

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Horry County

Honorable Kristi F. Curtis, Circuit Court Judge

WILLIAM HOWARD FUNDERBURKE, JR

PETITIONER

V.

STATE OF SOUTH CAROLINA

RESPONDANT

APPELLATE CASE NO. 2023-001061

PRO SE TESTIMONY

OF

WILLIAM HOWARD FUNDERBURKE, JR

Throughout my personal experience with the South Carolina legal system, I have had one singular problem. I am unable to get people to believe me when I am telling them the truth. In 2017, I was accused by my stepdaughter, Mrs. Tristan Hershey, (born 8-8-1986) of molesting her when she was 13 years old. It was an out and out lie, but the Horry County Police Department believed her and thus began the nightmare. This seven-year hell has reached this moment and this document and is my last legal attempt to try and prove that 1) I DID NOT molest my stepdaughter, and 2) Mr. James Stanko, my appointed Public Defender, DID NOT provide me with adequate legal representation and counsel, which is my right under the 6th Amendment.

I want the court to know that I did have two mutually consensual sexual trysts with Mrs. Hershey when she was an adult. The first occurrence happened in the Fall of 2010, and the second occurrence early in 2012. These were massive moral failures on my part, and they wound up costing me my marriage and my family, and everything I held dear. Rightfully so because these were my decisions and I take full responsibility for them. Decisions I rue every day. Be that as it may, I did not ever have any sexual intentions or interactions with Mrs. Hershey when she was a minor.

There are three attachments I am including in this Pro Se document. The first is a synopsis of my every meeting with Mr. Stanko. I took meticulous notes at each meeting because, literally, my life and freedom depended on it. I sent this document to my court appointed PCR attorney, Mr. James Falk, on July 22, 2021. My desire was to read the document in its entirety at my PCR hearing, and have it placed into the court record. Mr. Falk, whom I met an hour before the proceedings, told me I could not read it before the court because he had failed to send opposing council a copy. So, I present it to you. Judge Curtis stated in her ruling "The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal". I hope the specifics I make in my statement will fulfill this requirement. I have notarized this with an oath to its accuracy. The second document represents the results of a polygraph examination which I paid for to submit to this court. The polygraph was administered by Mr. Andrew Goldstein LCPE. Mr. Goldstein came to me highly regarded by three of the most successful criminal law firms in the Myrtle Beach area. I have also included his biography. The third is a statement from my former spouse, Sandra Lee, who, of her own volition wished to

make a statement to this court about her brief interaction with Mr. Stanko. Ms. Lee is also the mother of Mrs. Hershey.

ITEM 1: INEFFECTIVE ASSISTANCE OF COUNSEL

In her PCR ruling, Judge Curtis cites *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985) indicating the applicant bears the burden of proving allegations contained in the application. She also cites *Strickland v. Washington*, 466 U.S., 668, 686 (1984) noting when an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result”. I would direct the court to the attached document of my meeting synopses with Mr. Stanko, specifically the meeting on January 18, 2018. Mr. Stanko had been my counsel for approximately eight months. I asked him exactly what his plan for my defense was and he did not have one. He told me as soon as we had a court date, we would plan a defensive strategy. The next time I heard from Mr. Stanko was via telephone on June 5th indicating we now had a court date of June 11th, and he felt confident we would go to trial. It had been almost six months since I heard anything from him. He wanted to meet at his office on June 7th.

At that meeting, there was no “vigorous” defense planning...just a presentation of a plea deal he had brokered with the Solicitor’s office. Mr. Stanko, along with one of his colleagues strongly recommended that I accept the plea deal, of which I was vehemently opposed. He stated that if I really wanted to proceed with a jury trial, he would do that. But how could I? There was no defensive plan, no rebuttal strategy, no witnesses subpoenaed. We never even had a discussion for his “She said/He said” defense, and we were due in court Monday! I felt that he had not adequately prepared for a jury trial, and I would lose. That is why I accepted the plea deal.

Let me please state, that I whole-heartedly believe that with competent legal counsel, we could have presented enough evidence to create a reasonable doubt in a jury and that additional preparations and communications WOULD have produced a different outcome.

ITEM 2: COUNSEL REFUSED TO SCHEDULE A REQUESTED POLYGRAPH EXAMINATION.

Mr. Stanko testified at my PCR hearing during both direct and cross-examination that "a polygraph was brought up early in our proceedings, and it never really progressed to the point where I believed it was a serious offer on his part". Judge Curtis found that Mr. Stanko's testimony was "credible". Nothing could be further from the truth. I understand polygraph results are inadmissible as evidence in a criminal court. I wanted Mr. Stanko to believe me when I said I never molested my stepdaughter. I asked for one at **every** meeting with him. I would draw the court's attention to my second set of documents, the results of my self-funded polygraph examination. I offer these documents only to show what the results WOULD have been had Mr. Stanko respected my request and scheduled one. The results would have been the same because the truth is the truth. I sought out one of the most reputable polygraph examiners in North & South Carolina. Mr. Goldstein's biography (also included) confirms he is just that. I told the truth when I said I did not molest my stepdaughter. The final statement made on my polygraph examination was for the benefit of this court. Another truthful statement is that, except for court dates, I asked for a polygraph at every meeting with Mr. Stanko.

Please understand, I am not claiming that Mr. Stanko perjured himself. I am saying that he NEVER took any notes. He told me he had 531 other clients so to think he paid any particular attention to me is ill-considered. I was number 532. At our three courts hearings, Mr. Stanko asked me each time what I did for a living.

I would also give anything to have Mrs. Hershey take the same polygraph examination.

The third statement contained herein is from my former spouse, Ms. Sandra Lee, Mrs. Hershey's mother. When I told her of this documentation I was preparing, she wished to report to this court of her encounter with Mr. Stanko, especially regarding his professionalism.

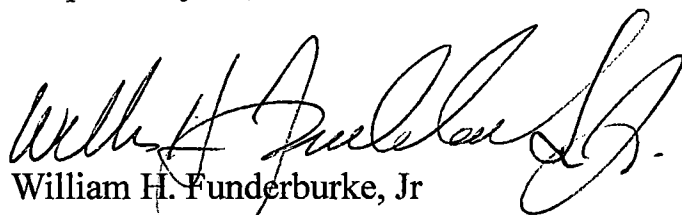
CONCLUSION

I did not want to accept the plea deal offered me by my counsel. That being said, I have complied and submitted to each, and every condition dictated by the rules of the plea deal. I was a model prisoner in the SCDC and have had an issue-free probation. I have abided by the laws for sex offenders, have paid all my court costs, and will pay off my probation fees before the end of April. My complete sentence will be over in June 2024. However, I still want justice. I did not commit the crimes I am accused of doing and I will not give up the fight to clear my name. I am not looking for any kind of recompense or to inflict retribution. I just want to go on with my life without the stigma of being a felon and a sex offender.

I am asking the court to vacate this plea deal with prejudice based on *Cherry*, '300 S.C. at 117-118; "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."

I remain grateful for your time and attention.

Respectfully submitted,



William H. Funderburke, Jr

2407 James St., Apt. 410

Conway, S.C. 29527

SYNOPSIS OF EVERY MEETING WITH JAMES STANKO, ESQ.

I was initially arrested on February 7, 2017, on a charge of Criminal Sexual Conduct w/a Minor, Second Degree. I was confined to the J. Reuben Long confinement facility in Myrtle Beach, SC. I was able to secure a bond release on February 11, 2017. I received notification from the 15th Circuit Public Defender's Office, in a letter dated February 9, 2017, that James Stanko, Esq., had been appointed as my attorney. There was some delay between the mailing of these documents and my receipt of them, as I did not return to my marital home after my release on bail.

My first court appearance was scheduled for April 21, 2017, but I did not attend as I was not required to since Mr. Stanko was now representing me. My next scheduled court date was July 7, 2017.

On May 5, 2017, I received notification of my first meeting with Mr. Stanko. It was scheduled for May 25th at the Public Defender's office. This and subsequent meetings and summaries of discussions follow.

1. Meeting on May 25, 2017 – Public Defender's Office

After initial pleasantries, Mr. Stanko said to me "So you admitted to doing it?" to which I vehemently denied any guilt or admission of guilt. At my denial, Mr. Stanko leapt to his computer as if he were going to prove me wrong. I told him strongly that the "victim" was lying, and I believed we should focus on getting to the facts. At this point I requested a polygraph test. *(Let me state here that I understand that polygraph evidence is not admissible in court. However, it is true that a successful polygraph has been used to remove an individual from a suspect list.)* I asked him to schedule one as soon as possible and he told me he did not believe in them; that they were not reliable. I recommended to him setting up a polygraph and inviting the solicitor's office to attend. Again, he stated he did not believe in them. At this point, somewhat puzzled but continuing, I let him know it was my desire to have a jury trial, and asked what we must do, bottom line, to win this case. He said that we must prove the "victim" is lying. So that became my focus, to find facts and proof that the "victim" had manufactured this story. I

remember asking him if he had ever defended a case like this and he told me he had not. I asked if he would be willing to seek advice from an attorney who had dealt with such charges. His reply was that He did not feel that would be necessary because there was no proof, and this was a "he said, she said" case of which type he had defended several times. He gave me instructions for my first appearance in court on July 7th, 2017. The meeting concluded with me receiving a copy of the video/audio of evidence.

June 2017

I had received a wonderful job opportunity to be the General Manager of a Christian radio station located in Fairmont, N.C. WSTS-FM, a part of the Truth Network offered me the position in early June, and I communicated several times with Mr. Stanko because my bond would not allow me to leave the state without permission. I did not need to move to North Carolina, only to commute daily for work. My residence would remain in South Carolina. I cleared it with my bondsman, and Mr. Stanko e-mailed me that he would ask for a bond modification. I never heard back concerning the modification, but I did accept the position on June 22, 2017.

2. Court date July 7th, 2017.

I honestly do not remember very much from this court date other acknowledging my attendance and that I was satisfied with counsel. One of the truly frustrating events did happen when Mr. Stanko brought me to the solicitor's table where I was presented with a plea deal offering a 5–10-year sentence for a guilty plea. As Mr. Stanko presented this to me, I reminded him that I did not want a plea agreement, but I had requested a jury trial. He told me to think about it and I had until September 6, 2017, to decide. I told him my mind was made up to fight these charges. He shrugged and handed the paper back to the assistant solicitor. I was also informed at this meeting that my arraignment would be October 5th, 2017. Again, I requested him to schedule a polygraph for me. He said it would cost \$400, which I said to set it up and I would get the money.

3. Court Date October 5, 2017.

Mr. Stanko met with me very briefly before court started. He asked me again what I did for a living. I entered a "Not Guilty" plea and requested a Jury trial. After the Judge explained the benefits of a plea deal, which he clearly stated was simply another option, I confirmed my desire to present evidence to a Jury. The Judge then asked Mr. Stanko if he would be ready to present the case in January and he acknowledged that we would. Mr. Stanko set up a meeting at his office for October 19th, 2017.

4. Meeting on October 19, 2017- Public Defender's Office

At this meeting, I presented Mr. Stanko with some names that I thought we should subpoena for the trial. Based on what the Judge had said about going to trial in January, I thought three months would be a good timetable to build a defense. The names I provided would be able to testify about the "victim's" other attempts at deceit and her penchant for emotional blackmail, in which she would refuse to let her mother see her grandchildren. Again, I reviewed for him the claims of the "victim" that were out and out lies and asked if he had set up the polygraph yet. Again, he stated that he was not going to do that. I asked when we could meet again, and he told me his office would call.

5. December 2017

I sent Mr. Stanko an e-mail on December 18th, 2017, lamenting my inability to get an appointment to see him, still thinking we were going to trial in January. I did receive a notice from the Public Defender's office on December 16th about a pre-scheduled appointment for January 18, 2018. In the e-mail, I indicated that my confidence in getting a fair trial was rapidly waning, as we had spent zero time planning a defensive strategy. He responded on December 21, 2018, telling me no trial date had been set, and there had been no new developments in my case. I made the arrangements to be at the January 18th meeting.

6. January 18, 2018 – Public Defender's Office

I will admit at this meeting I was a little chagrined. I asked him if he had subpoenaed the people I suggested, and he said no. I asked if he had scheduled a polygraph and he said no. (Again, let me state I was under the impression that we could go to trial any moment!) I asked him exactly what his plan was for my defense. He told me that there was no scheduled trial date, and he did not anticipate it coming in the immediate future. At this point he told me he had 531 other clients, and he would focus on my situation once we got a trial date.

I told him I had come upon some new information as to perhaps why the "victim" made up this story about me molesting her. The source was extremely reliable. I was told in mid-January, 2017 that a man appeared on the "victim's" porch and demanded a paternity test because he believed the "victim's" youngest child, a son born in 2013, was in fact his child. Two weeks later the "victim" made these outlandish accusations of being molested. I suggested these accusations were made to the "victim's" husband as she tried evading responsibility for her promiscuity. Mr. Stanko commented he was considering putting me on the stand, which he stated is something he rarely did. I implored him to please meet with me as much as possible in the coming weeks to plan a defensive strategy. He promised, as soon as we had a trial date, we would meet and plan a "vigorous" defense. He told me he had clients that have been waiting over a year for their trial date. When we had a date, he would focus on my case. After I left that meeting, I decided that all I could do was be prepared, and I would patiently wait to hear from him when the court assigned us a date.

7. Tuesday, June 5, 2018

I received a phone call from Mr. Stanko at approximately 2 pm. He informed me that we now had a trial date for Monday, June 11, 2018. He said there was no certainty, but he felt confident our case would come before the judge that day. At this news, my heart just sank because it was the first time I had heard from him since our meeting in January. He said he wanted to meet with me Thursday, June

7th, to which I agreed. I felt the blood leave my face. We were going to trial in less than a week and if he had planned a "vigorous" defense on my behalf, he had not included me in it. All I could do was pray that he had been working on my defense in the weeks leading up to June 11. I had a bone-chilling feeling that he had not.

8. Thursday, June 7, 2018 – Public Defender's Office

When I arrived at Mr. Stanko's office, He introduced me to one of his colleagues in the Public Defender's office. I do not recall his name, but he remained for the duration of the meeting. Mr. Stanko then handed me a document and said, in addition to the CSC w/a minor (2nd degree), the Solicitor's office was considering adding a charge of "Solicitation of a Minor". The paper Mr. Stanko handed me contained the excerpt from the law including the penalties for conviction of Solicitation. He then handed me another document that was an offer from the solicitor's office of a Plea deal. It stated if I agreed to plead guilty to a charge of Solicitation, the prosecutor's office would drop the Criminal Sexual Contact charges and would not recommend/request any type of punishment; they would leave it entirely up to the presiding Judge. Mr. Stanko recommended fervently that I agree to this deal. He then showed me three separate instances on the interrogation video, where I supposedly implicated myself to the alleged solicitation. I told him these selected video bytes are being taken completely out of context, but his associate said that the plea deal was the best action for me. Again, I implored him that I had neither sexually assaulted NOR solicited anything from the "victim" and that I wanted a jury trial. I asked him what he had done to prepare for a jury trial? Mr. Stanko said that his defense would be whatever direction I wanted to go. I stated, "*so basically you're going to do the He said/She said defense.*" He again said that, in his opinion, the plea deal was the better of the two options. He told me Solicitation is a "non-violent" charge and coupled with the fact that I had never been in trouble with the law, the Judge might be willing to go "easier" on me. I asked what he meant by "go easier" on me. He said the Judge could send me to jail or maybe just give me probation. I asked him what probation was like? Mr. Stanko's associate spoke up and said, "*you check in once a week and take a piss test once a month*". I asked Mr. Stanko, "*if I took this*

plea deal, what are my chances of getting probation?" to which he replied, *"better than 50 percent"*. I asked, *"what are my chances of winning a jury trial?"* to which he answered, *"less than 10 percent"*. I sat quietly for a few moments weighing the offer. I did not want to do this. I asked Mr. Stanko if he would please ask for a deferment to give us more time to plan a defense. He said the Judge would not do it. I said, *"could you please ASK?!"* and again he said it would not happen. It was obvious to me now that Mr. Stanko had no intention of actually trying to plan a defense and his motivation as a Public Defender (who works for the state) was to get me to agree to a plea deal and be on to his next case. I told him I would have to think about it. I will contact him tomorrow (Friday, June 8) and let him know my decision. He instructed me to make haste because the Solicitor could withdraw this offer at any time.

I was completely defeated when I left his office. What kind of attorney meets with his client to discuss a defense strategy, and the attorney shows him what the prosecution is going to show the court, and why he should take the plea deal? He had not committed a single minute to planning a defense and it appeared that the only thought he had given to my case was how to get me to accept a plea deal. He even brought in an associate to echo his sentiment of how hopeless my situation would be if placed with a jury. He painted an ugly picture. 20 plus years of prison for the violent crime of CSC w/ minor AND the addition of the solicitation charge or a better than 50 percent chance of probation for a non-violent crime (and a maximum penalty of 10 years incarcerated) by choosing the plea deal. I had not committed a crime. I felt we could prove the "victim" was a liar and had fabricated this entire scenario. For the moment I believed I did not have a choice. I deliberated the rest of Thursday and through much of the night into Friday morning. Since we were going to go to trial Monday, and I had to have Mr. Stanko an answer by Friday, I did not have time to seek any type of advice or to get someone else's opinion on what I should do. Once I got to prison, I found out I could have requested a different attorney through the Public Defender's office, but I was not aware of that at the time I had to decide. I never had a reason to know this information! I contacted Mr. Stanko on Friday and told him I would accept the plea deal. We agreed to meet at the courthouse before the trial time.

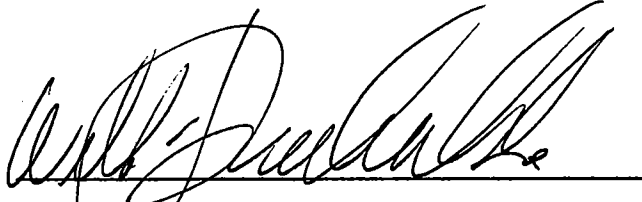
9. – Monday, June 11, 2018 - Fifteenth Circuit Court, Conway, SC

When Mr. Stanko arrived, I waited my turn as he met with other clients. When it was my time, he presented documents for me to sign regarding the plea deal. He asked me again what I did for a living. Again, I thought to myself that I am nothing but a name on paper to this man. I asked him if there was something I could do to perhaps influence the Judge to give me probation. He said to make sure I appeared remorseful, and it would be a good idea to apologize to the “victim” and he then coached me on what the judge would ask and how to answer. I threw up in my mouth. I signed the papers and asked him for one thing. If things went bad and I had to go to prison, please ask the judge to defer my report date for two weeks because I live alone and I have pets which I will need to plan other housing arrangements for. He said he did not believe the judge would grant it, but that, if I were sentenced to prison, he would ask the judge to please consider my request.

My hearing took place in front of Judge Benjamin Culbertson. I was sentenced to eight years in prison, suspended to two years and five years’ probation. Mr. Stanko did NOT ask the judge for a deferment to re-home my pets. When they took me immediately to the holding cell, Mr. Stanko came in and his last and only statement to me was *“Well...it could have been worse”*. The final atrocity came when the judge ordered me to pay Mr. Stanko \$500 for his services.

Mr. James Stanko failed in his responsibility to provide me with fair and honest legal representation. As his client, he did NOT follow my wishes for my defense, and it was scathingly obvious he put minimal effort into planning a reasonable defense and most of his effort was to steer me into the plea deal. The ONLY “strategy” Mr. Stanko discussed with me was that he was considering putting me on the stand. His ENTIRE defensive plan was to react, and he demonstrated zero effort in planning a course of pro-action. Although he always said we could take this to the jury, it appeared to me he had put zero effort into any preparation.

I do solemnly swear under penalty of perjury that the statements in this document, transcribed from my personal notes of every meeting, are true and correct to the best of my knowledge and belief, so help me God.

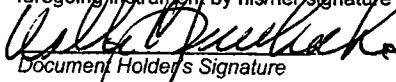
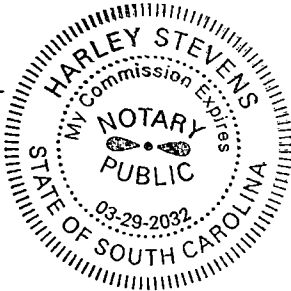


William H. Funderburke, Jr.

Conway, S.C.

State of South Carolina
County of Horry

On this 5 day of April, 2024, before me personally appeared William Funderburke who provided satisfactory evidence of his/her identification to be the person whose name is subscribed to this instrument and he/she acknowledged that he/she executed the foregoing instrument by his/her signature here.


Document Holder's Signature

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CONWAY, S.C. 29527

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