as far in giving his
8 chance to speak to the Court even goes on to say, I'm going
9 to take the time to thank my attorneys. They did a great
10 job.

11 I don't think there's any deficiency in any of
12 these regards based on Mr. Chaplin's -- well, the State will
13 submit there's no -- no deficiency by Mr. Chaplin based on
14 his testimony. Even if the Court were to find some stray
15 deficiency in this entire transcript, I would -- I would
16 urge the Court to go through the record before -- before
17 this Court and what was presented at the plea hearing.
18 There was overwhelming evidence of his guilt. There's no
19 prejudice resulting from any of this anyway. The victim in
20 this situation remembered Mr. Brown's license plate number,
21 home address, identified him perfectly, was able to bring
22 the police back to the address where he brought her. I
23 mean, overwhelming -- that there's a forensic analysis done
24 on her for a rape kit and just overwhelming evidence, and I
25 don't think that the Court will find prejudice even if a

1 deficiency were to be found, but the State would submit
2 obviously there's no deficiency in this regard.
3 So, that's all.

4 THE COURT: Thank you.

5 MR. HOLT: Other than the final statements about
6 the substance of the plea below we don't -- we'd ask the
7 Court not to consider those things and then the Court will
8 not and otherwise that's what we have today.

9 THE COURT: All right. Thank you both for your
10 lively presentation.

11 MR. HOLT: Yes, Your Honor.

12 THE COURT: I'll let you know my decision in due
13 course.

14 MR. CORNEY: Thank you, Your Honor.

15 END OF PROCEEDINGS

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1 COUNTY OF RICHLAND)

2 CERTIFICATE OF REPORTER

3

4 I, Crystal Holmes, hereby certify that I reported the
5 preceding case entitled Daniel Brown V. State of South
6 Carolina No. 2010-CP-40-8716, at the Richland County
7 Courthouse, May 22, 2012. I

8 FURTHER CERTIFY that the foregoing pages 1 through 33
9 constitute a true, accurate and full transcript of said
10 hearing. I

11 FURTHER CERTIFY that I am not employed by any of the parties
12 hereto and I have no financial interest in the outcome of
13 said case.

14 IN WITNESS WHEREOF, I have heretofore set my hand and seal
15 at Richland County on this 27th day of February, 2013.

16
17 
18

19 Crystal Holmes, Court Reporter
20 and Notary Public for the
21 State of South Carolina my
22 Commission Expires:
23 April 21 2014

24
25

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
 Daniel Brown, #341265,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

2010-CP-40-08716

ORDER OF DISMISSAL

2012 NOV 19 PM 3:06
 RICHLAND COUNTY
 FILED
 JUANETTE W. McBRIDE
 C.C.P. & G.S.

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed December 14, 2010. An evidentiary hearing into the matter was convened on Tuesday, May 22, 2012, at the Richland County Courthouse. The Applicant was present at the hearing with counsel, Ryan Holt, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Also testifying was Applicant's former plea counsel, Joenathan Chaplin, Esquire. This Court had before it a copy of the transcript of the proceedings against Applicant, the records of the Richland County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was true bill indicted at the August 2007 term of the Richland County Grand Jury for Criminal Sexual Conduct with a Minor – Second Degree (2007-GS-40-6132). Joenathan Chaplin, Esquire, represented Applicant on the charges. On January 20, 2010, Applicant appeared before The Honorable J. Michelle Childs, where he pled guilty to the lesser

included Assault and Battery of a High and Aggravated Nature. Sentencing was deferred at that time. On March 19, 2010, counsel appeared before the plea court for sentencing, at which Applicant was not present; Judge Childs entered a sealed sentence and bench warrant for Applicant's arrest at that time, as well as relieved counsel from representation of Applicant in the matter. On June 9, 2010, Applicant appeared before the court at which time the sealed sentence was opened and imposed, sentencing Applicant to ten (10) years imprisonment on the charge.

In his current Application, the Applicant alleged he is being held in custody unlawfully for the following reasons:

9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) Plea counsel did not advise Applicant that he was able to make an appeal.
 - (b) Plea counsel terminated attorney-client relationship prior to sentencing and passage of ten days.
 - (c) Applicant was not given the opportunity to appeal because plea counsel did not file an appeal following sentencing.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) My conviction or sentence violates United States or South Carolina Constitution because I received ineffective assistance of counsel prior to pleading guilty.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 - (a) I entered a plea upon the advice of my plea counsel, Joenathan S. Chaplin. Because of Mr. Chaplin's ineffective assistance of counsel, I entered the plea unknowingly and involuntarily. Had it not been for Mr. Chaplin's errors, I would

not have pled guilty. The solicitor promised that she would recommend a lesser sentence than she actually did. Plea counsel failed to tell me about an earlier plea offer that was better than the one I was given. Mr. Chaplin specifically told me that the solicitor was recommending a lesser sentence as part of a plea deal. If I had known I was receiving a ten year sentence, I would not have agreed to the plea. Mr. Chaplin did not tell me the truth regarding the plea agreement and incorrectly advised me. I would not be in prison here today if it were not for Mr. Chaplin's ineffective assistance of counsel. As my attorney, it was Mr. Chaplin's responsibility to obtain any plea offer in writing. By not doing so, plea counsel demonstrated a complete lack of assistance and failed to uphold my side of the plea bargain. Mr. Chaplin also said things at the plea hearing that were not true. The things that he said, I was not told he would say. Those misstatements made my sentencing and case worse. An effective attorney would not misstate facts to make his clients worse off if he is really an effective attorney. Plea counsel also failed to arrange that the plea hearing and sentencing were on the same day. Additionally, during the hearing, Mr. Chaplin did not object when the alleged victim's mother submitted a letter to the Court which was not reviewed by Mr. Chaplin. Furthermore, Mr. Chaplin was difficult to make contact with and conducted himself as if this case were his first, although he indicated that he had handled similar cases before.

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This Court has had the opportunity to review the record in its entirety and has heard the arguments presented by both parties at the evidentiary hearing. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced 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.

Merger of Applications (2010-CP-40-7942; 2010-CP-40-8716)

As a preliminary matter, this Court hereby merges the two applications previously filed challenging the underlying convictions. The first application was filed November 12, 2010 (2010-CP-40-7924); the State made a motion to dismiss the application based on Applicant's failure to complete the verification page. That action is still currently pending. Thereafter, the

current application was filed on December 14, 2010. Because an Applicant is generally not allowed to have two post-conviction relief proceedings in regard to the same conviction(s), this Court hereby merges the two applications to be disposed of collectively as Applicant's complete "one bite" at the proverbial PCR apple. See Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); S.C. Code Ann. § 17-27-90.

Therefore, the Richland County Clerk of Court is hereby ordered to merge the two open cases, with docket number 2010-CP-40-8716 being the surviving case ("Application") and docket number 2010-CP-40-7924 being a supplement to the above application ("Amendment"). Upon finalizing the merger, the Clerk of Court and South Carolina Attorney General's Office are ordered to close their files in the earlier application (2010-CP-40-7924).

Involuntary Guilty Plea

Applicant alleges his guilty plea was rendered involuntary as a result of counsel's ineffective assistance prior to and during the plea hearing. Specifically, Applicant testified at the PCR hearing that counsel told him in July of 2007 that the state was extending a plea offer under which Applicant would receive time served, probation and no sex offender registry. Applicant said that because staying off of the registry was very important to him, he decided to accept the plea offer. Applicant conceded he never saw the alleged plea offer in writing from the state, nor did he ever partake in discussions with the state about the supposed plea offer. Applicant said had he known he was going to get jail time and be required to register as a sex offender, he would never have entered the plea as he did. Applicant also stated he believed he was sentenced more harshly because he did not appear at the sentencing hearing due to a death in the family. Applicant conceded he was aware of the sentencing hearing date and time, but did not appear because of that family member's death.

Counsel testified he was retained to represent Applicant in late July of 2007, after which he brought on Gwynn Smalls as "of counsel" to sit second chair in the matter. Counsel recalled that he reviewed the indictments, charges, potential sentences, and indirect consequences of a conviction with Applicant during their initial meetings, as well as informed Applicant of his constitutional rights including the absolute right to jury trial. Counsel also noted he reviewed the discovery materials with Applicant in depth during their meetings.

Counsel testified he entered into plea negotiations with the prosecuting solicitor thereafter, but was unable to get the solicitor to agree to a "time served" plea offer. Rather, counsel said, the solicitor offered Applicant the opportunity to plead to a lesser included offense, while leaving sex offender registration in the plea judge's discretion. Counsel stated he had "detailed discussions" with Applicant about these plea negotiations, which counsel said he believed Applicant fully understood. He noted that he never promised Applicant a particular sentence and said Applicant was aware he could potentially receive the maximum sentence upon entry of his plea as there were no recommendations or negotiations as to the sentence to be imposed.

According to counsel, on the day of sentencing Applicant did not show up despite counsel having spoken with Applicant and Applicant's family as recently as two (2) days prior to the hearing at which time Applicant said he would be at the hearing. Counsel said he was never made aware of the alleged death in Applicant's family that purportedly prevented Applicant from being at the sentencing hearing and, therefore, he did not present that issue to the plea judge.

Based on a thorough review of the record and the testimony presented at the PCR, this Court finds the current allegation to be without merit as counsel was not ineffective in this regard. As a preliminary matter, this Court finds Applicant's testimony to be not credible, and

conversely finds counsel's testimony to be very credible. Counsel worked diligently to obtain a plea bargain from the state with the terms which Applicant sought, but was unable to elicit such an offer as the state was unwilling to agree to Applicant receiving a "time served" sentence. Counsel was able to obtain a beneficial plea offer from the state under which Applicant would be allowed to plead to a lesser included offense with no negotiations/recommendations as to sentence or sex offender registry. Counsel thoroughly reviewed the terms of that offer with Applicant to ensure Applicant had a full understanding of both the direct and indirect potential consequences of accepting the offer. Applicant, having full knowledge of the state's evidence against him and his ability to challenge that evidence through jury trial, made the voluntary and informed decision to accept the plea offer and waive that right to trial. Applicant has entirely to show how counsel's performance was objectively unreasonable in this regard, or how such alleged deficient representation affected his decision to plead guilty.

Further, this Court finds Applicant cannot prove resulting prejudice from any alleged deficiency as he was facing overwhelming evidence of guilt. A reasonable probability of a different result does not exist when there is overwhelming evidence of guilt. See Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (1991); Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994). The victim was able to tell police Applicant's license plate number from the car in which he picked her up, the exact address of Applicant's home where the assault occurred, give a detailed description of Applicant, pick Applicant from a photo lineup and provide other various distinguishing details identifying Applicant as the suspect. With all of this in mind, this Court finds no reasonable likelihood that, but for counsel's alleged deficiency, Applicant would not have pled but rather proceeded to trial to face the more serious charge. Therefore, this allegation is denied and dismissed.

Failure to File Motion for Reconsideration or Direct Appeal

Applicant's only other allegation is counsel was ineffective for failing to file a motion for reconsideration of the sentence after the plea to seek a lesser sentence, and for failing to file an appeal on Applicant's behalf. Applicant testified counsel never advised him of the right to ask for reconsideration or the right to appeal. Counsel testified Applicant was not at the sentencing hearing and he did not hear from Applicant thereafter until Applicant attempted to "reach out" to counsel from jail. Counsel stated Applicant never requested reconsideration, nor did he request an appeal, and further stated the time to file a motion for reconsideration and/or appeal had already expired by the time Applicant reached out to him from jail.

Based on the credible testimony from counsel above, this Court finds these allegations to be without merit. Under Rule 29(a), SCRCrimP, "post-trial motions shall be made within ten (10) days after the imposition of the sentence." Counsel was never asked by Applicant to file the motion to reconsider within the ten (10) day timeline, nor did counsel have any reason to believe Applicant wanted such a motion filed. Further, by the time Applicant's sentence was unsealed by the court and imposed at which time Applicant could have potentially wanted such a motion filed, counsel had been relieved from his representation of Applicant by the plea judge. Therefore, this allegation is without merit.

Regarding counsel's alleged failure to file an appeal of the plea, absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to direct appeal from a guilty plea. Roe v. Flores-Ortega, 528

U.S. 470 (2000). The South Carolina Supreme Court has applied this standard to guilty pleas, saying:

...absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to appeal from a guilty plea... The bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief. Instead, there must be proof that extraordinary circumstances exist such that the defendant should have been advised of the right to appeal.

Weathers v. State, 319 S.C. 59, 459 S.E.2 838 (S.C. 1995). Therefore, even if taken as true, Applicant's allegation that counsel did not inform him of the right to direct appeal is not *per se* reason to warrant a belated direct appeal. Further, based on the credible evidence, Applicant did not request counsel file an appeal on his behalf within the ten (10) day time frame for filing, nor did any extraordinary circumstances exist such that counsel reasonably *should have* known Applicant wanted an appeal. Finally, Applicant failed to establish any non-frivolous grounds existed for appeal. Accordingly, this Court finds Applicant is not entitled to relief and the current application must be denied and dismissed with prejudice.

CONCLUSION

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

Except as discussed above, this Court finds that the Applicant failed to raise all additional allegations raised in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may

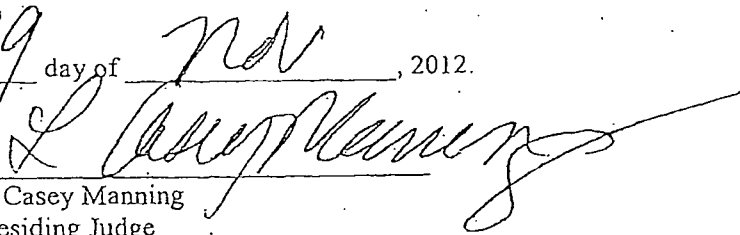
be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

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

IT IS THEREFORE ORDERED:

1. That Applicant's original PCR application filed November 12, 2010 (2010-CP-40-7924), be merged with the current application filed December 14, 2010, with the current action being the surviving one (2010-CP-40-8716);
2. The Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
3. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 19 day of Nov, 2012.


 L. Casey Manning
 Presiding Judge
 Fifth Judicial Circuit

Columbia, South Carolina.

WITNESSES

(S) J.W. SLOAN, CPD

ARREST WARRANT NUMBER

K-265076

ACTION OF GRAND JURY

TRUE BILL

Person of Grand Jury

AUG 16 2007

VERDICT

Person of Petit Jury

DOCKET NO. 2007-GS-40-6132

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

AUGUST TERM 2007

92

THE STATE
vs.

DANIEL M. BROWN

Indictment for
CRIMINAL SEXUAL CONDUCT
WITH A MINOR 2ND

SC Code: 16-3-655(B)
CDR Code: 0396
Class: FEL/C(V)

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

Defendant

Daniel M. Brown

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

ABHAN

Defendant

Witness:

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

CERTIFIED TRUE COPY
OF ORIGINAL FILED
J. W. Sloan
C.C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on AUGUST 15, 2007, the Grand Jurors of Richland County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, 2nd DEGREE

That DANIEL M. BROWN, did in Richland County on or about JUNE 4, 2007, wilfully, unlawfully and feloniously engage in a sexual battery with a minor who was fourteen (14) years of age or less but who was at least eleven (11) years of age, to wit: Minor _____, all in violation of Section 16-3-655 (B), 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.


WARREN B. GIESE, SOLICITOR

REC'D HUNT CENTRAL
CLERK OF COURT
RICHLAND COUNTY
SOUTH CAROLINA
AUG 16 2007